V.S. DREAM COACHING

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

Year – 2024

NO. 12 OF 2024

NEWSLETTER

December 2024

Index

S.N.	Subject
1.	Study Material-Law
2.	Study Material-G.K.
3.	Study Material-Language
4.	Current Affairs December 2024
5.	Prelims and Mains Notes Preparation Scheme

Secret of success is to know something

nobody else knows

Established in Sept. 2022

For Judicial Service Aspirants

In the service of Judicial Fraternity

1. Study Material-Law

Indian Local Governance and 73rd and 74th Constitutional Amendment Acts

The significance of local government was recognized during the pre-independence period. Consequently, when the Indian Constitution was drafted post-independence, its creators proposed measures to promote public participation at all levels of governance, which is essential for the smooth and efficient functioning of democracy. To achieve this, the concept of the panchayat system was introduced. Article 40 of the Constitution states that the state shall take steps to organize village panchayats and endow them with the necessary powers and authority to function as units of self-government.

In 1952, India launched a community development program; however, it failed to engage the general public effectively. To enhance accessibility, a committee chaired by Balwant Rai Mehta was formed in 1957. This committee submitted its report in 1958, recommending the establishment of a three-tier panchayat system at the local level, including a gram panchayat at the village level, a panchayat committee at the block level, and a district council at the district level. All three bodies were to be interconnected through indirect elections, with direct elections proposed for the gram panchayat and indirect elections for the other two bodies.

In response to the committee's recommendations, then-Prime Minister Jawaharlal Nehru launched the panchayat system for the first time on October 2, 1959, beginning in the Nagor district of Rajasthan. Following this, several other states adopted the panchayati system. However, due to insufficient funding and internal conflicts among members of the Panchayati Raj institutions, the initiative did not achieve its intended success.

After the recommendations of the Balwant Mehta Committee were not successfully implemented, the Ashok Mehta Committee was established in 1977 to assess panchayati raj institutions and enhance their effectiveness. In its report, the committee proposed a two-tier system for the panchayat structure, with a mandal panchayat at the lowest level, comprising 10 to 15 villages, and a district council at the district level. However, these recommendations could not be realized due to the prevailing political climate.

In 1985, a committee led by GVK Rao was formed, which recommended strengthening the zilla parishads. A year later, in 1986, another committee was established under the chairmanship of LM Sindhvi to examine the panchayat system. This committee highlighted the necessity of reinforcing the gram sabha and conducting regular elections for panchayati raj, while also advocating for constitutional status for panchayat raj.

The 73rd and 74th Amendments to the Constitution of India granted constitutional status to local self-governments in rural and urban areas. Before these amendments, the Constitution recognized only states as subnational entities. Governance, policymaking, and legislative domains were outlined in three lists: the Union List, the State List, and the Concurrent List—the 73rd and 74th Amendments aimed to enhance grassroots democracy through local bodies.

The 73rd Constitutional Amendment not only facilitates public participation in local self-governments within the Panchayati Raj system but also plays a vital role in strengthening democracy. Simultaneously, it represents a step toward fulfilling Mahatma Gandhi's vision of Gram Swaraj.

The 73rd Amendment focuses on Panchayati Raj institutions, resulting in the addition of Part IX to the Constitution. With the inclusion of Schedule 11, subjects related to the jurisdiction of panchayats were incorporated into the Constitution.

To effectively implement the provisions of Article 40, the 73rd and 74th Constitutional Amendments were enacted in December 1992. These amendments introduced local self-governance in both rural and urban India. The 73rd Amendment Act took effect on April 24, 1993, followed by the 74th Amendment Act on June 1, 1993. Together, these amendments granted constitutional status to both the Panchayati Raj system and municipalities.

The 74th Amendment to the Constitution was passed by Parliament in December 1992 and came into effect on June 1, 1993. This amendment introduced Part 9A into the Constitution and added the 12th Schedule. The Municipality Amendment Act defines municipal areas and establishes rules governing the organization, powers, functions, and finances of urban local government institutions. It also includes provisions from Article 243P to Article 243ZG. The 74th Amendment aimed to revitalize urban governments, enabling them to operate effectively as local government units and enhance public participation in city development.

Article 243Q outlines the establishment of three types of municipalities in every state: Nagar panchayats for areas transitioning from rural to urban, municipal councils for smaller urban areas, and municipal corporations for larger urban areas.

Regarding the composition of municipalities, all members are to be directly elected by the residents of the municipal area. To facilitate this process, municipal areas are divided into territorial constituencies known as wards. Each ward in the urban area will have its members elected directly. The method of electing chairpersons for municipalities is to be determined by the state legislature under Article 243R.

Reservations for seats for Scheduled Castes and Scheduled Tribes in every municipal corporation must be allocated in proportion to their population relative to the total population of the municipal area. Every municipal corporation has a five-year term that begins with the date of its first meeting. Elections are held following the completion of this term. A new election to form a corporation must occur within six months of the resolution of a municipal corporation. Article 243K pertains to elections for the panchayats, while Article 243ZA addresses the state election commission. The responsibility for conducting elections lies with the state election commission, which operates independently of the Election Commission of India.

A key feature of the constitutional amendment is the establishment of a finance commission under Article 243Y, which will make recommendations on the financial distribution between the state and municipalities and suggest methods for improving finances as well as determining grants and aids. The finance commission constituted under Article 243I will also review the financial status of municipalities and provide recommendations to the governor.

Additionally, the act has introduced a 12th Schedule to the Constitution, which lists 18 functional items for municipalities under Article 243W. These items include urban planning, financial and social development (including urbanization), regulation of land use, roads and bridges, water supply, and public health, among others.

To address the economic, social, and political challenges facing society, there is a continuous need to amend the Constitution. The Constituent Assembly established a detailed procedure for this purpose, which has facilitated the inclusion of numerous amendments, ranging from the Panchayati Raj system to many others.

B. Important Cases December 2024

Important Supreme Court Cases
December 2024

S.N.	Subject	Case Reference
1.	Issued direction to the police official(s) of all the States to complete the enquiry and file report as regards the character, antecedents, nationality, genuineness of the documents produced by the candidates selected for appointment to the Government service, etc., within a stipulated time provided in the statute / G.O., or in any event, not later than six months from the date of their appointment.	Basudev Dutta Vs. State of West Bengal and Ors., decided on 05/12/2024
2.	It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.	Kunhimuhammed @ Kunheethu Vs. State of Kerala, decided on 06/12/2024
3.	Directed all states and union territories to constitute a dedicated cell for the prompt processing of the mercy petitions by death row convicts within the timeline laid down by the respective governments.	State of Maharashtra and Ors. Vs. Pradeep Yashwant Kokade and Anr., decided on 09/12/2024
4.	The inclusion of Section 498A of the IPC by way of an amendment was	Dara Lakshmi Narayana and Ors. Vs. State of Telangana

	intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife.	and Anr., decided on 10/12/2024
5.	Permanent alimony shouldn't penalize husband but should ensure decent living for wife	Parvin Kumar Jain Vs. Anju Jain, decided on 10/12/2024
6.	Contempt jurisdiction cannot be invoked to execute a decree or implement an order. The contempt power can be invoked only if it is established that there was a wilful disobedience. Even while exercising such power, the Court has to restrict the scope of its enquiry to the directions which are explicitly specified in the judgment or order. In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. It means knowingly-intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It	Chaduranga Kanthraj Urs and Anr. Vs. P. Ravi Kumar and Ors., decided on 10/12/2024

	would exclude casual, accidental, bonafide or unintentional acts or genuine inability and would also not include involuntary or negligent actions. The deliberate conduct of a person means that he knows what he is doing and intends to do the same- If two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable.	
7.	Merely because wife didn't file complaint under Sec. 498A IPC for many years doesn't mean there was no cruelty by husband	Jayedeepsinh Pravinsinh Chavda & Ors. Vs. State of Gujarat, decided on 10/12/2024
8.	If the compromise entered between the parties was not adhered to, there is no bar to filing a recall application seeking restoration of the proceedings under Order 23 Rule 3 CPC. The validity and legality of a compromise agreement can be challenged even after a decree is passed.	Navratan Lal Sharma Vs. Radha Mohan Sharma and Ors., decided on 12/12/2024
9.	A police official who is accused of lodging a false case cannot claim that he cannot be prosecuted without the sanction under Sec. 197 Cr.P.C. The protection of Sec. 197 Cr.P.C. is available only for acts discharged in the course of official duties. Since fabrication of evidence and filing bogus cases are not part of the official duties of a police official, the protection under Sec. 197 Cr.P.C. are not applicable to such acts.	Om Prakash Yadav Vs. Niranjan Kumar Upadhyay & Ors., decided on 13/12/2024
10.	Marriage is a relationship built on mutual trust, companionship, and shared experiences. When these essential elements are missing for an extended period, the marital bond becomes a mere legal formality devoid of any substance.	Amutha Vs. AR Subramanian, decided on 19/12/2024

IN THE SUPREME COURT OF INDIA

Basudev Dutta
Vs.
State of West Bengal and Ors.

[Civil Appeal No. 13919 of 2024
arising out of SLP (C) No. 8026 of 2024]

HEADNOTE – Issued direction to the police official(s) of all the States to complete the enquiry and file report as regards the character, antecedents, nationality, genuineness of the documents produced by the candidates selected for appointment to the Government service, etc., within a stipulated time provided in the statute / G.O., or in any event, not later than six months from the date of their appointment.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. Assailing the final judgment and order dated 16.08.2023 passed by the High Court of Calcutta1 in W.P.S.T. No. 106 of 2013, the appellant has come up with this appeal. Vide the said order, the High Court set aside the order dated 28.08.2012 passed by the West Bengal State Administrative Tribunal at Calcutta2 in O.A.No.331 of 20113, in which, the order of termination passed against the appellant herein was set aside, however, the authority concerned was granted liberty to proceed against the appellant in accordance with law, following the principles of natural justice.

3. According to the appellant, when he was aged about 16 years, he along with his father by name Harianandа Dutta, came to India from East Pakistan (now Bangladesh) and his father was issued with a Migration Certificate being No.D/65/69 dated 19.05.1969 by the authority concerned. Subsequently, the appellant joined Bangabasi College, Calcutta and passed the Pre-University Examination in Science in May, 1971 under the University of Calcutta. Thereafter, he got admission in Regional Institute of Ophthalmology, Calcutta and successfully completed Ophthalmic Assistant Course in 1984.

Later, he participated in the selection process and was appointed as Para Medical Ophthalmic Assistant by the Director of Health Services, Government of West Bengal, vide order dated 21.02.1985 and in terms of the said appointment order, the appellant joined at Kadambini Block Primary Health Centre, Monteswar,

Burdwan on 06.03.1985. The Department received satisfactory report of the medical examination and Police Verification Roll from the concerned authorities. He continued in service and was granted yearly increment and other consequential service benefits.

While so, based on the secret verification report dated 25.05.2010 of the Government of West Bengal, which was communicated by the police to the department on 07.07.2010, the appellant was served with a memo dated 23.08.2010, stating that he is 'unsuitable' for employment and directing him to submit his defense, within 10 days from the date of receipt of the memo. In response, the appellant sent the details of his candidature on 09.09.2010.

However, by order dated 11.02.2011 passed by the Director of Health Services, Government of West Bengal, the appellant was terminated from service with immediate effect without any enquiry. Challenging the said order of termination, the appellant preferred Original Application No.331 of 2011, which was allowed by the Tribunal, by order dated 28.08.2012. Aggrieved by the same, the State filed a writ petition being W.P.S.T.No.106 of 2013 and the High Court by the order impugned herein, allowed the same by setting aside the order passed by the Tribunal and affirming the order of termination passed by the authority concerned. Therefore, the appellant is before us with the present appeal.

4. The learned counsel for the appellant strenuously argued that on the basis of migration certificate issued in favour of the appellant's father, in which, the appellant's name also finds place, the appellant is a citizen of India with effect from 19.05.1969; he was issued with ration card, Voter Identity Card and Aadhaar Card by the Government of India and he participated in all local Assembly and Parliamentary elections; and he is also an assessee under the Income Tax Act and is regularly submitting his returns.

Adding further, it is contended that upon participating in the selection process, the appellant was appointed as Ophthalmic Assistant, on 21.02.1985 and he joined the service upon submission of the satisfactory report of medical examination and police verification roll. After having rendered 26 years of unblemished service, the appellant was terminated from service, based on the secret verification report of the Government. While passing such order, the appellant was not given an opportunity of personal hearing and was not furnished the alleged verification report. Therefore, the order of termination passed against the appellant is arbitrary, illegal and in violation of the principles of natural justice.

4.1. The learned counsel for the appellant also emphatically submitted that it is mandatory on the part of the police authority to submit the police verification report within a period of three months from the date of appointment. Whereas, in

the present case, though the appellant joined the service on 06.03.1985, the verification report was communicated by the police to the department only on 07.07.2010, that too, just two months prior to the date of retirement of the appellant. Hence, there was inordinate delay on the part of the police authority for submission of verification report to the appointing authority.

4.2. Ultimately, the learned counsel for the appellant submitted that considering the facts and circumstances of the case, the Tribunal rightly set aside the order of termination. However, the High Court erred in allowing the writ petition filed by the State by setting aside the order of the Tribunal. Therefore, the learned counsel prayed for allowing this appeal by setting aside the order of the High Court.

5. On the contrary, the learned senior counsel for the respondent(s) submitted that except the migration certificate, the appellant did not produce any document to prove that he is an Indian national. Migration certificate does not recognize him as a citizen of India and he has to register his citizenship with the authority concerned.

Though the appellant stated that he applied for citizenship certificate and the Government of West Bengal issued no objection certificate to him with respect to his citizenship, no such document was placed on record. The Aadhaar Card, voter ID and Pan Card are not the conclusive proof of evidence for citizenship or nationality as held by this Court. Thus, the appellant being a noncitizen, he cannot claim employment against the post reserved for the Indian citizen.

5.1. Elaborating further, the learned senior counsel for the respondent(s) submitted that it was clearly stated in the appointment order that the same is subject to satisfactory reports of police verification and medical examination; though the appellant cleared the medical examination, his police verification report was still awaited; upon receipt of the communication from the Deputy Inspector General of Police, Intelligence Branch, Kolkata, vide Memo No.1899/S.231-04/SA-I/VR dated 07.07.2010, pursuant to the secret verification report dated 25.05.2010 of the Government, to the effect that the appellant was considered as 'unsuitable' for employment to the post in question, the Director of Health Services, Government of West Bengal, issued a show cause notice by way of memo dated 23.08.2010, calling upon the appellant to submit his defence; accordingly, the appellant submitted his reply on 09.09.2010; being dissatisfied with the same, the authority concerned terminated the appellant from service with immediate effect on 11.02.2011.

Thus, according to the learned counsel, only after receipt of the reply submitted by the appellant and upon considering the same, the termination order came to be issued and hence, there was no violation of the principles of natural justice.

5.2. Referring to the decisions of this court in Nirma Industries Ltd. v. Securities and Exchange Board of India4; State of UP v. Sudhir Kumar Singh5; and Dharampal Satyapal Ltd v. Deputy Commissioner of Central Excise, Gauhati and Others6, wherein, it was observed that 'the principles of natural justice means, a fair hearing should be given to the concerned person and the same would not necessarily imply oral hearing', the learned senior counsel for the respondent(s) submitted that merely because the appellant was not given an opportunity of hearing, that by itself is not sufficient to quash the proceedings, unless and until it is pointed out by him that he was prejudiced by the order, which was passed behind his back and therefore, the denial of personal hearing before passing the termination order would not amount to violation of the principles of natural justice.

5.3. Adding further, the learned senior counsel for the respondent(s) submitted that police verification is essential for joining any service and it is a settled principle of law that any act contrary to law cannot be given the sanctity of being legal under law by mere passage of time and hence, the delay in submission of the verification report, cannot be a ground to quash the termination order passed against the appellant.

5.4. Therefore, the learned senior counsel for the respondent(s) submitted that the High Court correctly set aside the order of the Tribunal and restored the termination order passed against the appellant herein, by a reasoned order, which does not call for any interference by this court.

6. By way of reply, the learned counsel for the appellant submitted that the grandfather of the appellant was a permanent resident of Calcutta and the father of the appellant was born in the year 1911 at Calcutta and through migration certificate, the appellant came to India along with his father in the year 1969, before creation of Bangladesh (Formerly East Pakistan) and hence, he is a citizen of India. Further, the police department has no authority to neutralize the citizenship of a person.

However, based on the information provided by the police authority and without ascertaining the veracity of the same and without any report / order following the provisions of the Citizenship Act, 1955 and the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunal) Order, 1964, the authority concerned terminated the appellant from service with immediate effect, that too, without affording an opportunity of hearing to the appellant to adjudicate his claim of nationality.

Though the Tribunal set aside the said order of termination, the High Court erred in reversing the same, by the order impugned in this appeal. It is also submitted by the learned counsel that the right guaranteed under Articles 14 and 21 of the

Constitution of India is seriously violated, in view of the State not taking proper steps to continue the service of the appellant and in failing to sanction and disburse the pensionary benefits to him, after having served nearly 26 years of service.

7. Heard the learned senior counsel/counsel appearing for the parties and also perused the materials available on record.

8. It cannot be disputed that as per the interim order of the High Court, the appellant received the amount of general provident fund, group insurance and leave Salary. However, the authority concerned did not disburse the pension, gratuity and arrears of salary.

9. As indicated earlier, by order dated 11.02.2011, the appellant was terminated from service after rendering 26 years of service, based on the police verification report that he was considered as 'unsuitable' for employment to the post of Ophthalmic Assistant. The said termination order was set aside by the Tribunal, by order dated 28.08.2012 in O.A.No.331 of 2011. However, the High Court reversed the order of the Tribunal and restored the order of termination passed by the authority concerned, by the order impugned herein.

10. The contentions raised by the learned counsel for the appellant, assailing the order of termination passed by the authority concerned, as affirmed by the High Court, are three-fold, though interlinked and intertwined.

Firstly, the appellant claimed his nationality as Indian on the strength of the migration certificate dated 19.05.1969 issued in favour of his father.

Secondly, in the show cause notice, there was no mention as to why the appellant was declared as 'unsuitable' for employment to the Government service; the alleged secret police verification report was not served on the appellant; and no opportunity of personal hearing was provided to the appellant to defend his stand and hence, there was total violation of the principles of natural justice.

Thirdly, the appellant joined the service in the year 1985, but the police verification report, which was supposed to have been filed, within a period of three months from the date of appointment, was submitted to the department only in the year 2010 and thus, there was inordinate and unexplained delay on the part of the police authority in submission of the same.

ANALYSIS

11. Let us consider the first contention. According to the appellant, he is an Indian citizen. Section 9 of the Foreigners Act, 1946 mandates that the onus of proving citizenship of a person is upon that person who claims to be a citizen of

India. For better appreciation, Section 9 of the Foreigners Act, 1946, is extracted below:

"9. Burden of proof.- If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person."

11.1. In Sarbananda Sonowal v. Union of India7, this Court pointed out that 'there is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of his date of birth, place of birth, name of his parents, their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State'.

11.2. In Lal Babu Hussein v. Electoral Registration Officer8, it was held by this Court that 'the question whether a person is a foreigner, is a question of fact which would require careful scrutiny of evidence since the enquiry is quasi-judicial in character'.

11.3. In the instant case, the appellant claimed that his grandparents are Indian citizens because of their birth. The provisions relating to citizenship are enshrined in Part II of the Constitution of India under Articles 5 to 11. Section 4 of the Indian Citizenship Act, 1955, entitles the appellant's father to be treated as a citizen by descent. The appellant is also entitled to citizenship by registration as per Section 5 of the Act.

As per Section 5 (1) (a), a person of Indian origin who has been an ordinary resident in India for seven years prior to the application and as per 5(1)(b), a person of Indian origin who is an ordinary resident of any country or place outside undivided India is entitled to citizenship. "Undivided India" has been defined in Section 2 (h) as "India, as defined in the Government of India Act, 1935" as originally enacted. The intention of the Central Government to award citizenship to minorities from neighboring countries has been spelled out by way of amendment to Section 2, by introducing Proviso in Section 2 vide Amendment Act No.47 of 2019 with effect from 10.01.2020, which states that the persons like the appellant herein are not be treated as "illegal migrants".

Once an application has been submitted, the authority concerned has to take appropriate decision within a reasonable time by taking into consideration all the applicable laws and the documents produced by the appellant. However, no decision has been taken against the appellant. Therefore, we answer the first contention in favour of the appellant.

12. Qua the second contention, we have carefully considered the documents placed before us. Vide Memo No.944-P.S. dated 25.05.2010, the Assistant Secretary to the Government of West Bengal, Home (Political) Department, Secret Section, Kolkata, informed to the Additional Director General of Police, Intelligence Branch, West Bengal, Kolkata, that the Government considered the appellant 'unsuitable' for employment to the post of Ophthalmic Assistant under the Chief Municipal Officer of Health, Burdwan. Vide Memo No.1899/S.231-04/SA-I/VR dated 07.07.2010, the said information was communicated by the Deputy Inspector General of Police, Intelligence Branch, West Bengal to the Chief Municipal Officer of Health, Burden.

Subsequently, by memo dated 04.11.2010, the Director of Health Services, Government of West Bengal, Kolkata, informed to the Special Superintendent of Police(C), Intelligence Branch, West Bengal, that the case of the appellant was referred to the Government to decide over the suitability or otherwise of the verification of his employment under the Chief Municipal Officer of Health, Burdwan, because the nationality of the appellant could not be determined as Indian national, during enquiry; and finally, the appellant was considered 'unsuitable' by the Government. Pursuant to the same, the Director of Health Service, West Bengal, sent the show cause notice styled as 'Memorandum' dated 23.08.2010 directing the appellant to submit his defense within a period of 10 days. For better appreciation, the contents of the said Memorandum are reproduced below:

"Whereas Shri Basudev Dutta, S/o.Hari Ananda Dutta of 30/C Buildings, Bonhooghly, Alambazar, Kolkata-700035 was offered appointment to the post of "Ophthalmic Assistant" vide order No.A 6012 dated 21-02-1985 along with 32 other incumbents subject to satisfactory reports of Police Verification and Medical Examination; And whereas the said Shri Basudev Dutta joined in the forenoon of 06- 03-1985 at Kadambini P.H.C., Monteswar, Burdwan;

And whereas the Dy. Inspector General of Police, Intelligence Branch, 13, Lord Sinha Road, Kolkata -71 in his No.1899/S. 231-04/SA-I/VR dated 07- 07-2010 has informed that the Government under his No.944-PS dated 25-05- 2010 of Home (Pol) Department, Government of West Bengal has declared Shri Basudev Dutta "UNSUITABLE" for employment to the post of Ophthalmic Assistant;

And whereas the case of Shri Basudev Dutta, Ophthalmic Assistant, attached to Kurmun B.P.H.C., Burdwan, has since been reviewed in the light of terms and condition laid down in the order of appointment bearing No.A 6012 dated 21-02-1985 and also declaring Shri Basudev Dutta "UNSUITABLE" for employment to the Government service;

And as such, on going through the relevant papers / documents in respect of the case of Shri Basudev Dutta and applying my full mind on to it, I, the D.H.S., West Bengal, being the appointing and disciplinary authority in respect of the post held by Shri Basudev Dutta, Ophthalmic Assistant, hold the view that the said Shri Basudev Dutta does not have any right to continue further in Government service and accordingly propose that the service of Shri Basudev Dutta may be terminated with immediate effect;

Shri Basudev Dutta is hereby directed to say, if any, in his defence within 10 (ten) days from the date of receipt of the memorandum through the C.M.O.H., Burdwan, positively failing which it may be presumed that he has nothing to say and decision will be taken against him without any further reference to him."

12.1. Curiously, in all these documents, including the show cause notice, no reason was mentioned as to why the appellant was considered as 'unsuitable' for employment to the post of Ophthalmic Assistant. Furthermore, the alleged police verification report was not served on the appellant. As such, the appellant was unable to make his defense with supportive materials. Resultantly, he was terminated from service vide order dated 11.02.2011 of the Director of Health Services, West Bengal. Even in the termination order, there was nothing about the unsuitability of the appellant for employment to the Government service.

12.2. It is settled law that every administrative or quasi-judicial order must contain the reasons. Such reasons go a long way in not only ensuring that the authority has applied his mind to the facts and the law, but also provide the grounds for the aggrieved party to assail the order in the manner known to law. In the absence of any reasons, it also possesses a difficulty for the judicial authorities to test the correctness of the order or in other words, exercise its power of judicial review. In this context, it will be useful to refer to the judgment of this Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan9, wherein after a detailed analysis of various judgments, it was held as follows:

"27. In Rama Varma Bharathan Thampuram v. State of Kerala [(1979) 4 SCC 782: AIR 1979 SC 1918] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural

justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In Gurdial Singh Fijji v. State of Punjab [(1979) 2 SCC 368 : 1979 SCC (L&S) 197] this Court, dealing with a service matter, relying on the ratio in Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87], held that "rubber-stamp reason" is not enough and virtually quoted the observation in Capoor (supra), SCC p. 854, para 28, to the extent that:

"28. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt. [(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1] while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) Broom's Legal Maxims (1939 Edn., p. 97) where the principle in Latin runs as follows:

"Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that : (H.H. Shri Swamiji case [(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1] , SCC p. 658, para 29)

"29. 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

33. In Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd. [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

46. The position in the United States has been indicated by this Court in S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers.

It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L Ed 626 : 318 US 80 (1942)] and Dunlop v. Bachowski [44 L Ed 2d 377 : 421 US 560 (1974)] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision16 making process as observing principles of natural justice by judicial, quasijudicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decisionmaking process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37]).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

12.3. That apart, before passing the termination order, no opportunity of personal hearing was provided to the appellant to defend his stand effectively. In Mazharul Islam Hashmi v. State of U.P.10, it was categorically held by this Court that 'personal hearing should be given, before termination of employee from service'. The relevant paragraph of the same is quoted below for ready reference:

"25. It was observed in that case that it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. The main requirements of a fair hearing, as pointed out by this Court earlier, are: (i) A person must know the case that he is to meet; and (ii) he must have an adequate opportunity of meeting that case. These rules of natural justice, however, operate in voids of a statute. Their application can be expressly or implicitly excluded by the legislature. But, such is not the case here.

On the contrary, the two circulars issued by the State Government, to which a reference has been made earlier, expressly imported these principles of natural

justice and required that in all cases in which the services of an officer or servant were to be determined on the ground of his unsuitability, they must be given an opportunity of personal hearing by the Committee. The whole purpose of the personal interview was that, when it was proposed to declare an official unsuitable for absorption, the Committee had to afford him an opportunity to appear before it and clear up his position.

Since it is nobody's case that such an opportunity was afforded to the appellant, we would hold that the order dated August 26, 1967 (of termination of his services passed by the State) suffers from a serious legal infirmity and must be quashed. He will, therefore, have to be treated as having continued in service till the age of superannuation and entitled to all the benefits incidental to such a declaration.

12.4. In S.Govindaraju v. Karnataka State Road Transport Corporation11 again, this Court held thus:

"7. There is no dispute that the appellant's services were terminated on the ground of his being found unsuitable for the appointment and as a result of which his name was deleted from the select list, and he forfeited his chance for appointment. Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations, he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future.

In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice."

12.5. This Court in Aureliano Fernandes v. State of Goa12, in an unequivocal terms observed as follows:

"73. This Court has repeatedly observed that even when the rules are silent, principles of natural justice must be read into them.

74. In its keen anxiety of being fair to the victim / complainants and wrap up the complaints expeditiously, the Committee has ended up being grossly unfair to the

appellant. It has completely overlooked the cardinal principle that justice must not only be done, but should manifestly be seen to be done. The principles of audi alteram partem could not have been thrown to the winds in this cavalier manner."

12.6. It is manifestly clear from the above judgments that reasons are heartbeat of every order and every notice must specify the grounds on which the administrative or quasi-judicial authority intends to proceed; if any document is relied upon to form the basis of enquiry, such document must be furnished to the employee; it is only then a meaningful reply can be furnished; and the failure to furnish the documents referred and relied in the notice would vitiate the entire proceedings as being arbitrary and in violation of the principles of natural justice; and before taking any adverse decision, the aggrieved person must be given an opportunity of personal hearing. In the light of the same, we have no hesitation to hold that the order of termination passed against the appellant is arbitrary, illegal and violative of the principles of natural justice and it cannot be sustained.

12.7. Though we are in agreement with the proposition laid down in the decisions cited on the side of the respondent(s), the same does not apply to the present case, which factually differs.

12.8. Thus, in the ultimate analysis, we find that the Tribunal was right in observing that without following the principles of natural justice and without affording any opportunity to explain his case before the authority, the appellant was terminated and hence, his termination order cannot be sustained in the eye of law; and accordingly, set aside the order of termination.

However, the High Court erroneously allowed the writ petition filed by the State and set aside the order of the Tribunal by observing that the action of the authorities in issuing a show cause notice and inviting a reply therefrom and the availing of such opportunity by the appellant, is in adherence with the principles of natural justice. Hence, we are inclined to set aside the order of the High Court and restore the order of the Tribunal to that extent.

13. As far as the third contention is concerned, it appears to us that the appellant joined the post of Ophthalmic Assistant on 06.03.1985 upon production of satisfactory report of medical examination and police verification roll. Yet, the police verification report, which was supposed to have been filed within three months from the date of initial appointment of the appellant, was filed only in the year 2010, i.e., after 25 years of service and just two months prior to the date of his retirement. Placing reliance on such report, he was terminated from service.

In view of the enormous delay on the part of the respondent authorities in submission of the verification report, the appellant has been rendered ineligible to

receive his pensionary benefits, though he had put in 26 years of unblemished service. The respondents in their reply affidavit categorically admitted about the inordinate delay occasioned to ascertain the unsuitability of the appellant for appointment to the Government service. However, they did not assign any reason much less valid reason for the same. Such a callous and lackadaisical attitude on the part of the respondent authorities cannot be countenanced by us. As held by us in paragraph

12.6 supra, the order of termination passed against the appellant is arbitrary, illegal and in violation of the principles of natural justice and it cannot be sustained. In view of the same, the second limb of the order of the Tribunal granting liberty to the authority to proceed against the appellant in accordance with the principles of natural justice, after a period of 14 years from the date of retirement, would not serve any purpose. Hence, the appellant is entitled to receive all the service benefits that are duly payable to him.

13.1. The given factual matrix would also compel this Court to issue a direction to the police official(s) of all the States to complete the enquiry and file report as regards the character, antecedents, nationality, genuineness of the documents produced by the candidates selected for appointment to the Government service, etc., within a stipulated time provided in the statute / G.O., or in any event, not later than six months from the date of their appointment. It is made clear that only upon verification of the credentials of the candidates, their appointments will have to be regularized so as to avoid further complications, as in the case on hand.

14. With the aforesaid observations and directions, this appeal is allowed and the order of the High Court is set aside. As a sequel, the service benefits which remain unpaid as on date, be paid to the appellant within a period of three months from the date of receipt of a copy of this judgment. There is no order as to costs. Pending application(s), if any, shall stand closed.

.....J. [J.K. Maheshwari]

.....J. [R. Mahadevan]

New Delhi;

December 05, 2024.

1 Hereinafter shortly referred to as "the High Court"

2 Hereinafter shortly referred to as "the Tribunal"

3 Basudev Dutta v. The State of West Bengal and Others

4 (2013) 8 SCC 20

5 (2021) 19 SCC 706

6 (2015) 8 SCC 519

7 (2007) 1 SCC 174

8 (1995) 3 SCC 100

9 (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852 : 2010 SCC OnLine SC 987

10 (1979) 4 SCC 537

11 (1986) 3 SCC 273

12 (2024) 1 SCC 632 : 2023 SCC OnLine SC 621

IN THE SUPREME COURT OF INDIA

Kunhimuhammed@ Kunheethu
Vs.
State of Kerala

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 4403 of 2023]

HEADNOTE – It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death.

Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. This appeal assails the correctness of the judgment and order dated 18.09.2018 whereby the appeal of the appellant-accused no.1, against his conviction under sections 302, 324 and 326/34 of Indian Penal Code, 18601 has been dismissed. The prosecution story in brief is:

2.1. On 10.04.2006, the sympathizers of United Democratic Front (UDF) and Left Democratic Front (LDF) fought against each other in connection with the dispute regarding the drawing of their election symbol at a place near a library in Kunnappalli, Pathaikkara Village. A criminal case with non-bailable offences was registered against the sympathisers of UDF in connection with the above incident.

2.2. On 11.04.2006, The appellant along with the other accused who are sympathisers of Indian Union Muslim League on account of above enmity and with the intention to commit murder of deceased Subrahmannian and CW-1 Vasudevan Ramachandra, waited at Mukkilaplavu Junction for their arrival and at about 08:45 PM when the deceased along with Vasudevan Ramachandra

reached at the above-mentioned place, the first accused attempted to beat the deceased with a tamarind stick, on his head. The deceased saved himself from the said attack and snatched the stick from the first accused and started assaulting the first accused on his forehead and back with the same stick.

At this stage, the first accused took out a knife from his hip region and stabbed the deceased on the left side of chest, back of the head and the left shoulder. On seeing the above incident, CW-1 made an attempt to obstruct the first accused from assaulting the deceased, however, the first accused stabbed him on the left side of the buttock of CW-1 with the same knife. When CW-1 fell on the ground, the second accused caused a fracture on the right foot bone of CW-1 by beating him with another tamarind stick. Thereafter, the third accused assaulted CW-1 by beating on his right chest with a wooden stick.

2.3. After the said incident, the injured and the deceased were taken to the Maulana Hospital where Additional Sub-Inspector CW-32 reached and recorded the statement of CW-1 on the basis of which the First Information Report was registered as Crime No.260 of 2006 against the three accused under sections 302/324 read with section 34 IPC. The accused were thereafter arrested. The Investigating Officer prepared the inquest report, spot map, and recovered the knife under the seizure memo on the basis of the disclosure statement made by the first accused.

2.4. After completing the investigation, the charge sheet was submitted under sections 302/307 read with section 34 IPC. The Magistrate took cognizance and committed the case for trial to the Sessions Court. The Trial Court framed the charges under the aforesaid sections and read them over to the accused who denied the same and claimed trial.

3. The Prosecution examined 19 witnesses and filed 28 Exhibits and 18 material objects. The statements of the accused under section 313 of Code of Criminal Procedure, 19732 were recorded wherein again they claimed that they were innocent and had nothing to do with the said incident. They claimed to have been falsely implicated on account of political rivalry at the instance of the leaders of Communist Party of India (Marxist) (CPI(M).

4. The Trial Court after appreciating the evidence led by the parties held that the appellant was found guilty of offences punishable under sections 302, 324 and 326/34 IPC and accordingly sentenced him to life imprisonment with a fine of Rs.1 Lakh under section 302, IPC, six years rigorous imprisonment with a fine of Rs.25,000/- under section 326, IPC, and two years imprisonment under section 324, IPC. Accused no.2 was found guilty of offences punishable under section 326 and under sections 324/34 IPC and he was sentenced to six years imprisonment under section 326, IPC with a fine of Rs.25,000/- and two years

rigorous imprisonment under section 324 IPC. The third accused was also awarded the same sentence as accused no.2. The sentences were to run concurrently.

5. Three appeals were preferred before the High Court by the three accused separately. The High Court by the impugned order dismissed all the three appeals. The second accused and the third accused had preferred a separate SLP registered as SLP(Crl.) No.2822 of 2019. In the said SLP, leave was granted, and it was partly allowed vide judgment and order dated 29.07.2019. This Court extended benefit of doubt to accused no.3 whereas accused no.2's conviction was upheld, however, his sentence under section 326 for six years was reduced to three years.

6. We have heard Shri Nikhil Goel, learned senior counsel appearing for the appellant and Shri P.V. Dinesh, learned senior counsel appearing for the State of Kerala and perused the material on record. The submissions of Shri Goel are limited to the extent that this was not a case of premeditated pre planned murder. There was no mens rea for committing culpable homicide amounting to murder.

The intention was only of assaulting with the stick but later on during the fight as the deceased overpowered the appellant and started assaulting him with the same stick after snatching it from the appellant, the appellant pulled out the knife from his back and stabbed the deceased and also the injured to save him. He has drawn attention to the evidence on record as also to the judgment of the Trial Court wherein specific finding was recorded to that extent by the Trial Court but despite the same, the Trial Court proceeded to record conviction under section 302 IPC and not section 304 IPC.

7. He also submitted that the appellant is aged 67 years and is suffering from multiple ailments and that having undergone almost twelve and half years of actual sentence, this Court may consider reducing the sentence by converting the conviction to under section 304 IPC Part II.

8. On the other hand, Mr. P.V. Dinesh, learned senior counsel appearing for the respondent-State submitted that the Trial Court and the High Court have both dealt with this aspect of the matter and have concurrently found that this was a case of culpable homicide amounting to murder. The fact that the appellant was carrying a knife and the number of assaults made by him on the deceased as also the injury would clearly show that the intention was to commit murder.

9. Having heard the learned counsels for the parties, we find it imperative to look into the evidence, witness testimonies, and injury reports to better understand and analyse the incident to see whether the culpable homicide in the present case amounts to murder or not. A meticulous analysis of the evidence on record is

necessary to check whether the appellant had the intention to kill the deceased or if he can be given the benefit of reduction of sentence on the grounds pleaded in the appeal. To understand the evidence and their probative value in establishing the offence, it is necessary to look at the categorical findings of both the courts below.

FINDINGS OF THE TRIAL COURT

10. The Trial Court found appellant guilty of offences under Sections 302, 326, and 324, IPC. The Trial Court's findings were primarily based on the direct testimony of PW1, an eyewitness who was also injured in the incident, and corroborative evidence from medical and forensic reports.

11. The evidence of PW1 was crucial to the prosecution's case. The Trial Court carefully analyzed his testimony and found it credible, reliable, and consistent with the injuries sustained by the deceased and PW1, as recorded in the medical reports. Although the defense argued that PW1 was an interested witness and highlighted omissions and contradictions in his testimony, the Trial Court concluded that these discrepancies were minor and did not affect the core narrative. The Trial Court also noted that PW1's statements were corroborated by PW2, who arrived at the scene shortly after the incident and observed the accused fleeing. PW2's account was deemed trustworthy and supported the prosecution's version.

12. The recovery of the murder weapon (a knife, marked as MO1) at the instance of appellant was a significant factor in the Trial Court's findings. The knife was recovered under Section 27 of the Indian Evidence Act, 1872 based on information provided by appellant during his custodial interrogation. Forensic examination confirmed that the knife bore human blood matching the deceased's blood group. This finding provided compelling corroboration of PW1's testimony regarding the role of Accused No. 1 in the fatal assault. Additional physical evidence, such as blood-stained sticks recovered from the crime scene, further substantiated the prosecution's case.

13. Medical evidence also played a vital role. The postmortem report of the deceased, prepared by PW-6 (a police surgeon), confirmed that the cause of death was multiple stab injuries inflicted with a sharp-edged weapon like MO1. PW6 identified specific fatal injuries to the heart and lungs, which were consistent with the prosecution's narrative of the assault. Similarly, the wound certificate of PW1 corroborated his account of the injuries he sustained during the attack. The Trial Court observed that the injuries detailed in the medical reports aligned with the testimonies of PW1 and PW2, reinforcing the prosecution's case.

14. The defense attempted to argue that the incident occurred in the exercise of private defense, claiming that the accused were attacked by CPI(M) workers, including the deceased and PW1. However, the Trial Court rejected this claim, finding it unsubstantiated and improbable. The injuries on appellant, documented in the wound certificate, were deemed minor and inconsistent with the defense's narrative of a large-scale attack. The Court concluded that the accused were the aggressors and were not entitled to claim the right of private defense.

15. Ultimately, the Trial Court held that the prosecution had proved beyond reasonable doubt that appellant intentionally caused the death of Subrahmannian and grievously injured PW1. The recovery of the murder weapon, corroborative forensic and medical evidence, and the reliable testimony of PW1 and PW2 were central to this conclusion. Accordingly, appellant was convicted under Sections 302, 326, and 324 IPC and sentenced to life imprisonment for the murder charge, along with additional terms for the other offenses.

FINDINGS OF THE HIGH COURT

16. The High Court of Kerala meticulously analyzed the roles and culpability of each accused based on the evidence presented during the trial. The findings highlight the distinct involvement of each accused in the crime, with a particular focus on the actions of appellant. This comprehensive assessment ensures that the degree of liability is proportionate to their individual actions and intentions as discerned from the evidence on record.

17. The High Court affirmed the findings of the Trial Court that Accused No. 1 played a pivotal role in the murder. The evidence of PW-1, an injured eyewitness, was central to establishing the sequence of events. PW-1 testified that appellant first beat the deceased with a wooden stick, causing injuries to his left shoulder. When the deceased tried to flee, appellant - accused no. 1 drew the knife and inflicted a stab wound to his back. As PW- 1 intervened to protect the deceased, appellant- turned on him, stabbing him in the buttock. This act of aggression was corroborated by medical evidence, which indicated that PW-1 sustained injuries consistent with the use of the weapon recovered during the investigation. Despite PW-1's injuries, appellant resumed his attack on the deceased, stabbing him multiple times in the chest and other vital areas.

18. The High Court emphasized the significance of the post-mortem report, which revealed eight incised wounds on the deceased, including fatal injuries to the chest, heart, and lungs. PW-6, the police surgeon, testified that these injuries were consistent with the knife recovered and that the fatal wounds were sufficient in the ordinary course of nature to cause death. The chemical analysis linking the knife to appellant was further corroborated by the presence of human blood matching the deceased's blood group on the weapon. The recovery of the knife,

facilitated by a disclosure statement from appellant, lent further credence to the prosecution's case.

19. The High Court also addressed the appellant's argument that the testimony of PW-1 was unreliable due to alleged embellishments regarding the number of stab injuries. The Court rejected this contention, noting that minor omissions in the First Information Statement (FIS) could not undermine the credibility of PW-1's account, especially given the traumatic circumstances under which the FIS was recorded. The court reasoned that PW-1, having sustained a stab injury himself, may not have been able to provide exhaustive details at the time but consistently identified appellant - accused no. 1 as the primary assailant. The testimony of PW-2, an independent eyewitness, corroborated PW-1's account, further strengthening the prosecution's case against appellant.

20. The High Court concluded that the actions of appellant demonstrated clear intent to cause death. The deliberate targeting of vital organs with a sharp weapon indicated premeditation or, at the very least, the formation of intent during the incident. The court observed that while the altercation may have initially involved the use of sticks, appellant's decision to escalate the violence by drawing and using a knife was an intentional and unilateral act. This conduct set him apart from the other accused, whose actions were limited to assaulting the victims with sticks.

21. In contrast, accused nos. 2 and 3 were found guilty of lesser offenses under Section 326 IPC for causing grievous hurt to PW-1. The evidence established that they used sticks to beat PW-1, resulting in non-fatal injuries, including a fracture to his leg. The High Court concurred with the Trial Court's finding that there was insufficient evidence to prove that Accused Nos. 2 and 3 shared a common intention with appellant to commit murder. The court noted that there was no evidence to suggest that they were aware of the knife concealed by appellant or his intent to use it. This lack of knowledge precluded the application of Section 34, IPC to hold them vicariously liable for the murder.

22. The High Court underscored the principle that liability must be determined based on the specific actions and intentions of each accused. While accused nos. 2 and 3 were complicit in the assault, their participation did not extend to the homicidal attack perpetrated by accused no. 1. The court further noted that the initial assault with sticks did not indicate a pre-arranged plan to kill the deceased. Had there been such an intention, the attack would have begun with the use of the knife rather than sticks.

23. The High court also dismissed the appellant's plea for leniency based on parity with the co-accused. It emphasized that the role of appellant was materially different and far more culpable than that of accused Nos. 2 and 3. The fatal

injuries inflicted by appellant on the deceased were deliberate, targeted, and intended to cause death, whereas the actions of the co-accused were confined to non-fatal assaults on PW-1. The principle of parity, therefore, did not apply in this case.

24. The High Court upheld the conviction of appellant under Section 302 IPC for the murder of Subrahmannian. The court noted that the evidence against him was overwhelming, including eyewitness testimonies, medical reports, and forensic findings. The sentences imposed on Accused Nos. 2 and 3 under Section 326 IPC were also affirmed, as they appropriately reflected their limited roles in the incident.

FINDINGS ON THE GROUNDS FOR REDUCTION OF SENTENCE

25. **SCUFFLE AND LACK OF INTENT:** The appellant's counsel has argued that the incident arose out of a scuffle between two rival factions, during which the act of stabbing and killing the deceased was not premeditated but rather occurred spontaneously in the heat of the moment. According to the appellant, there was no deliberate intent to commit murder, and the unfortunate event resulted from a confrontation that escalated during the altercation. However, this submission has been closely examined and dismissed by both the Trial Court and the High Court, based on substantial evidence presented during the proceedings.

A. Fatal Injuries:

25.1 The severity of the injuries inflicted on the deceased has been central to the Courts' conclusion that the act qualifies as murder under Section 300 of the IPC. As per the post-mortem report, the deceased sustained both external and internal ante-mortem injuries that were identified as being inflicted by a sharp-edged knife. These injuries, detailed in the Trial Court's order, include multiple incised penetration wounds to vital regions such as the chest, rib cage, lungs, and heart.

25.2 The evidence of PW-6, the police surgeon who conducted the post-mortem examination, was instrumental in establishing the fatal nature of the injuries. He testified that the death resulted from multiple injuries, including several incised wounds caused by the knife recovered during the investigation. The injuries sustained by the deceased, as per the report, were as follows: External Antemortem Injuries:

1. (a) Incised wound 4x2x0.5cm involving back of right side of head, horizontal, upper inner end at 2 cm below occiput and 2 cm outer to midline back, with tapering ends.

2. Incised penetrating wound 12x3xl-2cm involving top and back of left shoulder, extending vertically downwards and backwards, upper inner end at 17 cm outer to mid line front and on top of shoulder.

3. (a) Incised penetrating wound (stab wounds) 3x2x3.5cm involving front of left chest, oblique, upper end near to midline front than lower, upper inner end at 12 cm outer to midline front and II cm below middle of collar bone, directed downwards. backwards and right wards, with tapering ends, and contusion of margins.

4. (a) Incised penetrating wound (stab wound) 2xl.5x3.5cm including front of right chest, oblique, upper end away from midline front than lower end, upper inner end at 10 cm outer to midline front and 17 cm below middle of collar bone, directed downwards, backwards and leftwards, with tapering ends and contusion of margins.

5. Incised wound 2x0.8x0.5cm involving dorsum of left hand at the root of middle finger. Internal Antemortem Injuries:

1. (b) Contusions of scalp 17x10 em involving front half and 5x3cm involving right side of back. Inter one is. under neath and around the injury No. 1 -(a).

2. (b) (i) contusion 23x9cm involving left front chest wall upper inner end at collar bone and in midline front.

(ii) Incised penetrating wound 8x0.5x I cm involving left front chest wall (rib cage and inter costal muscles), oblique, which penetrates into chest cavity, with fracture separation of 3rd and 4th ribs and contusion of edges the upper inner end at I 0 cm outer to midline front and 9 cm below middle of collar bone.

(iii) Incised penetrating wound 7x2x1.5 em involving left atrium and upper part of left ventricle of heart, which penetrates through entire thickness of antero lateral wall into cavity, tearing mitral valve leaflets, with contusion at the edges of the wound.

(iv) Laceration of left lung 4xlx0.5cm involving outer aspect of upper lobe and 2x2x0.5cm including outer aspect of lower lobe and contusion 6x3 cm involving outer aspect of lower lobe just below the previous injury Injury No. 3 (b) is underneath and corresponds with and continuation of injury no. (3) (a), and total depth of both injuries taken together is 6 cm.

4.(b) (i) Contusion 10x7 cm involving right front chest wall upper inner end at 13 cm belowcollar bone and in midline front.

(ii) Incised penetrating wound 4x2x2cm involving right front chest wall (rib cage and intercostale muscles), oblique, penetrates into the chest cavity, with fracture separation of 5th rib, the upper inner end at 9 cm outer to midline front and 20 cm below middle of collar bone, with contusion of edges.

(iii) Laceration of right lung 2xlx0.5 cm involving outer aspect of middle lobe. Injury No. (4) (b) is underneath, corresponds with and continuation of injury No. (4) (a) and the total depth of both injuries taken together is 5 cm.

25.3 Among the injuries, some were specifically identified as fatal, including: i. Penetrating wounds to the chest and rib cage. These injuries caused significant trauma to the internal organs, including the lungs and heart. ii. Laceration of the heart. The most critical injury involved a penetrating wound measuring 7x2x1.5 cm in the left atrium and the upper part of the left ventricle, which extended through the entire thickness of the anterolateral wall of the heart. This injury also tore the mitral valve leaflets and caused contusions at the edges of the wound. The medical expert opined that this particular injury was sufficient to cause death in the ordinary course of nature. Additionally, other injuries inflicted on the deceased were of such severity that they compounded the fatal outcome.

25.4 This Court held in Virsa Singh vs. State of Pepsu3, that to see whether the injury intended and thus caused by the accused was sufficient in the ordinary course of nature to cause death or not, it must be examined in each case on the basis of the facts and circumstances. In that case, the injury was caused with a knife blow to the stomach and it was inflicted with such force that the knife penetrated the abdomen of the deceased and caused injuries to the bowel.

The expert opinion of the doctor therein stated on record that such an injury was sufficient in the ordinary course of nature to cause death. Further, in the absence of any evidence or circumstances to prove that the injury was accidental or unintentional, it was presumed that the accused had intended to cause such injury, thus making it fall under clause 3 of Section, 300 IPC.

25.5 It has been held by this Court in several cases such as Manubhai Atabhai vs. State of Gujarat4, and Arun Nivalaji More vs. State of Maharashtra5, that when the ocular evidence of eye witnesses are reliable and well corroborated by medical, and other evidence also inspires the confidence that the accused had the intention to cause such fatal injuries, then such evidence is enough to prove the charge of murder beyond reasonable doubt. This intention is to be gathered from a number of circumstances and evidence like the place of injury the nature of the weapon, the force applied while inflicting the injury, and other such considerations. Whether the accused had any intention to kill the deceased has to be judged upon taking into consideration the facts of each case.

25.6 This position has been elaborated by this Court in the case of Nishan Singh vs. State of Punjab6, where the accused person had snatched the weapon carried by someone else and brutally inflicted injuries on the deceased. The Court stated that in such a case it cannot be said that he did not have the intention to cause death.

25.7 The prosecution established beyond doubt that these injuries were inflicted by the appellant- accused no. 1 using a knife, which was recovered during the investigation based on the appellant's disclosure statement. PW-18, the Investigating Officer, corroborated this recovery, and the seizure report was further attested by PW-16, an independent witness. Further, the doctor PW-6 has stated that these injuries are sufficient to cause death in the ordinary course of nature. Cross-examination of these witnesses did not reveal any inconsistencies that could undermine the credibility of the evidence. Consequently, the courts have rightly concluded that the fatal injuries inflicted by the appellant were the direct cause of the deceased's death.

B. Intention to Commit Murder

25.8 The appellant's primary defence has been the absence of intent to commit murder. However, intent can be inferred from the circumstances surrounding the act, including the nature and location of the injuries inflicted, the weapon used, and the actions of the appellant during the incident. The injuries were concentrated on the vital parts of the deceased's body, such as the chest and ribs, which house critical organs like the heart and lungs. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death.

According to the testimony of the injured eyewitness, the appellant stabbed the deceased with considerable force, further corroborating the prosecution's argument that the injuries were inflicted intentionally or at least with the knowledge of their natural consequence. While other co-accused were reportedly armed with sticks, the appellant- accused no. 1 was in possession of a sharp knife, which was used to inflict severe injuries. The decision to carry and use such a weapon during the scuffle reflects a readiness to escalate violence beyond a mere physical altercation.

Even if the appellant did not have a prior intention to murder the deceased, the circumstances demonstrate that such injuries were caused which were sufficient in the ordinary course to cause death. The deliberate act of stabbing vital parts of the body, coupled with the force used, indicates that the appellant must have been aware of the likely fatal consequences of his actions. Under the provisions of Section 300 IPC, an intention to cause such injuries that are sufficient in the ordinary course of nature to cause death qualifies as murder, and even if

ingredients other than intention to cause murder are proved, mere knowledge of the result of fatal actions is enough to ascribe culpability to the accused person.

25.9 The lower courts have also dismissed the appellant's argument that the act was not premeditated. While the attack may not have been planned in advance, intent can emerge in the heat of the moment, particularly during a violent confrontation. The appellant's decision to use a lethal weapon and the precise targeting of the victim's vital organs are sufficient to establish the requisite intent for murder or at least knowledge of the possible consequences of one's actions and to hold the appellant liable for death of the deceased as per clause 3 of Section 300, IPC.

25.10 This Court held in Virsa Singh (Supra), that the prosecution must prove that there was an intention to inflict that particular injury, that is to say that the injury was not accidental or unintentional or that some other kind of injury was intended, and that particular injury was sufficient in the ordinary course of nature to cause death.

25.11 The third clause of section 300 speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. This Court in the above-mentioned judgment held that to bring the case under this part of the section the prosecution must establish objectively:

1. That a bodily injury is present;

2. That the nature of injury must be proved;

3. It must be proved that there was an intention to inflict that particular bodily injury;

4. That the injury inflicted is sufficient to cause death in the ordinary course of the nature.

25.12 The Court further held that:

"13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300, "Thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death.

Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is

whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

25.13 This position has further been upheld by this Court recently in the case of Vinod Kumar vs. Amritpal7, wherein the bench observed that:

"24. Once the prosecution establishes the existence of the three ingredients forming a part of "thirdly" in Section 300, it is irrelevant whether there was an intention on the part of the accused to cause death. Further, it does not matter that there was no intention even to cause the injury of a kind that is sufficient to cause death in ordinary course of nature. Even the knowledge that an act of that kind is likely to cause death is not necessary to attract "thirdly"."

25.14 This Court in the case of Balkar Singh vs. State of Uttarakhand8, while following the judgment in Virsa Singh (Supra) further elaborated the position of law and laid down that culpable homicide is murder if two conditions are fulfilled: a. the act which caused death is done with the intention of causing death or is done with the intention of causing a bodily injury; and b. the injury intended to be inflicted in sufficient in the ordinary course of nature to cause death.

25.15 The Court in the above-mentioned judgment clarified that even if the intention of accused was limited to inflicting a bodily injury sufficient to cause death in the ordinary course of nature, the offence of murder would still be made out.

25.16 The third clause of Section 300, IPC defines murder as the act of causing death by causing such bodily injury as is likely to result in death in the ordinary course of nature. In the present case, the appellant's actions satisfy these criteria. The appellant was armed with a knife, which he used to inflict multiple injuries on vital organs.

The fatal nature of these injuries, as confirmed by medical evidence, and the circumstances of the attack clearly point to an intent to cause death or at least an intention to inflict injuries with the knowledge that they were likely to result in death. Even if it is presumed that the appellant - accused no. 1 did not have an intention to cause such bodily injury, the act of causing injuries with knife to vital parts is reflective of the knowledge that causing such injuries is likely to cause death in the ordinary course.

25.17 The defence's argument that the incident was a spontaneous scuffle does not absolve the appellant of liability. While the scuffle may have triggered the attack, the appellant's use of a lethal weapon and the manner in which the injuries were inflicted elevate the act from culpable homicide to murder. Courts have consistently held that intent can be inferred from the nature and severity of injuries, as well as the choice of weapon and the manner of its use. The use of a lethal weapon and the deliberate targeting of vital parts of the body are strong indicators of such intent.

25.18 In light of the evidence and the legal principles involved, the appellant's plea for leniency on the grounds of spontaneity and lack of premeditation cannot be sustained. The nature and location of the injuries inflicted, the choice of weapon, and the circumstances of the attack unequivocally establish the liability of the appellant for causing the death of Subrahmannian. The argument that the act was committed in the spur of the moment does not diminish the gravity of the offence or the appellant's culpability.

2. Plea of Private Defence: The appellant's counsel has invoked the right of private defence arguing that the act of stabbing was carried out under a perceived threat to the appellant-accused no. 1's life. It is further contended that the appellant exceeded the bounds of lawful defence, thereby bringing the act within the ambit of Exception 2 to Section 300, IPC, which reads:

"Culpable homicide is not murder if the offender, in the exercise of good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right."

26.1 To bring the appellant's act under section 304, IPC in light of the offence being committed in exercise of private defense and thereby exceeding the power given under the law, that is under exception 2 to section 300, IPC - the ingredients therein must be proved. The ingredients for this exception are:

1. The accused must be free from fault in bringing about the encounter;

2. There must be an impending peril to life or of great bodily harm, either real or apparent;

3. Injuries received by the accused;

4. The injuries caused by the accused;

5. The accused did not have time or opportunity to take recourse to public authorities.

26.2 This Court in Darshan Singh v. State of Punjab9, held that the law provides for the right of private defense to citizens to enable them to protect themselves when confronted with imminent danger or unlawful aggression. But such protection must not be misused or extend beyond the necessities of the case.

26.3 The counsel for the appellant has argued that the appellant acted under a genuine belief of impending harm. However, this argument falls short upon scrutiny of the injuries sustained by the appellant during the altercation. As per the wound certificate, the appellant suffered only minor injuries:

i. A contusion on the back of the buttock.

ii. An abrasion over the forehead.

26.4 The medical evidence confirms that these injuries were superficial and did not pose any real or imminent threat to the appellant's life or safety. The courts below have rightly concluded that the appellant's perception of danger was neither reasonable nor proportional to the force he employed in response. It is a settled position of law that the number of injuries on the accused side by itself may not be sufficient to establish right of private defense, as has been held by this Court in V. Subramani vs. State of Tamil Nadu10. But it has further been held that an overall view of the case has to be taken to check whether a case for private defense is made out from the evidence on record.

26.5 Even if the appellant claims to have acted in defense, his role in bringing about the altercation cannot be overlooked. The appellant cannot benefit from the exception when he was instrumental in creating the circumstances that led to the confrontation. It has been held in the case of Sone Lal vs. State of U.P.11, that when the aggressors, even if they receive injuries from the victims of their aggression, cannot have the right of private defence. The courts below have made a categorical finding that the appellant- accused no.1 and his co-accused were the aggressors in the altercation.

The attack was initiated by the accused group, who were armed with sticks and a knife, with the intent to intimidate or harm the victim and his companions. This fact is substantiated by the testimony of PW-1, an injured eyewitness, who described the sequence of events leading up to the stabbing. Even if it were assumed that the appellant-accused no. 1 acted in self-defense, the evidence overwhelmingly demonstrates that the force used was excessive and disproportionate. The act of stabbing the deceased multiple times in vital organs such as the chest and heart goes far beyond what is permissible under the right of private defense.

26.6 As noted in the post-mortem report and corroborated by the testimony of PW-6 (the police surgeon), the injuries inflicted on the deceased were severe and

intentional, including a fatal wound to the heart. The appellant's actions cannot be justified as a defensive response to the minor injuries he sustained.

26.7 In light of the above findings, the plea of exceeding the right of private defense under Exception 2 to Section 300, IPC, is not applicable to the appellant's case. The courts below have rightly rejected this argument, holding that the appellant was not under any imminent peril and that his actions were deliberate and excessive.

3. Parity with Other Accused Persons:

27.1 The appellant has further contended that his sentence should be reduced on the grounds of parity with his co-accused. It is argued that since one co-accused had his sentence reduced, and another was acquitted by this Court, the appellant should be afforded similar leniency. The appellant is seeking similar leniency on the ground that the circumstances and involvement of all accused were substantially similar.

27.2 The doctrine of parity ensures fairness in sentencing when co-accused persons are similarly situated and share the same level of culpability. However, parity is not an automatic entitlement; the role, intent, and actions of each accused must be individually assessed to determine their degree of involvement in the crime.

27.3 The evidence presented during the trial clearly establishes that the appellant played a distinct and more culpable role in the incident. While the co-accused were armed with sticks and caused non-fatal injuries to the victims, the appellant alone was armed with a knife and used it to inflict fatal injuries on the deceased. The testimony of PW-1 reveals that the appellant stabbed the deceased after his stick was snatched during the altercation. This sequence of events demonstrates a deliberate escalation by the appellant, who resorted to using a deadly weapon with the intent to cause grievous harm.

27.4 Nothing has been brought on record to show that the other accused persons had knowledge of appellant being in possession of the knife. Thus, there is no evidence to show that the other accused persons shared a common intention with the appellant to commit murder. The courts below have meticulously analyzed the evidence and concluded that the co-accused did not share a common intention to commit murder. While the group acted in concert to assault the victims, the fatal stabbing by the appellant was an independent and unilateral act. This finding is crucial in distinguishing the appellant's culpability from that of his co-accused. The absence of common intention among the coaccused precludes the application of vicarious liability under Section 34, IPC, for the act of murder.

27.5 The sentence of Accused No. 2 was reduced from six years to three years on the grounds that he caused only grievous hurt with a stick and did not participate in the stabbing and was also unaware of the knife in possession of appellant. Accused no.3 was given the benefit of doubt and was acquitted due to lack of evidence linking him to the assault.

27.6 The courts have carefully evaluated the evidence against each accused and tailored their sentences accordingly. The appellant's argument for parity fails to recognize the qualitative differences in their roles and the gravity of their actions. The appellant's actions were not only more severe but also demonstrated a clear intent to cause death. The fatal injuries inflicted on the deceased, as detailed in the post-mortem report, leave no room for doubt about the appellant - accused no. 1's culpability. The courts below have correctly observed that the appellant's role in the crime is incomparable to that of his co-accused.

27.7 The principle of parity does not apply in the present case, as the appellant's actions were materially different from those of his co-accused. The sentence imposed on the appellant reflects the gravity of his offense and his individual culpability.

28. **Plea of old age and deteriorating health:**

28.1 Another ground taken by the appellant for reduction in sentence is that he is a senior citizen and has severe health concerns necessitating continuous treatment and physiotherapy. This Court had once previously granted interim bail to the appellant on medical grounds owing to the fact that he had suffered a stroke and partial paralysis as a result.

28.2 The Court is cognizant of the appellant's advanced age and deteriorating medical condition, considerations that warrant a humane and compassionate approach to justice. These factors, when presented in cases of serious offences, often invite the judiciary to weigh individual circumstances against the broader interest of justice. However, the Court is also tasked with balancing these personal hardships against the severity and nature of the offence, as well as its impact on the rule of law and societal harmony.

28.3 In the present case, the appellant has been convicted of murder, committed in the course of a group attack fueled by political rivalry. The act was not one of sudden provocation or impulse but arose from a premeditated and collective intent to harm the victim, even if the initial intention was to cause hurt. The evidence unequivocally establishes that the appellant actively participated in the attack, which culminated in the brutal stabbing of the victim in vital parts of the body, leading to his death. Such an act, carried out with the clear objective to eliminate the victim, underscores its heinous nature and deliberate execution.

28.4 While this Court has carefully considered the appellant's plea for leniency on account of old age and a medical condition, these factors alone cannot absolve or mitigate the responsibility for a crime of this magnitude. A murder committed with the intent to target vital organs, particularly in a group setting, reflects a level of intent and cruelty that demands an appropriate punitive response. To reduce the sentence in such a case would risk undermining the seriousness of the crime and the sanctity of life itself, principles that the judicial system is duty-bound to uphold.

28.5 Furthermore, the offence occurred in a context of political rivalry, a factor that exacerbates its gravity. Crimes rooted in such motives often have far-reaching consequences beyond the immediate loss of life, contributing to social unrest and weakening public confidence in the rule of law. The Court must therefore ensure that its decisions reinforce the principle of accountability and deter the recurrence of such violent acts, particularly those that disrupt public order. The medical evidence, corroborated by eyewitness testimony and the recovery of the weapon, leaves no room for doubt. While the Court acknowledges the appellant's advanced age and medical condition, these factors cannot outweigh the need for justice and the imperative to uphold the rule of law.

28.6 In light of the above, while we empathize with the appellant's personal circumstances, we find no compelling justification to interfere with the sentence imposed by the lower Court. The nature of the offence, its deliberate execution, and its societal implications necessitate that the punishment reflects the seriousness of the crime.

29. Lastly, once conviction under Section 302 of IPC is confirmed by all the Courts, then the minimum sentence is imprisonment for life, as provided under the provision itself. Thus, no ground or reason for granting a lesser sentence arises. When the minimum sentence itself is life imprisonment, then grounds like parity, leniency, old age, health concerns, etc. shall not be of any aid to the accused while seeking reduction of sentence. Therefore, the appellant herein has been granted the minimum sentence for committing the offence of murder.

30. After thoroughly examining the appellant's submissions and the evidence presented in the case, the Court concludes that the appeal against conviction and the request for a reduction in sentence are without merit. The findings of both the Trial Court and the High Court are well-founded and supported by compelling evidence.

31. The courts below have rightly concluded that the appellant's actions amount to murder under Section 300, IPC and thus punishable under Section 302, IPC. Accordingly, the appeal for reduction of the sentence is dismissed. The conviction and sentence are upheld.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

December 06, 2024

1 IPC

2 CrPC

3 1958 SCR 1495

4 (2007) 10 SCC 358

5 (2005) 12 SCC 613

6 (2008) 17 SCC 505

7 (2021) 19 SCC 181

8 (2009) 15 SCC 366

9 (2010) 2 SCC 333

10 (2005) 10 SCC 358

11 (1981) 2 SCC 531

IN THE SUPREME COURT OF INDIA

State of Maharashtra and Ors.
Vs.
Pradeep Yashwant Kokade and Anr

[Criminal Appeal No. 2831 of 2023]
[Criminal Appeal No. 2832 of 2023]

HEADNOTE – Directed all states and union territories to constitute a dedicated cell for the prompt processing of the mercy petitions by death row convicts within the timeline laid down by the respective governments.

It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the stage of execution of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanising effect on the accused. An inordinate and unexplained delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence

JUDGMENT

Abhay S. Oka, J.

1. The main question involved in these appeals is about the effect of delay in executing the death sentence.

FACTUAL ASPECTS

2. The deceased was employed in a company as an Associate. The deceased was required to attend the night shift between 11:00 pm and 09:00 am. On 1st November 2007, one Purushottam Dasrath Borate (Convict no.2) was scheduled to pick up the deceased from her residence at 10:30 pm. Convict no.2 was the driver of the cab hired by the employer of the deceased. As per usual practice, Convict no.2 gave a missed call to the deceased. After receiving the missed call, the deceased came down.

After picking up the deceased, Convict no.2 was supposed to pick up one Sagar Bidkar, an employee of the same company. Though Sagar repeatedly called Convict no.2, there was no response. At about 12:45 am, Convict no.2 came to pick up Sagar. When Sagar sat in the vehicle, one Pradeep Yashwant Kokade (Convict no.1/Respondent no.1) was already occupying the car's rear seat. Convict no.1 introduced convict no.2 to Sagar as his friend. Before the vehicle

reached the company's office, Convict no.1 alighted from the car. Convict no.2 requested Sagar to endorse in the company's record that the delay was due to the puncture of a tyre in the vehicle.

3. On the morning of 2nd November 2007, when the deceased did not return home, her sister enquired with the office of the deceased. She was told that the deceased had not reported for duty. The deceased's sister lodged a missing person report with the local Police Station. The body of the deceased was found on the morning of 2nd November 2007. In the postmortem report, the cause of death was stated as shock and haemorrhage due to grievous injuries to the vital organs.

There was a fracture of the skull involving the frontal, left temporal, and parietal bones with a laceration to the brain. Rib nos.2, 3 and 4 were fractured and the right lung was ruptured. The postmortem report recorded that the deceased was raped before her death. On 3rd November 2007, both the convicts were taken into judicial custody. By the judgment dated 20th March 2012, the learned Sessions Judge, Pune, convicted both the convicts for the offences punishable under Sections 302, 376(2)(g), 364, and 404, read with Section 120-B of the Indian Penal Code, 1860 (for short, 'the IPC').

Both the convicts were sentenced to death. The proceedings were sent to the High Court of Judicature at Bombay in accordance with Section 366 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') for confirmation of the death penalty. By the judgment dated 25th September 2012, the High Court held that the case of the convicts was falling in the category of 'rarest of the rare case'. Therefore, the High Court proceeded to confirm the death sentence. This Court also confirmed the death sentence by the judgment dated 8th May 2015.

4. On 29th May 2015, the Superintendent of Yerawada Central Prison, Pune (for short, 'the Superintendent of Prison') informed the Registrar of this Court that the contents of the judgment dated 8th May 2015 of this Court had been explained to the convicts in the language known to them. On 1st June 2015, the convicts gave a statement to the jail officers that they were desirous of filing a review petition before this Court.

The decision was informed to the Home Department, Government of Maharashtra on 2nd June 2015, by a letter issued by the Superintendent of Prison. On 10th July 2015, the convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra. On 16th July 2015, the Superintendent of Prison forwarded the mercy petitions to the Principal Secretary of the Home Department, Government of Maharashtra. On 17th August 2015, the Home Department, Government of Maharashtra, addressed a letter to the Superintendent of Prison to verify whether the convicts had filed any review petition before this Court.

On 22nd August 2015, the convicts confirmed to the Superintendent of Prison that they had not filed any review petition. The Superintendent of Prison communicated this fact to the Home Department, State of Maharashtra, vide a letter dated 24th August 2015. Even the Office of the Additional Director General of Police and Inspector General of Prisons (for short, 'the ADG (Prisons)') addressed a similar communication on 26th August 2015, confirming that the convicts had filed no review petition.

5. Five months after receiving the mercy petitions, on 25th January 2016, a note was prepared by the Section Officer of the Home Department, State Government for the benefit of the Hon'ble Governor. Pursuant to the letter dated 17th July 2015 sent by the ADG (Prisons), the Superintendent of Prison by his letter dated 27th January 2016, forwarded necessary factual details to the Principal Secretary of the Home Department along with a copy of the judgment of conviction of the Sessions Court.

On 1st February 2016, the Superintendent of Prison requested the Senior Inspector of Police of the concerned Police Station to supply English translations of the police diary, a short crime history in English, copies of FIR, dying declaration and a copy of the charge and reason for commitment. On 29th March 2016, the Hon'ble Governor rejected the mercy petitions.

A communication to that effect was issued by the Deputy Secretary to the Hon'ble Governor to the Additional Chief Secretary of the Home Department, Government of Maharashtra by a letter dated 29th March 2016. On 9th April 2016, the Superintendent of Prison received a letter dated 6th April 2016 from the Home Department, Government of Maharashtra, informing about the rejection of the mercy petitions. According to the case of the appellant state of Maharashtra, the Hon'ble Governor's rejection of the mercy petitions was communicated to the convicts on the same day.

6. Convict no.1 intimated his desire to file a mercy petition before the Hon'ble President of India. This desire was recorded in the statement of Convict no.1 dated 11th April 2016 by the prison officials. After that, there was correspondence exchanged by the ADG (Prisons), the Superintendent of Prison, the concerned Police Station, the State Government, etc., between 13th April 2016 and 31st May 2016.

7. On 11th June 2016, relatives of the convicts submitted fresh mercy petitions before the Hon'ble President of India. On 15th June 2016 and 22nd July 2016, the Under Secretary (Judicial), Ministry of Home Affairs, Government of India (for short, 'Under Secretary (GOI)') issued letters of request to the Principal Secretary, Home Department, Government of Maharashtra for the supply of documents. On 9th August 2016, the Under Secretary, Home Department, Government of

Maharashtra addressed a letter to the ADG (Prisons) and the Superintendent of Prison to supply information regarding the past criminal history of the convicts, the economic condition of the families of convicts and the filing of any review petitions by the convicts.

On 5th September 2016, the Superintendent of Prison addressed a letter to the concerned Police Station requesting information regarding the past criminal history and economic condition of the family of convicts. The Under Secretary (GOI) addressed a reminder on 6th September 2016 to the Home Department, Government of Maharashtra, requesting to supply the documents. On 9th September 2016, the Superintendent of Prison confirmed by addressing a letter to the Home Department, Government of Maharashtra, that the convicts had not filed review petitions.

On 12th September 2016, the concerned Police Station forwarded to the Home Department, Government of Maharashtra, the details regarding the criminal history and economic condition of the convicts. On 30th September 2016, the Home Department of the State Government addressed a letter to the Under Secretary (GOI) giving information about the criminal history and economic condition of the convicts and filing of review petitions by the convict. On 26th December 2016, the Under Secretary (GOI) addressed a letter to the Home Department, Government of Maharashtra, for confirmation regarding the decision of the convicts not to file review petitions.

This information was sought by the Home Department, Government of Maharashtra, by the letter dated 16th January 2017 from the ADG (Prisons) and the Superintendent of Prison. Accordingly, on 21st January 2017, statements of the convicts were recorded in which they stated that though they intended to file review petitions, the same have not been filed. This information was furnished by the Offices of Superintendent of Prison and the ADG (Prisons) to the Home Department of the State Government in separate letters dated 23rd January 2017 and 7th February 2017, respectively.

On 22nd February 2017, the Home Department, Government of Maharashtra, informed the Under Secretary (Judicial), Home Department, Government of India, confirming that the convicts intended to file review petitions. The said letter recorded that both the convicts had decided to file review petitions after the decision of the Hon'ble President of India on the mercy petitions. The Hon'ble President on 26th May 2017 rejected the mercy petitions.

This information was submitted by the Under Secretary, Ministry of Home Affairs, Government of India, to the Principal Secretary, Home Department, Government of Maharashtra, in a letter dated 6th June 2017. By separate letters dated 19th June 2017 addressed to the family members of the convicts and the

learned Sessions Judge, Pune, the Superintendent of Prison informed them about the rejection of the mercy petitions.

8. On 10th August 2017, the Superintendent of Prison addressed a letter to the learned Sessions Judge, Pune, requesting him to issue a warrant for the execution of the death sentence. On 24th August 2017, the Superintendent of Prison addressed a letter to the Registrar of this Court requesting him to provide information about any review petition filed by the convicts. By a letter dated 9th September 2017, the Registrar of this Court communicated to the Superintendent of Prison that no review petitions were filed by the convicts. On 5th October 2017, 18th July 2018 and 29th August 2018, letters were addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.

On 17th October 2018, a letter was sent by the ADG (Prisons) to the learned Sessions Judge, Pune, requesting him to fix a date for the execution of the death sentence. As no action was taken by the Sessions Court, Pune, the Home Department of the Government of Maharashtra on 30th October 2018, addressed a letter to the Law and Judiciary Department of the State Government making a query whether the Home Department could proceed with the execution of death sentence in accordance with the provisions of the Maharashtra Prison Manual.

By the letter dated 12th November 2018, the Law and Judiciary Department of the State Government informed the Home Department of the State Government that the exclusive jurisdiction to issue warrants for executing the death sentence was of the learned Sessions Court. Meanwhile, on 2nd November 2018, the learned Sessions Judge, Pune, addressed a letter to the Home Department, Government of Maharashtra, seeking information about the status of mercy petitions.

On 7th December 2018 and 27th December 2018, the ADG (Prisons) and the Superintendent of Prison addressed letters to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence. On 31st January 2019, the Home Department of the State Government wrote a letter to the ADG (Prisons) and the Superintendent of Prison informing them about the letter dated 2nd November 2018 sent by the learned Sessions Court, Pune. On 10th April 2019, warrants for the execution of the death sentence were issued by the Sessions Court, Pune.

GROUNDS OF CHALLENGE BEFORE THE HIGH COURT

9. On 2nd May 2019, the convicts filed separate writ petitions before the High Court. A prayer was made in the petitions for quashing the warrants of execution of the death sentence, inter alia, on the following grounds:

i. Inordinate and unexplained sdelay in execution of death sentence on the part of the State Government as well as the Sessions Court, Pune;

ii. Inordinate and unexplained delay in deciding mercy petitions;

iii. The convicts were kept in solitary confinement during the pendency of the appeals before this Court as well as the mercy petitions before the Hon'ble Governor of the State of Maharashtra and the Hon'ble President of India;

iv. Rejection of mercy petitions was illegal on account of nonapplication of mind due to non-placement of relevant information before the concerned authorities; and,

v. The Sessions Court, Pune, issued death warrants without notice to the convicts or their family members.

10. Counter affidavits were filed in the writ petitions before the High Court by various officers. By the impugned judgment dated 29th July 2019, the High Court held that there was an undue and avoidable delay in executing the death sentence. Moreover, the convicts were kept in solitary confinement from 20th March 2012. Therefore, the High Court proceeded to commute the death sentence to life imprisonment for a total period of thirty-five years. The warrants for the execution of the death sentence issued by the learned Sessions Court, Pune, were set aside.

SUBMISSIONS

11. Mr Shreeyash Lalit, the learned counsel representing the appellants, made detailed submissions. He referred to a decision of this Court in the case of T.V. Vatheesswaran v. State of Tamil Nadu1. He also pointed out a decision of the three Judge Bench of this Court in the case of Sher Singh & Ors. v. State of Punjab[2]. He pointed out that in the case of T.V. Vatheesswaran[1], it was held that a delay beyond two years in the execution of the death sentence was enough to commute the death sentence to life imprisonment.

However, in the case of Sher Singh & Ors[2], it was held that a delay of two years is not enough for the commutation of a death sentence. Ultimately, this conflict was resolved by a decision by the Constitution Bench of this Court in the case of Triveniben v. State of Gujarat[3]. He also pointed out various decisions of this Court in the cases of Shatrughan Chauhan & Anr. v. Union of India & Ors.[4], Ajay Kumar Pal v. Union of India & Anr[5], Mukesh v. Union of India & Ors.[6] and B.A. Umesh v. Union of India & Ors[7]. He submitted that though undue delay in the execution of a death sentence will entitle convicts to seek commutation, no fixed period of delay can be laid down as a criterion for commutation.

He submitted that in such a case, the twin test must be satisfied. The first test is whether there was an avoidable delay. The second test is whether the quantum of delay was unduly long or inordinate, which must warrant the commutation of a death sentence to life imprisonment. The learned counsel urged that both the tests must be satisfied to make out a case for commutation of a death sentence. He submitted that neither of these two tests alone would be sufficient to commute the death sentence.

12. The learned counsel submitted that the High Court has committed an error by holding that the quantum of delay is not material. He submitted that the delay has to be inordinate and, therefore, the quantum of delay is very material. He submitted that the time consumed for the disposal of mercy petitions by the Hon'ble Governor and the Hon'ble President of India was from 10th July 2015 to 26th May 2017, which is about one year and ten months. His submission is that this delay cannot be held to be inordinate or unexplained.

He submitted that, in any case, there is an explanation for the delay. He submitted that there was some delay as time was required to ascertain whether the convicts wanted to file review petitions. He submitted that the time taken of a few months to prepare a note for presenting it to the Hon'ble Governor could not be said to be unreasonable as it required scanning of voluminous records. Even the time of three months taken by the Hon'ble Governor cannot be said to be unreasonable.

13. As regards the delay in the disposal of mercy petitions by the Hon'ble President of India, he submitted that the time of five months was consumed in getting information on the criminal antecedents and economic condition of the convicts. Time of about four months or more was required to get the information on the issue of convicts filing review petitions before this Court. The Hon'ble President of India took about four months to decide on the mercy petitions, which is not at all long or inordinate considering the fact that the issue was the life and death of the convicts. He submitted that in the case of B.A. Umesh7, the delay of two years and three months in the disposal of the mercy petition was held as not excessive.

14. The learned counsel submitted that the major delay is on the part of the Sessions Court in issuing the warrants of execution of the death sentence. He submitted that on 19th June 2017, the Superintendent of Prison had communicated to the Sessions Court about the Hon'ble President of India's rejection of the mercy petitions. There was an exchange of correspondence by the Government Officers with the Sessions Court, and only on 10th April 2019 were warrants issued for the execution of the death sentence issued by the Sessions Court. He submitted that in view of the decision of the Constitution Bench in the case of Triveniben3, only the delay caused by the executive could be taken into

consideration to decide whether there was any violation of Article 21 of the Constitution of India.

15. As regards the finding of the High Court on keeping the convicts in solitary confinement before rejection of mercy petitions, the learned counsel pointed out that in the affidavit of the Superintendent of Prison, it was pointed out that the convicts were kept in a security yard wherein they were allowed to access the veranda and interact with other prisoners from 06:00 am to 06:30 pm. He pointed out that there was a fan and light bulb in their cell. In their room, there was usually more than one inmate. Moreover, they had access to an open ground. He, therefore, submitted that in view of the law laid down by this Court in the case of Vinay Sharma v. Union of India & Ors[8], it cannot be said that the convicts were kept in solitary confinement.

16. The learned counsel submitted that in the execution warrants, more than a reasonable period was provided from the date of warrants till the date of execution. Copies of the warrants were immediately supplied to the convicts. He submitted that merely because the convicts were not brought before the Sessions Court while proceeding with issuance of warrants, this lapse by itself, was not sufficient to commute the sentence to life imprisonment.

The learned counsel also made suggestions for issuing guidelines for effective compliance with Sections 413 and 414 of the CrPC corresponding to Sections 453 and 454 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'). In short, the submission of the learned counsel appearing for the appellants is that there was no warrant for commuting the death sentence.

17. Ms. Payoshi Roy, the learned counsel representing the respondents-convicts submitted that as held by this Court in the case of Sher Singh & Ors2, Article 21 of the Constitution of India inheres in every person till his last breath. The learned counsel submitted that unreasonable delay in adjudicating upon the mercy petitions makes the punishment barbaric and, hence, unconstitutional. She submitted that, in fact, avoidable delay in deciding the mercy petitions violates constitutional due process, which includes fair, just and reasonable procedure. The learned counsel relied upon the observations made by this Court in the cases of Sher Singh & Ors2 and Ajay Kumar Pal5.

The learned counsel submitted that the executive authorities should follow a self-imposed rule that every mercy petition must be disposed of within three months. The delay beyond a period of three months must be, prima facie, presumed to be excessive, which puts the burden on the State Government to explain the delay. She submitted that no fixed length of delay can be determinative, and, in that context, the High Court observed that the quantum of delay is not material. She pointed out that the total delay in execution of the death sentence, in this case,

starting from the date of filing of mercy petitions till the date of issuance of execution warrants, was three years, eleven months and fifteen days.

18. The learned counsel for the convicts submitted that the poor economic condition of the convicts was not considered by the Hon'ble Governor of the State of Maharashtra and the Hon'ble President of India. Even the fact of relatively young ages of the convicts has not been considered while deciding the mercy petitions. In the facts of the case, delay post the rejection of the mercy petitions will have to be treated as executive delay as there was a gross delay in doing the ministerial act of issuing execution warrants.

19. The learned counsel also submitted that the finding of the High Court regarding keeping the convicts in solitary confinement is just and proper, and no interference is called for with that finding.

CONSIDERATION

LEGAL POSITION

20. Law on the subject has been laid down in the case of Triveniben3 by a Constitution Bench. G.L. Oza, J. rendered the main opinion for himself and on behalf of three other Hon'ble Judges. The controversy which led to a reference to the Constitution Bench has been set out in the majority judgment in paragraphs 1, 2 and 3, which read thus:

"1. These matters came up before us because of the conflict in the two decisions of this Court: (i) T.V. Vatheeswaran v. State of T.N. [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348], Sher Singh v. State of Punjab [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] and observations in the case of Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra [(1985) 1 SCC 275: 1984 SCC (Cri) 653 : (1985) 2 SCR 8].

In Vatheeswaran case [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348] a Bench of two Judges of this Court held that two years delay in execution of the sentence after the judgment of the trial court will entitle the condemned prisoner to ask for commutation of his sentence of death to imprisonment for life. The court observed that: [SCC p. 79: SCC (Cri) p. 353, para 21] 'Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death.'

2. In Sher Singh case [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] which was a decision of a three-Judges' Bench it was held that a condemned prisoner has a right of fair procedure at all stages, trial, sentence and

incarceration but delay alone is not good enough for commutation and two years rule could not be laid down in cases of delay. It was held that the court in the context of the nature of offence and delay could consider the question of commutation of death sentence. The court observed: [SCC p. 356 : SCC (Cri) p. 473, para 19]

'Apart from the fact that the rule of two years runs in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive authorities, we are of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is undoubtedly entitled to pursue all remedies lawfully open to him to get rid of the sentence of death imposed upon him and indeed, there is no one, be he blind, lame, starving or suffering from a terminal illness, who does not want to live.'

It was further observed: [SCC p. 357 : SCC (Cri) p. 474, para 20]

'Finally, and that is no less important, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula, as a matter of quod erat demonstrandum.'

3. In Javed case [(1985) 1 SCC 275: 1984 SCC (Cri) 653 : (1985) 2 SCR 8] it was observed that the condemned man who had suffered more than two years and nine months and was repenting and there was nothing adverse against him in the jail records, this period of two years and nine months with the sentence of death heavily weighing on his mind will entitle him for commutation of sentence of death into imprisonment for life. It is because of this controversy that the matter was referred to a five-Judges' Bench and hence it is before us."

(emphasis added)

Ultimately, in paragraph 23, the Constitution Bench held thus:

"23. So far as our conclusions are concerned we had delivered our order on 11-10-1988 and we had reserved the reasons to be given later. Accordingly in the light of the discussions above our conclusion is as recorded in our order dated 11-

10-1988 [Triveniben v. State of Gujarat, (1988) 4 SCC 574: 1989 SCC (Cri) 25], reproduced below: [SCC p. 576: SCC (Cri) pp. 26-27, para 2]

'Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death.

This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in Vatheeswaran case [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348] cannot be said to lay down the correct law and therefore to that extent stands overruled."

(emphasis added)

In paragraph 16, the Constitution Bench held that while considering the delay, the period consumed in the judicial process culminating in confirmation of the death sentence should not be considered. K. Jagannatha Shetty, J, rendered a concurring opinion. In paragraphs 75 and 76 of his opinion, it was observed thus:

"75. As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. This mental torment may become acute when the judicial verdict is finally set against the accused. Earlier to it, there is every reason for him to hope for acquittal. That hope is extinguished after the final verdict. If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court requesting to examine whether it is just and fair to allow the sentence of death to be executed.

76. What should be done by the court is the next point for consideration. It is necessary to emphasise that the jurisdiction of the court at this stage is extremely limited. If the court wants to have a look at the grievance as to delay, it is needless to state, that there should not be any delay either in listing or in disposal of the matter. The person who complains about the delay in the execution should not be put to further delay. The matter, therefore, must be expeditiously and on top priority basis, disposed of. The court while examining the matter, for the reasons already stated, cannot take into account the time utilised in the judicial proceedings up to the final verdict.

The court also cannot take into consideration the time taken for disposal of any petition filed by or on behalf of the accused either under Article 226 or under Article 32 of the Constitution after the final judgment affirming the conviction and sentence. The court may only consider whether there was undue long delay in disposing of mercy petition; whether the State was guilty of dilatory conduct and whether the delay was for no reason at all. The inordinate delay, may be a significant factor, but that by itself cannot render the execution unconstitutional. Nor it can be divorced from the dastardly and diabolical circumstances of the crime itself. The court has still to consider as observed in Sher Singh case [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] : [SCR p. 596: SCC p. 357: SCC (Cri) p. 474, para 20]"

(emphasis added)

21. Thereafter, a Bench of three Hon'ble Judges in the case of Shatrughan Chauhan & Anr.4 dealt with the same issue. Paragraphs 44 to 49 of the decision are material, which read thus:

"44. In view of the above, we hold that undue long delay in execution of sentence of death will entitle the condemned prisoner to approach this Court under Article 32. However, this Court will only examine the circumstances surrounding the delay that has occurred and those that have ensued after the sentence was finally confirmed by the judicial process. This Court cannot reopen the conclusion already reached but may consider the question of inordinate delay to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life.

45. Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonising delay caused to the convict only on the basis of the gravity of the crime.

46. India has been a signatory to the Universal Declaration of Human Rights, 1948 as well as to the United Nations Covenant on Civil and Political Rights, 1966. Both these conventions contain provisions outlawing cruel and degrading treatment and/or punishment. Pursuant to the judgment of this Court in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] , international covenants to which India is a party are a part of domestic law unless they are contrary to a specific law in force.

It is this expression ("cruel and degrading treatment and/or punishment") which has ignited the philosophy of Vatheeswaran [T.V.Vatheeswaran v. Sta te of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342] and the cases which follow it. It is in this light, the Indian cases, particularly, the leading case of Triveniben [Triveniben v. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248] has been followed in the Commonwealth countries.

It is useful to refer the following foreign judgments which followed the proposition: (i) Pratt v. Attorney General for Jamaica [(1994) 2 AC 1 : (1993) 3 WLR 995 : (1993) 4 All ER 769 (PC)], (ii) Catholic Commission for Justice & Peace in Zimbabwe v. Attorney General [(1993) 4 SA 239 (Zimbabwe SC)], (iii) Soering v. United Kingdom [Application No. 14038 of 1988: (1989) 11 EHRR 439], (iv) Attorney General v. Susan Kigula [Constitutional Appeal No. 3 of 2006, decided on 21-1- 2009 (Uganda SC)], (v) Herman Mejia v. Attorney General [AD 2006 Action No. 296, decided on 11-6-2001 (Belize SC)].

47. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time-limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in Triveniben [Triveniben v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248], further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.

48. Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute thone death sentence into life imprisonment this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.

49. The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is inexcusable. Since it is well established that Article 21 of the Constitution does not end with the

pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanising effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence.

In fact, in Vatheeswaran [T.V.Vatheeswaran v. Sta te of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342], particularly, in para 10, it was elaborated where amongst other authorities, the minority view of Lords Scarman and Brightman in the 1982 Privy Council case of Riley v. Attorney General of Jamaica [Riley v. Attorney General of Jamaica, (1983) 1 AC 719 : (1982) 3 WLR 557 : (1982) 3 All ER 469 : 1982 Cri Law Review 679 (PC)], by quoting: (Vatheeswaran case [T.V.Vatheeswaran v. State of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342] , SCC p. 72)

"10. 'Sentence of death is one thing: sentence of death followed by lengthy imprisonment prior to execution is another.'" (Riley case [Riley v. Attorney General of Jamaica, (1983) 1 AC 719 : (1982) 3 WLR 557 : (1982) 3 All ER 469 : 1982 Cri Law Review 679 (PC)] , AC p. 735 B)

(emphasis supplied)

The appropriate relief in cases where the execution of death sentence is delayed, the Court held, is to vacate the sentence of death. In para 13, the Court made it clear that Articles 14, 19 and 21 supplement one another and the right which was spelled out from the Constitution was a substantive right of the convict and not merely a matter of procedure established by law. This was the consequence of the judgment in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] which made the content of Article 21 substantive as distinguished from merely procedural."

(emphasis added)

In paragraph 244, the Bench proceeded to hold thus:

"244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time.

However, when the delay caused in disposing of the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every constitutional duty must be fulfilled with due care and

diligence, otherwise judicial interference is the command of the Constitution for upholding its values."

(emphasis added)

This Court also issued several other directions regarding the procedure to be followed in placing mercy petitions before the Hon'ble Governor or the Hon'ble President of India.

22. The decision of this Court in the case of B.A.Umesh7 does not make a departure from the law laid down in the case of Shatrughan Chauhan & Anr4. On the contrary, paragraphs 44, 47 and 48 of the decision have been quoted therein with approval. We have carefully perused several other decisions of this Court which have been rendered in the facts of the case before this Court. The propositions laid down in these decisions can be summarized as under:

(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. But this Court will only examine the nature of the delay caused and circumstances that ensued after the judicial process finally confirmed the sentence and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable.

(ii) Keeping a convict sentenced to death in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time is certainly agony for him/her. It creates adverse physical conditions and psychological stress on the convict under sentence of death. Therefore, this Court, while considering the delay in the disposal of clemency petitions by the highest constitutional authorities, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, cannot excuse the agonising delay caused to the convict only based on the gravity of the crime; and

(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the execution stage of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanising effect on the accused. An inordinate delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence.

23. In paragraph 16 of the decision of this Court in the case of Triveniben3, the Constitution Bench held that while considering the delay in the execution of the

death sentence, the period consumed in the judicial process culminating in the confirmation of the death sentence should not be taken into consideration. The reason for the said conclusion is that only after the judicial process in the form of the judgment of this Court in appeal / special leave petition arising out of the order of conviction does the order of death sentence become final. Therefore, the period required for judicial consideration cannot be termed as a delay in the execution of the death sentence, as till the conclusion of judicial proceedings arising out of the order of conviction, a sentence of death does not attain finality. The question of execution thereof arises only when the death sentence becomes final.

24. We may refer to Sections 413 and 414 of the CrPC, which read thus:

"413. Execution of order passed under section 368.- When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

414. Execution of sentence of death passed by High Court.- When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant."

There are identical provisions in the BNSS in the form of Sections 453 and 454. These provisions constitute a vital safeguard. These provisions ensure that the execution of the death sentence takes place only after all remedies available to the convicts are exhausted. The executive cannot execute the death sentence unless the Sessions Court issues a warrant.

25. The proceedings for issuing a warrant for executing a death sentence under Sections 413 and 414 of the CrPC do not require any judicial adjudication. Before issuing the warrant, the Sessions Court must satisfy itself that the order of death sentence has attained finality and the review/curative or mercy petitions, if filed, have been finally rejected. Before issuing a warrant, the Sessions Court has to issue notice to the convict so that even the convict can state whether any other proceedings are pending before the Courts or Constitutional authorities. In a given case, the convict may not be interested in pursuing remedies.

The Sessions Court can verify this aspect after issuing a notice to the convict. The Sessions Court, in such a case, must appraise the convict of the remedies available and, if required, provide legal aid to enable the convict to take recourse to such remedies. After the convict has been made aware of the remedies available, reasonable time be granted to the convict to consider, weigh and even

consult a member of his family or friend to finally take a decision on adopting remedies as the possibility of thinking logically and rationally may be impeded or hampered because of the situation being faced by the convict.

The Sessions Court can issue a warrant only after providing such reasonable time to the convict and after satisfying itself that the convict has taken a conscious decision of not pursuing the available remedies. The reasonable time can be of seven days. The Sessions Court can direct the counselling of the convict if it is not satisfied that the decision is a well-informed, considered and conscious decision. If such a procedure is followed, it enables the convict to take recourse to the available legal remedy.

Moreover, if an order of issue of warrant of execution is passed after notice to the convict, it enables the convict to challenge the order of issuing a warrant of execution. But after the convict exhausts all remedies, including filing mercy petitions or after the Sessions Court is satisfied that the convict has taken a conscious decision of not availing the remedies, the execution warrant must be issued without any delay. It is the responsibility of the trial court to take up and conclude the proceedings of issuing a warrant of execution as expeditiously as possible. The trial court must give necessary out of turn priority.

26. After the decisions on mercy petitions, if there is an inordinate and unexplained delay in actual execution for no fault on the part of the convict, there is no reason why the principles set out in paragraph 23 should not apply. The principles will also apply to a case where there is a long and unexplained delay on the part of the Sessions Court in issuing the warrant of execution in accordance with Sections 413 and 414 of CrPC. After the order of rejection of mercy petitions is communicated to a convict, the sword of Damocles cannot be kept hanging on him for inordinately long time. This can be very agonising, both mentally and physically. Such inordinate and unreasonable delay will violate his rights under Article 21 of the Constitution. In such a case, this Court will be justified in commuting the death penalty into life imprisonment.

27. A convict can invoke even the jurisdiction of a High Court under Article 226 of the Constitution if there is an inordinate and unexplained delay in the execution of the death sentence post-confirmation of the sentence. The High Court will apply the same principles summarised in paragraphs 22 to 25.

28. No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. In a given case, a delay of two years may not be fatal. In another case, a delay of six months can be a ground to commute sentence. The terms "undue" or "inordinate" cannot be interpreted by applying the rules of mathematics.

The Courts, in such cases, deal with human issues and the effect of the delay on a particular convict. What delay is inordinate must depend on the facts of the case. For example, if a convict is more than seventy years old and is suffering from multiple ailments, an unexplained delay of even six months in deciding a mercy petition can amount to a violation of Article 21. Ultimately, the Courts will have to determine the effect of delay in the light of the principles laid down as aforesaid, considering the facts of the case before it.

APPLICATION OF THE PRINCIPLES TO THE FACTS OF THE CASE

29. In this case, there is a delay in the following three stages:

i. On 10th July 2015, the convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra, which were rejected on 29th March 2016. This is the first part of the delay;

ii. On 11th June 2016, mercy petitions were addressed by the convicts to the Hon'ble President of India, which were rejected on 26th May 2017. This is the second part of the delay, and

iii. The third part of the delay started on 19th June 2017, when the Superintendent of Prison informed the learned Sessions Judge, Pune, about the rejection of mercy petitions by the Hon'ble President of India. Ultimately, it was only on 10th April 2019 that the learned Sessions Court, Pune, issued the warrants for the execution of the death sentence.

Thus, from 10th July 2015 till 10th April 2019, time was consumed in deciding the mercy petitions filed before the Hon'ble Governor of the State and the Hon'ble President of India, and in issuing warrants for executing the death sentence.

DELAY IN PROCESSING AND DISPOSAL OF MERCY PETITIONS

30. We are dealing with the first part of the delay in deciding the mercy petitions made to the Hon'ble Governor which was as follows:

Date	Particulars	Time taken
10th July 2015	Convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra	-
16th July 2015	Prison authorities forwarded the mercy petitions along with the letter	6 days
20th July 2015	Home Department of the State Government received the mercy petitions forwarded by the prison	4 days

	authorities	
17th August 2015	Home Department of the State Government addressed a letter to the Superintendent of Prison seeking confirmation regarding the decision of the convicts to prefer review petitions	28 days
22nd August 2015	Superintendent of Prison recorded the statements of the convicts stating that they had not preferred review petitions.	5 days
24th August 2015 and 26th August 2015.	Fact of convicts not having preferred review petitions was communicated by the prison authorities and the ADG (Prisons)	7/9 days since receipt of letter dated 17th August 2015 and 2/4 days since recording convicts' statement
25th January 2016	Note prepared by the Home Department of the State Government for the benefit of the Hon'ble Governor	152 days
29th March 2016	Mercy petitions rejected by the Hon'ble Governor.	64 days

From the above table, it appears that nothing was done by the Home Department of the State Government for five months (152 days) after receiving confirmation that the convicts had not preferred a review petition. Further, a perusal of the note prepared for the benefit of the Hon'ble Governor shows that it consists of three and a half pages. The recommendation is in three lines in the last paragraph. It is interesting to note that while forwarding the mercy petitions along with the letter dated 16th July 2015, the following documents were sent to the Home Department:

i. Nominal roll of the convicts;

ii. Medical report of mental and physical health;

iii. A summary of crime;

iv. Warrant of conviction issued by the Sessions Court; and

v. A copy of the judgment of the High Court confirming the death sentence and the order/judgment of this Court.

The note appears to be based only on these documents, which were available to the Home Department in July 2015. A lot of time was wasted on correspondence made by various officers. All this was avoidable. Immediately upon receipt of the mercy petitions, all the required information/documents ought to have been

called for by the Home Ministry. That was not done. Perhaps the officers in the Home Ministry showed a lack of sensitivity. Ultimately, on 29th March 2016, mercy petitions were rejected by the Hon'ble Governor. Thus, the delay of 5 months between 16th July 2015 and 25th January 2016 is unexplained and unjustified.

31. Now, we come to the second part of the delay which was as follows:

Date	**Particulars**	**Time taken**
11th April 2016	Convict no.1 intimated that he was desirous of filing a mercy petition before the Hon'ble President of India.	-
13th April 2016	Letter sent by the ADG (Prisons) to the Superintendent of Prison, requesting to forward updated nominal roll, report on the mental and physical health of the convicts and information about criminal antecedents.	2 days
28th April 2016	Home Department of the State Government informed the Under Secretary (GOI) that the Hon'ble Governor had rejected mercy petitions. Mercy petitions addressed to the Hon'ble President were forwarded with this letter. Apart from the copies of the mercy petitions, the judgments of the Sessions Court, Pune, the High Court and this Court, along with the communication of rejection of mercy petitions by the Hon'ble Governor, were forwarded to the Under Secretary (GOI).	-
31st May 2016	Under Secretary (GOI) addressed a letter to the Home Department of the State Government requesting to provide criminal history, economic condition and information regarding the filing of review petition by the convicts within two weeks.	33 days
11th June 2016	Fresh set of mercy petitions were filed by the relatives of both convicts	-
15th June 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-
22nd June 2016	Letter dated 31st May 2016 was received by the Home Department of the State Government.	22 days
22nd July 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-

9th August 2016	Home Department of the State Government wrote to the ADG (Prisons) and Superintendent of Prison to supply documents as mentioned in the letter dated 31st May 2016.	48 days since receipt of letter dated 31st May 2016
5th September 2016	Superintendent of Prison acted upon letter dated 9th August 2016 by addressing a letter to the Senior Inspector of the concerned Police Station to forward details regarding the antecedents and economic condition of the family of the convicts.	27 days
6th September 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-
9th September 2016	Information was sent by the Superintendent of Prison to the Home Department of the State Government recording the fact that no review petitions were filed by the convicts.	31 days since letter dated 9th August 2016
12th September 2016	The concerned Police Station forwarded a report regarding the criminal history and economic condition of the convicts to the Home Department of the State Government.	7 days
30th September 2016	Home Department of the State Government communicated the information mentioned above to the Under Secretary (GOI).	14 days
26th December 2016	Under Secretary (GOI) again requested confirmation about the review petitions filed by the convicts, despite the State Government having already provided this information to the Under Secretary (GOI) vide letter dated 30th September 2016.	87 days
16th January 2017	In view of the letter dated 26th December 2016, correspondences were again started by the Home Department of the State Government.	-
23rd January 2017	ADG (Prisons) communicated to the Home Department of the State Government that the review petitions were not filed.	-
7th February 2017	Superintendent of Prison communicated to the Home Department of the State Government that the review petitions were not filed.	-
22nd February 2017	Home Department of the State Government confirmed to the Under Secretary (GOI) that a review petition had not been filed.	58 days

26th May 2017	Ultimately, the Hon'ble President rejected the mercy petitions.	93 days

A period of about three months taken by the Hon'ble President cannot amount to undue delay. However, the delay from 28th April 2016, when the mercy petitions were forwarded to the Under Secretary (GOI) till 22nd February 2017, is entirely unexplained and unwarranted.

DELAY IN ISSUE OF WARRANT OF EXECUTION

32. We have already held that the undue delay in issuing a warrant of execution can violate the rights of convicts under Article 21 of the Constitution of India. Accordingly, the third part of the delay was as follows:

Date	**Particulars**	**Time taken**
6th June 2017	Information was submitted by the Under Secretary, Ministry of Home Affairs, Government of India, to the Principal Secretary, Home Department, Government of Maharashtra regarding rejection of mercy petition	11 days since rejection by Hon'ble President
19th June 2017	Superintendent of Prison addressed separate letters to the family members of the convicts and learned Sessions Judge, Pune, informing them about the rejection of the mercy petitions.	24 days since rejection by Hon'ble President
10th August 2017	Superintendent of Prison addressed a letter to the learned Sessions Judge, Pune, requesting him to issue a warrant for the execution of the death sentence.	-
24th August 2017	Superintendent of Prison addressed a letter to the Registrar of this Court requesting him to provide information about any review petition filed by the convicts.	-
9th September 2017	Registrar of this Court communicated to the Superintendent of Prison that no review petitions were filed by the convicts.	16 days
5th October 2017	Letter was addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	-
18th July 2018	Letter was addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	-
29th	Letter was addressed by the Superintendent of	-

August 2018	Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	
17th October 2018,	Letter was addressed by the ADG (Prisons) to the learned Sessions Judge, Pune, requesting him to fix a date for the execution of the death sentence.	-
30th October 2018	As no action was taken by the Sessions Court, Pune, the Home Department of the Government of Maharashtra addressed a letter to the Law and Judiciary Department of the State Government making a query whether the Home Department could proceed with the execution of death sentence in accordance with the provisions of the Maharashtra Prison Manual.	-
2nd November 2018	Learned Sessions Judge, Pune, addressed a letter to the Home Department, Government of Maharashtra, seeking information about the status of mercy petitions	502 days since letter dated 19th June 2017
12th November 2018	Law and Judiciary Department of the State Government informed the Home Department of the State Government that the exclusive jurisdiction to issue warrants for executing the death sentence was of the learned Sessions Court	13 days
7th December 2018	ADG (Prisons) addressed letter to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence.	-
27th December 2018	Superintendent of Prison addressed letter to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence.	-
31st January 2019	Home Department of the State Government wrote a letter to the ADG (Prisons) and the Superintendent of Prison informing them about the letter dated 2nd November 2018 sent by the Learned Sessions Judge, Pune	90 days
10th April 2019	Warrants for the execution of the death sentence were issued by the Sessions Court, Pune.	661 days since letter dated 19th June 2017

33. When the mercy petitions were pending, the Sessions Court could not have issued a warrant to execute the death sentence. The most straightforward procedure that the State Government could have followed was to apply through the Public Prosecutor before the learned Sessions Court on the judicial side by placing on record the rejection of the mercy petitions and seeking the issuance of

warrants for the execution. Even the Sessions Court ought to have acted upon the several letters from the Prison and issued notice to the State Government. However, that was not done. Thus, there was an inordinate delay in issuing warrants for executing the death sentence. This delay from June 2017 to April 2019 was entirely avoidable. This also is a delay post-confirmation of the death sentence by this Court, which must be taken into consideration.

THE EFFECT OF THE DELAY

34. Thus, on facts, it can be said that there was undue and unexplained delay at all three stages. The undue delays have occurred in placing the mercy petitions before the Hon'ble Governor for the State and the Hon'ble President of India. In the facts of the case, the inordinate delay is on the part of the executive and not on the part of the Constitutional functionaries.

35. The time consumed from the filing of mercy petitions before the Hon'ble Governor to the date of issue of the execution of warrants by the learned Sessions Court, Pune, is of three years, eleven months and fourteen days. Even if we exclude the time actually taken by the constitutional functionaries to decide mercy petitions, still the delay will be of more than three years. The Court must consider the cumulative effect of the delays at three stages after taking into consideration the facts of the case.

The reason is that in a given case, there may not be an inordinate delay in one stage, but there may be an inordinate delay in two other stages. The only conclusion in this case is that the delay is unexplained and inordinate. Therefore, it is impossible to find fault with the view taken by the High Court that there was a violation of the rights of the convicts guaranteed under Article 21 of the Constitution of India. Therefore, the commutation of the death sentence to a fixed term sentence of thirty-five years by the High Court cannot be faulted.

DUTY OF THE EXECUTIVE AND THE SESSIONS COURT

36. The Executive must promptly deal with the mercy petitions filed by the convicts of the death sentence. In this case, the approach of the Executive, and especially the State Government, has been casual and negligent. Even the Sessions Court ought to have been pro-active. When the delay from the date of filing of mercy petitions till the date of issue of a warrant of execution is inordinate and unexplained, the right of the convicts guaranteed by Article 21 of the Constitution of India is violated. This right must be upheld, and it is the duty of the Constitutional Courts to do so.

37. We must also consider the rights of the victims of the offences to justice. Their right is to ensure that there is a prompt and proper investigation. However, we hasten to add that there is no right vested in the victim to insist on imposing

capital punishment. The law must be enforced with all the vigour, and the Executive Branch of the State Government cannot show laxity in implementing the orders of conviction passed by the competent Courts. The very purpose of passing orders of sentence cannot be allowed to be defeated. We cannot ignore the effect of the laxity shown by law enforcement agencies on society. Therefore, we propose to issue directions to ensure that there are no administrative delays in dealing with the mercy petitions or issuing warrants for execution of death sentence.

DIRECTIONS TO CURB THE DELAYS

38. The first direction which we propose to issue is regarding the nature of documents which ought to be immediately forwarded with the mercy petitions. The second direction we propose is that the State Government must set up a dedicated cell in either the Home Department or Prison Department to ensure prompt and expeditious processing of the mercy petitions. We also propose to direct the State Government to issue executive orders to ensure prompt processing of the mercy petitions.

39. Now, we come to the role of the Sessions Court. There cannot be any dispute that unless a warrant is issued for the execution of the death sentence under Section 413 or Section 414 of the CrPC, the death sentence cannot be executed. On this aspect, we must refer to a decision of this Court in the case of Shabnam v. Union of India[9] and, in particular, paragraph 21.

This Court held that the procedure laid down by the High Court of Allahabad in its decision in the case of People's Union for Democratic Rights (PUDR) v. Union of India & Ors.[10] is in consonance with Article 21 of the Constitution of India. Therefore, while executing the death sentence, it is mandatory to follow the procedure laid down by the Allahabad High Court in the decision mentioned above. The decision of the Allahabad High Court can be summarised as follows:

i. The principles of natural justice must be drawn into the provisions of Sections 413 and 414 of the CrPC, and sufficient notice ought to be given to the convict before issuance of a warrant for the execution of the death sentence by the Sessions Court, which would enable the convict to consult an advocate and represent him in the proceedings;

ii. The warrant for the execution of the death sentence must specify the exact date and time of the execution and not a range of dates within which the death sentence will be executed, which places the convict in a state of uncertainty. A reasonable time must be provided between the date of the order of issue of the execution warrant and the date fixed for actual execution so that the convict gets

an opportunity to adopt a remedy against the warrant and to have a final meeting with the family members;

iii. A copy of the warrant must be immediately supplied to the convict, and

iv. After issuing a notice and before issuing a warrant of execution, if the convict is not represented by an advocate, legal aid should be provided to him. As held by this Court, the procedure described above is in conformity with Article 21 of the Constitution of India.

40. To avoid the situation that arose in this case, we need to elaborate further upon the directions already issued by the Allahabad High Court. When a death sentence is confirmed or the High Court imposes a death sentence, a writ/order of the High Court is always sent to the Sessions Court. When the Sessions Court receives intimation of such order, the disposed of sessions case must be taken on board by the Sessions Court, and notice should be issued to the Public Prosecutor/investigating agency to ascertain whether the convicts have challenged the judgment of the High Court. Depending upon the rules of procedure of the concerned court, the proceeding can be numbered as a Misc. Application in the disposed of case.

If the Public Prosecutor informs the Sessions Court that the challenge before this Court is pending, the Sessions Court should pass no further order. As soon as the intimation of confirmation of the death sentence by this Court is received, the disposed of case should be taken on the cause list and notice should be issued to the convicts through the Jail Superintendent calling upon the convicts to disclose whether they intend to file review petition and/or mercy petition. It is the duty of the State/investigating agency to inform the Sessions Court about the outcome of the review and mercy petitions by filing a proper application in the disposed of case.

The reason is that it is the responsibility of the State/investigating agency to ensure that the death penalty is executed. To ensure that there is no delay, the Sessions Court, after confirmation of the death sentence by the Court, shall periodically fix dates in the disposed of case so that an up-todate report can be submitted on behalf of the State Government/investigating agency through the Public Prosecutor. It will be the duty of the State Government/investigating agency to make an application and inform the Sessions Court about the rejection of the mercy petitions made to the Constitutional authorities so that the Sessions Court can take further steps.

Such information shall be furnished by making a regular application on the judicial side and not by sending a letter. After such an application is filed before the Court, notice should be issued to the convicts informing them that the Court

is proposing to issue a warrant for executing the death sentence. After hearing the convict and/or his advocate or legal aid advocate provided to the convict, the Court should pass an order directing issuance of the warrant of execution, a copy of which shall be immediately forwarded to the convict. As directed earlier by this Court, the warrant must contain a precise date and time of execution.

The time should be fixed in such a manner that the convict gets at least a period of fifteen clear days from the date of receipt of the warrant of execution of the death sentence and the actual date of execution to enable him to take recourse to legal remedies or to allow him to meet his relatives finally. 41. As we are confirming the impugned judgment on the ground of inordinate and unexplained delay in the execution of the death sentence, it is not necessary to decide the controversy whether the convicts were kept in solitary confinement even before the rejection of the mercy petitions.

OUR CONCLUSIONS

42. We hold that:-

(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. However, this Court will only examine the nature of the delay caused and circumstances that ensued after the judicial process finally confirmed the sentence and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be commuted to imprisonment for life;

(ii) Keeping a convict in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time will certainly cause agony to him/her. It creates adverse physical conditions and psychological stress on the convict. Therefore, this Court, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, must consider the effect of inordinate delay in disposal of the clemency petition by the highest Constitutional authorities and cannot excuse the agonising delay caused only on the basis of the gravity of the crime;

(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the stage of execution of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanising effect on the accused. An inordinate and unexplained delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence;

(iv) The above principles will also apply to a case where there is a long and unexplained delay on the part of the Sessions Court in issuing the warrant of execution in accordance with Section 413 or Section 414 of CrPC. After the order of rejection of mercy petitions is communicated to a convict, the sword of Damocles cannot be kept hanging on him for an inordinately long time. This can be very agonising, both mentally and physically. Such inordinate delay will violate his rights under Article 21 of the Constitution. In such a case, this Court will be justified in commuting the death penalty into life imprisonment;

(v) No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. The terms "undue" or "inordinate" cannot be interpreted by applying the rules of mathematics. The Courts, in such cases, deal with human issues and the effect of the delay on individual convicts. What delay is inordinate must depend on the facts of the case;

(vi) A convict can invoke even the jurisdiction of a High Court under Article 226 of the Constitution in the event there is an inordinate and unexplained delay in the execution of the death sentence, postconfirmation of the sentence. The same principles will be applied by the High Court, which are summarised above; and,

(vii) It is the duty of the Executive to promptly process the mercy petitions invoking Articles 72 or 161 of the Constitution and forward the petitions along with requisite documents to the concerned constitutional functionary without undue delay.

OPERATIVE DIRECTIONS

43. Hence, we pass the following order:

i. The impugned judgment and order, by which the death sentence of the convicts has been commuted to a fixed sentence of thirty-five years of imprisonment, is upheld, and Criminal Appeals are dismissed;

ii. As regards the mercy petitions, we issue the following directions to all the State Governments and Union Territories:

A. A dedicated cell shall be constituted by the Home Department or the Prison Department of the State Governments/Union Territories for dealing with mercy petitions. The dedicated cell shall be responsible for the prompt processing of the mercy petitions within the time frame laid down by the respective governments. An officer-incharge of the dedicated cell shall be nominated by designation who shall receive and issue communications on behalf of the dedicated cell;

B. An official of the Law and Judiciary or Justice Department of the State Governments/Union Territories should be attached to the dedicated cell so constituted;

C. All the prisons shall be informed about the designation of the officer-in-charge of the dedicated cell and his address and email ID;

D. As soon as the Superintendent of Prison/officerin- charge receives the mercy petitions, he shall immediately forward the copies thereof to the dedicated cell and call for the following details/information from the officer-in-charge of the concerned Police Station and/or the concerned investigation agency;

a. The criminal antecedents of the convict;

b. Information about family members of the convict; c. Economic condition of the convict and his/her family;

d. The date of arrest of the convict and the period of incarceration as an undertrial; and,

e. The date of filing charge sheet and a copy of the committal order, if any.

On receipt of the request made by the jail authorities, the officer-in-charge of the concerned police station shall be under an obligation to furnish the said information to the jail authorities immediately;

E. On receipt of the said information, without any delay, the jail authorities shall forward the following documents to the officer-in-charge of the dedicated cell and the Secretary of the Home Department of the State Government:

a. Information furnished as aforesaid by the concerned Police Station with its English translation;

b. Copy of the First Information Report with its English translation;

c. Details, such as date of arrest of the convict, date of filing of chargesheet and actual period of incarceration undergone by the convict;

d. A copy of the committal order, if any, passed by the learned Judicial Magistrate;

e. A copy of charge-sheet with its English translation;

f. Report about the conduct of the convict in prison;

g. Copies of the notes of evidence, all exhibited documents in the trial and copies of statements of convicts under Section 313 of the CrPC with its English translation;

h. Copies of the judgments of the Sessions Court (with its English translation, if it is in vernacular language), High Court and this Court;

F. As soon as mercy petitions are received by the dedicated cell, copies of the mercy petitions shall be forwarded to the Secretariats of the Hon'ble Governor of the State or the Hon'ble President of India, as the case may be so that the Secretariat can initiate action at their end;

G. All correspondence, as far as possible, be made by email, unless confidentiality is involved; and,

H. The State Government shall issue office orders/executive orders containing guidelines for dealing with the mercy petitions in terms of this judgment.

iii. The Registry of this Court shall forward copies of this judgment to the Secretaries of the Home Department of the respective State Governments/Union Territories for its implementation. The Secretaries shall report compliance within three months from today to the Registrar (Judicial) of this Court;

iv. The Sessions Court shall endeavour to follow the following guidelines:

a. As soon as the order of the High Court confirming or imposing the death sentence is received by the Sessions Court, a note thereof must be taken, and the disposed of case shall be listed on the cause list. The proceedings can be numbered as Misc. Application depending upon the applicable Rules of the procedure. The Sessions Court shall immediately issue notice to the State Public Prosecutor or the investigating agency calling upon them to state whether any appeal or special leave petition has been preferred before this Court and what is the outcome of the said petition/appeal;

b. If the State Public Prosecutor or the investigating agency reports that the appeal is pending, as soon as the order of this Court confirming or restoring the death sentence is received by the Sessions Court, again, the disposed of case or miscellaneous applications should be listed on the cause list and notice be issued to the State Public Prosecutor or the investigating agency to ascertain whether any review/curative petitions or mercy petitions are pending. If information is received regarding the pendency of review/curative petitions or mercy petitions, the Sessions Court shall keep on listing the disposed of case after intervals of one month so that it gets the information about the status of the pending petitions. This will enable the Sessions Court to issue a warrant for the execution of the death sentence as soon as all the proceedings culminate;

c. However, before issuing the warrant, notice should be issued to the convict, and the directions issued by the Allahabad High Court in the case of People's Union for Democratic Rights (PUDR)10, and as elaborated above, shall be implemented by the Sessions Court;

d. The Sessions Courts shall consider what is held in Paragraph 25 above;

e. Copies of the order issuing the warrant and the warrant shall be immediately provided to the convicts, and the Prison authorities must explain the implications thereof to the convicts. If the convict so desires, legal aid be immediately provided to the convicts by the Prison authorities for challenging the warrant. There shall be a gap of fifteen clear days between the date of the receipt of the order as well as warrant by the convict and the actual date of the execution; and,

f. It shall also be the responsibility of the concerned State Government or the Union Territory administration to apply to the Sessions Court for the issuance of a warrant immediately after the death penalty attains finality and becomes enforceable.

v. A copy of this judgment shall be forwarded to both the convicts through the Jail Superintendent of the concerned jail.

vi. A copy of this judgment shall be forwarded to the Registrar Generals of all the High Courts, who in turn shall forward the copies thereof to all the Sessions Courts.

vii. These disposed of appeals shall be listed on 17th March 2025 for considering compliance.

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

.....J. (Ahsanuddin Amanullah)

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

New Delhi;

December 9, 2024.

1 (1983) 2 SCC 68

2 (1983) 2 SCC 344

3 (1989) 1 SCC 678

4 (2014) 3 SCC 1

5 (2015) 2 SCC 478

6 (2020) 16 SCC 424

7 2022 SCC OnLine SC 1528

8 (2020) 4 SCC 391

9 (2015) 6 SCC 702

10 2015 SCC OnLine All 143

IN THE SUPREME COURT OF INDIA

Dara Lakshmi Narayana and Ors.
Vs.
State of Telangana and Anr.

[Criminal Appeal No._____ of 2024
arising out of SLP (Criminal) No. 16239 of 2024]

HEADNOTE – The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. Being aggrieved by the order dated 16.02.2022 passed by the High Court for the State of Telangana in Criminal Petition No.1479 of 2022 refusing to quash the criminal proceedings in FIR No.82 of 2022 dated 01.02.2022 registered with Neredmet Police Station, Rachakonda against the appellant Nos.1 to 6 herein (collectively referred as "appellants") under Sections 498A of the Indian Penal Code, 1860 ("IPC", for short) and Section 3 and 4 of Dowry Prohibition Act, 1961 ("Dowry Act", for short), the appellants have preferred this appeal.

3. Briefly stated the facts of this case are that the marriage of appellant No.1 husband and respondent No.2 wife was solemnised on 08.03.2015 as per Hindu rites and rituals at Chennakesava Swamy Temple, Marakapuram, Andhra Pradesh. Appellant Nos.2 and 3 are the father-in-law and mother-in-law respectively of respondent No.2 and appellant Nos.4 to 6 are sisters-in-law of respondent No.2. Respondent No.2 lodged a complaint against the appellant

Nos.1 to 6 and accused No.7 who is her brother-in-law which was registered as FIR No.82 of 2022 dated 01.02.2022 for the offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act registered with Neredmet Police Station, Rachakonda.

As per the said FIR, it was alleged that at the time of her marriage, the father of respondent No.2 gave net cash of Rs.10 lakhs, 10 tolas of gold, and other household articles as dowry and also spent Rs. 5 lakhs towards marriage expenses. After the marriage, the couple started residing at Jollarpeta, Tamil Nadu where appellant No.1 was working in Southern Railways. Out of their wedlock, respondent No.2 and appellant No.1 have 2 minor children.

The first child was born in the year 2016 and the second child was born in the year 2017. After marriage, appellant No.1 started harassing her both physically and mentally for want of additional dowry. Appellant No.1 also used to abuse respondent No.1 in filthy language and used to suspect her character. He also used to come home inebriated and harassed her by having an illegal affair with one Mounika. In so far as appellant Nos.2 to 6 are concerned, respondent No.2 alleged that they used to instigate appellant No.1 for demanding more dowry her.

4. Being aggrieved by the said criminal proceedings pending against them, the appellants and accused No.7 approached the High Court by filing Criminal Petition No.1479 of 2022 under Section 482 of the Code of Criminal Procedure, 1908 ("CrPC") seeking quashing of the FIR No.82 of 2022 dated 01.02.2022 registered with Neredmet Police Station, Rachakonda.

5. By the impugned order dated 16.02.2024, the High Court refused to quash the criminal proceedings pending against the appellants and accused No.7 in FIR No.82 of 2022 dated 01.02.2022 and disposed of the Criminal Petition No.1479 of 2022 directing the Investigation Officer to follow the mandatory procedure contemplated under Section 41-A of CrPC and also the guidelines issued by this Court in Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273.

The High Court further granted protection by directing the Investigation Officer not to arrest to appellants until the chargesheet is filed. The High Court noted that there are matrimonial disputes between appellant No.1 and respondent No.2 and that in matrimonial disputes, custodial interrogation of the accused is not required. Being aggrieved by the High Court's refusal to quash the criminal proceedings arising out of FIR No.82 of 2022 dated 01.02.2022, the appellants herein have preferred the instant appeal.

6. Subsequent to the impugned order dated 16.02.2022, the police have filed a chargesheet dated 03.06.2022 before the Court of 1st Metropolitan Magistrate, Malkajgiri, Cyberabad vide C.C. No.1544 of 2022 against the appellant Nos.1 to

6 under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act. However, the charges were dropped against accused No.7 (respondent No.2's brother-in-law). The criminal case against the appellants herein is pending trial in the Court of 1st Additional Junior Civil Judge-cum- Additional Metropolitan Magistrate, Malkajgiri.

7. We have heard learned counsel for the appellants and learned counsel for the respondent-State and perused FIR No.82 of 2022 dated 01.02.2022. There is no appearance on behalf of respondent No.2 despite service of notice.

8. Learned counsel for the appellants submitted that the appellants never demanded any dowry from respondent No.2. Respondent No.2 in fact used to leave the matrimonial house uninformed. In fact, on one such occasion when she left the matrimonial house on 03.10.2021, appellant No.1 made a police complaint on 05.10.2021. When the police found her whereabouts, she was allegedly living with someone. Respondent No.2 after being counselled, returned to her matrimonial house.

It was further submitted that respondent No.2 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting to close the complaint made by appellant No.1 wherein she admitted that she had left her matrimonial house after quarrelling with appellant No.1 because of one Govindan, with whom she was talking over the phone for the past ten days continuously. She also stated that she would not repeat such acts in future.

Learned counsel for the appellants further submitted that respondent No.2 again left the matrimonial house leaving appellant No.1 and children behind. It was submitted that having no other option, appellant No.1 issued a legal notice dated 13.12.2021 to respondent No.2 seeking divorce by mutual consent. Therefore, it was argued that only as a counterblast, the present FIR has been lodged by respondent No.2. on 01.02.2022. Insofar as appellant Nos.2 to 6 are concerned, learned counsel for the appellants submitted that no specific allegation is made against them in the FIR.

It was further submitted that appellant Nos.2 to 6 did not live in the matrimonial house of the couple and have been unnecessarily dragged into this case. Therefore, it was submitted that the present case is a fit case for quashing the FIR and accordingly prayed that this Court may set-aside the impugned order dated 16.02.2022 and quash the criminal proceedings pending against the appellants herein arising out of FIR No. 82 of 2022 dated 01.02.2022.

9. Per contra, the learned counsel for the respondent-State submitted that on a perusal of the FIR, it would reveal that a prima facie case has been made out against the appellants. It was submitted that, as per the FIR, respondent No.2 was

harassed both physically and mentally for want of additional dowry and that appellant No.1 used to come home in a drunken state and used to have an illicit affair with one Mounika. Learned counsel for the respondent-State submitted that the father of respondent No.2 was examined as LW3 who stated in the examination that at the time of marriage, he gave Rs.10 lakhs and 10 tolas of gold as dowry.

It was further submitted that after the marriage, appellant No.1 used to harass and abuse respondent No.2 and appellant Nos.2 to 6 used to provoke and instigate appellant No.1. Hence, learned counsel for the respondent-State argued that the High Court, vide impugned order, was justified in declining to quash the criminal proceedings pending against the appellants herein arising out of FIR No.82 of 2022 dated 01.02.2022 and prayed for the dismissal of the present appeal as well.

10. Having heard the learned counsel for the respective parties and having perused the material on record, the only question that arises for our consideration is whether FIR No.82 of 2022, dated 01.02.2022, lodged against the appellants herein should be quashed.

11. In State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 ("Bhajan Lal"), this Court formulated the parameters under which the powers under Section 482 of the CrPC could be exercised. While it is not necessary to revisit all the parameters, a few that are relevant to the present case may be set out 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.

(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."

12. In the instant case, the allegations in the FIR are under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

13. Section 498A of the IPC deals with offences committed by the husband or relatives of the husband subjecting cruelty towards the wife. The said provision reads as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

14. Further, Sections 3 and 4 of the Dowry Act talk about the penalty for giving or taking or demanding a dowry.

"3. Penalty for giving or taking dowry.-

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride without any demand having been made in that behalf:

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom without any demand having been made in that behalf:

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.-

If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

15. An offence is punishable under Section 498A of the IPC when a husband or his relative subjects a woman to cruelty, which may result in imprisonment for a term extending up to three years and a fine. The Explanation under Section 498A of the IPC defines "cruelty" for the purpose of Section 498A of the IPC to mean any of the acts mentioned in clauses (a) or (b). The first limb of clause (a) of the Explanation of Section 498A of the IPC, states that "cruelty" means any wilful conduct that is of such a nature as is likely to drive the woman to commit suicide.

The second limb of clause (a) of the Explanation of Section 498A of the IPC, states that cruelty means any wilful conduct that is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Further, clause (b) of the Explanation of Section 498A of the IPC states that cruelty would also include harassment of the woman where such harassment is to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

16. Further, Section 3 of the Dowry Act deals with penalty for giving or taking dowry. It states that any person who engages in giving, taking, or abetting the exchange of dowry, shall face a punishment of imprisonment for a minimum of five years and a fine of not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks of penalty for

demanding dowry. It states that any person demanding dowry directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

17. The issue for consideration is whether, given the facts and circumstances of the case and after examining the FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the appellants arising out of FIR No. 82 of 2022 dated 01.02.2022 under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

19. Further, the record reveals that respondent No.2 on 03.10.2021 left the matrimonial house leading appellant No.1 to file a police complaint on 05.10.2021. When the police officials traced her, respondent No.2 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting to close the complaint made by appellant No.1.

In the said letter, respondent No.2 admitted that she left her matrimonial house after quarrelling with appellant No.1 as she was talking to a person by name Govindan over the phone for the past ten days continuously. She further admitted that appellant No.1 was taking good care of her. She also stated that she will not engage in such actions in future. Despite that, in 2021 itself, respondent No.2 once again left the matrimonial house leaving appellant No.1 and also her minor children.

20. Losing hope in the marriage, appellant No.1 issued a legal notice to respondent No.1 seeking divorce by mutual consent on 13.12.2021. Instead of responding to the said legal notice issued by appellant No.1, respondent No.2 lodged the present FIR 82 of 2022 on 01.02.2022 registered with Neredmet Police Station, Rachakonda under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

21. Given the facts of this case and in view of the timing and context of the FIR, we find that respondent No.2 left the matrimonial house on 03.10.2021 after quarrelling with appellant No.1 with respect to her interactions with a third person in their marriage. Later she came back to her matrimonial house assuring

to have a cordial relationship with appellant No.1. However, she again left the matrimonial house. When appellant No.1 issued a legal notice seeking divorce on 13.12.2021, the present FIR came to be lodged on 01.02.2022 by respondent No.2. Therefore, we are of the opinion that the FIR filed by respondent No. 2 is not a genuine complaint rather it is a retaliatory measure intended to settle scores with appellant No. 1 and his family members.

22. Learned counsel for respondent No.1 State contended that a prima facie case was made out against the appellants for harassing respondent No.2 and demanding dowry from her. However, we observe that the allegations made by respondent No.2 in the FIR seem to be motivated by a desire for retribution rather than a legitimate grievance. Further, the allegations attributed against the appellants herein are vague and omnibus.

23. Respondent No.2 has not contested the present case either before the High Court or this Court. Furthermore, it is noteworthy that respondent No. 2 has not only deserted appellant No. 1 but has also abandoned her two children as well, who are now in the care and custody of appellant No.1. The counsel for the appellants has specifically submitted that respondent No.2 has shown no inclination to re-establish any relationship with her children.

24. Insofar as appellant Nos.2 to 6 are concerned, we find that they have no connection to the matter at hand and have been dragged into the web of crime without any rhyme or reason. A perusal of the FIR would indicate that no substantial and specific allegations have been made against appellant Nos.2 to 6 other than stating that they used to instigate appellant No.1 for demanding more dowry. It is also an admitted fact that they never resided with the couple namely appellant No.1 and respondent No.2 and their children. Appellant Nos.2 and 3 resided together at Guntakal, Andhra Pradesh. Appellant Nos. 4 to 6 live in Nellore, Bengaluru and Guntur respectively.

25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution.

Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos.2 to 6, who are the members of the family of appellant No.1 have been living in different cities and have not resided

in the matrimonial house of appellant No.1 and respondent No.2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

26. In fact, in the instant case, the first appellant and his wife i.e. the second respondent herein resided at Jollarpeta, Tamil Nadu where he was working in Southern Railways. They were married in the year 2015 and soon thereafter in the years 2016 and 2017, the second respondent gave birth to two children. Therefore, it cannot be believed that there was any harassment for dowry during the said period or that there was any matrimonial discord.

Further, the second respondent in response to the missing complaint filed by the first appellant herein on 05.10.2021 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting for closure of the said complaint as she had stated that she had left the matrimonial home on her own accord owing to a quarrel with the appellant No.1 because of one Govindan with whom the second respondent was in contact over telephone for a period of ten days. She had also admitted that she would not repeat such acts in future. In the above conspectus of facts, we find that the allegations of the second respondent against the appellants herein are too far-fetched and are not believable.

27. We find that the High Court noted that there were also allegations against respondent No.2 and matrimonial disputes are pending between the parties. Therefore, the High Court came to the conclusion that custodial interrogation of the appellants was not necessary and protected the personal liberty of the appellants directing the Investigation Officer not to arrest the appellants till the completion of the investigation and filing of the charge-sheet. Albeit the said findings and observations, the High Court ultimately refused to quash the criminal proceedings against the appellants.

28. The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife.

Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is

taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.

29. We are not, for a moment, stating that any woman who has suffered cruelty in terms of what has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any criminal proceeding. That is not the intention of our aforesaid observations but we should not encourage a case like as in the present one, where as a counterblast to the petition for dissolution of marriage sought by the first appellant-husband of the second respondent herein, a complaint under Section 498A of the IPC is lodged by the latter. In fact, the insertion of the said provision is meant mainly for the protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry. However, sometimes it is misused as in the present case.

30. In the above context, this Court in G.V. Rao vs. L.H.V. Prasad, (2000) 3 SCC 693 observed as follows:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case.

There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts."

31. Further, this Court in Preeti Gupta vs. State of Jharkhand (2010) 7 SCC 667 held that the courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realties into consideration while dealing with matrimonial cases. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

32. We, therefore, are of the opinion that the impugned FIR No.82 of 2022 filed by respondent No.2 was initiated with ulterior motives to settle personal scores and grudges against appellant No.1 and his family members i.e., appellant Nos.2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in Bhajan Lal. Therefore, the High Court, in the present case, erred in not exercising the powers available to it under Section 482 CrPC and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants.

33. We, accordingly allow the appeal and set aside the impugned order of the High Court dated 16.02.2022 in Criminal Petition No.1479 of 2022 filed under Section 482 CrPC. The Criminal Petition No.1479 of 2022 under Section 482 of CrPC shall accordingly stand allowed. FIR No.82 of 2022 dated 01.02.2022 registered with Neredmet Police Station, Rachakonda under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act against appellant Nos.1 to 6, charge-sheet dated 03.06.2022 filed in the Court of 1st Metropolitan Magistrate, Malkajgiri, Cyberabad and the trial pending in the Court of 1st Additional Junior Civil Judge-cum-Additional Metropolitan Magistrate, Malkajgiri against the appellants herein shall accordingly stand quashed.

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

.....J. [Nongmeikapam Kotiswar Singh]

New Delhi;

December 10, 2024

IN THE SUPREME COURT OF INDIA

Parvin Kumar Jain
Vs.
Anju Jain

[Civil Appeal Nos._____ of 2024
arising out of SLP (C) Nos. 21710-21711 of 2024]

HEADNOTE – Permanent alimony shouldn't penalize husband but should ensure decent living for wife

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeals arise out of the impugned order dated 01.08.2024 passed by the Delhi High Court in MAT. APP.(F.C.) 226/2018 & CM APPL. 36723/2018. CM APPL. 4245/2021. CM APPL. 51379/2022, CM APPL. 52044/2022 and MAT.APP. (F.C.) 120/2019. Vide the impugned order, the High Court dismissed MAT. APP. (F.C.) 226/2018 filed by the Husband against the order of the Family Court, in an application for maintenance pendente lite under section 24 of the Hindu Marriage Act, 19551 along with all pending applications, with costs of Rs. 1,00,000/- (Rupees one lakh only).

By the same common order, the MAT.APP. (F.C) 120/2019 filed by the Wife is allowed to the extent that the interim maintenance granted to the Wife under Section 24 of the HMA is enhanced from Rs.1,15,000/-(Rupees one lakh fifteen thousand only) to Rs.1,45,000/- (Rupees one lakh forty five thousand only) per month from the date of filing of enhancement application.

3. The parties were married as per Hindu rites and ceremonies on 13.12.1998 and have one son born from their wedlock on 28.05.2001. However, the marital relationship soured and the parties began living separately from January, 2004. Since the date of separation, the son has been residing with the respondent-wife. Subsequently, on 11.05.2004, the appellant-husband filed a petition under Section 13(1)(ia) of the HMA, before the Family Court seeking divorce on the ground of cruelty.

During the pendency of the divorce petition, the respondent, on 27.05.2004, filed an application under Section 24 of the HMA seeking pendente lite maintenance for herself and the son. This application was disposed of by the Family Court vide order dated 20.09.2004, directing the appellant to pay a cumulative sum of

₹18,000/- (Rupees eighteen thousand only) per month, comprising ₹15,000/- (Rupees fifteen thousand only) to the respondent and ₹3,000/- to the son.

4. Both parties challenged the Family Court's order through separate appeals before the High Court. Consequently, vide order dated 21.11.2005, the High Court enhanced the maintenance amount to ₹20,000/- (Rupees twenty thousand only) per month, allocating ₹15,000/- (Rupees fifteen thousand only) to the respondent and ₹5,000/- (Rupees five thousand only) to the son. Subsequently, the respondent filed an application under Sections 24 and 26 of the HMA, seeking further enhancement of interim maintenance.

In her application, she claimed an enhanced amount of ₹1,45,000/- (Rupees one lakh forty five thousand only) per month, contending that the appellant's income had increased significantly, exceeding ₹4,00,000/- (Rupees four lakhs only) per month, inclusive of salary, perks, allowances, and bonuses. She further argued that the financial needs of both, her and the son, had increased manifold since the prior determination of maintenance.

5. During the pendency of the application, the appellant, in July 2015, voluntarily increased the interim maintenance to ₹65,000/- (Rupees sixty five thousand only) per month. He agreed to pay ₹50,000/- (Rupees fifty thousand only) to the respondent, effective from the date of filing the enhancement application on 28.02.2009, and ₹15,000/- (Rupees fifteen thousand only) to the son, effective from July 2015. However, the appellant contended that following the dismissal of his divorce petition on 14.07.2016 upon being withdrawn by him, the Family Court had become functus officio, rendering it incapable of granting any further relief under Sections 24 and 26 of the HMA. He also submitted that the provisions of Section 26 of the HMA do not permit granting of maintenance to an adult male child.

6. The respondent's application for enhanced interim maintenance rested on her assertion of significant changes in circumstances since the last maintenance order, including the increased financial requirements of herself and the son. On the other hand, the appellant's position focused on the legal implications of the withdrawal of his divorce petition and the applicability of Section 26 of the HMA concerning the maintenance of an adult male child.

7. The Family Court, in its order dated 16.08.2018, allowed the respondent's application for enhancement of maintenance and held that the relief in an application filed under Section 24 of the HMA can only be granted from the date of filing of the application, i.e., 28.02.2009, until the date the main divorce petition was dismissed as withdrawn, i.e., 14.07.2016. Proceedings under Section 26 of the HMA are independent of the main divorce proceedings, and relief under

this section can be granted for a period beyond the dismissal of the main divorce petition.

The Court therein observed that the appellant had adopted delaying tactics, which prevented the timely resolution of the respondent's enhancement application. The appellant had been evasive in disclosing his actual income and assets, concealing his true financial status, including his movable and immovable properties. Therefore, he failed to discharge his moral and legal obligations to provide reasonable and just maintenance to his wife and son, commensurate with their social and economic standing.

8. The Family Court held that the respondent and her son are entitled to enhanced maintenance considering the increased expenditures for a growing child and the respondent's requirements aligned with her social status. Accordingly, the Family Court directed the appellant to pay the following amounts:

i. ₹1,15,000/- (Rupees one lakh fifteen thousand only) per month as pendente lite maintenance to the wife and the son from 28.02.2009 to 14.07.2016, when the divorce petition was withdrawn.

ii. ₹35,000/- (Rupees thirty five thousand only) per month to the son from 15.07.2016, until he attains the age of 26 years or becomes financially independent, whichever is earlier. This amount shall be subject to a 10% increase every two years starting 28.05.2019.

iii. Litigation costs of ₹2,00,000/- (Rupees two lakhs only).

9. Both the parties challenged the above order of the Family Court vide two separate appeals before the High Court. It is the judgment passed in these appeals by the High Court, which is challenged before us by the appellant.

10. The High Court considered whether the Family Court loses its jurisdiction to decide pending applications under Sections 24 and 26 of the HMA, upon withdrawal of the main divorce petition. The appellant argued that the Family Court becomes functus officio upon such withdrawal, and therefore, proceedings for interim maintenance and childrelated relief under Sections 24 and 26 of the HMA, respectively, could not be adjudicated. This contention was based on the assumption that the statutory jurisdiction under Sections 24 and 26 of the HMA is ancillary to the divorce proceedings and cannot survive withdrawal of the main case.

The High Court rejected this argument, holding that both provisions are independent in nature and continue to operate despite the withdrawal of the divorce petition. The High Court observed that the legislature's intent behind Section 24 of the HMA is to ensure that a financially dependent spouse is not left

without resources during the pendency of matrimonial disputes, and this obligation cannot be unilaterally nullified by withdrawal of the petition. It emphasized that allowing withdrawal of the main petition to terminate Section 24 of the HMA proceedings would render the dependent spouse financially vulnerable and create a procedural loophole for evasion of legal obligations.

The High Court concluded that interim maintenance proceedings have an independent existence and are not strictly ancillary to the main proceedings. It held that the Family Court's jurisdiction to adjudicate interim maintenance under Section 24 of the HMA extends until the date of withdrawal of the main petition, thereby ensuring that the dependent spouse's financial security is not abruptly disrupted by procedural tactics.

11. With respect to Section 26 of the HMA, which pertains to custody, maintenance, and education of minor children, the High Court provided a detailed analysis of the statutory language and intention. It held that the provision explicitly permits Courts to make orders "from time to time," granting or modifying reliefs related to children, irrespective of the pendency or withdrawal of the main matrimonial proceedings.

The High Court reasoned that matters concerning the welfare of children are not merely incidental to the matrimonial dispute but are of paramount and enduring importance. Recognizing that the interests of the children are paramount, the High Court clarified that the Family Court retains jurisdiction under Section 26 of the HMA even after withdrawal of the main petition, ensuring that children's needs are addressed in an ongoing and dynamic manner.

12. The High Court also dismissed the appellant's appeal placing reliance on the this Court's decision in Ajay Mohan and Ors. v. H.N, Rai and Ors.2, observing that the judgment was delivered in a different context and was not applicable to matrimonial proceedings under the HMA. It noted that this Court in Ajay Mohan (Supra), did not address the specific statutory framework or the unique considerations governing Sections 24 and 26 of the HMA.

Reaffirming its position, the High Court underscored that the provisions under Sections 24 and 26 of the HMA serve distinct and independent purposes-one ensuring financial support for the dependent spouse and the other protecting the welfare of minor children. It concluded that the Family Court's jurisdiction to adjudicate these matters persists independent of the status of the primary matrimonial dispute, thereby reinforcing the legislative objective of ensuring fairness and equity in matrimonial proceedings.

13. The High Court, while deciding the correctness of interim maintenance provided by the Family Court, heavily relied on the judgment of this Court in

Rajnesh v. Neha and Another3. This Court, in this judgment laid down the principles to ensure equitable determination of financial support for the wife and dependent child. It reiterated that maintenance should be determined after considering the status and lifestyle of the parties, reasonable needs of the wife and children, the wife's educational qualifications, professional skills, and earning capacity, as well as the appellant's financial standing and obligations.

It must also address the rising cost of living and inflation to ensure a standard of living that is proportionate to the appellant's financial capacity and consistent with the standard of living the wife and children were accustomed to prior to separation. This Court highlighted that a husband cannot evade his duty of disclosure by concealing assets, as financial transparency is critical to the fair adjudication of maintenance claims.

14. In this case, the High Court observed that the appellant's income, primarily from employment and investments, demonstrated his ability to provide for the wife and child's maintenance adequately. The evidence revealed that the appellant earned over ₹4,00,000 (Rupees four lakhs only) per month between 2007 and 2016. Although he claimed higher living expenses due to his residence in Mauritius, the High Court found his arguments to be unsubstantiated, as his financial resources allowed him to meet maintenance obligations without undue hardship.

The High Court further noted several instances of the appellant's deliberate attempts to mislead the judicial process. He withheld critical financial documents and selectively disclosed information to conceal the full extent of his wealth. The inquiry into the statutory forms of the appellant revealed that he had investments in mutual funds valued at ₹5.10 crores as early as 2009-2010, significant sums deposited in bank accounts, and other financial transactions that were not initially disclosed.

15. The High Court also identified false representations by the appellant regarding his property and income. He denied ownership of a property located at F-146, Richmond Park, Gurgaon, despite evidence of its ownership and rental income accruing to him. Additionally, the appellant misrepresented his association with Prasham Consultants LLP, wherein he continued to receive financial benefits until his father replaced him in 2016.

These findings demonstrated a pattern of deliberate suppression of material facts and assets by the appellant, aimed at minimizing his maintenance liability. Such conduct warranted judicial intervention to ensure justice and provide adequate financial support to the wife and child, reflecting principles of fairness, transparency, and equity. Consequently, the High Court directed the appellant to pay interim maintenance that adequately addressed the needs of the wife and

child, proportionate to his financial capacity and consistent with the obligations of a responsible spouse and parent.

16. Consequently, the High Court dismissed the appellant's appeal challenging the order of interim maintenance granted by the Family Court, and, while allowing the respondent's appeal, granted the following relief:

i. MAT.APP. (F.C) 120/2019 filed by the wife is allowed to the extent that the interim maintenance granted to the wife under Section 24 of the HMA is enhanced from Rs. 1,15,000/- (Rupees one lakh fifteen thousand only) to Rs. 1,45,000/- (Rupees on lakh forty five thousand only) per month from the date of filing of enhancement application i.e. 28.02.2009 till the date of withdrawal of divorce petition by the appellant i.e. 14.07.2016.

ii. All amounts paid by the appellant to the wife and the son till date shall be duly adjusted.

iii. The appellant shall also be liable to pay interest at the rate of 12% per annum towards the shortfall in the maintenance amount for the concerned period. The interest shall be calculated on the amount of deficit from the time it became due in a particular month and till the time it is paid.

iv. Based on the aforesaid, the arrears of maintenance to both the wife and the son, along with the interest, shall be paid within a period of eight (8) weeks from today.

17. The appellant is before us challenging the above judgment of the High Court on the grounds that the respondent has played a fraud on the Courts by concealing material/relevant documents and by filing false affidavits in support of her enhancement application, and that the son could not be granted maintenance till the age of twenty-six years as per the law. The interest @ 12% per annum in punitive in nature even though he had never defaulted in payment of interim maintenance.

18. We heard the parties in camera to discuss the possibility of an amicable solution but during the proceedings both the parties submitted that they are willing to have the marriage annulled by mutual consent as there remains no possibility of a reunion between them.

19. During the interaction before this Court, we found both the parties to be fair and reasonable in their approach, demeanor and conduct. They have shown an honest intention to amicably settle their disputes instead of maligning each other and unnecessarily delaying the proceedings.

20. Learned senior counsels for the respective parties have made their submissions at length. The parties have also filed their affidavits of assets as directed by this Court.

21. Before we proceed further, it is relevant to note that the parties stayed together only for around five years of the marriage, and even though they have a son out of the wedlock, they have been staying separately for almost over two decades now. They have made multiple serious allegations against each other and have been conducting litigations. They have no intention of reconciling, their marriage exists only for namesake, and there has been no cohabitation between the parties since 2004. Though the petition for dissolution of marriage has been withdrawn by the appellant, the interim maintenance proceedings have been going on between the parties since 2004.

22. The admitted long-standing separation, nature of differences, prolonged litigations pending adjudication, and the unwillingness of the parties to reconcile, are evidence enough to show that the marriage between the parties has completely broken down irretrievably.

23. A Constitution Bench of this Court in its judgment in the case of Shilpa Sailesh v. Varun Sreenivasan4, laid down that it has the discretionary power to dissolve a marriage which in its opinion and on the evidence has broken down irretrievably. The Court is required to exercise this discretion cautiously while analyzing the facts and evidence of each case. In order to arrive at the decision regarding whether the marriage has irretrievably broken down, the Court needs to factually examine and firmly establish the same, after careful consideration.

24. In Shilpa Sailesh (Supra), this Court further laid down the factors to be considered for such examination, and the same were reiterated in the case of Kiran Jyot Maini v. Anish Pramod Patel5. This Court in both these judgments opined that the factors to be examined include the period of cohabitation between the parties, the period of separation, the attempts made for reconciliation, nature and gravity of allegations made between the parties, and such other similar factors.

25. This Court in plethora of judgments, such as Shilpa Sailesh (Supra) and Kiran Jyot Maini (Supra), Ashok Hurra v. Rupa Bipin Zaveri6 and Hitesh Bhatnagar v. Deepa Bhatnagar7, has laid down the clear position that a marriage can be dissolved by this Court on the ground of irretrievable breakdown when the relationship is so strained that the marriage has succumbed to the long standing differences between the parties and it has become impossible to save such a relationship. When the Court is convinced that there is no scope for the marriage to survive and no useful purpose, emotional or practical, would be served by continuing the soured relationship, and it finds that the marriage is completely

dead, then it can exercise its inherent power under Article 142 of the Constitution of India to dissolve the marriage.

26. In the present case, even though the parties cohabited for about five to six years after marriage, but they have been living separately for more than two decades now. From the material on record, it also appears that even during the period of cohabitation the relationship between the parties was strained. The parties have made multiple serious allegations against each other. The appellant has contended that the respondent was short-tempered, hostile and behaved inappropriately with him and his parents, which led him into depression.

The respondent has alleged that the appellant's family was indifferent towards her from the beginning, they had created an uncomfortable environment for her, and the appellant showed no concern or care towards her. She further alleged that in the five years of cohabitation, the appellant was hostile towards her, she was treated like a domestic help, was never taken care of, and she was never treated as a wife by him. She finally left her matrimonial house fearing threat to her life, after hearing conversations between the appellant and his mother.

27. It is evident that the relationship between the parties appears to be strained from the beginning and only further soured over the years. Reconciliation proceedings during the pendency of the divorce petition also failed. The parties have been litigating maintenance proceedings for a prolonged period, and there appears to be no cogent reason to only deal with the issue of interim maintenance after twenty years of strained relationship and separation. These facts are admitted by the parties before us, and they have also mutually agreed for the dissolution of their marriage. Therefore, we believe that the marriage between the parties should be dissolved by this Court while exercising the discretionary power under Article 142 of the Constitution of India.

28. Thus, considering the facts of this case, all the material on record, submissions of the parties and analyzing the same in light of the factors stated above, the marriage between the appellant and the respondent is ordered to be dissolved.

29. The main issue between the parties all these years, since separation, is the quantum of maintenance to be paid by the appellant to the respondent. The issue of maintenance pendente lite is now infructuous with the dissolution of marriage, but the financial interest of the wife still needs to be protected through grant of permanent alimony. The learned senior counsels for the parties have made submissions at length regarding the financial condition of both the parties. In order to establish the correct financial position of both the parties, they have filed their respective affidavits of income and assets as ordered by this Court.

30. Before going into the details of the financial position of the parties, it is imperative that we highlight the position of law with regard to determination of permanent alimony. This Court, in a catena of judgments, has laid down the factors that needs to be considered in order to arrive at a just, fair and reasonable amount of permanent alimony.

31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar8, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal9.

32. This Court in the case of Rajnesh v. Neha (Supra), provided a comprehensive criterion and a list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, with specific emphasis on permanent alimony. The same has been reiterated by this Court in Kiran Jyot Maini v. Anish Pramod Patel (Supra).

The primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependent spouse and does not provide for penalizing the other spouse in the process. The Court in these two judgments laid down the following factors to be looked into:

i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and the dependent children.

iii. Parties' individual qualifications and employment statuses.

iv. Independent income or assets owned by the applicant.

v. Standard of life enjoyed by the wife in the matrimonial home.

vi. Any employment sacrifices made for the family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities. These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.

33. This Court in Kiran Jyot Maini (Supra), while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed that:

"26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs.

Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort postseparation."

34. In the present case, it is a matter of record and an admitted fact that the respondent is unemployed while the appellant is a well accomplished banker who has worked in multiple senior roles at various banks over the years. We have perused the records of finances produced before us. Even though the records of the DEMAT accounts and the employment letters produced by the appellant are almost ten years ago or earlier, his financial position can be suitably ascertained from them.

35. It is admitted on record that the respondent is a home maker and has not been working in all these years, the son lives with her, who has now completed his B. Tech. course, and they reside in a house owned by the respondent's mother. The appellant has paid for the son's education as well as paid the interim maintenance as ordered by the Family Court. The son is now major and has also completed his graduation.

36. The appellant is currently working as the Chief Executive Officer of Vision Bank in Dubai and his estimated salary is about AED 50,000 per month which means that he is earning around Rs. 10 to 12 Lakhs per month. Though he has filed details of his DEMAT accounts from 2010, it is revealed that he had

investments of around Rs.5 crores at that time. Further, he has three properties worth approximately Rs.2 crores, Rs.5 crores and Rs.10 crores, respectively.

37. During the period of cohabitation, the parties were initially residing in Mumbai when the appellant was working as a Foreign Exchange Executive with Global Trust Bank and subsequently in Chennai when the appellant changed his job. The appellant has worked at multiple positions in prestigious Banks and stayed in metropolitan cities with the respondent during the subsistence of the marriage. 38. In compliance of this Court's order dated 23.09.2024, the appellant has also paid Rs. 72 Lakhs as arrears of maintenance in addition to the maintenance already paid by him.

39. It is not disputed that the appellant has the legal obligation as well as the financial capacity to maintain the respondent after dissolution of the marriage. As held by us in Kiran Jyot Maine (Supra), it is also necessary to ensure that the amount of permanent alimony should not penalize the husband but should be made with the aim of ensuring a decent standard of living for the wife.

40. Considering the material on record, the totality of the circumstances and the facts of this case, a one-time settlement amount with provision for the respondent as well as the son, would be a fair arrangement. For the respondent, considering the standard of living enjoyed by her during subsistence of the marriage, the prolonged period of separation, and the appellant's financial capacity, a one-time settlement amount of Rs. 5 crores (Rupees five crores only), appears to be just, fair and reasonable amount for the respondent to be paid by the appellant towards settlement of all pending claims also.

41. It is also equitable and only obligatory for a father to provide for his children, especially when they have the means and the capacity to do the same. Even though the son is now major and has just finished his engineering degree, the High Court has rightly observed that it is only after completion of a college/ university degree and in some cases, completing a post-graduation/ professional degree, would the child be able to secure employment. In fact, it can safely be concluded that, in today's competitive world, gainful employment may be feasible only after the child has pursued education beyond 18 years of age.

Mere completion of his engineering degree does not guarantee a gainful employment, in these competitive times. The appellant herein has sufficient means to support his child, and thus provision should also be made for his maintenance and financial security as well. An amount of Rs. 1 crore (Rupees one crore only) towards the maintenance and care of the son appears to be fair, which he can utilize for his higher education and as security till he becomes financially independent.

42. Therefore, we fix the abovementioned amount as one-time settlement amount to be paid by the appellant to the respondent and his son within a period of four months from the date of this judgment.

43. Consequently, the appeals are disposed of with the above observations and directions to the parties. Accordingly, decree of divorce be granted in exercise of this Court's power under Article 142 of the Constitution of India.

Further, the appellant shall pay the amount provided above towards permanent alimony to the respondent and his son within the time stipulated above. The Registry to draw a decree accordingly.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

December 10, 2024

1 HMA

2 (2008) 2 SCC 507

3 (2021) 2 SCC 32

4 (2022) 15 SCC 754

5 (2024) SCC OnLine SC 1724

6 (1997) 4 SCC 226

7 (2011) 5 SCC 234

8 (2011) 13 SCC 112

9 (2012) 7 SCC 288

IN THE SUPREME COURT OF INDIA

Chaduranga Kanthraj Urs and Anr.
Vs.
P. Ravi Kumar and Ors.

[Contempt Petition (Civil) No. 688 of 2021]
[Civil Appeal No. 3310 of 1997]

Chamundi Hotel Pvt. Ltd.
Vs.
Vandita Sharma and Ors.

[Contempt Petition (Civil) No. 578 of 2022]
[Civil Appeal No. 3305 of 1997]

M.L. Varchusvin S.S. Raje Urs and Anr.
Vs.
Vandita Sharma and Ors.

[Contempt Petition (Civil) No. 716 of 2023]
[Civil Appeal No. 3307 of 1997]
[Interlocutory Application No. 39734 of 2023]

Chaduranga Kanthraj Urs and Anr.
Vs.
Rajneesh Goel and Ors.

[Contempt Petition (Civil) No. 555 of 2024]
[Civil Appeal No. 3310 of 1997]

Indrakshi Devi
Vs.
Rajneesh Goel and Ors.

[Contempt Petition (Civil) No. 556 of 2024]
[Civil Appeal No. 3309 of 1997]

Kamakshi Devi Avaru
Vs.
Rajneesh Goel and Ors.

[Contempt Petition (Civil) No. 585 of 2024]
[Civil Appeal No. 3306 of 1997]

HEADNOTE – Contempt jurisdiction cannot be invoked to execute a decree or implement an order. The contempt power can be invoked only if it is established that there was a wilful disobedience. Even while exercising such power, the Court has to restrict the scope of its enquiry to the directions which are explicitly specified in the judgment or order.

In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. It means knowingly-intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It would exclude casual, accidental, bonafide or unintentional acts or genuine inability and would also not include involuntary or negligent actions. The deliberate conduct of a person means that he knows what he is doing and intends to do the same- If two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The weapon of contempt will not be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. The paramount consideration is given to maintain court's dignity and majesty of law.

The civil contempt would mean a wilful disobedience of a decision of this Court. What would be relevant is the "wilful disobedience". Hence, knowledge of having acted in disregard to an order is sine qua non for being proceeded with if there is a deliberate, conscience and intentional act then the jurisdiction can be clutched.

The primary concern would be as to whether there has been deliberate default or if there is any ambiguity in the directions issued therein, in which event it would be better to direct the parties to approach the court which disposed of the matter for clarification instead of clutching the contempt jurisdiction.

JUDGMENT

Aravind Kumar, J.

1. Alleging wilful disobedience of the Orders dated 21.11.2014, 17.05.2022 and 19.03.2024 passed by this Court, these contempt petitions have been filed for punishing the respondents for their alleged contumacious act.

1.1 For purposes of convenience the contempt petitions which have been filed with details appended thereto are tabulated herein below:

SERIAL NO.	**CONTEMPT PETITION**	**COMPLAINANT/S**	**RESPONDENT/S**	**ORDER ALLEGED TO**

	No.			**HAVE BEEN FILED**
1	CP. No. 688 of 2021 in C.A. NO. 3309 -3310 /1997	Chaduranga Kanthraj Urs and Anr.	Shri P. Ravi Kumar and Ors.	Order dt. 21.11.2014 passed in I.A. No. 13 of 2011 in C.A. No. 3303 of 1997.
2	CP. No. 578/2022 in C.A. No. 3305 of 1997	Chamundi Hotel Private Limited	Smt. Vandita Sharma and Ors.	i. Order dt. 21.11.2014 passed in I.A. No. 13 of 2011 in C.A. No. 3303 of 1997. ii. Order dt. 17.05.2022 in I.A. No. 98276 of 2021 in C.A. No. 3303 of 1997. iii. Order dt. 19.03.2024 in CP No. 578 of 2022.
3	CP. No. 716 of 2023 in C.A. No. 3307 of 1997	M.L Varchusvin S.S. Raje Urs.	Smt Vandita Sharma and Ors.	i. Order dt. 21.11.2014 passed in I.A. No. 13 of 2011 in C.A. No. 3303 of 2011 in C.A. No. 3303 of 1997.

				ii. Order dt. 17.05.2022 in I.A. No. 98276 of 2021 in C.A. No. 3303 of 1997.
4	CP. No. 555 of 2024 in C.A. No. 3310 of 1997 and C.P. 688 of 2021	Chaduranga Kanthraj Urs and Anr.	Dr. Rajneesh Goel and Ors.	i. Order dt. 17.05.2022 in I.A. No. 98276 of 2021 in C.A. No. 3303 of 1997. ii. Order dt. 19.03.2024 in CP No. 578 of 2022.
5	CP. No. 556 of 2024 in C.A. No. 3309 of 1997	Smt. Indrakshi Devi	Rajneesh Goel and Ors.	i. Order dt. 21.11.2014 passed in I.A. No. 13 of 2011 in C.A. No. 3303 of 1997. ii. Order dt. 17.05.2022 in I.A. No. 98276 of 2021 in C.A. No. 3303 of 1997.
6	C.P No. 585 of 2024 in C.A. No. 3306 of 1997	Kamakshi Devi Avaru	Rajneesh Goel and ors.	i. Order dt. 21.11.2014 passed in I.A. No. 13 of 2011 in C.A. No. 3303 of

				1997. ii. Order dt. 17.05.2022 in I.A. No. 98276 of 2021 in C.A. No. 3303 of 1997.

The aforestated analogous petitions are taken up together and disposed of by this Common Order as they involve facts in common.

1.2 The petitioners in the aforestated contempt petitions have contended that the order dated 21.11.2014 and 17.05.2022, including the order dated 19.03.2024 is clear and explicit whereunder the respondent authorities have been directed by this Court to issue TDR as per TDR Rules in favour of the respective land owners whose land has been acquired for widening of Bellary and Jayamahal Roads and yet respondents have failed to do so and thereby they have wilfully disobeyed the directions and orders passed by this Court.

It is also contended that though Bengaluru Development Authority (for short BDA) and Bengaluru Bruhat Mahanagara Palike (for short BBMP) on the one hand were taking steps to issue TDR by calling for information from the petitioners, on the other hand Government of Karnataka passed an Order on 23.02.2021 expressing its difficulty to implement the orders of this Court on the ground of financial hardship being caused to exchequer which itself is clear wilful disobedience.

It is also contended that State has taken the benefit flowing from the order dated 21.11.2014 and utilized the land owned by petitioners to widen the roads and has issued the Government Order dated 08.12.2022 after dismissal of the IA for modification on 17.05.2022, which amounts to over reaching the orders of this Court. It is also contended that the positive direction issued by this Court to the respondents to issue TDR as per TDR rules in favour of complainants had not been complied which not only undermine the dignity of this Court but also the authority of this Court. It is further contended that market value determined for the subject land for issuing TDR by no stretch of imagination can be the market value prescribed under the provisions of Karnataka Town and Country Planning Act, 1961 and the Karnataka Town and Country Planning (Benefit of Development Rights) Rules, 2016.

It is also submitted that contemnors in the IA No.98276 of 2021 had filed for modification of the order dated 21.11.2014 wherein they have clearly admitted

that in the event of TDR is to be issued to the extent of 15 acres 39 guntas as per the orders of this Court which is the extent of land acquired by the BBMP for widening of the roads, it would result in issuance of TDR valued at Rs.1,396 crores as per TDR rules and yet determined the value under the notices dated 10.06.2024 diametrically opposite to the stand already taken by them. Hence, contending that respondents are acting in violation of the orders of this Court wilfully and as such they are liable to be proceeded with and punished for wilful disobedience of the order dated 21.11.2014, 17.05.2022 and 19.03.2024.

1.3 On being notified contesting respondents have filed affidavits of compliance in the respective petitions. Shri Jairam N., Commissioner, BDA has stated that BBMP had proposed to grant Development Rights Certificate (DRC/TDR) in lieu of utilisation of Bengaluru Palace ground for "widening of Bellary road from BDA junction to Mekhri Circle" and in this regard the BBMP has issued the provisional acceptance order dated 07.06.2024 and in response to the recommendations by the BBMP, the BDA has approved the issuance of DRC/TDR on 10.06.2024 whereunder the details of the DRC has been enumerated. It is further contended that same is in compliance with the order dated 21.11.2014, 17.05.2022 and 19.03.2024.

It is further stated that as per the recommendations of the BBMP, the petitioners have been served notice dated 10.06.2024 by BDA calling upon them to hand over the physical possession of the lands to the officials of BBMP, apart from informing them to hand over personal bonds simultaneously, to enable them to collect DRC. It is also stated that as indicated in the notice the officials of BBMP and BDA were present at Bengaluru Palace grounds on the appointed date and time to take possession of the lands, but petitioners had failed to appear and as such a joint mazar was drawn on 18.06.2024 by noting physical possession of the land was not taken and personal bonds was not furnished by the petitioners.

1.4 It is further stated that one more opportunity was extended to the petitioners to collect the approved DRC and a notice dated 26.06.2024 was issued in this regard and again the petitioners had failed to appear on the appointed place and time for handing over possession of the land. It is stated that possession of the subject land was taken on 01.07.2024 and respective authorities though were ready to handover DRC to the petitioners, they failed to appear and receive the same.

Hence, it is contended that at no point of time the said respondent had any intention to wilfully disobey the orders of this Court and have tendered unconditional apology for the delay that has occasioned in implementing the orders of this Court. Contending that delay was neither deliberate or intentional they have prayed for dismissal of the contempt petitions.

1.5 Mr. Tushar Giri Nath, Chief Commissioner, BBMP has filed an affidavit of compliance dated 17.03.2024 stating thereunder that in compliance of the order dated 21.11.2014 and 17.05.2022, the Government of Karnataka through decision of Cabinet decided on 14.03.2024 to utilise 15 acres 39 guntas namely the subject land for road widening and also decided to issue the TDR as per the Karnataka Town and Country Planning Act, 1961 and the TDR Rules and in furtherance of the same Government Order dated 15.03.2024 came to be issued.

It is further stated that as per the said Government Order the BBMP would implement the orders of this Court by issuance of TDR/ DRC as per rules. It is further stated that out of 15 acres 39 guntas only an extent of 1,217.41 sq. meter has been actually utilised for the road widening purposes and the entire land would be utilised after issuance of DRC/TDR as per rules. It is further stated that at no point of time the respondent had any intention to wilfully disobey the orders of this Court and have tendered unconditional apology for the delay in implementing the orders of this Court.

1.6 Sri Jairam N., Commissioner, BDA had initially filed counter affidavit on 18.03.2024 in contempt petition No. 688 of 2021 contending thereunder that on the basis of the orders dated 21.11.2014 and 17.05.2022 passed by this Court, the Government of Karnataka had taken a decision on 14.03.2024 to utilise 15 acres 39 guntas namely subject land for road widening subject to grant of DRC/TDR and as such Government Order dated 15.03.2024 came to be issued. It is further submitted that BDA is the planning authority as per the KTP Act and said authority would issue Development Rights Certificate-DRC after receiving recommendation by the public authority. It is further stated that at no point of time the contemnor had any intention to wilfully disobey the orders passed by this Court.

1.7 The Chief Commissioner of BBMP has filed further affidavit on 28.07.2024 in contempt petition No. 555-556 of 2024 narrating the sequential events culminating in the orders dated 21.11.2014 and 17.05.2022 apart from narrating the purported details about issuance of DRC/ TDR to the claimants. The sum and substance of the narration is pursuant to the orders passed by this Court, notices had been issued to the petitioners and except Smt. Deepamalini Devi none of the petitioners had turned up to hand over physical possession of 15 acres 17.5 guntas of land, as a result thereof another notice dated 26.06.2024 came to be issued and on the appointed date 01.07.2024 none had appeared and after identifying the subject land i.e. 15 acres 17.5 guntas by metes and bonds by the survey wing of the revenue department possession of subject land was taken by BBMP on 01.07.2024.

In paragraph 5 of the said affidavit the sequential events leading to the issuance of DRC/TDR has been narrated and the summary of the same is to the effect that

the BDA was the authority to issue/deal with Form No.3 and thereupon DRC/TDR and after the amendment to the KTCP Act in 2021 the BBMP public authority became the authority to issue/deal with form No.1 and 3 and after the amendment the matter stood transferred to BBMP from BDA for further action as per the notification dated 23.09.2022 and accordingly notice came to be issued to the claimants on 21.03.2024.

It is also stated that there were exchange of correspondence between the BDA and the claimants whereunder it is clearly admitted that 15 acres 17.05 guntas is the land utilised/to be utilised for road widening purposes based on the survey settlement dated 22.04.2024. It is further stated that the Deputy Commissioner (TDR) BBMP vide order dated 22.04.2024 after considering all the claims and objections determined and finalised the extent of land of various claimants.

It is further stated that on the basis of the request of BBMP the Government passed an order dated 24.05.2024 permitting BBMP to utilise the land ad measuring 15 acres 17.5 guntas for road widening and determined the value of the land at Rs. 11 crores for the entire land covered under the acquisition namely under BPAT and determined the compensation of subject land in proportion to the same value for issuance of DRC/TDR to be issued to the claimants. The Deputy Commissioner (TDR) after considering the objections raised to the order dated 24.05.2024 while rejecting the objections of the claimants/petitioners by order dated 06.06.2024 held the "market value" of the subject land cannot be beyond 2 lakhs and as such applied the said value for issuance of TDR.

In other words, factor taken into consideration for determining the market value of the subject land is on the premise that land had stood vested with the State Government under the BPAT whereunder the total value of the entire land has been computed at Rs.11 crores namely for 472 acres 16 guntas and proportionate value is to be considered for the subject land which is the part of the larger extent and as such justifying the order dated 06.06.2024, the notices were issued to the petitioners/claimants to accept the DRC/TDR as per value determined thereunder and contending orders of this Court had been complied they have sought for contempt proceedings being dropped or petitions being dismissed.

1.8 The complainant/petitioner in contempt petition No.716 of 2023 has filed a rejoinder/affidavit dated 08.07.2024 reiterating the contentions raised in the contempt petitions and also contending the development that have taken place pursuant to the order dated 19.03.2024 and has highlighted the issue regarding reduction of the extent of land and determination of the market value at Rs. 120.68 per sq. meter as against the guidance value of Rs. 2,83,500 (for Bellary Road) and 2,04,000 (for Jay Mahal Road) per sq. metre as fixed under Section 45-B of The Karnataka Stamp Act, 1957. It is also contended that DRC/TDR which was forwarded through post and handed over to the minor daughter of the

first petitioner would not absolve the liability of the respondents contemnors to comply with the orders of this Court in substance.

1.9 The petitioner in contempt petition No.578 of 2022 has also filed a rejoinder affidavit in response to counter affidavit filed by respondent no.3 whereunder it has been contended that at all relevant point of time and in various forum the ownership rights over the subject land has been declared to be that of the petitioner and as such there is no dispute with regard to the ownership of the land and none of the legal heirs of Late Shri SDN Wadiyar could object to it either. Contending that the official respondents have failed to comply with the order dated 21.11.2014 the petitioner have sought for appropriate action being taken against the respondents.

DISCUSSION AND REASONING:

Heard the arguments of the Learned Senior Advocates assisted by the Learned Advocates for appearing parties, perused the entire case papers and having bestowed our careful consideration to the rival contentions raised at the bar, we are of the view that following point would arise for our consideration

"Whether orders dated 21.11.2014, 17.05.2022 and 19.03.2024 passed by this Court has been wilfully disobeyed by the respondents/contemnors?"

PREFACE:

1.10 In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. It means knowingly-intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It would exclude casual, accidental, bonafide or unintentional acts or genuine inability and would also not include involuntary or negligent actions. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. It is too well settled that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable.

1.11 The weapon of contempt will not be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. The paramount consideration is given to maintain court's dignity and majesty of law. In Sudhir Vasudeva Vs. George Ravishekeran1 this Court has observed that a Court exercising jurisdiction under the Contempt of Courts Act, 1971 must not travel beyond the four corners of the orders in relation to which contempt has been alleged. That the Court hearing a contempt petition ought to restrict the scope of its enquiry to such directions which are explicit in the judgment or orders of which contempt has been alleged.

1.12 The civil contempt would mean a wilful disobedience of a decision of this Court. What would be relevant is the "wilful disobedience". Hence, knowledge of having acted in disregard to an order is sine qua non for being proceeded with if there is a deliberate, conscience and intentional act then the jurisdiction can be clutched.

1.13 Having adumbrated position of law enumerated by this Court we proceed to deal with the alleged acts of contempt said to have been committed by the contemnors in the instant petitions.

FACTUAL BACKGROUND:

2. The background in which the orders dated 21.11.2014 and 17.05.2022 came to be passed can be succinctly narrated as under: Undisputedly the land measuring 15 acres and 39 guntas (hereinafter referred to as 'subject land') and the adjoining properties collectively measuring 456 acres belonged to the erstwhile Maharaja of Mysore. The legal heirs of deceased Maharaja of Mysore amongst others and/or claiming through them are before this Court alleging wilful disobedience of the aforestated orders.

3. The State enacted the Bangalore Palace (Acquisition and Transfer) Act 1996 (herein after referred to as "BPAT" Act) to acquire the Bangalore Palace and adjacent land including all the buildings around on the grounds enumerated therein. The constitutional validity of the same was unsuccessfully challenged by the legal heirs of Maharaja of Mysore before the High Court of Karnataka and an ad interim order of Stay of the operation of the Act came to be passed by the High Court on 10.12.1996.

On conclusion of hearing writ petitions came to be dismissed vide Order dated 31.03.1997 and four weeks' time was granted to the writ petitioners to file an appeal before this Court and interim order granted on 10.12.1996 which was in operation till disposal of the writ petitions came to be continued till then. Subsequently, appeals came to be filed, and this Court by Order dated 22.04.1997 granted stay of dispossession and the Special Leave Petitions came to be admitted on 30.04.1997 and order of status quo came to be passed pending disposal of the appeals. The said appeals are pending before this Court.

4. In Civil Appeal No. 3303 of 1997, an interlocutory application came to be filed by the State of Karnataka seeking permission of this Court to widen the Bellary Road and Jayamahal Road and to complete the same by utilising 15 acres and 39 guntas of the Bengaluru Palace ground; and, to pay compensation to the above land as per the calculation made in the original award.

Appellants in various appeals virtually conceded to the needs of the State to widen the road and expressed their willingness to accept the proposal of BBMP

made in its letter dated 26.12.2009, whereunder BBMP had agreed to issue TDR for the extent of land acquired as per the Karnataka Town and Country Planning Act and the TDR guidelines, subject to final decision of this Court. Having regard to the fact that the State did not grant its approval to the proposal mooted by the BBMP and had instead offered to pay compensation as per the rates relevant at the time of passing of the order, this Court disposed of the said application by order dated 21.11.2014 and permitted the road widening subject to the condition that the appellants would be given the TDR as per TDR Rules. Order dated 21.11.2014 reads:

"10. In the above circumstances, having considered the submissions of learned counsel for the parties, including learned counsel for the parties in all the connected appeals, without prejudice to the rights of the parties, and keeping in mind the necessity of widening of the road, and the public interest, we think it just and proper to allow I.A. No. 13 of 2011 subject to condition that the appellants in the present appeal and the connected appeals shall be given TDR for widening of the road as per TDR Rules."

(Emphasis Supplied by us)

5. The respondent-authorities were required to implicitly implement the aforesaid order or in other words issue TDR as per the extant TDR rules. This Court in Rita Markanday v/s Surjit Singh Arora2 has taken the view that even if the parties have not filed an undertaking before the Court, but if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false then the party would be guilty of committing contempt of court.

In fact, this Court having heard the parties on merits and taking into consideration the totality of circumstances into consideration had passed a positive direction to the respondents to issue TDR a per TDR Rules. However, under the guise of the said order requires to be modified, a valiant attempt was made by the State after Seven (7) years by filing an interlocutory application on 12.08.2021 in IA No.98276 of 2021 seeking modification of the order dated 21.11.2014 wherein it was specifically prayed that the order dated 21.11.2014 may be clarified or modified, with a further prayer to direct the instrumentalities of the State to pay compensation as per the calculation made in the original award in the Act of 1996 in similar terms of the order of this Court dated 15.02.1999 passed in IA No.2.

5.1 Aforesaid application came to be rejected after adjudication vide order dated 17.05.2022 whereunder this Court reiterated its earlier order dated 21.11.2014 and observed there was no reason to modify the said order. The Order dated 17.05.2022 reads:

"We have noticed from the order dated 21.11.2014 that this court has allowed the I.A. No. 13 of 2011 filed by the applicant subject to the condition that the appellants will be given TDR for widening of the road as per the TDR Rules. We do not see any reason to modify the said order. It is for the applicant(s) to take action in terms of the order dated 21.11.2014. The I.A. No. 98276 of 2021 stands rejected."

(emphasis supplied by us)

5.2 This Court in Rama Narang Vs. Ramesh Narang3, has held that contempt jurisdiction could be invoked in every case where the conduct of a contemnor is such as would interfere with the due course of justice.

5.3 This Court exercising contempt jurisdiction would not enter into question which have not been dealt with and decided in the judgment or order, violation of which is complained by the applicant. This Court will consider whether the direction issued in the judgment or order is complied in true sense or in its letter and spirit and would not embark upon the journey of examining as to what the judgment or order should have contained.

The primary concern would be as to whether there has been deliberate default or if there is any ambiguity in the directions issued therein, in which event it would be better to direct the parties to approach the court which disposed of the matter for clarification instead of clutching the contempt jurisdiction. A plain reading of the orders dated 21.11.2014 and 17.05.2022 supra would indicate that direction issued to the respondents is to the effect that TDR had to be issued as per TDR rules. There was no ambiguity or vagueness in the said orders. It is also not the case of the contemnors that any doubt being there in the said orders.

5.4 However, on the basis of an assumed doubt having arisen in the mind of the State that too after seven years of the passing of the order (dated 21.11.2014) and to stave off the impending contempt proceedings, an Interlocutory Application I.A. No. 98276 of 2021 referred to supra came to be filed for modification of the said order dated 21.11.2014 primarily on the ground of financial hardship amongst other grounds, which came to be rejected.

5.5 It is apt and appropriate to note at this juncture itself that a specific plea came to be raised by the State in paragraph 9 of the aforesaid application, that if the TDR certificate is issued as per the order dated 21.11.2014 to the extent of 15 acres 39 guntas the notional value of the same would be Rs.1,396 crores. At the cost of burdening this order the relevant plea raised by the respondent in that regard is extracted herein below:

"9. The Respondents/Applicant-State of Karnataka respectfully submits that area of land sought to be acquired vide I.A. No. 13/2011 is an extent of 15 acres 39

guntas. If the compensation was required to be paid in terms of the Award passed under the Act of 1996 for the extent of 15 acres 39 guntas, the compensation payable would be Rs.37,28,813.

However, if the TDR certificate is to be issued for the said extent of 15 acres 39 guntas, it would result in 13,91,742 Sq. ft. additional built up area constructible in the city of Bengaluru and approximately it would be equivalent to notional value of Rs.1,396 crores. It is also relevant to note that TDR once granted is transferable. If the appellants were to be given TDR, the same may immediately be transferred by the appellants to any other parties/ builders. In event of the final judgment going against the appellants, then it would not be possible to recover the value of TDR from the appellants."

(Emphasis Supplied by us)

6. On passing of the aforesaid order dated 17.05.2022 it was incumbent upon the respondents-authorities to implement the aforesaid two orders without a demur as they are crystal clear. However, same was conveniently ignored or in other words the authorities seem to have gone into deep sleep at least till 05.04.2017 on which date a notification came to be issued by BBMP for carrying out the work of widening the road.

7. One another factor which cannot go unnoticed in the background of affidavits filed by both the parties is, that in respect of the subject property, Writ Petitions in Public Interest had also been filed seeking widening of Bellary Road and Jayamahal Road before the High Court of Karnataka wherein several orders came to be passed by referring to the orders passed by this Court referred to supra, of which contempt is alleged. Hence, we deem it proper to refer to the order dated 07.09.2016 passed in W.P. No. 42927 of 2015 which would have direct bearing on the present proceedings and it reads:

"We, therefore, direct the State Government to grant necessary clearance to the BBMP for widening the road and issue TDR certificates to the land owners in terms of the Order of the Supreme Court of India as per the existing TDR rules. We trust and hope that the widening of the road will be completed within a year."

(Emphasis supplied by us)

8. For complying the aforesaid direction an attempt was made to issue notification dated 05.04.2017 namely to carry out the widening of Jayamahal Road from Mekhri Circle up to Cantonment Railway Station and Bellary Road from BDA Junction to Mekhri Circle. After two (2) years i.e., on 17.07.2019, the State Government issued a Government Order permitting BBMP to issue TDR to the concerned land owners. Hence, a communication dated 29.08.2019 was addressed by the complainants to the Commissioner BBMP seeking to expedite

the process of issuance of TDR and documents in support of their claim were also forwarded. However, TDR's were not issued for no reason at all.

Thus, from 21.11.2014 till 17.07.2019 there was absolute silence on the part of contemnors and there is not even a whisper in the affidavits filed by the respondents in this regard viz., as to the reason for non-implementation of the Order dated 21.11.2014. Knowing fully, the consequences of nonimplementing the orders of this Court, yet respondents consciously ignored to comply with the directions issued by this Court. After four (4) years notification came to be issued on 05.04.2017 to widen the road.

Again, respondents went into deep slumber for two (2) years i.e., till 17.07.2019 date of government order issued resolving to issue TDR in favour of landowners. Silence on the part of the contemnors from 05.04.2017 to 17.07.2019 has to be termed as deliberate with full knowledge of consequences flowing therefrom. Thus, delay of five (5) years in implementation of the Order dated 21.11.2014 till 17.07.2019 not only remains unexplained but also prima-facie seems to be intentional and not bonafide or there being any genuine inability and this is the first stage of intentional delay.

This Court in Ram kishan Vs. Tarun Bajaj & Ors4 has opined that deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Though Government Order dated 17.07.2019 came to be issued, that too after five (5) years after passing of orders (direction) by this Court to issue TDR's, yet it did not fructify. Thus, irresistible conclusion will have to be drawn that non-implementation of the orders of this Court was deliberate and intentional act on the part of contemnors.

9. From the pleadings of these proceedings it would also emerge, yet another Writ Petition No. 6585 of 2020 (PIL) had also been filed for expediting the process for road widening and an order came to be passed by the High Court of Karnataka on 07.01.2021 in that regard whereunder the State Government was directed to report the compliance by implementing with the directions contained in paragraph 10 of this Court's Order dated 21.11.2014 and paragraph 12 of High Court Order dated 07.09.2016 passed in Writ Petition No. 42927 of 2015 and for reporting such compliance, the State Government was granted time till 15.02.2021.

State Government was also called upon to produce records and documents depicting grant of TDR certificates in terms of the order of this Court as well as the order of the High Court. However, the State Government instead of complying with the Orders passed by this Court and the High Court and initially having made a show of its earnestness to comply with the order, had submitted

before the High Court in Writ Petition No. 6585 of 2020 on 17.02.2021 through the learned Advocate General that it would move this Court seeking modification of the Order dated 21.11.2014.

Thus, Government Order came to be issued on 23.02.2021 wherein it has been stated that State Cabinet had decided to resile from its earlier decisions taken on 11.07.2019 vide Subject No. C435/2019 (pursuant to which the State Government had issued Government Order dated 17.07.2019 bearing No. MA.AA.EE.-MNY/2018 permitting issuance of TDR) and had resolved to file an application for modification of the Order dated 21.11.2014 and pursuant to the decision so taken, I.A. No. 98276 of 2021 came to be filed in C.A. No. 3303 of 1997 and connected appeals by the State of Karnataka on 12.08.2021 as already noted hereinabove.

The present contempt petitions came to be filed on 17.08.2021 and this Court by Order dated 03.01.2022 directed the listing of these contempt petitions along with I.A. No. 98276 of 2021 filed for modification of the order dated 21.11.2014. Said application came to be heard and disposed of by this Court by Order dated 17.05.2022 by rejecting the same as already noticed herein above. Atleast then orders dated 21.11.2014 and 17.05.2022 ought to have been implemented.

However, the Respondents seem to have dragged their feet and for no justifiable reason whatsoever have not implemented the said orders. Thus, explicitly there has been wilful disobedience of orders of this Court and respondents having failed in their attempt to seek modification of order dated 21.11.2014 cannot take umbrage under any circumstances whatsoever for not implementing the orders of this Court, particularly when clarification/modification prayer was put to rest on 17.05.2022 by this Court.

10. The wilful disobedience of the orders of this Court, at this stage is manifest and for no reason whatsoever it can be construed that respondents were under any doubt or there was lack of clarity in the orders of this Court. Infact the order dated 21.11.2014 is clear and explicit. However, under the guise of implementation of said order would result in grant of TDR to the extent of Rs. 1396 crores (the value of which is in serious dispute) modification was sought and said attempt made after Seven (7) years had also failed.

This Court in the matter of All Bengal Excise Licensees Association v/s Raghabendra Singh and Others5 has taken a view that disobedience in a particular case would be continued as wilful based on facts and circumstances unfolded in a given case. Judicial orders are to be properly understood and complied with, even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the Court's order and its implications.

In the instant case respondents being aware of the consequences of non-implementation of the order of this Court dated 21.11.2014 had sought for modification on the ground of financial hardship and had also failed. Hence, they are estopped from feigning ignorance for not implementing the orders of this Court or not being aware of the consequences of its implementations.

11. In the Writ Petition No. 6585 of 2020 aforestated which was pending before the High Court of Karnataka, the State Government dragged its feet by taking adjournment after adjournment on one pretext or the other and had projected a picture of its earnestness to implement the orders of this Court, though parallelly it had resiled from its earlier order dated 17.07.2019 by issuance of Government Order dated 23.02.2021 and later filed I.A. No. 98276 of 2021 on 12.08.2021 for modification of Order dated 21.11.2014 which ended in its dismissal also on 17.05.2022.

It would be apposite to note that by Government Order No. UDD 269 MNY 2018 dated 08.12.2022 it was resolved to drop the proposal for widening of the roads itself and as such BBMP withdrew the proposal made to the State Government on 30.03.2009 in this regard which came to be accepted by Government Order dated 08.12.2022. Strangely and curiously it may be noted that the BBMP took a contrary stand before the High Court in the pending Writ Petition No.6585 of 2020 by filing affidavits which reflected about the progress of the steps taken by BBMP to widen the road or in other words, State and its authorities or instrumentalities were blowing hot and cold.

On the one hand State was depicting a picture before the High Court of implementing the Orders of this Court and simultaneously State and its authorities were filing application for modification of the order passed in 2014 and parallelly assuring the High Court that it was keen on implementing the orders of this Court, though it was postponing the implementation and dragging its feet on one pretext or the other and eventually shelved the proposal to widen the road, though substantial progress had been made to widen the road for which purpose possession of land had also been taken.

12. Turning our attention to the core issue on hand namely as to whether there has been compliance of the Order dated 21.11.2014 and 17.05.2022 by the respondents, we will have to answer it in the negative and also further hold that there has been wilful disobedience, for the reasons assigned hereinbelow:

"(i). In compliance of the Order dated 21.11.2014 a communication came to be issued by the Special Deputy Commissioner Land Acquisition and TDR BBMP requesting the applicants to provide an indemnity bond following which the relinquishment deed would be executed and registered and thereafter TDR would

be issued, yet same was not issued though land owners complied with the demand made by BBMP;

(ii). The State Government though passed a Government Order No. ma.aa.ee./269/MNY/2018 dated 17.07.2019 permitting issuance of TDR yet, same was not issued;

(iii). Though a communication was addressed by the State Government to the Commissioner BBMP on 29.08.2019 to expedite the process of issuance of TDR yet, TDR was not issued;"

13. The above sequential events would clearly reflect that the State Government was projecting before this Court of its bona fides to implement the Orders of this Court and having failed in its attempt to seek modification of the Order dated 21.11.2014 on account of application for modification having been dismissed on 17.05.2022, yet during the interregnum arrived at a conclusion that the implementation of the Order of this Court would be neigh impossible and vide Government Order No. UDD269MNY2018 (Part-4) dated 23.02.2021 which was pursuant to the Cabinet decision taken on 18.02.2021 vide subject No.C.82/21 the State had dropped the proposal to widen the road and thereby had failed to comply with the orders of this Court.

14. On present contempt petitions being filed in 2022 an attempt has been made by the authorities to project a picture as though all efforts were made to implement the orders of the Court. Two stages in which there has been wilful disobedience of the orders of this Court are:

FIRST STAGE

i. After the order was passed on 21.11.2014 no steps were taken to implement the said order in its letter and spirit which ought to have been at least till 2017 i.e., issuance of notification dated 05.04.2017 for carrying out widening of roads;

ii. Though State Government issued order on 17.07.2019 permitting BBMP to issue TDR to the concerned land owners, yet TDR was not issued despite all demands of BBMP were complied by land owners:

iii. From the date of order dated 21.11.2014 till an application namely IA No. 798276 of 2021 was filed for modification, the saga of pushing the file from table to table and keeping the same idle for a long period and conveniently ignoring the order of this Court by not implementing the same in its true spirit had continued for years or atleast till 17.07.2019;

SECOND STAGE

iv. After the order dated 17.05.2022 came to be passed rejecting the application for modification/ clarification yet the State and its authorities did not take steps to implement the orders of this Court as expected of a prudent litigant i.e., by the State which should have acted as a model litigant.

15. In fact, this Court by Order dated 19.03.2024 with the hope that respondents would purge in the contempt by implementing the same in its letter & spirit had directed compliance of the Order dated 21.11.2014 and 17.05.2022. However, an additional condition was imposed or in other words orders dated 21.11.2014 and 17.05.2022 was tweaked by this Court. The direction so issued by this Court on 19.03.2024 reads:

"2. After some hearing, it is clear that the State shall issue necessary TDR as directed by this Court on 21.11.2014 and on 17.05.2022. Taking note of the submissions of the learned Advocate General, we direct compliance within a period of eight weeks from today."

"3. Order dated 2 1.11.2014 does not specifically enable sale or transfer of the TDR, but directs grant of TDR as per Rules. To secure interests of all parties pending disposal of the Civil Appeals, we direct the recipient of the TDR to undertake return of the consideration received upon any sale or transfer of the TDR in the event the Civil Appeal(s) before Supreme Court are dismissed. An affidavit of Undertaking to this effect in the nature of personal bond(s) shall be furnished by the recipient of the TDR to the State before the sale or transfer of the TDR. We have not expressed any opinion with regard to inter se dispute between the parties."

16. A valiant attempt has been made by the contemnors to contend that orders of this Court has been complied by passing of the order dated 15.03.2024 and issuance of consequential notices and Government Orders. In the notices issued on 10.06.2024 and 26.06.2024 the authorities seems to be projecting a picture that the possession of the subject land has not been delivered and this is nothing but suppressing the true facts and making a false statement before this Court namely suppressio veri suggestio falsi.

We say so for the simple reason that in the notices referred to hereinabove the respondents are attempting to give a picture as though possession of the land in question has not been taken, whereas in the Government Order dated 08.12.2022, it has been specifically mentioned that a sum of Rs. 56 crores has been provided for widening of the Bellary Road and Jayamahal Road and a Government Order No. UDD 56 MNY 2020 dated 04.03.2020 in the form of tender is handed over to M/s JMC Organization by issuance of a work order.

The said Government order would also indicate that the road project is in progress. In fact, in the affidavit filed through Additional Chief Secretary Shri Rakesh Singh, it has been stated in paragraph 13 that the work is almost complete from Mekhri Circle to Jayamahal and because of the untimely rain, the completion got delayed.

17. In Writ Petition No.6585 of 2020, an affidavit dated 20.01.2023 came to be filed by BBMP through Smt. Priyadarshini, Executive Engineer, Road Infrastructure (East) BBMP, which came to be recorded by the High Court on 03.02.2023 by noticing that in paragraph 6 of the said affidavit, the deponent has made a statement that the road widening work is in progress. In fact, photographs were also appended to the said affidavit as document No.5. It was deposed in unequivocal terms that the road widening work has commenced and same came also to be recorded by the Division Bench of the High Court of Karnataka by observing that "it can safely be said that necessary steps are taken by BBMP for widening of roads and the work is in progress at present".

It was further observed by the High Court that the BBMP can certainly explore some effective means and ways to see that that road widening work is done in a speedy manner and is not delayed on account of lame excuses or lethargy on the part of some officer of the BBMP or the executing agencies. Hence, BBMP was directed to file further progress report.

A further affidavit was also filed on 13.03.2023 which came to be recorded by the Division Bench of the High Court on 29.09.2023 whereunder it was noticed that in paragraph 3 of the said affidavit it had been stated that the 95% of the road widening project is completed in all respects and now there is free flow of traffic on the stretch, particularly, with reference to the stretch on Bellary Road to Kaveri theatre junction.

The status report which was called upon to be filed by BBMP resulted in filing further affidavit of the Executive Engineer which again came to be recorded by the Division Bench of the High Court on 19.04.2023 whereunder it was stated that in respect of different phases of the road widening, the project is complete to the extent of 25%, 95%, 50% and 60% respectively.

17.1 We are compelled to note or make references to the aforestated orders passed by the High Court of Karnataka, since the issue of road widening has been the core issue, and on the one hand the State is contending possession of the subject land was not taken or it was taken only in July 2024 and countered by the complainants that possession was taken long back.

The pleadings above referred to would also leave no manner of doubt in the mind of this Court of possession of these lands having been taken either by the State or

BBMP and same being in their possession since long, it is too late in the day for the State and its instrumentalities to contend that after the issuance of notices on 10.06.2024 and 26.06.2024 the possession of the subject land has been taken. It is for this reason we have held that the contemnors are guilty of supressing the truth and suggesting falsehood.

18. A theoretical implementation would not amount to compliance. The implementation of the order should be substantial and said order/s should clearly reflect the intention of the authorities of its bonafides, as otherwise it has to be necessarily held that the act of State and its officers are not bonafide but tainted or malafide. Lex non cogit ad impossibilia- Law does not compel a person to do the impossible (AIR 1996 SC 753) Unless an order is absolutely impossible to be executed or carried out, the authorities cannot be heard to contend that financial burden would be a hurdle to implement the orders of this Court.

If at all, there were any such hurdles, it was always open to authorities to approach this Court to seek appropriate orders and an attempt made in that regard had also failed. In the instant case, after having kept quiet for a period of almost 07 years i.e., from 21.11.2014 till 12.08.2021 (till filing of IA No.98276 of 2021), no effective steps were taken by the State and its instrumentalities to implement the orders of this Court except exchange of inter-departmental correspondence which is already noticed herein above.

19. The affidavits of the Commissioner of BDA and Chief Commissioner of BBMP would reflect as though there is due compliance of the aforesaid two Orders passed by this Court and this is not only in clear violation of the Orders 21.11.2014 but also order dated 17.05.2022 whereunder this Court in unequivocal terms or had categorically directed the respondents' herein to issue TDR as per the TDR Rules and nothing short or long of it. In other words, the TDR which was required to be issued ought to have been as per the Karnataka Town and Country Planning (Benefit of Development Rights) Rules, 2016. This Court by order dated 19.03.2024 after hearing the matter for some time had passed the aforesaid order.

20. A perusal of the same would indicate that this Court in no uncertain terms and categorically has held that State should issue necessary TDR as directed by this Court on 21.11,2014 and 17.05.22. In fact, specific direction was issued that there should be compliance within eight (8) weeks. It was also ordered that the recipient of the TDR should undertake to return the consideration received upon sale or transfer of the TDR in the event of the civil appeals before this Court are dismissed and called upon the complainants to file an affidavit of undertaking to this effect in the nature of personal bond(s) to be furnished by the recipient of the TDR to the state before the sale or transfer of the TDR.

We deem it appropriate to note at this juncture that order dated 19.03.2024 was passed for implementing the orders dated 21.11.2014 and 17.05.2022 and there was no occasion or necessity for this Court to impose further conditions which in effect would amount to tweaking the orders dated 21.11.2014 and 17.05.2022. Infact there was no such prayer made by the State or its instrumentalities by filing appropriate applications. Attempt made in that regard by filing I.A. No. 98276 of 2021 had already been rejected by this Court by Order dated 17.05.2022 itself.

Yet another reason which requires to be assigned for supporting such a view, emanates from the fact that State itself has admitted in the I.A. No. 98276 of 2021 that if TDR is to be issued as per TDR Rules the market value will have to be determined as per TDR Rules, which in effect would mean value of the land has to be determined as per the value fixed under the Karnataka Stamp Act, 1957. Accordingly, the calculation had been made and pleaded financial hardship.

Though, while applying the market value as fixed under the Stamp Act, 1957, 60% of the value has been deducted which we are not in agreement for reasons detailed herein below, yet, the fact remains that State itself has admitted and adopted the value fixed under Karnataka Stamp Act, 1957 to fix the value of TDR to be issued. We would hasten to add that Civil Appeals relating to challenge of acquisition of larger area (456 acres) is still pending before the court and sufficient safeguards to protect the interest of the State can be taken care of at the time of passing final order.

Necessarily, the issuance of TDR as per TDR Rules would be subject to final outcome of Civil Appeals and as such filing of an undertaking by the recipients of TDR as opined by our Order dated 19.03.2024 is not warranted. Hence, we deem it proper to delete the additional condition imposed by this Court by order dated 19.03.2024 and making it explicitly clear that TDR issued by the competent authority would be subject to final orders that may be passed in Civil Appeals pending before larger bench and this order would have no bearing on the pending appeals.

20.1 Though, initially there was resistance to the order dated 21.11.2014 and 17.05.2022, the State and its machinery seems to have understood the gravity of the situation and to fall in line with the further directions issued by this Court, has made a feeble attempt on 19.03.2024 to demonstrate before this Court of having complied with the orders passed by this Court which is alleged to have been wilfully disobeyed by the contemnors.

After having dragged their feet for the last 10 years and having exhausted all remedies to stave off the orders dated 21.11.2024, 17.05.2022 and 19.03.2024, the respondent authorities or contemnors have filed affidavits by stating thereunder that orders of this Court have been complied. The affidavits dated

09.07.2024 filed by Shri Uma Shankar Additional Chief Secretary, Urban Development Department, Government of Karnataka- Respondent No.1 would indicate that the deponent is depicting the picture of having complied with the orders dated 21.11.2014 and 17.05.2022 without any whisper with regard to the order dated 19.03.2024.

In fact the deponent has relied upon the Government Order No. DPAR 68 PSR 2024 dated 24.05.2024 whereunder the TDR for 15 acres 17.5 guntas has been resolved to be issued to the complainants by determining the value as per the BPAT Act. The deponent also refers to the order dated 06.06.2024 passed by the Deputy Commissioner (TDR) who has again rested his oars on the Government Order dated 24.05.2024 namely determining the value of the land as per the value determined under the BPAT Act for the entire land of 436 acres.

Pursuant to the said orders the TDR is said to have been forwarded to the complainant/claimant. On this ground contemnors are seeking from being absolved of the present proceedings or in other words seeking for contempt proceedings being dropped and clearly admitting there has been delay for which an unconditional apology has been tendered.

20.2 The affidavit of compliance filed by respondent No.3 is as vague, vagueness could be. Except enclosing the order No. UDD 22 MNY 2023, Bengaluru dated 15.03.2024 whereby it has been resolved to utilise 15 acres 39 guntas of the Bengaluru Palace for road widening subject to the grant of TDR and undertaking that BPAT would implement the orders nothing further revolves around this affidavit.

20.3 The compliance affidavit of Respondent No.4 namely the Commissioner of BDA would indicate the steps taken by the said authorities to implement the order namely issuance of notice dated 10.06.2024 and reply given thereto by the noticee and the purported joint mahazar having been drawn at the spot for taking possession of the subject land, nothing more turns around.

20.4 The compliance affidavit filed on behalf of the Respondent Nos.5 to 6 is in same line with the affidavit filed by the Respondent No.4.

20.5 We find from the afore-stated affidavits that the consistent stand taken by the State from day one till date is to the effect that:

(i) petitioners were not entitled for the TDR;

(ii) if at all they are entitled to, then they would be entitled to the compensation as per the Land Acquisition Act or the value of the land as fixed by the ULC authorities or the value of the land as determined by the authorities determining the wealth tax;

(iii) even if value is to be determined and TDR is to be furnished the valuation of the land cannot be as per the value fixed for the adjacent lands under Section 45B of the Karnataka Stamp Act,1957 and the value is to be fixed as per the value of the land determined under the BPAT Act namely 11 crores for 472 acres and proportionately for 15 acres 39 guntas the value of the subject land has to be determined.

21. Having dragged its feet for years in implementing the Orders of this Court the respondents seem to have conceptualized a novel method to overreach the Orders of this Court and we say so for the simple reason that affidavit of the compliance does not indicate or clearly admit that the TDR certificate being issued is in accordance with the extant TDR Rules but it is on an assumed value.

The notice dated 10.06.2024 which was preceded by Government Order dated 24.05.2024 issued to the petitioners reflect that market value of the land acquired has been determined @ Rs.120.68/ per square meter inclusive of interest, which notice has also been duly replied to by the petitioners on 13.06.2024 contending valuation made is contrary to TDR Rules. The Government Order dated 24.05.2024 being contrary to the direction issued by this Court cannot be accepted or the value of the subject land as determined thereunder to be correct, or the value indicated therein can be taken as a determination as per TDR Rules and it is diametrically opposite to the TDR Rules. We say so for reasons more than one.

Firstly, the gazette notification dated 27.09.2023 issued in exercise of power vested under Section 45B of Karnataka Stamp Act, 1957 by the Government of Karnataka fixing the guidance value of the properties for the purposes of registration which has been appended to the counter affidavit filed by the complainants would indicate that the value of the subject property is fixed at Rs. 2,83,500 per square meter on Bellary Road, and for Jayamahal Road it is fixed at Rs. 2,04,000 per square meter (see convenience compilation filed on 21.07.2024 at pages 248 and 249) and this value is not adopted.

Secondly, the applicable rules for issuance of TDR is known and called as Karnataka Town and Country Planning (Benefit of Development Rights) Rules 2016. Section 2(i) defines 'Market Value' to mean the value determined as per the guidance value of land in accordance with Section 45B of the Karnataka Stamp Act, 1957.

Thus, the TDR has to be issued as per the guidance value fixed under the Stamp Act and it is for this precise reason the State while determining the market value of the subject land had adopted the guidance value as specified under the Stamp Act for purposes of calculation/determination under I.A. No. 98276 of 2021 for pleading financial hardship. The State Government cannot now retrace its steps in

this regard and determine the value of the subject property at its whims or fancies or on any imaginary value for the purposes of issuance of TDR. Thirdly, the market value of the property has to be prescribed under Rule 4 of TDR Rules, which clearly mandates the "market value" of a property to be as prescribed under Section 45B of Stamp Act, as the basis for issuance of TDR.

In fact, this Court by Orders dated 21.11.2014, 17.05.2022 and 19.03.2024 in no uncertain terms has ordered or directed the respondents to issue TDR as per TDR Rules. Fourthly, in the interlocutory application (I.A. No. 98276 of 2021) filed for modification by the State, it has been specifically pleaded by the State itself that "if the compensation was required to be paid in terms of the award passed under the Act of 1996, then for the extent of 15 acres and 39 guntas the compensation payable would be Rs. 37,28,813.

However, if the TDR certificate is to be issued as per TDR rules for the said extent of 15 acres 39 guntas, it would result in 13,91,742 sq. feet additional built up area constructable in the city of Bengaluru and approximately it would be equivalent to notional value of Rs.1,396 crores" after deducting 60% of the guidance value. The State specifically pleaded that TDR once granted is transferable and it would not be possible to recover the value of the TDR from the appellants if it is transferred to other parties/ builders, in the event of final judgment going against the appellants.

In fact, it is for this precise reason we have opined supra that orders dated 21.11.2014 and 17.05.2022 was not required to be tweaked by this Court by adding additional conditions. Fifthly, it is to be noted that when value of adjacent and abutting land is fixed at Rs. 2,83,500 per sq. meter and 2,04,000 per sq. meter respectively under the Karnataka Stamp Act, 1957, the value of subject land cannot be diminished below the said value.

The State specifically sought for modification of the order dated 21.11.2014 whereunder it was required to issue TDR as per TDR rules and wanted to pay compensation as per the calculation in the original award of 1996 in similar terms of the order dated 15.02.1999 passed on IA No.2 and this has been categorically turned down or rejected by this Court by order dated 17.05.2022. For these myriad reasons Government Order dated 24.05.2024 cannot be accepted as substantial compliance of the orders dated 21.11.2014, 17.05.2022 and 19.03.2024 and it stands rejected.

22. In fact, the State itself has categorically admitted in its Government Order dated 23.02.2021 the value of the TDR to be issued in favour of the claimants would be as under:

Total area 15 Acres 36 Guntas, Total 639 Guntas 639 x 1089 = 695871 sq. ft. x 2 = 1391742 sq. feet.

It is also admitted that the gross value is Rs.2,70,000 per Sq. Meter. However, it has determined the value as 0.4 times of the land value that is 1,08,000 per Sq. Meter on the premise that it is to be construed as an agricultural land. This very plea came to be raised for the modification of the order dated 21.11.2014 and it was turned down by this Court by order dated 17.05.2022 and it was reiterated that the TDR is required to be issued as per TDR Rules namely by adopting market value of the land.

The value of the land cannot be anything less than market value as already determined under Section 45B of the Karnataka Stamp Act 1957. At the cost of repetition it requires to be noticed that the State Government itself has considered the market value as per guidance value at Rs. 2,70,000 per sq. meter fixed under Karnataka Stamp Act, 1957 and has adopted 0.4 times of the said value to calculate the TDR for the reason that the Bangalore Palace falls within agricultural zone which cannot be market value under TDR Rules. No material whatsoever has been placed by the State to depict that the subject land is to be construed as falling within agricultural zone.

In fact, the subject property was utilized as a private residence of the then Maharaja of Mysore since long number of years and it is situated in the heart of city of Bangalore. There cannot be any cavial to the fact that TDR is required to be issued as per TDR Rules. In fact, not dwelling upon further on this aspect, it can be safely concluded that valuation of the subject land even according to the State was determined as per the guidance value then prevailing but restricted it to 40% of the guidance value by treating it as agriculture land without any basis whatsoever. The notifications issued under Section 45B of the Karnataka Stamp Act prescribes the guidance value and this value alone ought to have been adopted and there cannot be any reduction or subtraction in that regard.

Thus, any amount of plea raised by the contemnors on the ground of financial hardship or otherwise would be in contravention of the Order passed by this Court on 21.11.2014, 17.05.2022 and 19.03.2024. Hence, we are of the considered view that the State and its instrumentalities and/or the competent authority being the BBMP is required to issue the TDR as per the then prevailing guidance value fixed under Section 45B of Karnataka Stamp Act, 1957 namely 2,83,500 per sq. meter for Bellary Road and 2,04,000 per sq. meter for Jayamahal road as indicated under the notifications issued under Section 45B of the Karnataka Stamp Act.

23. Yet the fact remains that subsequent to the same the State has calculated the value of the TDR in terms of the Order dated 22.04.2024 and 06.06.2024 as

approved by the provisional acceptance order dated 07.06.2024, the correctness of which cannot be subject matter of the present contempt proceedings and the value of subject land as determined thereunder has not been accepted by this Court for the reasons already indicated supra. No doubt by way of attempting to purge in the contempt, these orders have been passed. The State and its authorities have no doubt dragged their feet in implementing the orders of the Court.

However, there seems to be thin line of doubt which has arisen in the mind of State and its authorities as regards the valuation and in this direction if steps have been taken to protect the interest of the revenue and several meetings have been held and these aspects are placed before the State Cabinet and a decision has been taken by the State cabinet, it cannot be construed or held that State is not willing to implement the order and particularly in the background of several orders having been passed though not in consonance with the orders dated 21.11.2014 and 17.05.2022. Hence, we deem it proper to extend one final opportunity to report compliance within a time frame.

24. Since we have opined that the State and its authorities have intentionally dragged its feet for long number of years and having attempted to tap all the mirage remedies and left with no other option and to stave off these proceedings have passed the orders dated 15.03.2024, 22.04.2024, 24.05.2024 and 10.06.2024 to utilise the subject land for road widening, fixing the extent to which each of the claimants would be entitled for compensation and to issue the TDR on an estimate value which is not accepted by this Court, still an opportunity to issue TDR's as per market value as envisaged under Karnataka Stamp Act, 1957 as observed hereinabove ought to be extended to the respondents/contemnors.

25. Hence, we direct the respondent authorities to issue the TDR as per the value noticed hereinabove in favour of the respective claimants within six (6) weeks from today. We also make it abundantly clear that issuance of the TDR certificates would be subject to further orders that may be passed by this Court while disposing of the appeals which are pending before the larger Bench and both parties are at liberty to bring this fact to the notice of the court adjudicating the appeals. This order would also have no bearing on the respective contentions of both the parties in pending appeals or on any other collateral proceedings.

We also make it explicitly clear that the order dated 19.03.2024 to the extent of imposing additional conditions is hereby recalled, as it is diametrically opposite to the order dated 17.05.2022 and 21.11.2014. The directions issued under Orders dated: 21.11.2014 and 17.05.2022 shall be complied by the competent authority of BBMP keeping in mind the observations made hereinabove within six (6) weeks from today and compliance affidavit shall be filed within the said period failing which the Commissioner, BBMP and the competent authority for issuance

of TDR shall appear in person before this Court for having failed to comply with the orders of this Court, to enable this Court to pass further orders. On account of the faux pas situation that has been created by the respondent authorities, we direct that each of the contemnors shall be paid a sum of Rs. 1 lakh each towards the cost of these proceedings except complainant in C.P. No. 578 of 2022.

26. In the light of the aforesaid observations contempt petition Nos.688 of 2021, 716 of 2023, 555 of 2024, 556 of 2024 and 585 of 2024 are allowed in above terms, CP No. 578 of 2022 stands disposed of reserving liberty to the complainants to pursue their grievance before the competent authority for issuance of TDR on resolution of the inter se dispute and it is needless to state that successful party would be entitled to receive the TDR as ordered by this Court vide Order dated 21.11.2014, 17.05.2022 and 19.03.2024.

27. All pending applications stands consigned to records. For reporting compliance and/or appearance of the contemnors as the case may be. List these matters on 22nd January 2025.

.....J. (M.M. Sundresh)

.....J. (Aravind Kumar)

New Delhi,

December 10, 2024

1 (2014) 3 SCC 373

2 (1996) 6 SCC 14

3 (2021) 15 SCC 338

4 2014 (16) SCC 204 para 12

5 (2007) 11 SCC 374

IN THE SUPREME COURT OF INDIA

Jayedeepsinh Pravinsinh Chavda & Ors.
Vs.
State of Gujarat

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 7957 of 2024]

HEADNOTE – Merely because wife didn't file complaint under Sec. 498A IPC for many years doesn't mean there was no cruelty by husband

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present criminal appeal arises from an order of the Gujarat High Court, dated 09.05.2024, whereby the Court rejected the Criminal Revision Application No. 536 of 2024 filed by the appellants herein and refused to discharge the appellants - accused from offences punishable under sections 306, 498A and 114 of the Indian Penal Code, 1860.

3. FIR No. 11206038210259 of 2021 dated 18.04.2021 was registered at the instance of the deceased's father against the appellants herein for offences under sections 306, 498A, 114 of the IPC. It was alleged that the appellant no.1 was married to the deceased - wife in the year 2009. The deceased - wife was residing in the matrimonial house with her in-laws, that is, appellant nos. 2 and 3. For the first five years of the marriage, no child was born to the couple. The deceased - wife was subjected to physical and mental harassment owing to this and thus returned to her parental home.

When she returned to her matrimonial home on being convinced by her parents, a son was born to the deceased in the next few years. Around twelve months before the alleged incident, the deceased had informed her father - the informant that the appellant - accused had sold her ornaments, given to her as streedhan during her marriage, and whenever she demanded return of the same, she was physically and mentally harassed. On 18.04.2021, the informant received information that the deceased had committed suicide by hanging herself. It is alleged that it was due to the physical and mental harassment meted out by the appellant - accused that the deceased was compelled to commit suicide.

4. Appellants had earlier sought quashing of the FIR, which petition was dismissed by the High Court and even the Special Leave Petition before this Court against the dismissal order of the High Court was dismissed as withdrawn. The appellants thereafter preferred an application seeking discharge under Section 227 of the Code of Criminal Procedure, 19732 on the ground that, prima facie, the ingredients for the offence of abetment as provided under Section 107 of IPC are not made out against them.

As per the complaint the incident had taken place twelve months ago. In the circumstances prima facie instigation is not proved, therefore the offence as per sections 306, 498A, 114 of the IPC are not made out against them. The Sessions Court, vide order dated 28.02.2024, dismissed the discharge application observing that in the circumstances of the case, it did not seem just and proper to discharge or acquit any accused person without recording evidence on all the facts alleged.

5. Appellants challenged the above order before the High Court in a Criminal Revision Petition, wherein the High Court in the impugned order has dismissed the same and held that the appellants failed to bring any material on record to prove that a prima facie case is not made out to frame charges against them. The Court, while dismissing the revision petition, observed that at the stage of charge framing, the Court's role is preliminary and limited to determining whether a prima facie case exists. The test applied is whether the materials presented by the prosecution, taken at its face value, disclose ingredients of the alleged offence.

The Court is not required to evaluate the probative value of the evidence or assess its sufficiency for conviction. Instead, it only has to consider whether there is a strong suspicion that the accused might have committed the offence. This suspicion must be based on credible material and not on arbitrary conclusions. In the present case, witness statements revealed that the deceased had faced consistent physical and mental harassment by the accused. The harassment included selling the deceased's gold ornaments, which was her streedhan, and torturing her when she demanded their return.

Witnesses also indicated that the harassment intensified before her suicide, particularly during a recent family event, and directly contributed to her decision to end her life. These statements provided sufficient material to establish strong suspicion against the accused. The Court further noted that the appellants failed to present any material demonstrating that the allegations were patently absurd or inherently improbable. As such, the High Court upheld the decision of the Sessions Court to frame charges under Sections 306 and 498A of the IPC. The revision petition was dismissed, with the High Court finding it devoid of merit and an attempt to delay the trial.

6. Aggrieved by this judgment, the appellants are before us on several grounds, inter alia, that the allegations against them are completely baseless and they have been roped in on concocted facts and there is nothing on record to show how the appellants were even remotely involved in abetting the suicide of the deceased. Further, the appellants also claimed that allegations made against them in the FIR as well as statements brought on the record are vague and general, and do not constitute an offence either under section 306 or section 498A, IPC.

And thus, there is no prima facie case against them to condemn them to face trial as the key ingredient of mens rea required to make out a case under section 306, IPC is absolutely lacking. That apart, from the alleged selling of the ornaments there was no bone of contention between the deceased and the appellants. Having been together with appellant no. l for a duration of almost twelve years there has been no other complaint filed against any of the appellants under section 498A, IPC nor is the claim made by the informant that there was a constant demand for dowry or that the appellant kept the deceased badly or treated her badly.

The only instance, as alleged in the FIR, of harassment was allegedly met out to the deceased when she inquired about getting back the jewellery that was allegedly sold off by appellant no.1 and his family members which, admittedly, as per the order of the Trial Court, occurred a year prior to death of the deceased.

7. We have heard the learned counsels for parties and have perused the material on record. We find that the following issues arise for our consideration:

1. Whether a prima facie case under Section 498A, IPC is made out against the appellant - accused?

2. Whether a prima facie case under Section 306, IPC is made out against the appellant - accused?

3. Whether the appellant - accused can be discharged for the offences under sections 306 and 498A, IPC?

8. Section 498A, IPC provides for punishment to the husband or to relatives of the husband of a woman subjecting the woman to cruelty. 'Cruelty' under this provision has been explained to mean -

a. any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

b. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.

9. This Court in the case of U. Suvetha v. State3, laid down the following ingredients to constitute the offence under section 498-A, IPC:

i. The woman must be married;

ii. She must be subjected to cruelty or harassment; and

iii. Such cruelty or harassment must have been done either by husband of the woman or by the relative of her husband.

10. This Court has also held in the judgment in the case of State of A.P. v. M. Madhusudhan Rao4, that not every kind of harassment would amount to 'cruelty' within the meaning of the provision, to constitute the offence punishable therein. Every case has to be analysed on its individual facts to assess whether the act of the accused persons constitutes cruelty. Further, cruelty can either be mental or physical, and it is to be seen on the facts of each case.

11. From the above understanding of the provision, it is evident that, 'cruelty' simpliciter is not enough to constitute the offence, rather it must be done either with the intention to cause grave injury or to drive her to commit suicide or with intention to coercing her or her relatives to meet unlawful demands.

12. In the present case, the deceased has committed suicide after twelve years of marriage. In these twelve years, the informant and other witnesses on record have stated that the deceased had informed them on multiple occasions that she was subjected to physical and mental harassment by the appellants herein.

It has also been stated that once before she had returned to her parental home owing to the alleged cruelty and was later sent back to her matrimonial house. Deceased's father, who is the informant, has also stated that around twelve months prior to her death, the appellants had sold the deceased's streedhan and had tortured her when she demanded them back. The same has also been stated by her relatives who have been examined by the Investigating Officer during investigation.

13. The appellants' argument that the deceased had not made a single complaint for cruelty or harassment against the appellants in the twelve years of marriage cannot be sustained. Merely because she did not file any complaint for twelve years does not guarantee that there was no instance of cruelty or harassment.

14. Further, the argument that ingredients of section 498A, IPC are not made as the allegations made therein are general and vague, also does not strengthen the

case of the appellants as the allegations, with specific, instances stated by the informant and other witnesses prima facie constitute a case for offence under section 498-A, IPC. From a perusal of the FIR, findings of the Investigating Officer in the chargesheet as well as the statements of the deceased's cousins recorded during investigation prima facie indicate that the deceased was subjected to physical as well as mental cruelty by her husband and the in-laws.

There is also the specific instance related to the alleged selling of the gold ornaments and subsequent cruelty upon the demand for return made by the deceased. A preliminary analysis, as required during the stage of charge-framing, points towards the probable commission of the offence of cruelty as provided under section 498-A, IPC.

15. Hence, the appellants cannot be discharged for offence under section 498-A, IPC and should be charged with and tried for the same. 16. Section 306 of the IPC provides for punishment for the offence of abetment of suicide. It has to be read with Section 107 of the IPC which defines the act of 'abetment'. The provisions read as follows:

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

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

First.-Instigates any person to do that thing; or

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

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

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

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

17. Section 306 of the IPC penalizes those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that

the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107 of the IPC. These conditions include the accused instigated or encouraged the individual to commit suicide, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

18. For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of clear mens rea-the intention to abet the act-is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide. The same position was laid down by this Court in S.S. Chheena v. Vijay Kumar Mahajan5, wherein it was observed that:

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

19. To bring a conviction under section 306, IPC it is necessary to establish a clear mens rea to instigate or push the deceased to commit suicide. It requires certain such act, omission, creation of circumstances, or words which would incite or provoke another person to commit suicide. This Court in the case of Ramesh Kumar v. State of Chhattisgarh6, defined the word "instigate" as under:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation

may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

20. The essential ingredients to be fulfilled in order to bring a case under Section 306, IPC are:

i. the abetment;

ii. the intention of the accused to aid or instigate or abet the deceased to commit suicide.

21. Thus, to bring a case under this provision, it is imperative that the accused intended by their act to instigate the deceased to commit suicide. Thus, in cases of death of a wife, the Court must meticulously examine the facts and circumstances of the case, as well as assess the evidence presented. It is necessary to determine whether the cruelty or harassment inflicted on the victim left them with no other option but to end their life. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that led to the suicide. Mere allegations of harassment are insufficient to establish guilt. For a conviction, there must be evidence of a positive act by the accused, closely linked to the time of the incident, that compelled or drove the victim to commit suicide.

22. It is essential to establish that the death was a result of suicide and that the accused actively abetted its commission. This can involve instigating the victim or engaging in specific actions that facilitated the act. The prosecution must prove beyond doubt that the accused played a definitive role in the abetment. Without clear evidence of an active role in provoking or assisting the suicide, a conviction under Section 306 IPC cannot be sustained.

23. The act of abetment must be explicitly demonstrated through actions or behaviors of the accused that directly contributed to the victim's decision to take their own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation. Furthermore, these actions must be proximate to the time of the suicide, showcasing a clear connection between the accused's behavior and the tragic outcome. It is only through the establishment of this direct link that a conviction under Section 306 IPC can be justified. The prosecution bears the burden of proving this active involvement to hold the accused accountable for the alleged abetment of suicide. The same position has been laid down by this court in several judgments, such as:

i. M. Mohan v. State7;

ii. Amalendu Pal alias Jhantu v. State of West Bengal8;

iii. Kamalakar v. State of Karnataka9.

24. Therefore, for a conviction under Section 306 IPC, there must be clear evidence of direct or indirect acts of incitement to commit suicide. The cause of suicide, especially in the context of abetment, involves complex attributes of human behavior and reactions, requiring the Court to rely on cogent and convincing proof of the accused's role in instigating the act. Mere allegations of harassment are not enough unless the accused's actions were so compelling that the victim perceived no alternative but to take their own life. Such actions must also be proximate to the time of the suicide.

The Court examines whether the accused's conduct, including provoking, urging, or tarnishing the victim's self-esteem, created an unbearable situation. If the accused's actions were intended only to harass or express anger, they might not meet the threshold for abetment or investigation. Each case demands a careful evaluation of facts, considering the accused's intent and its impact on the victim.

25. This Court in Ude Singh v. State of Haryana10, held that to convict an accused under Section 306 IPC, the intent or mental state to commit the specific crime must be evident when assessing culpability. It was observed as under:

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions.

In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions abovereferred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide.

But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.

The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide.

However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

26. On a careful and close consideration of the facts and the material on record in the present case and in light of the law laid down by this Court regarding Section 306, IPC, there appears no proximate link between the alleged facts, instances of harassment and her subsequent death by hanging. The alleged incident of selling of gold ornaments and subsequent physical and mental harassment, as alleged, occurred almost a year before the FIR was registered at the instance of the father of the deceased.

Even the statements of the deceased's cousins only mention instances which occurred a year prior to the death of the deceased. Further, selling of gold ornaments and the same was followed by discord and harassment upon their demand, even if true, do not reflect any intention to instigate, incite or provoke the deceased to commit suicide.

Mere harassment and such issues between the wife and her husband along with the in-laws do not appear to create a scenario where she was left with no option other than to end her life. There is, therefore, absence of mens rea to instigate suicide of the deceased persons. Therefore, prima facie, it appears that the appellants did not have the requisite mens rea and neither did they commit any positive or direct act or omission to instigate or aid in the commission of suicide by the deceased.

27. Hence, the ingredients for the offence under Section 306, IPC are not made out even on a preliminary analysis of the material on record. Therefore, they

cannot be charged under Section 306, IPC and thus deserve to be discharged of the same.

28. Consequently, the appeal filed by the appellants is partly allowed, they are discharged from the charges under Section 306 of the IPC, however the charge under Section 498A of the IPC is upheld and the trial under this provision shall proceed against them.

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

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

December 10, 2024

1 IPC

2 CrPC

3 (2009) 6 SCC 757

4 (2008) 15 SCC 582

5 (2010) 12 SCC 190

6 (2001) 9 SCC 618

7 (2011) 3 SCC 626

8 (2010) 1 SCC 707

9 (2007) SCC OnLine Kar 824

10 (2019) 17 SCC 301

IN THE SUPREME COURT OF INDIA

Navratan Lal Sharma
Vs.
Radha Mohan Sharma and Ors.

[Civil Appeal No. 14328/2024
@ SLP (Civil) No. 27723 of 2024]

HEADNOTE – If the compromise entered between the parties was not adhered to, there is no bar to filing a recall application seeking restoration of the proceedings under Order 23 Rule 3 CPC. The validity and legality of a compromise agreement can be challenged even after a decree is passed.

JUDGMENT

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. The appellant initially filed a suit for declaration and injunction, which was dismissed by the Trial Court. The appellant then filed a first appeal. During its pendency, the parties reached a compromise, agreeing to dispose of the appeal based on its terms. On 14.07.2022, the High Court decided the appellant's application under Order 23, Rule 3 of the Code of Civil Procedure, 19081 and disposed of the first appeal in terms of the compromise. However, when the respondent failed to comply with the compromise terms, the appellant filed an application to restore the appeal. Unfortunately, this application was dismissed by the order impugned before us, citing that the High Court had not granted liberty for restoration of the appeal while recording the compromise.

3. After careful consideration of the statutory framework and Order 23, Rules 3 and 3A, as informed by relevant judicial precedents, we have allowed the appeal. We have directed that, in such circumstances, restoration is the sole remedy, which the aggrieved party may exercise as a statutory right.

4. The short facts are that the appellant is the owner of the suit property. He filed a suit against the respondents for cancellation of the power of attorney dated 19.07.2010 and 27.07.2010, sale deeds dated 31.08.2010 and 15.09.2010, and grant of permanent and mandatory injunction on the ground that respondent no. 1 forged the abovementioned power of attorney and subsequently entered into the abovementioned sale deeds for the suit property in favour of respondent no. 2. The Trial Court dismissed the suit on 17.02.2014, and the appellant preferred a first appeal before the Rajasthan High Court.

5. During the pendency of the first appeal, the appellant and respondent no. 2 entered into a compromise, recorded in deed dated 18.05.2022 and corrigendum compromise dated 08.07.2022. The compromise contemplated development of the suit property, as per which certain amounts were to be paid by respondent no. 2 to the appellant. Paras 4 and 7 of the compromise deed dated 18.05.2022 are relevant and extracted hereinbelow for ready reference:

"(4) That there is a first appeal no. between the parties in the Honourable State High Court. 210/2014 is pending. The said compromise will be presented in other cases and both the parties will be able to get them resolved on the basis of the compromise, but if the terms of the compromise are violated then the second party will have the right to get the said appeal number 210/2014 reinstated by submitting an application.

(7) That the first party issued a check dated 18/5/22 to the second party, check no. 160711 amount of Rs 11,00,000/- has been given today itself, payment can be taken by presenting the check in the bank on the date written in it. After giving the lease of the developed land, an amount equal to the value of the said amount will be transferred to Khasra No. Out of 11, the second party will give it to the first party. If any check is dishonoured, the agreement will be considered void."

6. The parties filed an application under Order 23, Rule 3 of the CPC for disposal of the first appeal as per the compromise, wherein it was stated that respondent no. 1 does not have any objection to the compromise and that the appellant can file for restoration of the appeal if the agreed payment is not completed and the cheques are dishonoured.

7. By order dated 14.07.2022, the High Court disposed of the first appeal by taking the compromise dated 18.05.2022 and the corrigendum compromise dated 08.07.2022 on record and making them a part of its order. However, it also held that the parties do not have liberty to get the first appeal restored. The relevant portion of the order reads:

"5. This Court, without entering into the merits of appeal but without giving any liberty to get restored the first appeal, is of considered opinion that when both parties have entered into the terms of compromise and have agreed to abide by the terms of compromise, this appeal deserves to be disposed of accordingly.

6. Hence the compromise dated 18.05.2022 along with corrigendum compromise dated 08.07.2022 is taken on record and the first appeal is disposed of in terms of compromise.

7. The compromise dated 18.05.2022 along with corrigendum compromise dated 08.07.2022 shall be treated as part of this order."

(emphasis supplied)

8. When the cheques issued by respondent no. 2, said to be in furtherance of the compromise were dishonoured, the appellant moved the High Court for restoration of the appeal alleging fraud and illegal interference with his possession and attempts to get the land converted without paying the agreed amounts. By the order impugned before us, the High Court dismissed the application on the only ground that in its order dated 14.07.2022, the Court clearly recorded that the parties were not given liberty to restore the appeal.

The High Court observed that since the order dated 14.07.2022 was a consensual order and the parties were aware that there was no liberty to get the first appeal restored, the application for restoration was not entertainable even if the compromise is not acted upon. The short order of the High Court dated 19.10.2023 is extracted hereinbelow:

"1. Instant misc. application has been filed by the appellant-plaintiff seeking to restore S.B. Civil First Appeal NO.210/2014 by recalling the order dated 14.07.2022 whereby and whereunder the first appeal was disposed of in terms of compromise dated 18.05.2022 arrived at between parties.

2. It has been stated in the application that cheques issued by respondents in terms of the compromise have been dishonoured and respondents have not adhered to the terms of the compromise, hence the first appeal be restored to be heard on merits.

3. By perusal of the order dated 14.07.2022, more particularly para No.5, it stands clear that this Court while disposing of the first appeal in terms of the compromise has clearly observed that parties would be not at liberty to get restore this first appeal. The order dated 14.07.2022 is consensual order and both parties were well aware that no liberty to restore the first appeal is available, even though the compromise may or may not be acted upon. Therefore, the application for restoration of first appeal is not entertainable.

4. Thus, in view of above, the prayer for restoration of the first appeal is uncalled for. In case, the terms of the compromise dated 18.05.2022 have not been complied with, the applicant-plaintiff is at liberty to take appropriate steps in accordance with law.

5. With aforesaid observations, without recalling of the order dated 14.07.2022, the misc. application stands disposed of.

6. Stay application and any other pending application, if any, stand disposed of."

9. We have heard the learned counsels for the parties.

10. The relevant provisions under the CPC that govern compromise decrees are contained in Order 23, Rules 3 and 3A, which are extracted hereunder:

"3. Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

3A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

11. This Court in Banwari Lal v. Chando Devi2 has laid down the law on the disposal of a proceeding in accordance with a compromise between the parties and on recall of a compromise decree. It held that under Order 23, Rule 3, the Court must be satisfied upon applying judicial mind that the agreement between the parties is lawful before accepting the same and disposing the suit.

Further, the proviso and the Explanation to Order 23, Rule 3 mandate that the court must "decide the question" of whether an adjustment or satisfaction has been arrived at, and it is clarified that void and voidable agreements under the Indian Contract Act, 18723 shall be deemed to be not lawful.4 Upon such reading of the provision, it held that the court recording the compromise can examine the legality of the agreement, in accordance with the provisions of the Contract Act, even after the compromise decree is passed and when a party moves an application for recall.5

12. The law on the issue is summarised in Pushpa Devi Bhagat v. Rajinder Singh6. In this case, the Court also took note of Section 96(3) of the CPC7 and the deletion of Order 43, Rule 1(m) of the CPC by way of an amendment in 1976, as well as Order 23, Rule 3A. The consequence of these is that an appeal against a consent decree and an order recording (or refusing to record) a compromise is not maintainable, nor can a fresh suit be filed for setting aside such decree.

Hence, the only remedy available to the aggrieved party is to approach the court that recorded the compromise under the proviso to Order 23, Rule 3. The Court held:

"17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made."

(emphasis supplied)

13. In the present case, the appellant has alleged fraud by the respondents in his recall application, which he bears the burden to prove.8 The Explanation to Order 23, Rule 3 clearly states that void and voidable agreements under the Contract Act shall not be deemed to be lawful. By alleging fraud in his recall application, the appellant is effectively impugning the legality of the compromise as proving the same would render the agreement voidable under the Contract Act.9

When the court disposes of a proceeding pursuant to a compromise under Order 23, Rule 3, it bears the duty to examine this issue and be satisfied that the agreement or compromise is lawful. The proviso explicitly obligates the court that entertains the petition of compromise to determine this issue, and as per the

law laid down by this Court in Banwari Lal (supra), this issue can be agitated by way of a recall application even after the compromise decree has been passed.

14. By the impugned order, the High Court dismissed the application solely on the ground that the order dated 14.07.2022 recording the compromise does not grant liberty to restore the appeal. We are of the opinion that this is not the correct approach, as it defeats the statutory right and remedy available to the appellant under the CPC. This Court in Pushpa Devi Bhagat (supra), as well as several other cases,10 has held that only the court that entertains the petition of compromise can determine its legality, at the time of recording the compromise or when it is questioned by way of a recall application. No other remedy is available to the party who is aggrieved by the compromise decree as an appeal and fresh suit are not maintainable under the CPC.

15. In view of this legal position, the High Court was not correct in curtailing the statutory remedy available to the appellant in the first place.11 In fact, when there is a statutory remedy available to a litigant, there is no question of a court granting liberty to avail of such remedy as it remains open to the party to work out his remedies in accordance with law.12

Therefore, there was no occasion for the court to deny liberty to file for restoration by its order dated 14.07.2022 and the consequent dismissal of the recall application by the impugned order on this ground alone does not arise. Further, as a matter of public policy, courts must not curtail statutorily provisioned remedial mechanisms available to parties.

16. It is also relevant that para 4 of the compromise deed dated 18.05.2022 recognises the appellant's right to file for restoration of appeal in case of non-compliance. Further, para 7 stipulates that the compromise will be considered void in case of nonpayment.

Reading these clauses together, it is clear that the compromise deed itself recognises the parties' right to approach the court to question its validity in certain circumstances. These clauses are in line with the public policy consideration of access to justice reflected in Section 28 of the Contract Act that stipulates that agreements which restrain a party from enforcing his rights through legal remedies are void.

17. In this view of the matter, we allow the appeal, set aside the impugned order dated 19.10.2023, and remand the matter to the High Court to decide the application for recall on its own merits. Needless to say that we have not expressed any opinion on the merits of the matter.

18. No order as to costs. Pending applications, if any, stand disposed of.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Manoj Misra]

New Delhi;

December 12, 2024.

1 Hereinafter "CPC".

2 (1993) 1 SCC 581.

3 Hereinafter "the Contract Act".

4 Banwari Lal (supra), paras 11-13.

5 ibid, para 14.

6 (2006) 5 SCC 566.

7 Section 96(3) of the CPC reads:

"96. Appeal from original decree.-

(3) No appeal shall lie from a decree passed by the Court with the consent of parties."

8 Shanti Budhiya Vesta Patel v. Nirmala Jayprakash Tiwari, (2010) 5 SCC 104; K. Srinivasappa v. M. Mallamma, (2022) 17 SCC 460.

9 Section 19 of the Contract Act provides that when consent to an agreement is caused by fraud, it is voidable at the option of the party whose consent was so caused.

10 R. Rajanna v. S.R. Venkataswamy, (2014) 15 SCC 471, para 11; Triloki Nath Singh v. Anirudh Singh, (2020) 6 SCC 629, paras 17 and 18; R. Janakiammal v. S.K. Kumaraswamy, (2021) 9 SCC 114; Sree Surya Developers & Promoters v. N. Sailesh Prasad, (2022) 5 SCC 736, para 9; Basavaraj v. Indira, (2024) 3 SCC 705, para 9.

11 See Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787, paras 28 and 36.

12 See Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers, (2003) 6 SCC 659, para 36.

IN THE SUPREME COURT OF INDIA

Om Prakash Yadav
Vs.
Niranjan Kumar Upadhyay & Ors.

[Criminal Appeal Nos. 5267-5268 of 2024
arising out of SLP. (Crl.) Nos. 8239-8240 of 2018]

HEADNOTE – A police official who is accused of lodging a false case cannot claim that he cannot be prosecuted without the sanction under Sec. 197 Cr.P.C.

The protection of Sec. 197 Cr.P.C. is available only for acts discharged in the course of official duties. Since fabrication of evidence and filing bogus cases are not part of the official duties of a police official, the protection under Sec. 197 Cr.P.C. are not applicable to such acts.

JUDGMENT

Vikram Nath, J.

J.B. Pardiwala, J.:

1. Leave granted.

2. These appeals arise out of the common Judgment and Order passed by a learned Single Judge of the High Court of Judicature at Allahabad dated 19.04.2018 in Criminal Misc. Writ Application Nos. 4080 of 2009 and 32494 of 2009 respectively filed by the respondent nos. 1, 3, 4 and 5 respectively under Section 482 of the Code of Criminal Procedure, 1973 (for short, the "CrPC") whereby the High Court allowed the applications and quashed the proceedings of Case No. 67 of 2008 (State vs. Niranjan Kumar Upadhyay) as well as Case No. 67-A of 2009 (State vs. Ram Prakash Gunkar and others) pending before the CJM, Firozabad, both arising out of Case Crime No. 617 of 2007 registered for the offence punishable under Sections 147, 148, 149, 307, 302, 201 and 120-B respectively of the Indian Penal Code, 1860 (for short, the "IPC") with the Dakshin Police Station, District Firozabad, Uttar Pradesh.

A. FACTUAL MATRIX

3. On 12.10.2007, at 09:15 am, Om Prakash Yadav (hereinafter, the "appellant") lodged a First Information Report (hereinafter, "FIR") as Case Crime No. 617 of 2007 for the offence punishable under Sections 147, 148, 149, 302 and 307 of IPC respectively with the Dakshin Police Station, Firozabad, Uttar Pradesh,

against Surender Singh Gurjar, Veerbhan Gurjar, Ashok Dixit, Pappu Dixit, Sanjay Dixit and three others.

The FIR alleged that the appellant's brother, Suman Prakash Yadav who was a teacher at the Tilak Inter College, Firozabad, was killed and his brother's son Harsh aged about 4 ½ years was grievously injured by the aforesaid accused persons by indiscriminately firing with their handguns near the Suhagnagar Crossing, at 08:30 am, on 12.10.2007. The appellant claimed that the incident was witnessed by him and several others.

4. On the same day, another FIR was registered as Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior, Madhya Pradesh, for the offence punishable under Section 34 of the Madhya Pradesh Excise Act, 1915 (hereinafter, the "Excise Act") against Ashok Dixit who is the main accused of Case Crime No. 617 of 2007. The FIR which was lodged by Head Constable Ram Baran Singh Yadav (hereinafter, "respondent no.5") stated that based on the information received from an informant while patrolling the area, the accused Ashok Dixit was arrested for carrying 12 bottles of illegal foreign liquor near the Thatipur Crossing.

It was stated therein that the respondent no. 5 along with A.S.I. Ram Prakash Gunkar (hereinafter, "respondent no. 4") and Head Constable Vijay Bahadur Singh (hereinafter, "respondent no. 3") of the Thatipur Chauki, Murar Police Station, had seized the illegal liquor and arrested the accused at around 09:30 am on 12.10.2007. It was further added that the accused, Ashok Dixit, was later released on bail by the Station House Officer (hereinafter, "SHO"), D.S. Khushawa of the Murar Police Station, on the same day, upon furnishing the necessary surety since the offence under Section 34 of the Excise Act was a bailable one. On 26.10.2007, the concerned IO is said to have submitted a Charge Sheet in connection with Case Crime No. 967 of 2007 against Ashok Dixit before the Chief Judicial Magistrate (hereinafter, "CJM"), Gwalior.

5. The Investigating Officer (hereinafter, "IO") at Dakshin, Firozabad undertook further investigation and recorded the statements of several witnesses under Section 161 CrPC in connection with Case Crime No. 617 of 2007. On 05.01.2008, the Charge Sheet No. 3 of 2008 was submitted before the CJM, Firozabad, against 12 persons namely Ashok Dixit, Pappu Dixit, Sanjay Dixit, Surender Singh Gurjar, Veerbhan Gurjar, Sandeep, Swadesh Bhardwaj, Ashu, Suresh, Pancham, Rajesh and Devender.

However, the charge sheet stated that the investigation against Niranjan Kumar Upadhyay (hereinafter, "respondent no. 1"), respondent no.3, respondent no. 4, respondent no. 5 and two other individuals in regard to the FIR registered for the

offence under Section 34 of the Excise Act in Murar, Gwalior allegedly for the purpose of shielding the accused, Ashok Dixit, was still pending.

6. Subsequently, on 23.01.2008, the IO at Dakshin, Firozabad recorded the statements of SHO D.S. Khushawa, respondent no. 3, respondent no. 4 and respondent no. 5 respectively of the Murar Police Station, Gwalior under Section 161 of CrPC.

7. Soon thereafter, on 30.01.2008, the IO at Dakshin, Firozabad moved an application before the CJM, Gwalior, Madhya Pradesh, requesting that the proceedings in Case No. 15003 of 2007 relating to the Case Crime No. 967 of 2007 under Section 34 of the Excise Act filed against the accused Ashok Dixit, pending before him, be stayed. The application alleged that the respondent no. 1 who was posted in Gwalior as Town Inspector (for short, "TI") was a relative of the accused Ashok Dixit.

It was further alleged that the respondent nos. 1, 3, 4 and 5 respectively had conspired to shield the accused from the offence of murder by creating a bogus case under Section 34 of the Excise Act with the sole object of providing the accused with an alibi for the crime alleged to have been committed in Firozabad. The incident in Firozabad occurred at 08:30 am while the incident in Gwalior occurred at 09:30 am on the same day.

The distance between Gwalior and Firozabad being 160 kilometers, the same could not have been covered in a duration of one hour by road. The application stated that, since the accused, Ashok Dixit, might confess his guilt in connection with the offence under Section 34 of the Excise Act with a view to save himself from the offence of murder, the proceedings in Case Crime No. 617 of 2007 pending before the CJM, Firozabad might get adversely affected if the proceedings in Case No. 15003 of 2007 were allowed to be continued.

8. Upon due consideration of the aforesaid application, the CJM, Gwalior vide its order dated 05.02.2008, directed the SHO of the Murar Police Station, Gwalior, to furnish a report before the Court. On 12.02.2008, the statements of respondent nos. 3, 4 and 5 respectively, were recorded by the SHO of the Murar Police Station, Gwalior and an enquiry report was furnished on 17.02.2008 before the CJM, Gwalior. Upon perusal of the enquiry report, the CJM, Gwalior vide its order dated 23.02.2008 rejected the application dated 20.01.2008 filed by the IO at Dakshin, Firozabad, as being baseless.

9. On 14.04.2008, the IO at Dakshin, Firozabad filed an application before the CJM, Firozabad for the issuance of non-bailable warrant against the respondent nos. 1, 3, 4 and 5 respectively along with two other persons. In pursuance of the said application, on 21.04.2008, the CJM, Firozabad issued a non-bailable

warrant against the aforesaid 6 accused which included the respondent nos. 1, 3, 4 and 5 respectively, herein. However, it is the case of the IO at Firozabad that the respondent nos. 1, 3, 4 and 5 were absconding and therefore, proceedings under Sections 82 and 83 CrPC respectively were also initiated and completed against them.

10. On 02.05.2008, the IO at Dakshin, Firozabad filed an application before the D.I.G., Gwalior, Madhya Pradesh through the D.I.G., Agra, Uttar Pradesh, requesting sanction for prosecution of the respondent nos. 1, 3, 4 and 5 respectively. Further, on 07.05.2008, the Superintendent of Police, Firozabad, also sent a letter to the D.I.G., Gwalior, requesting for the sanction for prosecution under Section 197 CrPC so that the respondents could be chargesheeted.

11. In the meantime, the respondent no.1 preferred Criminal Misc. Writ Petition No. 10181 of 2008 before the High Court of Allahabad and vide order dated 23.07.2008, the arrest of respondent no. 1 was stayed.

12. On 30.07.2008, the Superintendent of Police, Firozabad, addressed one another letter to the D.I.G., Gwalior in the form of a reminder to accord sanction under Section 197 CrPC for prosecuting the respondents herein. However, on 02.08.2008, the D.I.G., Gwalior replied to the Superintendent of Police, Firozabad, informing him that sanction for prosecution cannot be granted till the disposal of the trial in connection with Case Crime No. 967 of 2007 registered at the Murar Police Station, Gwalior for the offence under Section 34 of the Excise Act.

13. On 28.08.2008, the appellant filed a Misc. Criminal Case. No. 5971 of 2008 under Section 482 CrPC before the High Court of Madhya Pradesh at Gwalior for quashing the criminal proceedings concerning Case No. 15003 of 2007 arising out of Case Crime No.967 of 2007 registered for the offence under Section 34 of the Excise Act pending before the Court of CJM, Gwalior. In the alternative, it was prayed that the proceeding be stayed till a decision is arrived at in the case pending against Ashok Dixit before the CJM, Firozabad, concerning Case Crime No. 617 of 2007. The High Court vide its order dated 25.08.2009 stayed the proceedings in Case No. 15003 of 2007 by observing as follows:

"12. In the light of the above legal position, the Appellant who is a complainant in the criminal case in connection with Crime No.617 of 2007 registered against respondent No.2 at Firozabad has locus standi to file this petition under section 482 of Cr.P.C. Now legal aspect and circumstances of the case is to be considered. Suppose for the sake of argument, if respondent No.2 admits his guilt in the case of Excise Act pending in the Court of CJM Gwalior what will be its effect?

He will have a good ground of alibi that at the time of alleged murder of Appellant's brother he was not present at Firozabad but was present at Gwalior which is 160 Kms. away from Firozabad. So it will cause a great prejudice in that case and on the other hand, in the interest of justice, if proceedings pending in the court of CJM Gwalior are stayed, it will not cause any prejudice to respondent No.2. Moreover, it will avoid conflicting judgments of two Courts. Therefore, it is good case for invoking inherent powers of the court.

13. Considering the facts and circumstances of the case, petition is allowed and further proceedings pending in the court of CJM Gwalior in connection with Excise. Act pending in the CJM Gwalior concerning Case No.15003 of 2007 are hereby stayed till disposal of the Criminal Case pending at Firozabad concerning Crime No.617 of 2007."

(emphasis supplied)

14. After a period of almost one year, on 25.10.2008, the IO at Dakshin, Firozabad recorded the statements of two persons i.e., Ramesh Yadav and Barelal under Section 161 CrPC. Both stated that they had witnessed the respondent no.1 being directly involved in the creation of a false case under Section 34 of the Excise Act in order to provide the accused Ashok Dixit the benefit of an alibi. Soon thereafter, on 03.11.2008, a supplementary Charge Sheet No. 3A of 2008 in case Crime No. 617 of 2007 was filed against the respondent no. 1 for the offence punishable under Sections 147, 148, 149, 307, 302, 201 and 120-B IPC respectively for being involved in hatching a conspiracy of murder that occurred in Firozabad.

It was the case of the IO at Firozabad that the Charge Sheet was filed since he had found out that the respondent no. 1 was not posted at the Murar Police Station, Gwalior at the time of the arrest of Ashok Dixit for the offence under Section 34 of the Excise Act and therefore, the provision of sanction under Section 197 CrPC would not be attracted against the respondent no. 1. It is pertinent to observe here that it is the case of the respondent no. 1 herein that the Charge Sheet No. 3A of 2008 was backdated to 03.11.2008 when in fact it was actually filed on 24.11.2008 before the Magistrate.

15. The mother of respondent no.1, while alleging that the appellant was trying to falsely implicate the respondent no. 1 in the case of murder, moved an application before the D.I.G., Firozabad, requesting that the investigation be transferred from the Dakshin Police Station to some other police station. The D.I.G., Firozabad vide order dated 11.11.2008 directed the Senior Superintendent of Police, Firozabad (for short, "S.S.P.") to look into the matter.

Thereafter, the S.S.P. called for a status report on the case from the Circle Officer vide letter dated 14.11.2008. The status report submitted by the Circle Officer revealed that while the respondent no.1 had obtained a stay on his arrest from the High Court, the arrest of the other accused remained pending and the investigation was still going on. Upon consideration of the same, the S.S.P., Firozabad, vide order dated 20.11.2008 transferred the investigation from the Dakshin Police Station to the Uttar Police Station at Firozabad, with immediate effect.

16. The CJM, Firozabad took cognizance of the Charge Sheet No. 3A of 2008 vide order dated 24.11.2008. Immediately, on 28.01.2009, the respondent no. 1 preferred Criminal Misc. Application No. 4080 of 2009 under Section 482 CrPC before the High Court of Allahabad seeking to quash the proceedings in Case No. 67 of 2008 (State vs. Niranjan Kumar Upadhyay) arising out of the above charge sheet in Case Crime No. 617 of 2007, pending before the CJM, Firozabad.

17. Later, on 25.02.2009, the Charge Sheet bearing No. 30 of 2009 was filed in the case of the respondent nos. 3, 4 and 5 respectively for the offence under Sections 147, 148, 149, 307, 302, 201 and 120-B IPC respectively for being involved in the conspiracy to commit murder of the appellant's brother at Firozabad. The CJM, Firozabad took cognizance of the same vide order dated 10.08.2009. On 29.11.2009, the respondent nos. 3, 4 and 5 respectively also preferred an application being the Criminal Misc. Application No. 32494 of 2009 under Section 482 CrPC before the High Court of Allahabad seeking to quash the proceedings of Case No. 67A of 2009 (State vs. Ram Prakash Gunkar and Ors.) arising out of the said charge sheet in Case Crime No. 617 of 2007 pending before the CJM, Firozabad.

18. During the pendency of the aforesaid two applications filed under Section 482 CrPC before the High Court, the Court of Additional District and Sessions Judge, Firozabad, completed the Sessions Trial No. 753 and 753A of 2008 respectively and vide the judgment & order dated 10.07.2015, held all the 12 accused, including Ashok Dixit, guilty of the offences under Sections 147, 148, 149, 307, 302 and 120-B IPC with which they were charged. The relevant observations made by the Trial Court are reproduced hereinbelow:

"The "plea of alibi" taken by accused Ashok Dixit that on the day of incident he was lodged in jail u/s 34, Excise Act at P.S. Murar, district Gwalior was with the inconsistent report of the Murar police officials and after investigation I.O. has submitted its report to SSP, Gwalior and JM, Gwalior and stated that the case was false. The above mentioned police officials have been suspended after conducting a departmental investigation also they have been named for conspiring the death along with accused Ashok Dixit in the charge sheet that has been presented before CJM, Firozabad in which they have been charged u/s 302, 120B I.P.C.

It is correct that the distance of 160 kilometres cannot be covered in one hour and if accused Ashok Dixit was at Murar, Gwalior at 9.30 a.m., then he cannot be involved in the commission of incident at Firozabad at 8.30 a.m. It was contended in this regard on behalf of the prosecution that accused Ashok Dixit is a cunning criminal. He showed his presence there colluding with Murar Police station, Gwalior in order to escape himself from the offence of murder.

The investigator SHO Shri Baldhari Singh made enquiries after going there, then the whole matter was found forged and the investigator gave an application to SSP Gwalior in this regard and also submitted an application before JM Gwalior Madhya Pradesh and keeping the investigation in progress, it was found that in order to save accused Ashok Dixit from the heinous crime like murder, the forged arrest and his release on bail has been shown by the police of Murar police station.

SSP Gwalior, on investigation, finding the whole case forged, has suspended all the officials involved in the said matter and initiated departmental inquiry against them and after collecting the evidence in the said case, a charge sheet has been filed in the court of CJM Firozabad against the said police officials Niranjan Upadhyay, T.I. Police Station Murar, Gwalior and Shailendra Singh and Triloki Gaur and ASI P.P. Gunkar, Head constable Vijay Bahadur and Head Constable. Rambaran Yadav under Section 147, 148, 149, 307, 302, 201, 120B IPC with regard to give cooperation in the conspiracy of murder under Section 120B IPC. A case No. 67 A/2008 State Versus Niranjan and others is pending in that regard in the court of CJM Firozabad and the warrant of the arrest of the accused persons have been issued.

The said file pending in the court of CJM was summoned on behalf of the prosecution in this regard, which is available on the file of the instant session trial which makes it clear that accused Ashok Dixit has shown his presence at 9.30 a.m. on the day of incident showing his arrest under Section 34 of Excise Act in order to escape from the case of murder of Suman Prakash colluding with the police officials of police station Murar, District Gwalior, Madhya Pradesh which was found forged in the investigation and charge sheet has been filed against the said police officials involving them in the conspiracy of murder and in order to save accused Ashok Dixit from punishment, the case of the same is pending in the court of CJM, Firozabad and warrant of arrest against all the police officials have been issued and SSP Gwalior has suspended them and departmental inquiry has been initiated against them.

All these police officials are absconding. Arrest warrants have been issued against them by CJM Court, Firozabad. The, copy of charge sheet of Case No.67 A/2008 State Versus Niranjan and others pending in the court of CJM has also been filed on record behalf of the prosecution. The proceedings of case

No.15003/2007 State Versus Ashok Dixit under Section 34 of Excise Act, police Station Murar pending before the CJM Court has been stayed by order dated 25.08.2009 by the Hon'ble High Court, bench at Gwalior passed in Misc. Case No.5971.

The copy of the order passed by the Hon'ble High court bench at Gwalior is filed on record from 613B/25 to 613B/30. SLP has been filed against the said order before the Hon'ble Supreme court which was not admitted for hearing, the copy of the same is filed on record at 613B/31, Therefore, no profit of case under Section 34 of Excise Act cannot be given to accused Ashok Dixit and his presence at Murar, District Gwalior at the time of incident under the case of 34 Excise Act has been found forged and the accused has made a forged plea of alibi colluding with the police officials."

(emphasis supplied)

19. The High Court at Allahabad heard the Criminal Misc. Writ Application Nos. 4080 of 2009 and 32494 of 2009 analogously and disposed them vide the common Judgment and Order dated 19.04.2018. The High Court quashed the proceedings in Case Nos. 67 of 2008 and 67A of 2009 respectively essentially on the ground that sanction to prosecute the respondent nos. 1, 3, 4, and 5 respectively under Section 197 CrPC was necessary & since it had not been obtained, the trial cannot proceed. The relevant observations are reproduced hereinbelow:

"Admittedly, the applicants are public servant and case was registered under Section 34 Excise Act against main accused of the murder in the discharge of public duty but the sanction to prosecute for the offence committed at Firozabad was not granted by the State of M.P. to prosecute the applicants for the offence committed within the jurisdiction of the Police Station, Dakhin at Firozabad (U.P.) as is evident from the Annexure SA-I and SA-II to the supplementary affidavit.

In the above circumstances, it ought not to be proper to allow the proceedings to be continued against the applicants and in case, the proceeding is allowed to continue against the applicants, it would be nothing but misuse of process of law. In view of what has been submitted and discussed above, the applications have substance and are liable to be allowed. Accordingly, the applications are allowed and the proceedings pending before CJM, Firozabad as Case No. 67 of 2008 (State Vs. Niranjan Kumar Upadhyay) as well as Case No. 67A of 2009 (State Vs. Ram Prakash Gunkar and others) in connected application arising out of Case Crime No. 617 of 2007 under Sections 147, 148, 149, 307, 302, 201, 120B IPC, P.S. Dakshin, District Firozabad are hereby quashed."

(emphasis supplied)

20. In such circumstances referred to above, the appellant (complainant) is here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

21. Mr. Ravindra Singh, the learned senior counsel appearing for the appellant submitted that the plea of Alibi which was taken by the accused Ashok Dixit on the ground that his arrest in connection with the offence under Section 34 of the Excise Act was effected on 12.10.2007, at 09:30 am, by the officials of the Murar Police Station, Gwalior, Madhya Pradesh, has been appropriately considered by the Trial Court at Firozabad in Sessions Trial No. 753 and 753A of 2008.

However, the said plea of alibi was outrightly rejected by the Trial Court by way of its well-reasoned judgment. The Trial Court categorically observed that the accused Ashok Dixit in connivance with the police officials of the Murar Police Station, Gwalior had managed to get a false case registered under Case Crime No. 967 of 2007 related to Section 34 of the Excise Act. The Trial Court had further observed that during the investigation, the presence and arrest of Ashok Dixit in Murar, Gwalior was found to be false & bogus and therefore, charge sheet came to be filed against those police officials for acting in collusion with Ashok Dixit.

Furthermore, those police officials have also been suspended and a departmental enquiry has been initiated against them. Therefore, it was submitted that the respondent no. 1 cannot assert that he has been erroneously implicated in Case Crime No. 617 of 2007 registered for the offence under Sections 147, 148, 149, 307, 302, 201 & 120-B of IPC with the Dakshin Police Station, Firozabad, Uttar Pradesh.

22. The counsel submitted that the High Court fell in serious error while passing the impugned order. The High Court could be said to have travelled beyond its jurisdiction by quashing the criminal proceedings against the respondents on the ground that the Trial Court has already decided the case against Ashok Dixit and the other accused. The Trial Court in Sessions Trial Nos. 753 and 753A of 2008 respectively arising out of Case Crime No. 617 of 2007 held Ashok Dixit guilty of the offence of murder of the appellant's brother.

23. The counsel submitted that the High Court erroneously quashed the criminal proceedings against the respondents saying that the accused respondents being public servants, the sanction to prosecute for the alleged offence is a must. It was submitted that the act of hatching a conspiracy to commit murder and creating a plea of alibi by instituting a false case, cannot be said to be done in the exercise of discharge of official duty. It was further submitted that no sanction is required

under Section 197 CrPC to prosecute an erring Government official/respondent no.1 herein for the reason that the respondent no. 1 was not posted at the Murar Police Station, Gwalior where the Case Crime No. 967 of 2007 was registered.

24. It was also submitted that the respondent no. 1 had managed with the police officials of the Murar Police Station, Gwalior, to get a false FIR being Case Crime No. 967 of 2007 registered under Section 34 of the Excise Act and thereby falsely showed the presence of Ashok Dixit at Murar, Gwalior on 12.10.2007 at 09:30 am i.e., on the same day on which the Case Crime No. 617 of 2007 was registered at the Dakshin Police Station, Firozabad in respect of the murder of the appellant's brother. Furthermore, the respondent no. 1 had also influenced the other respondents to release a person under the Excise Act from the Thatipur Chowki of the Murar Police Station without producing the said person before the concerned court, in order to save Ashok Dixit.

25. The learned counsel relied upon the Police statements of Ramesh Yadav and Barelal dated 25.10.2008. They as independent witnesses have categorically stated that while they were at Thatipur, Gwalior, "Niranjan Upadhyay came out from car along with other person and said that Ashok Dixit you do not worry, I will protect you from murder case but you follow me and starts roaming in Thatipur, Gwalior along with 10-12 cartons of whisky.". The same makes it clear that the respondent no. 1 was also actively involved in the lodging of a false FIR.

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

C. SUBMISSIONS OF BEHALF OF THE RESPONDENT NO. 1

27. Mr. R. Basant, the learned senior counsel appearing for the respondent no. 1 submitted that there is nothing to indicate that the respondent no. 1 was directly or indirectly responsible for the registration of Case Crime No. 967 of 2007 in any manner, since he was neither posted at the Murar Police Station nor he had instructed any of the concerned officials to register such an FIR. In fact, the respondent no. 1 was posted at District Shivpuri which is 120 kms away from Gwalior at the time of filing the Case Crime No. 967 of 2007 on 12.10.2007.

28. The counsel submitted that the respondent no. 1 had neither filed the FIR in Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior nor was he associated with the said police station in any manner. However, assuming without conceding that the said FIR was registered at the behest of respondent no. 1, sanction for prosecution with respect to Case Crime No. 617 of 2007 is required. It is an admitted fact that sanction was refused by the D.I.G., Gwalior vide its letter dated 02.08.2008.

29. The counsel further submitted that there are bleak chances of conviction of the respondent no. 1 for the following reasons-

(a) the respondent no. 1 was not posted at the Murar Police Station, Gwalior where the Case Crime No. 967 of 2007 was registered,

(b) the respondent no. 1 is 72 years old and no purpose would be served if the respondent no. 1 was made to face trial at this stage when the Case Crime No. 617 of 2007 was admittedly filed in the 2007,

(c) the Trial Court has already convicted all the accused including Ashok Dixit by way of its judgment in 10.07.2015,

(d) respondent no. 1 has retired from Police service in 2015 and 9 years have passed since then,

(e) No departmental inquiry was initiated against respondent no. 1 for the alleged act of registration of Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior, and

(f) there is nothing to indicate that the respondent no. 1 is related to the accused Ashok Dixit.

30. The counsel submitted that the charge sheet should be read as a whole and there exists no circumstance or evidence to warrant any assumption of involvement of respondent no. 1 in connection with Case Crime No. 617 of 2007 for the alleged offence of conspiracy to commit murder. This is so because there are only two statements of witnesses recorded under Section 161 CrPC and such statements were recorded after a period of one year i.e., on 25.10.2008 from the date of registration of case Crime No. 617 of 2007 i.e., on 12.10.2007. These two statements are the sole basis for instituting a prosecution against the respondent ro. 1. Furthermore, the said witnesses were not examined in the trial whereby the 12 accused including Ashok Dixit stood convicted vide order dated 10.07.2015.

31. It was also submitted that there is a material contradiction in the case of the prosecution. The statements of the two witnesses i.e., Ramesh and Barelal suggest that the respondent no. 1 was seen with Ashok Dixit in Gwalior since they had verbatim deposed that they had heard respondent no. 1 telling Ashok Dixit that they would create a false plea of alibi. However, the eyewitnesses have all deposed that Ashok Dixit was present at the place of the incident in Firozabad where the firing had occurred. These two contradictory statements confirm the presence of Ashok Dixit in Firozabad and also in Gwalior and are therefore, ex-facie derogatory to each other.

32. The counsel submitted that Section 201 CrPC would not apply to the instant facts and circumstances. There is no allegation that the respondent no. 1 had conspired with the other co-accused persons for the offence of murder and the only allegation that surfaces from the charge sheet is that a false alibi was provided in order to shield Ashok Dixit by registering an FIR under the Excise Act in Gwalior. The said alleged act was made after the commission of the offence of murder and there is nothing on record to even remotely suggest that the respondent no. 1 had knowledge about the incident of murder.

33. In light of the above, the counsel submitted that the impugned Judgment and Order of the High Court quashing the criminal proceedings against the respondent no. 1 may not be interfered with.

D. SUBMISSIONS OF BEHALF OF THE RESPONDENT NOS. 3, 4 AND 5.

34. Ms. Nanita Sharma, the learned counsel appearing for the respondent nos. 3, 4, and 5 respectively submitted that the Uttar Pradesh police was bent upon falsely implicating her clients for the offence under Sections 302 and 120-B IPC. This is evident from the following -

(a) the statements of Ramesh Yadav and Barelal were recorded under Section 161 CrPC after a gap of one year from the date of the offence committed at Firozabad i.e., 12.10.2007,

(b) the address of Barelal as recorded by the IO while recording his statement under Section 161 CrPC was found to be incorrect and as per the information of the Sarpanch, no person with the name of Barelal had ever lived at the said address. The permanent address of the witness Barelal was not in existence even as per the certificate given by the Parshad of the area on 28.12.2008,

(c) Ramesh Yadav had also never lived at the address which was given by him to the IO during his statement recorded under Section 161 CrPC and the same was clear from the certificate issued by the Sarpanch of Bada Gaon, Murar Police Station, Gwalior.

35. The counsel also submitted that the respondent nos. 3, 4 and 5 respectively had never been named in the FIR registered in Case Crime No. 617 of 2007 nor their names were ever disclosed by any of the witnesses whose statements had been recorded by the IO under Section 161 CrPC after the commission of the offence at Firozabad. It was never pointed out that there was any conspiracy between the respondents and the main accused, Ashok Dixit. It was submitted that the respondent nos. 3, 4 and 5 respectively or their family members are neither relatives nor known to the accused, Ashok Dixit, in any manner.

36. The counsel submitted that the IO at Firozabad has falsely implicated the respondent nos. 3, 4 and 5 respectively in the murder case which occurred at Firozabad even though they had no role to play in the case. They have been implicated only because of the rivalry between the two police establishments and the refusal of the D.I.G., Gwalior to grant sanction to prosecute them.

It was submitted that the respondents had only performed their duty without suspecting any kind of manipulation in both the arrest and release of Ashok Dixit because they were merely following the instructions of their superior officer i.e., the T.I. (SHO), D.S. Khushawa of the Murar Police Station. 37. The counsel in the last submitted that the High Court was justified in quashing the criminal proceedings against the respondent nos. 3, 4 and 5 for want of sanction.

E. ISSUE(S) FOR DETERMINATION

38. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only issue that falls for our consideration is:

a. Whether the CJM, Firozabad could have taken cognizance of the Charge Sheet No. 3A of 2008 and Charge Sheet No. 30 of 2009 respectively against the respondent nos. 1, 3, 4 and 5 respectively, in the absence of the grant of sanction for prosecution under Section 197 CrPC? In other words, whether the offence or the act alleged to have been committed by the respondent nos. 1, 3, 4 and 5 respectively could be said to have been done "while acting or purporting to act in the discharge of official duty"?

F. ANALYSIS

39. Section 197 CrPC reads as under:

"197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.- For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 3 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in

force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

40. The 41st Report of the Law Commission of India contextualizes the object behind the enactment of Section 197 CrPC by pointing out that it enables the more important categories of public servants, performing onerous and responsible functions, to act fearlessly by protecting them from false, vexatious or mala fide prosecutions. Under the erstwhile Code of Criminal Procedure, 1898, the ambit of the Section was considered a bit too wide since it read - "is accused as such Judge or public servant of any offence".

However, to offer more precision, the Amending Act of 1923 inserted the phrase - "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The same has been retained in the statute books till today despite the provision undergoing several amendments over the period of time.

41. As rightly acknowledged by the Law Commission, the meaning of the word "acting or purporting to act" in Section 197 CrPC has been well settled by a legion of decisions of the Federal Court, the Privy Council and the Supreme Court and any difficulty that may be felt lies only in the actual application of the principles laid down in these decisions to the facts and circumstances of a particular case. In other words, the question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact, which is to be determined in the unique circumstances of each case.

42. The applicability of Section 197 CrPC has been the subject of judicial interpretation in several cases. One of the first and foremost case laws which examined the pith of the expression "any act done or purporting to be done" was the Federal Court decision in Dr. Hori Ram Singh v. The Crown reported in AIR 1939 FC 43. Their Lordships were called upon to consider the applicability of Section 270 of the Government of India Act, 1935 which albeit not identical, but was similar to Section 197 CrPC.

The Court held that while the offence under Section 409 IPC as regards the criminal breach of trust by a public servant would not require consent from the Governor for it cannot be done or purported to be done in the execution of his duty, yet the offence under Section 477A IPC as regards the falsification of

accounts would require the Governor's consent. The words "purported to be done" was interpreted as follows:

"Extent of the Protection. Obviously, the section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be the official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty." The two expressions are obviously not identical. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty.

The reference as obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty.

Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though, of course, the offence would really amount to a breach of duty.

An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another the impression that he is so acting. The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time.

For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite

certain that he could never have been able to take the bribe unless he were the official in charge of some official work. He does not even pretend to the person who offers the bribe that he is acting in the discharge of his official duty, but merely uses his official position to obtain the illegal gratification."

(emphasis supplied)

43. His Lordship, Sulaiman, J, clarified that it is not imperative for the very act which is at the center of the charge to be the official duty of the public servant. This would lead to the inference that an offence can never be part of one's official duty and defeat the very intent behind the enactment of the provision. Instead, the essence of the provision was that the offence must be in respect of an act done or purported to be done in the execution of duty i.e., in the discharge of an official duty.

Although the offence would really amount to a breach of duty, it must purport to be done in the official capacity with which the official pretended to be clothed at the time. However, it was made clear that the provision must not be applied to acts done purely in a private capacity by a public servant but only to those acts ostensibly done by him in his official capacity and in execution of his duty. Therefore, merely because the act was committed at a time when he held such office or when he was engaged in his official business would not make the section automatically applicable.

44. His Lordship, Varadachariar, J, in his concurring opinion, expressed that the question of whether or not the act complained of is one "purporting to be done in execution of his duty" as a public servant is substantially one of fact which is to be determined with reference to the act complained of along with the attendant circumstances. It would not be wise nor desirable to lay down any hard and fast tests in this regard.

45. The Judicial Committee of the Privy Council in Gill and Another v. The King reported in AIR 1948 PC 128 was faced with deciding whether sanction was required under Section 197 CrPC for the prosecution of a public servant charged with the offence of bribery and/or conspiracy to take bribes. The Court was of the opinion that it was impossible to distinguish or differentiate between S. 270 of the Government of India Act, 1935 and S. 197 CrPC, at least in relation to offences of this character.

Therefore, the decision in Dr. Hori Ram Singh (supra) would be of great assistance in cases pertaining to S. 197 as well. It was observed that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is as such as to lie within the scope of his official duty. Therefore, the test may well be whether the public servant, if challenged, can reasonably

claim that, what he does, he does in virtue of his office. The relevant observations are reproduced hereinbelow:

"A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act.

The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office" Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited, think it sufficient to say that in their opinion no sanction under s. 197 of the Code of Criminal Procedure was needed."

(emphasis supplied)

46. In Albert West Meads v. The King reported in AIR 1948 PC 156, the Privy Council echoed the view taken in Gill (supra) and held that the appellant in that case could not justify that the act of fraudulently misapplying money entrusted to his care as a public servant was an act done by him by virtue of his office.

47. In Shreekantiah Ramayya Munipalli v. State of Bombay reported in (1954) 2 SCC 992, this Court stressed that each case must be decided in its own facts. Herein, the Bench opined that Section 197 CrPC can never be applied if it is construed too narrowly since it is no part of an official's duty to commit an offence and the language of the provision must be given its true meaning. However, it is not the duty but the act which has to be examined because an official act can be performed in the discharge of official duty as well as in the dereliction of it. The relevant observations are as follows:

"14. Now it is obvious that if Section 197 of the Criminal Procedure Code is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning."

(emphasis supplied)

48. In Amrik Singh v. State of Pepsu reported in AIR 1955 SC 309, the appellant was charged under Section 465 IPC for forging the thumbimpression of an individual and under Section 409 IPC for the criminal misappropriation of a certain sum. The Court opined that if the act complained of is directly concerned with the official duty of the public servant so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. This would be irrespective of whether it was, in fact, a proper discharge of his duties because that would really be a matter of defence on the merits which would have to be investigated at trial and not be examined at the stage of granting sanction for prosecution.

Therefore, the test as to whether sanction is necessary to prosecute a public servant will depend on whether the acts complained of are so integrally connected with his duties as a public servant. If they do, then sanction is a requisite and there cannot be any uniform rule that an offence of criminal misappropriation or criminal breach of trust would always be outside the scope of Section 197 CrPC. The relevant observations are reproduced hereinbelow:

"7. The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

8. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

11. The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary.

(emphasis supplied)

49. A five-Judge Bench of this Court in Matajog Dobey v. H.C. Bhari reported in AIR 1956 SC 44 acknowledged that slightly differing tests had been laid down under Section 197 CrPC but the difference in those tests were only in language and not in substance.

The Court laid down a more refined test that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. Therefore, what one must ascertain is whether the act and the official duty are so interrelated such that it can be reasonably postulated that it was done in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. The relevant observations are as follows:

"17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty.

There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

19. The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

(emphasis supplied)

50. Furthermore, in Dhannjay Ram Sharma v. M.S. Uppadaya and Others reported in AIR 1960 SC 745, it was clarified that the mere fact that an opportunity to commit an offence is furnished by the official duty is not such a

connection of the offence with the performance of such duty, so as to justify even remotely the view that the acts complained of are within the scope of the application of Section 197 CrPC.

51. This Court in P. Arulswami v. State reported in (1967) 1 SCR 201 was also concerned with an offence under Section 409 IPC and it was opined that the act must be directly concerned and connected with the official duties of the public servant such that it could be claimed to have been done by virtue of his office. Furthermore, it is the "quality" of the act that must be emphasized on. The act must not be totally unconnected with the official duty. Only if Page 35 of 77 it falls either within the scope and range of the official duties, or is in excess of it, then Section 197 CrPC would stand attracted. The Court had stated as thus:

"It is not therefore every offence committed by a public servant that requires sanction for prosecution under s. 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by s. 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

(emphasis supplied)

52. In Harihar Prasad Etc. v. State of Bihar reported in (1972) 3 SCC 89 the appellants were alleged to have entered into a criminal conspiracy for committing the offences of criminal breach of trust and cheating in respect of a large amount of government money earmarked for a development project. The Court opined that sanction under Section 197 CrPC would not be necessary since it is no part of the duty of a public servant while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct and observed as thus:

"66. The next point was with regard to consent or sanction. There is no doubt that in respect of B.P. Sinha consent was properly given by the Deputy Commissioner. So consent was also given in respect of N.K. Banerjee and Harihar Prasad by the Chief Secretary. This is not a case of sanction or consent under Section 196-A of the Code of Criminal Procedure. On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid

down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay [AIR 1955 SC 287] and Amrik Singh v. State of Pepsu [AIR 1955 SC 309] was as follows:

"It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary." The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants.

As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Penal Code, 1860 is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

(emphasis supplied)

53. In B. Saha and Others v. M.S. Kochar reported in (1979) 4 SCC 177, the appellants were charged for the offences under Sections 409 and 120-B IPC. The Court opined that while it is not an invariable proposition of law that the act of criminal misappropriation or conversion cannot be inseparably intertwined with the performance of the official duty, yet in the facts of the present case, the alleged act of criminal misappropriation could not reasonably be said to be imbued with the color of office or having a direct connection with the duties of the appellants as public servants. Therefore, sanction was not considered necessary.

While observing so, the Court stated that the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" must neither be construed narrowly nor widely and the right approach would be to arrive at a balance between the two extremes. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty. The relevant observations are as thus:

"17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed.

The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J., in Baijnath v. State of M.P. [AIR 1966 SC 220, 227 : (1966) 1 SCR 210 : 1966 Cri LJ 179] , "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."

18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."

(emphasis supplied)

54. This Court in State of Maharashtra v. Dr. Budhikota Subbarao reported in (1993) 3 SCC 339 elaborated on how the balance between a narrow and wide construction of Section 197 CrPC can be maintained. The Court opined that the section must be construed strictly while determining its applicability to any act or omission in the course of service and its operation has to be limited only to those acts which are discharged in the "course of duty".

However, once any act or omission has been found to have been committed by a public servant in the discharge of his duty then a liberal and wide construction can be given to the particular act, so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities in the discharge of his duty and to that extent, the section must be construed narrowly and in a restricted manner. However, once it is established that the act or omission was done by the public servant while discharging his duty, then the scope of it being "official" should be interpreted such that the objective of the section is advanced in favor of the public servant.

55. In R. Balakrishna Pillai v. State of Kerala and Another reported in (1996) 1 SCC 478, the appellant who was the then Minister for Electricity for the State of Kerala was alleged to have entered into a criminal conspiracy to sell electricity to an industry in the State of Karnataka without the consent of the Government of Kerala. The Court stressed that the quality of the act must be looked into and there can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant, the protection under Section 197 CrPC would have no application. The question of whether the act complained of had a direct nexus with the discharge of official duties would depend on the facts of each case and it was stated as thus:

"6. The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the public servant concerned would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case."

(emphasis supplied)

56. In Shambhoo Nath Misra v. State of U.P. and Others reported in (1997) 5 SCC 326, allegations of fabrication of record and misappropriation of public funds were made against the accused public servant. The Court while holding that sanction was not necessary in the facts of the case re-affirmed that the public servant's act must be in furtherance of the performance of his official duties and only if the act or omission is integral to the performance of the public duty, he would be entitled to protection under Section 197 CrPC.

While stating so, the Court elaborated on the objective behind the enactment of the provision and clarified that the protection of sanction is an assurance to an honest and sincere officer so that he can perform his public duty honestly and to the best of his ability. The threat of prosecution would demoralize them and therefore, the requirement of sanction by the competent authority or the appropriate Government can serve as a shield only for such honest officers who carry out their duty with an aim to further public interest. The Court also rightly cautioned that, however, such an immunity cannot be utilized by public servants to camouflage the commission of a crime under the supposed color of public office.

57. This Court's reasoning in State of Orissa and Others v. Ganesh Chandra Jew reported in (2004) 8 SCC 40 was further adopted in a few other landmark decisions including S.K. Zutshi and Another v. Bimal Debnath and Another reported in (2004) 8 SCC 31 and K. Kalimuthu v. State reported in (2005) 4 SCC

512. The Court in Ganesh Chandra Jew (supra) considered the scope of the expression "official duty" and stated that the protective cover of the section must not be extended to every act or omission done by a public servant in service but be restricted to only those acts or omissions which are done by a public servant in the discharge of his "official" duty. The scope can be widened further by also extending protection to those acts or omissions which are done in the "purported" exercise of "official" duty i.e., under the color of office, but not more.

58. Dr. Arijit Pasayat, J, went on to state that the protection given under Section 197 CrPC must not be viewed as limitless. This protection has certain limits and is available only when the alleged act done is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act. However, if the public servant acted in excess of his official duty but there exists a reasonable connection between the act and the performance of his official duty, the excess cannot be a sufficient ground to deprive him of the protection under Section 197 CrPC. Therefore, it was re-iterated that it is the "quality" of the act which is important and such an act must fall within the scope and range of the public servant's official duty.

While there cannot be any universal rule to determine whether there exists a reasonable connection between the act done and the official duty, one "safe and sure test" in this regard would be to consider if the omission or neglect on part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant. The relevant observations are as follows:

"7. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.

The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule.

One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant."

(emphasis supplied)

59. In Sankaran Moitra v. Sadhna Das and Another reported in (2006) 4 SCC 584, the appellant police officer was accused of killing the complainant's husband while carrying out a lathi-charge near the pollingbooth on an election day. While the Bench in its majority opinion had held that the appellant was acting in the discharge of his official duty, C.K. Thakker, J, in his minority opinion had stated that the act complained of had no nexus, reasonable connection or relevance to the official act or duty of such public servant and was otherwise, illegal, unlawful and highhanded.

He went on to state that it is not only the "power" but the "duty" of the court to apply its mind to the factual situation before it. The Courts must ensure that on the one hand, the public servant is protected if the case is covered by Section 197 CrPC and on the other hand, that appropriate action would be allowed to be taken if the provision is not attracted and the accused is trying to take undue advantage of the section under the guise of his position as a public servant. The relevant observations are as thus:

"67. From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an

offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

68. Mr Tulsi, no doubt, submitted that the appellant was a police officer. He was on duty. He had received a message about rioting and law and order situation at Beliaghata. He, therefore, had gone to the spot pursuant to the said message, in police uniform, in police jeep to deal with the situation. All the ingredients of Section 197 of the Code were thus satisfied and the High Court was wrong in not applying the said provision.

69. I am unable to agree with Mr Tulsi. In my judgment, it is precisely in such cases that the Court is called upon to consider whether the public servant was acting or purporting to act in discharge of his duty or it was merely a cloak for doing illegal act under the excuse of his status as a public servant and by taking undue advantage of his position, he was committing an offence or an unlawful act.

In such situations, when the question comes up for consideration before a court of law as to the applicability or otherwise of Section 197 of the Code, it is not only the power but the duty of the Court to apply its mind to the fact situation before it. It should ensure that on the one hand, the public servant is protected if the case is covered by Section 197 of the Code and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant, he is trying to take undue advantage."

(emphasis supplied)

60. In Choudhury Parveen Sultana v. State of West Bengal and Another reported in (2009) 3 SCC 398 the appellant's husband had suffered grievous injury in a shoot-out for which a case was registered and police investigation was undertaken. The appellant had filed a complaint before the Magistrate that the respondent no. 2 (Investigating Officer) and the coaccused visited her house under the pretext of conducting an investigation, threatened her and her husband to make a tutored statement and had also tried to obtain the husband's signature on a blank paper under threatening circumstances. While the Magistrate had taken cognizance, the High Court had quashed the proceedings for want of sanction. In such circumstances, the following observations were made:

"18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC.

On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] the underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official.

However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

19. In the instant case, certain deeds and acts have been attributed to Respondent 2 and another accused, which cannot be said to have been part of the official duties to be performed by Respondent 2. Hence, in our view, Respondent 2 was not entitled to the protection of Section 197 CrPC in respect of such acts."

(emphasis supplied)

The Court, while stating that the respondent no. 2 was not entitled to the protection under Section 197 CrPC, was of the view that if the authority which has been vested in a public servant is misused or abused for committing acts which are not otherwise permitted under the law, one cannot claim recourse under Section 197 CrPC. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.

61. In Urmila Devi v. Yudhvir Singh reported in (2013) 15 SCC 624, a complaint was filed by M alleging that the appellant and R were living in an illicit relationship. Therefore, the respondent Sub-Divisional Magistrate directed the Tehsildar to enquire into the matter and also directed the DSP concerned to conduct a special investigation. It was alleged that the respondent had forcibly entered the house of the appellant at 10:00 pm with his investigation team, equipped with video cameras, to carry out a search of the appellant's house.

It was further alleged that R was forced to remove his clothes in front of the other officials and that both the appellant and R were taken to a Civil Hospital where they were forced to undergo a medical examination against their will. The medical examination of the appellant was also alleged to have been conducted by a male doctor. Furthermore, it was alleged that when the appellant and R filed a

complaint against M, the respondent threatened them to withdraw the same. The Court stated that none of the acts alleged against the respondent, can by any stretch of imagination, be held to have been carried out in his capacity as an Executive Magistrate.

Hence, the invocation of Section 197 CrPC was wholly uncalled for. While emphasizing that the test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by him is the true test, the Court stressed that public functionaries cannot, under the cloak of the purported discharge of official duties, resort to the harassment and humiliation of the citizens on the pretext of a complaint having been received by them. The relevant observations are reproduced hereinbelow:

"63. The test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by them is, therefore, the true test to be applied while deciding whether the protection of Section 197 CrPC is available to a public servant accused of the commission of an offence. The High Court has not adverted to this test nor has it held that there existed a direct and reasonable connection between the official duty being discharged by the accused public servant and the acts committed by him. The High Court has on the contrary misdirected itself when it said that the accused had only committed an act of omission towards his official duties which entitled him to the protection of Section 197 of the Code.

65. It is difficult to appreciate what the High Court meant by saying that the acts of the accused were "at best acts of omission towards official duty". It was not the case of the respondent before the High Court nor is it his case before us that the complaint filed by Maya Devi disclosed any offence which could be taken cognizance of by him as an Executive Magistrate or investigated by the police. Assuming that the complainant and R.C. Chopra were living together even when they were not married to each other, the complaint regarding any such relationship could be filed only by the wife of R.C. Chopra, or the husband of the complainant Urmila Devi.

The complaint filed by Maya Devi could not provide a valid basis for the SDM, the Tahsildar or the Deputy Superintendent of Police concerned to barge into the house of the complainant, humiliate or harass her or drag her to the police station without the registration of any case or subject her to an uncalled for medical examination. The test of direct and reasonable connection between the official duty of the respondent Sub-Divisional Magistrate and the police officers concerned and the acts complained of thus fails in the present case especially because there is not even a semblance of a lawful justification forthcoming from the respondent for what he did.

Entering the house of a woman, after sunset with a posse of police force, carrying video cameras conducting an unwarranted search of the house, humiliating and invading the privacy of the complainant, insulting and humiliating R.C. Chopra by asking him to undress and dragging both of them to the police station for medical examination against their wishes, especially when male doctors were asked to examine the complainant which added insult to injury, all remain unsupported by any lawful justification and have no connection with the duties that were cast upon the respondent as a public servant, even if a complaint alleging an adulterous relationship between the appellant and R.C. Chopra had been received by the SDM. The alleged acts of the respondent cannot, therefore, be said to be in discharge of his official duties or in the purported discharge of such duties.

66. Public functionaries cannot under the cloak of purported discharge of official duties resort to harassment and humiliation of the citizens on the pretext of a complaint having been received by them, especially when the same does not disclose the commission of any offence triable by the Executive Magistrate or cognizable by the police; nor was there any other proceeding in connection with which such conduct could be justified in law. The plea of the respondent that the prosecution was barred under Section 197 CrPC has, therefore, to be rejected."

(emphasis supplied)

62. In Rajib Ranjan v. R. Vijaykumar reported in (2015) 1 SCC 513, a complaint was filed against the appellant public officials for conspiracy to create false documents. This Court had held that even while discharging official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such a misdemeanor must not be treated as an act in the discharge of his official duties in order to grant protection under Section 197 CrPC and elaborated as follows:

"15. The sanction, however, is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duties". In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, the following yardstick is provided by this Court in Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 : 1993 SCC (Cri) 901 : (1993) 2 SCR 311] in the following words : (SCC p. 347, para 6)

"6. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

16. This principle was explained in some more detail in Raghunath Anant Govilkar v. State of Maharashtra [(2008) 11 SCC 289 : (2009) 1 SCC (Cri) 130] , which was decided by this Court on 8-2-2008 in SLP (Crl.) No. 5453 of 2007, in the following manner : (SCC pp. 298- 99, para 11)

"11. '7. "66. On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay [AIR 1955 SC 287 : 1955 Cri LJ 857] and Amrik Singh v. State of Pepsu [AIR 1955 SC 309 : 1955 Cri LJ 865] was as follows : (Amrik Singh case [AIR 1955 SC 309 : 1955 Cri LJ 865] , AIR p. 312, para 8)

'8. It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.'

The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Section 120-B read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure.

To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar." [Ed. : As observed in Harihar Prasad v. State of Bihar, (1972) 3 SCC 89, 115, para 66 : 1972 SCC (Cri) 409.] '[Ed. : Quoted from State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690, 692, para 7 : 1999 SCC (Cri) 1031.]"

17. Likewise, in Shambhoo Nath Misra v. State of U.P. [(1997) 5 SCC 326 : 1997 SCC (Cri) 676 : AIR 1997 SC 2102] , the Court dealt with the subject in the following manner : (SCC p. 328, para 5)

"5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public

fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations, namely, the allegations pertain to fabricating the false records which cannot be treated as part of the appellants' normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied."

(emphasis supplied)

63. The purpose behind the enactment of Section 197 CrPC must not be to shield corrupt officials and this was the position taken in Inspector of Police and Another v. Battenapatla Venkata Ratnam and Another reported in (2015) 13 SCC 87. Here, the respondents while working as Sub-Registrars in various offices of the State of Andhra Pradesh had conspired with stamp vendors, document writers and other staff to manipulate the registers and had gotten the documents registered with the old value of the respective properties, resulting in wrongful gain to themselves and loss to the Government. Such acts were held to not be in the discharge of their official duty. The observations made are reproduced hereinbelow:

"11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only."

(emphasis supplied)

64. This Court in Surinderjit Singh Mand and Another v. State of Punjab and Another reported in (2016) 8 SCC 722 was faced with a factual scenario wherein an accused was allegedly arrested in a theft case by the appellant police officers on 24.06.1999 but was formally and officially shown to have been arrested only on 28.06.1999. Prosecution was initiated against the appellant officers on the

basis of an FIR registered at the instance of the mother of the accused in relation to the alleged illegal detention of the accused for the period from 24.06.1999 to 28.06.1999. While holding that no sanction to prosecute was required in the circumstances of an illegal detention, this Court observed as thus:

"23. Having given our thoughtful consideration to the contention advanced at the hands of the learned counsel for the respondents, we are of the view that the decision rendered by this Court in P.P. Unnikrishnan case [P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131 : 2000 SCC (Cri) 1460] is clear and emphatic. The same does not leave any room for making any choice. It is apparent that the official arrest of Neeraj Kumar in terms of the provisions of the Code, referred to hereinabove, would extend during the period from 28-6-1999 to 30-6-1999.

The above period of apprehension can legitimately be considered as having been made "while acting or purporting to act in the discharge of their official duties". The factual position expressed by the appellants is that Neeraj Kumar was not detained for the period from 24-6-1999 to 28-6-1999. His detention during the above period, if true, in our considered view, would certainly not emerge from the action of the accused while acting or purporting to act in the discharge of their official duties.

If it emerges from the evidence adduced before the trial court that Neeraj Kumar was actually detained during the period from 24-6-1999 to 28-6-1999, the said detention cannot be taken to have been made by the accused while acting or purporting to act in the discharge of their official duties. More so, because it is not the case of the appellants that they had kept Neeraj Kumar in jail during the period from 24-6-1999 to 28-6-1999. If they had not detained him during the above period, it is not open to anyone to assume the position that the detention of Neeraj Kumar, during the above period, was while acting or purporting to act in the discharge of their official duties.

Therefore, in the peculiar facts and circumstances of this case, based on the legal position declared by this Court in P.P. Unnikrishnan case [P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131 : 2000 SCC (Cri) 1460] , we are of the considered view that sanction for prosecution of the accused in relation to the detention of Neeraj Kumar for the period from 24-6- 1999 to 28-6-1999 would not be required before a court of competent jurisdiction takes cognizance with reference to the alleged arrest of Neeraj Kumar. We therefore hereby, endorse the conclusions drawn by the High Court to the above effect."

(emphasis supplied)

65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 CrPC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -

(i) The object behind the enactment of Section 197 CrPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.

(ii) The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the "course of duty". However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its "official" nature is concerned.

(iii) It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 CrPC if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.

(iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under Section 197 CrPC. Hence, it is not the duty which requires an examination so much as the "act" itself.

(v) One of the foremost tests which was laid down in this regard was - whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

(vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act done and the performance of his official duty.

(viii) It is the "quality" of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract Section 197 CrPC.

(ix) The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.

(x) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a "safe and sure test" would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.

(xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue

advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.

(xii) On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied.

66. At the cost of repetition, we say that the position of law on the application of Section 197 CrPC is clear - that it must be decided based on the peculiar facts and circumstances of each case. This Court has held in a legion of decisions that any misuse or abuse of powers by a public servant to do something that is impermissible in law like threatening to provide a tutored statement or trying to obtain signatures on a blank sheet of paper; causing the illegal detention of an accused; engaging in a criminal conspiracy to create false or fabricated documents; conducting a search with the sole object of harassing and threatening individuals, amongst others, cannot fall under the protective umbrella of Section 197 CrPC.

67. In light of the same, it follows that when a police official is said to have lodged a false case, he cannot claim that sanction for prosecution under Section 197 CrPC was required since it can be no part of the official duty of a public official to lodge a bogus case and fabricate evidence or documents in connection with the same. On examining the quality of the act, it is evident that there exists no reasonable or rational nexus between such an act and the duties assigned to the public servant for the claim that it was done or purported to be done in the discharge of his official duty.

The mere fact that an opportunity to register a false case was furnished by the official duty would certainly not be sufficient to apply Section 197 CrPC. Allowing so, would enable the accused to use their status as public servants as a facade for doing an objectionable, illegal and unlawful act and take undue advantage of their position. If the Case Crime No. 967 of 2007 registered at the Murar Police Station, Gwalior, by respondent nos. 3, 4 and 5 respectively, was a false case, then there is no doubt that the refusal to grant sanction would not operate as a bar for their prosecution.

Moreover, as far as the case of respondent no. 1 is concerned, it is an undisputed fact that he was not even posted as the S.H.O or T.I at the Murar Police Station when the said false case was registered. The same is evident from the affidavit submitted by the IO at Firozabad before the High Court. Additionally, the respondent no. 1 has himself admitted in his submissions before us that he was in

fact posted at District Shivpuri which is 120 kms away from Gwalior during the relevant time. Therefore, any act or offence committed by the respondent no. 1 in the present case can safely be said to have been outside the scope of his official duty which obviates the question of sanction for his prosecution.

68. Having said the above, the question whether sanction is required or not is a question that may arise at any stage of the proceeding. There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. That the necessity of sanction may also reveal itself in the course of the progress of the case as was laid out in Matajog (supra) as follows:

"20. Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram case [(1939) FCR 159, 178] and also in Sarjoo Prasad v. King-Emperor [(1945) FCR 227]. Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (at P-179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words:

"Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at p. 185, "At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty".

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

(emphasis supplied)

69. In Pukhraj v. State of Rajasthan and Another reported in (1973) 2 SCC 701, the 2nd respondent was alleged to have abused and kicked his clerk who was his subordinate and was charged under Sections 323 and 504 IPC. The Court opined that such an act cannot be said to be in the purported exercise of his duty and held that sanction under Section 197 CrPC was not necessary. However, it was also observed that the necessity of sanction may reveal itself in the course of progress of the case and that it would be open to the accused to place materials on record during the trial for showing what his duty was and also that the acts complained of were so interrelated to his duty that protection under Section 197 CrPC must be granted to him. It was observed as follows:

"3. We must also make it clear that this is not the end of the matter. As was pointed out in Sarjoo Prasad v. King- Emperor [AIR 1946 FC 25 : 1954 FCR 227 : 47 Cri LJ 838] referring to the observations of Sulaiman, J. in Hori Ram Singh case the mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial inquiry or during the course of prosecution evidence at the trial may establish the necessity for sanction.

Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case [see observations in Matajog Dobey v. H.C. Bhari]. In Bhagwan Prasad Srivastava v. N.P. Misra also it was pointed out that it would be open to the appellant (the 2nd respondent in this case) to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty so as to attract the protection afforded by Section 197 CrPC."

(emphasis supplied)

70. In B. Saha (supra), the Court went on to observe that they have no quarrel with the proposition that the question of sanction under Section 197 CrPC can be raised and considered at any stage of the proceedings. Moreover, it was also stated that in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint, and it can take into account all the material on record at the time when the question is raised and falls for consideration.

Similar to the rationale adopted in B. Saha (supra), this Court in State of Bihar v. Kamla Prasad Singh and Others reported in (1998) 5 SCC 690 also re-affirmed that while determining whether the public servant was "acting in the discharge of

his official duty", the Court must consider not only the allegations made in the complaint but also other materials available on record.

71. In Bakhshish Singh Brar v. Gurmej Kaur and Another reported in (1987) 4 SCC 663, the petitioner police officer along with 14 other persons was charged under Sections 148, 149, 302, 323 and 325 IPC for allegedly causing hurt to the complainant and also causing the death of her son. This Court had emphasized that a balance has to be struck between protecting public servants from being harassed in criminal prosecutions and protecting the rights of the citizens against unlawful acts of public servants.

This must be done by examining as to what extent and how far is a public servant working in the discharge or purported discharge of his duties and whether the public servant had exceeded his limit. Having said so, it was observed that criminal trials must also not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence. The relevant observations are reproduced hereinbelow:

"6. In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 of the CrPC.

But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the facts and circumstance of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit.

It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

(emphasis supplied)

72. This Court in P.K. Pradhan v. State of Sikkim reported in (2001) 6 SCC 704 re-emphasized that for invoking protection under Section 197 CrPC, the acts of the accused must be such that it cannot be separated from the discharge of the official duty. However, if there was no reasonable connection between the act and the performance of those duties, and the official status only furnishes the occasion or opportunity for the illegal act, then no sanction would be required.

The Court acknowledged that the question of sanction can be raised at any time after cognizance i.e., maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. However, there may be certain cases where it may not be possible to decide the question of sanction effectively without giving opportunity to the defence to establish that what he did, he did in the discharge of official duty. In such cases, the question of sanction must be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. The relevant observations are as follows:

"15. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty.

In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

16. In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage. However, we may observe that during the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders."

(emphasis supplied)

73. This Court in Devinder Singh v. State of Punjab reported in (2016) 12 SCC 87 had observed that sometimes certain questions about the requirement of sanction cannot be decided without evidence and questions like the good faith or bad faith of the public servant can be decided on the conclusion of trial. The relevant observations made are reproduced hereinbelow:

"39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases, it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

40. In the instant cases, the allegation as per the prosecution case is that it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct, there is no requirement of any sanction.

However, it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct.

The trial court has prima facie to proceed on the basis of the prosecution version and can redecide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis."

(emphasis supplied)

74. The legal position that emerges from the discussion of the aforesaid case laws is that:

(i) There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. Therefore, the question whether sanction is required or not is one that may arise at any stage of the proceeding and it may reveal itself in the course of the progress of the case.

(ii) There may also be certain cases where it may not be possible to effectively decide the question of sanction without giving an opportunity to the defence to establish that what the public servant did, he did in the discharge of official duty. Therefore, it would be open to the accused to place the necessary materials on record during the trial to indicate the nature of his duty and to show that the acts complained of were so interrelated to his duty in order to obtain protection under Section 197 CrPC.

(iii) While deciding the issue of sanction, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the material on record available at the time when such a question is raised and falls for the consideration of the Court.

(iv) Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to be adduced before the appropriate trial court.

75. In the present case, we are concerned with the allegation of registering an FIR i.e., Case Crime No. 967 of 2007 for the offence under Section 34 of the Excise Act at the Murar Police Station, Gwalior, Madhya Pradesh at the instance of the accused respondents so as to facilitate one Ashok Dixit in raising the plea of alibi in Case Crime No. 617 of 2007 filed at the Dakshin Police Station, Firozabad, Uttar Pradesh for the murder of the appellant's brother.

The appellant's brother was shot dead at 08:30 am on 12.10.2007 in Firozabad, Uttar Pradesh and the arrest of the accused Ashok Dixit for the offence under the Excise Act is said to have been made at 09:30 am on the very same day in Gwalior, Madhya Pradesh. Evidently the accused in both the cases i.e., Ashok Dixit could not have been simultaneously present at both the places on the same day, especially when the distance between the two locations is 160 Kms and such a distance cannot be covered by road in one hour. This is precisely the reason why the appellant asserts that the case registered at Gwalior is false or in other words concocted.

76. It is relevant to note that the Trial Court vide its order dated 10.07.2015 held the accused, Ashok Dixit along with 11 others guilty of murder of the appellant's brother. In doing so, the Trial Court had made some pertinent observations regarding the registration of the case under the Excise Act by the accused respondents. The Trial Court had arrived at a categorical finding that the second FIR was registered as a result of collusion by the present accused respondents with Ashok Dixit.

It has been observed that the IO at Dakshin, Firozabad after thorough investigation had found out that the entire case was concocted and hence, the Charge Sheets giving rise to Case Nos. 67 of 2008 and 67A of 2009 had been filed against the accused respondents for being involved in the conspiracy of murder. The Trial Court also observed that the accused respondents had been suspended by the SSP, Gwalior and a departmental inquiry had been initiated against them. Adding to the above, the High Court of Madhya Pradesh vide order dated 25.08.2009 had also stayed the proceedings in Case No. 15003 of 2007 (State vs. Ashok Dixit) under Section 34 of the Excise Act which is pending before the CJM, Gwalior for the reason that a decision in that case might cause severe prejudice to the case of murder of the appellant's brother.

77. The statements of the respondent nos. 3, 4 and 5 respectively recorded earlier by the IO at Dakshin, Firozabad during the course of his investigation on 23.01.2008 and later by the SHO of the Murar Police Station, D.S. Khushawa on 12.02.2008, under Section 161 CrPC, are the only pieces of evidence that have been adduced before us for our consideration.

Those statements reveal that - (a) amongst the two panchas of arrest and seizure namely, Shailendra Singh and Triloki Gaur in the alleged false second case i.e., Case Crime No. 967 of 2007, Triloki Gaur was the former driver of the respondent no. 1, (b) the respondent no. 1 had arrived at the Murar Police Station shortly after the alleged arrest of Ashok Dixit and had conversed with the SHO of the Murar Police Station, D. S. Khushawa, (c) the respondent no. 1 also had a conversation with the person arrested by the accused respondents, and (d) the respondent no. 1 had asked the SHO of the Murar Police Station, D.S. Khushawa, to release the arrested person on bail stating that he was his relative.

However, it is settled law that a statement recorded under Section 161 CrPC does not constitute substantive evidence and can only be utilized for the limited purpose of proving contradictions and/or omissions as envisaged under Section 145 of the Evidence Act, 1872. This has been laid down in a catena of decisions including in Parvat Singh and Others v. State of Madhya Pradesh reported in (2020) 4 SCC 33 which observed as follows:

"13.1 However, as per the settled proposition of law a statement recorded under Section 161 CrPC is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 CrPC can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW 8 recorded under Section 161 CrPC while observing that the appellants were having the lathis."

(emphasis supplied)

78. The aforesaid position of law was reiterated in Birbal Nath v. State of Rajasthan reported in 2023 SCC OnLine SC 1396 which observed as thus:

"19. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong."

(emphasis supplied)

79. Moreover, the statements of the two independent witness i.e., Ramesh Yadav and Barelal recorded on 25.10.2008 by the IO at Dakshin, Firozabad, implicating the respondent no. 1, cannot be taken as a gospel truth either, especially when they were not examined in the Session Trial Nos. 753 and 753A of 2008 respectively which resulted in the conviction of the accused Ashok Dixit. Therefore, we are a bit hesitant to rely on the version of events as stated under these statements recorded under Section 161 CrPC at this stage. It would be best left for the Trial Court to decide the truthfulness and veracity of these statements which allegedly prove the case of the prosecution.

80. Furthermore, the respondent no. 1 has contended that no departmental inquiry was ever initiated against him in relation to the registration of Case Crime No. 967 of 2007. However, the Trial Court in its order dated 10.07.2015 has made an observation that the respondent nos 1, 3, 4 and 5 respectively were suspended and also subjected to an inquiry. Whether the departmental inquiry was initiated against all the accused respondents or just some of them and the exact findings of the inquiry is also an aspect where there exists some ambiguity.

81. Having said so, on the other hand, the respondent nos. 3, 4 and 5 respectively have also not adduced any credible evidence before us to prima facie establish that it was Ashok Dixit who was arrested at 09:30 am at Murar, Gwalior; that the illegal liquor carried by him was seized, and that he was later released from the Murar Police Station on the directions of SHO, D.S. Khushawa upon furnishing a surety. It is true that the offence contemplated under Section 34 of the Excise Act is bailable and that any accused under the said offence would be entitled to be released on bail from the police station.

However, bearing in mind that there exist serious suspicion as to whether an arrest was ever made to begin with and if made, whether it was Ashok Dixit who was indeed arrested, we find ourselves unable to arrive at an appropriate decision at this stage due to lack of reliable and credible evidence to verify the same. The respondent nos. 3, 4 and 5 respectively have stated that the accused had identified himself to be Ashok Dixit upon arrest and it is unclear whether the identity of the said accused was further duly verified while the case was registered under the Excise Act.

Despite the appellant's allegation that the release of the said accused on bail from the police station was done hurriedly, almost immediately after arrest, in order to conceal the identity of the person who was released and that an unconnected stranger might have been released from the police station, no other material which substantiates the bona fides of respondent nos. 3, 4 and 5 have been made available before us at the present moment.

82. It is the case of the IO at Dakshin, Firozabad that sanction for prosecution of the accused respondents was not granted by the D.I.G., Gwalior citing the pendency of Case No. 15003 of 2007 in Case Crime No. 967 of 2007 registered for the offence under the Excise Act before the CJM, Gwalior. However, those proceedings have been stayed by the High Court of Madya Pradesh vide order dated 25.08.2009 and therefore, the question of sanction can be re-visited, if found necessary.

83. As far as respondent no. 1 is concerned, it is made clear that there would be no requirement for sanction since he was not acting in the discharge of his official duty by virtue of not being posted at Murar Police Station, Gwalior at the relevant time when the alleged false case was registered. As a consequence, the extent of the involvement of respondent no. 1 in the alleged conspiracy to murder can be determined by the Trial Court upon a further examination of the evidence adduced before itself.

However, so far as the respondent nos. 3, 4 and 5 respectively are concerned, if the case of the prosecution that they had also played a dubious role in registering a false case is correct then the requirement of sanction would not be a sin qua non

for proceeding further with the criminal proceedings. However, the defence must be given an opportunity to rebut the same by leading appropriate evidence.

84. At this juncture on a prima facie examination of the materials adduced before us, we are of the opinion that the criminal proceedings pending before the CJM, Firozabad as Case Nos. 67 of 2008 and 67A of 2009 should not have been quashed at such a preliminary stage. In cases where there is a legitimate doubt as regards whether sanction for prosecution under Section 197 CrPC is required or not, the progress of the trial must not be hampered or unnecessarily delayed. Therefore, the CJM, Firozabad had rightly taken cognizance of the two charge sheets vide its orders dated 24.11.2008 and 10.08.2009 respectively. The High Court committed an error in failing to consider this aspect while quashing the proceedings in Case No. 67 of 2008 and 67A of 2009 respectively vide its impugned order.

85. In view of the aforesaid discussion, the Trial Court is directed to proceed with the trial and at any stage of the trial if the evidence suggests that the acts complained of were indeed done or purported to be done in the discharge of official duty by respondent nos. 3, 4 and 5 respectively or that the FIR registered by them was not bogus, the trial may be stayed for want of sanction.

Therefore, the question of sanction only qua respondent nos. 3, 4 and 5 respectively is left open to be appropriately decided by the Trial Court at a suitable stage, in accordance with the law, without being prejudiced by any of the observations made in this order as well as in the order passed by the High Court. As these proceedings arise from a case registered more than 16 years ago, the Trial Court is directed to proceed with the trial & conclude it expeditiously preferably within one year from today.

G. CONCLUSION

86. In light of the aforesaid, the appeals filed by the appellant are allowed and the impugned order passed by the High Court is set aside.

87. We dispose of the present appeals in light of the aforesaid directions.

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

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

.....J. (Manoj Misra)

New Delhi.

December 13, 2024

IN THE SUPREME COURT OF INDIA

Amutha
Vs.
AR Subramanian

[Civil Appeal No. 2643 of 2023]

HEADNOTE – Marriage is a relationship built on mutual trust, companionship, and shared experiences. When these essential elements are missing for an extended period, the marital bond becomes a mere legal formality devoid of any substance.

JUDGMENT

Vikram Nath, J.

1. The present appeal challenges the validity of the order dated 08.06.2018 passed by the Madras High Court's Madurai Bench in CMSA (MD) No. 34 of 2014 wherein the High Court allowed the appeal of the respondent - husband herein, thereby setting aside the judgments of the two lower Courts, and thus granting a decree of divorce on the ground of cruelty. The appellant herein is the wife challenging the grant of divorce.

2. The appellant and the respondent got married on 30.06.2002. At the time of their marriage, the respondent was employed as a software engineer in Punjab. After the marriage, the appellant moved to Chandigarh with the respondent and secured employment as an engineer in the same company as the respondent. The couple lived together for a few months, during which the appellant conceived a child. Subsequently, she returned to her parental home for the delivery of the child.

On 09.07.2003, she gave birth to a female child. The respondent visited to see the child, but when he requested the appellant to return to the matrimonial home, she allegedly refused. Consequently, the respondent issued a legal notice for reunion on 29.12.2003, to which the appellant replied on 31.12.2003 with allegations against him. Thereafter, the respondent filed a petition for restitution of conjugal rights in January 2004, pending which attempts at reconciliation through a panchayat failed.

3. During the pendency of the restitution petition, the appellant agreed to resume cohabitation and joined the respondent at his residence on 28.06.2004. The couple subsequently moved to Bengaluru, Karnataka, where they resided together. However, the respondent alleged that the appellant treated him with cruelty during this period. Eventually, the petition for restitution of conjugal rights was dismissed for default. The appellant once again left the matrimonial home allegedly without informing the respondent and returned to her parental

home. The respondent claimed that this desertion, combined with the mental anguish caused by her absence during the demise of his father, amounted to cruelty. Consequently, the respondent filed a divorce petition in 2010 on the grounds of cruelty.

4. The appellant denied the allegations in the petition for dissolution of marriage and contended that the respondent was at fault for failing to bring her back to the matrimonial home. She filed a counterclaim for restitution of conjugal rights in her response before the Trial Court, expressing her willingness to reconcile. Both parties presented their cases: the respondent examined himself as PW1 and submitted twelve documents as evidence, while the appellant testified as RW1 but did not produce any documentary evidence. After evaluating the evidence, the Trial Court dismissed the respondent's divorce petition, holding that he has failed to establish that the appellant's conduct amounted to mental cruelty.

5. The respondent's appeal against this decision was also dismissed by the First Appellate Court. The First Appellate Court concurred with the Trial Court's findings, observing that the respondent had not proven that the appellant had voluntarily deserted him without cause or inflicted mental cruelty. Instead, the First Appellate Court noted that the appellant had expressed a desire for reconciliation.

6. Challenging the findings and the judgment of the First Appellate Court, the respondent approached the High Court. The High Court in its judgment reviewed the contentions of both the parties, as well as the rulings of the Courts below. The respondent' primary contention was that the appellant had subjected him to cruelty, both mental and physical.

He argued that her actions, including filing false cases against him and deserting the matrimonial home, amounted to mental cruelty. He further claimed that despite his repeated attempts to reconcile, the appellant remained adamant and disinterested in reuniting, which led to the breakdown of the marriage. The respondent emphasized that their separation, which had lasted for over ten years, demonstrated the irretrievable breakdown of the marital relationship.

7. On the other hand, the appellant contended that the Courts below had correctly appreciated the evidence and rightly dismissed the respondent's claims for divorce. Her counsel before the High Court argued that the alleged acts of cruelty were not substantiated with sufficient evidence and that trivial disputes or normal wear and tear of married life could not constitute grounds for divorce. The appellant maintained that the burden of proof rested on the respondent to demonstrate acts of cruelty, which he failed to do. Furthermore, the appellant contended that there was no evidence to suggest she had no interest in continuing the marital relationship, and the claims of cruelty were unsubstantiated.

8. The High Court, in its findings, held that lodging false complaints against a spouse amounts to mental cruelty. In this case, the wife had filed a criminal complaint alleging dowry harassment against the husband and his family but later abandoned it without pursuing the matter further. The Court inferred that the complaint was baseless and filed with intent to harass, constituting an act of mental cruelty. Furthermore, the Court observed that the couple had been living separately for over fifteen years by then, which demonstrated an irretrievable breakdown of the marriage.

Drawing from judgments of this Court in Naveen Kohli vs. Neelu Kohli1, and Samar Ghosh vs. Jaya Ghosh2, the High Court noted that such prolonged separation indicates that the marital relationship is beyond repair and forcing the parties to remain in a dead marriage would be neither just nor beneficial. Additionally, the High Court concluded that the appellant's act of leaving the matrimonial home without reasonable cause, coupled with her lack of interest in reconciliation, amounted to desertion.

9. The High Court extensively analyzed the principles laid down by this Court, particularly in the case of Samar Ghosh (Supra), which provides illustrative examples of mental cruelty. These principles emphasize that mental cruelty is a subjective state of mind caused by prolonged anguish, frustration, and emotional turmoil, which renders it unreasonable for spouses to cohabit.

10. The High Court observed that the appellant had filed a false criminal complaint accusing the respondent and his family of dowry harassment. However, the appellant neither pursued the complaint nor provided reasonable justification for her actions. Her conduct demonstrated malice and intent to harass, causing mental agony to the respondent and his family. The High Court inferred that this amounted to mental cruelty, as the complaint disrupted the matrimonial harmony and caused significant emotional distress to the respondent.

11. The High Court also addressed the respondent's claim of desertion. The appellant had been living separately from the respondent for over fifteen years without valid reasons or attempts at reconciliation. Although she filed a counterclaim seeking restitution of conjugal rights, she failed to actively pursue it, revealing lack of genuine intent to resume marital cohabitation. Prolonged separation, coupled with absence of any reasonable explanation, demonstrated the appellant's intention to permanently withdraw from the marital relationship. The High Court held that this constituted desertion under the principles established by this Court, which define desertion as the willful and permanent abandonment of matrimonial obligations without consent of the other spouse.

12. The High Court also relied on precedents wherein this Court had held that filing false criminal complaints and leveling unsubstantiated allegations amounts

to mental cruelty. It emphasized that false accusations erode trust and affection, irreparably damaging marital bond. Additionally, the High Court observed that the appellant's behavior caused an irreparable rift between the parties, rendering their marriage broken beyond repair. Prolonged separation of over fifteen years, coupled with lack of any effort to resolve disputes or reconcile, supported the conclusion that the marital bond had become a legal fiction.

13. The High Court noted that the respondent's efforts for reunion were unsuccessful, as the appellant displayed indifference towards reconciliation. Her insistence on retrieving her belongings from the matrimonial home and the absence of any subsequent action for restitution of conjugal rights further illustrated her lack of interest in continuing the marriage.

Her admission during cross-examination that she had not taken any steps for reconciliation further strengthened the conclusion that she was not genuinely invested in salvaging the marriage. The Court emphasized that the factum of separation and animus deserendi, that is, the intention to desert, were conclusively established, and in the absence of reasonable justification for her conduct, the appellant's actions amounted to both cruelty and desertion.

14. The High Court underscored that mental cruelty cannot be established through direct evidence but must be inferred from the cumulative circumstances of the case. It observed that the appellant's behavior, including the filing of a false dowry harassment complaint and her prolonged separation from the respondent, clearly fell within the parameters of mental cruelty as outlined in Samar Ghosh (Supra). This included sustained reprehensible conduct, studied neglect, and indifference that rendered cohabitation intolerable and caused significant mental anguish to the respondent.

15. Further, the High Court addressed the breakdown of the marriage, noting that the prolonged separation of over fifteen years demonstrated that the marital relationship was beyond repair. Relying on precedents such as Naveen Kohli (Supra), it held that maintaining the facade of marriage under such circumstances serves no purpose and only perpetuates emotional distress for both parties. The High Court emphasized that refusing to dissolve a marriage that has become defunct de facto, despite its legal tie, undermines the sanctity of marriage and disregards the emotional well-being of the parties.

16. Hence, the High Court found that the respondent had sufficiently established the grounds of cruelty and desertion under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 19553. It held that the appellant's false criminal complaint and her indifference to reconciliation efforts caused significant mental agony to the respondent, amounting to cruelty. Additionally, her prolonged separation without reasonable cause constituted desertion. The High Court dissolved the marriage

and set aside the decisions of the Trial Court and the First Appellate Court, granting a decree of divorce to the husband. It noted that maintaining the marital tie under these circumstances was contrary to public interest and the principles of justice, and therefore, the appeal was allowed.

SUBMISSIONS ON BEHALF OF THE APPELLANT

17. The appellant contends that the High Court erred in reversing the concurrent findings of fact established by the Trial Court and the First Appellate Court. According to the appellant, the High Court overstepped its jurisdiction under Section 100 of the Code of Civil Procedure, 19084, which allows intervention only in cases involving a substantial question of law.

The appellant asserts that the High Court introduced an entirely new ground-whether the marriage had irretrievably broken down-without this issue being argued in the earlier proceedings. This, the appellant argues, goes against established principles that the High Court cannot reappreciate evidence or interfere with findings unless they are unsupported by evidence, based on a misreading of material evidence, or are manifestly unreasonable.

18. The appellant highlights that the respondent had not raised any grounds for interference with the concurrent findings in the second appeal under Section 100, CPC. The appellant supports this contention by citing the decision of this Court in State of Rajasthan & Ors. vs. Shiv Dayal & Anr5, which reiterates the limited scope of second appeals. The appellant further argues that the First Appellate Court had already conducted a detailed reappreciation of the evidence and reached a reasoned conclusion. Therefore, the High Court lacked jurisdiction to revisit these findings.

19. The appellant also submits that the High Court erred in addressing the issue of condonation under Section 23(1)(b) of HMA. Referring to this Court's decision in N.G. Dastane vs. S. Dastane6, the appellant asserts that acts of cruelty or desertion were condoned when the parties reconciled and resumed cohabitation after the filing of a complaint. The appellant emphasizes that the respondent husband, during cross-examination, admitted that the death of his father was unrelated to the appellant's actions, undermining the claim of cruelty. The appellant argues that the High Court failed to appreciate this evidence and incorrectly reversed the concurrent findings of the lower Courts.

20. Lastly, the appellant underscores that the respondent did not seek divorce on the grounds of desertion under Section 13(1)(ib) of HMA but instead benefited from his own wrongful actions. The appellant claims that the respondent deserted her and then sought divorce on fabricated grounds. The appellant states that she does not wish to burden her daughter with the stigma of divorce, nor is she

seeking financial support from the respondent. She simply wishes to uphold her dignity and safeguard her family's reputation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

21. The respondent argues that the marriage has irretrievably broken down and should be dissolved to allow both parties to move on with their lives. He submits that the appellant subjected him to cruelty, including filing frivolous criminal complaints against him and his family. The respondent claims that these complaints caused mental agony and created an irreparable rift between the parties. The respondent asserts that the High Court rightly considered the irretrievable breakdown of the marriage as a ground for divorce, even though it was not explicitly raised in the earlier proceedings.

22. The respondent further contends that the appellant's allegations of cruelty and desertion were baseless and unsupported by evidence. He argues that the appellant lodged complaints against him and his family, which amounted to harassment. Although there was an attempt at reconciliation, the respondent maintains that the complaints caused lasting damage to the marital relationship. He submits that the High Court correctly found that the complaints, even if later condoned, had a significant impact on his mental well-being and justified dissolution of the marriage.

23. The respondent challenges the appellant's reliance on concurrent findings of fact, arguing that the High Court was justified in interfering because the lower Courts failed to consider critical aspects of the evidence. He asserts that the Trial Court and the First Appellate Court ignored the cumulative effect of the appellant's conduct, which amounted to mental cruelty. The respondent highlights that the High Court, in its judgment, noted these deficiencies and addressed the substantial question of law concerning the irretrievable breakdown of the marriage.

24. The respondent also argues that he has acted in good faith throughout the proceedings and has consistently sought a resolution to the marital discord. He claims that the appellant's unwillingness to accept the breakdown of the marriage has prolonged the litigation unnecessarily. The respondent submits that granting a divorce would not only end the prolonged legal battle but also allow both parties to rebuild their lives independently.

ANALYSIS

25. We have heard Mrs. V. Mohana, learned Senior Counsel appearing for the appellant and Ms. Haripriya Padmanabhan, learned Senior Counsel appearing on behalf of the respondent.

26. Upon careful consideration of the submissions made by the parties and the facts established in this case, this Court finds itself in agreement with the decision of the High Court, which granted a decree of divorce in favor of the respondent husband. The appellant's arguments centered around procedural challenges under Section 100 of the CPC, and her insistence on reconciliation, fail to address the core and undeniable realities of the marriage between the parties. On the contrary, the evidence on record unequivocally demonstrates grounds of cruelty, prolonged separation, and an irretrievable breakdown of the marital relationship. These grounds, coupled with legal precedents cited by the High Court, leave no room for doubt that the marriage has lost its essence and that its continuation would serve no meaningful purpose.

27. One of the primary grounds for the dissolution of the marriage is the appellant's conduct, which constitutes mental cruelty under Section 13(1)(ia) of HMA. The respondent has provided sufficient evidence to show that the appellant was engaged in a pattern of behavior that caused him immense mental and emotional distress. This included filing false and baseless criminal complaints against the respondent and his family, which not only strained their relationship but also caused significant damage to his reputation and peace of mind.

28. In N.G. Dastane (Supra), this Court laid down the principle that cruelty is not confined to physical violence but also encompasses actions that inflict mental pain and suffering that creates a reasonable apprehension of harm or injury to the aggrieved spouse from the conduct of the other spouse so as to make it impossible for them to stay together. In the present case, the appellant's conduct, including the initiation of frivolous legal proceedings, falls squarely within the definition of mental cruelty. The respondent's claim is further supported by this Court's judgment in Samar Ghosh (Supra), wherein it was recognized that actions causing sustained emotional torment and loss of trust in the marital relationship constitutes cruelty.

29. Moreover, the evidence suggests that the appellant's actions were not isolated incidents but formed a pattern of behavior that made cohabitation impossible. In V. Bhagat vs. D. Bhagat 7, this Court emphasized that sustained and deliberate acts of cruelty make it unreasonable to expect one spouse to continue living with the other.

30. The fact that the parties have been living separately for two decades now further reinforces the conclusion that the marriage is no longer viable. Prolonged separation, as observed in K. Srinivas Rao vs. D.A. Deepa8, creates a presumption of the marriage having irretrievably broken down. In this case, the parties have not shared a marital life since 2004, and all attempts at reconciliation have failed.

31. Marriage is a relationship built on mutual trust, companionship, and shared experiences. When these essential elements are missing for an extended period, the marital bond becomes a mere legal formality devoid of any substance. This Court has consistently held that prolonged separation, coupled with inability to reconcile, is a relevant factor in deciding matrimonial disputes. In the present case, the length of separation and the evident animosity between the parties make it clear that there is no possibility of the marriage being revived.

32. Although irretrievable breakdown of marriage is not a statutory ground for divorce under the HMA, this Court has, in appropriate cases, invoked its powers under Article 142 of the Constitution of India to grant relief where the marriage is beyond repair. In Naveen Kohli (Supra), this Court observed that when a marriage has irretrievably broken down, forcing the parties to remain together serves no purpose and only prolongs their misery.

33. The evidence in the present case points unequivocally to an irretrievable breakdown of the marriage. The appellant and the respondent have been embroiled in legal disputes for years, with no signs of reconciliation. The respondent has expressed his desire to move on with his life, while the appellant, despite her assertions to the contrary, has failed to demonstrate any genuine willingness to repair the relationship. As held by this Court in Ashok Hurra vs. Rupa Bipin Zaveri 9 and Shilpa Sailesh vs. Varun Sreenivasan10, prolonging a dead marriage serves no interest and only perpetuates the agony of the parties involved.

34. It is evident from the record that continuation of the marriage would only lead to further animosity and litigation, causing harm to both parties. The appellant's insistence on reconciliation appears to be more of a strategy to prolong the proceedings rather than a genuine effort to revive the relationship. In matrimonial disputes, this Court has emphasized the need to prioritize welfare and dignity of both parties. Forcing a marriage to continue when it has become a source of unhappiness and conflict undermines the very purpose of the institution of marriage. In the present case, the interests of both the parties are best served by allowing both parties to move on with their lives independently.

35. In view of the above, this Court upholds the judgment of the High Court granting a decree of divorce to the respondent. The appellant's submissions are rejected as lacking in merit, both on procedural and substantive grounds. This Court reiterates that cruelty, long separation, and irretrievable breakdown of marriage, as established in this case, and thus, provide sufficient justification for dissolving the marriage.

36. While granting the decree of divorce, we deem it appropriate to award permanent alimony to the appellant wife and the parties' daughter. Although the

appellant wife has not specifically claimed any monetary relief or maintenance during these proceedings, it is trite and equitable to grant such relief, considering the financial status of the parties, their professional backgrounds, and the larger interest of justice. The financial independence of a party does not preclude the High Court from granting maintenance if it is necessary to secure dignity, social standing, and financial stability postdivorce, especially in cases where the marriage has subsisted for a long period.

37. It is undisputed that both, the appellant and the respondent are software engineers and were earning handsomely at the time of their marriage more than two decades ago. It is reasonable to infer that their respective incomes must have increased substantially over the years.

However, considering the dynamics of their separation and the financial burdens the appellant may have borne during the protracted litigation, this Court finds it necessary to award her a lumpsum permanent alimony of Rs. 50,00,000/- (Rupees Fifty lakhs only) to secure her financial independence and ensure that she can lead her life with dignity. As observed in Kiran Jyot Maini vs. Anish Pramod Patel 11, the concept of maintenance and alimony encompasses a right to sustenance that allows the spouse to live in a manner suited to her status and standard of living, and the aim is not to penalise the husband.

38. Further, this Court recognizes the responsibility of both parents toward the well-being, education, and future prospects of their child. Although the daughter may be of an age where she is approaching independence, the financial support provided through this judgment will be instrumental in meeting her educational needs as well as expenses related to her future marriage. A sum of Rs. 50,00,000/- (Rupees Fifty lakhs only) is, therefore, awarded to the daughter for these purposes. This is in line with the principles of safeguarding the interests of children suffering under distress of such prolonged matrimonial disputes between the parents. Both parents share the duty of ensuring the daughter's well-being and future security, and this financial provision will contribute to fulfilling that duty.

39. In granting permanent alimony and financial support, this Court is mindful of the principles laid down in Rajnesh vs. Neha12. The factors to be considered while awarding maintenance or alimony include the duration of the marriage, the earning capacities of the parties, their age and health, their standard of living, and their financial and non-financial contributions to the marriage. Here, the appellant has spent substantial time during the pendency of the litigation without the emotional or financial support of the respondent.

Moreover, granting a lumpsum as permanent alimony ensures finality and reduces the scope for future litigation between the parties. While the appellant is presumably capable of earning, she has undoubtedly faced financial and

emotional setbacks due to the prolonged litigation and separation. Similarly, the financial provision for the daughter ensures her welfare is not compromised due to the breakdown of the marital relationship between her parents.

40. For the reasons stated above, this Court directs the respondent husband to pay a sum of Rs. 50,00,000/- (Rupees Fifty lakhs only) to the appellant as permanent alimony and an additional Rs. 50,00,000/- (Rupees Fifty lakhs only) to their daughter for her education and future expenses, such as her marriage. These payments shall be made within four months from the date of this judgment.

41. Consequently, the appeal is dismissed, the decree of divorce is upheld, and the maintenance amount above granted is directed to be paid by the respondent to the appellant and their daughter within the time specified above.

42. There shall be no order(s) as to costs.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

December 19, 2024

1 (2006) 4 SCC 558
2 (2007) 4 SCC 511
3 In short, 'HMA'
4 In short, 'CPC'
5 (2019) 8 SCC 637
6 (1975) 2 SCC 326
7 (1994) 1 SCC 337
8 (2013) 5 SCC 226
9 (1997) 4 SCC 226
10 (2022) 15 SCC 754
11 (2024) SCC OnLine SC 1724
12 (2021) 2 SCC 324

2. Study Material-G.K.

Sangam Age

The **Sangam Age** is a significant phase in the history of ancient South India, spanning roughly from the 3rd century BCE to the 3rd century CE. It is also referred to as the period of Tamil Literature. The term "Sangam" refers to assemblies or gatherings of poets and scholars that took place in ancient South India. These gatherings were instrumental in nurturing a literary tradition that focused on various aspects of life, including love, war, ethics, politics, and nature.

The works composed by different poets during the Sangam age provide insights into the social, cultural, and political dynamics of the time. The Sangam age left a significant cultural legacy, influencing the region's history and heritage.

Sangam Literature

According to Tamil scholars, **three sangams** (academies of Tamil poets) existed in ancient Tamil Nadu, also known as **Muchchangam**. Under the Pandyan dynasty's royal patronage, these Sangam flourished. These Tamil literary works continue to be valuable resources for rewriting Sangam age history.

- **First Sangam: Legendary gods and sages** attended the first Sangam held in **Madurai**, although there are no recorded accounts of it.
- **Second Sangam:** It was held in **Kapadapuram** in Tamilnadu.Except for **Tolkappiyam**, none of the literary works written during this Sangam survived.
- **Third Sangam:** The third Sangam was established in **Madurai by Mudathirumaran**. Although many poets participated and created substantial work, only some persisted.
- **Tolkappiyam, Ettutogai, Pattuppattu, Pathinenkilkanakku**, and the two epics Silappathigaram and Manimegalai are among the works in the Sangam literature corpus.
- **Pathinen Melkanakku** includes **Ettutogai and Pattuppattu**.

Early Sangam Literature

The earliest Sangam literature provides invaluable insights into the social, cultural, and literary aspects of ancient South India. It incudes Agattiyam, Tolkappiyam, Ettuttogai and Pattuppattu.

Aham and Puram Concept

The use of the **poetic form** is an important aspect of Sangam literature. **Tholkappiyam**, an ancient Tamil treatise, divides poetry into two

categories: **Aham and Puram.** These two are related in the sense that they are the polar opposites of each other while also complementing each other.

Aham (Agam)	Puram
It represents the individual, the interior, the feminine, and the various stages of love.	It represents the world, the exterior, the masculine, violence, and heroism.
Women dominated	- Male-dominated
Concerns on subjects such as love and sexual relations.	- Concerns many issues, such as wars, kings, poets and personal virtues

Agattiyam (Akattiyam)

Agattiyam was the earliest book on **Tamil grammar** according to Tamil tradition.

- This book was a **non-extant text (not existing)**, written and compiled by sage **Agattiar** (Agastya) during the First Sangam.

Tolkappiyam

It was written by **Tolkappiyar** and is considered the first Tamil literary work.

- First mentioned by name in **Iraiyanar's Akapporul** as an authoritative text on Tamil grammar.
- This was the most ancient Tamil grammar text and the **oldest extant long work of Tamil literature.**
- Arranged into three books – Eluttatikaram, Sollatikaram and Porulatikaram
- **Source**: It also gives an insight into the **political and socio-economic** conditions of the time.

Ettuttogai

Ettuttogai is a classical Tamil poetic work consisting of eight works long and short, both or eight anthologies. It is included in the **Pathinen Melkanakku** (Eighteen Greater Texts).

Eight anthologies	Significance
Natrinai	- Mentions the Tamil legend about **Kannagi** (Kannaki) to protest against her husband's unjust execution.
Kurunthogai	- Kuruntokai's influence can be seen in modern Tamil films.
Aingurunuru	- It was compiled by **Kudalur Kilar** and has a colophon identifying it as a Chera text as opposed to the more typical Pandyan kingdom-based text.
Patitruppathu	- About ten decades of Chera kings, known as **Cheramals**.
Paripadal	- Expresses love in the form of religious devotion and includes **dialogue-based poems.** These poems are longer than the poems in other major Sangam anthologies.
Kalithogai	- Compiled by **Nallantuvanar**, notable for the relatively higher number of

	Sanskrit loan words, categorised into the five tinais conforming to the Sangam landscape.
Akananuru	- Notable for its **mathematical** arrangement, it has a reference to the Ramayana.
Purananuru	- Information on the political and social history of ancient Tamil Nadu

Pattuppattu

It is an anthology of ten longer poems in the Sangam literature – the earliest known Tamil literature.

Poem	**Meaning**	**Author**	**Source/ Information about**
Thirumurugatrupatai	Guide to Lord Murugan	Nakkīrar	Murugan
Porunaratrupatai	Guide for the war bards	Mutattamakkanniyar	Karikal
Sirupanatruppatai	Guide to bards with small lutes	Narrattanar	Nalliyakkotan
Perumpanatruppatai	Guide to bards with large lutes	Uruttiran Kannanar	Tontaiman Ilantiraiyan
Mullaipattu	Song about the forest	Nappitanar	-
Maduraikanchi	Reflection on Maturai	Mankuti Marutanar	Netunceliyan
Nedunalvadai	Good long northern wind	Nakkirar	Netunceliyan
Kurinjipattu	Song about the hills	Kapilar	-
Pattinappalai	Poem about the separation and the city	Uruttiran Kannanar	Karikal
Malaipadukadam	Poem of the sound about the mountains	Perunkunrur, Perunkaucikanar	Nannan

Later Sangam Literature

The Sangam age was a time of great literary achievement, where poets and scholars thrived, creating a vibrant literary tradition.

- The works produced during this era continue to be revered for their poetic excellence, imaginative storytelling, and cultural significance.
- This includes mainly poetic work **Patinen Kilkanakku**, also known as the "The Eighteen Lesser Texts", and **five great epics,** extensive narrative Tamil epics according to later Tamil literary tradition.

Patinen Kilkanakku (The Eighteen Lesser Texts)

It is a collection of eighteen poetic works created during the post-Sangam period. It mainly deals with morals and ethics.

Book	Author	Significance
Naladiyar	Various poets (mainly Jain monks)	The most important ancient didactic text in Tamil is next after **Tirukkural**.
Nankakatigai	Vilambi Naganaar	Contains one hundred songs, and each poem has four ideas.
Inna Narpathu	Kapilar	Describes the most undesirable things one should avoid.
Iniyavai Narpathu	Putham Sernthanar	Explains the most desirable things in life.
Kaar Narpathu	Kannankoothanaar	Deals with the intangibles of life, such as human emotions, love, separation etc.
Kalavazhi Narpathu	Poigayaar	Deals with the puram (external) subjects.
Ainthinai Aimpathu	Kannankoothanaar	Deals with the aham (internal) subjects
Tiṉaimozhi Aimpatu	Kannan Chenthanaar	Deals with the aham (internal) subjects
Aintinai Eḻupatu	Muvathiyaar	Deals with the subjective (aham) concepts.
Tiṇaimālai Nūṟṟaimpatu	Kanimeytaviyar	Deals with the subjective (aham) concepts.
Thirukkural	Thiruvalluvar	Discusses epics, love, polity and governance.
Tirikaṭukam	Nallathanaar	Uses the analogy of traditional herbal medicine.
Acharakkovai	Peruvaayin Mulliyaar	Concerned with personal rituals and the correct method to follow.
Pazhamozhi Nanuru	Munrurai Araiyanaar	Employs old Tamil proverbs to illustrate its messages.
Siruppanchamulam	Kariyaasaan	Uses the analogy of traditional herbal medicine.
Muthumozhikkanchi	Mathuraikkoodalaar Kilaar	Employs a simple poetic style to enable the layperson to understand the messages.
Elathi	Kani Methaviyar	The analogy of traditional herbal medicine known as **elathi** is used.
Kainnilai	Pullangkaathanaar	Deals with the subjective (agam) concepts.

Five Great Epics

Epic	Author	Feature
Silappadikaram	Ilango Adigal	- Describes the **story of Kovalan and Kannagi**. - Gives insight into contemporary Tamil **society**, **polity** and **social** life of the people. - Called the **Iliad of Tamil Literature.**
Manimekhlai	Seetalaisattanar	- **Sequel to Silappadikaram**, where Manimekhlai is the daughter of Kovalan, born to Madhavi (she becomes a Buddhist monk). - It contains useful details about the Sangam government

		and society. - Related to philosophical topics and **Buddhism** in South India. - Called the **Odissi of Tamil literature.**
Jivaka Chintamani	Tiruttakrdeva	- Related to the life of Jivaka, who marries eight queens and later becomes a **Jain monk.** (associated with **Jainism**) - Also called the Book of Deity and **Manannul (Book of Marriages).**
Valayapathi	Tamil Jain monk	- Story of a son and father, where the father left before the birth of the son, and the son seeks his father - Supported the ideologies found in early **Jainism**
Kundalakesi	Nathakuthanaar	- A story about love, marriage, getting tired of the married partner, murder and then discovering religion. - Related to **Buddhism**.

Other Literary Sources of the Sangam Age

- The commercial ties between the West and South India are mentioned by Greek authors like **Megasthenes, Pliny, Strabo, and Ptolemy.**
- **The Chera, Chola, and Pandya kings** in the southern region of the Mauryan empire are mentioned in **Asokan inscriptions.**
- The **Hathigumpha** inscription of Kharavela of Kalinga also mentions Tamil kingdoms.

Art and Architecture During Sangam Age

Art and architecture during the Sangam Age in ancient South India were not as extensively documented as the literature. While physical remnants are rare, references in literature and archaeological findings provide insights into the art and architecture during the Sangam age.

Art of Sangam Age

- The Sangam age was characterised by the widespread **popularity of poetry, music, and dancing.** Kings, chieftains, and nobles lavishly bestowed gifts upon poets.
- **Panar and Viraliyar, two singing bards,** were common performers in the royal courts. They were experts at folk music and dance.
- Dance and music were both highly developed arts. The Sangam literature makes reference to a wide range of **yazhs and drums**.
- Kanigaiyar performed dances. **Koothu** was the most popular form of entertainment among the people.

- Sangam **painters** employed the painting guidebook **Oviya Nul** to direct their creative endeavours.

Architecture of Sangam Age

Information and documentation regarding the architecture of the Sangam ages are limited. It can, however, be deduced from literary references.

- **The Hero Stone worship (Nadu Kal worship):** During the Sangam age, Nadu Kal worship was important. The Hero Stone was erected to commemorate the warrior's valour in battle. Many hero stones with legends carved on them have been discovered in various parts of Tamil Nadu.
- **Port cities:** Pattinappalai refers to the seaport of **Puhar**. Other seaports during the Sangam period are Tondi, Musiri and Korkai.
- **Building irrigation tanks: Karaikala** built Kallanai across the Kaveri River and built a large number of irrigation tanks.

Keeladi Excavation

- It is a small village in **Tamil Nadu's** Sivaganga district.
- These findings demonstrate the existence of an urban civilisation in Tamil Nadu during the Sangam age along the Vaigai River's banks.
- Excavations at Keeladi have pushed the Sangam age back about **300 years earlier than the previously believed** third century BCE.
- The discovery of pottery heaps points to the existence of a pottery manufacturing industry.
- Findings of inscribed potsherds suggest the **long survival of the script.**
- **Presence of the weaving industry:** Spindle whorls, copper needles, terracotta seals, hanging stones of the yarn, terracotta spheres and earthen vessels to hold liquid.
- **Dyeing industry and glass bead industry**: There is evidence of the existence of a **dyeing industry and a glass bead industry** in the Keeladi finding.

3. Study Material-Language

Words Confused and Misunderstood

S.N.	Words	Meaning
1.	**Acceptance**	Acceptance is used to express the active sense of the verb i.e. the act of accepting. It is a common word.
	Acceptation	Acceptation is used to express the passive sense (to be accepted). Acceptation is indicator of the state of being accepted.
2.	**Accident**	Accident means; (a) chance, fortune (b) untoward happening, mishappening
	Incident	Incident means event, occurrence or episode
3.	**Accord**	Accord means agreement
	Accordance	Accordance means conformity or compliance
4.	**Act**	An act is the single thing done, or what is done by a single effort, as that is your act or his act
	Action	An action may consist of more acts than one or embrace the causes or the consequence of the action, as a bold action, judge of actions etc.
5.	**Advice**	Advice is a noun, which means an opinion or recommendation offered as a guide to action, conduct, etc.
	Advise	Advise is a verb, which means "to give counsel to; offer an opinion or suggestion as worth following
6.	**Actuate**	Actuate means to move mechanical things to action
	Activate	Activate means to make active
7.	**Affect**	Affect is verb and stoats to influence; to have effect on.
	Effect	Effect means result or consequence
8.	**Allusion**	Allusion means reference
	Illusion	Illusion means deception
9.	**Alluvion**	Alluvion means "the flow or wash of water against a river bank"
	Alluvium	Alluvium means "a deposit of soil, clay, or the sock of such a deposit caused by an alluvion."
10.	**Ascent**	Ascent means the act of ascending
	Assent	Assent means to approve, to sanction or to put signature on
11.	**Bath**	Bath means a large open container for water, in which to wash the whole body while sitting in it or an act washing the body in a bath.
	Bathe	Bathe refers to swimming or to therapeutic washing
12.	**Beside**	Beside means next to, by the side of or near something or someone.
	Besides	Besides means in addition to, other than, as well as, apart from something or someone.
13.	**Beneficial**	Beneficial means advantageous, profitable, favourable, producing benefits
	Beneficent	Beneficent means doing good, charitable.

14.	**Blatant**	Blatant means done openly and unashamedly
	Flagrant	Flagrant means shocking
15.	**Breath**	The word "breath" is a noun. It is the act of breathing; the air that is inhaled and exhaled.
	Breathe	The word "breathe" is a verb. It means to take a breath by inhaling and exhaling.
16.	**Cannon**	Cannon means a big gun or the ear of a bell by which the bell hangs
	Canon	Canon means (a) a corpus of writings; (b) an accepted notion or principle; or (c) a law or regulation.
17.	**Canvass**	Canvas means (i) to examine in detail (ii) to discuss or debate (iii) to solicit orders or political support or (iv) to take stock of public opinion.
	Canvas	Canvas is the heavy cloth
18.	**Cast**	Cast means to throw, to give
	Caste	Caste is a form of social stratification characterized by endogamy, hereditary transmission of a style of life which often includes an occupation, ritual status in a hierarchy, and customary social interaction and exclusion based on cultural notions of purity and pollution.
19.	**Cause**	A thing that gives rise to an action, phenomenon, or condition
	Reason	Reason is the explanation of something, as the court gives reason for its judgment
20.	**Causality**	Causality shows the principle of causal relationship; the relation of cause and effect.
	Causation	Causation means the causing or producing effect.
21.	**Chasten**	Chasten means to discipline, punish, or subdue.
	Chastise	Chastise means to punish, thrash.
22.	**Centre**	Centre means the middle point of something
	Center	Center means a place or institution
23.	**Ceremonial**	Ceremonial relates to all manners of ceremonies and ritual or formal
	Ceremonious	Ceremonious represent lightly disparaging, suggests an overtone formality.
24.	**Childlike**	Childlike has positive connotations of simplicity; innocence and truthfulness
	Childish	Childish has negative connotations of puerility, peevishness and silliness
25.	**Chronic**	Chronic stands for old, lasting for considerable time like chronic Asthma, chronic phothisis etc.
	Acute	Acute indicates extreme intensity, as acute pain, acute inflammation etc.
26.	**Cleanliness**	Cleanliness is used of persons and their habits.
	Cleanness	Cleanness is used of things or places.
27.	**Clear**	Clear is used to show transparency; free from hindrance.
	Clean	Clean is used to express the opposite of dirty

28.	**Codicil**	Codicil is a testamentary instrument ancillary to a will that adds to, varies or revokes provisions in the will.
	Will	Will is a written or oral expression of one's intention regarding the disposition of one's property at death.
29.	**Collision**	Collision is when two vessels strike each other
	Allision	An allision occurs when a vessel strikes a stationary object, such as a bridge or dock
30.	**Collocate**	Collocate means to arrange in place to set side by side.
	Collate	Collate means to compare minutely and critically; to collect and compare for the purpose of arranging accurately; or to assemble in proper order.
31.	**Commendable**	Commendable means praiseworthy, laudable.
	Commendatory	Commendatory means 'expressing commendation, laudatory.
32.	**Comminate**	Comminate means "to denounce".
	Comminute	Comminute means "to pulverize".
33.	**Complacent**	Complacent means self-satisfied, smug, pleased with oneself.
	Complaisant	Complaisant means obliging, accommodating, polio.
34.	**Complement**	Complement means to supplement appropriately or adequately,
	Compliment	Compliment means to praise, pay tribute.
35.	**Comprehensive**	Comprehensive means large, extensive e.g., comprehensive account, comprehensive note.
	Comprehensible	Comprehensible means understandable.
36.	**Condemn**	Condemn means to render judgment against a person or a thing
	Contemn	Contemn means to hold in contempt, to despise.
37.	**Congruent**	Congruent is used in the sense "coincident throughout; in accordance with"
	Congruous	Congruous means "appropriate, fitting; marked by harmonious agreement."
38.	**Connote**	Connote implies in addition to the literal meaning.
	Denote	Denote signifies the literal meaning, to indicate.
39.	**Consensual**	Consensual means "having or expressing, or made with consent."
	Consentaneous	Consentaneous means unanimous or agreeing.
40.	**Consignment**	Consignment means "the act of delivering goods to a carrier to be transmitted to a designated agent."
	Consignation	Consignation means, "the act of formally paying over money, as into a bank, or to a person legally appointed to receive it, often because it is the subject of a dispute."
41.	**Contagious**	A contagious disease is communicable by contact or touch, as Eczema; Leprosy etc.
	Infectious	An infectious disease spread by contact with the germs, e.g., in air or water, as plague (air) cholera and typhoid (water) some contagious diseases are not infectious and vice-versa.
42.	**Contemporary**	Contemporary indicates modem, contemporary with us.
	Contemporaneous	Contemporaneous is usually used of actions or things.
43.	**Contemptible**	Contemptible means worthy of contempt, despisable.
	Contemptuous	Contemptuous means worthy of contempt or scorn.
44.	**Continual**	Continual means frequently recurring
	Continuous	Continuous means occurring without interruption. e.g.,

		continuous use, in reference to a roadway, etc.,
45.	**Coarse**	Coarse is rough, vulgar; as coarse cloth, coarse manner; coarse (obscene) book.
	Course	Course means race course (ground); evil course (behaviour); course of studies or lectures; or in due course; etc.
46.	**Contravene**	Contravene means to transgress, infringe; to defy or to be contrary to, come in conflict with
	Controvert	Controvert means to dispute or contest; to debate; to contend against or oppose in argument,
47.	**Contributory**	Contributory means making contribution; that contributes to a common fund;
	Contributive	Contributive having the power of contributing; conducive (exercise is contributive to health).
	Contributorial	Contributorial relates to a contributor.
	Contributional	Contributional relates to a contribution.
48.	**Contumacious**	Contumacious means wilfully disobedient of a court order.
	Contemptuous	Contemptuous means showing contempt; scornful.
49.	**Contumacity**	Contumacy is a particular kind of contempt of court and contumacity is a long needless variant of contumacy
	Contumely	Contumely means rude and haughty language
50.	**Corporal**	Corporal means of or affecting human body.
	Corporeal	Corporeal means having a physical material body and
51.	**Corespondent**	Corespondent is a man charged with adultery and proceeded against together with wife or respondent;
	Correspondent	A correspondent is a letter-writer, an on-location news gatherer or a business representative.
52.	**Corrigendum**	Corrigendum means correction
	Erratum	Erratum means error
53.	**Corps**	Corps means singular and plural both; a division of any army, National Cadet
	Corpse	Corpse means a dead body
54.	**Council**	Council means an advisory or a deliberative body as Privy Council, the Council of State; the Executive Council.
	Counsel	Counsel means advice, advocate, barrister; as verb, it means to advice.
55.	**Credible**	Credible means worthy of credence or believable.
	Credulous	Credulous means tending to believe.
	Creditable	Creditable means worthy of credit, laudable.
56.	**Crevice**	A Crevice is a narrow crack or break, as in a side walk or a wall.
	Crevasse	A crevasse is a large split or rupture, as in a levee, glacier, or embankment;
57.	**Cultured**	Correctly cultured is used of a person
	Cultivated	Cultivated is used of the mind. A cultivated mind is well trained and highly developed.
58.	**Cursory**	Cursory means perfunctory; superficial.
	Cursorial	Cursorial means pertaining to running.
59.	**Dairy**	Dairy is a place where milk, cheese, butter etc, are kept or sold.
	Diary	Diary is a journal for recording daily memoranded

60.	**Debauch**	Debauch means "to defile, to seduce away from virtue, to corrupt".
	Debouch	Debouch means 'to emerge or cause to emerge", "to come out into open ground."
61.	**Debility**	Debility means weakness; feebleness etc.
	Debilitation	Debilitation means the action of making weak of feeble.
62.	**Declaim**	Declaim is done by lawyers in court.
	Disclaim	Disclaim is done by manufacturers in warranties.
63.	**Decry**	Decry means to disapprove of, to disparage.
	Descry	Descry means to see in the distance, to discern with the eye
64.	**Deduce**	Deduce means "to infer"
	Deduct	Deduct means "to substract"
65.	**Deducible**	Deducible means "inferable",
	Deductible	Deductible, means "capable of being (usually lawfully) substracted."
66.	**Defective**	Defective means faulty, imperfect, subnormal.
	Detectible	Detectible means likely to fail or become defective
	Deficient	Deficient means insufficient, lacking in quantity.
67.	**Defer**	Defer means "to postpone".
	Defer to	Defer to means "to give way", yields the toot deference.
68.	**Definite**	Definite means fixed, exact, explicit.
	Definitive	Definitive means authoritative; conclusive; exhaustive; providing it final solution.
69.	**Deliberate**	Deliberate means intentional, fully considered
	Deliberative	Deliberative means appointed for the purpose of, deliberation or debate.
70.	**Delivery**	Delivery means to transfer or conveyance something; utterance
	Deliverance	Deliverance means "rescue, release",
71.	**Delusive**	Delusive means tending to delude
	Delusional	Delusional applies in the nature of delusion
72.	**Dependent**	Dependent (adj.) means depending on another for maintenance.
	Dependant	Dependant (noun) is one who depends on another for maintenance
73.	**Deportation**	Deportation means the act of removing (a person) to another country; the expulsion of an alien from a country.
	Deportment	Deportment means the bearing, demeanor, or manners of a person.
74.	**Depone**	Depone means to testify.
	Depose	Depose means to bear witness or testify or to take deposition of some one.
75.	**Depravity**	Depravity shows the condition of being depraved or corrupt.
	Depravation	Depravation is the act or process of depraving or corrupting.
76.	**Depositary**	Depositary means a person with whom one deposits something, a custodian. a trustee like depositary bank
	Depository	Depository is store house, a place where you deposit something. It is used for places.
77.	**Depreciate**	Depreciate means "to belittle, disparage".
	Deprecate	Deprecate means to disapprove regretfully
78.	**Deprivation**	Deprivation the damaging lack of material benefits considered

		to be basic necessities in a society
	Privation	Privation means the loss or absence of a quality or attribute that is normally present.
79.	**Depute**	Depute means to delegate.
	Deputize	Deputize means to make another one's deputy or to act as deputy.
80.	**Derisive**	Derisive means scoffing; expressing derision.
	Derisory	Derisory means worthy of derision or of being scoffed at.
81.	**Desirable**	Desirable means wished for as being an attractive, useful, or necessary course of action.
	Desirous	Desirous is used in reference to people's emotions.
82.	**Desert**	Desert is a sandy waste like Sahara, Thar etc.
	Dessert	Dessert is the last course of a dinner and consists of fruits, sweat meats etc.
83.	**Deterrent**	A deterrent is that which deters.
	Deterrence	Deterrence is preventing by fear.
	Determent	Determent means the act or fact of deterring.
84.	**Detinuit**	Detinuit means an action of replevin in which the plaintiff already possesses the goods for which he sues.
	Detinet	Detinet means an action alleging simply that the defendant is wrongfully withholding money or chattels.
85.	**Devastavit**	Devastavit means the failure of a personal representative to administer a descendent; estate promptly or property.
	Devisavit	Devisavit is invariably used in the phrase devisavit vel non (he devises or not)
86.	**Deviser**	A deviser is one who invents or contrives.
	Devisor	A devisor is one who disposes property at will.
	Divisor	Divisor is a mathematical term referring to the number, by which another number is divided
87.	**Devisibility**	Devisibility means the capability of being devised or bequeathed
	Divisibility	Divisibility means the capability of being divided. 89.
88.	**Diagnosis**	A diagnosis is any analysis of one's present bodily condition with reference to disease or disorder.
	Prognosis	A prognosis is the projected future of a present diseases or disorder.
89.	**Dialogue**	Dialogue means a conversation between two or more persons; or the exchange of ideas
	Duologue	Duologue means "a conversation between two persons only
90.	**Disburse**	Disburse is used only in reference to distribution of money.
	Disperse	Disperse is used in reference to distribution of all other things, such as crowd or diseases.
91.	**Discrete**	Discrete means separate, distinct.
	Discreet	Discreet means cautious, judicious.
92.	**Discriminatory**	Discriminatory means applying discrimination in treatment, especially on ethnic ground.
	Discriminative	Discriminative is ambiguous and is a needless variation of both discriminatory and discriminating
	Discriminating	Discriminating means keen, discerning, judicious

	Discriminant	Discriminant is a needless variant of discriminating
93.	**Disincentive**	Disincentive provides an incentive not to do something.
	Non-incentive	Non-incentive is no incentive at all.
94.	**Disinterested**	Disinterest means impartiality or freedom from bias
	Uninterested	Uninterested means "lack of interest" or "having no interest."
95.	**Disorganized**	Disorganized means in confusion or disarmy; broken up.
	Unorganized	Unorganized means "not organized"
96.	**Disposal**	Disposal means the action or process of getting rid of something.
	Disposition	Disposition connotes a preconceived plan and an orderly arrangement
97.	**Disqualified**	Disqualified means disabled, debarred.
	Unqualified	Unqualified means not meeting the requirements.
98.	**Dissemble**	Dissemble means "to present a false appearance"
	Disassemble	Disassemble means "take apart"
99.	**Dissent**	Dissent refers to a difference of opinion
	Dissension	Dissension refers to contentious or partisan arguing
100.	**Dissentient**	Dissentient means in opposition to a majority or official opinion.
	Dissentious	Dissentious means given to dissension; quarrelsome
101.	**Distinct**	Distinct means well defined; discernibly separate
	Distinctive	Distinctive means serving to distinguish, set all by appearance
102.	**Divers**	Divers implies severalty, various, sundry.
	Diverse	Diverse implies difference. It means marked by different; unlike.
103.	**Doctrinal**	Doctrinal means of or relating to a doctrine.
	Doctrinaire	Doctrinaire means dogmatic; impractically adhering to dogma.
104.	**Dominance**	Dominance express the fact or position of being dominant
	Domination	Domination means the exercise of ruling power
105.	**Economic**	Economic refers to the study of economics
	Economical	Economical means 'thrifty' or in the current Jargon "cost-effective"
106.	**Educational**	Educational means having to do with education
	Educative	Educative means tending to educate; instructive
	Educatory	Educatory is a needless variant of educative
	Educable	Educable means capable of being educated
107.	**Educible**	Educible means capable of being educed, or drawn out.
	Educable	Educable means capable of being educated.
108.	**Effective**	Effective means having a high degree of effect, powerful, striking
	Effectual	Effectual means producing desired result.
	Efficacious	Efficacious means to have desired effect.
	Efficient	Efficient increasingly has economic connotations in law that are evident
109.	**Egress**	Egress means the right or liberty of going out (leave)
	Ingress	Ingress means the right or liberty of going in (enter)
	Regress	Regress means right or liberty to re-enter.
110.	**Elemental**	Elemental means "of or relating to the elements of something; essential; primal or primitive
	Elementary	Elementary means introductory, rudimentary; simple;

		fundamental.
111.	**Elocution**	Elocution means style in speaking: the art of speaking persuasively
	Locution	Locution means a word or phrase.
112.	**Eligible**	Eligible means legally qualified for selection.
	Illegible	Illegible means incapable of being read.
113.	**Emigrant**	Emigrant is one who goes out of his country to settle in another country.
	Immigrant	Immigrant is one who comes into a foreign country to settle there
114.	**Eminent**	Eminent means great, distinguished
	Imminent	Imminent means impending, threatening to occur immediately
115.	**Empanel** **Impanel**	Empanel and Impanel have the same meaning. It means to put name on panel of jury
116.	**Empathy**	Empathy is the ability to imagine oneself in another person's position and to experience all the sensations connected with it
	Sympathy	Sympathy is compassion for or commiseration with another
117.	**Emulate**	Emulate means to strike to equal or rival, to copy or imitate with the object of equalling
	Immolate	Immolate is to kill as a sacrifice
118.	**Envisage**	Envisage means to contemplate or view in a certain way
	Envision	Envision means to picture to oneself
119.	**Equitable**	Equitable derives from equity and has associations of justice and fairness or that which can be sustained in a court of equity
	Equable	Equable means even; tranquil; level.
120.	**Eruption**	Eruption is breaking out like volcanic eruption, eruption of war, revolution or disease etc.
	Irruption	Irruption means sudden and violent entry into a country of an invador in large numbers.
121.	**Especial**	Especial means distinctive, significant, peculiar
	Special	Special means specific, particular
122.	**Ethics**	Ethics relates to the field of moral science.
	Ethos	Ethos means the characteristic spirit or beliefs of a community, people, system, or person.
123.	**Euphuism**	Euphuism is the name given to highly affected and elaborate style.
	Euphemism	Euphemism is a mild or vague expression in place of a harsh and blunt one, as stout for fat, in exactitude for falsehood.
124.	**Exalt**	Exalt means to raise in rank, place in a high position or extol
	Exult	Exult means is to rejoice exceedingly
125.	**Exceptionable**	Exceptionable means open to exception and objectionable
	Exceptional	Exceptional means out of the ordinary; uncommon; rare; superior.
126.	**Excercise**	Exercise is familiar enough in physical exercise, mental exercise.
	Exorcise	Exorcise means to drive out an evil spirit by prayers.
127.	**Exlex**	Exlex is an adjective meaning "outside the law; without legal authority"
	Ex ege	Ex ege is an adverb meaning “as a matter of law”
128.	**Exhausting**	Exhausting is draining all one's energy, tiring.

	Exhaustive	Exhaustive is comprehensive or leaving out nothing of a subject.
129.	**Expatiate**	Expatiate means to wander; or to discourse on at length
	Expatriate	Expatriate means to leave one's home country to live elsewhere; or to banish or exile.
130.	**Facility**	Facility means ease, the quality of being easily done.
	Felicity	Felicity means happiness or blessedness.
131.	**Factious**	Factious is related to faction or party and means turbulent.
	Factitious	Factitious means made up, false, artificial. It is indicative of man-made and not natural;
	Fictitious	Fictitious means imaginary, not real.
132.	**Fair**	Fair means a gathering to celebrate a holiday or a market held at stated time.
	Fare	Fare means price for conveyance by land, water or air.
133.	**Forceful**	Forceful means full of force, powerful, convincing.
	Forcible	Forcible means "effected by force against resistance."
134.	**Foul**	Foul is the opposite of fair i.e., unfair and use familiarly in foul play
	Fowl	Fowl formerly meant a bird, but now is restricted to cock or hen.
135.	**Garnish**	Garnish means to take property; usually a portion of someone's salary, by legal authority.
	Garnishee	Garnishee is usually reserved for the nominal sense.
136.	**Generative**	Generative means procreative.
	Generational	Generational means relating to generations.
137.	**Gibe**	Gibe means a caustic remark or taunt
	Jibe	Jibe means to make things fit, uniform, or consistent.
138.	**Gilt**	Gilt means covered with a thin layer of gold as gilt edged paper; such as gilt-edged securities.
	Guilt	Guilt means crime, offence, neglect of duty.
139.	**Gratuitous**	Gratuitous means done or performed without obligation to do so (gratuitous promises); done unnecessarily (gratuitous criticisms).
	Fortuitous	Fortuitous means occurring by chance (fortuitous circumstances):
140.	**Hoard**	Hoard means a store or treasure.
	Horde	Horde is a contemptuous expression for gong, or mob.
141.	**Human**	Human pertaining to human being
	Humane	Humane means kind or compassionate.
	Humanitarian	Humanitarian is one who is full of sympathy for all living things
142.	**Humanism**	Humanism indicates study in human as opposed to divine interests.
	Humanities	Humanities was the name given to Roman and Greek classics (comprising literature, philosophy, history, oratory etc.).
	Humanist	Humanist means the students of these classics.
143.	**Illegible**	Illegible means not plain or clear enough to be read.
	Unreadable	Unreadable means too dull or obfuscatory to be read (used of bad writings)
144.	**Illusion**	An illusion exists in one's fancy or imagination.

	Delusion	A delusion is an idea or thing that deceives, or misleads a person.
145.	**Imaginary**	Imaginary is non-existent, fabricated by imagination.
	Imaginative	Imaginative is having the creative faculty of imagination.
146.	**Immoral**	Immoral means "evil depraved".
	Unmoral	Unmoral means merely "without moral sense, not moral, and is used, for example, of animals and inanimate objects.
147.	**Impartable**	Impartable means capable of being imparted.
	Impartible	Impartible means indivisible.
148.	**Impassible**	Impassible means incapable of feeling or suffering.
	Impassable	Impassable means not capable of being passed.
149.	**Imperial**	Imperial means of or belonging to an emperor or empire.
	Imperious	Imperious means overbearing; supercilious, tyrannical. Additionally it means urgent; absolute and imperative.
150.	**Imprudent**	Imprudent means rash, indiscreet.
	Impudent	Impudent means insolently disrespectful shamelessly presumptous
151.	**Incipient**	Incipient means 'beginning in an initigstage."
	Insipient	Insipient is an obsolete word meaning unwise and foolish.
152.	**Incredible**	Incredible means not believable.
	Incredulous	Incredulous means skeptical.
153.	**Ingenious**	Ingenious means clever, having ingenuity.
	Ingenuous	Ingenuous means honest, frank.
154.	**Insidious**	Insidious means things or persons lying in wait or seeking to entrap on ensnare, operating subtly or secretly so to not to excite suspicion.
	Invidious	Invidious means offensive; entailing odium or ill will upon the person performing, discharging or discussing; giving offense to others.
155.	**Insoluble**	Insoluble is used both for substances that will not dissolve in liquids and of problems that cannot be solved
	Insolvable	Insolvable is used only of problems that cannot be solved.
	Unsolvable	Unsolvable is needless variant and therefore should be avoided.
156.	**Interpretivism**	Interpretivism means a plea that judges can enforce only norms stated or clearly implicit in the Constitution
	Non-Interpretivism	Non-Interpretivism mean the view that courts can legitimately go beyond those sources.
157.	**Innovation**	Innovation is novelty, something new.
	Renovation	Renovation is indicative of making a new again.
158.	**Judgmental**	Judgmental means of or relating to judgment; or judging when uncalled for.
	Judgmatic	Judgmatic means facetious formation
159.	**Judicial**	Judicial means (1) of or relating to court or by the court (2) in court (judicial admission); (3) legal; (4) of or relining to a judgment.
	Judicious	Judicious means well considered; discreet; wisely circumspect.
160.	**Jural**	Jural means of or relating to law or its administration; legal :

		juristic; or of or pertaining to rights or obligations
	Juridical	Juridical means relating to judicial proceedings or to the law
161.	**Juratory**	Juratory is a rare term used today to mean of or pertaining to an oath or oaths; expressed or contained in an oath.
	Juratorial	Juratorial means "of or relating to a jury."
162.	**Jurisprudent**	Jurisprudent means a jurist or learned lawyer.
	Jurisprudential	Jurisprudential means "of or relating to jurisprudence".
163.	**Justiciable**	Justiciable means liable to be determined in a court of justice.
	Judicable	Judicable is a needless variant.
164.	**Levee**	Levee means a river embankment; alike; pier.
	Levy	Levy means (i) to impose (as a fine) by legal sanction, (ii) to conscript For service in military; (iii) to wage (a war); (4) to seize (the property).
165.	**Lightning**	Lightning means thunderbolt.
	Lightening	Lightening means (i) shining, brightening or making bright, illuminating; (ii) making (lighter, reducing weight or burden; giving or feeling relief.
166.	**Loath**	Loath means reluctant, unwilling.
	Loathe	Loathe means to detest, to hate intensely.
167.	**Lost Property**	Property is said to be lost when the owner has involuntarily relinquished possession of it, usually by accident or forgetfullness
	Abandoned Property	Property is abandoned if the owner has knowingly forsaken his interest in the property.
168.	**Lose**	Lose means to suffer the deprivation of; to part with;
	Loose	Loose means to release; unbind; as he loosed the dog.
169.	**Luxuriant**	Luxuriant means growing abundantly, lush.
	Luxurious	Luxurious means characterized by luxury or sensuous enjoyment.
170.	**Malevolent**	Malevolent is a person 'desirous of evil to others.'
	Maleficent	Maleficent is a person who is positively "hurtful or criminal to others.
171.	**Malfeasance**	Malfeasance means an unlawful act.
	Misfeasance	Misfeasance means the negligent or otherwise improper performance of lawful act.
172.	**Malignancy**	Malignancy should be confined to denoting any cancerous disease.
	Malignity	Malignity means wicked or deep rooted ill will or hatred; malignant feelings or actions.
173.	**Mean**	Mean means (i) small; (ii) obstreperous; or (iii) median - average.
	Median	The median is the 'point in a series of numbers above which is half the series and below which is the other half.
174.	**Mean**	Mean means average.
	Mien	Mien means general manner, demeanour, appearance, bearing or behaviour of a person
175.	**Mistreat**	Mistreat means to treat badly or wrongly.
	Maltreat	Maltreat mean to abuse, to handle roughly or cruelly.
176.	**Mitigate**	Mitigate means to take less severe or intense.
	Militate	Militate means to exert a strong influence.

177.	**Momentary**	Momentary means lasting a moment, short lived, fleeting; as momentary feeling of despair, relief, momentary pleasure.
	Momentous	Momentous means of great importance or significance.
178.	**Non-Constitutional**	Non-Constitutional means a issue relating to some legal basis or principle other than the Constitution.
	Unconstitutional	Unconstitutional means in violation of or not in accordance with principles enshrined in the Constitution.
179.	**Non feasance**	Non feasance implies the failure to act where a duty to act existed
	Non act	Non act means merely the failure to act
180.	**Observation**	Observation is the act of observing i.e., seeing, marking, examining alternatively, also a remark.
	Observance	Observance is obeying of a rule, keeping a custom or performing a ceremony.
181.	**Official**	Official means pertaining to office.
	Officious	Officious means servile, fussy in offering unwanted service.
182.	**Ordance**	Ordance means military supplies, cannon; artillery.
	Ordinance	Ordinance means a rule or law made to meet some emergent situation.
	Ordonnance	Ordonnance means the ordering of parts in a whole; arrangement.
183.	**Persecute**	Persecute means to harass.
	Prosecute	Prosecute means (i) to take legal proceedings against a person, (ii) to pursue or carry on study,
184.	**Personal**	Personal is one's own, private, individual
	Personnel	Personnel is used collectively for a body of persons engaged in any service or institution
185.	**Perspicuity**	Perspicuity is the quality of clear statement and is used of books, style, writing
	Perspicacity	Perspicacity is the quality of clear, sharp understanding or penetration and is used of persons
	Perspicuous	Perspicuous means clear; lucid; seen readily
	Perspicacious	Perspicacious means penetrating in thought: acutely discerning; keen, shrewd
186.	**Practical**	Practical means manifested in practice; capable of being put to good use.
	Practicable	Practicable means capable of being accomplished; feasible, possible.
187.	**Pray**	Pray means to offer prayer
	Prey	Prey means victim
188.	**Precautionary**	Precautionary means (i) suggesting or advising provident caution; (ii) of, relating to, or of the nature of a precaution.
	Precautions	Precautious means using precaution; displaying previous or provident caution or care.
189.	**Precede**	Precede means to go ahead of; to come before.
	Proceed	Proceed means to go ahead; to continue.
190.	**Precision**	Precision means accuracy.
	Precisian	Precisian means a person who adheres to rigidly high standards
	Precisionist	Precisionist means a person who prizes absolute correctness of

		expression and performance
191.	**Precipitate**	Precipitate means sudden; hasty; rash; showing violent or uncontrollable speed.
	Precipitous	Precipitous is like a precipice; steep.
192.	**Presumptive**	Presumptive means giving reasonable grounds for presumption or belief; warranting inferences; or based on presumption or inference.
	Presumptuous	Presumptuous means arrogant, presuming, bold, forward, impudent.
193.	**Presumptively**	Presumptively means by legal presumption
	Presumably	Presumably means may presume or reasonably suppose; by presumption or supposition.
194.	**Principal**	Principal is the head of the institution
	Principle	Principle means a truth, law, doctrine or course of action
195.	**Prophesy**	Prophesy means to predict or foretell.
	Prophecy	Prophecy means a prediction or foretelling
196.	**Proscribe**	Proscribe means to prohibit
	Prescribe	Prescribe means to impose authoritatively
197.	**Quaere**	Quaere means "question".
	Query	Query means to enquire.
198.	**Quantum Meruit**	Quantum Meruit means the reasonable value of the services as quasi-contract. Literally it means “as much as he deserved."
	Quantum Valebant	Quantum Valebant means the reasonable value of goods and materials.
199.	**Recital**	Recital means the formal statement, or setting forth, of some related matter of fact in any deed or writing,
	Recitation	Recitation connotes an oral delivery before an audience, whether in the classroom or an stage.
200.	**Recognizance**	Recognizance means a bond or obligation, entered into and recorded before a court or a magistrate, by which a person engages himself to perform some act or observe some condition (as to appear when called on, to pay a debt or to keep the peace)
	Reconnaissance	Reconnaissance means a preliminary survey, a military or intelligence gathering examination of a region.
	Reconnoisance	Reconnoisance is the older spelling of reconnaissance, it is also a needless variant of recognizance and of recognition
201.	**Recourse**	Recourse means application and is used in idiomatic phrases without recourse and have recourse to.
	Resort	Resort means that which one turns to for refuge or aid
202.	**Rejoinder**	A rejoinder is the pleading served by a defendant in answer to the plaintiff's reply
	Surrejoinder	Surrejoinder is a plaintiff's pleading in reply to a defendant's rejoinder
203.	**Remainder**	A remainder is defined as `what is left' of an entire grant of lands or tenements after the preceding part of the some grant or estate has been disposed of in possession, whose regular expiration the remainder must await
	Reversion	A reversion is the remnant of an estate continuing in the grantor, undisposed of, after the grant of a party of his

		interest."
204.	**Remediable**	Remediable means capable of being remedied
	Remedial	Remedial means providing a remedy; corrective; curative
205.	**Remittance**	Remission means either forgiveness or diminution of force, effect, degree, or violence.
	Remittal	Remittal is a needless variant.
	Remission	Remittance correspondence to transmit (as money) and means "money sent to a person or the sending of money to a person.
	Remitment	Remitment is a needless variant.
206.	**Remitter**	A remitter is one who sends a remittance
	Remittitur	A remittitur is the process by which the court reduces the damages awarded in a jury verdict.
207.	**Reprise**	Reprise means (i) an annual deduction, duty, or payment out of manor or estate; as an annuity or the like; or (ii) (in music) a repetition.
	Reprisal	Reprisal means an act of retaliation, usually, of one nation against another but short of war.
208.	**Rescission**	Rescission means an act of rescinding; annulling; vacating,' or cancelling
	Recision	Recision comes from the Latin verb recisio meaning "the cut back, lop off'.
209.	**Revalidate**	Revalidation consists in repetition of the formalities of execution of the will previously revoked.
	Revive	Revival consists in revocation of the superseding or revoking will i.e., the will that is displaced or invalidated the original will.
210.	**Right**	Right means correct, proper, just etc.
	Righteous	Righteous means morally upright, virtuous or law-abiding
	Rightful	Rightful means (i) (of an action) equitable; fair (ii) (of a person) legitimately entitled to a position (the rightful heir); or (iii) (of an office or piece of property) that one is entitled to (his rightful inheritance).
211.	**Sanitary**	Sanitary means of or relating to health or more usually, cleanliness.
	Sanative	Sanative means health-producing; healthful.
	Sanatory	Sanatory is a needless variant
212.	**Savable**	Savable means capable of being saved.
	Salvable	Salvable means admitting of salvation.
	Salvageable	Salvageable means "that can be salvaged."
213.	**Scarify**	Scarify means (i) "to make superficial incisions in, cut off skin from". (ii) "to pain by severe criticism"; or (iii) "to loosen soil by means of an agricultural machine (a sacrificer) with prongs for spiked road breaking".
	Scorify	Scorify means "to reduce or to dross or slag."
214.	**Sensuous**	Sensuous means of or relating to five senses or arousing any of the five senses.
	Sensual	Sensual means sexual; salacious; voluptuous (sexual desires).
215.	**Sequential**	Sequential means "forming a sequence or consequence".
	Sequacious	Sequacious means "intellectually servile."
216.	**Sequester**	Sequester means to remove (as property) from the possession

		of the owner temporarily; to seize and hold the effects of a debtor until the claims of creditors are satisfied.
	Sequestrate	Sequestrate means to divert the income of an estate or benefice, temporally or permanently, from its owner into other hands."
217.	**Sideswipe**	Sideswipe means to strike a glancing blow.
	Sidewipe	Sidewipe means an artificial form, has no valid standing.
218.	**Signatory**	Signatory means forming one of those persons or governments whose signatures are attached to a document.
	Signatural	Signatural means of or pertaining to signatures.
219.	**Significance**	Significance means (i) a subtly or indirectly conveyed meaning; suggestiveness; the quality of implying; (ii) the quality of being important or significant.
	Signification	Signification means (i) the act of signifying; as by symbols; or (ii) the purport or sense intended to be conveyed by a word or other symbol.
220.	**Sophistical**	Sophistical means "quibbling, specious, or captious in reasoning."
	Sophical	Sophical means learned; intellectual.
221.	**Specious**	Specious is used of arguments or reasoning and means having special appeal but false.
	Spurious	Spurious is used of things. It means not genuine.
222.	**Stationary**	Stationary means remaining in one place.
	Stationery	Stationery means materials for writing on or with.
223.	**Statutable**	Statutable means (i) prescribed, authorised, or permitted by statute; (ii) conformed to the requirements of the statutes as to quality, size, or amount; (iii) (of an offense) legally punishable.
	Statutory	Statutory means pertaining to or consisting in statutes, enacted, appointed, or created by statute; conformable to the provisions of a statute.
224.	**Staunch**	Staunch is preferable as the adjective i.e., trustworthy, loyal.
	Stanch	Stanch means to restrain the flow of blood.
225.	**Terminus**	Terminus means the city at the end of a rail road or bus line
	Terminal	Terminal means the station of a transportation line
226.	**Timbre**	Timbre is primarily a musical term meaning "tone quality".
	Timber	Timber means wood prepared for use in building and carpentry.
227.	**Treble**	Treble means consisting of three parts; threefold.
	Triple	Triple means having three times the usual size, quality, or strength.
228.	**Trustee**	Trustee means a person having a nominal title to property that he holds for the benefit of one or more others, the beneficiaries.
	Trusty	Trusty means trustworthy.
229.	**Turpid**	Turpid means "filthy; worthless".
	Turbid	Turbid means muddy, thick; disordered.
	Torpid	Torpid means dormant, sluggish, apathetic.
230.	**Urban**	Urban means city or town (as opposed to rural).
	Urbane	Urbane means cultured, polite.

231.	**Venal**	Venal means purchasable or for sale;
	Venial	Venial means slight (used of sin's); pardonable; excusable; trivial.
232.	**Void**	Void means completely null.
	Voidable	Voidable means capable of being voided or confined.
233.	**Vocation**	Vocation is sense of fitness or urge for some particular career or profession.
	Avocation	Avocation is occupation or profession.
234.	**Wave**	Wave is noun associated with water i.e., wave of the sea means to move
	Waive	Waive means to give up the claim; to forgo
235.	**Wrack**	Wrack means to destroy utterly; to wreck.
	Rack	Rack means to torture or oppress.

* * * * * * * * *

5. Current Affairs

DECEMBER 2024

1. New A(H5N1) Avian Flu Strain shows increase Airborne Spread
2. India Wins Junior Asia Cup 2024 Title
3. World Soil Day 2024 observed on December 05
4. Google opens safety Engineering Centre in Hyderabad
5. Govt introduces 'Anna Chakra' to improve food supply chain
6. India wins ISSA Good Practice Award 2024
7. Cabinet approves of 85 New Kendriya Vidyalayas across India
8. India Chairs 68th Commission on Narcotic Drugs
9. Michelle Bachelet wins 2024 Indira Gandhi Prize for Peace, Disarmament, and Development
10. Uttar Pradesh becomes first state to fully implement GEM
11. Armed Forces Flag Day Observed on December 07
12. Jasleen Kaur wins 2024 Turner Prize
13. International Anti-Corruption Day observed on December 09
14. Human Rights Day 2024 Observed on December 10
15. IIT Madras unveils detailed 3D Images of Human Foetal Brain
16. IIT Guwahati innovates Biofuel Production from Methane and CO2
17. Abathsahayeshwarar Temple (Tamil Nadu) wins UNESCO Award for Heritage Restoration
18. Madhav Gadgil receives Champions of the Earth Award
19. International Mountain Day observed on December 11
20. Elon Musk reaches Historic $400 Billion Net Worth
21. Gukesh becomes youngest Chess Champion ever
22. Mikheil Kavelashvili elected President of Georgia
23. Tabla Maestro Ustad Zakir Hussain passes away at 73
24. Minorities Rights Day observed on December 18
25. India becomes Third Largest Smartphone Exporter
26. Ayodhya Ram Temple wins UK's 'Sword of Honour'
27. Tom Cruise receives US Navy's Top Civilian Honour
28. India has achieved a remarkable milestone in mobile connectivity, a total of 115.12 crore mobile subscriptions
29. Indian educator Arun Kapur honoured by Bhutan's King
30. Russia has made strides in cancer treatment with the announcement of a new mRNA vaccine.
31. Goa recently commemorated its 63rd Liberation Day, on December 19, 2024, marking the end of Portuguese colonial rule in 1961
32. India ranks 39th in Travel and Tourism Development Index 2024

33. International Human Solidarity Day observed on December 20
34. World Meditation Day observed on December 21
35. US Pledges to cut Greenhouse Gas Emissions by 61% by 2035
36. Prime Minister Narendra Modi has recently been awarded the Order of Mubarak Al-Kabeer, Kuwait's highest national honour.
37. National Mathematics Day is observed annually on December 22, which commemorates the birth of Srinivasa Ramanujan, a renowned Indian mathematician.
38. The theme for 2024 is "Mathematics – A bridge to innovation".
39. National Farmers' Day, observed on December 23
40. Indore, recognized as India's cleanest city, is making strides in sustainability, and is set to become the first zero-waste airport in the country on December 22.
41. National Consumer Day observed on December 24
42. Republic Day 2025: Tableaux Theme "Swarnim Bharat – Virasat aur Vikas"
43. Former SC Judge V. Ramasubramanian appointed as NHRC Chairperson
44. G.S. Sandhawalia becomes Chief Justice of Himachal Pradesh High Court
45. Dr. Manmohan Singh passes away at 92
46. Bald Eagle officially recognised as America's National Bird
47. Former Suzuki Motor Chairman Osamu Suzuki Passes Away at 94
48. Koneru Humpy wins 2024 FIDE Women's World Rapid Chess Championship
49. Jimmy Carter, Former US President and Nobel Laureate, passes away at 100
50. China has recently revealed its CR450 bullet train, achieved a remarkable speed of 450 km/h (approximately 280 mph) during testing.
51. Lakshya Sen wins bronze at King Cup International Badminton Open
52. United States has recently committed nearly 6 billion dollars in additional support for Ukraine amidst ongoing conflict

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.

<table>
<tr><th>1. General Knowledge</th><th>2. Law</th></tr>
<tr><td>1. Current Affairs
2. G.K.MCQs
3. History of India and IndianCulture
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</td><td rowspan="2">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</td></tr>
<tr><td>3.CLAT
1. General Knowledge
2. A Guide for CLAT</td></tr>
</table>