As on 28.02.2025

V.S. DREAM COACHING

Indirapuram Ghaziabad

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

Year – 2025

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nobody else knows

NO. 2 OF 2025
NEWSLETTER

FEBRUARY 2025

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1. Study Material-Law

Secularism and the Uniform Civil Code

I. INTRODUCTION

India's diverse and multifaceted society poses significant challenges to legal and religious rights. The concept of secularism made explicit in the Constitution through the 42nd Amendment in 1976, mandates that the State must remain neutral and respectful towards all religions. This principle underscores the necessity of equal respect for all religions, as outlined by judicial interpretations that have become a cornerstone of constitutional philosophy.

Article 25 deals with the Freedom of conscience and free profession, practice, and propagation of religion, as the bare language states that protect these rights and restrict the state from intervening in religious matters. The doctrine of 'Essential Religious Practices' has evolved through judicial interpretation to protect religious freedoms by ensuring that the State does not interfere with practices fundamental to a religion's core beliefs. This principle is crucial for personal laws governing marriage, divorce, and inheritance and is integral to various communities' religious and cultural identities.

The call for a Uniform Civil Code mentioned in Article 44 of the Indian Constitution aims to unify personal laws under a single legal framework, promoting national cohesion. However, this initiative faces substantial challenges due to India's vast diversity and the constitutional provisions that protect regional and tribal customs. The debate over the Uniform Civil Code has gained significant traction with the release of the Bharatiya Janata Party's manifesto, Sankalp Patra; among its promises, the BJP pledged to implement the UCC if it retains power in the upcoming General Elections. This pledge underscores the ongoing tension between the push for legal uniformity and the need to preserve India's rich cultural and religious diversity. Balancing these competing interests remains a critical challenge in maintaining the country's secular ethos while addressing its complex multi-religious landscape.

Before understanding the implications of UCC, it is essential to understand the meaning of secularism in the Indian context, Article 25, the doctrine of essential religious practices, and the need for and challenges of implementing UCC.

II. IDEA OF INDIAN SECULARISM

In 1976, through the 42nd Amendment of the Constitution, the concept of secularism was made explicit by amending the Preamble.

In the case of Indira Nehru Gandhi Vs. Raj Naraian, AIR 1975 SC 2299 Justice Chandrachud held that:

If there be any unamendable features of the Constitution on the Score that form a part of the basic structure of the Constitution, they are that:

(3) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion. These are the pillars of our constitutional philosophy, therefore, of the basic structure of the Constitution.

During the Constitution Assembly Debate, the dominant position on secularism was that a 'democratic' Constitution finds a place for religion as a way of life for most citizens. This thought triumphed over the argument of those members who wished for the Assembly to grant only a narrow right to religious freedom or to make the uniform civil code a fundamental right. The problem before the Assembly was "creating a secular state in a religious society." Out of all the theories contested in the Assembly debates, the 'Equal-respect' theory was felt to be catering to the needs of Indian society the best. The theory of secularism in India emphasizes equal respect for all religions rather than mere tolerance or distancing from religious beliefs. It upholds religious liberty by acknowledging the significance of religion in people's lives and requires the state to respect all religions equally, moving beyond viewing them as mere private superstitions. This approach ensures that the state does not favor or disfavor any religion but treats all equally.

III. JUDICIAL INTERPRETATION OF ESSENTIAL RELIGIOUS PRACTICES IN INDIA UNDER ARTICLE 25

The doctrine of 'Essential religious practices' evolved via judicial interpretation, safeguards the right of free religious practice as it states that the state shall not interfere in matters or practices that form an essential part of the religion. Marriage, divorce, inheritance, adoption, and maintenance are essential religious practices, as these practices form their very essence from the religious Scriptures and, in the case of **Sarla Mudgal Vs. Union of India, (1995) 3 SCC 635,** the Supreme Court held that:

Marriage, inheritance, divorce, and conversion are as religious and content as any other belief or faith. Going around the fire seven rounds or giving consent before Qazi is as much a matter of faith and conscience as the worship itself.

In the case of **G.V.Rao Vs. L.H.V Prasad and others, (2000) 3 SCC 693** called marriage a "sacred ceremony, the main purpose of which is to enable the young people to settle down in life and live peacefully."

It was upheld in the case of **Tilkayat Shri Govindlaji Maharaj Vs. State of Rajasthan, AIR 1963 SC 1638**, where the court opined that a practice is considered essential to a religion if necessary for the community following it.

In the case of **The Commissioner, Hindu Religious Endowment, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282,** it was held that the guarantee under the Constitution not only protects the freedom of opinion but also acts done to pursue such religious opinion, and the provisions of Article 25 and 26 of the Constitution protect it.

In the case of **Sardar Syedna Taher Saiffuddin Saheb Vs. State of Bombay, AIR 1962 SC 853,** it was held that what constitutes an essential practice is to be gathered from the texts and tenets of the religion. Looking at the holy Scripture of the Quran, activities like marriage, divorce, inheritance, succession, and adoption are considered religious.

Art. 25 distinguishes between religious practices and secular activities associated with religious institutions. The state can regulate or restrict secular activities associated with religious practices unrelated to religion's core aspects.

IV. MANDATE FOR PERSONAL LAWS

Personal religious laws regulate marriage, divorce, and other related practices, including inheritance. The body of laws that only apply to an individual because they follow a specific religion is known as personal religious laws. Secular laws can be applied to any citizen, regardless of religious beliefs**.** As a codification of Hindu personal law, the Hindu Marriage Act of 1955 was enacted and continues to be operative solely for Hindu nationals of India. Similarly, the Dissolution of Muslim Marriages Act of 1939 applies to only Muslims. So, these personal codified laws are religious, not secular. To perceive the religious identities of these minorities, they were given protection under Articles 25 to 28.

In the case of **Krishna Singh Vs. Mathura Ahir, AIR 1982 SC 686**, the Supreme Court held that "Part III of the Constitution does not touch upon the Personal Laws of the parties' and that the Personal Laws of the parties have to be applied based on recognized authoritative sources of Personal Law and not based on the HC's concept of modern times."

V. THE NEED FOR GENDER JUSTICE UNDER PERSONAL LAWS

The UCC seeks to eradicate such practices or social dogmas shadowed by personal laws and reform society. A well-crafted UCC can foster gender justice & equal rights.

Personal laws are based on the scriptures and customs of each major religion, many of which discriminate against women. There have been various cases in which personal laws have been considered oppressive towards women, such as **Jiauddin Ahmed Vs. Anwara Begum (1981) 1 Gau.L.R. 358 and Shayara Bano Vs. Union of India, (2017) 9 SCC 1,** show instances of misuse of Triple Talaq, which not only discriminatory against woman but also contravened the principle of constitutional morality. However, Triple Talaq has been made illegal, void, and punishable by the legislature in 2019; other forms of unilateral divorce by Husband still exist i.e., 'talaq-e-ahsan' and 'talaq-ehasan' which are discriminatory against women. Not only Muslim personal law, but specific provisions of Hindu Personal law are also discriminatory against women. For example, In the case of **Githa Hariharan Vs. Reserve Bank of India (1999) 2 SCC 228,** this Court held the provisions of the Hindu Minority and Guardianship Act, 1956, unconstitutional. The practice of 'Sati', 'Devadasi' 'Untouchability' and 'Polygamy', which were components of Hindu religion that also discriminatory to women were done away with by various legislations in the past. However, many such practices still exist. Polygamy in the Hindu religion was done away with by legislation, but the same is not invalid in the Muslim religion; this is one of the instances which postulate the need for a Uniform Civil Code.

Not only women, but 'Khula-Unilateral divorce at the instance of wife' is discriminatory against men. Since Gender is a constitutionally unacceptable basis for differential treatment of people, it is violative of Articles 14 & 15 Of the Constitution.

These are various provisions in various personal laws that are discriminatory against women, e.g., Sec. 2(7) of the Sharia Act allows polygyny but not polyandry. Furthermore, the Supreme Court has also emphasized the need for a UCC in various cases, **Mohd. Ahmad Khan Vs. Shah Bano Begum & Ors., AIR 1985 SC 945, Jordan Diengdeh Vs. S.S. Chopra (1985) 3 SCC 62**. **Sarla Mudgal Vs. Union of India, AIR 1995 SC 1531** was a classic case of an individual's attempt to misuse religious freedoms to evade legal restrictions, and this court emphasized the need for a UCC to curb the same.

VI. CHALLENGES AND FEASIBILITY OF IMPLEMENTING A UNIFORM CIVIL CODE

Implementing UCC will replace personal laws and govern every citizen with a standard set of laws. The citizens of this country are not forming a homogenous community but a heterogeneity in terms of ethnicities, religions, cultures, and languages. The primary purpose of implementing UCC on the part of the state is to seek an image of a unified political community. However, a country with such diversity will not be united if diversity is not respected. The same stance can be observed in the 21st Law Commission report, stating that a united nation does not necessarily need uniformity. It is reconciling diversity with specific universal and indisputable arguments on human rights. Supreme Court, in the case of **T.M.A**

Pai Foundation Vs. State of Karnataka and Ors, (1994) 2 SCC 195, reiterated that:

The essence of secularism in India is recognizing and preserving the different types of people with diverse languages and beliefs and placing them together to form a united India.

The feasibility of implementing a UCC faces challenges due to constitutional provisions like the Sixth Schedule and Art 371 (A) to (I). These protect states like Assam, Nagaland, Mizoram, Andhra Pradesh, and Goa regarding family law. The 6th Schedule provides for autonomous districts and regions with legislative competence over inheritance, succession, marriage, divorce, and justice administration. While protecting the status given to Schedule tribes, the Supreme Court, in the case of **Madhu Kishwar & Ors Vs. State of Bihar, AIR 1996 SC 1864,** the Hon'ble Supreme Court had observed that:

In the face of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions, and usages, judicially enforcing on them the principles of personal laws applicable to others, on an elitist approach or equality principle, by judicial activism, is a difficult and mind-boggling effort. ...it is not desirable to declare the customs of tribal inhabitants as offending Arts. 14, 15, and 21 of the Constitution.

VII. CONCLUSION:

Implementing a Uniform Civil Code in India poses significant challenges due to the nation's inherent diversity in ethnicities, religions, cultures, and languages. The doctrine of Essential Religious Practices, upheld by judicial interpretation, emphasizes the importance of preserving religious freedoms and practices, which are deeply intertwined with personal laws governing marriage, divorce, inheritance, and adoption. While the BJP's push for a UCC aims to create a unified political community, it risks undermining the very fabric of India's secularism by disregarding the constitutional protections afforded to various communities, especially those in autonomous regions and states protected under the Sixth Schedule and Article 371. The SC's stance in cases like the T.M.A. Pai Foundation and Madhu Kishwar underscores the necessity of respecting diversity to maintain national unity. Thus, any move towards a UCC must carefully balance equality principles and preserve India's rich cultural and religious mosaic.

B. Important Cases February 2025

Important Supreme Court Cases
February 2025

S.N.	Subject	Case Reference
1.	Mortgage created by deposit of title deeds prevails over equitable mortgage created by deposit of agreement to sell. Difference between the equitable mortgage and legal mortgage	The Cosmos Company Operative Bank Ltd. Vs. Central Bank of India & Ors., decided on 04.02.2025
2.	Extrajudicial confession is one of the other instances of circumstantial evidence, including the accused's guilt after the incident, recovery of evidence, and others. In cases where reliance is placed solely on circumstantial evidence, a conviction can only occur when all circumstances point towards the accused's guilt.	Ramu Appa Mahapatar Vs. State of Maharashtra, decided on 04.02.2025
3.	In order to make out an offence under Section 306 IPC, specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The alleged harassment meted out should have left the victim with no other alternative but to put an end to her life.	Ayyub and Ors. Vs. State of Uttar Pradesh and Anr., decided on 07.02.2025
4.	Public employment process must always be fair, transparent, impartial and within the bounds of the Constitution of India. Every citizen has a fundamental right to be treated fairly and impartially, which is an appendage of right to equality under Article 14 of the Constitution of India. A violation of this guarantee is liable to judicial scrutiny as well as criticism.	Amrit Yadav Vs. State of Jharkhand and Ors., decided on 10.02.2025
5.	If an appeal abates due to the failure to substitute legal heirs, filing a substitution application under Order 22 Rule 4 CPC eliminates the need for a separate	Om Prakash Gupta @ Lalloowa (Now Deceased) and Ors. Vs. Satish Chandra (Now Deceased), decided on

	application to set aside the abatement.	11.02.2025
6.	Mere presence at the crime scene doesn't establish common intention unless active participation is proven. Distinction between common intention and common object	Vasant @ Girish Akbarasab Sanavale & Anr. Vs. State of Karnataka, decided on 11.02.2025
7.	Permanent alimony and interim maintenance under the Hindu Marriage Act, 1955 can be granted even when the marriage has been declared void.	Sukhdev Singh Vs. Sukhbir Kaur, decided on 12.02.2025
8.	Interest may be denied to party who abused judicial process	M/s. Tomorrowland Ltd. Vs. Housing and Urban Development Corporation Ltd. and Anr., decided on 13.02.2025
9.	If the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification.	Vinod Kumar Vs. State (Govt. of NCT of Delhi), decided on 13.02.2025
10.	A preliminary inquiry is not mandatory before registering an FIR against a public servant under the Prevention of Corruption Act. Moreover, the accused cannot have a vested right to claim preliminary inquiry before FIR registration in corruption cases.	State of Karnataka Vs. T.N. Sudhakar Reddy, decided on 17.02.2025
11.	A second FIR for the same offence is impermissible but a second FIR for a different offence is permissible. The nature of the allegations in both FIRs must be examined to determine the permissibility of registering a subsequent FIR.	State of Rajasthan Vs. Surendra Singh Rathore, decided on 19.02.2025
12.	The testimony of a child witness cannot be dismissed outright because, under Section 118 of the Evidence Act, a child is competent to testify if they can understand the questions and provide rational answers. Moreover, the accused cannot benefit from a minor contradiction in the child's testimony and	State of Madhya Pradesh Vs. Balveer Singh, decided on 24.02.2025

	no corroboration of the Child is required when his/her testimony remains credible and consistent. Summarized the law regarding the child witness testimony.	
13.	If the discovery was not proved to be in furtherance of the confessional statement, then the confessional statement cannot be accepted as per Section 27 of the Evidence Act.	Md. Bani Alam Mazid @ Dhan Vs. State of Assam, decided on 24.02.2025
14.	'Legislative Decisions' are not immune from judicial review. Protection under Article 212(1) is only for 'Proceedings in Legislature	Dr. Sunil Kumar Singh Vs. Bihar Legislative Council (Through Secretary) and Ors., decided on 25.02.2025
15.	Failure of the sanctioning authority to provide sanction within the stipulated time would not make the sanction a 'deemed sanction' because such a concept doesn't exist under Section 197 Cr.P.C.	Suneeti Toteja Vs. State of U.P. and Anr., decided on 25.02.2025
16.	The landlord or property owner is the best judge of which portion of the rented premises should be vacated to meet their specific needs, and the tenant cannot oppose eviction merely on the grounds that the landlord owns other properties.	Kanahaiya Lal Arya Vs. Md. Ehshan and Ors., decided on 25.02.2025
17.	Mere possession of the stolen property by the accused would not justify a conviction under Section 411 IPC unless it is proven that the accused had knowledge or reason to believe that the property was stolen.	Hiralal Babulal Soni Vs. State of Maharashtra and Ors., decided on 25.02.2025
18.	A law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.	Kaniskh Sinha Vs. State of West Bengal, decided on 27.02.2025
19.	A contribution made by the partner to the partnership firm becomes the firm's property as per Section 14 of the Partnership Act, 1932 and neither the	Sachin Jaiswal Vs. M/s Hotel Alka Raje and Ors., decided on 27.02.2025

	partner nor his legal heirs would have an exclusive right over the firm's property after the partner's death or retirement except the share in profit in proportion to the contribution made in partnership firm.	
20.	An order granting bail can be stayed by the Court only in exceptional cases when a very strong prima facie case of the existence of the grounds for cancellation of bail is made out. The prima facie case must be of a very high standard.	Sudershan Singh Wazir Vs. State (NCT of Delhi) and Ors., decided on 28.02.2025

IN THE SUPREME COURT OF INDIA

The Cosmos Company Operative Bank Ltd.
Vs.
Central Bank of India & Ors.

[Civil Appeal No. 1565 of 2025
@ SLP (C) No. 11557/2019]

HEADNOTE – Mortgage created by deposit of title deeds prevails over equitable mortgage created by deposit of agreement to sell.

Difference between the equitable mortgage and legal mortgage

The very basis for creation of an 'equitable mortgage' is the intention of parties alone, and as such any action or remedy can be directed only against the parties so involved. This is because, unlike a legal mortgage where a 'charge' is created directly on the property itself and the title or any proprietary interest therein is transferred to the lender thereby becoming a right enforceable in rem in respect to the property, in case of an 'equitable mortgage' no such charge is said to have been formally created on the property nor any transfer or conveyance of interest has said to occur. Rather on the contrary, the de jure title or ownership continues to vest with the original borrower and only the documents thereof is ordinarily retained by the lender and as such the right of the lender in such a situation is being enforced through the party having title over the said property alone i.e., the borrower and thus is only a right in personam.

JUDGMENT

J.B. Pardiwala, J.

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

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E. CONCLUSION.....

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Bombay (Civil Appellate Jurisdiction) dated 12.12.2018 in Writ Petition No.11324 of 2015, by which the writ petition filed by the appellant herein seeking to challenge the order passed by the (Debt Recovery Appellate Tribunal) (for short, the "DRAT") dated 28.08.2015 in Appeal No. 41 of 2007 came to be rejected thereby affirming the order passed by the DRAT.

A. FACTUAL MATRIX

3. The facts giving rise to this appeal may be summarised as under:-

(a) We take notice of the fact that the respondent nos. 2, 3 and 4 respectively, are the original borrowers. However, the respondent No.4 has passed away and therefore his name came to be deleted from the array of parties vide order dated 4.12.2020.

(b)The original borrowers on the strength of one unregistered agreement of sale availed loan facility from the Central Bank of India i.e. the respondent No. 1 to the tune of Rs.30,00,000/- approximately. What was offered by way of security was a flat which the original borrowers proposed to purchase from the developer and all that they had on the day and date when they went before the bank to avail the loan was an unregistered agreement of sale.

(c) It is not in dispute that the Central Bank on the strength of an unregistered agreement of sale sanctioned the loan creating a charge over the flat. (d)Since the borrowers defaulted in the repayment of the loan, the Central Bank initiated proceedings for the recovery of the requisite amount before the Debt Recovery Tribunal-I, Mumbai (in short "the DRT"). The DRT Mumbai adjudicated the Original Application No. 74 of 2002 and held the borrowers jointly and severally liable to pay an amount of 43,15,405.56 paisa with interest ₹ thereon @15% per annum from the date of filing of the O.A. till its payment.

(e) The relevant observations made by the DRT, Mumbai in Para 8 reads thus:-

"8. In application affidavit of the applicant state that the Defendant No. 2 with intention to create mortgage deposited title deeds of her flat No. C-28, Sahyadari Apartment, L.T. Road, Borivali West, Bombay-400092 as security of the loan. sanctioned to Defendant No. l. To prove this fact the Applicant's side rely on Exh. 53, which is an unregistered memorandum. It being unregistered document itself is not sufficient to create the mortgage. The applicants state further on 04.02.1993, the Defendant No. 2 again attended Applicants office and redeposited the title deeds of her flat on the enhanced, revised loan.

The applicant's case about mortgage is based on the title deeds, the documents produced by Defendants to create the mortgage. That was primary evidence. It was not produced. Memorandum, Exh. 53 affidavit and pleading of applicant cannot take place. The applicant do not state or explain why that primary, basic evidence is not brought before the Tribunal. Unless these documents are on record, it cannot be assessed/ascertained whether those documents were sufficient to create mortgage or not. In all the circumstances, I hold the applicant failed in proving the Defendant No. 2 mortgaged her flat as a security of the loan given by the Applicants."

(f) The operative part of the order passed by the DRT reads thus: -

"A) The Defendant No. 2 and 3 shall jointly and severally pay the amount of Rs. 43,15,405.56 ps (Rupees Forty Three Lacs Fifteen Thousand Four Hundred Five and Paise Fifty Six only) to the Applicant with interest thereon @ 15% p.a. from the date of filing of this application till the payment.

B) The defendant No. 2 shall pay the Applicant, the amount of Rs. 5,70,787.21 ps. (Rupees Five Lacs Seventy Thousand Seven Hundred Eight Seven and Paise Twenty One Only) as dues of Overdraft Accounts, Rs. 4,08,157.25 ps. (Rupees Four Lacs Eight Hundred One Hundred Fifty Seven and Paise Twenty Five only) as due of Short Term Loan Account, Rs. 2,25,498.45 ps. (Rupees Two Lacs Twenty Five Thousand Four Hundred Ninety Eight and Paise Forty Five only) as dues of Working Capital Loan with interest thereon @ 15% p.a.

C) The Applicant will be entitled to recover this amount from the hypothecation created by the defendants as mentioned in the application of the defendants fail to pay the above amount."

D) The defendants No. 2 & 3 shall pay cost of this Application to the applicant and to bear their own costs".

(g)The Central Bank of India had to file an appeal before the DRAT because of the observations made by the DRT in its order as contained in para 8 referred to above.

(h)The order passed by the DRAT, allowing the appeal filed by the Central Bank reads thus: -

"1. This appeal has been filed by the plaintiffs /appellant herein being aggrieved by the order dated 30/11/2006 passed by the learned Presiding Officer, DRT-I, Mumbai in O.A. No. 74 of 2002, whereby the learned Presiding Officer directed the defendant nos. 2 and 3 to jointly and severally pay the amount of Rs.43,15,405.56 ps. to the applicant with interest thereon @15% p.a. from the date of filing of the application till its payment. Further directed the defendant No. 2 to pay the amount of Rs.5,70,787.21 ps. as dues of Overdraft Accounts, Rs. 4,08,157.25 ps. as dues of Short Term Loan Account and Rs.2,25,498.45 ps. as dues of Working Capital Loan with interest thereon @15% p.a.

2. The ld. counsel for the appellant raised two grounds namely the description made by the defendant no.1 is not correct one and second ground is that the original title deeds have not been produced before this court. Hence he prayed that the appeal has to be allowed against the defendant no.1 alone. The suit has been dismissed against the defendant no.1. Anyhow the suit against the defendant nos. 2 and 3 has been decreed.

3. The contention of the ld. counsel for the appellant is that the defendant no.1 is real borrower and is sued in his personal capacity as proprietor of M/s. Ajanta Industries which is evident from Para No. 2. Hence he prayed that the appeal has to be allowed.

4. The contention of the respondent is that the mortgage has not been proved before the DRT. Hence the suit has been rightly dismissed. Thereafter respondent no. 4 has advanced the loan to the respondent no. 1 and thereafter the property is sold to the third person. Hence he prayed that the appeal has to be dismissed.

5. From the perusal it is seen that it has been mentioned that the respondent no.1 was sued in his personal and individual capacity as proprietor of M/s. Ajanta Industries as clearly set out in Para No.2. Hence as per Order 30 Rule 10 he has been properly described, hence the finding in this regard given by the DRT has to be set aside and in turn is set aside.

6. The next contention is that the original documents have not been produced before the trial court is not in dispute. Now it has been produced before this court which pertains to the mortgaged property and original agreement are now brought on record and is taken on record. It is pertinent to note that the original title deeds are with the appellants and mortgage is not denied by the guarantor. It is also clear that respondent no.4 do not have title deeds pertaining to the property and their alleged mortgage is very much subsequent to the mortgage of appellants. Hence, I am of the view that it can be accepted that the appellant bank

has valid and subsisting mortgage in its favour and in turn mortgage is admitted and finding given by the DRT in this regard has to be set aside and the O.A. against the defendant no.1 also decreed and allowed as all parties are properly sued and joined.

7. The appeal is allowed. 8. Subsequent to sale by respondent no. 4 in favor of third party and amount of deposit is concerned, this point is left open to agitate before the appropriate forum.

"(i) While the proceedings before the DRAT were pending in the form of appeal filed by the Central Bank of India, the appellant bank herein had to intervene, and they were also heard on the question as to which bank had the first charge over the security interest created by the original borrowers.

(j) The appellant bank herein being dissatisfied with the order passed by the DRAT referred to above challenged the same by filing a writ petition before the High Court. The High court proceeded on the footing that the DRAT was right in recording a finding that the mortgage of the flat in question created in favour of the appellant bank herein was subsequent in point of time and besides the same, the appellant bank had no valid title deeds with them at the time of sanctioning the loan in favour of the original borrowers.

(k)In short, the finding of fact recorded by the High Court in its impugned judgment is that the flat was mortgaged with the Central Bank of India on 31.10.1989, whereas the mortgage claimed by the appellant Bank herein was of October, 1998.

(l) The High Court observing as aforesaid, rejected the writ petition filed by the appellant herein. The relevant observations made by the High Court in its impugned judgment read thus:-

"6. By the impugned order, therefore, the DRAT had arrived at a clear finding of fact that the mortgage of the said flat to the Petitioner-Cosmos Bank is 'subsequent' to the mortgage of the Respondent-Central Bank apart from the fact that the Petitioner-Cosmos Bank did not have title deeds pertaining to the said flat. This finding was arrived at by DRAT as the said flat was mortgaged to the Respondent-Central Bank on 31-10- 1989, whereas the mortgage claimed by the Petitioner-Cosmos Bank was of October 1998.

7. It is brought out in the Affidavit-in-Reply of the Respondent-Central Bank that the Respondent-Central Bank had Initially filed a suit against the borrower/guarantors (Respondents Nos.2 to 4 herein) in this Court on 5 September 1994. By an interim order dated 20-10-1994, this Court had appointed a Court Receiver in respect of the said flat.

8. It would thus be evident that at the time of sanction and grant of the Loan by the Petitioner-Cosmos Bank i.e. sometime in November 1998, the said flat was in custodia legis as the Court Receiver was appointed in the year 1994. In these circumstances, there appears to be substance in this submission of the learned Counsel for the Respondent-Central. Bank that the validity of the mortgage of the said flat in favour of the Petitioner-Cosmos Bank was even otherwise questionable. The suit which was filed in this Court was ultimately transferred to DRT only in the year 2002 and numbered as O.A.No. 74 of 2002.

Before this Court, the Petitioner-Cosmos Bank have essentially relied upon the Share Certificate which was as a matter of fact issued by the Society only in the year 1989 (as the Society itself was formed in the year 1986-87) and Agreement for Sale dated 7-12-1978 (which is subsequent to Agreement for Sale dated 09-11-1978 relied upon by the Respondent-Central Bank). Both the Agreements are unregistered. It Is not even pleaded by the Petitioner-Cosmos Bank in the present Petition that the documents of title deeds relied upon by the Respondent-Central Bank were not credible or that the mortgage of the said flat in favour of the Respondent-Central Bank was not valid.

In any event, it can be hardly disputed that the mortgage in favour of the Respondent- Central Bank was prior in point of time. In the circumstances, in our view, the DRAT rightly held in the impugned order that the alleged mortgage of the Petitioner-Cosmos Bank was subsequent in point of time to the mortgage of the Respondent- Central Bank. 9. In view of the aforesaid discussion, we are unable to find fault with the impugned order of the DRAT. The Petition is, accordingly, dismissed. The Recovery Officer, DRT may now pass appropriate orders as regards the distribution of the sale proceeds of the said flat which has been deposited in the DRT."

4. In such circumstances referred to above, the appellant bank is here before this Court with the present appeal.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the appellant Cosmos Co. Operative Bank.

5. The learned counsel appearing for the appellant bank vehemently submitted that the High Court committed an egregious error in rejecting the writ petition filed by his client and thereby affirming an equally egregious order passed by the DRAT.

6. He would submit that indisputably the first mortgage was created in favour of the Central Bank of India, but the said mortgage was invalid or rather having no force in law. According to him any bank, while sanctioning the loan would ensure that what is being offered by way of security is something valid. In such

circumstances, when an unregistered agreement of sale was offered as a title deed, it was of no value as it is a settled law that agreement of sale does not confer any right title or interest. Far from being a registered agreement of sale, in the case on hand, what was offered by way of security to the Central Bank was an unregistered agreement of sale.

7. In the aforesaid context, the learned counsel first invited the attention of this Court to Section 54 of the Transfer of Property Act, 1884 (for short, the "Act, 1884") which defines the terms sale. Thereafter he invited the attention of this Court to Section 58 of the Act, 1884 which defines the term "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage- deed".

8. He laid much emphasis on sub-section (a) of Section 58, which explains what is mortgage. Thereafter, he invited the attention of the Court to Section 100 of the Act, 1884 which explains what is "charge".

9. The learned counsel thereafter invited the attention of this Court to certain provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (for short the "Act 1963") more particularly Section(s) 4, 4A and 11 therein, respectively.

10. He thereafter invited the attention of this Court to few provisions of the Maharashtra Apartment Ownership Act 1970 (for short the "Act, 1970") more particularly the preamble to the Act and Sections 2, 4 and 5 respectively.

11. To fortify his submissions more particularly the principal contention that the respondent no. 1 Bank cannot be said to have the first charge over the mortgaged property, he relied on few decisions of this Court, which are as under:-

i . Suraj Lamp & Industries (P) Ltd. (2) through Director v. State of Haryana and Another reported in (2012) 1 SCC 656 more particularly paras 16 and 19 respectively therein.

ii. Bank of India v. Abhay D. Narottam and Others reported in (2005) 11 SCC 520 more particularly the observations made in paras 9 and 11 respectively therein.

iii. Anita Enterprises and Anr. v. Belfer Coop. Housing Society Ltd. and Ors. reported in (2008) 1 SCC 285 more particularly the observations made in para 41 therein.

iv. Dattatreya Shanker Mote and Ors. v. Anand Chintaman Datar and Ors. reported in (1974) 2 SCC 799 more particularly the observations made in para 67 therein."

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

ii. Submissions on behalf of the respondent no.1; Central Bank of India.

13. On the other hand, the learned counsel appearing for the Central Bank of India submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He would submit that indisputably the first charge over the mortgaged property is that of the Central Bank.

14. At this stage, we must record that the learned counsel wanted to place few additional documents on record to make good his case that the view taken by the High Court is correct. However, considering the fact that this litigation is pending past almost 10 years, we declined such request.

15. We requested the learned counsel to proceed on the basis of the material on record and make good his case that the impugned order passed by the High Court needs no interference.

16. He would submit that there are concurrent findings recorded by the DRAT and by the High Court in so far as the validity of the mortgage is concerned and also which bank has the first charge over the mortgaged property.

17. In such circumstances, referred to above, the learned counsel would submit that there being no merit in this appeal, the same may be dismissed.

C. ISSUE FOR CONSIDERATION

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

D. ANALYSIS

i. Relevant Provisions

19. Before adverting to the rival submissions canvassed on either side, we must look into the few provisions of the law relevant for the purpose of deciding the present appeal which are as follows: -

SECTION(S) 58 AND 100 OF THE ACT, 1884.

"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.-

(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being arc called the mortgagemoney, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple mortgage.- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Mortgage by conditional sale.- Where the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

(d) Usufructuary mortgage.- Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) English mortgage.- Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to

the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Mortgage by deposit of title-deeds.- Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) Anomalous mortgage.-A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of titledeeds within the meaning of this section is called an anomalous mortgage."

"100. Charges.-

Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, 5 [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

SECTIONS 4, 4A AND 11 RESPECTIVELY OF THE ACT, 1963

"4. Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.-

(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 (hereinafter in this section referred to as "the Registration Act") and such agreement shall be in the prescribed form."

(lA) The agreement to be prescribed and sub-section (1) shall contain inter alia the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b),- (a) particulars,-

(i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;

(ii) the date by which the possession of the flat is to be handed over to the purchaser;

(iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;

(v) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats;

(vi) the nature, extent and description of limited common areas and facilities;

(vii) the nature, extent and description of limited common areas and facilities, if any;

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;

(ix) statement of the use of which the flat is intended and restriction of its use, if any;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

(b) copies of documents,-

(i) the certificate by an Attorney at law or Advocate under clause (a) of sub-section (2) of section 3;

(ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;

(iii) the plans and specifications of the flat as approved by the concerned local authority.

(2) Any agreement for sale entered into under sub-section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the

time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:

Provided that, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983, and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:

Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons.

If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.

4A. Effect of non-registration of agreement required to be registered under section 4.-

Where an agreement for sale entered into under sub-section (1) of section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, Management and transfer) (Amendment and Validating Provisions) Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under

Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

11. Promoter to convey title, etc., and execute documents, according to agreement-

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Cooperative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the

promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub- Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'."

SECTIONS 2, 4 AND 5 RESPECTIVELY OF THE ACT, 1970

"2. Application of the Act.-

This Act applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration as hereinafter provided:

Provided that, no property shall be submitted to the provisions of this Act, unless it is used or proposed to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use:

4. Status of apartments.-

Subject to the provisions of the second proviso to section 2 of this Act, each apartment, together with its undivided interest in the common areas and facilities, appurtenant to such apartment, shall for all purposes constitute heritable and transferable immoveable property within the meaning of any law for the time being in force in the State; and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies and to penalty, forfeiture and punishment as any other immoveable property, or make a bequest of the same under the laws applicable to the transfer and succession of immoveable property.

5. Ownership of apartments.-

(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the Declaration executed and registered as required by section 2 of this Act. (2) Each apartment owner shall execute a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose."

20. Without any doubt in our mind, we say that the High Court fell in error more particularly, in view of, what has been observed in para 8 of the impugned order. The law is very well settled as explained by this Court in Suraj Lamp (supra) that a contract of sale i.e. an agreement of sale does not itself create any interest in or charge on any property. This is evident on plain reading of Section 54 of the Act, 1884 which we have referred to above.

21. In the aforesaid context, the decision of this Court in Abhay D. Narottam (supra) is also relevant more particularly the observations made in para 11 therein. Paras 9 and 11 read thus:-

"9. It is not necessary for us to determine the import of Section 125 of the Companies Act as we are of the opinion that the appeal must be dismissed on a much more basic ground. "Mortgage" has been defined in Section 58(a) of the Transfer of Property Act, 1882 as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, etc. Without a transfer of interest there is no question of there being a mortgage. The same principle would apply to a charge under Section 100 of the Transfer of Property Act. Section 100 provides that all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge. The definition of simple mortgage in Section 58(b) of the Act merely speaks of the procedure and describes that species of mortgage.

11. As far as the flat is concerned, it needs no authority to say that a contract for sale of immovable property does not of itself create any interest in or charge over such property. This is provided in Section 54 of the Act and is well-settled law. In this case, the agreement for sale which was deposited by Respondent 2 with the appellant Bank was not an agreement by which Respondent 2 agreed to sell the property to a third party, but an agreement to sell the flat to Respondent 2. No interest was created in favour of Respondent 2 by virtue of this agreement for sale which could have been transferred by way of security to the appellant Bank. There is as such no question of the appellant Bank having any charge over such non-existent interest."

(Emphasis supplied)

22. The observations referred to above are directly applicable to the facts of the present case. 23.The observations made by this Court in Dattatreya Shanker Mote

(supra), more particularly, in para 67 also assumes significance. Para 67 reads thus:-

"67. The contention was that, although a charge may not be described as "a transfer", yet, the result of Section 100 of the Act was to equate it with a simple mortgage which is a transfer because Section 100 says: "all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge". I think that, apart from the qualifying words, "so far as may be", used by Section 100 of the Act, a condition essential to the applicability of Section 48 of the Act is that there must be an actual transfer of property. Furthermore, another condition for invoking Section 48 of the Act is that the previous and the subsequently created rights "cannot all exist or be exercised to their full extent together".

In the case before us, this does not appear from facts found. In any case, the prior right of the charge-holders could only obtain priority provided other things are not unequal. This follows from words used indicating that each of the two or more transactions must at least be a "transfer". Furthermore, the conditions of priority as between the holder of a previous charge and a subsequent simple mortgage are completely covered by Section 100 of the Act. The principle underlying Section 48 is one expressed in the maxim of Equity:

"Qui prior est tempore potior est jure" (first in time is stronger in right). This principle, applied to ranking between rival equitable claims, is applied by Section 48 to contending claims of otherwise equal legal validity. The effect of Section 100 is that while a charge, which is not a "transfer" of property, gets recognition as a legally enforceable claim, that enforceability is subjected by the proviso to the requirements of a prior notice in order to give it precedence over a legally valid transfer of property.

The rights of the appellants charge-holders could only be exercised, on facts found, subject to the priority obtained by the respondent mortgagee's rights. This clear result of the law, as contained in Section 100 of the Act, cannot be defeated by invoking either the terms of or the principles underlying Section 48 of the Act read with the first part only of Section 100 of the Act. If the respondent simple mortgagee Oswal could not have claimed the benefit of the proviso to Section 100, the first part of Section 100, read with Section 48 of the Act, could have come to the aid of the appellants. But, on the view adopted by me, this line of reasoning does not help the unfortunate charge-holders at all."

(Emphasis supplied)

24. The observations made by this Court in Anita Enterprises (supra) in para 41 are also relevant. The para 41 reads thus:-

"41. It appears to us that the status of a member in a tenant copartnership housing society is very peculiar. The ownership of the land and building both vests in the society and the member has, for all practical purposes, right of occupation in perpetuity after the full value of the land and building and interest accrued thereon have been paid by him. Although de jure he is not owner of the flat allotted to him, but, in fact, he enjoys almost all the rights which an owner enjoys, which includes right to transfer in case he fulfils the two preconditions, namely, he occupies the property for a period of one year and the transfer is made in favour of a person who is already a member or a person whose application for membership has been accepted by the society or whose appeal under Section 23 of the Societies Act has been allowed by the Registrar or to a person who is deemed to be a member under sub-section (1-A) of Section 23 of the Societies Act.

In case any of these two conditions is not fulfilled, a member cannot be said to have any right of transfer. Thus, we reiterate the law laid down by this Court in Sanwarmal [(1990) 2 SCC 288] that a member has more than a mere right to occupy the flat, meaning thereby higher than tenant, which is not so in the case of a tenant within the meaning of Section 5(11) of the Rent Act. This being the position, we have no difficulty in coming to the conclusion that the status of a member in the case of tenant co-partnership housing society cannot be said to be that of a tenant within the meaning of Section 5(11) of the Rent Act, as such there was no relationship of landlord and tenant between the Society and the member."

(Emphasis supplied)

25. The observations made by this Court in Suraj Lamp (supra) in paras 16 and 19 are also relevant. The paras 16 and 19 respectively read thus:-

"Scope of an agreement of sale 16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744 : (1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. that only on execution of conveyance, ownership passes from one party to another."

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

(Emphasis supplied)

26. Suraj Lamp (supra) later came to be referred to and relied upon by this Court in Shakeel Ahmed v. Syed Akhlaq Hussain reported in 2023 SCC OnLine SC 1526 wherein the Court after referring to its earlier judgment held that the person relying upon the customary documents cannot claim to be the owner of the immovable property and consequently not maintain any claims against a third-party. The relevant paras read as under: -

"10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis.

Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the

case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:

(i). Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar (2018) 7 SCC 639

(ii). Balram Singh v. Kelo Devi Civil Appeal No. 6733 of 2022

(iii). Paul Rubber Industries Private Limited v. Amit Chand Mitra SLP(C) No. 15774 of 2022.

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view."

iii. Concept of Equitable Mortgage.

27. The question whether Central Bank of India i.e., the respondent no. 1 herein had a valid mortgage or not can be looked at from one another angle. It is an undisputed fact that the original borrowers herein whilst availing the loan facility from the respondent no. 1 bank herein had offered the said flat in question as a security, and pursuant to the same had willingly deposited the agreement of sale in respect of the same with the respondent no. 1 bank.

28. Although, indisputably as discussed in the foregoing paragraphs the said agreement to sale can by no means be treated as title deeds to the said flat and as such would not constitute a mortgage in terms of Section 58 of the Act, 1884, yet could it be said that there was no charge created on the said flat at all by the original borrowers? Could it be argued that the failure to deposit the share certificate to the said flat at the time of availing the loan for whatsoever reasons by a necessary implication nullifies the charge that was intended or sought to be created over the said flat in favour of the appellant bank herein, merely because the agreement to sale in itself does not purport any title even though the intention of the parties was to create a charge over the flat? The answer to the same has to be an emphatic "No".

29. Before we proceed to explain the aforesaid, it would be apposite for us to understand the concept of "Equitable Mortgage". Under the English Law, broadly there are two kinds of mortgages; (i) a legal mortgage and (ii) an equitable mortgage. A 'legal mortgage' entails creation of a charge by way of conveyance of a proprietary interest over the property or security in favour of the lender in accordance with the formalities set out under the Law of Property Act, 1925. This is typically effectuated through execution of a deed of charge or a mortgage deed simpliciter.

While such conveyance need not involve transfer of the title or ownership in itself nor is the conveyance required to be physical or actual and may be symbolic in nature where the borrower or mortgagor continues to retain possession or even title of the mortgaged property; however, the de jure effect of such conveyance must be in the nature of vesting the lender with an enforceable right to take possession, to foreclose or to sell the property in the event of default. Thus, the legal effect of the deed of charge or mortgage must convey certain enforceable rights in favour of the lender or mortgagor over the mortgaged property even though the title or ownership may not be transferred.

30. However, there may be instances where the parties agree to mortgage a property as security, but no formal charge or conveyance of any proprietary interest in the said property has taken place, still the same may be recog- nized as a mortgage. This is popularly understood as an 'equitable mortgage' where although under the law the formalities required for creating a legal charge or mortgage over a property are patently absent, yet the said property would be in equity deemed to have been mortgaged and as such may be apportioned or appropriated by the lender on the strength of mere intention of the parties to create a mortgage.

In other words, where under the law no mortgage or charge is said to have been created over a property i.e., no conveyance of a right or interest over the subject property has been effected, yet if the intention of parties to create a mortgage is clear, equity would demand that such intention is not only respected but given some effect to and the said property be deemed to have been mortgaged so as to enable the lender to assert its rights over the same, it is known as an 'equitable mortgage'.

31. The concept or doctrine of 'equitable mortgage' owes its origin to the English case of Russel v. Russel reported in [1783] 28 E.R. 1121 wherein the High Court of Chancery speaking through Lord Thurlow held that where there is delivery of title by the borrower to the lender for the purpose of availing a loan, although such deposit may not constitute a valid mortgage, but the courts in granting specific performance to the lender to create a security or lien over the property

would effectively be "supplying the legal formalities necessary to create nothing but a mortgage though one in equity".

He explained that the court in permitting the lender to create a se- curity over the property on the strength of the title deeds lying with it is not per se performance of a contract but rather its execution and hence for all purposes would be a mortgage inter se the borrower and the lender in equity. He lastly elaborated that the further grant of relief to execute such a contract which is not a valid mortgage but nevertheless being converted into one is grounded on it being already being a contract part performed. [See; J.B. White & Tudor in Equitable Mortgage and Leading Cases in Equity, 9th Ed. (Sweet & Maxwell (1928)]

32. Thus, the underlying distinction between a legal mortgage and an equitable mortgage under the English Law is that in the former, there is conveyance or transfer of some proprietary interest in the mortgaged property in accordance with the statute or law whereas in the latter the formalities required for a legal mortgage are not fully satisfied, but the parties' intentions to create a mortgage are clear as result of which it is deemed as a mortgage.

33. The rationale behind the existence of the concept of an 'equitable mortgage' was elaborated upon by Sir William Holdsworth in A History of English Law. He explained that the evolution of equitable mortgage is based on the principle that a mortgage at its core is essentially nothing more than a 'security'. It is not intended as a mechanism of transferring either ownership or any vested interest in the strict sense but rather only a means for providing a security.

He elaborated how 'equitable mortgages' of today's time is a reflection of the practicalities of the then mercantile system of the time where due to the commercial exigencies and need for quick financial arrangements led the community to resort to the informal practice of extending loans and creating security by mere deposit of titles or a promissory note to repay solely on a 'mutual understanding' between the parties, without any actual agreement or memorandum and without following the cumbersome formalities of any transfer of conveyance of proprietary rights as required under a traditional or legal mortgage.

34. The aforesaid may be better understood through the well-known maxim of 'Quod fieri debuit pro facto censetur' which means that 'what ought to have been done is considered as done'. Edward Henry Turner Snell in his book on The Principles of Equity explained that the role of equity in law is only one i.e. to rectify the injustice arising out of the rigidities of the law, to intervene and ensure that substantive justice prevails over mere formalities or hyper technicalities, even when strict legal requirements have not been met. Snell articulated that equity operates as a "court of conscience" tempering the harshness of the law and

fulfilling its enduring mission to deliver fairness and justice where the rigid application of legal rules would otherwise result in inequity.

In the context of mortgages, take a situation where there is no express document or deed to evince that a charge was created over the subject property and the parties at the time of availing the loan merely agreed that they would create a mortgage in the event of default. In the eyes of law, it would be said that no mortgage has been created whatsoever, yet the understanding between the parties to later create a mortgage at the time whilst advancing the loan shows the ab initio intention to create a charge and treat the subject property as a security or a collateral for the sum so advanced.

Under the general principle of law, the recourse that would ordinarily be available to the lender in the aforesaid situation would be to seek specific performance of the said agreement (oral or written) to create a mortgage on the strength that there has been part performance of the agreement i.e., loan has been advanced and thus, charge should now be permitted to be created, and thereafter proceed to exercise its rights after the said mortgage is created.

But a "court of conscience" would instead of subjecting the lender to the rigmarole of the law, will directly give effect to the true sum and substance of the intention of the parties and thereby give to the very agreement itself the effect of creating a mortgage in 'equity' and enable the lender to exercise its rights as he would be entitled to if the agreement had been performed.

35. Thus, where a borrower willingly parts away with any title deed or a document or a promissory note or an undertaking in respect of a property by depositing it with the lender for the purpose of availing any credit facility and upon such deposit, the loan is so advanced by the lender, fairness, good conscience and justice or in other words 'equity' would demand that some meaningful significance be given to such act or conduct of the parties, as generally such act of depositing documents against loans is more often than not for no other purpose but to create a mortgage.

Thus, a "court of conscience" would give effect to the intention of the parties in the form of an 'equitable mortgage' even if there is no formal agreement or a shred of document expressly providing that such deposit is for the purpose of creating a charge OR if the documents so deposited do not necessarily have the effect of transferring or conveyancing any title or interest in the subject property to the lender.

iv. Nature of an Equitable Mortgage.

36. Having understood the concept of 'equitable mortgage', it would now be apposite to understand the ways in which an equitable mortgage may be created

and its nature. Under the English Law, the two primary ways for creating an 'equitable mortgage' is either (i) by deposit of the original title deeds to the subject property with the lender or where the original title deeds are retained by the borrower then (ii) by way of a memorandum of understanding or an agreement simpliciter recording the intention of the parties to create a charge over the subject property.

37. In the case on hand, the original borrowers had availed loan facilities from both, the appellant bank and the respondent no. 1 bank herein by deposit of certain documents in respect of the said Flat. For availing the loan facility from the respondent no. 1 bank, the original borrowers deposited two unregistered agreement to sale dated 15.10.1973 and 09.11.1978 respectively in relation to the said Flat all the way back in 1989. Whereas, whilst availing the loan facility from the appellant bank herein in the year 1998 the original borrowers deposited one another unregistered agreement to sale dated 07.12.1978 in respect of the said flat which is subsequent in time along with a share certificate of ownership of the said Flat dated 14.09.1989 that was issued by the concerned cooperative housing society.

38. Indisputably, when the loan was granted to the original borrowers, the share certificate of ownership being the sole document for conveyance of title had not been issued by the concerned housing society. In such a scenario, could it be said that in order to create a mortgage by deposit of title deeds, the respondent no. 1 bank was required to take or collect all documents and deeds of title to the said Flat in its possession, more particularly when the title deed or share certificate of ownership was not in existence at that time?

39. The High Court of Chancery in Robberts v. Croft reported in 44 E.R. 887 and a catena of other decisions have emphatically answered the aforesaid question in a negative. It has been held that "It is not necessary, to create an equitable mortgage, that all the title deeds, or even all the material title deeds, should be deposited. It is sufficient if the deeds deposited are material evidence of title."

40. In fact, the English Courts have gone to the extent of saying that the title deeds are not the only documents a deposit of which may create an equitable charge upon the subject property, and that even a promissory note or an agreement for purchase of the subject property can create an equitable mortgage. [See; Ex parte Warner, reported in [1812] 19 Ves Jr 202; Lacon v. Allen reported in [1856] 3 Drew. 579].

Samuel Miller in The Law of Equitable Mortgages explained the aforesaid with a illustration that take a case where the owner has lost an important deed or where the deeds which have been deposited while purporting title to the property contain no reference to any other material deeds, or a situation where there exists

no possible way for the lender to ascertain whether any other deeds or documents are actually outstanding, should the lender be deprived of the benefit of the deposit of the other documents even if the intention of parties to create a mortgage is clear?

In his opinion, the principle underlying the doctrine of 'equitable mortgages' is premised to mitigate these very hardships or technicalities that often emerge in transactions of such nature from coming in the way of creation and enforcement of mortgages. He added, to hold otherwise, would be nothing but an unfaithful dilution of the doctrine of equitable mortgages and by extension the concept of 'equity' based justice.

This is because for deciding a question of an equitable mortgage, the court is not required to look for deposit of a valid legal title, because no passing or transfer of title is involved in the first place in equitable mortgage unlike a legal mortgage, rather what the courts look for is a transaction in the nature of a contract whereby the interests of the borrower embraced in the subject property may be later subjected and made liable for the debt.

41. Even though, the High Court of Chancery speaking through Lord Eldon in the case of In Re: Rice reported in [1819] 36 E.R. 632 argued against the idea of extending the doctrine of 'equitable mortgage' to instances of deposit of 'part-deeds' to discourage the act of scrupulous borrowers of obtaining loans from multiple creditors by dividing and depositing different deeds with each of them, the position under the English Law has continued to remain the same i.e., part deposits of title would be sufficient to create an equitable mortgage and that there is neither any requirement that the mortgagee or the lender should be required to acquire every title deed, nor is there any requirement that the documents so deposited show a good title to the vested property. [See; Robberts (supra).

What is required is that the deeds or documents so deposited materially evinces the intention of the parties to create a charge over the subject property and the mortgagor assures itself that he has acquired all available titles or documents.

42. The Court of Chancery speaking through Lord Eldon in Knight v. Knight reported in (1840) 3 Beav 148 held that "equity looks to the intent rather than the form". Thus, even if the document that was deposited with the lender falls short, it would still be enforceable in equity provided the intention of the parties to do so is as clear as a noon day. In the case at hand, even though what was deposited with the respondent no. 1 bank herein was nothing but an unregistered agreement to sale having no legal effect of con- veyance or transfer of the said flat or any right therein in favour of the bank, the undisputed factum that the said agreement to sale was deposited by the original borrowers herein so as to offer the said flat as security would tantamount to an equitable mortgage.

Moreover, since at the time of availing the loan, the share certificate of ownership to the said Flat was yet to be issued, it could be said that the respondent no. 1 bank had all the documents to the said Flat that it could have at that time possibly taken in possession, and we even proceed on the footing that the respondent no. 1 bank might have undertaken all the necessary steps to assure itself that there were no other material documents to be taken possession of at the time of extending the loan.

43. Thus, where 'equitable mortgages' have been created based on deposit of part-deeds or documents purporting title or evincing intention of parties to create an interest, all such deposits will be a valid mortgage in equity and the charge that might have been created prior in time will assume priority over any subsequent charges or mortgagors. However, since such a mortgage is an 'equitable mortgage' any rights flowing from such mortgages are only of personal character and only rights in personam and as such will not operate against any strangers or subsequent incumbrancers unaware of such equitable mortgage.

This stems from the rule that equity acts only in personam. The very basis for creation of an 'equitable mortgage' is the intention of parties alone, and as such any action or remedy can be directed only against the parties so involved. This is because, unlike a legal mortgage where a 'charge' is created directly on the property itself and the title or any proprietary interest therein is transferred to the lender thereby becoming a right enforceable in rem in respect to the property, in case of an 'equitable mortgage' no such charge is said to have been formally created on the property nor any transfer or conveyance of interest has said to occur.

Rather on the contrary, the de jure title or ownership continues to vest with the original borrower and only the documents thereof is ordinarily retained by the lender and as such the right of the lender in such a situation is being enforced through the party having title over the said property alone i.e., the borrower and thus is only a right in personam. Edgar N. Durfee in The Lien or Equitable Theory of the Mortgage explaining the aforesaid stated that, in cases of equitable mortgage in the absence of any 'conveyance' or creation of 'charge', the money so advanced against the subject property is only in the form of a personal debt and hence a right in personam at best and the right of the lender to apportion or appropriate the subject property for repayment of loan only a right to take such an action rather than a right in the property itself.

44. 'Equitable Mortgage' being a right in personam will not affect successive incumbrances and will not be enforceable against successive mortgagees if the creation of such equitable charge was no disclosed to them. This is particularly because, 'equitable mortgages' are construed as 'incomplete mort- gages' (as no actual charge is created nor any conveyance of title has taken place) and thus no

person can be permitted to derive any advantage from any incomplete title who has on his own volition not done everything requisite to complete its title.

If a first mortgagee voluntarily either leaves the title deeds with the mortgagor, or voluntarily accepts part-deeds and fails to either secure the rest or assure himself of any outstanding deeds or documents, then the charge of such first mortgagee must be postponed to any and all subsequent mortgagees, without notice of the charge of first mortgagee, because he due to his own gross negligence enabled the subsequent incumbrances.

Thus, even if multiple equitable mortgages are created, the first charge will have priority, unless in case of fraud or gross negligence, or a voluntary, distinct, and unjustifiable concurrence, on the part of the first mortgagee in either (i) retaining the remaining deeds or (ii) failure to take steps in putting everyone to notice, more particularly the subsequent incumbrancers about the first equitable mortgage. Where the first mortgagor has made bond fide inquiry for them and received a reasonable excuse for their non-delivery, he shall not be postponed to a subsequent equitable mortgage that may be created.

45. In India, the aforesaid has been recognized in Section 78 of the Act, 1882 which provides that where on account of any fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee. The said provision reads as under: -

78. Postponement of prior mortgagee.-

Where, through the fraud, misrepresentation or gross neglect of prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

46. It is in this very context, this Court in Suraj Lamps (supra) emphasized on the need for registration of documents so as to give publicity and public exposure to various transactions in respect of immovable properties and enable people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. The relevant observation reads as under:-

Advantages of Registration

10. In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference:-

"The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of nonregistration. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

Section 49 al the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed.

It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property.

It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."

(Emphasis supplied)

47. In the present case, it appears from the materials on record, that when the loan was being advanced by the respondent no. 1 bank, a Memorandum of Equitable Mortgage recording transfer / deposit of the agreement to sale in respect of the said Flat was sought to be created, although the same has not been placed on record. There are no correspondences or communications between the respondent no. 1 bank or the original borrowers where the share certificate of ownership was

demanded, even though the Bank was well aware that the conveyance of title where the subject Flat is situated only takes place through such certificate and not by the agreement of sale in terms of Section 11 of the Act, 1963 read with Section 4 of the Act, 1970.

Moreover, it appears that no steps were taken by the respondent no. 1 bank to issue a public notice of equitable charge that was created in its favour, as discernible from the fact that when the appellant bank upon inquiry was informed by the concerned cooperative housing society that the said flat was not subject to any prior encumbrances or charge. In such a scenario, the equitable charge of the respondent no. 1 bank herein is liable to be postponed to the charge created in favour of the appellant bank herein in terms of Section 78 of the Act, 1882, and the impugned order of the High Court is liable to be set-aside on this ground alone.

v. Distinction between Mortgage by Deposit of Title Deeds under the English Law and under the Transfer Of Property Act, 1882.

48. At this stage we must also address ourselves on one another important aspect where the High Court grossly erred whilst passing the impugned judgment and order. As discussed in the foregoing paragraphs of this judgment, the original borrower whilst availing the loan facility from the respondent no. 1 and appellant, had deposited with them two unregistered agreement to sale, and another unregistered agreement to sale along with the share certificate of ownership, respectively. Although both of the aforesaid transactions seek to create mortgage by deposit of documents or title, yet there lies a very fine but pertinent distinction between the two transactions.

In respect of the loan advanced by the respondent no. 1 bank, only two unregistered agreements to sale were deposited which as discussed earlier do not purport any title as held in Suraj Lamps (supra) while with the appellant bank herein apart from one unregistered agreement to sale the share certificate of ownership had also been deposited which has the effect of conveyance of title.

49. Under the English Law, whether the documents so deposited actually purport or transfer any title is immaterial for the purpose of creating an 'equitable mortgage' as long as the intention to do so is clearly discernible. The position in India however is quite different. This is because under the English Law, a mortgage created by deposit of title or documents is not construed as a legal mortgage and is only treated as an equitable mortgage.

Whereas in India under the Act, 1882, more particularly under Section 58 sub-section (f) a statutory recognition has been given to the mode of creation of mortgage by deposit of title deeds. Such a mortgage by deposit of title deeds is

for all purposes a 'legal mortgage' and not an equitable mort- gage. At the cost of repetition, the said provision is once again reproduced hereunder:-

"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.-

(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being arc called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple mortgage.- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Mortgage by conditional sale.- Where the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

(d) Usufructuary mortgage.- Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) English mortgage.- Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property

absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Mortgage by deposit of title-deeds.- Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) Anomalous mortgage.-A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of titledeeds within the meaning of this section is called an anomalous mortgage."

50. Section 58 sub-section (a) stipulates the general rule that mortgage is "the transfer of an interest in specific immoveable" or as understood under the English Law as a "legal mortgage". Section 58 sub-section(s) (b) to (g) further explains the different modes to create a mortgage under the Act, 1882. What is particularly important to note is the fact that, the subsequent subsection(s) do not either expressly or impliedly stipulate that no transfer of interest is taking place where mortgage is created in terms of the other modes provided therein.

There is also nothing in the entire Act, 1882 that mortgage created by one particular mode under Section 58 would be subservient to another. In such a scenario, any mortgage that happens to be created in terms of the Act, 1882 more particularly Section 58 would for all purposes be equal except in the consideration of priority of charge. Thus, while mortgage by deposit of title deeds under the English Law is an equitable mortgage and subservient to a legal mortgage, in India mortgage created by such deposit is not subservient to an equitable mortgage as such mortgage is in itself a legal mortgage.

51. Deposit of title deeds is one of the many forms of mortgages whereunder there is a transfer of interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan. The three requisites for a valid mortgage are, (i) debt; (ii) deposit of title deed; and (iii) an intention that the deed shall operate as security for the debt. In other words, when the debtor deposits with the creditor title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under Section 59 of the Act, 1882 as in other classes of mortgage.

It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. Whether there is an intention that the deed shall be security for the debt is a question of fact to be decided in each case on its own merits. The said fact will have to be decided just like any other fact based on legal presumptions, oral, documentary and/or circumstantial evidence.

Normally, title deeds are delivered to the bank along with a covering letter indicating therein an intention of delivering title deed i.e. to create security for the present or future liability. In turn, bank gives a letter to the person delivering title deeds indicating acceptance of the documents and/or title deeds by way of security either for the outstanding dues or for the loan to be advanced. The banks, normally, maintain register of securities called Equitable Mortgage Register; wherein the entry of title deeds is taken in the form of memorandum signed by the Branch Manager alone, as a person accepting delivery of the documents as security.

These formalities are done to establish three essential requisites of equitable mortgage, viz. (1) debit, (2) deposit of title deed and (iii) the intention that deed shall operate as security for the present or future debt. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage.

52. Thus, when the original borrowers deposited with the appellant bank herein, the share certificate of ownership to the said Flat, on that very day and date, a legal charge is said to have been created on the flat in favour of the appellant bank, whereas, when it comes to the respondent no. 1 bank no such charge on the flat was created, rather what was created was only an equit- able mortgage, though prior in time.

This distinction is particularly important, because even if the agreements to sale deposited with the respondent no. 1 bank were registered and thereby, giving public notice of their existence, still the appellant bank by virtue of possession of the actual title deeds to the said Flat in the form of the share certificate of ownership would be accorded priority in charge for the sole reason that the charge created by it is a legal mortgage in terms of Section 58 of the Act, 1882.

At this stage, we may clarify that deposit of part-deeds of title would not constitute a mortgage in terms of Section 58 sub-section (e) of the Act, 1882 unlike English Law, because under the latter such deposit is only an equitable

mortgage and thus, the strict rigidities may not be imposed or insisted upon whereas in India mortgage by deposit of title deeds is a legal mortgage which in effect would defeat any equitable mortgage, and thus, the requirement to deposit all title deeds would have to mandatorily be required except those deeds which despite best of efforts of the mortgagee could not have been deposited or known to be outstanding.

53. The underlying reason behind why an equitable mortgage would be subservient to a legal mortgage, even where proper notice was effectuated may be understood in many different ways, we have already discussed one of them in the foregoing paragraphs, particularly that the former does not create any de jure charge or right in the subject property and rather is only a right in personam, however, the short answer to the above is that equity cannot sup- plant the law and can only supplement it.

Thus, where the law is unambiguous and clear, equity will always yield to the law. However, when it comes to equitable mortgages, we may rephrase the above to only say that equity will yield to the law only to the extent provided by the law. Thus, although the legal mortgage would have assumed priority in charge, yet an equitable mortgage may still be enforceable as secondary charge, provided the other considerations such as notice of such mortgage is fulfilled.

54. This Court in K.J. Nathan v. S.V. Maruthi Rao reported in AIR 1965 SC 430 has explained the fine distinction between an equitable mortgage as understood in the English law and the mortgage by deposit of title deed. K. Suba Rao J. (as His Lordship then was) speaking for Court observed as under:-

"Under this definition (referring to section 58(f) of the Transfer of Property Act) the essential requisites of mortgage by deposit of title deeds are, (i) debt), (deposit of title-deeds, and (iii) an intention that the deeds shall be security for the debt. Though such a mortgage is often described as an equitable mortgage, there is an essential distinction between an equitable mortgage as understood in English Law and the mortgage by deposit of title deeds recognized under the Transfer of Property Act in India.

In England an equitable mortgage can be created either, (1) by actual deposit of title deeds, in which case collateral evidence is admissible to show the meaning of the deposit and the extent of the security created, or (2) if there be no deposit of title deeds, then by a memorandum in writing, purporting to create a security for money advanced; See White and Tudor's Leading Case in Equity, 9th Edition, Vol. II, at p.

77. In either case it does not operate as an actual conveyance though it is enforceable in equity; whereas under the Transfer of Property Act a mortgage by

deposit of title deeds is one of the modes of creating a legal mortgage whereunder there will be transfer of interest in the property mortgaged to the mortgagee. This distinction will have to be borne in mind in appreciating the scope of the English decisions cited at the Bar. This distinction is also the basis for the view that for the purpose of priority it stood on the same footing as a mortgage by deed."

(Emphasis supplied)

55. However, in order to obviate any confusion, we may clarify that the aforesaid observations in K.J. Nathan (supra) must not be understood to mean that equitable mortgage has no valid basis or is not recognized in toto in India. Any act of the parties that evinces a clear intention of the parties to create a mortgage though the same might not have been created in terms of Section 58 of the Act, 1882, may still be a valid charge in terms of Section 100 of the Act, 1882. The said provision reads as under:-

"100. Charges.-

Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

56. Section 100 of the Act, 1882 provides that where a transaction does not amount to a mortgage i.e., not a mortgage in terms of Section 58 of the said Act, the person to whom the immovable property is offered as a security would still nevertheless be said to have a "charge" in terms of the said provision, and that all provisions under the Act, 1882 as applicable to simple mortgage envisaged under Section 58 sub-section (b) of the said Act shall apply to such "charge" insofar as possible. The key distinction is that any mortgage which is not created in terms of Section 58 of the Act, 1882 i.e., all equitable mortgages are still nevertheless a "charge" to such property.

The expression "and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge" assumes significance as it is not suggestive that such charge would be deemed a simple mortgage, rather it only goes so far as to provide that the provisions that apply to simple mortgage will also apply to such "charges" so far as possible but by no

means does it provide that such "charge" is to be treated as a simple mortgage in terms of Section 58 of the Act, 1882 i.e., as a legal mortgage.

The last part of Section 100 of the Act, 1882 further statutorily recognizes the in personam nature of such "charge" and provides that they shall not be enforced against any person to whom such property or interest therein has been transferred i.e., to whom it has been mortgaged in terms of Section 58 of the said Act or any other bona-fide transferee who does not have notice of the said charge. Thus, what may be discerned is that, 'equitable mortgages' are very much recognized in India under the nomenclature of "charge" in terms of Section 100 of the Act, 1882, and the same will be enforceable as far as possible in terms of the procedure and provisions applicable to a simple mortgage except those without notice of such charge.

57. We are conscious of the decision of this Court in J.K. (Bombay) (P) Ltd. v. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. reported in 1968 SCC OnLine SC 32 which held that an agreement to create a mortgage only gives rise to perform such an agreement and does not amount to either a mortgage or a charge and the decision in Haryana Financial Corpn. v. Gurcharan Singh reported in (2014) 16 SCC 722 wherein it was held that since all provisions applicable to a simple mortgage shall, as far as possible, also apply to a charge, Section 59 of the Act, 1882 which requires a simple mortgage to be compulsorily be registered would also be applicable and as such the creation of a charge under Section 100 of the Act, 1882 must be compulsorily registered.

However, a close reading of the decision in J.K. (Bombay) (P) Ltd. (supra) will reveal that this Court never held that any agreement to mortgage will be incapable of creating a charge in terms of Section 100 of the Act, 1882, rather what was held is that only those agreement to mortgage where the intention to create a charge in praesenti is absent will be incapable of creating either a mortgage or a charge, but where such intention of parties is there, the same will definitely tantamount to a 'charge' under Section 100 of the Act, 1882 as held in ONGC Ltd. v. Official Liquidator reported in (2015) 5 SCC 300.

Similarly, the decision of Haryana Financial Corpn (supra) holding that registration in terms of Section 59 of the Act, 1882 is mandatory in order to create a charge prima facie appears to be incorrect in view of an earlier decision of a larger bench of this Court in M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons reported in (1969) 1 SCC 573 which in clear terms held that the second part of Section 100 of the Act, 1882 does not attract the provisions of Section 59 of the said Act and that a charge may be made without any writing and there is no provision of law which require that such an instrument must be attested or registered. We are also in agreement with the decision of M.L. Abdul

Jabbar Sahib (supra) as to hold otherwise would result in absurd consequences which could not have been intended by the legislature.

We say so because, if a charge can be made only by a registered instrument in accordance with Section 59 of the Act, 1882, then the subsequent transferee will always have notice of the said charge in view of Section 3 Explanation I which stipulates that "where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration" This would effectively render the second part of Section 100 of the Act, 1882 which mandates requirement of notice to all subsequent transferees before the enforcement of a 'charge' as otiose and redundant, as the moment when such instrument is registered, notice is deemed to have been made.

The very idea behind stipulating the requirement of notice under Section 100 of the Act, 1882 seems to be to save even those transactions which are not registered and do not amount to a mortgage yet in equity may still be enforceable provided the subsequent transferee has notice of such charge. We do not intend to dwell any further on the decisions of this Court in J.K. (Bombay) (P) Ltd. (supra) and Haryana Financial Corpn (supra) as the present case does not require examining whether the respondent no. 1 bank could be said to have an enforceable charge against the appellant bank, and even otherwise if an 'equitable mortgage' cannot be construed as a 'charge' in terms of Section 100 of the Act, 1882, the former may still be permitted to be enforceable in the extant of equity in the peculiar facts of each case.

This is because the enforcement of an 'equitable mortgage' being a by-product of the doctrine of equity is purely a matter of discretion that a court of conscience may grant keeping in mind the principles of fair-play, good conscience and justice. Where any 'equitable mortgage' is found to be unenforceable, the same though neither a 'legal mortgage' nor a 'charge' may still nevertheless entitle a lender to seek other reliefs such as specific performance of the contract or a suit for recovery on the strength of the ab inito intention of the parties to create a security evident from such 'equitable mortgage'.

58. We are conscious of the decision of this Court in Kedar Lal v. Hari Lal reported in AIR 1952 SC 47 wherein it was held that the whole of law of mortgage in India, including the law of contribution arising out of a transac- tion of mortgage, is now statutory and is embodied in the Act, 1882 read with the Civil Procedure Code, 1908 and that the courts cannot travel beyond these provisions. The relevant observations read as under: -

"27. So far as Section 43 is concerned, I am not prepared to apply it unless Sections 82 and 92 can be excluded. Both Sections 43 and 82 deal with the question of contribution. Section 43 is a provision of the Contract Act dealing with contracts generally. Section 82 applies to mortgages. As the right to contribution here arises out of a mortgage, I am clear that Section 82 must exclude Section 43 because when there is a general law and a special law dealing with a particular matter, the special excludes the general. In my opinion, the whole law of mortgage in India, including the law of contribution arising out of a transaction of mortgage, is now statutory and is embodied in the Transfer of Property Act read with the Civil Procedure Code. I am clear we cannot travel beyond these statutory provisions."

59. However, a close reading of the aforesaid paragraph of Kedar Lal (supra) would reveal that the observations were made in light of the question whether Section 43 of the Indian Contract Act, 1882 which deals with right to contribution would be applicable to such a right which is arising out of a mortgage to the exclusion of Section 82 of the Act, 1882 which deals with mortgages. It was in this context this Court held that when it comes to mortgages it will not be permissible to travel beyond the scheme of Act, 1882 and venture into the provisions contained in other laws.

60. However, this by no stretch means that the concept of equitable mortgage has no place in the Indian jurisprudence. The concept of equitable mortgage is purely a creation and by-product of the doctrine of equity, and thus, the absence of any specific provision under the Act, 1882 providing for such a mortgage will not run to the detriment of something which is essentially designed to ensure that principles of fair-play, good conscience and justice endure.

There is no decision which either specifically excludes or outrightly rejects the application of this doctrine. Rather, the subsequent decision of this Court in K.J. Nathan (supra) it was specifically stated that although the concept of equitable mortgage as evolved under the English Law cannot be considered to be a rule of law, which as also discussed by us in the foregoing paragraphs is by-product of doctrine of equity and not the law of the land, yet they may serve as a guide. The relevant observations read as under:-

10. The foregoing discussion may be summarized thus : Under the Transfer of Property Act a mortgage by deposit of title deeds is one of the forms of mortgages whereunder there is a transfer of interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan. Therefore, such a mortgage of property takes effect against a mortgage deed subsequently executed and registered in respect of the same property. The three requisites for such a mortgage are, (i) debt, (ii) deposit of title deed; and (iii) an intention that the deeds shall be security for the debt.

Whether there is an intention that the deeds shall be security for the debt is a question of fact in each case. The said fact will have to be decided just like any other fact on presumptions and on oral, documentary or circumstantial evidence. There is no presumption of law that the mere deposit of title deeds constitutes a mortgage, for no such presumption has been laid down either in the Evidence Act or in the Transfer of Property Act. But a court may presume under Section 114 of the Evidence Act that under certain circumstances a loan and a deposit of title deeds constitute a mortgage.

But that is really an infer- ence as to the existence of one fact from the existence of some other fact or facts. Nor the fact that at the time the title deeds were deposited there was an intention to execute a mortgage deed in itself negatives, or is inconsistent with, the intention to create a mortgage by deposit of title deeds to be in force till the mortgage deed was executed. The decisions of English courts making a distinction between the debt preceding the deposit and that following it can at best be only a guide; but the said distinction itself cannot be considered to be a rule of law for application under all circumstances. Physical delivery of documents by the debtor to the creditor is not the only mode of deposit.

There may be a constructive deposit. A court will have to ascertain in each case whether in substance there is a delivery of title deeds by the debtor to the creditor. If the creditor was already in possession of the titledeeds, it would be hypertechnical to insist upon the formality of the creditor delivering the title deeds to the debtor and the debtor redelivering them to the creditor. What would be necessary in those circumstances is whether the parties agreed to treat the documents in the possession of the creditor or his agent as delivery to him for the purpose of the transaction."

(Emphasis supplied)

61. Thus, in such a situation where a transaction does not amount to a mortgage but nevertheless can be construed as a preliminary step towards the preparation of a mortgage which will be security thereafter with nothing else done for conveyance or transfer of title or interest, there three recourses may be available to the lender:-

(i) He may simply claim that the transaction amounts to an equitable mortgage as it was for the purpose of creating a present or immediate security which a court of equity ought to consider; or

(ii) He may claim that there has been a sufficient part performance of the contract, with attending circumstances which a court ought to relieve by permitting the lender to 'perfect its mortgage' i.e., to take further steps for the transfer of conveyance of title or interest in order to create a mortgage; or

(iii) He may bring a suit for recovery of money and base his claim simply on the ab initio intention of the parties to create a security in the first place and the resultant part-performance of the contract insofar as the loan was extended based on such promise or consideration of security.

62. Before we close this judgment, we must look into the observations made by the High Court in para 8 of its impugned order. In para 8 the High Court has recorded that at the time of sanction and grant of the loan by the appellantbank herein i.e. sometime in November, 1998 the flat in question was in custodia legis of the court receiver appointed in the year 1994. What weighed with the High Court was the submission canvassed on behalf of the Central Bank that the validity of the mortgaged flat in question in favour of the appellant bank was also questionable.

The reason why the High Court said so is because both the agreements are unregistered. According to the learned counsel appearing for the Central Bank, the agreement which appellant bank accepted was also unregistered. Then both the banks are sailing in the same boat. However, what seems to have been overlooked by the Central Bank is the fact that when the borrowers approached the appellant bank for loan they had a valid title deed i.e., the original share certificate issued by the society. The issuance of the original share certificate was also con- firmed by the society vide letter dated 13.11.1998, which forms a part of the record.

63. The original share certificate which was produced before the appellant-bank as availed Title deed assumes significance in view of the provisions of Section 11 of the Act 1963, more particularly, sub-section (1) of Section 11 of Act which reads thus:-

"11. Promoter to convey title, etc., and execute documents, according to agreement.-

(1) A promoter shall take all necessary steps to complete his title and convey, to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association flat-takers or apartment owners his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under Section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power."

(Emphasis supplied)

64. In para 8 of the impugned judgment, the High Court has recorded that the appellant bank herein had sought to rely upon the original share certificate issued by the Society as a valid piece of title deed. However, the High Court got carried away by the fact that the first charge was that of the Central Bank and not of the appellant bank, and failed to notice the distinction that exists between an 'equitable mortgage' and a 'legal mortgage'.

65. The proposition of law is that though the transaction evidenced by the prior unregistered document is valid in itself, yet any title or interest created by it is liable to be defeated under the rule of priority by a valid later and legal sale or mortgage evidenced by a duly registered document. The reason is, otherwise, no effect can be given to the rule which implies that the later registered title is intended to prevail against an earlier unregistered title.

No weight can, therefore, be attached to the contention that by a valid unregistered agreement of sale, the vendor's title is exhausted, he has, afterwards, nothing to sell, and the later registered sale deed gives nothing to the predecessor. The fallacy in the contention lies in ignoring the reason of the rule, namely that as between the registered and unregistered transactions, the registered transaction creates the dominant right or title.

E. CONCLUSION

66. In view of the aforesaid, we have reached the conclusion that the impugned order passed by the High Court is not correct and it deserves to be set aside.

67. In the result the appeal succeeds and is hereby allowed. The impugned Order passed by the High Court is hereby set aside. Since, the respondent no. 1 had failed in bringing the factum of its 'equitable mortgage' to the notice of the appellant bank, the respondent no. 1 bank is not entitled to enforce the same qua the recovery proceeds of the appellant bank herein.

68. We are informed that an amount of Rs. 51 lakh is lying deposited with the DRT maintained in an escrow account. The same now be disbursed along with interest in favour of the appellant bank.

69. We direct the Registry to send one copy each of this judgment to all the High Courts with further request to each of the High Courts to forward the judgment to the DRTs and DRAT benches.

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

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

.....J. (R. Mahadevan)

New Delhi;

February 04, 2025

IN THE SUPREME COURT OF INDIA

Ramu Appa Mahapatar
Vs.
State of Maharashtra

[Criminal Appeal No. 608 of 2013]

HEADNOTE – Extrajudicial confession is one of the other instances of circumstantial evidence, including the accused's guilt after the incident, recovery of evidence, and others. In cases where reliance is placed solely on circumstantial evidence, a conviction can only occur when all circumstances point towards the accused's guilt.

JUDGMENT

Ujjal Bhuyan, J.

1. This appeal by special leave is directed against the judgment and order dated 02.12.2010 passed by the High Court of Bombay at Bombay (High Court) in Criminal Appeal No. 252 of 2005 (Ramu Appa Mahapatar Vs. State of Maharashtra) whereby the High Court dismissed Criminal Appeal No. 252 of 2005 filed by the appellant.

2. Be it stated that the aforesaid criminal appeal was preferred against the judgment and order dated 15.10.2004 passed by the First Ad-hoc Additional District and Sessions Judge, Thane (Sessions Judge) in Sessions Case No. 52 of 2004 whereby and whereunder appellant was convicted under Section 302 of the Indian Penal Code, 1861 (IPC) and sentenced to suffer rigorous imprisonment (RI) for life and to pay fine of Rs. 1,000/-, in default to suffer RI for 3 months.

3. Prosecution case in brief is that appellant lived with deceased Manda; it was a live-in relationship. Both of them were living in a chawl of PW-1 Ravinder Gopal Jadhav, who was the landlord. Appellant informed PW-1 that his wife had expired and that he was going to her parents' house at Dipchale village to inform them. Thereafter, appellant alongwith his son went to Dipchale village where appellant met the brother of the deceased, Bhagwan i.e. PW-3. Appellant told PW-3 in the presence of Shankar PW-6, Pandhari PW-5 and Chanda Bai PW-4 that there was a quarrel between him and Manda following which he had assaulted Manda who succumbed to the injuries.

3.1. Before the appellant could come back to his village Kudus alongwith the relatives of the deceased, PW-1 had already opened the door of the house which was bolted from outside. On opening of the door PW-1 noticed that Manda was

lying dead with multiple bleeding injuries. Her mangalsutra and glass bangles were broken; some of the household articles were strewn around on the ground.

When appellant reached the place of incident alongwith the relatives of the deceased Manda, PW-1 enquired from him about the incident. At that stage, appellant told PW-1 that deceased Manda had suspected that he (appellant) was having illicit relation with some other woman. This resulted in a quarrel in the course of which appellant had assaulted Manda with the help of a grinding stone and a stick.

3.2. PW-1 then lodged First Information Report (FIR) before the police station whereafter offence under Section 302 IPC was registered against the appellant.

3.3. Investigating officer carried out the investigation in the course of which he drew inquest panchanama, spot panchanama and made seizure of various articles from the place of incident. Appellant was arrested. The weapon of assault was seized. On completion of investigation, chargesheet was filed against the appellant charging him for committing an offence punishable under Section 302 IPC.

4. Learned Sessions Judge read over and explained the charge to the appellant to which he pleaded not guilty and claimed to be tried. To prove its case, prosecution examined 10 witnesses. It was a case of circumstantial evidence. Prosecution relied upon the extra-judicial confession of the appellant made before PW-1 Ravindra, PW-3 Bhagwan, PW-4 Chandabai and PW-6 Shankar. After considering the evidence on record, learned Sessions Judge vide the judgment and order dated 15.10.2004 convicted the appellant under Section 302 IPC and sentenced him to undergo RI for life and also to pay fine of Rs. 1,000/-, in default to suffer RI for another 3 months.

5. Aggrieved by the aforesaid conviction and sentence, appellant preferred appeal before the High Court being Criminal Appeal No. 252 of 2005. By the judgment and order dated 02.12.2010 (impugned judgment), High Court dismissed the appeal of the appellant. Consequently, conviction and sentence of the appellant have been affirmed.

6. This Court by order dated 21.09.2012 had issued notice in the related petition for special leave to appeal (criminal). Leave was granted vide the order dated 15.04.2013. Hence, the present appeal.

7. Learned counsel for the appellant has taken us to the evidence of PW-1, PW-3, PW-4 and PW-6 and submits that the extra-judicial confession allegedly made by the appellant before the above witnesses could not be accepted as a valid piece of evidence. Extra-judicial confession itself is a weak piece of circumstantial evidence. From the testimony of the above witnesses, it is clearly evident that no

credence could be given to the theory of extra-judicial confession. Such confession does not inspire any confidence.

Beyond the extra-judicial confession, there was no material on record to link the appellant with the death of the deceased. Learned trial court as well as the High Court had erred in placing reliance on the so-called extra-judicial confessions and basing the conviction of the appellant on such evidence. He, therefore, submits that conviction of the appellant is wholly unsustainable and liable to be set aside. Resultantly, the appeal should be allowed.

8. Per contra, learned counsel for the respondent supports the impugned judgment of the High Court. According to him, there is no reason to disbelieve the evidence of PWs 1, 3, 4 and 6. Therefore, the trial court was justified in convicting the appellant on the basis of confessional statement made by the appellant before the above witnesses. High Court had rightly affirmed such conviction and sentence of the learned Sessions Judge. He submits that there is no case for interference with the concurrent findings. Therefore, the criminal appeal is liable to be dismissed.

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

10. PW-1 is the informant Ravindra; he is the owner of the chawl in which accused used to stay as the tenant alongwith his 'wife' and son. On 21.03.2003 at about 06:15 AM, accused came to the residence of PW-1 alongwith his son and informed PW-1 that his wife had expired. Thereafter, the accused went to the house of the parents of his wife to call her relatives. PW-1 stated that he had gone to the house of the accused alongwith his brother and found that it was bolted from outside. Alongwith his brother Shyam Rao Gopal Jadhav, PW-1 opened the door and saw that wife of the accused was lying dead on the floor in a pool of blood.

10.1. Accused brought the brother of the deceased and 4/5 persons. They also saw the dead body. At that stage, PW-1 and his brother enquired with the accused who told them that he had assaulted the deceased with a grinding stone.

10.2. According to PW-1, he went to the police station and lodged the first information which he proved in the court alongwith its contents.

10.3. In cross-examination, he stated that the accused had only told him that his wife had expired. He had talked with the accused for about five minutes. Accused told him that he was going to call her relatives.

10.4. PW-1 denied the suggestion that accused was in a confused state of mind. He stated that he did not feel it necessary to inform the police immediately. He

lodged the information between 12 noon to 12:15 PM. He also denied the suggestion that the accused had told him that some people had come in the night and had assaulted him and his wife whereafter they ran away. He further denied the suggestion that accused had told him that somebody had killed his wife and had also assaulted him.

11. PW-3 is Bhagwan. He is the brother of the deceased Manda. On 21.09.2003 at 07:30 AM, he was sitting alongwith Maruti, Pandu Ram Thorat and Shankar Rama Bhoye in front of his house. At that time, accused came alongwith his son Kiran. He told them that there was a quarrel between him and deceased Manda because of which he had assaulted Manda. As a result of the injuries sustained, she died. Hearing this, PW-3 alongwith Maruti, Pandu Ram Thorat and Shankar Rama Bhoye went with the accused to his village.

11.1. When they reached the house of the accused, they found that the landlord (PW-1) was present there. They saw Manda lying dead in a pool of blood. She had injuries on her head, forehead and face. Her saree was soaked in blood and food was strewn around. Accused told them that he had assaulted the deceased with a grinding stone and a wooden stick. Thereafter, they alongwith the landlord (PW-1) went to the police station.

11.2. In his cross-examination, he stated that the accused and the deceased were not married but were staying together. The deceased used to complain to him that accused was beating her.

1.3. Accused told PW-3 and the others that Manda had expired whereupon he was asked as to how she had expired. Though Manda was the younger sister of PW-3, he did not ask the accused whether any complaint was lodged with the police. Maruti Thorat and Pandu Ram Thorat, who are the maternal uncles of PW-3, were present when PW-3 made enquiries with the accused. He had told his maternal uncles Maruti and Pandu Ram to handover the accused to the police.

11.4. PW-3 denied the suggestion that he was not sure as to whether the accused was speaking lies. Since he was to verify as to whether Manda had died, therefore they did not handover the accused to the police. PW-3 clearly stated that when the accused came, he was in a confused state of mind and he did not take tea. His clothes were not torn or blood stained. Accused had brought one mini door rickshaw and in that, PW-3 and the others went to his house. According to PW-3, he had stated before the police that accused had told him that he had assaulted Manda with a grinding stone and had killed her but did not know why it was not written.

11.5. PW-3 stated that they reached the house of the accused around 10:00 AM and thereafter they alongwith the landlord went to the police station to lodge

complaint. He denied the suggestion that the accused had never told him about his quarrel with his wife and that he had assaulted her because of which she died. He also denied the suggestion that accused had told him that in the night, some thieves had come and that they had assaulted him and Manda.

12. Chandabai is PW-4. She is the wife of PW-3. According to her, on 21.09.2003 in the morning, her husband was chatting with Shankar, Maruti and Pandu Ram. Meanwhile, the accused came there alongwith his son Kiran and told them that he had quarrelled with Manda because of which he had assaulted her and she died. Leaving behind his son Kiran with PW-4, accused alongwith husband of PW-4 i.e. PW-3 and others went to Kudus i.e. the village of the accused.

12.1. In her cross-examination, she stated that she was residing alongwith her husband PW-3, their three children and now with Kiran, son of the accused. On the day of the incident, her husband PW-3 was sitting outside their home after his breakfast. She stated that she did not directly talk with the accused but came to know about the incident.

She denied the suggestion that she only came to know about the incident when her husband PW-3 told her that Manda was assaulted. She denied the suggestion that accused had told her that on that fateful night, 3/4 persons entered their house and had assaulted Manda when the accused ran away alongwith his son from the house. She further denied the suggestion that in the morning, accused had come and found that Manda had died and therefore he informed the landlord and thereafter to PW-4 and others.

12.2. She denied the suggestion that the accused also had injuries and that his clothes were torn. 13. PW-6 Shankar was sitting on the steps of the house of Bhagwan i.e. PW-3 in the morning of 21.09.2003 alongwith Bhagwan, Maruti and Pandu Ram. Accused came there at about 07:30 AM. He had come in a rickshaw alongwith his son. Accused told Bhagwan that he had quarrelled with Manda during which he had assaulted her and that she had died.

13.1. PW-6 stated that son of the accused was kept with the wife of Bhagwan whereafter they all went to the residence of the accused at Kudus. In the house of the accused, they saw that Manda had already expired. She had injuries on her forehead, head and back. They also saw that bangles and mangal sutra were broken and that there was splattering of blood.

13.2. In his cross-examination, he stated that accused was with them for about half an hour to 45 minutes. He did not know the accused prior to that date. He denied the suggestion that the clothes of the accused were torn and that the accused was in a confused state of mind.

13.3. PW-6 further deposed that he had told the police that accused had told Bhagwan in their presence that he had a quarrel with Manda in the night but he did not know why it was not written that accused had told so to Bhagwan in his statement by the police.

13.4. PW-6 denied the suggestion that the accused had told them that in the night, 3/4 drunk persons had entered their house whereafter they had assaulted him and when they were about to assault his son, he ran away with his son.

14. The above four are the witnesses who had deposed that the accused had stated before the informant (PW-1) and PW-3 that he had a quarrel with Manda because of which he assaulted her with a grinding stone and a stick following which she died. There is no dispute about the multiple injuries seen on the body of the deceased or the homicidal nature of the death of the deceased. Question for consideration is whether on the strength of the evidence of the above four witnesses, the accused can be linked with the offence and as to whether it can be said that the charge against the accused of committing murder of the deceased stood conclusively proved beyond all reasonable doubt?

15. Before we analyse the evidence of the above witnesses, it is necessary to briefly examine the law relating to extra-judicial confession as the present is a case of extra-judicial confession allegedly made by the accused before PW-1 and PW-3 which were endorsed by PW-4 and PW-6.

16. Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence.

The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.

17. In State of Rajasthan Vs. Raja Ram1, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity.

As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Indian Evidence Act, 1872 (briefly 'the Evidence Act' hereinafter).

The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

17.1. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be

based thereon if the evidence about the confession comes from a witness who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

The words spoken by the witness should be clear, unambiguous and unmistakenly convey that the accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.

18. In Sansar Chand Vs. State of Rajasthan2, this Court accepted the admissibility of extra-judicial confession and held that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extrajudicial confession should be corroborated by some other material.

19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan Vs. State of Tamil Nadu3. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused.

That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, the confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the veracity of the witness to whom it has been made.

19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows:-

14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

19.2. Upon an indepth analysis of judicial precedents, this Court in Sahadevan (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

20. Having surveyed the principles governing the acceptability and evidentiary value of an extra-judicial confession, we may now advert to such confession made by the accused before PW-1, PW-3, PW-4 and PW-6. It is on record that PW-3 in his cross examination was quite categorical in deposing that he found the accused to be in a confused state of mind. This factum has also come on record in the testimony of the other witnesses before whom such confession was made. In other words, the accused was not in a fit state of mind when he made the extra-judicial confession before PW-3.

That apart, there were no blood stains on the clothes worn by the accused; not to speak of any such blood samples matching with the blood of the deceased. While various articles were seized from the place of occurrence, there was no recovery of any blood-stained clothes. There is no evidence on record that the grinding

stone was recovered or that there were any blood stains on the recovered stick, not to speak of such blood stains matching the blood of the deceased.

Moreover, we find the conduct of the accused to be quite strange; instead of confessing his guilt before the police or any other authority, he first goes to PW-1, the landlord, and tells him about the death of Manda; further telling him that he was on his way to the residence of the brother of Manda (PW-3) to inform him about the development. He goes to the residence of PW-3 alongwith his son in a rickshaw and tells PW-3 about the death of Manda following assault on her by him. This he stated to PW-3 before PW-4 and PW-6.

What is more strange is the reaction or non-reaction of PW-3 when the accused confessed before him that he had killed his sister Manda. This is not at all a normal behaviour of a brother. He would have certainly reacted strongly when he heard the accused saying that he had killed his sister. Instead of any such reaction, as per the prosecution case, PW-3 accompanied the accused back to his residence. Further, PW-4 stated in her cross-examination that she did not talk with the accused directly but came to know about the incident. This clearly puts her testimony under a cloud.

21. There is one more aspect which we would like to flag off. From the evidence on record, we find that there is a clear material omission in the cross-examination of PW-3. According to the testimony of PW-3, he had stated before the police that the accused had told him that he had assaulted Manda with a grinding stone and had killed her but the same was not recorded by the police in his statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Similarly, PW-6 in his deposition stated that he had told the police that the accused had told Bhagwan (PW-3) in his presence that he had a quarrel with Manda in the night but the police did not record in his statement under Section 161 Cr.P.C.

22. From the above, it is evident that not only the extrajudicial confession of the accused lacks credibility as PW-3 is clearly on record stating that the accused was in a confused state of mind when he confessed before him, the testimonies of PW-3 and PW-6 suffer from material omission. Their statements made under Section 161 Cr.P.C. are at variance with their evidence in court regarding the confession made by the accused before PW-3. This Court in Alauddin Vs. State of Assam4 explained the context in which an omission occurs and when such an omission amounts to a contradiction. In the light of the Explanation to Section 162 of the Cr.P.C., this Court held as follows:

7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the police, there is a contradiction. When a prosecution witness whose statement

under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission.

There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his evidence. The Explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the Explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

23. As observed above, the testimony of the prosecution witnesses suffers from serious lack of credibility and also hit by contradictions which strike at the very root of the prosecution case. No corroborating circumstances have been brought on record by the prosecution.

24. No doubt there is a strong suspicion against the appellant and the needle of suspicion qua the death of Manda points towards him but as is the settled jurisprudence of this country, suspicion howsoever strong cannot take the place of hard evidence. The evidence on the basis of which the prosecution seeks conviction of the accused i.e. extra-judicial confession made before the above witnesses lack credibility and hence cannot be relied upon. Besides, the evidence suffers from material contradiction. Therefore, it would be wholly unsafe to sustain the conviction of the appellant based on such weak circumstantial evidence which on the top of it lack credibility.

25. For the aforesaid reasons, we are of the view that the appellant must get the benefit of doubt. In view of the above, the conviction and sentence of the appellant vide the judgment and order dated 15.10.2004 passed by the Sessions Judge in Sessions Case No. 52 of 2004 as affirmed by the High Court vide the judgment and order dated 02.12.2010 passed in Criminal Appeal No. 252 of 2005, are hereby set aside and quashed. Since the appellant is in detention, he shall be released from custody forthwith if not required in any other case.

26. Criminal appeal is accordingly allowed.

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

.....J [Ujjal Bhuyan]

New Delhi;

February 04, 2025.

1 (2003) 8 SCC 180

2 (2010) 10 SCC 604

3 (2012) 6 SCC 403

4 (2024) SCC Online SC 760

IN THE SUPREME COURT OF INDIA

Ayyub & Ors.
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal No. 461 of 2025
@ SLP (Crl.) No. 7371 of 2024]

HEADNOTE – In order to make out an offence under Section 306 IPC, specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The alleged harassment meted out should have left the victim with no other alternative but to put an end to her life.

JUDGMENT

K.V. Viswanathan, J.

1. The present criminal appeal calls in question the correctness of the order dated 27.07.2023 passed by the High Court of Judicature at Allahabad in Application under Section 482 Cr.P.C. No. 25969 of 2023. By the said order, the High Court declined to quash the proceedings instituted against the appellants under Section 306 of the Indian Penal Code, 1860 (for short 'IPC').

2. The facts of the case are rather unfortunate. It has its origin in a suspected relationship between the son of the first appellant, one Ziaul Rahman (since deceased) and Tanu (since deceased), the cousin sister of respondent no. 2.

3. On 02.11.2022 at 19:15 hrs, the first appellant Ayyub lodged a first information report alleging that Bhuru @ Janeshwar (relative of deceased Tanu), Maneshwar Saini (father of deceased Tanu), Priyanshu, and Shivam (brother of Tanu) beat his son Ziaul Rahman with sticks and fists. According to the complaint, this was on suspicion about the relationship between Ziaul Rahman and Tanu. According to the FIR, the incident was witnessed by Saleem Ahmed and Abdul Rehman. It was also averred that while being taken for treatment, after being referred to a higher centre by Medigram Hospital, Saharanpur, Ziaul Rahman died.

It was mentioned that the body was kept in the mortuary and the first appellant had come to the police station and lodged First Information Report No. 366 at PS Rampur Maniharan, District Saharanpur. According to the prosecution, Ziaul Rahman suffered 14 injuries on his body and the cause of death was shock and haemorrhage due to ante mortem injuries. Pursuant to the investigation, a charge-

sheet has been filed and charges have been framed for commission of offence under Section 304 IPC. We are informed that proceedings at the behest of the family of Ziaul Rahman for enhancement of the charge to Section 302 IPC are pending.

4. On 03.11.2022 at around 17:07 hrs, the respondent no. 2-Vijay lodged a First Information Report No. 367 at PS Rampur Maniharan, District Saharanpur. In the FIR, the appellants herein were arrayed as accused on the accusation that they abetted the suicide of the deceased Tanu and committed offence under Section 306 IPC.

5. The gravamen of the allegation was that on 02.11.2022, at around 08:00 am, at the residence of the complainant's uncle Janeshwar, the appellants came there and told the complainant's cousin Tanu, " because of you our boy has died, why you do not die". According to the FIR, so saying, they humiliated Tanu and tortured her and said that they will file a case against her and also get her arrested and humiliate her in society so that she will not be able to face anyone in the society.

6. According to the complainant, scared of the insult and humiliation, his cousin sister Tanu, between 10:30 am to 11:00 am committed suicide being hurt by the statements. The complainant mentioned that the incident concerning the verbal utterances at 08:00 am was witnessed apart from R-2, by Sushil S/o Jal Singh and Anil S/o Rahtu.

7. It was further stated that the deceased was cremated and that complainant-R-2 came to lodge the report. The statement of respondent no. 2-Vijay Saini was recorded on 07.11.2022. The statements of Sushil Singh S/o Jal Singh and Mrs. Sunesh W/o Janeshwar were recorded on 08.11.2022 and 22.11.2022 respectively. The statements parroted the FIR virtually verbatim. The only addition being that while the FIR refers to Sushil and Anil as being present along with R-2 Vijay, whereas in the statements Mrs. Sunesh also claims to have been present.

8. It further transpires from the application for quash that based on the information given by the ward boy of the hospital on 02.11.2022, the same was registered at Police Station G.D. 37 at 01:14 pm and then panchayatnama of deceased Tanu was conducted at the hospital in the presence of her family members.

9. Thereafter, it is clear from the counter affidavit of R-2 filed in this Court that at 05:00 pm on 02.11.2022, post-mortem was conducted at SBD Hospital, Saharanpur and the following injuries were noticed on the deceased Tanu:-

"1. ligature mark (24 cm x 1.5 cm) oblique, non-continuous, placed high up in the neck, between the thin and larger in position 5 cm below chin, 3 cm below outer

angle of right _____ of cm below from right ear, 4.5 cm below from outer angle of left ____ and 6 cm below left ear. Subcutaneous tissues under the ligature mark are white, hard and glistering.

2. multiple linear abrasion (11 cm x 5.5 cm) on front of neck.

3. linear abrasion 5 cm long on front of neck lower part.

4. linear abrasion 5 cm long on front of left forearm just above left wrist joint.

The cause of death was opined as 'Asphyxia as the result of ante-mortem hanging and viscera was preserved for chemical analysis."

The FIR, however, came to be registered on 03.11.2022 at 17:07 hrs.

10. The appellants obtained anticipatory bail from the High Court till the filing of the police report. The police filed final report against the appellants under Section 306 IPC on 02.05.2023. The police report does nothing more than reiterating the contents of the FIR. The Judicial Magistrate, Saharanpur, after perusing the charge-sheet, took cognizance of the offence against the appellants in case No. 2843 of 2023 (arising out of Crime No. 367 of 2022, Police Station : Rampur Maniharan) and issued summons on 17.06.2023 returnable on 11.07.2023.

11. The appellants approached the High Court with an application under Section 482 Cr.P.C. in Criminal Miscellaneous Application No. 25969 of 2023 seeking for quashment of the charge-sheet dated 02.05.2023 and the criminal proceedings in criminal case No. 2843 of 2023. It was averred that none of the ingredients to make out an offence under Section 306 IPC are attracted. Post the filing of the police report, the appellant no. 1-Ayyub and appellant no. 3-Haroon obtained pre-arrest bail from this Court by order dated 05.12.2023.

12. The High Court of Judicature at Allahabad dismissed the Application under Section 482 Cr.P.C. by holding that, on facts, proximate link between the unfortunate incident of suicide by Tanu and the act of the accused existed. The High Court also recorded that Tanu was a hypersensitive girl and she was very much depressed and felt humiliated among her family members, friends and in the society. The judgments cited by the appellants were distinguished and that the High Court held that it did not feel it appropriate to quash the proceedings at that stage. So holding, the High Court dismissed the Application under Section 482 Cr.P.C. Aggrieved, the appellants are in appeal before us.

13. We have heard Mr. Bhuwan Raj, learned counsel for the appellants as well as Mr. Vishwa Pal Singh, learned counsel for the State and Mr. Divyesh Pratap Singh, learned counsel for the complainant, R-2. We have also carefully perused the records.

14. At the outset itself, we notice certain disturbing and peculiar features that obtain in this case. The first appellant who lost his son, lodged the first complaint on 02.11.2022 at 19:15 hrs. By the said time the body was in the mortuary. It transpires from the first information report lodged on 03.11.2022 at 17:07 hrs by the respondent no. 2 that Tanu had committed suicide at around 10:30 am to 11:00 am on 02.11.2022. Regarding the death of Tanu, it was mentioned in the application for quash that the G.D. entry at the behest of the ward boy of the hospital was registered on 02.11.2022 at 01:14 pm. It was also mentioned that an inquest was held in the hospital on the said day. Admittedly, the post-mortem of Tanu was also held at 05:00 pm on 02.11.2022. However, the FIR came to be registered only on 03.11.2022 at 17:07 hrs.

15. It is intriguing that the police authorities, merely by recording the statements of the complainant Vijay, Sunesh W/o Janeshwar and Sushil who have simply parroted the contents of the FIR, proceeded to file the chargesheet against the appellants. On our repeated queries to the counsel for the State as to whether any investigation to explore any other angle was pursued, we were met only with a stoic silence.

16. We are today left with the one sided version of the complainant R-2. Was there anything more sinister? Even if it was suicide what was the real cause? Was the deceased Tanu distraught with what happened to her friend Ziaul Rahman? Considering the under-currents and the disapproval of the relationship, was there any instigation for the suicide from any other quarter? Did the deceased Tanu resort to the extreme action of taking away her own life due to the ugly turn of the events and due to the fact that her family members were suspected to be involved? We have no answers today. Only an independent, thorough and comprehensive investigation will bring to light the true story. The charge-sheet, as it stands, appears to have proceeded in an unidimensional manner by accepting the version of the complainant (R-2) and his family members as the gospel truth.

17. We find that based on the charge-sheet filed by the police on 02.05.2023 and the cryptic order of cognizance dated 17.06.2023, the proceedings cannot be allowed to be carried on against the appellants. Even taking the allegation on a demurrer, on the facts of the case, an offence under Section 306 IPC cannot be said to be made out against the appellants. The law on Section 306 IPC is well settled.

18. In Swamy Prahaladdas vs. State of M.P. and Another, (1995 Supp (3) SCC 438), the appellant remarked to the deceased that 'go and die' and the deceased thereafter committed suicide. This Court held that:-

"Those words are casual nature which are often employed in the heat of moment between quarrelling people. Nothing serious is expected to follow thereafter. The

said act does not reflect the requisite means rea on the assumption that these words would be carried out in all events."

19. By a long line of judgments, this Court has reiterated that in order to make out an offence under Section 306 IPC, specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It has been further held that the intention of the accused to aid or instigate or to abet the deceased to commit suicide is a must for attracting Section 306 IPC [See Madan Mohan Singh vs. State of Gujarat and Another, (2010) 8 SCC 628].

Further, the alleged harassment meted out should have left the victim with no other alternative but to put an end to her life and that in cases of abetment of suicide there must be proof of direct or indirect acts of incitement to commit suicide [See Amalendu Pal alias Jhantu vs. State of West Bengal, (2010) 1 SCC 707 and M. Mohan vs. State, (2011) 3 SCC 626 and Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618].

20. These principles have been reiterated recently by this Court in Mahendra Awase vs. The State of Madhya Pradesh, 2025 INSC 76.

21. We find none of the ingredients required in law to make out a case under Section 306 IPC to be even remotely mentioned in the charge-sheet or are being borne out from the material on record. The utterance attributed to the appellants assuming it to be true cannot be said to be of such a nature as to leave the deceased Tanu with no other alternative but to put an end to her life.

The surrounding circumstances, particularly the prior lodgment of the FIR by the first appellant against the family of Tanu for the death of his son Ziaul Rahman, does indicate an element of desperation on the part of the respondent no. 2 to somehow implicate the appellants. Reliance of the statements recorded under Section 161 Cr.P.C. belatedly on 07.11.2022, 08.11.2022 and 22.11.2022, only reinforces out suspicion viz. one-sided, partial and inimical investigation. Under these circumstances, proceeding with the trial against the appellants in the charge-sheet as filed will be a gross abuse of process.

22. As pointed out earlier, the case has several disturbing features which call for a reinvestigation, which we propose to order based on the observations made hereinabove. The Director General of Police, Law and Order, State of Uttar Pradesh is directed to constitute a Special Investigation Team headed by an officer of the level of Deputy Inspector General of Police to investigate the unnatural death of Tanu D/o Janeshwar R/o Rampur Maniharan, District Saharanpur.

We authorize the Special Investigation Team to treat the first information report registered in crime no. 367 of 2022 at PS Rampur Maniharan, District Saharanpur as one of unnatural death. We further grant them liberty to re-register the FIR if they deem it appropriate. We direct that the reinvestigation report shall be placed before this Court in a sealed cover within a period of two months from today.

23. We make it clear that the observations in the present judgment are only for the purpose of quashing the proceedings against the appellants, and the reinvestigation on other aspects indicated above, will be carried out independently. We are not to be taken, to have expressed any view, one way or the other.

24. In view of the above, the appeal is allowed. The proceedings in Case No. 2843 of 2023 pending before the Court of Judicial Magistrate, Saharanpur (arising out of Crime No. 367 of 2022 Police Station Rampur Maniharan, District Saharanpur) are quashed.

Let the matter be listed on 15.04.2025 for further directions and for consideration of the report of the Special Investigation Team.

.....CJI. [Sanjiv Khanna]

.....J. [Sanjay Kumar]

.....J. [K. V. Viswanathan]

New Delhi;

February 07, 2025

IN THE SUPREME COURT OF INDIA

Amrit Yadav
Vs.
State of Jharkhand and Ors.

[Civil Appeal No(s). 13950-13951 of 2024
arising out of SLP (Civil) No(s). 6120-6121 of 2023]

[Civil Appeal No(s). 13952 of 2024
arising out of SLP (Civil) No(s). 3203 of 2023]

Civil Appeal No(s). 13955 of 2024
arising out of SLP (Civil) No(s). 6118 of 2023]

[Civil Appeal No(s). 13953 of 2024
arising out of SLP (Civil) No(s). 3303 of 2023]

[Civil Appeal No(s). 13954 of 2024
arising out of SLP (Civil) No(s). 3399 of 2023]

HEADNOTE – No person can claim a fundamental right to appointment does not mean that the State can be allowed to act in an arbitrary or capricious manner. The State is accountable to the public at large as well as the Constitution of India, which guarantees equal and fair treatment to each person. Public employment process thus, must always be fair, transparent, impartial and within the bounds of the Constitution of India. Every citizen has a fundamental right to be treated fairly and impartially, which is an appendage of right to equality under Article 14 of the Constitution of India. A violation of this guarantee is liable to judicial scrutiny as well as criticism.

JUDGMENT

Mehta, J.

Civil Appeals No(s). 13950-13951 of 2024

1. The present appeals by special leave, are preferred by the appellant1, assailing the following two judgments rendered by the Division Bench of the High Court of Jharkhand at Ranchi2: -

i) Judgment dated 7th November, 2019 in LPA No. 26 of 2019, whereby the learned Division Bench dismissed the intra-court appeal preferred by the respondent-State against the common judgment of learned Single Judge in WP(S) No. 6709 of 2017 and other connected petitions3, who vide order dated 12th

September, 2018, had directed the respondent-State to make a fresh panel for appointment to the post of Class-IV employees as per the conditions stipulated in the advertisement dated 29th July, 2010. (Hereinafter, referred to as "first impugned order").

ii) Judgment dated 24th November, 2022 in batch of Letter Patent Appeals4, whereby, the learned Division Bench dismissed the intra-court appeals (one amongst them filed by the appellant-employee) against the judgment dated 9th March, 2022 passed by the learned Single Judge who vide common order passed in batch of writ petitions5, had refused to interfere with the order of termination issued by respondent-State. (Hereinafter, referred to as "second impugned order").

Factual Matrix: -

2. The Deputy Commissioner, Palamu6 published an advertisement dated 29th July, 2010, inviting applications for appointment to the post of Class IV employees7. The language of said advertisement is germane to the controversy at hand and the same is extracted below:-

"Date: 29 July 2010 (Ranchi)
Last Date of application
submission 21/8/2010

OFFICE OF THE DISTRICT MAGISTRATE PALAMU DISTRICT, NAZARAT BRANCH

Collectorate Palamu

(Information related to making the fourth panel)

Instructions for appointment to the post of class IV employee

Advertisement Number 1

Vacancy for the grade IV post - the eligible and interested candidates are invited to apply in subscribed application form to the vacant posts of Class IV category by sending application to the appropriate offices of the State Government in Palamu District on schedule date.

It will be mandatory to the candidate in list of the category to submit the certificate along with the application in printed form before the District Nazarat Branch, Palamu Collectorate till the last date for submission of application. After the last date, the application will not be considered without the eligible proof of deprivation.

Applicants are instructed to appear in the examination on the basis of admission eligibility, the cycling test of the qualified candidate will be held on schedule to qualify in compulsory basis. The date of examination will be announced later.

The complete details with terms and conditions to apply for the post in application are as follows.

1. Name of the post - IV Grade

2. Educational Qualification - VIII Passed

3. The candidate should must be eligible in cycling (there the cycle test should be organized to qualify on compulsory basis)

4. The candidate should be in sound health (should be compulsory to submit the medical fitness certificate obtained within last 6 months)

5. The candidate over to the maximum age should not be consider to apply.

6. The applicant for general category is eligible to apply other than the candidate in schedule caste and schedule tribe cast in age relaxation in between 18 to 27 years and for backward class / extremely backward class should be eligible to apply in age of 18 to 28 years and for female candidate in unreserved and other backward and scheduled and Scheduled Tribe Caste should apply with age relaxation 18 to 40 years.

7. The candidate belong from the local areas should be given to preference, will be eligible to apply and the candidate working in government offices should be in preference to apply from the date of publication of the advertisement in status of weightage calculation. For which weightage will be given for service. It will be mandatory for the daily wage to submit the certificate obtained or from the employer.

8. Preference will be given to local applicants.

9. No traveling allowance will be given to the candidates appearing in the final examination.

10. The emplacement will be effective for one year from the date of publication.

11. It is only related to the preparation of advertisement panels.

12. Instructions given from time to time to the district by the Jharkhand Government in this context should be applicable.

13. Information will be provided in the Devanagari script prescribed letter form and educational and other qualification proofs, eligible age certificate, reservation certificate, caste certificate issued by the employment office, disability certificate issued by the civil surgeon of the district (if the applicant is disabled) and residence certificate, caste proof issued by the eligible sub divisional officer / appropriate office by the Government of Jharkhand, It is mandatory for the candidate to attach the photocopy of the certificate (issued within six months) from the concerned authority including two passport size photographs should must be submit.

14. It will be mandatory to attach a bank draft of Rs.100 in the name of Deputy Collector, Palamu Secretariat along with 10x10 size envelope.

15. The decision of the District Selection Committee regarding panel creation will be final.

16. The entire recruitment process will be completely transparent. And all action will be taken according to the rules of the government. Therefore, under the public interest, even in your own interest, the broker should not come under the influence of the middleman. The candidate is warned to do not approach or recommend at any level. If any such attempt is detected, the form will automatically be canceled and legal action will be taken against the candidate.

Sd/-
The Deputy Commissioner Palamu"

3. Pursuant to the issuance of the above advertisement, an examination was conducted on 5th November, 2017. Subsequently, respondent No. 4 issued a press release8 dated 9th November, 2017, stating that before the final panel of selected candidates is prepared, the candidates would be required to remain present in the District Establishment Section, Palamu for the purpose of counselling. Upon completion of the counselling process, the District Education Officer9 vide office order10 dated 9th March, 2018, issued appointment letter to the successful candidates, including the appellant herein. Meanwhile, an FIR11 came to be registered at Police Station Daltonganj Town, District Palamu alleging rampant corruption and mass scale cheating in the examination conducted for the subject posts on 5th November, 2017.

4. Aggrieved by the publication of the list of successful candidates, some non-selected candidates preferred writ petitions12 before the High Court which came to be allowed vide order dated 12th September, 2018, directing the respondent-State to prepare a fresh merit list as per the marks obtained in the written examination conducted on 5th November, 2017, without counting the marks awarded to the candidates in interview.

The learned Single Judge opined that the appointment was not carried out in accordance with the stipulations made in the advertisement dated 29th July, 2010, as there was admittedly, no provision for interview in the advertisement which was conducted by the respondent-State. The learned Single Judge further observed that the respondent-State had acted de hors the rules and regulations while preparing the merit list by taking into account the cumulative marks obtained by the candidates in written examination as well as the interview.

5. Aggrieved, the respondent-State preferred an intra-court appeal13 assailing the aforesaid order of the learned Single Judge. The Division Bench vide first impugned order dated 7th November, 2019, dismissed the appeal and upheld the order dated 12th September, 2018, passed by the learned Single Judge. Pursuant to the aforesaid direction of learned Single Judge, respondent No. 5 vide office order dated 7th December, 2020, relieved the appellant-employee and other candidates who were purportedly selected de hors the rules and terminated their service.

6. The appellant-employee and other similarly aggrieved candidates assailed their termination order by preferring writ petitions14 before the High Court seeking issuance of a writ to reinstate them in service. The learned Single Judge vide order dated 9th March, 2022, dismissed the batch of writ petitions, holding that no case for interference was made out as admittedly, the respondent-State had changed the rules of the game by introducing the interview round in the selection process after the ball had been set rolling.

The learned Single Judge further held that the respondent-State had prepared the fresh panel of selected candidates in compliance with the direction of the High Court in WP (S) No. 6709 of 2017 and other analogous petitions15, which stood affirmed in the first impugned order and hence, the termination orders were valid in the eyes of law.

7. Aggrieved, the appellant-employee and other similarly situated candidates preferred a batch of intra-court appeals16 assailing the order dated 9th March, 2022, passed by the learned Single Judge. The learned Division Bench, vide order dated 24th November, 2022, dismissed these appeals and held that as the decision with respect to preparation of fresh panel of selected candidates had attained finality in view of the judgment of the Coordinate Bench, the respondent-State was justified in issuing the order terminating the services of the appellant-employee and other similarly situated candidates for being less meritorious.

8. Aggrieved, the appellant-employee has approached this Court by way of these appeals by special leave assailing the impugned orders passed by the learned Division Bench of the High Court.

Submissions on behalf of the appellant-employee:-

9. Learned senior counsel appearing for the appellant-employee strenuously contended that the appellant-employee was duly selected and has been appointed to the subject posts, purely on merit, vide Memorandum No. 399 dated 9th March, 2018, issued by the competent authority. There was no allegation of fraud or misrepresentation on the part of the appellant-employee while seeking the appointment on the post in question.

10. It was submitted that pursuant to the valid appointment of the appellant-employee, he has satisfactorily served the respondent-State for two and a half years and has also completed his probation period. Further, the learned counsel urged that as the appellant-employee has become over-age for other Government jobs, a sympathetic view ought to be taken by setting aside the termination order dated 7th December, 2020 issued by respondent No. 5.

11. He further contended that the Division Bench grossly erred in issuing a direction to the respondent-State to prepare a fresh panel of selected candidates without impleading the affected persons, such as the appellant-employee, as a party in the proceedings and thus, violated the principles of natural justice. The non-selected candidates who had filed the writ petitions had voluntarily refrained from appearing in the counselling process, and hence, they lacked locus to challenge the recruitment process.

12. Learned counsel concluded his submissions by imploring this Court to take a sympathetic view and to accept the appeals, set aside the impugned judgments, quash the termination order dated 7th December, 2020, and direct the respondent-State to reinstate the appellant-employee in service.

Submissions on behalf of the respondent-State:-

13. Per contra, learned counsel appearing on behalf of the respondent-State contended that the impugned judgments do not suffer from any infirmity or illegality. He contended that the fresh panel of selected candidates, was prepared by the respondent- State in compliance with the direction of the High Court vide order dated 12th September, 2018. Once the appointment of the appellant-employee was found to be de hors the law, he cannot claim a preferential right of continuing in service as against the candidates who were admittedly higher in merit.

14. Learned standing counsel further contended that the case of the appellant-employee suffers from gross delay which remains unexplained as he is laying challenge to judgment17 of the Division Bench dated 7th November, 2019 after a period of more than 3 years. As such, the appellant-employee is not entitled to

any relief. On these grounds, the learned Counsel for the respondent-State implored this Court to dismiss the appeals and affirm the impugned judgments.

Issues:-

15. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments and the material placed on record.

16. The core issues presented for adjudication before this Court in these appeals are:-

(1) Whether the advertisement dated 29th July, 2010 issued by respondent No. 4 and appointment process carried out in pursuance thereof, was valid in the eyes of law?

(2) Whether the direction issued by the High Court vide order dated 12th September, 2018 was justified considering the fact that the candidates earlier appointed to the subject posts were neither impleaded as party nor were heard before the issuance of a direction that adversely affected their service?

Discussion and Analysis:-

Issue No. 1: Whether the advertisement dated 29th July, 2010 by respondent No. 4 and appointment process carried out in pursuance thereof was valid in the eyes of law?

17. To adjudge the validity of the recruitment process and the appointments made thereunder for the subject posts, we deem it fit to consider the terms and conditions of the advertisement dated 29th July, 2010, issued by respondent No. 4 on the touchstone of the precedents of this Court so as to find out whether the same was in conformity with law or not.

18. A three-Judge Bench of this Court in Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi,18 discussed in detail the requirements of a valid advertisement and observed thus:-

"16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid

change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."

(emphasis supplied)

19. Thus, the advertisements which fail to mention the number of posts available for selection are invalid and illegal due to lack of transparency. This Court further expounded in Renu(supra) that any appointment in violation of the mandate of Articles 14 and 16 of the Constitution of India is not only irregular but also illegal and cannot be sustained. It is a trite law that a valid advertisement inviting applications for public employment must include the total number of seats, the ratio of reserved and unreserved seats, minimum qualification for the posts and procedural clarity with respect to the type and manner of selection stages, i.e., written, oral examination and interviews.

20. Further, the position of law is settled that though there is no fundamental right to claim reservation as Articles 16(4) and (4-A) of the Constitution of India are in the nature of enabling provisions only and do not mandate the State or its instrumentalities to provide reservation in every selection process but inspite thereof, the State's decision to not provide reservation has to be based on some quantifiable data and valid reasoning.

21. Reference in this regard may be made to this Court's decision in Mukesh Kumar v. State of Uttarakhand,19 wherein, it was held that:-

"12. Articles 16(4) and 16(4-A) do not confer fundamental right to claim reservations in promotion [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209]. By relying upon earlier judgments of this Court, it was held in Ajit Singh (2) [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209] that Articles 16(4) and 16(4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant.

It is settled law that the State Government cannot be directed to provide reservations for appointment in public posts [C.A. Rajendran v. Union of India, AIR 1968 SC 507]. Similarly, the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing inadequacy of representation of that class in public services.

If the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency

of administration as mandated by Article 335 of the Constitution. [M. Nagaraj v. Union of India, (2006) 8 SCC 212]

13. Articles 16(4) and 16(4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes "if in the opinion of the State they are not adequately represented in the services of the State". It is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/ Committee, person or authority.

All that is required is that there must be some material on the basis of which the opinion is formed. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in Barium Chemicals Ltd. v. Company Law Board [Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295], which need not be reiterated. [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217]"

(emphasis supplied)

22. Thus, it is imperative that the State must specifically mention in the advertisement the total number of reserved and unreserved seats. However, if the State does not intend to provide reservation, in view of the quantifiable data indicating adequacy of representation, this aspect must also be specifically mentioned in the advertisement.

23. In the present case, the advertisement dated 29th July, 2010, issued by respondent No. 4 is completely silent on the aspect of total number of posts and the number of reserved quota and general quota posts. We are of the view that if the State chooses not to provide reservation, that decision must also be conveyed through the advertisement along with the afore-mentioned lists of inclusions. This Court in the case of State of Karnataka v. Umadevi,20 observed that any appointment made in violation of the statutory rules as well as the mandate of Articles 14 and 16 of the Constitution would be a nullity in law.

24. In the wake of the afore-mentioned judicial precedents, we are of the view that the entire recruitment process initiated for the subject posts, in furtherance of the advertisement dated 29th July, 2010, is in violation of both the legal precedents and settled law. Therefore, we hold that the advertisement dated 29th

July, 2010, issued by respondent No. 4 was not a valid advertisement inviting applications for public employment and is thus, a nullity in law.

Issue No. 2: Whether the direction issued by the High Court vide order dated 12th September, 2018, was justified considering the fact that the candidates earlier appointed to the subject posts were neither impleaded as party nor were heard before the issuance of a direction that adversely affected their service?

25. Before answering this issue, we deem it fit to discuss the background of this case. The respondent-State had issued the advertisement dated 29th July, 2010, in complete disregard to the precedents of this Court as well as in sheer contravention of the mandate of Articles 14 and 16 of the Constitution of India as discussed in the first issue. In pursuance of this advertisement, the respondent-State has carried out the entire recruitment process. The limited ground of challenge in the legal proceedings from which the first impugned order emanates was that the petitioners therein had pleaded foul-play on the part of the respondent-State, and contended that the rules of the game had been changed by respondent-State by awarding marks to some candidates in the interview round.

The High Court in this regard was justified in ordering preparation of a fresh panel of selected candidates on the basis of the marks secured in the written examination, conducted on 5th November, 2017. This decision has been upheld by the Division Bench in the first impugned order dated 7th November, 2019 which has now attained finality as no further challenge thereto was laid by either the respondent-State or the appellant-employee at that time.

26. Subsequently, the respondent-State prepared fresh panel of selected candidates. However, the name of the appellant-employee was not included in the fresh panel, for being lower in merit and his services were terminated by order dated 7th December, 2020. It is then that fresh writ petitions21 came to be preferred by the appellant-employee and other similarly situated candidates laying challenge to order whereby their services were terminated. In our view, the appellant-employee was precluded from invoking the jurisdiction of the learned Single Judge who could not have interfered with the decision which had attained finality after being upheld by the Division Bench in the first impugned order. Until and unless, a review petition was filed against the first impugned order, it provided finality with respect to the present advertisement.

27. Hence, the learned Single Judge rightly dismissed the writ petitions filed by the appellant-employee and other similarly situated candidates against their termination order. No error whatsoever was committed by the learned Division Bench in dismissing the appeal as it had clearly stated that the appellants therein failed to lay challenge to the decision of the Coordinate Bench in the first

impugned order dated 7th November, 2019. The Division Bench in a fresh round of litigation could not have reviewed the orders passed by a Coordinate Bench in relation to the same controversy.

28. It is before this Court, for the first time, that the appellant-employee has laid challenge to the first impugned order dated 7th November, 2019, thus, the only controversy that demands our attention is whether the Division Bench was correct in directing the respondent-State to prepare fresh panel of selected candidates without giving an opportunity of hearing to the candidates who were likely to get affected by such direction.

29. The position of law is crystallized on the aspect of compliance with the principles of natural justice in both administrative spheres as well as judicial decisions. It is trite law that the principles of natural justice cannot be applied in any straitjacket formula and it is imperative to understand that there are certain exceptions to their applicability. Reference in this regard may be made to the decision of this Court in Dharampal Satyapal Ltd. v. CCE,22 wherein it was held thus:-

"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances.

For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well.

On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing."

(emphasis supplied)

30. In the present case, the Division Bench in the first impugned order dated 7th November, 2019, had confirmed the directions passed by the learned Single Judge to the respondent-State to prepare a fresh panel of selected candidates without affording any Civil Appeal No(s). 13950-13951 of 2024 opportunity of hearing to the candidates, who were earlier declared successful by the respondent-State and were holding the subject posts. Subsequently, the respondent-State relieved the appellantemployee and other candidates selected de hors the rules and terminated their services vide order dated 7th December, 2020.

31. In our view, since the very selection and appointment of the appellant-employee was a nullity in the eyes of law, the learned Single Judge committed no error in directing the respondent-State to prepare fresh panel of selected candidates without hearing the candidates who were likely to get affected. In this regard, we are benefitted by the decision of this Court in Union of India v. Raghuwar Pal Singh,23 wherein, it was held that when the appointment of the candidates is a nullity in law making them disentitled to hold the posts, the principles of natural justice were not required to be complied with, particularly when the same would be nothing short of an exercise in futility. The relevant portion is extracted hereinbelow:-

"20. For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore, Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon obtaining prior written approval of the competent authority. No case has been made out in the original application that due approval was granted by the competent authority before issuance of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the appointment of the respondent.

In such a case, the next logical issue that arises for consideration is : whether the appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.

23. In State of Manipur [State of Manipur v. Y. Token Singh, (2007) 5 SCC 65 : (2007) 2 SCC (L&S) 107], the appointment letters were cancelled on the ground that the same were issued without the knowledge of the department of the State. The Court after adverting to the reported decisions concluded that the candidates were not entitled to hold the posts and in a case of such nature, principles of natural justice were not required to be complied with, particularly when the same would result in futility."

(emphasis supplied)

32. Hence, in view of the above principle and the factual scenario in the case at hand, it is clear that if the subject appointments were ab-initio nullity in the eyes of law, it was not incumbent on the learned Single Judge to pass the order after hearing all the parties that were likely to be affected by such decision, i.e., the candidates who were already appointed on the subject posts including the appellant-employee.

33. Therefore, we are of the view that the learned Single Judge did not commit any error while issuing a direction vide order dated 12th September, 2018, for preparation of fresh panel of selected candidates in consonance with the statutory rules and procedure prescribed in the advertisement as it is clearly discernible from our discussion in the first issue that the recruitment process was void ab-initio and ultra vires the Constitution of India. Therefore, there was no need to comply with the principles of natural justice as that would be nothing, but an exercise in futility and the appellantemployee thus, cannot be allowed to claim prejudice from the fact that he was neither impleaded nor heard before the issuance of a direction affecting his service.

34. With respect to the power of cancellation of the entire selection process, this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav,24 held thus:-

"24. It is clear that in the matter of public appointments, the following principles are to be followed:

(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

(emphasis supplied)

35. Thus, it is clear that once the appointment process is declared to be a nullity in law, every action taken in furtherance of such appointment process is also illegal, and, therefore, the constitutional courts have jurisdiction to set aside such appointments wholly and ab-initio. This power of the Court is not curtailed even in a situation where a third-party right has been created in those who have been offered appointment or have even joined the service.

36. This Court in State of U.P. v. U.P. State Law Officers' Assn.,25 while dealing with the back-door entries in public appointment observed as under:-

"19. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will

always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door.

This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."

(emphasis supplied)

37. It is, therefore, clear that a beneficiary of a back-door procedure cannot claim proper treatment as per law when they come at the receiving end.

38. In the present case, the appellant-employee, who had been appointed under the advertisement dated 29th July, 2010, does not have any right on the subject posts once it is concluded that the advertisement is itself void and is declared illegal and unconstitutional. The candidates' right to continue on such posts is contingent upon the legality of the advertisement and the recruitment process conducted in pursuance thereof.

39. At this juncture, before parting, we deem it fit to note that public employment is a duty entrusted by the Constitution of India with the State. Therefore, it becomes imperative that the rigours of Articles 14 and 16 are not ignored by the State in relation to the matter concerning public employment. Arbitrariness in public employment goes to the very root of the fundamental right to equality. While no person can claim a fundamental right to appointment, it does not mean that the State can be allowed to act in an arbitrary or capricious manner.

The State is accountable to the public at large as well as the Constitution of India, which guarantees equal and fair treatment to each person. Public employment process thus, must always be fair, transparent, impartial and within the bounds of the Constitution of India. Every citizen has a fundamental right to be treated fairly and impartially, which is an appendage of right to equality under Article 14

of the Constitution of India. A violation of this guarantee is liable to judicial scrutiny as well as criticism.

Conclusion:-

40. In view of the peculiar facts of this case and discussion made hereinabove, we do not deem it fit to delve into the observations made in the impugned judgments as the subject matter dealt therein is different. The question with respect to the illegality of the recruitment process was not raised in any of the proceedings before the Courts below. On the other hand, it was here, for the first time, before this Court, that the appellant-employee have laid challenge to the first impugned order.

41. Resultantly, the appeals stand disposed of with the following directions:-

i. The advertisement dated 29th July, 2010, issued by respondent No. 4 and all the consequential proceedings conducted in pursuance thereof are hereby quashed for being violative of Articles 14 and 16 and judicial precedents of this Court.

ii. All the appointments made in furtherance of the direction of the High Court dated 12th September, 2018, with respect to the subject posts are quashed.

iii. The respondent-State shall issue a fresh advertisement, compliant with the constitutional mandate and in accordance with the extant Rules and the observations made hereinabove. Thereafter, the recruitment process shall be re-conducted in accordance with law for the subject posts.

iv. In the interest of justice, we direct that the fresh notification shall be issued in terms of our direction(supra) within six months from today and will specifically provide suitable age relaxation in order to accommodate all such aspirants, who would have in the supervening period and during the pendency of the present litigation crossed the age limit for selection on the subject posts.

42. Parties are directed to bear their own costs.

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

Civil Appeals No(s). 13952 of 2024
Civil Appeals No(s). 13953 of 2024
Civil Appeals No(s). 13954 of 2024
Civil Appeals No(s). 13955 of 2024

44. In these appeals, the appellants have laid challenge only to the second impugned order of the High Court dated 24th November, 2022. As we have

quashed the advertisement dated 29th July, 2010 and the consequential selection process thereto in Civil Appeal No(s). 13950-13951 of 2024, the question involved in these appeals has become academic and therefore, does not merit our interference.

45. The appeals are accordingly dismissed. No costs.

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

.....J. (Pankaj Mithal)

.....J. (Sandeep Mehta)

New Delhi;

February 10, 2025.

1 Hereinafter, referred to as "appellant-employee".

2 Hereinafter referred to as "High Court".

3 WP (S) Nos. 789 of 2018, 1257 of 2018, 1278 of 2018, 1342 of 2018, 1638 of 2018, 1757 of 2018, 544 of 2018, 1007 of 2018, 1915 of 2018, 1926 of 2018, 1893 of 2018 and 7047 of 2017.

4 LPA Nos. 305 of 2022, 197 of 2022, 185 of 2022, 186 of 2022 and 201 of 2022.

5 WP(S) Nos. 4440 of 2020, 187 of 2021, 4132 of 2020, 2219 of 2021, 4358 of 2020, 4363 of 2020, 4405 of 2020, 4407 of 2020 and 2244 of 2021.

6 Hereinafter referred to as "respondent no. 4".

7 For short "subject posts".

8 Memorandum No. 842 of 2017.

9 Hereinafter, referred to as "respondent no. 5".

10 Memo no. 399.

11 FIR No. 382 of 2017.

12 Supra note 3.

13 LPA No. 26 of 2019.

14 Supra note 5.

15 Supra note 3.

16 Supra note 4.

17 First impugned order.

18 (2014) 14 SCC 50.

19 (2020) 3 SCC 1.

20 (2006) 4 SCC 1.

21 Supra note 5.

22 (2015) 8 SCC 519.

23 (2018) 15 SCC 463.

24 (2007) 8 SCC 264.

25 (1994) 2 SCC 204.

IN THE SUPREME COURT OF INDIA

Om Prakash Gupta @ Lalloowa (Now Deceased) and Ors.
Vs.
Satish Chandra (Now Deceased)
[Civil Appeal No. 13407 of 2024]

Om Prakash Gupta alias Lalloowa now (D) & Ors.
Vs.
Smt. Rooprani now (D)
[Civil Appeal No. 13408 of 2024]

HEADNOTE – If an appeal abates due to the failure to substitute legal heirs, filing a substitution application under Order 22 Rule 4 CPC eliminates the need for a separate application to set aside the abatement.

JUDGMENT

Dipankar Datta, J.

BRIEF RESUME OF FACTS

1. FACTS OF CIVIL APPEAL NO. 13407 OF 2024:

a. Satish Chandra instituted a suit1 against Om Prakash Gupta2 seeking specific performance of an agreement3. The suit was dismissed by the trial court4 vide judgment and order dated 7th October, 1974. In first appeal5, Satish Chandra succeeded and the suit was decreed vide judgment and decree dated 31st March, 1977. Aggrieved, Om Prakash preferred a second appeal6 before the High Court of Judicature at Allahabad7. The High Court granted stay of operation of the decree vide order dated 11th May, 1977.

b. Satish Chandra passed away on 2nd December 1996 during the pendency of the second appeal. On 2nd January, 1997, his heirs moved an application for substitution8. The High Court was informed of the death of Satish Chandra by the heirs and prayer was made for their substitution. Paragraph no. 1 of the application for substitution contained details as follows:

"That in the above noted second appeal, the sole respondent Satish Chandra son of Sri Ram died on 2.12.1996 leaving behind the following heirs and legal representatives:-

1/1 Anil Kumar
1/2 Vimal Kumar
1/3 Manoj Kumar"

Prayer in the said application is as follows:

"It is prayed that the Hon'ble Court may be pleased to delete the name of the respondent no. 1 Sri Satish Chandra from array of the parties and on his place the following:

1/1 Anil Kumar
1/2 Vimal Kumar
1/3 Manoj Kumar

All sons of Late Sri Satish Chandra
R/o Gandhi Tola, Nawabganj, Bareilly
Be substituted as his heirs and legal representatives"

c. Om Prakash died on 8th December 2001.

d. From the sequence of orders passed in the second appeal between 17th March, 2004 and 8th December, 2006, it is seen that multiple opportunities were given to counsel for Om Prakash to file an application for substitution. However, pendency of the application for substitution filed by the heirs of Satish Chandra escaped the notice of the High Court.

e. Ultimately, the second appeal was ordered to have abated in the whole vide order dated 2nd January 2007 on the ground that no application for substitution was filed by Om Prakash or his heirs to bring on record the heirs/legal representatives of Satish Chandra.

f. In the year 2017, the heirs of Satish Chandra initiated proceedings for execution of the decree9.

g. Put on notice, the heirs of Om Prakash preferred an application for recall/restoration10 seeking recall of the aforesaid order recording abatement of the second appeal. On the same day, they also filed an application for substitution11 along with an application for condonation of delay12.

h. The restoration application was allowed by the High Court and the second appeal restored to its original file and number vide order dated 25th May, 2018.

i. Seeking recall of the said order, heirs of Satish Chandra preferred an application for recall13 along with an application for condonation of delay14. These applications were allowed vide order dated 11th January 2019, with the

result that the order restoring the second appeal to its original file upon setting aside of abatement stood recalled. Liberty was, however, reserved for the heirs of Om Prakash to file an application for setting aside abatement.

j. While hearing the pending applications, referred to in paragraph.

g. (supra), the High Court did not find sufficient reasons for condoning the delay in filing the application for substitution. Resultantly, such application filed by the heirs of Om Prakash along with the application for substitution was dismissed vide impugned order dated 27th February 2019.

k. Taking exception to such order of the High Court, the heirs of Om Prakash have filed Civil Appeal No. 13407 of 2024.

2. FACTS OF CIVIL APPEAL NO. 13408 OF 2024:

a. Smt. Rooprani15, Satish Chandra's wife, instituted a suit16 for specific performance of an agreement17 against Om Prakash and his minor sons (represented through their mother). The suit was dismissed vide order dated 7th October, 1974 by the Trial Court18. In an appeal19 preferred by Rooprani, the suit was decreed vide judgment and decree dated 31st March, 1977. Om Prakash carried the first appellate decree in a second appeal20. The High Court granted stay of operation of the impugned decree vide order dated 11th May, 1977.

b. After the death of Rooprani on 18th May, 1991, an application21 was filed on or about November/December, 1992 by deceased Rooprani's son, Anil Kumar, praying that the High Court may take note of an alteration made by Om Prakash and his heirs in the decretal property. In the affidavit accompanying such application, it was stated that the deponent (Anil Kumar) is one of the sons of deceased Rooprani (plaintiff). The same is reproduced below:

"That the deponent is one of the sons of the deceased respondent Smt. Roop Rani and conversant with the facts deposed."

c. As noted earlier, Om Prakash passed away on 8th December, 2001.

d. The second appeal of Om Prakash was dismissed for non-prosecution22 as the counsel for the remaining appellants (the heirs of Om Prakash) submitted that his clients were not responding.

e. After almost 11 (eleven) years, on 15th September, 2017, the legal representatives of Rooprani filed for execution of the decree23.

f. This is when the heirs of Om Prakash, on 5th April, 2018, filed an application24 seeking recall of the order dismissing the second appeal for want of

prosecution. They filed an application25, 40 (forty) days later, praying for their substitution as heirs of deceased Om Prakash, along with an application seeking condonation of delay26.

g. Finding that sufficient cause had been shown, the High Court allowed the recall application and restored the second appeal to its original file and number vide order dated 25th May, 2018.

h. Seeking recall of the aforesaid order, the heirs of Rooprani filed a recall application27 which was dismissed by the High Court vide order dated 11th January, 2019. The High Court opined that restoration of the second appeal, in itself, did not amount to setting aside of the abatement and unless abatement is set aside, the second appeal is non-est in the eyes of law and no right will accrue to either side.

i. Thereafter, the impugned orders were passed by the High Court on 27th February, 2019. By the first order, the application by heirs of Om Prakash for condonation of delay in filing the substitution application28 was dismissed. The second order, having regard to the first order, dismissed their application for substitution29. For the reasons assigned in the first order, the High Court did not find sufficient reasons to condone the delay.

j. Taking exception to the above, the heirs of Om Prakash have filed Civil Appeal No. 13408 of 2024.

PROCEEDINGS BEFORE THIS COURT

3. A coordinate bench of this Court, on 12th July, 2019, granted permission to file the special leave petitions and issued notice on such petitions as well as the accompanying applications for substitution and the connected applications. Pursuant to service of notice, the heirs of Satish Chandra and Rooprani entered appearance. Mr. Thomas Joseph, learned senior counsel and Mr. Shekar Devessa, learned senior counsel represented the heirs of Om Prakash. Heirs of Rooprani were represented by Mr. Raghenth Basant, learned senior counsel. While granting leave and reserving judgment on these civil appeals, we had made an order allowing the applications for substitution and the connected applications, filed in the present proceedings, subject to just exceptions.

CONTENTIONS OF THE PARTIES

4. Learned senior counsel/counsel appearing for the parties have meticulously taken us through the facts of both these appeals which, though not very complicated, are a bit extensive considering that proceedings commenced in 1972-1973.

5. Learned senior counsel/counsel for the appellants have argued that the High Court fell in error on both occasions by not granting the prayers of the appellants and having the two second appeals heard on merits. According to them, procedural requirements have been allowed to steal a march over substantive justice without duly appreciating the materials on record.

6. Per contra, Mr. Basant appearing for the respondents has assiduously contended that there is no infirmity, far less manifest infirmity, in the impugned orders of the High Court and no interference under Article 136 of the Constitution is warranted. He highlighted how Om Prakash was negligent in pursuing the second appeals before the High Court. According to him, it well within the knowledge of Om Prakash that Rooprani and then Satish Chandra passed away and who their heirs were. Lack of due diligence by Om Prakash being writ large, he prayed that the longstanding dispute between the parties be laid to rest by dismissing these appeals and leaving it open to the respondents to pursue the execution applications in accordance with law, should the need arise.

ISSUES

7. The issue arising for decision in C.A. No.13407 of 2024 is, whether the High Court was justified in dismissing the application for condonation of delay in filing the application for substitution and could the second appeal be regarded as having abated.

8. In C.A. No. 13407 of 2024, whether the High Court was justified in passing the impugned orders dismissing the applications filed by the appellants seeking substitution and condonation of delay is the issue.

ANALYSIS AND REASONS

9. The principles to guide courts while considering applications for setting aside abatement and application for condonation of delay in filing the former application are laid down by this Court in Perumon Bhagvathy Devaswom v. Bhargavi Amma30. An instructive passage from such decision reads as follows:

"13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:

(i) The words 'sufficient cause for not making the application within the period of limitation' should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

(emphasis supplied in original)

The aforesaid passage is followed by other instructive passages too on special factors which have a bearing on what constitutes "sufficient cause", with reference to delay in applications for setting aside abatement and bringing the legal representatives on record. To the extent relevant for decisions on these two appeals, the same are extracted hereunder:

"15. The first is whether the appeal is pending in a court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate court and an appeal pending in a High Court. In lower courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. The process is known as 'adjournment of hearing'.

16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the Court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as ten years or even more.)

When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years.

There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

17. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10-A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it.

When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be an indication of negligence or want of diligence.

18. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the court would accept his claim that he was not aware of the death.

19. Thus it can safely be concluded that if the following three conditions exist, the courts will usually condone the delay, and set aside the abatement (even though the period of delay is considerable and a valuable right might have accrued to the opposite party-LRs of the deceased-on account of the abatement):

(i) The respondent had died during the period when the appeal had been pending without any hearing dates being fixed;

(ii) Neither the counsel for the deceased respondent nor the legal representatives of the deceased respondent had reported the death of the respondent to the court and the court has not given notice of such death to the appellant;

(iii) The appellant avers that he was unaware of the death of the respondent and there is no material to doubt or contradict his claim.

(emphasis supplied)

10. Having the benefit of the aforesaid pertinent guiding principles, we also consider it prudent to dwell on another matter of some importance which quite frequently this Court is called upon to consider. It is the appropriate sequence in which remedies available to have an order for setting aside abatement of a suit should be pursued. This discussion is necessitated in view of the facts in C.A. No.13408 of 2024 revealing that the appellants had applied for substitution and an application for condonation of delay in filing the former application was filed, without there being an application for setting aside the abatement.

11. Rule 1 of Order XXII, CPC provides that when a party to a suit passes away, the suit will not abate if the right to sue survives. In instances where the right to sue does survive, the procedure for bringing on record the legal representative(s) of the plaintiff/appellant and the defendant/respondent are provided in Rules 3 and 4, respectively, of Order XXII. The suit/appeal automatically abates when an application to substitute the legal representative(s) of the deceased party is not filed within the prescribed limitation period of 90 days from the date of death, as stipulated by Article 120 of the Limitation Act, 1963.

It could well be so that death of a defendant/respondent is not made known to the plaintiff/appellant within 90 days, being the period of limitation. Does it mean that the suit or appeal will not abate? The answer in view of the scheme of Order XXII cannot be in the negative. In the event the plaintiff/appellant derives knowledge of death immediately after the suit/appeal has abated, the remedy available is to file an application seeking setting aside of the abatement, the limitation wherefor is stipulated in Article 121 and which allows a period of 60 days. Therefore, between the 91st and the 150th day after the death, one has to file an application for setting aside the abatement.

On the 151st day, this remedy becomes time-barred; consequently, any application seeking to set aside the abatement must then be accompanied by a request contained in an application for condonation of delay under Section 5 of the Limitation Act in filing the application for setting aside the abatement. Thus, the total time-frame for filing an application for substitution and for setting aside abatement, as outlined in Articles 120 and 121 of the Limitation Act, is 150 (90 + 60) days. The question of condonation of delay, through an application under Section 5 of the Limitation Act, arises only after this period and not on the 91st day when the suit/appeal abates.

From our limited experience on the bench of this Court, we have found it somewhat of a frequent occurrence that after abatement of the suit and after the 150th day of death, an application is filed for condonation of delay in filing the application for substitution but not an application seeking condonation of delay in filing the application for setting aside the abatement. The proper sequence to be followed, therefore, is an application for substitution within 90 days of death and if not filed, to file an application for setting aside the abatement within 60 days and if that too is not filed, to file the requisite applications for substitution and setting aside the abatement with an accompanying application for condonation of delay in filing the latter application, i.e., the application for setting aside the abatement.

Once the court is satisfied that sufficient cause prevented the plaintiff/appellant from applying for setting aside the abatement within the period of limitation and orders accordingly, comes the question of setting the abatement. That happens as a matter of course and following the order for substitution of the deceased defendant/respondent, the suit/appeal regains its earlier position and would proceed for a trial/hearing on merits. Be that as it may.

12. We proceed with C.A. No.13407 of 2024 first.

13. Having regard to the facts noticed above, this appeal would require us to decide whether the heirs of Om Prakash were required to file a separate application for substitution when, admittedly, an application for substitution (Civil Misc. Substitution Application No. 211 of 1997) had previously been filed by the heirs of Satish Chandra. If the answer is in the negative, the impugned orders and also the order dated 2nd January 2007 (vide which the second appeal was dismissed as abated) will have to be set aside, since dismissal of a second appeal as abated despite pendency of a valid substitution application would be bad in law.

14. Order XXII of the Code of Civil Procedure31 is titled DEATH, MARRIAGE AND INSOLVENCY OF PARTIES. Rule 4 thereof lays down the procedure in case of death of one of several defendants or of sole defendant. It is clear on

perusal of such rule that it does not expressly provide who between the parties to a civil suit is to present an application for substitution.

15. In Union of India v. Ram Charan32, this Court held:

"10. It is not necessary to consider whether the High Court applied its earlier Full Bench decision correctly or not when we are to decide the main question urged in this appeal and that being the first contention. Rules 3 and 4 of Order 22 CPC lay down respectively the procedure to be followed in case of death of one of several plaintiffs when the right to sue does not survive to the surviving plaintiffs alone or that of the sole plaintiff when the right to sue survives or of the death of one several defendants or of sole defendant in similar circumstances. The procedure requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit.

It does not say who is to present the application. Ordinarily it would be the plaintiff as by the abatement of the suit the defendant stand to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in State of Punjab v. Nathu Ram [AIR 1962 SCR 89] and Jhandha Singh v. Gurmukh Singh [CA No. 344 of 1956 decided on April 10, 1962]. Anyway, that question does not arise in this case as the sole respondent had died."

(emphasis supplied)

16. The law, laid down in Ram Charan (supra), is clear. There seems to be no legal requirement that on the death of a defendant, an application for substitution in all cases has to be made by the plaintiff only and that, any application, made by the heir(s)/legal representative(s) of the deceased defendant seeking an order to allow him/them step into the shoes of the deceased defendant and to contest the suit, cannot be considered.

Once an application has been made by either party and the court has been informed about the death of a party and who the heir(s)/legal representative(s) he has left behind, the only thing that remains for the court is to pass an order substituting the heir(s)/legal representative(s). Such being the case, we have no doubt in holding that the application moved by the heirs of Satish Chandra (Civil Misc. Substitution Application No. 211 of 1997), whereby the court was informed by them of his death and the heirs that he had left behind, amounted to an application for substitution which was legally permissible and valid and deserved consideration.

17. According to Mr. Basant, the application filed by the heirs of Satish Chandra was an application intimating the death of Satish Chandra under Order XXII Rule 10-A, CPC and it was not an application under Rule 4 thereof; thus, there being no valid and proper application for substitution, the appeal was rightly held to have abated.

18. We find no force in the argument advanced by Mr. Basant. The application filed by the heirs of Satish Chandra was registered as a substitution application and the prayer was also for deletion of the name of Satish Chandra and substitution of his three sons in his place. In view thereof and having regard to the law laid down in Ram Charan (supra), we hold that an application having been filed by the heirs of Satish Chandra, the heirs of Om Prakash were not legally obliged to apply separately for substitution.

19. In our opinion, the law not having expressly mandated that an application for substitution has to be filed by the plaintiff/appellant upon receiving intimation of death, requiring a formal application from the plaintiff only will serve no tangible purpose. A justice-oriented approach has to be followed in interpreting the provisions of the CPC is the well settled law. Reference may usefully be made to the decision in Chinnammal v. P. Arumugham33, where it was held:

"17. It is well to remember that the Code of Civil Procedure is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree."

(emphasis supplied)

20. The High Court having been duly informed of the death of Satish Chandra, and substitution having been prayed by the heirs of the deceased, it ought to have proceeded to consider such application and pass an order bringing the heirs of the deceased respondent on record. This, the High Court omitted to order, perhaps, due to inadvertence whereby pendency of the application for substitution filed by the heirs of Satish Chandra escaped its notice.

21. Therefore, the order dated 2nd January 2007 vide which the second appeal was dismissed as having abated cannot sustain and will have to be set aside. The said order, though not under challenge before this Court, there is no bar for this Court to erase defective orders by setting them aside, even in the absence of any challenge thereto. In A. Subash Babu v. State of A.P.34, this Court discussed its powers to make any order to cure a manifest illegality and to avoid travesty of

justice even in the absence of any challenge to such order, and proceeded to express as follows:

"58. There may be several reasons due to which the State might not have challenged that part of the judgment of the learned Single Judge quashing the complaint filed by Respondent 2 under Section 498-A of the Penal Code. So also because of several reasons such as want of funds, distance, nonavailability of legal advice, etc. the original complainant might not have approached this Court to challenge that part of the judgment of the learned Single Judge which is quite contrary to the law declared by this Court. However, this Court while entertaining an appeal by grant of special leave has the power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents challenging that part of the order which is against them. To notice an obvious error of law committed by the High Court and thereafter not to do anything in the matter would be travesty of justice.

59. This Court while disposing of an appeal arising out of grant of special leave can make any order which justice demands and someone who has obtained an illegal order would not be justified in contending before this Court that in the absence of any appeal against an illegal order passed by the High Court the relief should not be appropriately moulded by the Court or that the finding recorded should not be upset by this Court.

66. Further, the powers under Article 136 can be exercised by the Supreme Court, in favour of a party even suo motu when the Court is satisfied that compelling grounds for its exercise exist. Where there is manifest injustice, a duty is enjoined upon this Court to exercise its suo motu power by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allow illegality to be perpetuated.

67. When an apparent irregularity is found by this Court in the order passed by the High Court, the Supreme Court cannot ignore substantive rights of a litigant while dealing with the cause pending before it. There is no reason why the relief cannot be and should not be appropriately moulded while disposing of an appeal arising by grant of special leave under Article 136 of the Constitution."

(emphasis supplied)

22. There is another equally important aspect, which merits our attention. The second appeal was restored by the High Court vide order dated 25th May, 2018. This order, restoring the second appeal, was recalled vide order dated 11th January 2019. The reason given was that, in the absence of an application praying

for setting aside the abatement, the second appeal could not have been ordered to be restored.

23. We find it difficult to agree with such reasoning. When an application praying for substitution had been made, then, even assuming that it does not have an explicit prayer for setting aside the abatement, such prayer could be read as inherent in the prayer for substitution in the interest of justice. We draw inspiration for such a conclusion, having read the decision in Mithailal Dalsangar Singh v. Annabai Devram Kini35. This Court reiterated the need for a justice-oriented approach in such matters. Inter alia, it was held that prayer to bring on record heir(s)/legal representative(s) can also be construed as a prayer for setting aside the abatement. The relevant passage reads as under:

"8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement.

So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for.

Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub-rule (2) of Rule 9 of Order 22 and of

Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

10. In the present case, such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates.

The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf."

(emphasis supplied)

24. Hence, the impugned orders as well as the order dismissing the second appeal as abated, under challenge in the first of the two appeals, is bad in law; the same deserve to be set aside.

25. Turning to the second of the two appeals, the facts are a little distinct.

26. The order of the High Court dated 27th February, 2019 records as follows:

"this application was served on counsel for appellants on 12.11.1992, therefore, it cannot be said that appellants were not aware of death of sole plaintiff-respondent and this fact also came to their notice that aforesaid application was filed in this court. Appellant 1 was also alive on that date, as admittedly he died in 2001, but no substitution application was filed, therefore, appeal stood abated in 1992 itself. When no attempt was made by appellant 1 himself for substitution and setting aside the abatement, now appellants 2, 3 and 3 (sic, 4) cannot be allowed to take advantage subsequently. More so, mother of appellants 2, 3 and 4 who represented appellants in filing appeal, was also aware of pendency of the case and it is not the case of appellants that she never told them about pendency of the case."

27. In this context, it is fruitful to refer to Order XXII Rule 10-A, CPC. The same is reproduced below for convenience:

"Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon

give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist."

28. Rule 10-A was not originally contained in CPC, but was inserted in the CPC in the year 1976 for a noble purpose which has been acknowledged by this Court in multiple decisions. The first of such decisions, perhaps, is Gangadhar v. Raj Kumar36 where this Court held:

"3. Rule 10-A which has been added in Order XXII of the Code of Civil Procedure by the Amending Act of 1976 provides that when a pleader appearing for a party to the suit comes to know of the death of the party, he shall inform the court about it and the court thereafter shall issue notice to the other party. In the case of an appeal, the word 'suit' has to be read as 'appeal'. This provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not come to know about the death of the other party during the pendency of the appeal but when it is awaiting its turn for being heard.

The appeal lies dormant for years on end and one cannot expect the other party to be a watch-dog for day-to-day survival of the other party. When the appeal on being notified for hearing is activated, knowledge occasionally dawns that one or the other party has not only died, but the time for substitution has run out and the appeal has abated. In order to see that administration of justice is not thwarted by such technical procedural lapse, this very innovative provision has been introduced, whereby, a duty is cast upon the learned advocate appearing for the party who comes to know about the death of the party to intimate to the court about the death of the party represented by the learned counsel and for this purpose a deeming fiction is introduced that the contract between dead client and lawyer subsists to the limited extent after the death of the client.

(emphasis supplied)

29. Rule 10-A casts a duty upon a pleader appearing for a party to the suit to intimate the court about the death of such party. It further provides that once the court is informed by the pleader of a party that he is no more, the court "shall" notify the opposing party of the death. A straightforward interpretation of this rule would suggest that the court's obligation to issue notice to the other party is indeed mandatory. Nonetheless, this obligation may not arise in all circumstances.

One notable exception could be when the information regarding the party's death is conveyed to the court in the presence of the opposing party's pleader or is documented by the court in the order sheet. In such cases, if the pleader of the concerned party (and consequently the party itself) has already been notified, issuing a further notice from the court would not serve any substantial purpose

other than being an exercise by way of abundant caution. Therefore, in the aforementioned scenario, the absence of a notice from the court would not imply a failure to comply with Rule 10A, suggesting that it is not "always mandatory".

30. Had the circumstance outlined above applied to the present appeal, we would have likely concluded that Rule 10-A has been substantially complied with. However, the facts in this instant case are not particularly clear-cut. As previously noted, in the affidavit submitted alongside an application by Anil Kumar which primarily was not intended to inform the court of Rooprani's death, it was stated that he is "one of the sons of deceased Rooprani".

The inclusion of such pertinent information within an inconspicuous section of an application meant for a different purpose without the date of death does not, in our considered view, constitute sufficient compliance with Rule 10-A either by the pleader of the deceased or amount to due notice to Om Prakash by the court (without such death being recorded in any order passed subsequently in the presence of counsel for Om Prakash). To rule otherwise would undermine the intention of Rule 10-A, which mandates the clear communication of information relating to death of a party which, obviously, would mean not only the factum of death being conveyed but also the date of death since limitation to apply under Article 120 of the Limitation Act, 1963 for substitution begins to run from the date of death.

It is implicit that this information must be conveyed in a straightforward and unambiguous manner to enable the plaintiff or the appellant, as the case may be, to take steps and apply for substitution. No advantage should be allowed to be derived if such death is, by clever drafting, sought to be disclosed in an obscure corner of an application seeking to bring to the notice of the court an alleged subsequent development resulting in violation of a court's order.

31. Having held that the manner of conveying information of the death of Rooprani was not wholly in accordance with Rule 10-A, information through the application of Anil Kumar cannot operate adversely against Om Prakash. Had Om Prakash been noticed by the High Court in due compliance with Rule 10-A, yet, did not file an application for substitution, he would be estopped from pleading ignorance and we would have been inclined to hold otherwise. This not being the case, the abatement of the second appeal ought to be set aside.

32. Although no application praying for setting aside of abatement was ever made by the appellants before the High Court, but as held in Mithailal (supra), prayer for setting aside of abatement can be read in a prayer for substitution. Accordingly, the abatement of the second appeal can and ought to be set aside for ends of justice.

CONCLUSION

33. For the foregoing reasons, the appeals merit success.

34. While allowing Civil Appeal No. 13407 of 2024, the application for substitution37 filed by the heirs of Satish Chandra is ordered to succeed. We set aside the order dismissing the second appeal38 as abated. The said appeal is restored to its original file and number. Cause-title of the said appeal shall be amended to record the death of Satish Chandra and his heirs - Anil Kumar, Vimal Kumar and Manoj Kumar - shall be brought on record as substituted respondents.

35. Insofar as Civil Appeal No. 13408 of 2024 is concerned, the impugned orders stand set aside. The abatement of the second appeal is also set aside. Resultantly, the prayer for substitution stands granted. Causetitle of the said appeal shall be amended to record the death of Rooprani and her heirs - Anil Kumar, Vimal Kumar and Manoj Kumar - shall be brought on record as substituted respondents in the second appeal. Consequently, Civil Appeal No. 13408 of 2024 is allowed.

36. Having regard to the long lapse of time ever since the second appeals were presented before the High Court, that the original parties are now dead and that the suits were for specific performance of contracts for sale, we request the roster bench of the High Court to consider the second appeals on priority and decide the same, subject to its convenience, preferably within 6 (six) months from date.

37. There shall be no order for costs.

.....J. (Dipankar Datta)

.....J. (Prashant Kumar Mishra)

New Delhi;

February 11, 2025.

1 Civil Suit No. 264/1972

2 Om Prakash

3 agreement to sell dated 8th February,1970

4 the court of the Civil Judge, Bareilly

5 Civil Appeal No.11 of 1975

6 Second Appeal No. 885 of 1977

7 High Court, hereafter

8 Civil Miscellaneous Substitution Application No. 211 of 1997

9 E.A. No. 6 of 2017

10 Civil Miscellaneous Restoration Application No. 2 of 2018

11 Civil Miscellaneous Substitution Application No. 5 of 2018

12 Civil Miscellaneous Delay Condonation Application No. 4 of 2018

13 Recall Application No. 7 of 2018

14 I.A. No. 8 of 2018

15 Rooprani

16 Suit No. 94 of 1973

17 agreement to Sell dated 7th June, 1970

18 Court of Civil Judge, Bareilly

19 Appeal No. 12 of 1975

20 Second Appeal No. 884 of 1977

21 C.M.A. No. 5306 of 1992

22 vide order dated 3rd November, 2006

23 E.A. No. 7 of 2017

24 Recall/ Restoration Application No. 2 of 2018 in Second Appeal No. 884 of 1977

25 Civil Miscellaneous Substitution Application No. 5 of 2018

26 Civil Miscellaneous Application No. 4 of 2018

27 Recall Application No. 7 of 2018

28 C.M. Delay Condonation Application No.4 of 2018

29 C.M. Substitution Application No.5 of 2018

30 (2008) 8 SCC 321

31 CPC

32 AIR 1964 SC 215

33 (1990) 1 SCC 513

34 (2011) 7 SCC 616

35 (2003) 10 SCC 691

36 (1984) 1 SCC 121

37 Civil Miscellaneous Substitution Application No. 211 of 1997

38 Second Appeal No. 885 of 1977

IN THE SUPREME COURT OF INDIA

Vasant @ Girish Akbarasab Sanavale & Anr.
Vs.
State of Karnataka

[Criminal Appeal No. 593 of 2022]

HEADNOTE – A person present on the scene might or might not be guilty by the application of Section 34, IPC. If he is present on the scene for the purpose of participating in the offence, he would certainly be guilty as a participator in the offence. On the other hand, if he is present there merely as a spectator, he would not be guilty.

It is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.

If common intention is proved but no overt act is attributed to the individual accused, Section 34 IPC will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre-supposes prior concert therefore there must be meeting of mind.

JUDGMENT

1. This appeal arises from the judgment and order passed by the High Court of Karnataka, Dharwad Bench in Criminal Appeal No. 100168 of 2016 dated 6th October 2020 by which the High Court allowed the appeal filed by the State of Karnataka and thereby quashed and set aside the judgment and order passed by the VIth Additional District & Sessions Judge, Belagavi in S.C. No. 151 of 2013 acquitting the appellants herein of the offence punishable under Sections 498A, 302 and 504 read with Section 34 respectively of the Indian Penal Code, 1860 (for short "the IPC") and Sections 3 and 4 respectively of the Dowry Prohibition Act, 1961.

2. It is the case of the prosecution that the deceased named Geetha was married to the appellant no.1 herein viz. Vasant @ Girish Akbarasab Sanavale past 8 years from the date of the incident. In the wedlock three children were born. It is alleged that after a period of one year from the date of marriage the husband and

his family members started harassing the deceased. The deceased was being harassed for dowry and in connection with the domestic house hold work.

3. On the date of the incident at around 8.00 p.m. while the deceased was at her matrimonial home, her mother-in-law i.e. the appellant no.2 herein is alleged to have poured kerosene on her body and set her on fire. The deceased suffered extensive burn injuries.

4. The neighbours residing in the vicinity rushed to the place of the incident and immediately shifted her to the hospital. The deceased succumbed to the burn injuries after a period of one week. The cause of death as usual is septicemia.

5. The mother of the deceased Tippavva Chandru Patil, lodged an FIR dated 03-01-2013 which came to be registered as crime No. 2 of 2013 in Mudalagi Police Station, Mudalagi Circle, District Belagavi, Karnataka. The first information report reads thus:-

"The accused persons mentioned herein are the husband, mother-in-law and father-in-law of Geetha, daughter of the complainant and the said accused persons looked after Geetha cordially for 1 year after marriage but then they have not only ill-treated her physically and mentally by insisting her to wake up early in the morning and do the household chores and to go to the house of others to work but also pressurized her to bring an amount of Rs.5,000/- from her maternal house and since she did not bring money from her maternal house, the accused person had the intention to kill her and poured kerosene on her and set fire and tried to kill her and thereby committed offence."

6. On the FIR being registered the investigation started. The Tehsiladar of the area was requested to reach the hospital for the purpose of recording of the dying declaration of the deceased. The Tehsildar within four hours of the incident reached the hospital and recorded the dying declaration Exhibit-46.

7. The statements of various witnesses, more particularly, the neighbours who had brought the deceased to the hospital were recorded under Section 161 of the Criminal Procedure Code, 1973(for short "the Cr.P.C."). After the deceased passed away her body was sent to post mortem examination. The other articles collected in the course of the investigation like clothes etc. were sent to the Forensic Science Laboratory for the purpose of chemical analysis.

8. At the end of the investigation, Police filed charge-sheet against the husband and mother-in-law respectively for the offence enumerated above. The case being exclusively triable by the Sessions Court came to be committed to the Court of Sessions Under Section 209 of the Cr.P.C.

9. The trial court proceeded to frame the charge against the accused persons under Sections 498-A, 302, 114, 323 and 504 r/w Sec.34 of IPC respectively and Sections 3 and 4 respectively of Dowry Prohibition Act to which they pleaded not guilty and claimed to be tried.

10. The prosecution examined the following witnesses in support of its case:-

"PW1 Anand Shankar Sanawale
PW2 Laxman Ramappa Sanawale.
PW3 Sushila Dilip Sanawale.
PW4 Shabbir Samsher Sanawale.
PW5 Latha Shashikant Sanawale.
PW6 Julekha Gulabsab Sanawale.
PW7 Smt. Yallawwa Ramu Karale.
PW8 Krishna Mukappa Shivalli.
PW9 Malik Chandru Patil.
PW10 Prakash Shankar Sanawale.
PW11 Smt. Tippavva Chandru Patil.
PW12 Hanumanth Bhima Nayak.
PW13 Dastagir Abdulsab Inamdar.
PW14 Dr. Adam Allasab Nadaf.
PW15 Dr.Gopal Ramu Wagamude.
PW16 Shivanand Basavanthappa Dhulai.
PW17 Suresh Shankar Murgod.
PW18 Maruti Yallappa Padadalli.
PW19 Anil Balappa Padedar.
PW20 Lakkappa Durgappa Taddi.
PW21 Oudram Hammabba Beary
PW22 Sureshbabu Rudrappa Bandiwaddar.
PW23 Sharanappa.M.Olekar.
PW24 Mrthunjay Irayya Mathapati.
PW25 Dr.N.Sujatha Nanjegouda"

11. The prosecution also led the following pieces of documentary evidence:-

"(i) Ex.P.8 Mahazar of place of occurrence

(ii) Ex.P.27 Post Mortem Report

(iii) Ex.P.30 Opinion of the Doctor before recording the Dying Declaration (PW15)

(iv) Ex.P.30 Opinion of the Doctor before recording the Dying Declaration (PW25)

(v) Ex.P.46 Dying Declaration

(vi) Ex.P.54 FSL Report"

12. Upon closure of the recording of the evidence, the trial court recorded the further statement of both the accused persons under Section 313 of the Cr.P.C. in which both the accused said that they were innocent and had been falsely implicated.

13. Upon appreciation of the oral as well as documentary evidence on record, the trial court recorded a finding that the prosecution had failed to establish its case beyond reasonable doubt and accordingly acquitted both the accused.

14. The State being dissatisfied with the judgement and order of acquittal passed by the trial court went in appeal before the High Court. The High Court reversed the finding of acquittal and held both the accused guilty of the alleged offence. The High Court ultimately sentenced them to life imprisonment with fine.

15. In such circumstances, referred to above, the appellants are here before this Court with the present appeal.

16. Mr Faeek-ul-Farooq, the learned counsel appearing for the appellants vehemently submitted that the High Court committed an egregious error in reversing a well-reasoned judgement of the acquittal. According to him, even if a different view is possible on the evidence on record, the High Court as an Appellate Court should be slow in reversing the acquittal unless the High Court comes to the conclusion that the findings recorded by the trial court are perverse or contrary to the evidence on record.

17. He would submit that the High Court committed a serious error in relying upon the dying declaration of the deceased recorded by the Tehsildar. According to him having regard to the medical evidence on record the dying declaration should be discarded as the deceased at the relevant point of time was not in a fit condition of mind to speak anything.

18. He submitted that so far as the appellant no.1 i.e. the husband is concerned, there is no case at all against him.

19. He would submit that the deceased neither in the oral dying declaration made before the Doctor nor in the dying declaration recorded by the Tehsildar has said anything against the husband. On the contrary, according to the learned counsel the deceased in the dying declaration before the Tehsildar has said that the husband poured water on her to extinguish the fire.

20. In such circumstances, referred to above, the learned counsel prayed that there being merit in his appeal the same may be allowed and the accused persons be acquitted.

21. On the other hand, Mr.Singhvi, the learned counsel appearing for the State submitted that no error not to speak of any error of law could be said to have been committed by the High Court in reversing the acquittal and holding the appellants herein guilty of the offence of murder. He would submit that the only thing that weighed with the trial court in disbelieving the dying declaration is the fact that all other witnesses, more particularly, the neighbours had turned hostile and failed to support the case of the prosecution.

22. According to Mr. Singhvi, the oral dying declaration made by the deceased before PW-15 Dr.Gopal Ramu Wagamude and the dying declaration before the Tehsildar exhibit P-21 is sufficient enough to at least hold the appellant no.2 guilty of the alleged crime.

23. In the last Mr. Singhvi tried to develop an argument that although the husband may not be directly involved or in other words has not been directly implicated in the alleged crime still it is established that he was present in the house and it was expected of the husband to take all necessary precautions or steps to save his wife and the failure or omission on his part would indicate the common intention shared by him along with his mother.

24. Mr. Singhvi also tried to invoke Section 106 of the Evidence Act arguing that something within the personal knowledge of the husband should have been disclosed by the husband in his further statement recorded under Section 313 of the Cr.P.C. In the absence of any plausible explanation the High Court rightly held the husband also guilty with the aid of Section 34 of the IPC.

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

ANALYSIS:

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgement?

27. We first start with the dying declaration recorded by the Tehsildar.

28. The dying declaration exhibit-46 recorded by the Tehsildar reads thus:-

"Question No.1: Are you conscious and in a sound state of mind
Answer: Yes

Question No.2: Are. you in a state to speak?
Answer: Yes

Question No.3: Where are you now?
Answer: General Hospital, Gokak.

Question No.4: When and who brought you here and by what means?
Answer: The people belonging to my lane brought me here yesterday in ambulance at about 8~30 p.m.

Question No.5: Who attacked you?
Answer: My mother-in-law poured kerosene on me and my motherin- law Jaitunabi lit matchstick and threw on me and set fire.

Question No.6: Give their name and address?
Answer: Jaitunabi Sanavale

Question No. 7: How do you identify her?
Answer: I identify her.

Question No.8: How did you sustain injury?
Answer: I have sustained injuries by fire.

Question No.9: What are the weapons used and describe the shapes?
Answer: Kerosene and matchstick.

Question No.10: In which place you are attacked?
Answer: In the house situated in Mudalagi.

Question No.11: Can you identify wounds on your body?
Answer: Yes.

Question No.12: How and in what manner you have sustained injuries?
Answer: Burnt by pouring kerosene.

Question No.13: What was the intention behind the attack?
Answer: I was in house and in the evening there was quarrel due to my children and at that time my mother-in-law Jaitunabi Sanavale got enraged due to quarrel and poured kerosene on me and when I was going to bathroom, my mother-in-law Jaitunabi lit matchstick and threw it on me. My husband Vasant splashed water on me but the fire did not extinguish and at that time the residents of the lane gathered and took me in ambulance to General Hospital at about 8.30 p.m."

29. In the aforesaid context we shall now look into the oral evidence of the Tehsildar. The Tehsildar PW-21 namely Oudram in his examination in chief has deposed thus:-

"On 3-1-2013 when I was discharging my duty as Tahsildar Gokak. I, received requisition from Mudalagi police station as per Ex.P.42 which was received in my said office. On the same day I went to Govt. hospital Gokak and wrote a letter to Medical Officer, Govt hospital Gokak as per Ex.P.32 seeking his opinion whether Geeta was able to give any statement, which bears my signature Ex.P. 32 (b). The said Medical Officer in Ex.P.32 has endorsed that patient was able to give oral statement. Accordingly, I have recorded dying declaration of the said Geeta. She for questioning who, when and how she was brought to hospital, she answered that the residents of her lane brought her on previous night at 8.30 pm by ambulance.

For questing who assaulted her, she replied her mother-inlaw had poured kerosene and aunt, namely- Jaitunabi, set her fire my matchstick. For questioning whether she could identify her, she replied that she could. For questioning how she sustained injuries, she replied she sustained burn injuries. For questioning where crime was committed, she replied that at home at Mudalagi. For questioning the intention of the crime she replied when she was there in house in the evening, there was quarrel because of her children. Her mother-in-law enraged by the said quarrel poured kerosene on her.

When she was going to bathroom her mother-in-law Jaitunabi, lighted match stick and threw on her. Her husband, Vasant, splashed water on her. The fire did not extinguish. At that time the people from her lane gathered and took her to hospital at 8.30 pm by an ambulance. Since her palms were burned I took finger impression of her left toe on the said dying declaration. Afterwards I have signed said dying declaration and the Medical Officer has also signed the same. On 4-2-2013 I received requisition, marked Ex.P. 44, seeking to issue true copy of dying declaration of deceased Geeta.

On 4- 2-2013 I sent a letter, with one true copy of dying declaration and one sealed envelope containing original dying declaration to CPI, marked, Ex.P.45, which bears my signature Ex.P.45(a) (In the open court a sealed cover received from Addl. JMFC, Gokak is opened.) The dying declaration of Geeta is Ex.P.46;my signature is Ex P.46(a)(b);The left toe impression of Geeta there-in is Ex.P.46(c); The signature of medical officer there-in is Ex.P.46(d). I have recorded the dying declaration of Geeta on 3-1-2013 from 12.15 p.m. to 12.25 p.m."

30. Unfortunately, there is no cross examination worth the name of the Tehsildar. Nothing substantial could be elicited through the cross examination thereby to

disbelieve that the deceased was not in a fit state of mind to give a dying declaration.

31. We now proceed to look into the evidence of Dr. Gopal Ramu Wagamude Exhibit 17 (PW-15). Dr. Gopal Waghmude in his examinationin- chief as deposed as under:-

"I have been serving as Senior Specialist in General Hospital, Gokak, since 2011. On 02.01.2013 at about 9.30 p.m., Anand S. Sanavale had brought Geetha Vasant Sanavale, aged about 28 years; R/o Mudalagi, to our Hospital requiring treatment for burn injuries. As per the information given by Geetha; her mother-in-law poured kerosene on her and set her ablaze. She also informed that this incident occurred on the same day at about 8.00 p.m. On examining her, she was in conscious state. She was telling that she was feeling thirsty. When she was examined, her B.P was 90/70 and her pulse was palpitating and kerosene smell was coming out of her body.

On examining her, normal burn injuries were found on her face and neck, Deep burn injuries were found on her right hand, left hand, right leg and left leg. Deep burn injuries were found on abdomen and back and all these injuries appeared reddish in colour. All these injuries were grievous in nature and also fresh in nature. Nearly 90% of burn injuries were found. I have given treatment to the said as in-patient. I have also given treatment to her on 03.01.2013. Except me, General Surgeon has also provided treatment to this patient. On 03.01.2013, A.S.I of Mudalagi Police station gave a requisition requesting to know whether the patient is in the condition to give statement or not.

The document which is shown to me now is the office copy of the requisition which was given to me on that day. It has been marked as Ex.P.30. Ex.P.30 bears my signature about receiving it. In Ex.P.30, I have written my opinion that the patient is in the condition to give statement. It has been marked as Ex.P.30 (a). I have furnished wound certificate about the injuries. The document which is shown to me now is the wound certificate that I have furnished. It has been marked as Ex.P.31. The signature of witness has been marked as Ex.P.31 (a).

The document which is shown to me now is the office copy of the requisition given by the Tahsildar to N. Sujatha, Junior Specialist of our Hospital. The said requisition bears signature of N. Sujatha. The said document has been marked as Ex.P.32. In Ex.P.32, Junior Specialist Sujatha has given opinion and affixed signature by stating that the patient is in the condition to give statement. It has been marked as Ex.P.32 (a). When a person pours kerosene on another person, there are chances of sustaining injuries found in Ex.P.31. The above-mentioned patient was referred to KIMS Hospital, Hubballi from our hospital for further treatment."

32. Again, there is no cross examination of Dr. Wagamude. Nothing substantial could be elicited through the cross examination of the Dr. so as to disbelieve the oral dying declaration made by the deceased before him.

33. However, what is pertinent for us to note is that nowhere the husband figures. It is only the mother-in-law, who figures in the dying declaration as well as oral evidence of the Doctor and the Tehsildar.

34. We also looked into the evidence, so as to ascertain whether the deceased was in a fit condition to make the dying declaration or not. There is nothing on record to indicate that she was unable to talk or was not conscious.

35. To a very pertinent question put by us to Mr. Singhvi as to what weighed with the High Court in holding the husband guilty of the alleged offence, he invited the attention of this Court to para 30 of the impugned judgement. In para 30, the High Court has observed thus:-

30. From the very statement of Geetha, cruelty to her in the hands of the accused persons is established invariably and without iota of doubt. The cause of death is burn injuries and the burn injuries are established to have been inflicted by accused Nos.1 and 2, they are charged with common intention. If the accused No.1 was really about to save his wife, he could have done it when she was in murderous condition by sustaining injuries to the extent of 90-95% inflicted in his person in his presence and in the presence of hostility of himself and his wife, he never bothered even to take her to treatment. He wanted to ensure that she dies. In this connection, the offence may be with respect of commission or omission."

36. The plain reading of para 30 referred to above would indicate that what weighed with the High Court in holding the husband-appellant guilty is the fact that he never bothered to take his wife to the hospital as he wanted to ensure that she does not survive. Therefore, according to the High Court, the husband could be said to be guilty having shared common intention with his mother. We have not been able to understand exactly what the High Court wants to convey.

37. Be that as it may, we have reached the conclusion that there is no cogent and reliable evidence to hold the husband-appellant guilty of the alleged offence even with the aid of Section 34 of the IPC. Section 34 of the IPC reads thus:-

"34. Acts done by several persons in furtherance of common intention.-

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

38. If there is one decision explaining Section 34 IPC which could be termed as locus classicus then the same is the Allahabad High Court decision in the case of Om Prakash v. State reported in 1956 CrLJ 452. Justice M.H. Beg (as His Lordship then was) has beautifully explained the provision and its applicability.

39. In order that an intention should be common, it should be attributable to every member of the group. This is also clarified by the fact that the section itself characterises the common intention to be the 'common, intention of all'. Section 34, IPC, therefore, does not ignore the intention of the individual offender.

40. It only adds some more persons in the commission of the offence and postulates that the same intention was jointly existing in the mind of every individual member of the group as well. It may be that the intention was alleged to be common, but that only means that every member shared it along with others and not the some members shared it and others did not.

41. The common intention required under Section 34 Penal Code need not, however, be identical with the guilty intention or 'mens rea' which is the ingredient of the offence and is to be distinguished from it. The latter might be coincident with or collateral to the former.

42. On the other hand, the position under Section 149, IPC, is very different. The charge framed under Section 149, IPC, disregards the intention of the individual members of the assembly altogether, and concentrates merely on the common object of the assembly as a whole. The result of this position is that there may be cases in which a person might be guilty of an offence under Section 149, IPC though he himself had no intention to commit it or was even unaware of its commission.

43. There may even be cases where a person might be found guilty of an offence under Section 149 though it was committed quite contrary to his own intention. Supposing for instance, an unlawful assembly is formed with the object of wiping out all members of a particular community residing in a mohalla. While this assembly is busy in its unlawful activities, some of its members might come across a member of the other community and might in prosecution of the common object proceed to murder him.

44. But a particular individual, say X, who is a member of this very unlawful assembly might discover that Y was his old friend. X might not want that this old friend of his should be killed, and in spite of his wishes, and contrary to his intention, Y might be murdered.

45. If it so happens, then X who was a member of the unlawful assembly, might be held to be guilty of an offence committed by another member of the said assembly, even though the offence itself was committed quite contrary to his

desires and even in opposition to his own intention provided it is shown that X continued to remain a member of the assembly at the time of the offence and the offence itself was directly or indirectly within the purview of the common object of the assembly.

46. The reason is that the criminal liability under Section 149, IPC is determined not by the intention of the various individual members constituting it but by the common object of the assembly as a whole. The result is that when a charge against a person is framed for an offence under Section 149, IPC, read with a relative section, and the person is convicted of the offence under the relative section alone, he might legitimately complain that his own mental state having never been put into issue under the charge at all, he was taken by surprise in the matter and thereby misled and prejudiced.

47. For the purpose of the above discussion I am presuming that a charge framed under Section 149, IPC is the usual charge under which the individual authorship of the offence is not defined or specified, and the offence is alleged in the charge to be the act of an undefined member of the assembly. The position under Section 34 is different. The connection here between the offender and the offence is far closer and deeper.

48. Under Section 34 every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally. That is, he is a sharer not only in what has been described as a common act but also in what is termed as the common intention, and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different.

49. To put it in other words, whereas under Section 149, IPC the entire emphasis both in respect of the physical act as well as in respect of the mental state is placed on the assembly as a whole, under Section 34, IPC, the weight in respect of both is divided and is placed both on the individual member as well as on the entire group.

50. Section 34, IPC, as contrasted with Section 149, IPC, therefore, balances the individual and the general aspect, although while taking into account the individual aspect it conceives it as part and parcel of the general aspect. In this sense, Section 34, IPC, is far more restricted than Section 149, IPC. If, therefore, a person is charged with an offence with the application of Section 34, IPC, and convicted for the substantive offence only, it is not so easy for him to advance the plea that he was not aware that the matter had any individual aspect.

51. Participation of the individual offender in the criminal act in some form or the other which is the leading feature of Section 34, IPC differentiates it not only from Section 149, IPC, but also from other affiliated offences like criminal conspiracy and abetment. A bare agreement between two or more persons to do or cause to be done an illegal act might make a person liable for the offence of criminal conspiracy as defined in Section 120, IPC. If the said agreement is to commit offence, then such an agreement is by itself enough to make a man guilty and no overt act apart from the agreement would be necessary.

52. If, however, the agreement is to commit an act which is not tantamount to an offence, then some overt act in pursuance thereof is necessary. Such overt act may, however, be performed by any person who is a party to the agreement and not necessarily by the particular accused who might be guilty of the offence without having participated in the act.

53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.

54. The offence itself would be complete even though the act abetted is not committed; or, even if the act is committed, the abettor himself has not participated in it. Thus, actual participation in the commission of the offence, which is a condition precedent of Section 34 and is its main feature, again distinguishes it from the offence of abetment.

55. Section 34, IPC, compendiously summarises the liability imposed under English Law on what are therein called as principal in the first degree and principal in the second degree and assimilates the principles underlying both by compressing them in one section and treating them as what have been called accessories at the fact as opposed to what are termed as accessories before the fact and accessories after the fact.

56. In this connection, Mr. Singhvi the learned counsel for the State argued that a person who is present on the spot at the time of the commission of the offence would be guilty by the application of Section 34, IPC. although such a person did not do anything.

57. A person present on the scene might or might not be guilty by the application of Section 34, IPC. If he is present on the scene for the purpose of participating in the offence, he would certainly be guilty as a participator in the offence. On the other hand, if he is present there merely as a spectator, he would not be guilty.

58. Thus, for example a person who is an eyewitness of the incident is present at the spot as well as a person who is a confederate of the assailant. The former is not guilty because he is present merely to see the commission of the crime. On the other hand, the latter is guilty because he is present for the purpose of seeing that the crime is committed. In other words, presence on the spot for the purpose of facilitating or promoting the offence is itself tantamount to actual participation in the criminal act.

59. As observed by the Privy Council in the case of Barendra Kumar Ghosh v. Emperor, AIR 1925 PC 1 (C), "It is to be remembered that in crimes as in other things 'they also serve who only stand and wait'". The following observations of Mookerjee, J. in the case of Emperor v. Barendra Kumar Ghosh, AIR 1924 Cal 257 (FB) (D) are relevant in this connection:

"It is the expectation of aid, in case it is necessary to the completion of the crime and the belief that his associate is near and ready to render it which encourage and embolden the chief perpetrator, and incite him to accomplish the act. By the countenance and assistance which the accomplice thus renders, he participates in the commission of the offence.

60. It is, therefore, sufficient to hold a party as principal, if it is made to appear that he acted with another in pursuance of a common design; that he operated at one and the same time for the fulfilment of the same pre-concerted end, and was so situated as to be able to furnish aid to his associates with a view to insure success in the accomplishment of the common enterprise", (p. 280)

61. In a similar strain are the following instructive observations in the judgment of Richardson, J., in the same case:

"Moreover, it is impossible to say what might have happened, if one man alone had set out to accomplish the murder. Without the support moral and physical, of a comrade, his resolution might have failed him and his pistol remained in his pocket or diminution of confidence might have interfered with his aim; or again, he might have been successfully resisted and put to flight", (p. 296).

62. At p. 308 col. (1) of the same case Ghose J. has quoted the following illuminating passage from Poster's Criminal Law:

"Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned to him; some to commit the act, others to watch at proper distances and stations to prevent a surprise, or to favour, if need be, the escape of those who are more immediately engaged.

They are all, provided the act be committed, in the eye of the law present at it; for it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end, and the part each man took tended to give countenance, encouragement and protection to the whole gang, and to ensure the success of their common enterprise. To sum up persons executing parts of a crime separately in furtherance of a common intention are equally guilty".

63. It is, therefore, not correct for the appellant's learned counsel to say that a person present on the spot does nothing. He plays a very important part in the scheme of the commission of the offence. The potential utility of a person who is present as a guilty confederate on the scene of offence cannot be overestimated.

64. The word 'criminal act' is used in Section 34, IPC in the broadest possible sense. It would cover any word, gesture, deed or conduct of any kind on the part of a person whether active or passive, which tends to support the common design.

65. A 'criminal act' in Section 34, IPC consists of the entire bundle of acts or omissions tied together with the chain of common intention that have combined to constitute the offence. The acts that it might comprise within itself may be similar or diverse.

66. Such acts may be performed simultaneously, successively or at intervals. Instances to illustrate such acts are of a multifarious type. For example, two persons may beat a man at the same time, and if their acts are in furtherance of a common end, Section 34 IPC, would be attracted. The acts here are simultaneous.

67. Again, for example, two jailors whose duty it is to attend alternately on a prisoner may conspire to starve him to death. In pursuance of this conspiracy, they may omit to supply food to him. In this case the conduct consists of omissions and the acts of the accused are successive and not simultaneous. Or, for example, two persons may conspire to forge a document.

68. One may forge a part of it on one day and the other may forge the remaining part of it after a gap of a month. In this instance the acts of both the persons would attract Section 34, IPC even though there is an interval between acts performed by each of the two persons separately.

69. Such act may consist of a mere gesture or expression or conduct that may provide a signal for offence or help the confederate in identifying the victim. Thus, for example two persons may conspire to kill a third man. One may know him and the other may not know him.

70. It may be agreed between the two that the person who knows him will stand near the man who would be the victim and thereby enable the person to whom

the part of killing is assigned to identify the victim. If the scheme is carried out, both would be guilty under Section 34, IPC, even though the man who stood near the victim was merely present on the spot and apparently did nothing. If, however, the scheme is analysed, it would appear that by his presence near the victim he played a very important part.

71. In fact, it was his presence near the victim that really contributed to the successful commission of the crime. The part may consist of a mere omission. Thus, for example, a person who is employed as a sentinel to guard the room of the deceased might agree with the murderer to allow him entry into the room with a view to enable him to accomplish the murderous deed.

72. If the murderer turns up according to the pre-arranged plan and the sentinel deliberately omits to prevent his entry into the room, he has done an act which has contributed as effectively to the perpetration of the murder as the actual act of killing itself.

73. In fact, the murder might not have been possible without the omission on his part. The various acts may be quite diverse in nature. Thus, if two persons conspire to commit theft and devise a plan according to which one of them would lure the shopkeeper away to an adjoining room on the pretext of having conversation with him thereby leaving the shop unprotected in order to enable the other persons to commit theft and the scheme is executed according to the plan, both of them would be equally guilty of theft by the application of the provisions of Section 34, IPC although their respective acts are of a very different type.

74. In such a case, although only one man has committed the actual theft and the other has done nothing except entering into a friendly chat with the shopkeeper with a view to secure his removal from the scene, yet the part played by the latter is no less important than that of the former.

75. It is, therefore, evident that every person charged with the aid of Section 34, must in some form or the other participate in the offence in order to make him liable thereunder. For the above reason, I find myself unable to endorse the argument of the appellants' learned counsel that a guilty associate merely present on the spot cannot be said to participate in the commission of the offence.

76. The element of participation in the commission of the offence is the chief feature that distinguishes Section 34, IPC from Section 149, IPC and other kindred sections. This has been emphasised in a large number of decided cases.

77. In Shreekantiah Ramayya Munipalli v. State of Bombay, (S) AIR 1955 SC 287 (E) while expounding the meaning of Section 34, IPC Bose, J. observed as follows:-

"It is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually being committed. The antithesis is between the preliminary stages, the agreement, the preparation, the planning, which is covered by S. 109, and the stage of commission when the plans are put into effect and carried out. Section 34 is concerned with the latter", (p. 293).

78. At page 294, col. (1) of the same judgment it is observed that:-

"The emphasis in S. 34 is on the word 'done'. When a criminal act is 'done' by several persons, it is essential that they join in the actual 'doing' of the act and not merely in planning its perpetration".

79. In the same case, the following observations of their Lordships of the Privy Council in the case in AIR 1925 PC 1 (C) on this point were cited with approval: "Participation and joint action' in the actual commission of crime' are, in substance, matters which stand in antithesis to abetments or attempts".

80. The distinction between Section 34, IPC, and Section 149, IPC in this regard has been brought out by Lord Sumner in the well-known case in AIR 1925 PC 1 (C) thus:

"There is a difference between object and intention, for, though their object is common, the intentions of the several members, may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149 by membership of the assembly at the time of the committing of the offence".

81. In Bashir v. State, AIR 1953 All 668 (F) which is a Bench decision of the Allahabad High Court, it was observed by Desai J. that:-

"All the persons who are sought to be made liable by virtue of S. 34 must have done some act which is included in the 'criminal act'. One who has not taken any part in doing the criminal act cannot be made liable under the section", (p. 671 col 1).

82. In Faiyaz Khan v. Rex, AIR 1949 All 180 (G) it was held that:- "Section 34 refers to cases in which several persons both intend to do and do an act. It does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases S. 149 may be applicable, but S. 34 is not", (p. 184 col. 1).

83. In AIR 1924 Cal 257 (D) which is a Full Bench case of the Calcutta High Court, Cuming J. observed that:

"The expression criminal act done by several persons includes the case of a number of persons acting together for a common object and each doing some act in furtherance of the final result which various acts make up the final act", (p. 312 col. 2).

84. In Aydrooss v. Emperor, AIR 1923 Mad 187 (2) (H) it was held that in order to justify the application of Section 34, evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question, must be required. (Vide h.n. (b)).

85. To the same effect are the following observations of Sharpe J. in Abdul Kader v. Emperor, AIR 1946 Cal 452 (I) which is a Bench decision of the Calcutta High Court:

"We think it desirable to draw attention to the decision in Fazoo Khan v. Jatoo Khan AIR 1931 Cal 643 (J) in which it has been observed that 'all the accused persons can be found guilty of an offence constructively under Section 34 of the Penal Code only on a finding that each of them took some part or other in, or towards, the commission of the offence".

86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder", (pp. 457-458).

87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.

88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.

89. In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court

that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. [See: Om Prakash(supra)]

90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind.

91. Section 106 of the Evidence Act was also pressed into service by Mr. Singhvi appearing for the State. We are of the view that it has no application in the present case. It is true that when crime is alleged to have been committed inside the four walls of the house and that too in secrecy then the family members residing in the house are the best persons to know and explain as to what had actually happened.

Let us for the time being proceed on the footing that the husband was very much present at the time of the incident however there is nothing to indicate that he shared common intention with his mother. When the mother-in-law poured kerosene on the deceased and set her on fire, it is possible that the husband out of sheer fright might have run away from his house after trying to extinguish fire by pouring water on the burning body of his wife.

For applicability of Section 106 so as to implicate the husband also in the alleged crime the prosecution has to as a condition precedent lay the foundational facts prima facie indicating his involvement or participation in the alleged crime. His sudden disappearance after the incident is not sufficient to infer common intention.

92. In the overall view of the matter, we have reached the conclusion that the High Court rightly held the mother-in-law guilty of the alleged crime. However, the High Court at the same time committed an error in holding the husband-appellant no.1 guilty of the offence of murder with the aid of Section 34 IPC.

93. In the result, this appeal succeeds in part. The judgement and order of conviction passed by the High court so far as the appellant no.2 is concerned is hereby affirmed. So far as the appellant no.1 is concerned, the appeal succeeds and is hereby allowed. The appellant no.1 is acquitted of all the charges.

94. We are informed that mother-in-law is already in jail.

95. We are further informed that husband-appellant no.1 is also in jail. He shall be released forthwith, if not required, in any other case.

96. The appeal stands partly allowed in the aforesaid terms.

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

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

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

New Delhi

February 11, 2025

IN THE SUPREME COURT OF INDIA

Sukhdev Singh
Vs.
Sukhbir Kaur

[Civil Appeal No. 2536 of 2019]
[Civil Appeal No. 5726 of 2019]

HEADNOTE – Permanent alimony and interim maintenance under the Hindu Marriage Act, 1955 can be granted even when the marriage has been declared void.

JUDGMENT

Abhay S. Oka, J.

ISSUE REFERRED

1. The reference to a Bench of the three Hon'ble Judges has been made by the order dated 22nd August 2024 of this Court, which reads thus:

"Learned counsel appearing for the parties state at the Bar that these matters need to be considered by a Three Judge Bench combination as there are conflicting views on the applicability of Sections 24 and 25 of the Hindu Marriage Act, 1955, whether alimony can be granted where marriage has been declared void. Following are the judgments in favour of granting alimony:-

Sl. No.	CITATION	TITLED
1.	(1993) 3 SCC 406	Chand Dhawan Vs. Jawaharlal Dhawan
2.	(2005) 2 SCC 33	Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga

Following are the judgments against granting alimony:-

Sl. No.	CITATION	TITLED
1.	(1988) 1 SCC 530	Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav & Another
2.	AIR 1999 AP 19	Abbayolla Reddy Vs. Padmamma
3.	(2003) 1 HLR 100	Navdeep Kaur Vs. Dilraj Singh
4.	(2004) AIR Bom. 283(FB)	Bhausaheb @ Sandhu S/o Raguji Magar Vs. Leelabai W/o Bhausaheb Magar
5.	(2005) 3 SCC 636	Savitaben Somabhai Bhatiya Vs. State of Gujarat

		& Others

Accordingly, let the papers be placed before Hon'ble the Chief Justice of India for passing appropriate orders."

RELEVANT PROVISIONS OF LAW

2. Before we refer to the submissions made across the Bar, it will be necessary to briefly refer to the provisions of the Hindu Marriage Act, 1955 (for short, 'the 1955 Act'). Section 5 deals with the conditions for a Hindu marriage, which reads thus:

"5. Conditions for a Hindu marriage.-

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;"

(emphasis added)

3. The 1955 Act deals with void marriages and voidable marriages. Section 11, which deals with void marriages, reads thus:

"11. Void marriages.- Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto

against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

4. The 1955 Act contemplates the filing of the following categories of petitions for grant of different reliefs:

a. A petition seeking relief of restitution of conjugal rights in accordance with Section 9;

b. A petition seeking relief of judicial separation in accordance with Section 10;

c. A petition seeking a declaration that a marriage is void in accordance with Section 11;

d. A petition for annulment of a marriage on the ground that it is voidable in accordance with Section 12;

e. A petition seeking a divorce in accordance with Section 13; and

f. A petition seeking divorce by mutual consent in accordance with Section 13B.

5. We are called upon to interpret Sections 24 and 25 of the 1955 Act, which read thus:

"24. Maintenance pendente lite and expenses of proceedings.-

Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

25. Permanent alimony and maintenance.-

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such

gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

(emphasis added)

6. The following questions arise for our consideration:

(i) Whether a spouse of a marriage declared as void by a competent Court under Section 11 of the 1955 Act is entitled to claim permanent alimony and maintenance under Section 25 of the 1955 Act?

(ii) Whether in a petition filed seeking a declaration under Section 11 of the 1955 Act, a spouse is entitled to seek maintenance pendente lite under Section 24 of the 1955 Act?

SUBMISSIONS

7. The learned counsel appearing for the appellant-husband relied upon five decisions mentioned in the order dated 22nd August 2024. We have already reproduced the said order in this judgment. The learned counsel has taken us through the relevant paragraphs of the five decisions. He urged the Court to reconsider the two decisions mentioned in the order dated 22nd August 2024, which support the proposition that a spouse of a declared void marriage is entitled to seek maintenance under Section 25 of the 1955 Act.

8. The learned counsel pointed out that there can be void marriages between father and daughter, brother and sister and grandfather and granddaughter. He questioned whether, in the case of such marriages, after the same are declared void, the Court can exercise the power under Section 25 of the 1955 Act to grant

maintenance. He submitted that there would be cases where parties to void marriages are conscious of the fact that their marriage would be bigamous.

There would be cases where the wife may be responsible for concealing her first marriage which is in subsistence, and induce the husband to marry. There may be cases where both parties may be unaware that they are solemnising a void marriage. He submitted that it is absurd to include a decree declaring a marriage as void in the expression "any decree" used in Section 25 of the 1955 Act. He submitted that to that extent, the view taken by this Court in the case of Chand Dhawan v. Jawaharlal Dhawan1 and Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga2 is incorrect.

9. He submitted that a marriage declared void under Section 11 is void ab initio, which does not exist. Therefore, a wife whose marriage is declared void cannot claim to be a spouse within the meaning of Section 25 of the 1955 Act. He relied upon a decision of the Full Bench of the Bombay High Court in the case of Bhausaheb @ Sandhu s/o Raghuji Magar v. Leelabai w/o Bhausaheb Magar3. He relied upon the observations made therein that an illegitimate wife cannot be equated to a divorced wife. He would, therefore, submit that Section 25 of the 1955 Act cannot apply to a spouse whose marriage is declared void.

10. The learned senior counsel appearing for the respondent-wife has made detailed submissions. She supported the decisions in the cases of Chand Dhawan1 and Rameshchandra Rampratapji Daga2 and submitted that the view taken therein is correct. She relied upon Article 15(3) of the Constitution of India and submitted that Section 25 is a special provision enacted for women. The learned senior counsel also tried to argue on facts of the case. However, we are not concerned with the facts of the case.

OUR VIEW ON THE QUESTION (i)

11. If Section 5 is read in conjunction with Section 11, the following categories of marriages are void:

a. If one or both the parties to the marriage have a spouse living at the time of marriage;

b. The parties to the marriage are within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two and

c. The parties are sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

12. A marriage is void when either of the parties to the marriage has a spouse living, and the marriage with the spouse is subsisting. If any of the spouses of the marriage had an earlier marriage dissolved by a decree of divorce before their marriage, clause (a) above will not apply. As far as clause (b) regarding prohibited relationships is concerned, the degrees of prohibited relationships have been specified in clause (g) of Section 3. Regarding the third category of sapinda relationship, clause (f) of Section 3 defines what is a sapinda relationship.

13. Section 11 provides for the grant of a declaration of a marriage as null and void. The marriages covered by the categories (a), (b) or (c) mentioned above become void at the inception. Therefore, such marriages are void ab initio. Such marriage does not exist at all in the eyes of the law.

14. Now, we come to Section 25 of the 1955 Act. We have already reproduced Section 25. It confers a power on the matrimonial court to grant permanent alimony "at the time of passing any decree or at any time subsequent thereto". The issue is about the meaning of the decree contemplated by Section 25. A cause of action arises for the spouses to apply for permanent alimony and maintenance when any decree is passed by any court exercising its jurisdiction under the 1955 Act.

15. Section 23 has the title "decree in proceedings". Section 23 of the 1955 Act reads thus:

"23. Decree in proceedings.-

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

Provided that nothing contained in this subsection shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties."

(emphasis added)

Clause (a) of Section 23(1) applies to a case where a decree of annulment is sought under Section 12. Only clause (d) of Section 23(1) is applicable when a decree of nullity is sought. The decree of nullity cannot be passed if there has been unnecessary and improper delay in instituting the petition seeking a declaration of nullity.

16. The following are the decrees which may be passed under the 1955 Act:

a. A decree under Section 9 of restitution of conjugal rights;

b. A decree under Section 10 of judicial separation;

c. A decree under Section 11 declaring a marriage as void;

d. A decree under Section 12 of annulment of a marriage on the ground that it is voidable; and

e. A decree of divorce under Sections 13 and 13B.

17. An order of dismissal of a suit will be a decree, provided the conditions in Section 2(2) of the Code of Civil Procedure, 1908 are satisfied. However, a decree in proceedings contemplated by Section 23 of the 1955 Act is a narrower concept. It can only be a decree granting one of the reliefs under Sections 9 to 13 of the 1955 Act. The decree referred to in Section 25 of the 1955 Act is the decree as contemplated by Section 23, which has the title 'decree in proceedings'.

On plain reading thereof, the decree contemplated by Section 23 is a decree granting relief under the 1955 Act. Section 23 deals with only the decrees granting reliefs under Sections 9 to 13 of the 1955 Act. Considering the language employed in Section 23, the 'decrees in proceedings' will not include the decisions dismissing the petitions seeking reliefs under Sections 9 to 13. The decrees passed under Sections 11 to 13 bring about a change of status of the parties to the marriage.

Even a decree of restitution of conjugal rights brings about a change of status of the parties in case there is no restitution of conjugal rights within one year of a decree. That is a ground for passing a decree of divorce under Section 13(1A)(ii). Even a decree of judicial separation under Section 10 brings about a change of status in the sense that a spouse who has got such a decree is no longer under an obligation to cohabit with his or her spouse. If the separation from the date of the decree continues for a period of one year, it becomes a ground for passing a decree of divorce by invoking Section 13(1A)(i).

18. While enacting Section 25(1), the legislature has made no distinction between a decree of divorce and a decree declaring marriage as a nullity. Therefore, on a plain reading of Section 25(1), it will not be possible to exclude a decree of nullity under Section 11 from the purview of Section 25(1) of the 1955 Act.

19. In the case of Chand Dhawan1, the issue arose regarding the meaning of 'decree' referred to under Section 25 of the 1955 Act. In paragraph 25 of the said decision, this Court observed thus:

"25. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant.

In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under Section 18(1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance."

(emphasis added)

In the case of Rameshchandra Rampratapji Daga2, the same view was taken relying upon the decision in the case of Chand Dhawan1. In paragraphs 18 to 20, this Court held thus:

"18. In the present case, on the husband's petition, a decree declaring the second marriage as null and void has been granted. The learned counsel has argued that where the marriage is found to be null and void - meaning non-existent in the eye of the law or non est, the present respondent cannot lay a claim as wife for grant of permanent alimony or maintenance.

We have critically examined the provisions of Section 25 in the light of conflicting decisions of the High Court cited before us. In our considered opinion, as has been held by this Court in Chand Dhawan case [(1993) 3 SCC 406 : 1993 SCC (Cri) 915], the expression used in the opening part of Section 25 enabling the "court exercising jurisdiction under the Act" "at the time of passing any decree or at any time subsequent thereto" to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial separation under Section 10 or divorce under Section 13.

When the legislature has used such wide expression as "at the time of passing of any decree", it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and divorce under Section 13.

19. Learned counsel for the husband has argued that extending the benefit of Section 25 to even marriages which have been found null and void under Section 11 would be against the very object and purpose of the Act to ban and discourage bigamous marriages.

20. It is a well-known and recognised legal position that customary Hindu law like Mohammedan law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu law

was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. Keeping in consideration the present state of the statutory Hindu law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in a marriage relationship."

(emphasis added)

When a decree is sought under Sections 9 to 13 and is declined by the court, the remedy under Section 18 of the Hindu Adoption and Maintenance Act, 1956, remains available to the wife. Even the remedy under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') or Section 144 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short, 'the BNSS') continues to be available. The view taken in both cases on the interpretation of the words 'any decree" used in Section 25 is consistent with what we have held above.

20. But in the case of Rameshchandra Rampratapji Daga , this Court observed that as a bigamous marriage cannot be said to be immoral, the right to claim maintenance under Section 25 is not taken away. The real question involved was whether a decree of nullity was a decree within the meaning of section 25. If a decree of nullity is covered by Section 25, the issue of whether a bigamous marriage is immoral is irrelevant. The entitlement under Section 25 does not depend on whether the bigamous marriage is moral or immoral.

21. Now, we come to the decision relied upon by the appellant-husband. In the first decision in the case of Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav & Anr.4, this Court was dealing with an application under Section 125 of the CrPC. This Court held that when a marriage is nullity by Section 25 of the 1955 Act, the spouse of such marriage is not entitled to get the benefit of Section 125 of the CrPC. Section 125 of the CrPC operates altogether in a different field. It is a quick and efficacious remedy made available to a wife or a child to seek maintenance.

The proceedings under Section 125 of the CrPC are of a summary nature. While deciding the applications under Section 125 of the CrPC, a summary procedure is required to be followed, and a detailed adjudication of the rights of the parties cannot be made. The same is the legal position as regards the corresponding remedy under Section 144 of the BNSS. Hence, the decision in the case of Yamunabai6 will have no application to Section 25.

22. The remedy under Section 25 of the 1955 Act is completely different from the remedy under Section 125 of the CrPC. It confers rights on the spouses of the marriage declared as void under Section 11 of the 1955 Act to claim maintenance from the other spouse. The remedy is available to both husband and wife. The principles which apply to Section 125 of the CrPC cannot be applied to Section 25 of the 1955 Act. The relief under Section 125 of the CrPC can be granted to wife or child and not to husband.

23. Now, we come to the decision in the case of Abbayolla Reddy v. Padmamma5. The Andhra Pradesh High Court's view is based on the right of a spouse to claim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. This is a specific provision for the grant of maintenance to the wife. The right under Section 25 of the 1955 Act is different.

The right is created in favour of both spouses once there is a decree passed under Sections 9 to 13 of the 1955 Act. The third decision is in the case of Navdeep Kaur v. Dilraj Singh6. In paragraph 10 of the said decision, the Himachal Pradesh High Court gave a very narrow meaning to the 'decree in proceedings' under the 1955 Act by holding that the expression "husband and wife" used in Section 23 must mean legally wedded husband and wife. This view is entirely contrary to the view taken in the case of Chand Dhawan1.

24. The Bombay High Court, in the case of Leelabai3, dealt with the reference made to the Full Bench of the three Hon'ble Judges. The issue referred to Full Bench was the same one we are dealing with. The Full Bench of the Bombay High Court relied upon the decision in the case of Yamunabai6. In paragraph 18 of the judgment, the Full Bench has coined the term "illegitimate wife". Calling the wife of a marriage declared as void as an illegitimate wife is very inappropriate.

It affects the dignity of the concerned woman. Unfortunately, the Bombay High Court went to the extent of using the words "illegitimate wife". Shockingly, in paragraph 24, the High Court described such a wife as a "faithful mistress". It is pertinent to note that the High Court has not used similar adjectives in the case of husbands of void marriages. Under Section 21 of the Constitution of India, every person has a fundamental right to lead a dignified life. Calling a woman an "illegitimate wife" or "faithful mistress" will amount to a violation of the fundamental rights of that woman under Article 21 of the Constitution of India.

Describing a woman by using these words is against the ethos and ideals of our Constitution. No one can use such adjectives while referring to a woman who is a party to a void marriage. Unfortunately, we find that such objectionable language is used in a judgment of the Full Bench of a High Court. The use of such words is

misogynistic. The law laid by the Full Bench of the Bombay High Court is obviously not correct.

25. Then comes the decision in the case of Savitaben Somabhai Bhatiya v. State of Gujarat & Ors7. We must note here that in this decision, this Court was dealing with the proceedings under Section 125 of the CrPC which is of a summary nature. This Court dealt with the eligibility of a spouse to claim maintenance under Section 125 of the CrPC. Therefore, none of these decisions support the stand taken by the appellant-husband.

26. An apprehension is the expression by the learned counsel for the appellant that if it is held that Section 25 of the 1955 Act also applies to void marriages, it will lead to a ridiculous result. He gave an example of a wife whose first marriage is subsisting, inducing another man to marry her. He also gave an example of a daughter getting married to her father. We must note that Sub-Section 1 of Section 25 uses the word "may". A grant of a decree under Section 25 of the 1955 Act is discretionary.

If the conduct of the spouse who applies for maintenance is such that the said spouse is not entitled to discretionary relief, the Court can always turn down the prayer for the grant of permanent alimony under Section 25 of the 1955 Act. Equitable considerations do apply when the Court considers the prayer for maintenance under Section 25. The reason is that Section 25 lays down that while considering the prayer for granting relief under Section 25, the conduct of the parties must be considered.

OUR VIEW ON THE QUESTION (ii)

27. Section 24 confers a power on a matrimonial Court to grant interim maintenance in pending proceedings seeking a decree contemplated under the 1955 Act. The power is to be exercised pending the proceedings for a grant of a decree under Sections 9 to 13 of the 1955 Act. The conditions for applicability of Section 24 are:

(i) There must be a proceeding under the 1955 Act pending and

(ii) the court must come to a conclusion that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding.

26. Even if, prima facie, the matrimonial court finds the marriage between the parties is void or voidable, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned above are satisfied. The grant of relief under Section 24 is discretionary as the Section uses the word 'may'. While deciding the prayer for interim relief under Section 24, the Court will always

consider the conduct of the party seeking the relief. It provides for issuing a direction to pay a reasonable amount.

28. Accordingly, we answer the questions as follows:

a. A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and

b. Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary.

We direct the Registry to place these appeals before the appropriate Bench for the decision on merits.

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

.....J. (Ahsanuddin Amanullah)

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

New Delhi;

February 12, 2025.

1 (1993) 3 SCC 406

2 (2005) 2 SCC 33

3 AIR 2004 Bom 283

4 (1988) 1 SCC 530

5 AIR 1999 AP 19

6 (2003) 1 HLR 100 : 2002 SCC OnLine P&H 498

7 (2005) 3 SCC 636

IN THE SUPREME COURT OF INDIA

M/s. Tomorrowland Ltd.
Vs.
Housing and Urban Development Corporation Ltd. and Anr.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 34338 of 2016]

HEADNOTE – Interest may be denied to party who abused judicial process.

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. The instant appeal preferred by M/s Tomorrowland Technologies Exports Limited (formerly M S Shoes East Ltd.) is directed against the judgment dated 03.06.2016 (Impugned Judgment) passed by the High Court of Delhi (High Court) in RSA No. 362/2014 whereby the concurrent findings returned by the courts below have been set aside. Consequently, the Appellant's suit seeking declaratory relief has been dismissed for being not maintainable.

3. The fulcrum of the dispute herein lies in respect of the forfeiture of the Appellant's payments by Respondent No. 1, namely the Housing and Urban Development Corporation Limited (HUDCO), on account of non-performance of contractual obligations by the Appellant. Before adverting to the respective contentions of the parties, we deem it appropriate to briefly narrate the factual background leading to the present appeal.

A. FACTUAL BACKGROUND

4. The sequence of events in the instant appeal commenced with the Ministry of Urban Development, Government of India (MUD), i.e., Respondent No. 2 herein, having decided in 1990 to develop an area of 71 acres of land located at Andrew's Ganj, New Delhi, through Respondent No. 1. Bids were thus invited by Respondent No. 1 for properties at Andrew's Ganj inter alia offering:

(i) Land, which was to be leased for 99 years, in order to establish a 5-star Hotel, along with an already-built Car Park;

(ii) Nine Guest House blocks, nine Restaurants, and 25 Shops already constructed by Respondent No. 1;

(iii) A Shopping Arcade and;

(iv) A Cultural Centre to be built by the successful bidder(s).

We must underscore that the scope of the present appeal is restricted only to Item No. (i) specified hereinabove, i.e. 'land, which was to be leased for 99 years, in order to establish a 5-star Hotel, along with an already-built Car Park' (Subject Property). We further clarify that the conclusions drawn in the instant appeal will have no bearing on the ongoing disputes in respect to the other bids.

5. Reverting to the facts, the Appellant seems to have emerged as the highest bidder for the Subject Property after the conclusion of the bidding process. As a result, Respondent No. 1 issued the allotment letter dated 31.10.1994 (Allotment Letter), on such terms and conditions as specified therein, including the following:

5. "The broad terms and conditions for the allotment are as follows:- The 5-star hotel building shall be constructed within the parameters of the approved overall Urban Design Form after obtaining required approvals from the concerned local authority and the Delhi Urban Arts Commission. The height coverage in basement and such related development controls shall be as per the operative norms of the statutory authorities.

You shall make the payment of premium, i.e., consideration of Rs. 64.10 Cores (Rs. Sixty Four Crores and ten lacs only) for the allotment of the Hotel site and Rs. 14.00 crores for the allotment of car parking space. The payment shall be made in the following manner/stages:

(A) Hotel Site (Rs. 64.10 Crores)

(i) Within 4 weeks of the date of this allotment letter (i.e. before 28.11.94)	- 40% (Rs. 25,64,00,000)
(ii) Before the end of one year of the date of this allotment letter (i.e. before 31.10.95)	- 30% (Rs 19,23, 00,000)
(iii) Before the end of two years of the date of this allotment letter (i.e. before 31.10.96)	- 30% (Rs. 19, 23,00,000)
	Rs. 64,10,00,000

(B) Car Parking Space (Rs. 14.00 Crores)

(i) Within four weeks of the date of issue of allotment letter (i.e. before 28.11.94)	- 10% (Rs.1,40,00,000)

(ii) Before the end of one year of the date of issue of the allotment letter (i.e. before 31.10.95)	- 40% (Rs. 5,60,00,000)
(iii) Within four weeks of issue of letter by HUDCO intimating that the services were ready for being handing over	- 50% (Rs.7,00,00,000)
	Rs. 14,00,00,000

The above payments shall be made through demand drafts drawn in favour of HUDCO payable at New Delhi.

(iii) No interest will be charged on payments made before the due dates stated above. In case of default, interest shall be charged @ 16% p.a. for three months if the payment is made after the due date. Additional penal interest @ 3% p.a. shall also be charged on the interest for three months. Any delay beyond three months would entail cancellation of allotment and/or forfeiture of the total amount deposited to date.

(iv) You will be required to complete the construction of the Hotel Site within three years of the date of handing over possession of the Hotel Site on licence basis for construction of the Hotel building as per terms and conditions contained in the proforma of Agreement to Sub- lease, two copies of which are enclosed with this allotment letter. In the event of noncompletion of construction within the stipulated time, HUDCO may consider granting extension if exceptional and unavoidable circumstances have prevented you to complete construction within the stipulated time.

The decision of HUDCO regarding the existence of the exceptional and unavoidable circumstances will be final and binding upon you. In case the construction is not completed within the prescribed period or the extended period as decided by HUDCO, HUDCO will have the right to take over the land along with the unfinished building with materials, fixtures, if any, on the site without payment of any compensation to you. Since the underground car parking space will be made available to you in the adjacent building, you may provide underground linkage from the hotel with the parking space. However, cost of such linkages shall be borne by you.

(v) You shall not have any right to sell, transfer, assign or otherwise parting with the possession without the prior permission of Lessor/ HUDCO. You may also at the discretion of HUDCO, be permitted to raise loan only for construction of the building and equipment, to mortgage the premises subject to such terms and conditions including recovery of 50% unearned increase in the value of this land

as will be laid down in the lease documents and subject to the first charge of HUDCO for the unpaid cost of land for the hotel as well as other dues payable hereunder.

(vi) Hudco will execute all required documents for obtaining approval of the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and also of the Appropriate Authority in terms of Chapter XX C of the Income Tax Act. If these approvals are not accorded Hudco will refund the amount paid without any interest and you shall not be entitled to claim any compensation for damages.

(vii) You shall pay annual ground rent at the rate of 2-1/2% of the premium for land for the Hotel site land the proportionate cost of land underneath the car parking space from the date of handing over of possession of the Hotel site and the car parking space to you. The ground rent shall be revised periodically in accordance with the terms and conditions of the sub lease deed.

(viii) Initially, the Hotel site will be on a licence under an Agreement to Sub-lease and upon fulfilment of the terms of the said agreement including payment of all dues, perpetual sublease will be executed. The terms and conditions of the perpetual sub-lease shall be as per the proforma duly approved by the Govt. of India, a copy of which will be sent to you in due course.

(ix) Upon the receipt of the first instalment of the premium both for the Hotel site as well as the car parking space as indicated in para 5(ii) and also after receipt of approvals as indicated in para 5(vi), the Agreement to Sub-lease will be made available to you for execution for the Hotel site and upon its execution, the possession of Hotel Site will be handed over to you for raising construction.

(x) All costs for the preparation of required documents, stamp duty, registration charges and other levies of any kind whatsoever will have to be borne by you. Property taxes and other municipal levies shall borne by you from the date of possession of the site(s)".

[Emphasis supplied]

6. The Appellant duly deposited the first instalment of Rs. 27.04 Crores along with interest at the rate of 16.48% for three months, amounting to Rs. 1,04,81,939, as per Clause 5(A) of the Allotment Letter. In addition, the Appellant also deposited a sum of Rs. 2.5 Lakhs towards the maintenance corpus. As such, the total amount paid by the Appellant was admittedly Rs. 28,11,31,939.

7. Subsequently, a dispute arose between the parties; purportedly on account of the Appellant's assertion: that in terms of the Allotment Letter, Respondent No. 1 was obligated to execute certain documents after obtaining clearances under the

Income Tax Act, 1961 (IT Act) and the Urban Land (Ceiling and Regulation) Act, 1976 (ULCR Act). Respondent No. 1 was further obligated to execute an 'agreement to sub-lease' in favour of the Appellant. The Appellant thus claimed that as per the terms and conditions of allotment, the second and third instalments would have become due in favour of Respondent No. 1, only in the event that the abovementioned documents were duly executed by the latter.

8. Thereafter, the Appellant sent letters to Respondent No. 1 requesting compliance with the reciprocal contractual obligations enshrined in the Allotment Letter. That being said, it is imperative to caveat at this juncture that Respondent No. 1 was bereft of a perpetual lease to be executed in its favour by MUD, and as such, was not in a position to execute the 'agreement to sub-lease' in favour of the Appellant. Regardless thereto, Respondent No. 1 insisted on payment of the second and third instalments, and further sought to threaten the Appellant that non-compliance with the payment schedule would result in cancellation of the allotment in its favour.

9. At this point, it is also relevant to bring on record that Ansal Properties & Industries Limited (Ansals), who being the successful bidders for the establishment of a Shopping Arcade (as enumerated in Item No. (iii) of Paragraph 4), were allotted land in this regard as well as access to utilise certain portion of the aforementioned Car Parking, which indubitably would have to be shared with the Appellant. Pertinently, the Ansals also delayed the payment of further instalments on the similar ground that the Car Park was allegedly illegal/unauthorised. Pursuant thereto, the Ansals appear to have been granted an interest-free extension of instalment payments by Respondent No. 1.

10. In these circumstances, the Appellant filed Suit No. 275/1996 before the High Court (First Suit), seeking mandatory injunction against Respondent No. 1 to extend the dates for payment of the second and third instalments until Respondent No. 1 fulfilled its reciprocal obligations. The Appellant further sought a permanent injunction to restrain Respondent No. 1 from cancelling its allotment.

11. The High Court passed a conditional status quo order on 31.01.1996 in the First Suit, in terms whereof, the Appellant was directed to deposit Rs. 15 Crores by 08.04.1996, failing which such an order would stand automatically vacated. It is not in dispute that the Appellant failed to deposit the aforesaid amount even within the extended period. As a result, the status quo order stood vacated.

12. This followed an order by Respondent No. 1 issued on 02.05.1996, whereby the allotment was cancelled and the entire amount of Rs. 28,11,31,939 was forfeited.

13. Respondent No. 1 thereafter invited fresh bids in November, 1996 for the development of the Subject Property, this time disclosing in the bid that a lease in its favour for the said land was yet to be executed. Additionally, Respondent No. 1 also filed an application in the pending First Suit seeking its dismissal on the ground that the proceedings had become infructuous, owing to the cancellation of the allotment.

14. The Appellant being aggrieved by the cancellation of their allotment filed a fresh suit bearing Suit No. 1/1997 (Second Suit), changing the forum from the High Court to Tis Hazari Courts, Delhi (Civil Court). In the Second Suit, the Appellant sought a declaration that the cancellation of allotment by Respondent No. 1 was illegal, null and void. They also consequently sought possession of the Subject Property.

15. Interestingly, the Appellant moved an application before the High Court for the withdrawal of their First Suit, on the plea that the Second Suit had been filed before the Civil Court on the basis of a fresh cause of action. The High Court rejected the aforesaid application on 22.04.1997, citing that there were several factual aversions made by the Appellant. Eventually, the First Suit was dismissed as withdrawn unconditionally, upon the statement made by the Appellant's counsel before the High Court.

16. In the meantime, Leela Hotels Limited (Leela) emerged as the highest bidder in the fresh bid invited for the Subject Property, followed by allotment. Leela's allotment, however, was contingent on the outcome of the pending suit filed by the Appellant. It is also relevant to note that the Respondent No. 2/MUD executed the perpetual lease deed in favour of Respondent No. 1 on 04.07.1997.

17. The Appellant, meanwhile, impleaded Respondent No. 2 as one of the defendants in the Second Suit. The Respondent No. 2, in turn, filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking rejection of the plaint based on the assertion that the Appellant had allegedly not paid the requisite court fee. Though the Civil Court rejected that application, the High Court thereafter, on revision, allowed the objection raised by Respondent No. 2, holding that the Appellant was liable to pay court fees based on the market value of the Subject Property.

18. The Appellant, mirroring the characteristics of a chronic defaulter, this time decided to evade the liability of paying the court fee by abandoning the relief of delivery of possession. Resultantly, the Appellant restricted the relief in the Second Suit only to a declaration that the cancellation of the allotment by Respondent No. 1 was null and void.

19. The Civil Court eventually decreed the Second Suit vide judgment dated 03.07.2010, inter alia, holding that: (i) Respondent No. 1 was guilty of committing a breach of the terms of allotment; (ii) the Appellant was discriminated against and was denied parity with the Ansals; and (iii) a declaration under Section 34 of the Specific Relief Act, 1963 (SR Act) to the effect that the cancellation letter was null, void, and inoperative is warranted on account of the concealment and gross misrepresentation of facts by Respondent No. 1.

20. Respondent No. 1 unsuccessfully laid challenge to the judgment and decree dated 03.07.2010, as the First Appellate Court dismissed the Regular First Appeal vide judgment dated 18.07.2014, reiterating the same grounds.

21. Still aggrieved, Respondent No. 1 preferred a Regular Second Appeal before the High Court, which was allowed vide the Impugned Judgment dated 03.06.2016. Notably, the High Court overturned the concurrent findings of the courts below, and has inter alia observed that the Appellant admittedly did not have sufficient funds and, thus, wanted to prolong the litigation. The High Court further held that:

"39. the suit filed by the Appellant suffered from a fatal defect of not claiming possession as a further relief in terms of proviso to Section 34 of the Specific Relief Act, and therefore the decree seeking only declaration to the effect that the cancellation letter dated 02.05.1996 was bad in law could not have been passed by the courts below". Additionally, the High Court went on to observe that the grant of declaration under Section 34 of the SR Act, being a discretionary relief, cannot be bestowed upon a party who indulges in 'sharp' practices. Hence, this appeal.

B. CONTENTIONS ON BEHALF OF THE APPELLANT

22. Shri Tejinder Singh Dhindsa, learned Senior Counsel, representing the Appellant has painstakingly taken us through the voluminous material placed on record. He contended that the High Court has committed grave error in upsetting the concurrent finding of fact arrived at by the courts below.

23. Shri Dhindsa advanced the following submissions on behalf of the Appellant to challenge the Impugned Judgment:

a) At the time of allotment of the Subject Property, Respondent No. 1 failed to disclose that it had no subsisting lease in its favour to execute the sub-lease in favour of the Appellant. As such, it is a clear case of misrepresentation on the part of Respondent No. 1.

b) After payment of the first instalment by the Appellant, Respondent No. 1 was obligated to execute the 'agreement to sub-lease' in favour of the Appellant and further execute documents for obtaining statutory approvals under the ULCR Act and IT Act. However, Respondent No. 1 failed to execute these documents in the absence of a perpetual lease in its favour. There was, thus, no contractual obligation on the Appellant to pay further instalments.

c) The High Court erroneously held that the Second Suit filed by the Appellant suffered from a fatal defect of not claiming possession as a further relief in terms of the proviso to Section 34 of the SR Act. The High Court in this regard overlooked the fact that possession could be sought from Respondent No. 1 only after the execution of the sub-lease agreement, which was admittedly not done at the time of filing of the Second Suit. For this reason, the Appellant gave up the consequential relief of possession in the Second Suit, and it would be unfair to nonsuit the Appellant on this ground.

d) After the Subject Property was allotted to Leela under the subsequent bidding process, a dispute arose between Respondent No. 1 and Leela on account of failure of the former to disclose that the revised layout plan was yet to be approved by the Competent Authority. The said dispute was adjudicated by an Arbitrator directing refund of the entire sum paid by Leela, along with 20% interest. That Award attained finality, except that the rate of interest was reduced to 18% by this Court. The Appellant being similarly placed, therefore, deserved to be treated at par with Leela.

e) The treatment meted out to the Appellant was discriminatory when juxtaposed with the Ansals, who were granted repeated interest-free extensions for paying the second and third instalments, in regards to the shared Car Parking. Conversely, the Appellant was compelled to pay instalments as per the payment schedule and was threatened with cancellation of the allotment in the event of default.

f) The forfeiture of the amount paid by the Appellant towards the first instalment was done on account of misconstruction and selective reading of the mutual obligations emanating from the Allotment Letter and not on account of any actual loss suffered by Respondent No. 1.

24. Alternatively, Shri Dhindsa submitted that since considerable time has passed following the allotment and its cancellation, it would be in the interests of justice and equity to entertain the Appellant's limited relief for return of Rs. 28,11,31,929 along with the applicable rate of interest.

C. CONTENTIONS ON BEHALF OF RESPONDENT NO. 1

25. Ms. Meenakshi Arora, learned Senior Counsel appearing on behalf of Respondent No. 1, contrarily opposed the Appellant's prayer inter alia and vehemently contended that not only did they fail to comply with the terms and conditions of the Allotment Letter but that the Appellant had disqualified itself from any relief on account of its deceitful, unfair and unethical conduct.

26. Ms. Arora canvassed the following grounds in support of her submissions:

a) The Appellant defaulted on the payment schedule stipulated in the Allotment Letter, resulting in a breach of contractual obligations. As a result, Respondent No. 1 exercised its contractual right by cancelling the allotment in favour of the Appellant and forfeited the deposited amount, as envisaged in Clause 5(iii) of the Allotment Letter. The operation of the aforementioned Clause is not interlinked or contingent on any other clause of the Allotment Letter and therefore, non payment of the instalment is bound to entail cancellation of the allotment and forfeiture of the deposited amount.

b) The Second Suit filed by the Appellant was barred under Order II Rule 2 of the CPC, considering the cause of action of both the suits was one and the same, and also because the Appellant relinquished a portion of the claim which they could have sought in the First Suit itself.

c) The Second Suit was also barred in view of Clause (3) of Rule 1 of Order XXIII of the CPC, since in the First Suit which was unconditionally withdrawn by the Appellant, the High Court did not grant any liberty therein to institute a fresh suit.

d) The Appellant in the Second Suit, while seeking declaratory relief of the cancellation of allotment being null and void, abandoned the consequential relief of possession in order to avoid paying court fees. Such a recourse defies the proviso to Section 34 of the SR Act, which mandates that consequential relief be sought along with a declaratory decree. Hence, the High Court has rightly held that the Second Suit was non-maintainable.

e) The Appellant brazenly attempted to overreach the judicial process; indulge in forum shopping and finagle the judicial process. This is writ large from: (i) the Appellant dishonouring the High Court's direction to deposit Rs. 15 Crores for continuation of the order of status quo; (ii) the First Suit being withdrawn due to forum non conveniens; (iii) the Second Suit being crafted with a view to change the forum from the High Court to the Civil Court; (iv) the relief of possession being abandoned to avoid payment of court fees as the entire lis was speculative for the Appellant; and (v) non-payment of further instalments and failure to perform reciprocal obligations such as securing statutory approvals.

f) Unlike the Appellant, the Ansals had secured approval from the Income Tax authorities, whereas the Appellant did not take any steps to do so, despite categorical assertions in the Allotment Letter. Hence, no parity with the Ansals can be claimed when the Appellant never demonstrated any willingness to honour their obligations.

27. In essence, Ms Arora contended that the conduct of the Appellant throughout has been to prolong the litigation and entangle Respondent No. 1 in vexatious litigation. She thus maintained that the High Court has rightly reversed the findings of the courts below or that the Appellant is not entitled to any discretionary relief under Section 34 of the SR Act.

28. Ms. Aishwarya Bhati, learned Additional Solicitor General of India, on behalf of Respondent No. 2 reiterated the contentions put forth by Ms. Arora. She further fairly submitted that if this Court fixes any liability on Respondent No. 1 to refund the forfeited amount, it is inter-se the Respondents to comply with such direction. Ms Bhati maintained that Respondent No. 1 has sufficient assets to meet any liability imposed by this Court.

D. ISSUES FOR CONSIDERATION

29. In our considered view, the salient issues that arise for our consideration can be summed up as follows:

(a) Whether Respondent No. 1/HUDCO was in breach of its reciprocal contractual obligations qua the Appellant?

(b) If so, whether the Appellant is entitled to a refund of the forfeited amount under Clause 5(vi) of the Allotment Letter?

(c) If Issue (b) above is answered in the affirmative, whether the Appellant is entitled to interest on refund of the forfeited amount?

E. ANALYSIS

E. 1 Whether Respondent No. 1/HUDCO was in breach of its reciprocal contractual obligations qua the Appellant?

30. We have carefully perused the terms and conditions of the Allotment Letter and find that there are several reciprocal obligations placed upon the Appellant and Respondent No. 1.

31. First, a bare reading of the relevant recitals in the Allotment Letter extracted at Paragraph 5 above, leaves no room to doubt that Clause 5(vi) obligates Respondent No. 1 to 'execute all required documents for obtaining approval of

the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and also of the Appropriate Authority in terms of Chapter XX C of the Income Tax Act'. In fact, in the event of failure to do so this very Clause also necessitates that Respondent No. 1 'will refund the amount paid without any interest and you shall not be entitled to claim any compensation for damages'.

32. Though Respondent No. 1 has, in this regard, attempted to wriggle out of its obligations on the premise that it could only assist the Appellant in executing the necessary documents, we do not find any merit in such submission. We say so for the reason that had it not been obligatory on Respondent No. 1 to execute the necessary documents under the first part of Clause 5(vi), the second part thereof would not have mandated refund of the amount paid by the successful bidder. It seems to us that since the failure to secure approval of the Statutory Authorities and resultant execution of requisite documents has necessary consequences of refund of the amount paid, the first part of Clause 5(vi) is mandatory in nature. Respondent No. 1 therefore cannot be allowed to shirk its responsibility and leave the Appellant at the mercy of the Statutory Authorities for such approvals.

33. That being the clear intent of the relevant terms and conditions of the Allotment Letter as well as the supporting material placed on record, we are of the considered opinion that Respondent No. 1 was in breach of its contractual duty under Clause 5(vi) of the Allotment Letter.

34. Second, a conjoint reading of Clauses 5(viii) and (ix) of the Allotment Letter postulates an unambiguous promise on the part of Respondent No. 1: that upon receipt of the first instalment and on grant of approvals by the Statutory Authorities, an 'agreement to sub-lease' will be executed by Respondent No. 1, followed by handing over of possession of the Subject Property to the Appellant.

35. As held earlier, Respondent No. 1, even after the receipt of the first instalment, did not take any tangible steps to secure the necessary statutory approvals. It is obvious that the said failure led to breach of Clause 5(viii) and (ix) also, as admittedly, no 'agreement to sublease' was executed in favour of the Appellant, owing to the nonexecution of a perpetual lease by Respondent No. 2 in favour of Respondent No. 1. Nonetheless, we proceed to examine the contention of the Appellant that Respondent No. 1 also concealed the fact that it did not have the title and authority to execute the 'agreement to sub-lease' in favour of the Appellant.

36. The Appellant's plea to this effect is fortified by the contents of long drawn correspondence, including letters dated 03.01.1995, 24.01.1995, 03.03.1995, and 29.03.1995, whereby Respondent No. 1 had been requesting Respondent No. 2 to execute the perpetual lease deed in its favour, in absence whereof, no sub-lease could be executed in favour of the Appellant.

37. The other cascading effect of non-execution of perpetual lease in favour of Respondent No. 1, or sub-lease in favour of the Appellant, was that the possession of the Subject Property could not have been handed over to the Appellant. Admittedly, the perpetual lease deed in favour of Respondent No. 1 was executed only after the cancellation of allotment in favour of the Appellant, belatedly on 04.07.1997.

38. Our attention was also drawn towards several legal opinions and internal documents of Respondent No. 2 and the Ministry of Law & Justice in the context of the underlying bid dispute. While we do not intend to delve into these documents, we cannot be ignorant of the fact that these records tend to support the claim of the Appellant that Respondent No. 1 could not furnish the sub-leasing arrangements until the perpetual lease was executed in its favour.

39. As such, Respondent No. 1 being incapable of fulfilling its reciprocal promises, was not entitled to demand payment for the second instalment until the perpetual lease deed was executed in its favour. We therefore hold that Respondent No. 1's failure to execute the sub-lease in favour of the Appellant, owing to the lack of its authority and title, also amounts to a breach of their contractual obligations.

40. We may hasten to add that besides the breach of aforementioned contractual obligations, it seems that Respondent No. 1 did not have the necessary sanctions permitting construction of the 5-star Hotel at the site. This fact came to light only after Leela succeeded in getting an Arbitration Award in its favour, on account of alleged failure of Respondent No. 1 to disclose that the revised layout plan of the Subject Property was yet to be approved.

41. Furthermore, there is some merit in the Appellant's grievance of differential treatment when compared to the Ansals. As noted earlier, the Ansals were granted an interest-free extension for the pending instalments under similar circumstances, but the request of the Appellant was declined. It is difficult to comprehend as to how granting the same relief to the Appellant would have been detrimental to the interest of Respondent No. 1, when such a relief was granted to another similarly placed party.

42. As an upshot of the foregoing, we have no doubt in our mind that Respondent No. 1 was in breach of several obligations as contemplated in the Allotment Letter, viz. failure to execute documents for securing approval under the ULCR Act and the IT Act; failure to execute the sub lease agreement in favour of the Appellant and; failure to secure the approval of the revised layout plan for the construction of the hotel.

E. 2 Whether the Appellant is entitled to a refund of the forfeited amount?

43. Having held that Respondent No. 1 has breached its contractual obligations, we now proceed to determine the Appellant's entitlement to refund of the forfeited amount. We may clarify here that during the course of oral arguments, the Appellant sought a refund of the forfeited amount along with reasonable interest. However, in the written submissions, the Appellant, while reiterating their stance, has sought a refund of Rs. 28,11,31,929 along with interest from the date of payment at the rate of 16.48%, i.e., the contractual rate of interest charged by Respondent No. 1.

44. Clause 5 (vi) of the Allotment Letter, which deals with the monies paid by the Appellant, provides that Respondent No. 1 will execute all required documents to obtain approval from the Competent Authority under the ULCR Act and also from the Appropriate Authority as envisaged in Chapter XX C of the IT Act, failing which, Respondent No. 1 will refund the amount paid without any interest.

45. The contents of the above clause unequivocally enumerate that the parties had ample knowledge of the obligation cast upon Respondent No. 1 to refund the amounts paid by the Appellant, in case statutory approvals were not accorded. Significantly, the said clause also provides that such a refund will be without any interest or claim of compensation for damages.

46. We have already held in Issue No. E. 1 of this judgment that Respondent No. 1 was in breach of several obligations as contemplated in the Allotment Letter.

47. That being the case, it is imperative to maintain the sanctity of the terms of the agreement between the parties. It is a settled position of law that a commercial document ought not to be interpreted in a manner that arrives at a complete variance with what may originally have been the intention of the parties. As a result, we hold that Respondent No. 1 is liable to refund the amount of Rs. 28,11,31,939 (First instalment of Rs. 27.04 Crores along with interest for three months amounting to Rs. 1,04,81,939/- and Rs. 2.5 Lakhs towards maintenance corpus) deposited by the Appellant pursuant to the Allotment Letter.

E. 3 Whether the Appellant is entitled to interest on refund of the forfeited amount?

48. Having held that Respondent No. 1 is liable to refund the principal sum, we may now proceed to determine the Appellant's claim for interest on the amount directed to be refunded. Evidently, the Appellant is not entitled to any interest on the amount to be refunded in terms of the Allotment Letter. The Appellant, of course, can seek award of interest under Section 34 of the CPC, which inter alia provides that "the court may, in the decree, order interest at such rate as the Court

deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree."

49. It is trite law that under Section 34 of the CPC, the award of interest is a discretionary exercise steeped in equitable considerations. The law in this regard has been succinctly discussed in the Constitution Bench judgment of this Court in Central Bank of India v. Ravindra & Ors.; (2002) 1 SCC 367, which states:

"Award of interest pendente lite or post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest. The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons."

[Emphasis supplied]

50. There is no gainsaying that the power to award interest ought to be exercised judiciously, aligning with equitable considerations and also ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case, applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.

51. It is against this backdrop that the contentions of Respondent No. 1 concerning the conduct of the Appellant become material. Respondent No. 1 has contended that the Appellant's actions demonstrate unscrupulous and evasive conduct, apart from their financial incapability to honour the contractual obligations, undermining the essence of the contract.

52. It is not in dispute that in the First Suit, the High Court on 31.01.1996, passed a status quo order against Respondent No. 1 conditionally, obligating the Appellant to deposit Rs. 15 Crores by 08.04.1996. It was contemplated in the order that if the Appellant fails to make the stipulated deposit, the status quo order would stand vacated. Admittedly, despite seeking an extension of 10 days, the Appellant failed to deposit Rs. 15 Crores and establish their bona fides.

53. Shortly after the vacation of the status quo order and cancellation of the allotment, the Appellant sought to withdraw the First Suit which was pending before the High Court under its original jurisdiction, instead of seeking amendment of the plaint and the consequential relief(s) on the basis of subsequent events. This was done with an oblique motive, as the Appellant did not want to take a chance before the High Court whose order they had failed to

comply with. The Appellant thus withdrew the First Suit unconditionally even without the liberty to file a fresh one, ostensibly with a calculated mindset.

54. We have no hesitation in holding that such conduct was nothing short of a brazen attempt at forum shopping, as the Appellant wanted to avoid the jurisdiction of the High Court before whom they had failed to prove their bona fides by not depositing the stipulated sum. Such demeanour not only raises grave suspicions on the Appellant's propriety, but also amounts to sheer abuse of the process of law and a waste of precious judicial time.

55. Even in the Second Suit, upon an objection raised by the Union of India when the High Court directed the Appellant to deposit requisite court fees, the Appellant abandoned the relief of possession of the suit land to avoid payment of ad-valorem court fees. This again casts serious aspersions on the bona fides and financial capabilities of the Appellant.

56. The material on record sufficiently indicates that the Appellant did not approach the Court with clean hands and instead attempted to hoodwink the judicial process by creating a facade to subterfuge their inability to meet their contractual obligations. We are constrained to observe that the intent of the Appellant throughout appears to be that of prolonging the litigation to cloak its impecuniousness.

57. It needs no emphasis that whosoever comes to the court claiming equity, must come with clean hands. The expression 'clean hands' connotes that the suitor or the defendant have not concealed material facts from the court and there is no attempt by them to secure illegitimate gains. Any contrary conduct must warrant turning down relief to such a party, owing to it not acting in good faith and beguiling the court with a view to secure undue gain. A court of law cannot be the abettor of inequity by siding with the party approaching it with unclean hands. This also brings to mind the oft-quoted legal maxim-he who seeks equity must do equity.

58. We are conscious of the fact that as a general principle, in commercial disputes, the award of interest pendente lite or postdecree is typically granted as a matter of course. This is because such interest serves to compensate the aggrieved party for the time value of money that was due but withheld during the legal process. It reflects an established norm aimed at ensuring fairness and equity in commercial transactions.

59. Having said so, we find the instant case to be fit to justify a deviation from the established standards. In the facts and circumstances, though we have held Respondent No. 1 to be in breach of several contractual obligations, the conduct of the Appellant is rife with instances where it has also sought to undermine the

authority and integrity of the judicial process, by treating the Court with disregard, and attempting to exploit procedural mechanisms for personal gain. We, thus, hold that in view of the above reasons, the Appellant is not entitled to any discretionary relief of interest under Section 34 of CPC.

F. CONCLUSION

60. Striking a balance between these considerations, we deem it appropriate to allow this appeal in part, and dispose of the same in the following terms:

(i) Respondent No. 1/HUDCO, was in breach of its reciprocal contractual obligations, thereby disentitling them from forfeiting the monies already paid by the Appellant towards the first instalment as enshrined in Clause 5 (iii) of the Allotment Letter dated 31.10.1994.

(ii) Given that the Appellant has blatantly engaged in forum shopping, and considering that their overall conduct does not in any manner reflect an approach aligning with the clean hands doctrine, they are not entitled to grant of any discretionary relief of interest in their favour.

(iii) The Impugned Judgement dated 03.06.2016 passed by the High Court is set aside to the extent above.

(iv) The Second Suit filed by the Appellant is decreed in part, and the Appellant is held entitled to a refund of the principal amount, without any interest.

(v) As a sequel to the above, we direct Respondent No. 1/HUDCO, to refund the amount of Rs. 28,11,31,939 to the Appellant within three (3) months from the date of this order.

(vi) In the event Respondent No. 1 fails to refund the amount within the stipulated time, the Appellant shall be entitled to interest at the rate of 6% per annum till the date of realisation.

61. We find it necessary to clarify that the above-mentioned directions pertain only to the Subject Property, i.e., land for the establishment of a 5-star Hotel and the already built Car Park. We have not expressed any opinion on the pending matters between the parties insofar as the other properties are concerned. The other pending cases shall be decided by the concerned Court on their own merit and in accordance with law.

62. The appeal is disposed of in the above terms.

63. Pending interlocutory applications are also disposed of in the above terms. Ordered accordingly.

.....J. [Surya Kant]

.....J. [Ujjal Bhuyan]

New Delhi

February 13, 2025

IN THE SUPREME COURT OF INDIA

Vinod Kumar
Vs.
State (Govt. of NCT of Delhi)

[Criminal Appeal No. 2482 of 2014]

HEADNOTE – If the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification. The rationale behind the aforesaid legal principle is that unless the witness enters the witness box and submits himself for cross examination how can it be ascertained as to on what basis he identified the person or the article. Because it is quite possible that before the TIP is conducted the accused may be shown to the witness or the witness may be tutored to identify the accused. Be that as it may, once the person who identifies the accused during the TIP is not produced as a witness during trial, the TIP is of no use to sustain an identification by some other witness.

JUDGMENT

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC') and has been sentenced to undergo imprisonment for life and pay a fine of Rs.2000/-. In default of payment of the fine of Rs.2000/-, he has been sentenced to undergo rigorous imprisonment for one year. The appellant's conviction was rendered by the Sessions Court (Court of Additional Sessions Judge, Shahdara, Delhi) and confirmed by the impugned judgment by the High Court of Delhi.

2. The name of the deceased is Dharminder. The appellant was a neighbour of the deceased. On 12th July 1995, at about noon, the appellant came to the residence of the deceased and called upon him to accompany him. PW-3 (mother of the deceased) enquired with the appellant where they were going. The appellant replied that they would return soon, and they went together by holding each other's hands. At that time, PW-1 (father of the deceased) was in the house, but he was sleeping as he had done night duty as a security guard. As the deceased did not return till 1 pm, PW-3 went to the appellant's house to enquire about the whereabouts of the deceased.

At that time, the appellant told PW-3 that the accused had gone to watch a movie. PW-3 had to wait for the whole night. As the deceased did not turn up, on 13th July 1995 at 7 am, PW- 3 again visited the appellant's house to enquire. The appellant's mother told PW-3 that the appellant had gone out for work and he would be back by 9 pm. The parents of the deceased searched for the deceased the whole day. They went to the appellant's house again at 8 pm. When they met the appellant, they found that the appellant gave inconsistent answers. Initially, the appellant stated that the deceased had gone to purchase manjha (a thread used for flying kites).

Thereafter, he stated that he had left the deceased on the road. Lastly, the appellant stated that he had left the deceased at his residence. As the answers given by the appellant were not satisfactory, the parents of the deceased threatened the appellant to file a police complaint. Ultimately, at 10 pm, PW-1 went to the Police Station and lodged a missing report. After lodging the missing report, when the Police, accompanied by the parents of the deceased, went to the house of the appellant, they found that the appellant and his father had absconded.

On 14th July 1995 at about 8 am, PW-5, who was the cousin of the deceased, told PW-1 that the dead body of the deceased was lying in a bathroom on the terrace of a particular building. PW-1 visited the spot and identified the body of the deceased. He found that a rope was tied to the neck of the deceased, and the hands were tied on the back side. A First Information Report was registered for the commission of an offence punishable under Section 302 of the IPC. The case rests on circumstantial evidence.

SUBMISSIONS

3. The learned counsel appearing for the appellant has taken us through the evidence of the material prosecution witnesses. He submitted that the evidence of PW-3 (mother of the deceased) is full of inconsistencies, improvements, omissions and contradictions. He pointed out the omissions from the cross-examination of PW-3. He submitted that the omissions are so vital that it is very difficult to believe the testimony of PW-3.

He pointed out that PW-3 was declared hostile, and the Public Prosecutor was permitted to cross-examine her on certain aspects. He submitted that the evidence of PW-3 ought not to have been believed. He pointed out that though in the examination-in-chief, PW-1 and PW-3 stated that they repeatedly went to the house of the appellant to enquire about the whereabouts of the deceased, these statements in the examination-in-chief are omissions.

He submitted that the vital circumstance of the last seen together had not been established beyond a reasonable doubt. He submitted that even the allegation that the appellant gave evasive replies about the whereabouts of the deceased to PW-1 and PW-3 is not established. He would, therefore, submit that another circumstance of the appellant giving evasive replies is also not established. He would, therefore, submit that the appellant's conviction cannot be sustained.

4. The learned counsel appearing for the respondent- NCT of Delhi submitted that the state of mind of PW-1 and PW-3 must be considered while they deposed before the Court as they had lost their son. She submitted that the testimony of PW-3, as regards the appellant and the deceased being last seen together, is not shaken in the cross-examination. Even the circumstance of the appellant giving evasive replies about the whereabouts of the deceased has been duly proved. He submitted that the fact that the appellant absconded from his residence after registration of the FIR and recovery of bloodstained clothes was made at his instance established the appellant's guilt. He would, therefore, submit that no interference is called for with the impugned judgments.

CONSIDERATION

5. The prosecution's case is based on circumstantial evidence. We find from paragraph 35 of the impugned judgment of the High Court that the following circumstances, forming a part of the chain of circumstances, were held to be proved. The said circumstances are as follows:

"35. .. ..

a. That PW-3, mother of the deceased was a last seen evidence of the appellant taking the deceased along with him from his residence on 12th July 1995 at 12 noon.

b. The testimonies of PW-1 and PW- 3 that they repeatedly went to the residence of the appellant so as to know the whereabouts of their son but the appellant gave evasive replies to misguide them.

c. The proximity of time of the death of the deceased with the time of the deceased leaving his residence.

d. The conduct of the appellant in absconding from his residence after he was told that the Police Report would be lodged against him for not disclosing the whereabouts of the deceased.

e. The recovery of blood stained clothes of the appellant at the instance of the appellant.

f. The appellant had suffered injuries on his own person as the MLC proved on record as Ex.PW- 22/A, which remained unexplained by the appellant forming an additional link in the chain of circumstantial evidence to prove his guilt."

6. The evidence of PW-1 on the last seen together theory cannot be believed as he stated that he was sleeping when allegedly the appellant took the deceased with him. His statement that PW-3 had visited the appellant's house at 1 pm is hearsay evidence as he did not accompany his wife. Thereafter, he deposed that:

a) At about 8 pm, he, along with PW-3, visited the house of the appellant to enquire about the whereabouts of the deceased. At that time, the appellant was not present;

b) On 13th July 1995, at about 7 am or 7:30 am, he and PW-3 went to the appellant's house to enquire about the deceased's whereabouts. At that time, the parents of the appellant told them that the appellant had gone to attend his duty and would be back by 9 pm;

c) On the evening of 13th July 1995, he and PW-3 again visited the appellant's house at about 6 pm. At that time, the appellant told them that he had left the deceased near their house, and d) On the same day, at about 8 pm or 9 pm, he, along with the Police, went to the appellant's house when it was found that the appellant and his father had run away from their house.

7. What is stated by PW-1 in terms of clause (a) above is an omission. He did not depose that the appellant gave evasive answers when he visited his house.

8. Now, we come to the deposition of PW-3 (mother of the deceased). The following are the salient features of her evidence:

a. In the cross-examination, she stated that she had told the Police in her statement that the appellant pulled the deceased by catching his hand while taking the deceased with him. However, she accepted that no such statement was recorded by the Police;

b. In the examination-in-chief, she came out with a different version which indicates that the deceased voluntarily accompanied the appellant;

c. At 1 pm on 12th July 1995, she went to the appellant's house to enquire why the deceased had not come. This statement is an omission;

d. She alone went to enquire about the deceased at 6 pm to the house of the appellant when the appellant's mother told her that the appellant would be back by 9 pm. Even this statement is an omission;

e. On the next day, at about 9 am, she and her husband (PW-1) went to the house of the appellant to enquire about the deceased. She was informed by the appellant's mother that the appellant was on duty and would return at 9 pm. Even this statement is an omission;

f. She stated that at 9 am when she and her husband enquired with the appellant, he stated that the deceased had gone to fetch manjha. He also stated that he had left the deceased on the road. Even these statements are omissions. As the statement of PW-3 that she visited the appellant's residence at 9 am on 13th July 1995 is an omission, her version that the appellant gave evasive replies must be treated as an omission.

9. When PW-3 was asked a question for what reasons the appellant may have killed her son, she answered that there was no enmity between the deceased and the appellant, but she suspected that the appellant had killed her son as the appellant had taken her son with him. Therefore, even according to the case of the PW-3, the motive for the commission of the offence was absent. This is very relevant as the case is based on circumstantial evidence.

10. There are significant improvements and omissions in the evidence of PW-3. The omissions are so relevant that they become contradictions in view of the Explanation to Section 162 of the Code of Criminal Procedure, 1973. Thus, it is very difficult to accept the testimony of PW-3 as reliable. PW-1 is not a witness to the theory of last seen together. Therefore, it is not possible to hold that the theory of last seen together was proved by the prosecution beyond a reasonable doubt. Even the finding of the High Court that the appellant gave evasive replies to misguide the parents of the deceased cannot be sustained.

Therefore, two out of five circumstances held as established were not established beyond a reasonable doubt. When the prosecution case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established. There must be a chain of circumstances so complete as not to leave any ground for any conclusion inconsistent with the innocence of the accused. In this case, two significant circumstances forming the chain have not been established.

11. Before we part with the judgment, we must refer to a peculiar practice followed by the Trial Court. PW-1 and PW-3 were confronted in the cross-examination with their statements recorded under Section 161 of the CrPC. In the depositions, it is mentioned that the attention of the witness was invited to a particular portion of the prior statement. After recording the answer of the witness, the portion of the prior statement used to contradict the witness has been reproduced in brackets.

The law is well settled. The portion of the prior statement shown to the witness for contradicting the witness must be proved through the investigating officer. Unless the said portion of the prior statement used for contradiction is duly proved, it cannot be reproduced in the deposition of the witnesses. The correct procedure is that the Trial Judge should mark the portions of the prior statements used for contradicting the witness. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved.

12. For the reasons recorded above, the conviction and sentence of the appellant cannot be sustained. Accordingly, the impugned judgments are quashed and set aside, and the appellant is acquitted of the offences alleged against him. The Appeal is accordingly allowed. Bail bonds furnished by the appellant stand cancelled.

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

.....J. (Ujjal Bhuyan)

New Delhi;

February 13, 2025.

IN THE SUPREME COURT OF INDIA

State of Karnataka
Vs.
T.N. Sudhakar Reddy

[Criminal Appeal No(s). 5001 of 2024
arising out of SLP (Criminal) No(s). 13264 of 2024]

HEADNOTE – A preliminary inquiry is not mandatory before registering an FIR against a public servant under the Prevention of Corruption Act. Moreover, the accused cannot have a vested right to claim preliminary inquiry before FIR registration in corruption cases.

It is perspicuous that conducting a preliminary inquiry is not sine qua non for registering a case against a public servant who is accused of corruption. While preliminary inquiry is desirable in certain categories of cases including those under the PC Act, it is neither a vested right of the accused, nor a mandatory pre-requisite for registration of a criminal case.

JUDGMENT

Mehta, J.

1. Heard.

2. The present appeal by special leave is preferred by the appellant-State, challenging the judgment and final order dated 4th March, 2024 passed by the High Court of Karnataka at Bengaluru1, whereby the High Court allowed the Criminal Petition No. 13460 of 2023, filed by respondent-accused2 under Section 482 of the Code of Criminal Procedure, 19733, and quashed the FIR being Crime No. 56 of 2023 registered by the Karnataka Lokayukta Police Station, Bangalore against the respondent for the offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the Prevention of Corruption Act, 1988.4

Brief facts:

3. The respondent is a public servant who joined the Karnataka Power Transmission Corporation Limited5 on 3rd August, 2007 as an Assistant Executive Engineer (Electrical). In 2021, he was promoted to the post of Deputy General Manager (Vigilance)/Executive Engineer (Electrical) at BESCOM, Bengaluru, Vigilance Squad, Bangalore and was discharging his duties in the said capacity.

4. The Police Inspector, Karnataka Lokayukta, Bangalore, submitted a source information report dated 10th November, 2023 to the Superintendent of Police, Karnataka Lokayukta, Bangalore6 alleging inter alia that during his service tenure in various government department units, the respondent had acquired assets amounting to Rs. 3,81,40,246/-, which were disproportionate and almost 90.72% more than his known sources of income.

5. Based on the said source information report, the Superintendent of Police issued an order dated 4th December, 2023, directing the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore7 to register a case against the respondent for offences punishable under Section 13(1)(b), and Section 12 read with Section 13(2) of the PC Act, and further authorized the said officer to conduct the investigation of the case. The order dated 4th December, 2023 around which the controversy revolves is reproduced herein below for ready reference: -

"KARNATAKA LOKAYUKTHA

No KLA/B'City(SP-2)/Source/02/2023

Office of the Superintendent of Police,
Karnataka Lokayukta,
Bengaluru City-2, Bengaluru,
Dated 04.12.2023

PROCEEDINGS OF THE SUPERINTENDENT OF POLICE KARNATAKA LOKAYUKTHA BENGALURU CITY-2

Sub Possession of properties disproportionate to known source of income by Sri. T N Sudhakar Reddy, DGM,(EE) Ele, BESCOM Vigilance, Bangalore.

Ref Source Report submitted by Sri Balaji Babu H N, Police Inspector-8, Karnataka Lokayukta, Bengaluru City P S, Dated 10.11.2023

I have gone through the source report submitted by Sri Balaji Babu H N, Police Inspector-8, Karnataka Lokayukta, Bengaluru City P S, relating to his receipt of credible information that Shri T N Sudhakar Reddy, DGM,(EE) Ele, BESCOM Vigilance, Bangalore has acquired properties disproportionate to his known source of income to the extent of Rs 3,81,40,246/- and thereby committed an offence under section 13(l)(b) r/w 13(2) and 12 of Prevention of Corruption Act 1988.

From the material placed before me and with application of my mind I am satisfied that a prima-facie case is made out against Sri T N Sudhakar Reddy, D6M (EE), Ele, BESCOM Vigilance, Bangalore Warranting a statutory

investigation for an offence under section 13(l)(b) r/w 13(2) & 12 of Prevention of Corruption Act 1988.

ORDER NO. KLA/INV/BCD/SP-2/02/2023, DATED. 04.12.2023.

Therefore by virtue of the powers vested in me under provisions of Section 17 of the Prevention of Corruption Act 1988, I, Dr. K Vamsikrishna, IPS, Superintendent of Police, Karnataka Lokayukta, Bengaluru City-2, Bengaluru order that Sri. Tippeswamy H J, Deputy Superintendent of Police, Karnataka Lokayukta, Bengaluru City Police Station, Bengaluru to register a case under Section 13(1)(b) r/w 13(2) & 12 of Prevention of Corruption Act 1988 against Sri. T N Sudhakar Reddy, DGM(EE), Ele, BESCOM Vigilance, Bangalore and to investigate the said case. I know Sri. Tippeswamy H J, Deputy Superintendent of Police and he is having the knowledge of investigation of the cases registered under P.C. Act and also he is having previous experience of investigation of disproportionate of asset cases.

Further, I authorize Sri. Tippeswamy H J, Deputy Superintendent of Police, Karnataka Lokayukta, Bengaluru City Police Station, Bengaluru under the provisions of the section 18 of the Prevention of Corruption Act, 1988 to inspect the bankers books in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the said Sri. T N Sudhakar Reddy, DGM,(EE) Ele, BESCOM Vigilance, Bangalore and to take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the police officer Sri. Tippeswamy H J, Deputy Superintendent of Police, Karnataka Lokayukta, Bengaluru City Police Station, Bengaluru in the exercise of the powers under the said section of law.

(Dr. K Vamsirishna., IPS)
Superintendent of Police
Karnataka Lokayukta,
Bengaluru City-2,
Bengaluru.

To:
Sri. Tippeswamy H J,
Dy.S.P-4,
Karnataka Lokayukta
Bengaluru City-2, Bengaluru."

6. On the same day, i.e., 4th December 2023, an FIR8 came to be registered against the respondent at the Karnataka Lokayukta Police Station, Bangalore City, for the offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act.

7. Aggrieved, the respondent filed a Criminal Petition9 under Section 482 of the CrPC before the High Court, seeking quashing of the aforesaid FIR. The High Court, vide order dated 4th March, 2024, allowed the criminal petition and quashed the FIR along with all the consequential criminal proceedings arising therefrom. The said order of the High Court is the subject matter of challenge in this appeal by special leave.

Submissions on behalf of Appellant:

8. Learned counsel for the appellant-State vehemently and fervently argued that the High Court grossly erred in allowing the quashing petition preferred by the respondent. In this regard, he has advanced the following submissions: -

(i) That it is not mandatory to hold a preliminary inquiry when the secret information itself discloses the commission of offences under the PC Act. The scope of the preliminary inquiry is not to ascertain the veracity of the information, but only to check whether the information reveals the commission of a cognizable offence or not. Therefore, the necessity to conduct a preliminary inquiry is dependent upon the factual matrix of each case. Learned counsel in this regard has put reliance upon the decisions of this Court in the cases of CBI and Another v. Thommandru Hannah Vijaylakshmi and Another10 and National Confederation of Officers Association of Central and Public Sector Enterprises & Ors. v. Union of India and Ors.11.

(ii) That the Superintendent of Police, upon receiving the source information report from the Police Inspector, Karnataka Lokayukta, Bangalore, thoroughly examined the same and came to a conclusion that the information provided in the said report disclosed a prima facie case against the respondent for the offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act. Thereupon, he directed the Deputy Superintendent of Police to register a case for these offences against the respondent and to conduct investigation. Since there is no legislative prescription as to the format of the preliminary inquiry, the source information report submitted by the Police Inspector, Karnataka Lokayukta, Bangalore, which was critically evaluated by the Superintendent of Police, itself served the purpose of a preliminary inquiry.

The source information report not only delineates the assets amassed by the respondent but also lays out the expenditure made by him, which is disproportionate to his known sources of income. He thus urged that the source information report must itself be considered as a preliminary inquiry report. Hence, it would be incorrect to conclude that no preliminary inquiry was undertaken before the registration of the FIR. Learned counsel in this regard has placed reliance upon the decision of this Court in the case of State of Telangana v. Managipet Alias Mangipet Sarveshwar Reddy.12

(iii) That once the Superintendent of Police, upon receiving the source information report, was satisfied that the said report disclosed the commission of offences under the PC Act, he was competent under Section 17 of the PC Act to direct the Deputy Superintendent of Police to register an FIR in respect of the offences disclosed in the source information report. Further, it was submitted that the Superintendent of Police was well within his jurisdiction while directing the Deputy Superintendent of Police to conduct the investigation of the case. Learned counsel in this regard has placed reliance upon the decision of this Court in the case of Thommandru Hannah Vijayalakshmi (supra).

(iv) That the order dated 4th December, 2023 issued by the Superintendent of Police to the Deputy Superintendent of Police was passed after due application of mind to the facts of the case and upon being satisfied that tangible material exists which merits registration of the FIR. It is a reasoned order which sets out the name of the accused, the foundational facts pertaining to acquisition of properties disproportionate to his gross income, the information about all the expenditures incurred by him, the nature of the offence, the relevant provisions of the PC Act, and most importantly, the power of the Superintendent of Police to direct the Deputy Superintendent of Police to register an FIR and investigate the case.

Thus, the High Court was not justified in concluding that the Superintendent of Police did not apply his mind while issuing the order of registration of FIR and the consequent authorization for investigation into the offences thereunder. Reliance placed by the High Court on the judgment in the case of State of Haryana & Ors. v. Bhajan Lal & Ors13 is misplaced because the present case does not fall within any of the categories enumerated therein, justifying the decision to allow the quashing petition filed by the respondent. On these grounds, learned counsel appearing for the appellant-State implored this Court to accept the appeal, set aside the impugned judgment and restore the FIR, registered against the respondent.

Submission on behalf of the Respondent:

9. Per contra, learned senior counsel appearing for the respondent vehemently and fervently opposed the submissions advanced on behalf of the appellant-State. He advanced the following pertinent submissions, imploring this Court to dismiss the present appeal:-

(i) That the High Court was fully justified in quashing the FIR in Crime No. 56 of 2023 considering that the order dated 4th December, 2023, issued by the Superintendent of Police, was passed without conducting any preliminary inquiry. It is a well-established principle of law that before an FIR is registered against a public servant for the offences punishable under the PC Act, a preliminary inquiry must be undertaken by the competent authority, considering

the gravity of accusations involved in such cases which have a direct bearing on the accused/public servant's reputation and the reputation of the entire department.

Thus, a preliminary inquiry before registration of an FIR is mandatory so as to avoid abuse of the process of law considering that the primary objective of conducting the preliminary inquiry is to ensure that the criminal investigation is not initiated on a frivolous and untenable complaint. Learned senior counsel in this regard placed reliance upon the decisions of this Court in P Sirajuddin v. State of Madras14; Lalitha Kumari v. Government of Uttar Pradesh and Ors.15; and Charansingh v. State of Maharashtra & Ors.16

(ii) That any order issued under Section 17 of the PC Act, directing investigation in the FIR, must be passed with judicious discretion, based upon due application of mind and supported by substantive reasons. The second proviso to Section 17 of the PC Act, which is an additional safeguard for public servants, stipulates that any offence that is punishable under Section 13(1)(b) of the PC Act shall not be investigated without the order of a police officer who is below the rank of a Superintendent of Police. Thus, the Superintendent of Police was under an obligation to record reasons before directing the Deputy Superintendent of Police to register the FIR and conduct investigation thereupon.

However, in the present case, the Superintendent of Police passed the order for registration of FIR casually and mechanically, without assigning any reasons. That a bare perusal of the order dated 4th December, 2023 reflects that the Superintendent of Police mentioned having assessed the materials i.e., the source information report dated 10th November, 2023, and applied his mind thereto. However, the order fails to provide any clear reflection of a comprehensive and substantive examination of the said source information report, which makes it evident that the approach of the Superintendent of Police was totally mechanical and laconic, vitiating the criminal proceedings from the very inception i.e., the registration of the FIR.

(iii) That the permission accorded by the Superintendent of Police to register the FIR was based entirely upon the source information report and no verification whatsoever was sought in order to adjudge the veracity of the allegations made therein. Upon receiving the source information report, an independent preliminary inquiry should have been conducted, before directing registration of the FIR. However, the Superintendent of Police, influenced by the source information report, straight away directed the Deputy Superintendent of Police to register an FIR and simultaneously authorised him to commence the investigation of the case.

Learned senior counsel for the respondent further contended that the entire procedure followed by the Superintendent of Police is flawed and in teeth of the law laid down by this Court in Lalita Kumari (supra), wherein it was held that preliminary inquiry by the police is sine qua non in offences related to corruption even if the police are in possession of information that discloses the commission of an offence. Hence, the very initiation of the criminal process is vitiated as it was biased and flawed from the beginning and thus, the High Court has rightly allowed the quashing petition preferred by the respondent. On these grounds, the learned senior counsel for the respondent urged that the present appeal against the judgment of the High Court is liable to be dismissed, and the High Court's decision to quash the FIR and all consequential proceedings arising therefrom, should be upheld.

Discussion:-

10. We have given our consideration to the submissions advanced at the bar and have gone through the impugned judgment. With the assistance of learned counsels for the parties, we have perused the material placed on record.

11. There is no dispute that the respondent is a public servant who started serving in KPTCL in 2007. He was duly promoted to the post of Deputy General Manager (Vigilance)/Executive Engineer (Electrical), at BESCOM, Bengaluru, and has been discharging his duties in the said capacity.

12. The primary allegation set out against the respondent is that during his tenure of service in various departmental units, the respondent had acquired assets to the tune of Rs. 3,81,40,246/-, which were disproportionate and almost 90.72% more than his known sources of income. A detailed source information report to this effect was submitted to the Superintendent of Police who took cognizance of this report and issued a composite Order (supra) dated 4th December, 2023, directing the Deputy Superintendent of Police to register an FIR against the respondent for the offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act and to investigate the same.

13. The core questions which arise for our consideration in the present case are as follows:-

A. Whether a preliminary inquiry was mandatory before directing registration of an FIR under the PC Act in the facts of the case at hand or whether the source information report could be treated to be a substitute for the preliminary inquiry?

B. Whether the Order dated 4th November, 2023, passed by the Superintendent of Police under Section 17 of the PC Act, is sustainable in the eyes of law?

Issue A: Whether a preliminary inquiry was mandatory before directing registration of an FIR under the PC Act in the facts of the case at hand or whether the source information report could be treated to be a substitute for the preliminary inquiry?

14. It is the case of the appellant-State that preliminary inquiry is not mandatory before registration of an FIR. Without prejudice to the above, it is contended that the source information report submitted by the Police Inspector, Karnataka Lokayukta Police Station to the Superintendent of Police, detailing acquisition of assets by the respondent disproportionate to his known sources of income, itself serves as a preliminary inquiry report as it was elaborate enough to disclose a prima facie case for the offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act.

15. On the other hand, learned counsel for the respondent would urge that the Superintendent of Police acted in gross violation of law while issuing an order to the Deputy Superintendent of Police to register an FIR as preliminary inquiry in 'corruption cases' is a condition precedent for registration of the FIR. Further, preliminary inquiry can only be conducted by a police officer, who is competent to investigate the offence, and thus, a source information report, however detailed, cannot be taken to be a substitute for a preliminary inquiry.

16. In addressing this issue, we must first consider the legal framework established by this Court in a catena of decisions, particularly in P. Sirajuddin (supra), Lalita Kumari (supra), Thommandru Hannah Vijayalakshmi (supra), and Managipet (supra). This Court in P. Sirajuddin (supra) has held that before any public servant is charged with any acts of dishonesty, a preliminary inquiry 'must' be conducted in order to obviate incalculable harm to the reputation of that person. The relevant para from P. Sirajuddin is extracted herein below:-

"17. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there 'must' be some suitable preliminary inquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general."

(emphasis supplied)

17. However, the authoritative pronouncement of law in respect of registration of the FIR emerges from the decision of the Constitution Bench in Lalita Kumari (supra) wherein, the issue before the Court was whether a police officer is

obligated to register an FIR upon receiving information regarding the commission of a cognizable offence under Section 154 of the CrPC (corresponding Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 202317) or whether it is essential to conduct a preliminary inquiry to verify the information before registration of the FIR.

This Court held that under Section 154 of the CrPC, a police officer is required to register an FIR when the information received by him discloses the commission of a cognizable offence, without undertaking a preliminary inquiry. However, the Court was also cognizant of the possible misuse of the criminal law resulting in the registration of frivolous FIRs. To address this concern, it outlined specific 'exceptions' to the general rule, which mandates the immediate registration of FIR upon receiving information about a cognizable offence. The Constitution Bench in Lalita Kumari (supra) held:-

"119. Therefore, in view of various counterclaims regarding registration or nonregistration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith.

Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

(emphasis supplied)

18. The following guidelines were laid down by the Constitution Bench governing the issues:-

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. 120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a

preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

(emphasis supplied)

19. It was held that a preliminary inquiry is not mandatory if the information received by the police officer/Investigating Agency discloses the commission of a cognizable offence. However, if the preliminary inquiry is conducted, its scope is limited to determine whether the information prima facie reveals commission of a cognizable offence and does not extend to verifying its truthfulness. The necessity of a preliminary inquiry depends on the specific facts and

circumstances of each case. For instance, corruption cases fall into a category where a preliminary inquiry 'may be made'.

20. The use of the term 'may be made' as noted in Lalita Kumari (supra) underscores that conducting such an inquiry is discretionary in nature and not a mandatory obligation.

21. Following the rationale of Lalita Kumari (supra), this Court in Managipet (supra) held that while the decision in Lalita Kumari (supra) noted that a preliminary inquiry was desirable in cases of alleged corruption, this does not vest a right in the accused to demand a preliminary inquiry. Whether the preliminary inquiry is required to be conducted or not will depend on the peculiar facts and circumstances of each case, and it cannot be said to be a mandatory requirement, in the absence of which, an FIR cannot be registered against the accused in corruption-related matters.

22. The relevant paragraphs from Managipet (supra) are extracted herein below: -

"33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted.

The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR 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 and also where a criminal proceeding is manifestly attended with mala fides 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.

34. Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry

to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient."

(emphasis supplied)

23. A three-judge bench of this Court in Thommandru Hannah Vijayalakshmi (supra) extensively discussed the judicial precedents and legal principles governing the requirement of conducting a preliminary inquiry before registration of an FIR. The Court affirmed the view taken by the two-judge Bench in Managipet (supra), holding that a preliminary inquiry may not be necessary if the officer recording the FIR possesses relevant information which discloses the commission of a cognizable offence. The relevant extracts from Thommandru Hannah Vijayalakshmi (supra) are reproduced herein below:-

"32. we hold that since the institution of a Preliminary inquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain.

39. The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a preliminary inquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary inquiry would be required.

It also clarified that the scope of a preliminary inquiry is not to check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence. Similarly, Para 9.1 of the CBI Manual notes that a preliminary inquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a preliminary inquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence.

A similar conclusion has been reached by a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] as well. Hence, the proposition that a preliminary inquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] but would also tear apart the framework created by the CBI Manual."

(emphasis supplied)

24. Applying these principles to the case at hand, it is perspicuous that conducting a preliminary inquiry is not sine qua non for registering a case against a public servant who is accused of corruption. While preliminary inquiry is desirable in certain categories of cases including those under the PC Act, it is neither a vested right of the accused, nor a mandatory pre-requisite for registration of a criminal case.

The purpose of a preliminary inquiry is not to verify the veracity of the information received, but merely to ascertain whether the said information reveals the commission of a cognizable offence. The scope of such inquiry is naturally narrow and limited to prevent unnecessary harassment while simultaneously ensuring that genuine allegations of a cognizable offence are not stifled arbitrarily. Thus, the determination, whether a preliminary inquiry is necessary or not will vary according to the facts and circumstances of each case.

25. In the present case, the Police Inspector of the Karnataka Lokayukta submitted a comprehensive source information report dated 10th November, 2023 to the Superintendent of Police, which included meticulous documentation and evaluation of the assets acquired by the respondent, which were grossly disproportionate to his known sources of income. The respondent, during his tenure of service in various departmental units, had acquired assets worth Rs.3,81,40,246/-, which were disproportionate and almost 90.72% more than his known sources of income. Thereupon, the Superintendent of Police took cognizance of the source information report and concluded that the allegations made against the respondent did constitute prima facie offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act.

26. It is clearly discernible that the source information report dated 10th November, 2023, was in the nature of a preliminary inquiry in itself and nothing else. The comprehensive nature of the said report took it beyond a simple complaint, as it provided a meticulous breakdown of the respondent's monetary acquisitions. Further, the report makes cross-referencing of official income records with actual property acquisitions, bank deposits, and other financial assets. In substance, the source information report prime facie reflects a systematic pattern of financial irregularities, wherein the discrepancy in acquisition of assets was found to be 90.72% more than the known sources of income of the respondent.

27. Thus, in our view the source information report dated 10th November, 2023, served as a critical piece of information which not only documented the financial discrepancies but also presented a clear, prima facie picture of disproportionate assets accumulated by the respondent but also demanded immediate and thorough

investigative action. As we have noted above, the scope of preliminary inquiries is not to verify the absolute truthfulness of information, and it is only to ascertain whether a cognizable offence is disclosed or not therefrom.

The source information report in the case at hand clearly satisfies this criterion by comprehensively documenting the financial irregularities committed by the respondent and disclosed a prima facie case of commission of a cognizable offence involving acquisition of disproportionate assets, punishable under the PC Act. Thus, we are of the opinion that the High Court erred in concluding that the FIR was liable to be quashed on account of omission to conduct a preliminary inquiry.

Issue B: Whether the order dated 4th November 2023, passed by the Superintendent of Police under Section 17 of the PC Act, is sustainable in the eyes of the law?

28. It is the case of the appellant-State that since the preliminary inquiry is not mandatory, the Superintendent of Police, who took cognizance of the source information report, has rightly exercised his powers to issue an order directing the Deputy Superintendent of Police to register an FIR against the respondent and to commence the investigation.

29. Learned senior counsel for the respondent urged that the Superintendent of Police, grossly erred in issuing the order dated 14th December 2023 under Section 17 of the PC Act merely on the basis of the source information report dated 10th November 2023. Vide this order, he directed the Deputy Superintendent of Police to register a case against the respondent for offences punishable under Section 13(1)(b) and Section 12 read with Section 13(2) of the PC Act and to investigate the case. It was contended that the Superintendent of Police failed to apply his mind while appointing the investigating officer under Section 17 of the PC Act, as in the absence of a formally registered FIR, the permission of the Superintendent of Police could not have been sought as required under second proviso to Section 17 of the PC Act.

30. For the purpose of deciding this issue, it is essential to make a reference to Section 17 of the PC Act.

"Section 17: Persons authorised to investigate.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

(emphasis supplied)

31. Section 17 of the PC Act prescribes that no police officer below the rank of an Inspector in the case of the Delhi Special Police Establishment, an Assistant Commissioner of Police in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such, and in any other case, the Deputy Superintendent of Police or a police officer of equivalent rank shall investigate an offence punishable under the Act without prior order of the Metropolitan Magistrate or a Magistrate of the 1st Class, as the case may be, or make any arrest without a warrant.

According to the first proviso to Section 17, if a police officer not below the rank of an Inspector of Police as is authorised in this behalf by a general or special order issued by the Government, he can also investigate such offences without the order of the Metropolitan Magistrate or a Magistrate of the 1st Class, as the case may be, or make arrest thereunder without a warrant. Further, the second proviso provides that where an offence referred to in clause (e) of sub-section (1) of Section 13 is sought to be investigated, such an investigation shall not be conducted without obtaining the order of a police officer not below the rank of a Superintendent of Police.

32. In the impugned judgment, the High Court has placed reliance on the decision of a Coordinate Bench in the case Balakrishna H.N. v. State of Karnataka and Ors.18 and concluded that the failure to conduct a preliminary inquiry before registering the FIR, and the issuance of the order by the Superintendent of Police

under second proviso to Section 17 of the PC Act, tantamounted to a clear violation of the legal mandate. The High Court in the case Balakrishna (supra) held that:-

"11. The Apex Court considers entire spectrum of law and at sub-para 15.1 of paragraph 23 holds that an inquiry at pre-FIR stage is held to be permissible; not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring assets/properties disproportionate to his known sources of income. This cannot be demanded as a matter or right is what is held, apart from holding that there cannot be a hearing given to the accused prior to drawing up of a source report or registration of a crime.

The Apex Court nevertheless holds that the preliminary inquiry is not only desirable but necessary in such cases. At paragraph 33 the Apex Court holds that the superior officer thus has to verify whether the developed source information prima facie would result in the registration of a case; if yes, they then will have to direct verification of such information. Though the entire verification was governed by the CBI manual which the Apex Court had already held that it should be strictly and scrupulously followed, the Apex Court holds that preliminary inquiry would not be a matter of right or necessary in every case.

12. If the reasons rendered by Apex Court are noticed, two factors would emerge - one, that the prosecution is required to draw up source report after conducting some sort of a preliminary inquiry to know the assets of the Government servant and two, after the source information report is placed before the Superior Officer - Superintendent of Police, he has to verify as to whether a crime should be registered or otherwise. If these principles that would emerge from the judgment of the Apex Court are considered qua the facts obtaining in the case at hand, the registration of the crime would fall foul of the principles laid down by the Apex Court and that of this Court in the afore-quoted judgment."

(emphasis supplied)

33. Therefore, according to the High Court, the Superintendent of Police is not competent to pass an order under Section 17 of the PC Act until a formally registered FIR came into existence. In other words, registration of the FIR is sine qua non for issuance of an order to investigate the case. The High Court framed a four-step procedure: first, the police must verify the facts upon receiving the source information report; second, a preliminary inquiry is to be conducted by the police; third, the FIR is registered; fourth, the FIR, along with the source information report and the preliminary inquiry report, is to be forwarded to the Superintendent of Police. Thus, it was concluded that it is only at the 4th stage that the Superintendent of Police becomes competent to issue an order directing investigation under Section 17 of the PC Act.

34. From the discussion and conclusions drawn by us on the first issue, it is clear that conducting a preliminary inquiry is not an absolute mandate of law in cases concerning offences under the PC Act. Hence, the four-step procedure formulated by the High Court to quash the FIR against the respondent is not compliant with any prescription in law and is also contrary to the law laid down by this Court. What invites our consideration, therefore, is whether the Superintendent of Police is competent to pass a composite order for registration of an FIR as well as directing investigation under Section 17 of the PC Act, authorising the Deputy Superintendent of Police to conduct investigation.

35. It is an established principle that the special law overrides the general law. However, when a general law and a special law address the same subject matter, the rule of harmonious construction is to be applied.

36. In State of M.P. and Ors. v. Ram Singh19, this Court discussed the legislative intent of the PC Act and held:-

"10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object."

37. Chapter 3 of the PC Act deals with provisions concerning offences, and the following chapter, i.e., Chapter 4 of the Act articulates procedural aspects with regard to the investigation of the offences set out in Chapter 3. With respect to other procedural aspects inter alia registration of the FIR, the PC Act relies on the CrPC. Since the PC Act only outlines the procedure for investigation of offences, therefore, as a necessary corollary, Sections 154 (corresponding Section 173 of the BNSS) will be applicable for the registration of FIR in relation to offences punishable under the PC Act.

38. The initiation of criminal proceedings requires information that details the commission of an offence, whether cognizable or not. It is trite that if the information reveals the commission of a cognizable offence, the police officials are duty-bound to register an FIR, except in cases where individual reputation and relations are at stake, wherein it is advisable to conduct a preliminary inquiry. In this regard, reference may be made to Paras 120.3 and 120.4. of Lalita Kumari (supra)20.

39. In the case of Kailash Vijayvargiya v. Rajlakshmi Chaudhuri21, this Court held as follows:-

"29. Drawing on several earlier judgments and the language of Section 154 of the Code, it was held that the Police is bound to proceed to conduct investigation, even without receiving information about commission of a cognizable offence if

the officer in-charge otherwise suspects the commission of such an offence. The legislative intent is to ensure that no information of commission of a cognizable offence is ignored and not acted upon, which would otherwise result in unjustified protection of the alleged offender/accused. Every cognizable offence must be promptly investigated in accordance with the law.

This being the legal position, there is no reason that there should be any discretion or option left with the Police to register or not to register an FIR when information is given about commission of a cognizable offence. This interpretation in a way keeps a check on the power of the Police, which is required to protect the liberty of individuals and society rights inherent in a democracy. It is the first step which provides access for justice to a victim and upholds the rule of law, facilitates swift investigation and sometimes even prevents commission of crime and checks manipulation in criminal cases."

(emphasis supplied)

40. In the present case, the Superintendent of Police, after forming an opinion that the source information report dated 10th November, 2023 prima facie disclosed the necessary ingredients of the offences punishable under the PC Act, directed the Deputy Superintendent of Police to register an FIR against the respondent and subsequently in the same order, authorised him to investigate the case.

We find nothing wrong in this composite order which could justify the quashing thereof. However, the High Court, taking exception to the aforesaid order, found that the Superintendent of Police had acted de hors the legal mandate and went on to quash the FIR on the rationale that the act of issuing the order under Section 17 of the PC Act while simultaneously directing the registration of the FIR violated the principles laid down in Bhajan Lal (supra).

41. We are of the opinion that the High Court gravely erred while imposing unwarranted fetters on the investigation agency in corruption cases by carving out a framework of administrative hurdles which may have the potential of incapacitating law enforcement agencies. By mandating elaborate pre-investigation procedures and creating unwarranted procedural check dams, the High Court's approach has the potential to render the effectiveness of law enforcement nugatory. These additional procedural requirements which virtually tantamount to framing a policy could not only disrupt the smooth functioning of investigation agencies, but also risk shielding corrupt public servants from proper scrutiny, which would be in contravention of the objective of the PC Act.

42. The legislative intent behind the PC Act is to provide a robust mechanism for investigating corruption-related offences, and to avoid the creation of meandering

procedural hurdles that shield corrupt officials. While interpreting such procedural laws, it must be borne in mind that the interpretation should facilitate and not frustrate the investigation of potential criminal activities, particularly in cases involving serious allegations of corruption. The correct approach in such cases is to bolster the system created to ensure accountability and prevent arbitrary investigations, and not as a means to create insurmountable procedural barriers at the very inception.

The purpose of fair investigation is to ensure that the accused is afforded all the rights guaranteed to him under the law. As a corollary, an investigation which should be expected to be fair, must focus on collecting evidence that leads to the right conclusion and nothing else. A fair investigation cannot be interpreted to cater to the accused only, rather it must be such that the entire investigation process has a backing of the law, and the due procedure established therein. Thus, the ambit of fair investigation tethers the procedural safeguards in order to remain immune from arbitrary actions of individual investigators.

43. The critical issue which requires clarity is what would be the appropriate procedural mechanism when a detailed source information report reaches the Superintendent of Police. The Superintendent of Police is entrusted with the administrative authority to direct his subordinates to register an FIR upon receiving a factual report which prima facie discloses the commission of offences punishable under the PC Act. The Superintendent of Police is conferred with the responsibility of evaluating source information report(s) and to determine whether the same prima facie warrants further investigation. This administrative command is not contingent upon a pre-existing, formally registered FIR or an exhaustive preliminary inquiry report, as we have held while answering Issue A.

44. Under Section 3622 of CrPC (corresponding Section 30 of the BNSS), police officers superior in rank to the officer in charge of a police station are vested with the same powers that the officer in charge may exercise within their station. Section 154 of CrPC (corresponding Section 173 of the BNSS) empowers the officer in charge to reduce every piece of information, disclosing a cognizable offence, into writing either personally or under his direction. A conjoint reading of Section 36 with Section 154 would make it clear that if the officer in charge of a police station can direct the registration of an FIR under Section 154, as a natural corollary by virtue of Section 36 CrPC, superior officers, which in the case at hand is the Superintendent of Police, are equally competent to issue such directions for registration of the FIR.

45. As a consequence of the above discussion, we are convinced that the High Court erred in holding that the Superintendent of Police must first direct the registration of an FIR and only after it is registered, he would be competent to issue an order for investigation under Section 17 of the PC Act. This

interpretation could be permissible only if the subordinates of the Superintendent of Police had a discretion to either comply with or disregard the latter's directive to register the FIR. Under the scheme of the CrPC, the automatic consequence of registration of an FIR is commencement of investigation.

The only deviation which Section 17 of the PC Act creates is that the Superintendent of Police must authorize a competent subordinate officer to commence investigation. Since the subordinate police officers are obligated to comply with the orders of the Superintendent of Police, it cannot be argued that he lacked the authority to issue directions under Section 17 of the PC Act simultaneously with the direction to register the FIR. The former interpretation is against the true intent of the PC Act and is liable to be discarded. Hence, the composite order dated 4th December 2023 issued by the Superintendent of Police under Section 17 of the PC Act, directing the registration of the FIR and authorizing investigation by the Deputy Superintendent of Police is valid and compliant with law.

46. Furthermore, it is the case of the respondent that the Superintendent of Police passed the order mechanically in typed proforma and did not provide clear, comprehensive evidence of examining the source information report, which suggests a perfunctory approach that improperly set the criminal law into motion. The High Court in the impugned judgment also made a reference to Bhajan Lal (supra) to conclude that the Superintendent of Police did not properly apply his mind to the source information report and the statutory requirements before directing the registration of FIR.

47. In the case of Bhajan Lal (supra), this Court adjudicated an issue wherein the Superintendent of Police had issued the order in a mechanical and very casual manner. The Superintendent of Police, while authorising the Station House Officer to investigate a case, had only made an endorsement to the effect 'Please register the case and investigate'. The Court, while quashing the investigation as well as the entire proceedings, held that the Station House Officer is not clothed with the valid legal authority to take up the investigation and proceed with the same within the meaning of Section 5-A(1) of the PC Act. The relevant paragraphs from Bhajan Lal (supra) are extracted below:-

"129. In the present case, there is absolutely no reason, given by the SP in directing the SHO to investigate and as such the order of the SP is directly in violation of the dictum laid down by this Court in several decisions which we have referred to above. Resultantly, we hold that appellant 3, SHO is not clothed with the requisite legal authority within the meaning of the second proviso of Section 5-A(1) of the Act to investigate the offence under clause (e) of Section 5(1) of the Act.

131. From the above discussion, we hold that (1) as the salutary legal requirement of disclosing the reasons for according the permission is not complied with; (2) as the prosecution is not satisfactorily explaining the circumstances which impelled the SP to pass the order directing the SHO to investigate the case; (3) as the said direction manifestly seems to have been granted mechanically and in a very casual manner, regardless of the principles of law enunciated by this Court, probably due to blissful ignorance of the legal mandate and (4) as, above all, the SHO has got neither any order from the Magistrate to investigate the offences under Sections 161 and 165 IPC nor any order from the SP for investigation of the offence under Section 5(1)(e) of the Prevention of Corruption Act in the manner known to law, we have no other option, save to quash that order of direction, reading "investigate" which direction suffers from legal infirmity and also the investigation, if any, so far carried out.

Nevertheless, our order of quashing the direction of the SP and the investigation thereupon will not in any way deter appellant 1, the State of Haryana to pursue the matter and direct an investigation afresh in pursuance of the FIR, the quashing of which we have set aside, if the State so desires, through a competent police officer, clothed with the legal authority in strict compliance with Section 5- A(1) of the Act.

(emphasis supplied)

48. The apparent distinction in Bhajan Lal (supra) and the case at hand, is that the Superintendent of Police in the instant case has demonstrably applied his mind and passed a well-reasoned and a speaking order directing registration of the FIR and authorised the Deputy Superintendent of Police to begin with the investigation. The Superintendent of Police received the report on 10th November, 2023, and issued the subject order on 4th December, 2023, i.e. after a gap of 24 days.

The said order not only provided details of the respondent, but it also makes a reference to the quantification of the disproportionate assets, nature of the offence along with the provisions concerned. In addition, it also referred to the provisions that empowered the Superintendent of Police to authorise his junior officer to investigate the case. The Superintendent of Police assigned a palpable reason as to why the particular Deputy Superintendent of Police was directed to investigate the case. Reference in this regard may be made to the judgment in Ram Singh (supra), wherein this Court held as follows:-

"15. We are not satisfied with the finding of the High Court that merely because the order of the Superintendent of Police was in typed pro forma, that showed the nonapplication of mind or could be held to have been passed in a mechanical and

casual manner. As noticed earlier the order clearly indicates the name of the accused, the number of the FIR, the nature of the offence and power of the Superintendent of Police permitting him to authorise a junior officer to investigate. The time between the registration of the FIR and authorisation in terms of the second proviso to Section 17 shows further the application of mind and the circumstances which weighed with the Superintendent of Police to direct authorisation to order the investigation.

(emphasis supplied)

49. Moreover, this Court in the case of Superintendent of Police, Karnataka Lokayukta v. B. Srinivas23, adjudicated on a similar factual scenario wherein the Superintendent of Police issued a verbatim, similar order as in the present case. The Court opined that the order passed by the Superintendent of Police is elaborate and the reasons are clearly discernible therefrom.

50. Therefore, in view of the discussion made hereinabove, we are of the opinion that the order dated 4th December, 2023, issued by the Superintendent of Police under Section 17 of the PC Act, is fully compliant with the law. The High Court erred in imposing unwarranted administrative frameworks that could potentially incapacitate the law enforcement agencies. Thus, the Superintendent of Police's authority to issue a composite order directing registration of the FIR and authorizing the officer to conduct an investigation is valid in the eyes of law. The said order was issued without undue haste and with due application of mind. The reasons assigned in the order dated 4th December, 2023 for entrusting the investigation to the Deputy Superintendent of Police are manifest and obvious.

Conclusion

51. In view of the above discussion, we conclude that:-

a. The High Court erred in coming to the conclusion that the order dated 4th December, 2023, passed by the Superintendent of Police, was directly passed under Section 17 of the PC Act, thereby violating the mandatory provisions of the PC Act.

b. The preliminary inquiry is not mandatory in every case under the PC Act. If a superior officer is in seisin of a source information report which is both detailed and well-reasoned and such that any reasonable person would be of the view that it prima facie discloses the commission of a cognizable offence, the preliminary inquiry may be avoided.

c. Section 17 of the PC Act relates specifically to the investigation process, and not the initial act of registering the FIR, for which it relies on the provisions of the CrPC. Hence, it places limitations on only the investigation; it does not

impede the fundamental duty of the law enforcement agency to record and register an FIR for cognizable offences.

d. On a harmonious reading of the provisions of the PC Act and the CrPC, it is manifest that the Superintendent of Police is competent to direct the registration of an FIR if he has information about the commission of a cognizable offence, punishable under the PC Act. The former is also competent to simultaneously direct the Deputy Superintendent of Police to register an FIR for the offences under the PC Act, with the understanding that the subsequent investigation will be subject to the restrictions outlined in Section 17 of the PC Act. A composite order to register the FIR and conduct investigation aligns with the statutory framework of the CrPC and the PC Act.

52. For the above reasons, we quash and set aside the judgment and order dated 4th March, 2024 passed by the High Court of Karnataka in Criminal Writ Petition No. 13460 of 2023 and restore the FIR in Crime No. 56 of 2003, pending before the 23rd Additional City Civil and Sessions Judge, Bangalore City.

53. The appeal is allowed accordingly.

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

.....J. (Dipankar Datta)

.....J. (Sandeep Mehta)

New Delhi;

February 17, 2025.

1 Hereinafter referred to as 'High Court'.

2 Hereinafter referred to as 'the respondent.'

3 Hereinafter referred to as 'CrPC'.

4 Hereinafter referred to as the 'PC Act.'

5 Hereinafter referred to as the 'KPTCL.'

6 Hereinafter referred to as the 'Superintendent of Police'.

7 Hereinafter referred to as 'Deputy Superintendent of Police.'

8 FIR in Crime No. 56 of 2003.

9 Criminal Petition No. 13460 of 2023.

10 (2021) 18 SCC 135.

11 (2022) 4 SCC 764.

12 (2019) 19 SCC 87.

13 1992 Supp (1) SCC 335.

14 (1970) 1 SCC 595.

15 (2014) 2 SCC 1.

16 (2021) 5 SCC 469.

17 For short 'BNSS'.

18 Writ Petition (Criminal) No. 15886 of 2022 (GM-RES).

19 (2000) 5 SCC 88.

20 Refer to Para 18 of this judgment.

21 (2023) 14 SCC 1.

22
36. Powers of superior officers of police.- Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

23 (2008) 8 SCC 580.

IN THE SUPREME COURT OF INDIA

State of Rajasthan
Vs.
Surendra Singh Rathore

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 16358 of 2024]

HEADNOTE – A second FIR for the same offence is impermissible but a second FIR for a different offence is permissible. The nature of the allegations in both FIRs must be examined to determine the permissibility of registering a subsequent FIR.

Circumstances when the registration of a second FIR is permissible

1. When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.
2. When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.
3. When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.
4. When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.
5. Where the incident is separate; offences are similar or different.

JUDGMENT

Sanjay Karol, J.

1. Leave granted.

2. This appeal arises out of final judgment and order dated 9th September, 2022 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in S.B.Criminal Miscellaneous (Petition) No.4366 of 2022, whereby the respondent's prayer for quashing of FIR No.131 of 2022 dated 14th April 2022 registered at District Bikaner with Police Station Pradhan Arakshi Kendra, Anti-Corruption Bureau, Jaipur, for the offences punishable under Sections 7, 7A, 8 and 12 of the Prevention of Corruption (Amendment) Act, 20181 and Section 120-B of the Indian Penal Code, 18602, was allowed. The State, aggrieved by the quashing of FIR, is before us.

3. The brief facts giving rise to the present lis are as under:-

3.1 Three persons, namely, Vipin Parihar, Chief Marketing Officer, Fern Bio-fuel Private Limited, his business partner Deven Shah and Satya Narayan Saini S.D. of Kusum Petro Chemicals, lodged a complaint with the Anti-Corruption Bureau to the effect that the respondent, who is employed as Chief Executive Officer-cum-Project Director, Bio-fuel Authority, Government of Rajasthan, allegedly demanded a bribe @ Rs.2/- per litre for the sale of bio-diesel, i.e., Rs.15 lakhs per month with a further Rs.5 lakhs for renewal of the license of the complainant. This FIR is numbered as 123 of 2022 under Sections 7 and 7A of the P.C. Act. This demand took place on 4th April 2022.

3.2 A second FIR was lodged on 14th April 2022 for the incidents which took place between 30th September 2021 to 12th April 2022 when one Mr. Shyam Prakash, Constable with the Anti-Corruption Bureau, brought information to the notice of Mr. Parsamal, DSP, that amongst other persons the respondent is indulging in taking bribes to grant licenses to run bio-fuel pumps. One Nimba Ram and Ashish were the middlemen, who were put on surveillance after due permission from the competent authority.

3.3 This FIR running into nearly 30 pages, details the alleged conspiracy of which the respondent was a part and records in considerable detail the calls received and made by the various persons involved in furtherance of the object of the conspiracy.

4. The respondent aggrieved by the registration of the second FIR, preferred a petition under Section 482 Criminal Procedure Code 19733. Grounds for seeking quashing inter alia are as follows:-

(a) No fresh incident is disclosed by the second FIR. If fresh information comes to light, it is submitted even after the final report under Section 173 Cr.P.C. has been submitted, the course to be adopted is not a fresh FIR but further investigation after due permission and then the filing of a supplementary report.

(b) The filing of a second FIR in respect of the allegations that are connected to previous allegations, for which an FIR already stands registered, would be irregular and deserves to be quashed. Reliance is placed on Babu Bhai v. State of Gujarat4. In this judgment, it is submitted that if there are two FIRs in respect of the same transaction, they would have to pass the "test of sameness". Further reference is made to T.T. Antony v. State of Kerala5, which records that a second FIR in a case which is not a cross-case, violates Article 21 of the Constitution of India.

(c) The allegations of the second FIR, it was submitted are an attempt to blow up the allegations of the first FIR.

(d) No sanction stands taken under the Prevention of Corruption Act for proceeding against the respondent.

(e) The FIR and the consequent investigation, are both against the edict of the Legislature and deserve to be quashed.

5. The arguments of the respondent found favour with the High Court. In the impugned judgment, the High Court recorded as under:

"15. In the case on hand, the prosecution case is that the petitioner was trapped while accepting bribe through his agent on 7.4.2022 for showing some favour to Mr. Vipin Parihar in discharge of his official duties, the second FIR relates to an incident dated 21.1.2022 wherein the petitioner allegedly accepted bribe from some Shekhawatji for showing him some favour in official capacity. Both are the offences are identical in nature and committed within a very short span of time. The second incident which war earlier to the subject matter of the first FIR could have been investigate in the first FIR itself as one trial of two charges was permissible under the law."

Having recorded thus, it was held that the second FIR was an abuse of the process of law. On the aspect of prior permission being required to proceed against the respondent, it was found that prior permission was a must and without the same, the impugned FIR could not have been investigated. It was with this understanding that the High Court quashed the second FIR in the exercise of powers under Section 482 Cr.P.C.

6. We have heard learned counsel of the parties and perused the written submissions filed. The sole question for our consideration is whether the registration of the subsequent FIR is legally permissible and whether the High Court was correct in exercising its inherent powers in quashing the same.

7. We find that a judgment of this court titled T.T. Antony (supra) records the position that a second FIR is not maintainable. The relevant extract is as under:

"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate.

In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in

respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case.

In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

(Emphasis supplied)

8. This Rule, however, over the years through judicial pronouncements, has lent some flexibility. Reference may be made to:

8.1 In Anju Chaudhary v. State of U.P.6, this Court dealt with the concept of a second FIR at length. We may reproduce with profit certain observations as under:

"14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officerin- charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code.

It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police.

Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is only a right to investigate in

accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence.

If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. (Ref. Reeta Nag v. State of W.B. [(2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] and Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762] of the same date.)"

(Emphasis supplied)

8.2 In Kari Choudhary v. Sita Devi7 this Court held :

"11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.

Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it."

(Emphasis supplied)

8.3 The position regarding the second FIR has been clarified by a Three-Judge Bench of this Court in Upkar Singh v. Ved Prakash8. The relevant discussion made in the judgment is extracted herein below for ready reference:

"21. From the above it is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible.

22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case.

Suffice it to say that the discussion in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the judgments in Kari Choudhary [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] and State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] . However, it must be noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way.

23. Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences.

This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person

to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible."

(Emphasis supplied)

8.4 In Babubhai (supra), it was observed that:

"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed.

However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted."

(Emphasis supplied)

8.5 In Nirmal Singh Kahlon v. State of Punjab9 this Court held, in the following terms that when a new discovery is made, the second FIR would be maintainable. It was said as follows:

"67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged."

(Emphasis supplied)

8.6 Apart from these judgments, reference can also be made to Ram Lal Narang v. State (Delhi Admn.)10; Surender Kaushik v. State of U.P.11; and P. Sreekumar v. State of Kerala12.

9. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:

9.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2 When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.

9.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5 Where the incident is separate; offences are similar or different.

10. As recorded supra, the High Court found that the two FIRs were indeed in regard to the same offence and, therefore, not maintainable, however, in our view the scope of the two FIRs, as already referred to in para 3 supra, are distinct. The FIR prior in point of time refers to a particular incident and the action taken therein is limited. The second FIR pertains to the larger issue of widespread corruption in the concerned department and, therefore, is much larger in its scope than the previous FIR.

11. Quashing of the FIR would nip the investigation into such corruption, in the bud. The same would be against the interest of society.

12. In the attending facts and circumstances, the judgment referred to in para 1, impugned herein is set aside and FIR No.131 of 2022 stands restored on the file of the Anti- Corruption Bureau, Jaipur. We direct the completion of the investigation at the earliest. Director General of Police, Rajasthan, to ensure compliance with the directions.

13. Appeal is allowed and the pending applications, if any, are disposed of.

.....J. (Sanjay Karol)

.....J. (Prashant Kumar Mishra)

New Delhi

February 19, 2025

1 P.C. Act

2 'IPC' for short

3 Cr.P.C for short

4 (2010) 12 SCC 254

5 (2001) 6 SCC 181

6 (2013) 6 SCC 384

7 (2002) 1 SCC 714

8 (2004) 13 SCC 292

9 (2009) 1 SCC 441

10 (1979) 2 SCC 322

11 (2013) 5 SCC 148

12 (2018) 4 SCC 579

IN THE SUPREME COURT OF INDIA

State of Madhya Pradesh
Vs.
Balveer Singh

[Criminal Appeal No. 1669 of 2012]

HEADNOTE – The testimony of a child witness cannot be dismissed outright because, under Section 118 of the Evidence Act, a child is competent to testify if they can understand the questions and provide rational answers. Moreover, the accused cannot benefit from a minor contradiction in the child's testimony and no corroboration of the Child is required when his/her testimony remains credible and consistent.

Summarized the law regarding the child witness testimony in the following words:-

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion. The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(IV) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(V) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VI) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(VIII) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(IX) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony;-

(i) improvisation or
(ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to

be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

- Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.
- Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(X) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XI) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness."

JUDGMENT

J.B. Pardiwala, J.:

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

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1. This appeal is at the instance of the State of Madhya Pradesh and is directed against the judgment and order dated 29.06.2010 passed by the High Court of Madhya Pradesh of judicature at Gwalior in Criminal Appeal No. 524 of 2004 ('Impugned Order') whereby the High Court allowed the appeal filed by the respondent herein and acquitted him of the offence under Section(s) 302, 201 and 34 respectively of the Indian Penal Code, 1860 (for short, the 'IPC').

A. CASE OF THE PROSECUTION

2. The deceased, namely, Birendra Kumari was married to the respondent accused. In the wedlock, two sons and a daughter named Rani were born. Rani at the time of the incident in 2003, was seven years of age.

i. The Incident.

3. On 15.07.2003 sometime during the midnight, Bhoora Singh alias Yashpal i.e., the complainant along with his father Bharat Singh; the maternal cousin brother of the deceased's father, heard cries and screams of the deceased coming from the house of the accused. After some time, the screams of the deceased stopped. At about in the morning, they learnt from the other inhabitants of the village that the deceased had died during the night and that her body had been cremated.

4. Accordingly, the complainant along with his father went to the Indar Police Station at around 9:00 AM and lodged an unnatural death report / information under Section 174 of the Code of Criminal Procedure, 1973 (for short, the 'Cr.P.C.') in connection with the death of the deceased under suspicious circumstances, which was registered in entry no. 404 of the general diary as Morgue No. 07 of 2003 dated 16.07.2003.

In the said report, the Complainants stated that on the fateful night of the incident, at around 12:00 AM, they heard the cries and screams of the deceased which eventually ceased. Shortly, thereafter they saw the accused along with his family members cremating the deceased in their field. It was further stated that when they went to the house of the accused to inquire about the incident, the daughter of the deceased (Rani) informed that her mother had died. The said unnatural death information report reads as under:-

"Informant Bhoora @ Yashpal along with his companion father Bharat Singh came to the police station and orally reported that tonight at around 12 o' clock from the house of Balveer Yadav of their village, the noise of her wife Virendra Kumari crying and screaming were coming out, after some time, the noise stopped coming, thereafter, around 3 o'clock in the night Balveer and his family members were cremating Virendra Kumari in their field, then I went to Balveer's house and inquired from her daughter Rani why dear, what happened, then she told that Mummy has died, then I got to know that Virendra Kumari has died, her body has been burnt, therefore I am reporting that an investigation be conducted. The report was read over and heard and has been written in the same manner as it was stated.

Based on the aforesaid statement, Marg No. 7/03 under Section 174 Cr.P.C. was registered, taken under investigation, and the investigation was entrusted to ASI MP Singh."

5. Upon receiving the information, enquiry was undertaken by ASI Mahendra Singh Chauhan. In the course of the enquiry, it was revealed that the respondent accused on the night of the incident had killed his wife i.e., the deceased in the porch on the first floor by throwing her to the ground and thereafter choking her neck with his leg. The enquiry further revealed that thereafter the body was cremated in the night itself with the help of his sister, Jatan Bai.

6. In view of the aforesaid, first information report bearing no. 142 of 2003 dated 20.07.2003 came to be registered against the respondent accused herein and her sister, Jatan Bai for the offence punishable under Section(s) 302, 201 read with 34 respectively of the IPC. The relevant contents of the FIR are reproduced below:-

"I am posted as Station in charge at Police Station Indar. On 16/7/03, on the basis of information received from Informant Bhoora @ Yashpal S/o Bharat Singh Yadav R/o Village Singharai, Marg No. 7/03 was registered in the General Diary Entry No. 404 and taken under investigation. Its investigation was conducted by ASI Mahendra Singh, on receiving the investigation report, it was attested by me, where offence under Section 302, 201, 34 IPC were found proven against Balvir Singh Yadav and Jatan Bhai, therefore, Crime No. 142/03 registered against both the accused under relevant offence sections and taken under investigation. Copy of Marg Intimation and Inquiry Report is as follows:

Informant Bhoora @ Yashpal along with his companion father Bharat Singh came to the police station and orally reported that tonight at around 12 o' clock from the house of Balveer Yadav of their village, the noise of her wife Virendra Kumari crying and screaming were coming out, after some time, the noise stopped coming, thereafter, around 3 o'clock in the night Balveer and his family members were cremating Virendra Kumari in their field, then I went to Balveer's house and inquired from her daughter Rani why dear, what happened, then she told that Mummy has died, then I got to know that Virendra Kumari has died, her body has been burnt, therefore I am reporting that an investigation be conducted.

The report was read over and heard and has been written in the same manner as it was stated. Sd/- Yashpal Singh. Based on above information, Marg No. 7/03 under Section 174 Cr.P.C. was registered and taken under investigation and investigation was entrusted to ASI M.S. Chauhan. Investigation Report - Respected SO Police Station Indar Subject: In relation to the commission of offence under Section 302, 201, 34 IPC on the investigation of Marg No. 7/03 Section 174 Cr.P.C., it is stated that on the basis of order issued by his good-self, I ASI Mahendra Singh conducted the investigation of Marg No. 7/03 under Section 174 Cr.P.C. after reaching the spot Village Singharai, during the course of investigation, recorded the statement of complainant Bhoora @ Yashpal Singh Yadav, Kumari Rani, D/o Balvir Singh Yadav, Bharat Singh Yadav R/o Village Singharai and Badal Singh Yadav, Police Station Badarvas.

On spot map of the place of incident was prepared and seizure proceedings were conducted, from the investigation up till now and the statement of Kumari Rani Yadav, it has been found that Balvir Singh Yadav husband of the deceased Virendra Kumari murdered her by slamming Virendra Kumari on the floor of the porch of the house and choked her neck by pressing his foot and Kumari Jatan

Singh helped her brother Balvir Singh in the murder, later on, during the night itself, Balvir Singh Yadav took the dead body of his wife on his shoulders to his field and discreetly burnt it. Therefore, prima facie the offence under Section 302, 201, 34 IPC has been found to be proven against Balvir Singh Yadav S/o Samadar Singh Yadav, Jatan Bhai D/o Samadar Singh Yada, residents of Singharai. Therefore, it is requested, the investigation report for further action along with case diary is forwarded to you. Mahendra Singh ASI Police Station Indar."

7. In the course of the investigation, the statement of the complainant and his father were recorded, spot map / site plan of the place of occurrence was prepared along with the seizure memo for the bones and burnt bangles found at the place of cremation of the deceased along with a plastic diesel can in the presence of the complainant and the village watchman; Narain Singh. Accordingly, on 22.07.2003 the respondent accused was arrested.

8. Upon conclusion of the investigation, charge sheet was filed on 30.07.2003 against the respondent accused, Balveer Singh and the co-accused; Jatan Bai for the offences Section(s) 302, 201 read with 34 of the IPC. On 03.08.2003, the police statement of the child witness; Rani i.e., the daughter of the respondent accused and deceased was recorded. The investigation revealed that the co-accused at the time of incident was a juvenile, accordingly, her trial was separated. The case against the respondent accused was committed for trial to the Court of Session and registered as S.T. No. 197 of 2003. Charge was framed against the respondent accused for the offence enumerated above by the Addl. Session Judge to which the respondent accused pleaded not guilty and claimed to be tried.

ii. Oral Evidence on Record.

9. The prosecution examined a total of 8 witnesses in support of the charge. Narain Singh (PW2) the watchman of the village was examined as a panch witness to the seizure memo and for establishing the accounts of the fateful night of the incident. Bhoora Singh alias Yashpal (PW3) and Bharat Singh (PW4) were examined to establish the chain of events when the incident occurred along with Badal Singh (PW5), the father of the deceased to prove the harassment caused by the respondent accused towards his deceased wife. Rani (PW6) the daughter of the respondent accused and the deceased was examined as the sole eye-witness to the incident. Mahender Singh Chauhan (PW7) and Rajender Kumar Chhari (PW8) were examined to prove the contents of the unnatural death report, the FIR and the seizure memos. Mahesh Kumar Mishra (PW1) the Patwari of the village was also examined to establish the place of occurrence and cremation of the deceased.

10. Rani (PW6), the daughter of the accused and deceased and the sole eyewitness to the incident deposed that on the fateful night of the incident, the deceased was sleeping in the open courtyard of the house. She deposed that at that time, the deceased, her two infant brothers and her aunt Jatan i.e., the coaccused were present in the house. At that time, the respondent accused came and grabbed the deceased from her neck and hit a blow on her body with a stick causing her to fall. Thereafter, the respondent accused exerted pressure on her neck with his feet and as a result the deceased screamed for help.

When she ran to help her mother, the respondent accused slapped her and the coaccused pulled her away. She deposed that she did not witness what happened next but later she saw her mother dead and her body being taken by the respondent accused to the barn. She further deposed that early in the morning she found the body of her mother burning. She deposed that she had informed Bhoora Singh (PW3) in the morning that the deceased had been killed. In her cross examination, she denied the suggestion of being tutored at the instance of PW3 or PW4.

She denied that Bhoora Singh and Bharat Singh had told her to repeat or memorize the police statement given by her. She admitted not having told the police about the respondent hitting the deceased with a stick before attempting to choke her. She further denied the suggestion that the deceased was suffering from ailment, clarifying that her mother had fallen sick only once i.e., three-months before the incident took place. She further revealed that when her mother asked the respondent accused to take her for treatment, the accused hit her. Apart from this, nothing substantial was elicited through her cross-examination.

11. Mahesh Kumar Mishra (PW1), the village patwari deposed that he had assisted the police in preparation of the site-map of the place of incident and identified his signatures on the same. In his cross, he stated that there are around 5-6 houses between the house of the Complainant and the accused. He further stated that there is also a Basti between the two houses where approximately 100 people live. In the last, he admitted that cremations are often done by the people of the village in their own fields or barns, wherever they find space. Apart from this, nothing substantial could be elicited from his cross-examination.

12. Narain Singh (PW2), the village chowkidar deposed that when the police checked the verandah of the deceased, they could find nothing and that the bangles belonging to the deceased were recovered and collected from the place where the body was burnt. He identified his signatures on the seizure memo drawn of the ashes, bones and bangles belonging to the deceased as-well as a green coloured diesel cannister. In his cross, he stated that the house of the Complainant is 5-6 furlongs away from the accused's house making it impossible for any noise of shouting to travel between them.

He further admitted that there are houses of 150 people approx. between the two places. In his cross he also stated that, 4-5 years ago, there had been a dispute between the complainant and the accused, because of which they were not on talking terms. He also deposed that there is no designated area for cremation, and people usually hold it in their own fields. In the last, he also admitted that when he went to the house of the accused, nothing incriminating was noticed.

13. Bhoora Singh (PW3) deposed that the respondent accused and the deceased got married sometime in 1990 but their relationship turned sour about a year later. He deposed that the respondent accused had demanded a motorcycle, for which the deceased's father i.e., PW5 had arranged a certain sum of money. He further deposed that the deceased had also previously instituted a case seeking maintenance from the accused. He deposed that he lived near the house of the deceased and the accused and that on the fateful night of the incident, he and his father heard the cries and screams of the deceased for about an hour, and assumed that there had been a quarrel between the two.

When the screams stopped, they thought that the altercation had ended. However, the next morning they came to learn that the deceased had died in the night and that her body had been cremated in the accused's field. When he along with his father reached the spot where the body of the deceased was burning, the other inhabitants of the village gathered around. He deposed that the cremation of the deceased was unusually suspicious as typically the entire village would be called to attend the cremation, which was not the case here. He also recounted that two-three days before the incident, he had met the deceased who in turn had requested him to inform her father that there had been a fight between her and the accused.

In the last, he deposed that, when the police reached the place of incident, they collected the ashes and remains of the deceased, her bangles and a diesel canister. In the cross, he denied the suggestion that he could not have heard the cries of the deceased due to the distance between their houses, and stated to have heard the screams between 12:00 to 1:00 AM. He admitted not calling the other village inhabitants upon hearing the screams as it was common for the accused and the deceased to often fight. He denied having gone to the house of the accused at 3:00AM in the night and further denied stating so when confronted with his statement recorded in the morgue enquiry proceedings.

He deposed that he came to know that the deceased had died only in the morning after he was informed by other people residing in the village at around 5:00 AM. He further deposed that when he reached the spot at around 6:00 AM with his father, the accused was not present however, he noticed that the other village inhabitants had already gathered. He admitted that he was not able to remember their names.

He further deposed that the body of the deceased had been burned in the night itself but admitted not knowing who was responsible for it. He deposed that he only saw the burnt body of the deceased in morning and further admitted that none of the other villagers raised any issue. He stated that he met the daughter of the deceased i.e., PW6 after returning from the field. He in the last denied the suggestion that he was falsely deposing on account of an ongoing enmity.

14. Bharat Singh, PW4, deposed that withing two years of marriage the relationship between the deceased and accused turned sour. The accused would often harass the deceased with demands for dowry. The accused had already obtained a ring and a sum of money for a motorcycle from her father. He further deposed, that on the date of incident, they had heard cries and screams of the deceased in the night. When the screams eventually stopped, he along with his son went off to sleep. Later they came to know that the deceased had been killed.

He deposed that they saw the wood and ashes lying near the field of the accused from a distance. He deposed that they then went to the police to file a report, after which he spoke to the deceased's daughter who informed that the accused had killed the deceased. In the last, he deposed that usually cremation is not performed during the night hours and that all the inhabitants of the village would join the funeral. However, that was not the case and the accused surreptitiously burnt the body of the deceased on the fateful night of the incident. In his cross when confronted with his police statement, he denied the suggestion that he had not stated before police about the ring given to the accused.

He admitted that he had not personally seen the money being given to the accused and rather had only heard about it from PW5. He acknowledged that there are a couple of houses between his place and the accused's house. He further admitted that, he could not identify whose screams they heard on the night of the incident, but later came to know from other villagers that it was the deceased. He denied the suggestion that he and his son had gone to the accused's house at night and reiterated that they learnt about the incident only in the morning. He further admitted to have only seen the wood pyre burning from a distance and as such was unable to recollect who all had gathered.

He deposed that he had spoken to the deceased's daughter, after they brought the police with them, who then recorded his statement along with the statements of PW3 and PW6 respectively. He further denied the suggestion that there was no designated crematorium in the village. He also denied the suggestion that he was deposing falsely due to the strained relations with the accused, however, he admitted that two to four months before the incident, although the accused had stopped visiting him yet he used to meet the accused's father occasionally. Apart from this, nothing substantial was elicited from his cross-examination.

15. Badal Singh, PW5 deposed that the accused had made demands for a motorcycle within 10-12 days of the marriage, for which he gave him a sum of Rs. 45,000/-. He further stated that the accused initially took care of the deceased but later began harassing her to the extent he used to beat her. He stated that he had filed a case against the accused when he had threatened to kill the deceased, and further identified the certified copy of the same in the exhibits. He also deposed bringing medicines and food for the deceased. He had also filed a maintenance case and identified the certified copy of the same in the exhibits. He deposed that on the day of the incident, the deceased had already been cremated by the time he arrived.

In the cross, he admitted not mentioning to the police about the gold ring given towards dowry as it was a customary practice. He further deposed that on one occasion the accused had beaten the deceased in front of the PW3 & PW4 respectively, which had prompted them to take her to the police to lodge a complaint. He admitted that there is a village settlement or basti of approximately 100 lodgings between the house of the Complainant and the accused. He admitted that his relationship with the accused had strained due to the latter's constant demands and torturing of the deceased. Apart from this, nothing significant could be elicited through his cross-examination.

16. Mahendra Singh, PW7, the Assistant Sub-Inspector (ASI), stated in his deposition that on 16.07.2003 he was entrusted with the investigation of case under Morgue No. 07/2003. He further stated, that later on the same day, he prepared the site-map of the place of incident based on PW6's indications. He further seized and sealed pieces of broken bangles belonging to the deceased and the soil near the place of occurrence. He deposed that he then reached the field where the body of the deceased had been burnt, and collected her remains in the form of ashes and burnt pieces of bangles along with a diesel cannister.

He further deposed that he then proceeded to record the statements of PW3, PW4, PW5 and PW6 respectively. In the last, he deposed that after the investigation he prepared a report prima facie opining that the deceased had died under suspicious circumstances and thereby suggesting the commission of offence under Section(s) 302, 201 read with Section 34 of the IPC by the accused persons. He further deposed that he accordingly handed over the report along with the morgue case diary to PW8, the Sub-Inspector, for further action.

In his cross, he admitted that the statements recorded during the morgue enquiry were not produced along with the challan as he had carried out investigation only till 17.02.2003 after which the investigation was undertaken by PW8. He further admitted that he did not record the statements of both the brothers of PW6 as they could not be found. Apart from this, nothing substantial could be elicited through his cross-examination.

17. Rajendra Kumar Chhari, PW8, the Sub-Inspector (SI), deposed that upon completion of the investigation of case under Morgue No. 07/2003, he registered the First Information Report (FIR) as Crime No. 142 of 2003 against the accused persons. He further stated that during the investigation, he recorded the statements of PW3, PW4, PW5 and PW6 respectively, and that he neither added nor deleted anything from their police statement. In his cross, he stated that the statements recorded in morgue case diary by PW7 were handed over to him.

He further admitted that the statements of PW6 Rani and her two younger brothers were not recorded during the morgue enquiry as well as in the course of the investigation as they were just 3-4 years old and found to be not competent. He further stated that the police statement of PW6 had been recorded on 03.08.2003 at the house of her maternal grandfather i.e., PW5. When confronted with the contradiction brought on record in PW3's testimony with his police statement, he stated that the PW3 had categorically stated in his police statement visiting the house of the accused at night and inquiring with PW6 as regards her mother's death and thus proving the said contradiction. He further admitted in his cross, that PW4 had not mentioned anything about the accused taking a ring from the deceased's father in his police statement.

He also admitted, that PW6 in her police statement had neither mentioned that the accused hit the deceased with a stick nor was any such stick recovered. However, he confirmed that PW6 in her statement had mentioned about the accused placing his leg on the neck of the deceased, but admitted that she did not use the word 'shoe' or indicate whether the accused was wearing one. Nevertheless, he reiterated that PW6 had mentioned in her statement that she was sleeping with the deceased in the veranda and that the accused had placed his leg on the neck of the deceased. In the last, he further admitted that PW6 had not stated in her police statement that the accused's mother had mixed something in the food and had offered it to the deceased.

18. Upon completion of the recording of oral as well as documentary evidence, the further statement of the accused was recorded under Section 313 of the Cr.P.C., in which he claimed himself to be innocent and had been falsely implicated in the alleged crime. When asked about PW6's testimony that she saw him reach the courtyard where the deceased was allegedly sleeping and the incident took place, the respondent accused answered that all the family members were sleeping inside the house.

When questioned about PW6's deposition that she saw him pressing the deceased's neck with his leg on the night of the incident, the respondent accused answered that it was wrong. Similarly, the respondent accused refuted the PW6's deposition that she saw the deceased die at the spot and later found her body

cremated the following morning, and dismissing it as wrong. The relevant extracts of the respondent accused's further statement read as under:-

"Que. No. 25: Witness Rani (PW-06) states that Birender Kumari was her mother you are her father. What do you want to say?
Ans: It is right.

Que. No. 26: This witness further states that on the day of incident her mother was sleeping in the corridor and this witness was not sleeping by that time. You came from the Khera in the night. What do you want to say?
Ans: It is wrong.

Que. No. 27: This witness further states that she was sleeping nearby in the Tibbara. What do you want to say?
Ans: It is wrong.

Que. No. 28: This witness further states that you caught 8 Birender Kumari from her neck. Then her mother rant towards the door. You attempted a blow of Lathi on her which hit her on her back so her mother fell down. Then you caught her mother from the neck. What do you want to say?
Ans: It is wrong.

Que. No. 29: This witness further states that her mother had fell down in the Dehri and you kept your leg on her neck. You were wearing shoes. What do you want to say?
Ans: It is wrong.

Que. No. 30: This witness further states that her mother said, "Rani save me". So, this witness rant towards here and you slapped on her cheek. What do you want to say?
Ans: It is wrong.

Que. No. 31: This witness further states that then her Bua Jatan caught this witness. What do you want to say?
Ans: It is wrong.

Que. No. 32: This witness further states that you 9 reached in the courtyard and Bua was also sleeping in the courtyard at that time. What do you want to say?
Ans: All were sleeping in the house.

Que. No. 33: This witness further states that her mother died on the spot. She saw the dead body of her mother. What do you want to say?
Ans: I don't know.

Que. No. 34: This witness further states that you took the dead body of her mother in the Kher during the night to cremate her and after cremating her you fled away from there. What do you want to say?
Ans: It is wrong.

Que. No. 35: This witness further states that you caught her mother before this witness and when she went to the field in the morning her mother was burning there. What do you want to say?
Ans: It is wrong.

Que. No. 48: Why do the witnesses speak against you?
Ans: They are afraid of the police.

Que. No. 49: Do you want to adduce defence witness?
Ans: Yes, Sir.

Que. No. 50: What do you want to say in defence?
Ans: I am falsely implicated in the case."

iii. Trial Court's Judgment & Order.

19. Upon appreciation of the oral as well as documentary evidence on record, the Trial Court vide its final judgment and order dated 09.08.2004 passed in Sessions Trial No. 197 of 2003 reached the conclusion that the respondent accused herein was guilty of the offence punishable under Sections 302, 201 read with 34 of the IPC. The findings recorded by the Trial Court in its judgment and order of conviction can be better understood in five parts:-

(i) First, it took note of the fact that the deceased was cremated in the night itself without informing her family members and the villagers too. This fact stood proved through the testimony of PW6 who had deposed to have seen the accused take the deceased away. The Trial Court believed the version of the PW3 and PW4 who later found the body of the deceased burning in the field of the accused in the morning and also the say of the PW7, the ASI who conducted the inquest enquiry.

The clandestine manner in which the body of the deceased came to be cremated was taken by the Trial Court as one of the incriminating circumstances against the accused establishing the death of the deceased was not natural. The Trial Court considered the strained relations of the accused with the deceased. Another incriminating circumstance against the accused that was looked into was the fact that the accused fled away from the place of incident after cremating the deceased. The relevant observations read as under:-

"13. In evidence this fact is proved that the deceased Birender Kumari who is the wife of the accused, her cremation was done in the night in the fields of Samunder Singh and in evidence it has come that without informing the villagers or the family of the deceased she had been cremated.

20. The witness has stated that when her paternal aunt caught hold off her, after that she does not know what happened to her mother. She had seen her mother dead. Her father took her mother to the fields to burn her body which is at a little distance from the house. In the night itself her other was burnt after which her father ran away. The witness has stated that in her presence only her mother had been taken away but she was not burnt in her presence. When she went to the fields in the morning at that time her mother was burning there.

22. PW-3 Bhoora has stated that Birender Kumari is his .. sister being the daughter of his maternal uncle. On the day of incident in the night he and his father were sleeping in their house upon which they had heard voices of Birender Kumari crying. In the morning when he and his father got up then they came to know that Birender Kumari has died and that she has been burnt by the accused clandestinely in their fields itself.

When he and his father and the entire village went to see then the dead body was burning which fact is confirmed by Bharat Singh also. The accused used to harass and the motorcycle had not been given. He used to give beatings upon which the deceased used to come to him. Once the accused beat her very badly and did- not give her anything to eat also. Upon whiCh she had filed a case of maintenance in the JMFC Court, Kolaras of which the certified copy is Ex.P-8. The girl had been given beatings, the true copy of which report is Ex.P-9.

25. The deceased Birender Kumari in the night itself was taken to the fields and she was cremated which fact is confirmed apart from PW-3 Bhoora and PW-4 Bharat Singh, from the statement of Mahender Singh also that after the enquiry of report Ex.P-7 he had gone on the spot. The dead body of deceased Birender Kumari which was burnt in the fields of Balvir and Samunder Singh in which the bones of the deceased, her ashes and the burnt pieces of bangles were seized from the spot.

29. The accused had carried Birender Kumari to the fields in relation to which direct evidence has not come. It has come in the statement of Rani that the accused took her mother to the fields and Jatan had told that her mother had been taken for cremation. In the fields the deceased was cremated in the night which circumstance also goes against the accused. If the death of deceased Birender Kumari was of ordinary nature then what was the reason that in the night without informing the reason to the family of the deceased she was cremated in the night especially when prior to the incident itself the mutual relations of the accused and

deceased were not good and according to Ex.P-8 & P-9 the case in relation to not giving beatings and maintenance had been filed by the deceased in the Court.

Another circumstance which indicate the involvement of the accused in the incident is that after cremation, according to Bhoora and Bharat the accused was not present in the fields. It has also come in the statement of Rani that accused and Jatan had fled from the spot. According to the arrest memo the accused has been arrested on 22.08.03. If in actual the accused was innocent then he would not have cremated the dead body of his wife clandestinely in the night without informing anyone nor he would have fled from the spot."

(Emphasis supplied)

(ii) Secondly, the Trial Court in order to ascertain how and in what manner the incident had taken place which led to the death of the deceased, accepted the testimony of PW6 to be true, trustworthy and reliable. The Trial Court believed the version of PW6 that her mother was sleeping in the courtyard, when the accused came and caught hold of her. The deceased tried to escape but fell down upon which the accused compressed her neck with his leg. The Trial Court recorded that PW6 had in clear terms categorically deposed that she saw her mother die on the spot itself, however had no idea what transpired thereafter except that the accused carried her body to the field. The relevant observations read as under:-

"19. Now it has to be seen whether according to the version of the prosecution what incident had taken place in the room of the accused and in what manner the incident took place, in relation to it the evidence which has been led from it whether the version of the prosecution can be believed or not?

20. Rani (PW6) aged about is aged about 7-8 years and is the daughter of deceased and accused. This witness has stated in her chief that on the date of incident she was sleeping with her mother and brothers Sandeep and Chotu. Her mother was in the courtyard and she herself was sleeping in the open room. The accused caught hold off her mother by her neck upon which her mother ran towards the door upon which her father caught hold off her and L gave a lathi blow to her mother which landed on her back. Her mother fell down upon which, her father caught hold off the neck of her mother.

Her mother fell on the threshold. Her father put his leg on the neck of her mother. Her mother shouted "save me Rani" upon which she ran to save her but her father / accused gave her a slap. Her Bua/paternal aunt caught hold off her. The witness has stated that when her father came at the courtyard, at that time her paternal aunt was also sleeping in the courtyard and she does not know what happened after it. The police had come in the morning. Her mother had died there itself.

The witness has stated that when her paternal aunt caught hold off her, after that she does not know what happened to her mother. She had seen her mother dead. Her father took her mother to the fields to burn her body which is at a little distance from the house."

(Emphasis supplied)

(iii) Thirdly, the Trial Court found that although there had been a delay in recording the statement of PW6 under Section 161 of the Cr.P.C., yet the same, by itself, cannot be a ground to reject or doubt her testimony as an afterthought or unbelievable. No question was put by the accused to the IO in this regard nor any suggestion was put to the IO that he deliberately recorded as belated statement only to create evidence against the accused. It further noted that the testimony of both the PW5 as-well as PW6 had been recorded on the same day. The Trial Court observed that even before recording of statement of PW6, the morgue case No. 70/2003, the enquiry report and the FIR had mentioned PW6 as the main witness to the incident. Thus, it held that it cannot be said that there was any attempt to falsely project her as an eye-witness to the incident. The relevant observations read as under:-

"18. In his cross examination the witness has stated that the IO investigating the morgue had given the morgue diary with the enquiry report. The-statement of Rani has been recorded by the IO on 03.08.03. On the same day the statement of his maternal grandfather PW-5 Badal Singh had also been recorded the statement of both of them had been recorded in the house of Badal Singh. The registration of the case on the morgue enquiry report after delay by the IO or in relation to the recording of the statement of Rani after delay on 03.08.03 no questions have been put.

Therefore, only on this ground that the IO recorded the statement of Rani on 03.08.03 and that her statement is an afterthought and on the basis of it the accused is not guilty, this statement is not believable and I do not agree with this argument. in relation to the IO recording the statement of Rani after delay no question has been put, therefore, no benefit from the same can be given to the IO. There are no such facts in the evidence that the IO deliberately recorded the statement of Rani after delay under section 161 Cr.P.C., so that she may be projected as an eye witness as is mentioned in the morgue intimation Ex.P-7, morgue enquiry Report Ex.P-11 and the FIR Ex.P-12 that Rani is the main witness in the incident."

(Emphasis supplied)

(iv) Fourthly, the Trial Court upon evaluation of the testimony of PW6 found the same to be reliable and inspiring confidence. It found that the presence of PW6 as

an eye-witness to the incident was natural and believable, as it is common for a child of her age to be sleeping with her mother in the night. It further noted that the PW6 had been cross examined at length for approximately 1.5 hours, and her demeanour all throughout was observed and the same suggested that she was not tutored or deposing falsely.

In the absence of any contradictions in the form of material omissions, her testimony cannot be discarded solely because she resides with her maternal grandfather or that she hates the accused. It further found that although the statement given by her during the morgue enquiry had not been produced by the prosecution, yet the same, by itself, is not fatal as no demand had been made by the accused to bring the same on record. Moreover, the Trial Court found that in both morgue inquiry report and the FIR the factum of PW6 stating that the accused killed the deceased by putting his leg on her neck is clearly recorded. The relevant observations read as under:-

"17. First of all Rani was present on the spot and whether she is actually an eye witness to the incident, this fact has to be seen. In the statement of Rani in para no.1 it has come that Birender Kumari was her mother. On the day of incident her mother was sleeping in the courtyard and near her in open room this witness was sleeping. This witness has stated that she has two younger brothers of whom the elder is Sandeep who used to sleep with Jatan and the younger is Chotu who used to sleep with her mother and she used to sleep alone. At the time of incident her mother was feeding milk to her younger brother when her father came. Rani was present with her mother on the date of incident. There appears to be no reason to disbelieve her statement which is natural that a minor child was sleeping with his mother in the night.

18. The statement of Rani during investigation was recorded by PW-7 Mahender Singh. It is correct that the statements recorded during morgue enquiry have not been produced in evidence but Mahender Singh during his cross has stated that in the statement during morgue enquiry which he had recorded, his police diary is with the police. On behalf of the accused no demand has been made for the bringing on record of those statements in the case diary that statement is annexed according to which the statement of Rani has been recorded on 16.02.2003. After that on the morgue enquiry report the crime was registered on 20.02.2003. As has been stated by PW-8 Rajender Chhari that after recording the FIR Ex. P-12, its copy was sent to JMFC, Kolaras U/s 157 Cr.P.C. which is Ex.P-13. This fact has not been challenged during cross examination.

27. Here it will be proper to mention that PW-6 Rani has been cross examined at length and according to the record her statement was started at 12:45PM and she was cross-examined till 02:30PM and her cross examination no such fact has come which may warrant that she has deposed falsely or that she has been

tutored. She has been found to be present on the spot. there are no clear contradictions in the statements of PW-6 Rani. Her evidence appears to be believable. Her present on the spot and the circumstances of the incident are substantially proved.

Only on the ground that the Rani resides with her maternal grandfather and hates her father and does not want to reside with her and after the death of mother she is residing with her maternal grandfather only, her statement cannot be disbelieved. The statement of Rani was recorded immediately after the incident at the time of morgue enquiry which fact is proved from evidence. Even if on behalf of the accused her statement has not been called in evidence, after that the statement of Rani was recorded during the investigation on 03.08.03 as it has come alone. The reason of delay has not been asked from the IO . Only on that ground her statement given in the Court cannot be disbelieved.

28. The statement given by Rani in the Court where the incident is stated to have taken place and the manner in which the accused caused the death of Birender Kumari, there is no reason to disbelieve the same. It is correct that Bhoora was not told by Rani that the death of Birender Kumari has been caused by the accused or that in what manner, her death was caused but in the morgue enquiry report, FIR and statement section 161 Cr.P.C. Rani had stated the manner in which the accused put his leg on the neck of the deceased and caused her death which fact is confirmed from the statement of Rani given in the Court."

(Emphasis supplied)

(v) Lastly, the Trial Court also found the testimony of PW6 to be sufficiently corroborated with the other materials on record. It noted that the version of PW6 that the deceased stopped screaming after the accused pressed her neck with his leg is corroborated with the testimony of PW3 and PW4 respectively. Similarly, her version, that in the morning she told PW3 that the deceased had been killed and that she had found the burnt bangles of the deceased stands corroborated with the testimony of PW3. The relevant observations read as under: -

"16. It is clear that on the statement of a child witness reliance should not be placed in the absence of corroboration. In relation to the statement of a child witness the real test is that as to what extent a child witness remains constant on his statement and in what manner a child witness faces the cross-examination and what extent the statement given by him find a suitable place in the other evidence and the circumstances of the case. In view of these principles the investigation of the evidence given by PW-6 Rani is necessary.

20. When she went to the fields in the morning at that time her mother was burning there. The witness has also stated that she had met Bhoora who is the

nephew of the maternal grandfather upon which she had told him that "mother has been killed". She had told this fact to Bhoora in the morning when the police had come. The witness has stated that the bangles of her mother were lying in the courtyard.

26. Rani has also stated that the accused on the day of incident after putting his leg on the neck of mother had pressed it and she had seen her mother dead, upon which there is no reason to disbelieve the same. From the statement of PW-7 Mahender Singh as it has come above, he had recorded the statement of Rani during morgue enquiry and it has come in para 4 of the statement of Bharat Singh that the police had talked with Ranj- and had recorded her statement on the same day. This statement of Rani that she told to Bhoora that her mother has died is confirmed from the statement of Bhoora. The statement of Rani that when her mother had stopped screaming, this fact is confirmed from the statements of Bhoora and Bharat also that in the night the cries of Birender Kumari was heard and after sometime the voice has stopped."

(Emphasis supplied)

20. Accordingly, the Trial Court vide its judgment and order dated 09.08.2004 in ST No. 197 of 2003 held that the prosecution had succeeded in proving its case beyond a reasonable doubt, and convicted the respondent accused for the offence punishable under Sections 302, 201 read with 34 of the IPC. The operative portion of the order reads as under:-

"30. In view of the abovementioned entire facts Rani who is the eye witness of the incident and in view of the circumstantial evidence in which the deceased has been cremated, the prosecution has succeeded in proving its case the accused Balvir pressed the neck of his wife with his leg due to which she died and in order to hide that evidence he along with the co accused went to the fields with the dead body of the deceased Birender and cremated her without informing anyone. 32. In view of the abovementioned facts I find the accused guilty of the offence punishable under section 302 read with section 201/34 IPC. In order to hear the accused persons on the question of sentence, at this stage the decision is deferred."

21. The Trial Court sentenced the accused to undergo rigorous imprisonment for life with fine of Rs. 1,000/- for the offence punishable under Section 302 IPC and four years of rigorous imprisonment along with fine of Rs. 2,000/- for the offence punishable under Section 201 of the IPC.

B. IMPUGNED ORDER

22. The accused convict being dissatisfied with the judgment and order passed by the Trial Court, went in appeal before the High Court by way of Criminal Appeal

No. 524 of 2004. The High Court vide its impugned final judgment and order dated 29.06.2010 allowed the appeal and acquitted the respondent accused. The impugned judgment and order of the High Court is in three-parts. In other words, the High Court allowed the appeal of the accused and set aside the Trial Court's order of conviction on three grounds:-

(i) First, the High Court held that although PW6 was found to be competent to depose, yet her testimony appeared to be very shaky not inspiring confidence, more particularly, in view of the inordinate delay of 18-days in recording her police statement under Section 161 Cr.P.C. The High Court took the view that the Investigating Officer (for short, the "I.O.") was aware that PW6 was a very important witness, yet for reasons unknown, her statement was not recorded immediately. Considering the delay, the High Court took the view that the possibility of tutoring cannot be ruled out, more particularly, since PW6 was at that time residing with PW3 i.e., the Complainant who is at inimical terms with the accused.

It also held that even in the morgue inquiry report, PW6 never mentioned anything that would point a finger against the accused herein, thus, reinforcing the fact that PW6 had been tutored, as otherwise she would have mentioned about the accused killing the deceased in the said report, and this explains why PW6 had earlier simply stated that "her mother had died". The relevant observations read as under: -

"15. In the present case, from the testimony of the sole eyewitness Rani who has been examined as PW6 and who is daughter of the deceased and appellant, it is borne out that at the relevant point of time her age was seven years. We have no scintilla of doubt that the child witness is competent witness and his/her evidence cannot be thrown out just like a waste paper in a dustbin, merely because the witness happened to be a child witness, but, it is equally true that the testimony of the . child witness should be found to be clear, cogent and trustworthy and he or she should not have been tutored or her testimony should not be unnatural. By keeping this proposition in our mind we would like to scan the testimony of this witness Rani (PW.6).

16. The case diary statement of this witness (Ex.D.2) was recorded on 3.8.2003 viz. after 18 days of the incident. At this juncture, we would like to mention that on the very next date of the incident i.e. 16.7.2003 it already came into the knowledge of the investigating agency that after enquiring the incident by complainant Bhura alias Yashpal (PW.3) from this child withess the merg report (Ex.P. 7) was lodged at 9:45 AM. Hence, why the statement of this witness was not recorded earlier to it, we are unable to digest. The case diary statement (Ex.D.2) of this witness was recorded after considerable long period on 3.8.2003, and hence, it cannot be ruled out that this child witness was tutored particularly

when she was residing with her maternal uncle and it is borne out from the testimony of complainant Bhura alias Yashpal (PW.3) who is also the maternal uncle of this witness that they are in inimical terms with the appellant.

17. Since it is borne out from the testimony of complainant Bhura alias Yashpal (PW.3) that there is enmity between appellant and his in-laws and the case diary statement (Ex.D.2) of Rani (PW.6) was recorded on 3.8.2003 at the residence of' her maternal grandfather, according to us, the possibility of tutoring her cannot be ruled out, and therefore, according to us, it would be hazardous to place reliance on the statement of this witness and to convict the appellant on her solitary statement.

19. Bhura alias Yashpal (PW.3) (who is in inimical terms with appellant) has stated in the merg report that he saw appellant and his family members cremating the deceased at 3:00 in the late night and thereafter he went to the house of the appellant and enquired from the child witness Rani (PW.6) that what has happened and this much only was told by her that her mother had died. Nowhere in the merg report it has been mentioned that Rani (PW.6) has stated anything accusing the appellant since it did not find place in the merg report. For this reason also we find that if the case diary statement (Ex.D.2) of Rani (PW.6) was recorded on 3.8.2003 she was already tutored because if she would have stated of the same night that appellant had killed the deceased, certainly this fact should have been mentioned in the merg report."

(Emphasis supplied)

(ii) Secondly, the High Court observed that although the police had recorded PW6's statement during the morgue inquiry immediately after the incident, yet the accused never came to be arrested on the strength of the said statement. It further observed that the respondent accused came to be arrested on 22.08.2003, only after the statement of PW6 had been recorded under Section 161 of the Cr.P.C. on 03.08.2003. This according to the High Court indicates that prior to 03.08.2003 there was no evidence against the accused sufficient enough to effect his arrest. This necessarily would lead to a legitimate inference that the statement of PW6 recorded during the morgue enquiry must have been unfavourable to the prosecution & therefore, was suppressed during the trial. The relevant observations read as under:-

"17. In the present case the appellant was arrested on 22.8.2003 as it is borne out from the judgment of the learned Trial Court, and therefore, according to us till 3.8.2003 thee was no material and evidence against the appellant with the investigating agency to arrest him. It is borne out from the testimony of the investigating officer that the merg statements were recorded and, according to us, since the appellant was arrested only on 22.8.2003 and earlier to the statement

recorded under section 161 of Cr.P.C. of Rani (PW.6) on 3/8/2003, there was no evidence against the appellant with the investigating agency, and therefore, in these state of . affairs, according to us, the merg statements were quite relevant and the same have been suppressed by the investigating agency because they must be, against the prosecution."

(Emphasis supplied)

(iii) Lastly, the High Court held that apart from the oral evidence of PW6, being unreliable there were other reasons to extend the benefit of doubt to the accused, more particularly the contradictions in the form of material omissions in the testimony of PW3 and the fact that he was at inimical terms with the accused. It observed that the PW3 when confronted with his statement in the morgue report, he denied having stated that he went to the house of the accused at 3:00 AM in the night.

He had further stated that during the cremation of the deceased, the other inhabitants of the village were also present and that none of them entertained any doubt over the death of the deceased nor did he interact with the accused. Thus, the High Court took the view that it was difficult to hold that the deceased had been cremated in the night or that she had been killed by the accused. Furthermore, placing reliance on the testimony of PW1 and PW2, the High Court held that it is equally difficult to hold that the Complainant could have heard the screams of the deceased, particularly considering the distance between his house and that of the accused. The relevant observations read as under:-

"20. Later-on in the same para this witness says that at 6:00 in the morning he went to the field of appellant along with his father, but they never interacted with appellant that how the deceased had died. In very specific words this witness has stated that earlier to 6:00 AM he did not go to the ' house of appellant where he was informed by the child witness Rani (PW.6) that the deceased had died. In very specific words this witness is saying that he did not go in the night at 3:00 to the house of appellant and he never saw his sister (the deceased) being cremated in the field.

This witness was confronted with his merg report (Ex.P.7) and he admitted that it bears his signature, however, ,he has specifically stated that in the merg report (Ex.P. 7) he did not state to the police that at 3:00 in the night he went to the house of the appellant and if such type of statement is written in the merg report he cannot say how it has been written. Further he says that he did not . inform the police personnels that he made enquiry from the child witness Rani (PW.6) at 3:00 in the night.

21. Hence, it is difficult to hold that during the odd ' hours in the night the deceased was cremated. If the testimony of complainant Bhura alias Yashpal (PW.3) is taken into consideration in proper perspective it is difficult to hold that during the odd hours in the night the deceased was cremated and she was not cremated during the dawn hours. It is also borne out from the testimony of this witness that during the cremation the inhabitants of the village were also present because specifically he is saying that when the deceased was being cremated no dispute raised by the inhabitants of the village And therefore, if the deceased was cremated in presence of inhabitants of the village, it is difficult to hold that the deceased was killed by the appellant.

22. The testimony of complainant Bhura alias Yashpal (PW.3) who keep inimical terms with the appellant is further more doubtful because in his statement he has admitted that he heard the sound of hue and cry during the late hours at 12:00 in the night in his house which is 4 to 5 furlongs far away from the house of appellant. In this context, para 4 of the cross examination of this witness may be seen.

But, if this piece of evidence of this witness is kept in juxtaposition to the testimony of independent eye witness Narayan (PW.2) who is village chowkidar, who in para 2 of his cross-examination has categorically stated that the distance between the house of appellant and the complainant Bhura Singh alias Yashpal is 5 to 6 furlongs and if somebody would shout from the house of appellant the persons residing in the house of appellant the persons residing in the house of complainant Bhura alias Yashpal would not hear the sound.

It is borne out from the testimony of Patwari of the village namely Mahesh Kumar Mishra (PW.1) as well as Narayan (PW.2), who is chowkidar of the village that village people happen to cremate the dead body in the field itself and because there is no separate cremation ground, and therefore, if the deceased was cremated' in the field it was not an unnatural act."

(Emphasis supplied)

23. In such circumstances, referred to above, the appellant State is here before this Court with the present appeal.

C. ANALYSIS

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order. i. Evidence of Child Witness and Test for parsing Tutored Testimony.

25. The High Court, while setting aside the conviction, found the testimony of the child witness, Rani (PW6), to be unreliable and tutored. Before we proceed to undertake the analysis of PW6, Rani's oral evidence it is essential to understand how the testimony of a child witness should be looked into and appreciated.

26. The Indian Evidence Act, 1872 (in short, the "Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

27. In Dattu Ramrao Sakhare v. State of Maharashtra reported in (1997) 5 SCC 341 this Court held that as long as a child witness is found to be competent to depose i.e., capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence in terms of Section 118 of the Evidence Act, irrespective of their tender age or absence of any oath.

The only additional factor to be considered is that the witness must be found to be reliable, exhibiting the demeanour of any other competent witness, with no likelihood of having been tutored. It further clarified that there is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered, and rather the insistence of any corroboration is only a rule of prudence that would depend upon the peculiar facts and circumstances of each case. The relevant observation reads as under: -

"5. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case.

The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but,

however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record."

(Emphasis supplied)

28. Similarly in Pradeep v. State of Haryana reported in 2023 SCC OnLine SC 777 this Court emphasized on the importance of preliminary examination of a child witness. It held that although oat cannot be administered to a child witness under 12-years of age yet, as per Section 118 of the Evidence Act it is the duty of a Trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him.

It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the Trial Court. The relevant observations read as under: -

"8. Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can

understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

(Emphasis supplied)

29. In Ratansinh Dalsukhbhai Nayak v. State of Gujarat reported in (2004) 1 SCC 64, this Court explained that although child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded yet it is an accepted norm that if after careful scrutiny their testimony is found to inspire confidence and truthful, then there is no obstacle in accepting the evidence of such child witness. The relevant observation reads as under:-

"7. The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous.

This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

30. In Panchhi v. State of U.P. reported in (1998) 7 SCC 177, this Court held that the evidence of a child witness should not be outrightly rejected but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and an easy prey to tutoring. The relevant observations read as under:-

"11. Shri R.K. Jain, learned Senior Counsel, contended that it is very risky to place reliance on the evidence of PW 1, he being a child witness. According to

the learned counsel, the evidence of a child witness is generally unworthy of credence. But we do not subscribe to the view that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.

12. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law."

31. This Court in Suryanarayana v. State of Karnataka reported in (2001) 9 SCC 129 held that the evidence of a child witness who has withstood the test of cross-examination should not be rejected per se if his testimony is found to be free from any infirmity. It reiterated that corroboration to the testimony of a child witness is not a rule but a measure of caution and prudence. The Court further held that while assessing the evidence of a child witness, courts must rule out the possibility of tutoring. However, in the absence of any allegation of tutoring or an attempt to use the child witness for ulterior purposes by the prosecution, the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. The relevant observation reads as under: -

"5. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age.

The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony.

Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child

witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not."

(Emphasis supplied)

32. In Arbind Singh v. State of Bihar reported in (1995) Supp (4) SCC 416 this Court found the testimony of the child witness therein to be tutored due to the various inconsistencies and contradiction in her statements as regards the cause of death of the deceased therein, and due to the fact that the child witness was residing with her maternal uncle immediately after the incident occurred. This Court further held that implicit faith and reliance cannot be placed on a testimony that betrays traces of tutoring and the court must look for corroboration before relying on the same. The relevant observation reads as under: -

"3. The entire case hinges on the evidence of the child witness PW 2 Poonam Kumari, the daughter of the deceased and appellant Arbind Singh. The incident occurred late in the night and she claims she was awakened by the noise of quarrelling. She further claims to have seen her father tying and nailing her mother before hanging her. At the date of the incident she was aged about 5 years. When her evidence was recorded she was aged about 9 years. The learned Trial Judge did not undertake a 'voir dire' before recording her evidence on oath although he notes that she was capable of understanding and answering the questions.

Be that as it may, the fact remains that there was a gap of 4 years between the incident and the date on which her evidence was recorded. Immediately after the incident she was interrogated but as she was weeping her statement was not recorded. Thereafter her statements were recorded on October 25, 1984, October 28, 1984 and November 5, 1984, the last being under Section 164 of the Criminal Procedure Code. In her first statement she did not say that her mother was hanged. Subsequently she said she was hanged by electric wire. She later said she was hanged with the help of a jute string.

In her statement recorded under Section 164 of the Code of Criminal Procedure on November 5, 1984, she stated that her father had thrown a jute string around the neck of her mother and killed her. It will, therefore, appear from these statements that she has not been consistent in her version. That apart, we have carefully perused the evidence of this witness and we find traces of tutoring on certain aspects of the case. It appears from her evidence that she was very close to her maternal uncle with whom she was living when her mother had gone to Deoghar for training. Immediately after the incident she was taken away by her maternal uncle who happens to be a fairly important figure.

In her evidence she stated that there used to be quarrels between her father and mother and the former used to ill-treat the latter without any rhyme or reason. Then she adds that her father wanted to remarry and, therefore, he was ill-treating her mother. Now the case put up was that the husband was ill-treating the wife as he wanted to sell her jewellery to purchase a scooter. Therefore, the statement made by PW 2 that her father was illtreating her mother because he wanted to remarry could only be the result of tutoring. She also tried to involve all the other family members including her uncle Shambhoo whom she could not even recognize in the dock.

This she could have done only at the behest of someone else. She also stated that neither her father nor her grandfather met her mother's expense at Deoghar, a fact of which ordinarily a child under five years of age would not be aware. She even tried to involve her father's sister whose name she had not mentioned earlier. There are also certain other statements made in the course of her deposition which would suggest that possibility of tutoring could not be ruled out.

Having taken a careful look at the evidence of this child witness we are of the opinion that implicit faith and reliance cannot be placed on her testimony since it is not corroborated by any independent and reliable evidence. It is well-settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly when the evidence betrays traces of tutoring. We, therefore, think that appellant 1 was entitled to benefit of doubt."

(Emphasis supplied)

33. Similarly in Digamber Vaishnav v. State of Chhattisgarh reported in (2019) 4 SCC 522 this Court discarded the testimony of the child witness therein on the ground of being tutored as it found the same to be fraught with inconsistencies and in direct contradiction of the ocular evidence of other prosecution witnesses. 34. This Court in State of M.P. v. Ramesh reported in (2011) 4 SCC 786 summarized the principles pertaining to the appreciation of evidence of a child witness as under: -

(i) First, it held that that a child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of a child witness must reveal that he was able to discern between right and wrong, and the court may ascertain his suitability as a witness through either cross-examination or by putting questions to the child in terms of Section 165 of the Evidence Act or by determining the same from the evidence or testimony of the child itself. The relevant observation reads as under: -

"11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the

defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff crossexamination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide Himmat Sukhadeo Wahurwagh v. State of Maharashtra (2009) 6 SCC 712.)"

(Emphasis supplied)

(ii) Secondly, if the evidence of the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The relevant observation reads as under:-

"12. In State of U.P. v. Krishna Master (2010) 12 SCC 324 this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future.

In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature."

(Emphasis supplied)

(iii) Thirdly, even if the courts find that the child witness had been tutored, even then the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. In such cases, the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. The relevant observation reads as under: -

"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can

be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide Gagan Kanojia v. State of Punjab (2006) 13 SCC 516.)"

(Emphasis supplied)

(iv) Lastly, it held that an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition. If the deposition of a child witness inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully and look for corroboration. The relevant observation reads as under:-

"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(Emphasis supplied)

35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection.

While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.

36. In Ratansinh Dalsukhbhai Nayak (supra) this Court observed that merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. It added that a child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness. The relevant observation reads as under:-

"8. The learned trial Judge has elaborately analysed the evidence of the eyewitness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond the shadow of a doubt. Further, the trial court on careful examination was satisfied about the child's capacity to understand and to give rational answers.

That being the position, it cannot be said that the witness (PW 11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say.

The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. The learned counsel for the accusedappellant has taken pains to point out certain discrepancies which are of very minor and trifle nature and in no way affect the credibility of the prosecution version."

(Emphasis supplied)

37. Similarly in State of M.P. v. Ramesh reported in (2011) 4 SCC 786 it was held that even if the statement of a child witness is found to be tutored it can be relied upon, if the same is found to be believable or inspire confidence after separating the tutored part from the untutored portion. The relevant observation reads as under:-

"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can

be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness."

38. In the case at hand, the High Court held that the police statement of the child witness, Rani (PW6) under Section 161 of the Cr.P.C. had been recorded after a delay of more than 18-days, due to which the possibility of tutoring could not be ruled out, more particularly because PW6 at the time of recording of her statement was residing with PW3 i.e., the Complainant who was at inimical terms with the accused.

39. Indisputably the police statement of PW6 came to be recorded after 18-days of the incident. Although the police was well aware that she was a vital witness to the entire case and could guide the investigation in the right direction, yet to mechanically discard her testimony solely on the ground of delay alone was not warranted in the peculiar facts and circumstances of the case, particularly when no question in this regard was put to the IO so as to give him an opportunity to explain the reason for such delay.

40. In Ranbir & Ors. v. State of Punjab reported in (1973) 2 SCC 444 this Court observed that the factum of delayed examination of a witness ought to be specifically put to the IO so as to enable him to explain the reasons therefor. It further held that delay in examining a witness during investigation would be material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. The relevant observation made therein reads as under: -

"7. The appellants' counsel also faintly contended that Tota Ram PW 7 was examined by the police after considerable delay, the suggestion being that his evidence must be looked at with suspicion. We are not impressed by this submission. The fact of delayed examination of Tota Ram should, in our opinion, have been put to the investigating officer so as to enable him to explain the undue delay, if any, in examining Tota Ram. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the investigating officer should be asked specifically about the delay and the reasons therefor."

(Emphasis supplied)

41. In State of U.P. v. Satish reported in (2005) 3 SCC 114 this Court held that before the delay in examination of any particular witness can be taken into consideration to impeach their credibility, the IO must be first asked by the

accused to explain the delay by putting a question in this regard. The relevant observation reads as under: -

"20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."

(Emphasis supplied)

42. While it is true that primarily it was for the accused to question the IO to explain the delay in recording the statement of PW6, but at the same time the Trial Judge should not have remained a mute spectator, acting like a robot or a recording machine to just deliver whatever stands feeded by the parties. The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case.

The presiding judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicit all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties. In Munna Pandey v. State of Bihar reported in 2023 INSC 793 this Court held that a presiding judge must cease to be a spectator and a mere recording machine and become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

43. Thus, even if the accused had failed in putting a question in regards to delay in examination of PW6, the presiding judge was duty bound to put this question to the IO in exercise of his powers under Section 165 of the Evidence Act. Since in the present case no question whatsoever was put to the IO to explain the reason for the delay in examination of Rani, PW6, we should not willingly jump to discard the testimony of PW6 on the ground of delay alone, and ought to be circumspect while scrutinizing the effect of such delay. The court in such a situation would be required to carefully see whether there is anything palpable on

the face of it to indicate any malice at the end of the investigating agency in belatedly examining such witness.

44. There is nothing on record that would lead to the inference that the delay in recording the statement of PW6 was done deliberately in order to manipulate or concoct the case against the respondent accused herein, and rather such delay appears to be inadvertent with no sinister motive or design in mind. We say so because, the statement of PW6 had been recorded on the same date as the statement of PW5. If at all the investigating agency intended to allow the doctoring of the testimony of PW6 then it would have only delayed the examination of the child witness, Rani (PW6) and not of PW5 as-well, thus this delay in examination appears to be attributable to the routine manner in which the IO proceeded with the course of investigation and the overall investigation inertia and not to give effect to any unfair practice.

45. One another reason for the High Court to discard the testimony of PW6 on the ground of being tutored was due to the fact that at the time of recording of her statement, PW6 was residing with PW3, the complainant herein who is her maternal uncle and was also at inimical terms with the accused. However, the High Court appears to have lost sight of the fact that PW6 at the relevant point of time was only of seven years of age. She had not only lost her mother but had also been abandoned by her father i.e., the respondent accused herein who went absconding. In such circumstances, the only option available to PW6 was to reside with her maternal uncle.

Where else does the High Court expect a child of such tender age in such circumstances to reside? How could the High Court even possibly expect such child to go to the police station unaccompanied by any adult family member to give her statement? The testimony of PW6 could not have been discarded solely on the ground that it was recorded in the presence of PW3, an interested witness who is at inimical terms with the accused, especially in view of the facts narrated above. The courts are expected to deal with such cases in a more realistic manner and not discard evidence on account of procedural technicalities, perfunctory considerations or insignificant lacunas.

46. In the last what weighed with the High Court whilst discarding the testimony of PW6 was the fact that in the morgue inquiry report there was nothing to indicate that the witness had mentioned anything to implicate the respondent accused herein, as she had simply stated that "her mother had died". The High Court further observed that because the respondent accused came to be arrested only after the statement of PW6 had been recorded which according to the High Court meant that the earlier statement of PW6 made during the morgue enquiry must have been unfavourable to the prosecution which is why it was also never brought on record.

47. The incident is alleged to have occurred on 15.07.2003. On the very next date i.e., 16.07.2003, the inquest proceedings under Section 174 of the Cr.P.C. were carried out based on the information given by PW3. On that very date, PW7 recorded the statements of PW3, PW4, PW5 and PW6, respectively based on which the morgue report was submitted opining that the deceased had died under suspicious circumstances and suggesting the commission of offence under Section(s) 302, 201 read with 34 of the IPC by the accused persons. Accordingly, on 20.07.2003, the FIR came to be registered against the respondent accused herein.

48. No doubt, in the inquest report it has been mentioned that PW6 only stated that her "mother had died", however, this does not mean that her subsequent statements implicating the accused were tutored. This is because as per the testimony of PW7, the death report that was prepared upon conclusion of the inquest proceedings specifically implicated the accused herein for the suspicious death of the deceased.

In the FIR that was lodged, not only has the respondent been named as an accused but it also specifically mentions that from the statement of PW6 in the inquest proceedings, it has been found that the respondent accused, the husband of the deceased murdered her by slamming Virendra Kumari on the floor of the porch of the house and choked her to death by pressing his foot on her neck. At the cost of repetition, the relevant contents of the FIR are again reproduced hereunder: -

"on the investigation of Marg No. 7/03 Section 174 Cr.P.C., it is stated that on the basis of order issued by his good-self, I ASI Mahendra Singh conducted the investigation of Marg No. 7/03 under Section 174 Cr.P.C. after reaching the spot Village Singharai, during the course of investigation, recorded the statement of complainant Bhoora @ Yashpal Singh Yadav, Kumari Rani, D/o Balvir Singh Yadav, Bharat Singh Yadav R/o Village Singharai and Badal Singh Yadav, Police Station Badarvas.

On spot map of the place of incident was prepared and seizure proceedings were conducted, from the investigation up till now and the statement of Kumari Rani Yadav, it has been found that Balvir Singh Yadav husband of the deceased Virendra Kumari murdered her by slamming Virendra Kumari on the floor of the porch of the house and choked her neck by pressing his foot and Kumari Jatan Singh helped her brother Balvir Singh in the murder, later on, during the night itself, Balvir Singh Yadav took the dead body of his wife on his shoulders to his field and discreetly burnt it."

(Emphasis supplied)

49. Thus, although the statement of PW6 that was recorded during the course of the inquest proceedings was never produced before the court, yet it does not mean that the suppression was due to the same being unfavourable, particularly when the respondent accused neither sought for its production during the course of trial nor did it question the relevant witnesses as to its contents.

As regards the timing of arrest of the respondent accused, the High Court seems to have completely overlooked the fact that at the time of the incident, the accused was absconding. Both PW3 and PW6, respectively had deposed that after cremating the deceased, the respondent accused fled away, and even the Trial Court had taken a note of this. Thus, from the sequence of events narrated above, and the contents of the FIR, there is no doubt in our minds that the implication of the respondent accused was not an afterthought.

50. In order to obviate any confusion, we take this opportunity to explain what is meant by a "tutored testimony" and the test for determining or ascertaining a tutored testimony. Where there has been tutoring of any witness, the same can possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

51. Improvisation refers to instances where the tutored witness in question adds new details, alters facts, or provides an inconsistent version of events that were not previously stated in their initial statements, such as those given to the police in their statement under Section 161 of the Cr.P.C. In such situations, the improvisation by way of tutoring must be eradicated only in the manner envisaged under Section 162 of the Cr.P.C. read with Section 145 of the Evidence Act. The principle of law in this regard is that the witness who has improvised its testimony must be first confronted with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and give the witness an opportunity to either admit or deny the omission or contradiction.

Where such witness admits such omission or contradiction, there is no further need to prove the contradiction through the IO and its effect would be looked into while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved.

Thereafter when the investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction. It will then be said to have been proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police

statement and culling out that part with which the maker of the statement was intended to be contradicted. [See: V.K. Mishra v. State of Uttarakhand reported in (2015) 9 SCC 588]

52. However, where the allegation of tutoring pertains to fabrication - meaning that certain portions of both the testimony and the previous statement of a particular witness have been doctored or falsified - in such circumstances twin conditions would have to be proved, namely;

(i) the possibility or opportunity of the witness being tutored AND

(ii) the reasonable likelihood of the tutoring.

53. The first condition, namely the 'possibility or opportunity of the witness being tutored' can be established by demonstrating or laying down certain foundational facts that suggest the probability that a part of the testimony of the witness might have been tutored. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. A mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

54. The second condition 'reasonable likelihood of tutoring' requires that the foundational facts established in the first step be further proven or cogently substantiated before any portion of the witness's testimony can be deemed tutored. This may be done by leading evidence to prove a strong and palpable motive to depose falsely that was imputed to the witness, or by establishing that the delay in recording the statement is not only unexplained but is indicative and suggestive of some unfair practice by the investigating agency for the purpose of falsely supporting the case of the prosecution as held in Ranbir (supra), or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

55. Irrespective of whether the testimony of a witness is tutored or not, the same, generally may be classified into three categories:-

(i) wholly reliable;

(ii) wholly unreliable;

(iii) neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness. If it is found to be beyond approach or suspicion of interestedness, incompetence or subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact.

The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints, which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. [See: Ramratan and others v. State of Rajasthan reported in AIR 1962 SC 424; Guli Chand and others v. State of Rajasthan reported in AIR 1974 SC 276; Badri v. State of Rajasthan reported in AIR 1976 SC 560]

56. The appreciation of testimony of a witness is a hard task. There is no fixed or straight jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:-

a. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

b. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless there are reasons weighty

and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

c. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

d. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

e. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

f. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

g. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

h. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

i. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

j. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

k. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

l. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

m. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

n. The evidence of an interested and/or related witnesses should not be examined with a coloured vision simply because of their relationship with the deceased. Though it is not a rule of law, it is a rule of prudence that their evidence ought to be examined with greater care and caution to ensure that it does not suffer from any infirmity. The court must satisfy itself that the evidence of the interested witness has a ring of truth. Only if there are no contradictions and the testimony of the related/interested witness is found to be credible, consistent and reasonable, can it be relied upon even without any corroboration. At the end of the day, each case must be examined on its own facts. There cannot be any sweeping generalisation.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat reported in AIR 1983 SC 753; Leela Ram v. State of Haryana reported in AIR 1999 SC 3717; Tahsildar Singh v. State of UP reported in AIR 1959 SC 1012]

57. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence.

Although in cases where the plea of the accused is a mere bald assertion of tutoring, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raises a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or

case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

58. We summarize our conclusion as under:-

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.

(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

- Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such

witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

- Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.

59. As discussed in the foregoing paragraphs of this judgment, there is nothing on record to indicate that PW6 was a tutored witness. We may also refer to one finding of the Trial Court recorded in its judgment, wherein it has been noted that PW6 was cross examined at length for approximately 1.5 hours, and her demeanour throughout the same was believable, with nothing to indicate that she had been tutored or was deposing falsely. It also has taken note of the fact that in the entire cross examination no significant contradictions were found. Thus, we are of the considered opinion that the High Court committed an egregious error in discarding the testimony of PW6.

ii. Principles of Law relating to appreciation of Circumstantial Evidence.

60. In 'A Treatise on Judicial Evidence', Jeremy Bentham, an English Philosopher included a whole chapter upon what lies next when the direct evidence does not lead to any special inference. It is called Circumstantial Evidence. According to him, in every case, of circumstantial evidence, there are always at least two facts to be considered; (i) the Factum Probandum, or say, the principal fact the existence of which is supposed or proposed to be proved; and (ii) the Factum Probans or the evidentiary fact or the fact from the existence of which that of the factum probandum is inferred.

61. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:-

(i) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

(iii) The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved. [See: Sharad Birdhichand Sarda v. State of Maharashtra reported in (1984) 4 SCC 116]

62. In an Essay on the 'Principles of Circumstantial Evidence' by William Wills by T. and J.W. Johnson and Co. 1872, it has been explained that circumstantial evidence implies the existence of a certainty in the relation between the facts and the inferences stemming therefrom. The relevant extract reads as under:-

"In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions.

The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word" presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.

The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

63. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement or guilt of the accused. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.

64. Thus, in view of the above, the court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

a. Incriminating Circumstances emerging from the evidence on record.

65. We take note of the following circumstances emerging from evidence on record: -

a. The failure on the part of the respondent accused in not explaining in any manner as to what had actually happened to his wife i.e., the deceased or how she died on the fateful night of the incident, more particularly when he did not dispute that he was in the company of his wife at the relevant point of time.

Though the respondent accused in his statement under Section 313 of the Cr.P.C. admitted that at the time of the incident everyone was sleeping in the house, yet, surprisingly, he maintained a complete silence in regards to the cause of death of the deceased. At the cost of repetition, the relevant portion of the further statement of the accused is reproduced hereunder: -

"Que. No. 32: This witness further states that you reached in the courtyard and Bua was also sleeping in the courtyard at that time. What do you want to say? Ans: All were sleeping in the house."

b. The unnatural conduct of the respondent accused in not informing the family members either about the death of their daughter or the cremation of her body, despite the fact that her family members were residing in the very same village.

c. The fact that the respondent-accused after clandestinely cremating the deceased's body fled away and could not be found either at the house or in the field where the body had been burnt as stated by PW3 and PW6, respectively, again raises suspicion about the cause of death of the deceased.

Prosecution Witness No. 3 - Bhoora @ Yashpal

"I saw the dead body burnt in the morning. The villagers did not create any ruckus and Balvir was not present there. Who burnt the dead body of Virendra Kumari, we do not know. Because we did not see it getting burn"

Prosecution Witness No. 6 – Rani

"When the police came home, no one from the house was there. My father had ran away, and so had my aunt. My grandfather had also run away. I was the only one there and my brother. And my old grandfather was there. My mother's father in law, who is my grandfather was there."

d. The suspicious circumstances under which the deceased died coupled with the fact that the accused had a fight with the deceased two to three days before the incident; their strained relationship and the accused frequently treating the deceased cruelly, as deposed by PW3, PW4, PW5, and PW6, respectively, further raise concerns and points towards the involvement of the respondent accused in the alleged crime. This is corroborated by the certified copies of the maintenance case and the complaint lodged by the deceased, which were exhibited and read into evidence. The relevant observations made by the Trial Court in this regard are reproduced herein below: -

"22. PW-3 Bhoora has stated that Birender Kumari is his .. sister being the daughter of his maternal uncle. On the day of incident in the night he and his father were sleeping in their house upon which they had heard voices of Birender

Kumari crying. In the morning when he and his father got up then they came to know that Birender Kumari has died and that she has been burnt by the accused clandestinely in their fields itself.

When he and his father and the entire village went to see then the dead body was burning which fact is confirmed by Bharat Singh also. The accused used to harass and the motorcycle had not been given. He used to give beatings upon which the deceased used to come to him. Once the accused beat her very badly and did- not give her anything to eat also. Upon whiCh she had filed a case of maintenance in the JMFC Court, Kolaras of which the certified copy is Ex.P-8. The girl had been given beatings, the true copy of which report is Ex.P-9.

29. The accused had carried Birender Kumari to the fields in relation to which direct evidence has not come. It has come in the statement of Rani that the accused took her mother to the fields and Jatan had told that her mother had been taken for cremation. In the fields the deceased was cremated in the night which circumstance also goes against the accused. If the death of deceased Birender Kumari was of ordinary nature then what was the reason that in the night without informing the reason to the family of the deceased she was cremated in the night especially when prior to the incident itself the mutual relations of the accused and deceased were not good and according to Ex.P-8 & P-9 the case in relation to not giving beatings and maintenance had been filed by the deceased in the Court. Another circumstance which indicate the involvement of the accused in the incident."

(Emphasis supplied)

e. It is also not the case of the respondent accused that the deceased was suffering from any ailment nor is there any evidence worth the name to suggest the possibility of her death occurring due to any health issue. Thus, in this regard, it was all the more important for the respondent accused to explain in what circumstances and in what manner his wife suddenly died on the fateful night of the incident.

66. The High Court whilst passing the impugned judgment and order completely failed to advert to and refer to Section 106 of the Evidence Act, which was crucial in a case involving circumstantial evidence of such nature as aforementioned.

iii. Principles of Law governing the Applicability of Section 106 of the Evidence Act.

67. At this stage it would be apposite to refer to Section 106 of the Evidence Act, which states as under:-

"106. Burden of proving fact especially within knowledge.-

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustration:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

68. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act.

Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

69. In Shambhu Nath Mehra v. The State of Ajmer reported in AIR 1956 SC 404, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under: -

"9. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R. 1936-3 All ER 36 AT P. 49 (B)."

70. The aforesaid decision of Shambhu Nath (supra) has been referred to and relied upon in Nagendra Sah v. State of Bihar reported in (2021) 10 SCC 725, wherein this Court observed as under: -

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(Emphasis supplied)

71. In Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra reported in (2012) 10 SCC 373, this Court observed as under: -

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case.

In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the

following observation in State of W.B. v. Mir Mohammad Omar and Ors. [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. The State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus :

'11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.'"

(Emphasis supplied)

72. In Trimukh Maroti Kirkan v. State of Maharashtra, reported in (2006) 10 SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case: -

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [1944 AC 315 : (1944) 2 All ER 13 (HL)] - quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135].)

The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving

that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

(Emphasis supplied)

73. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of State of W.B. v. Mir Mohammad Omar and Ors. reported in (2000) 8 SCC 382. In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in the morning, his mangled body was found lying in the hospital.

The Trial Court convicted the accused under Section 364, read with Section 34 of the IPC, and sentenced them to ten years rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them.

The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the chain of evidence after the deceased

was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paras 31 to 34 of the report: -

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody."

(Emphasis supplied)

74. Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal

under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

75. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

76. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

77. Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation.

But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams: "All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."

(Emphasis supplied)

78. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it

is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts.

It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams-Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion-para 527 negative averments and para 528 - "require affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958.

79. But Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

80. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if he has such evidence.

When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom.

Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See: Balvir Singh v. State of Uttarakhand reported in 2023 SCC OnLine SC 1261 and Anees v. State Govt. of NCT reported in 2024 INSC 368] iv. What is "prima facie case" (foundational facts) in the context of Section 106 of the Evidence Act?

81. The Latin expression prima facie means "at first sight", "at first view", or "based on first impression". According, to Webster's Third International Dictionary (1961 Edn.), "prima facie case" means a case established "prima facie" by evidence which in turn means "evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted". In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment. In most legal proceedings, one party (typically, the plaintiff or the prosecutor) has a burden to prove, which requires them to present prima facie evidence for each element of the case or charges against the defendant. If they cannot present prima facie evidence, the initial claim may be dismissed without any need for a response by other parties.

82. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused.

83. The presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved.

84. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in Mir Mohammad (supra), wherein this Court has observed in paras 36 and 37 respectively as under:

"36. In this context we may profitably utilize the legal principle embodied in Section 106 of the Evidence Act which reads as follows:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

(Emphasis supplied)

85. We should also look into the decision of this Court in the case of Ram Gulam Chaudhary & Ors. v. State of Bihar reported in (2001) 8 SCC 311, wherein this Court made the following observations in para 24 as under:-

"24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants.

The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy.

Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr. Mishra."

(Emphasis supplied)

86. Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family like in the case on board, even if he is a witness of the crime, would come forward to depose against another family member.

87. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the

accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book.

In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

88. We are of the view that the following foundational facts, duly established by the prosecution, justify the invocation of the principles enshrined under Section 106 of the Evidence Act: -

a) The offence took place inside the four walls of the house in which the respondent accused, the deceased and their 7-year-old daughter were living. The respondent accused has not disputed his presence in the house at the time of the alleged incident.

b) The failure on the part of the accused to inform the family members about the death of their daughter and the clandestine manner in which her body was cremated, more particularly when her family members were residing in the very same village. By the time the Investigating Officer reached the place of incident the body of the deceased was fully burnt.

c) The dubious conduct of the respondent accused in fleeing away from home leaving behind his minor daughter of seven years age all alone.

d) The untimely death of the deceased in suspicious circumstances, occurring shortly after a fight with the respondent-accused two to three days before the incident, coupled with evidence of their strained relationship.

e) The respondent accused maintained complete silence. In other words, has failed to explain any of the incriminating circumstances pointing a finger against him.

89. We are of the view that the aforementioned circumstances constitute more than a prima facie case to enable the prosecution to invoke Section 106 of the Evidence Act and shift the burden on the accused husband to explain what had actually happened on the day & date his wife died. 90. This appeal reminds us of Justice V. R. Krishna Iyer's observations in Dharm Das Wadhwani v. State of U.P. reported in (1974) 4 SCC 267:

"The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct."

The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with like one on hand, cases in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished. The courts are expected to be sensitive in cases involving crime against women.

D. CONCLUSION

91. In the result, the present appeal succeeds and is hereby allowed. The impugned judgment and order of acquittal passed by the High Court is hereby set aside, and the judgment and order of conviction passed by the Trial Court in S.T. No. 197 of 2003 stands restored.

92. The respondent accused shall surrender before the Trial Court within a period of four weeks from today to undergo the sentence as imposed by the Trial Court.

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

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

.....J. (Manoj Misra)

New Delhi;

February 24, 2025

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IN THE SUPREME COURT OF INDIA

Md. Bani Alam Mazid @ Dhan
Vs.
State of Assam

[Criminal Appeal No. 1649 of 2011]

HEADNOTE – If the discovery was not proved to be in furtherance of the confessional statement, then the confessional statement cannot be accepted as per Section 27 of the Evidence Act.

JUDGMENT

Ujjal Bhuyan, J.

1. This criminal appeal by special leave is directed against the judgment and order dated 11.08.2010 passed by the Gauhati High Court at Guwahati (High Court) dismissing Criminal Appeal No. 88/2007 filed by the appellant.

2. Criminal Appeal No. 88/2007 was filed by the appellant against the judgment and order dated 20.03.2007 passed by the learned Sessions Judge, Kamrup in Sessions Case No. 16(K)/2005 whereby the appellant was convicted under Sections 366(A)/302/201/34 of the Indian Penal Code, 1860 (IPC). Appellant was sentenced to suffer rigorous imprisonment (RI) for 5 years alongwith a fine of Rs. 3,000.00 with a default stipulation for the offence under Section 366(A) IPC. For the offence under Section 201 IPC, he was sentenced to undergo RI for 5 years alongwith a fine of Rs. 3,000.00, again with a default stipulation. Appellant was also sentenced to undergo RI for life and to pay a fine of Rs. 3,000.00 with a default stipulation for the offence under Section 302 IPC.

3. Prosecution case in brief is that on 26.08.2003 at about 02:00 PM, PW-1 Amzad Ali lodged a first information before the Hajo Police Station stating that on 22.08.2003 at about 03:30 PM, appellant alongwith Mohd. Jahangir Ali (co-accused) had kidnapped his minor daughter Marjina Begum (16 years). The first informant alleged that his daughter had taken away Rs. 60,000.00 in cash from his house. He stated that though there was a search for the girl, she could not be traced out.

It was further mentioned that one Aklima Bibi, mother of the appellant Bani Alam Majid, and one Farid Ali, husband of the elder sister of the appellant, came and told the first informant that the appellant had kidnapped his daughter and had kept her at Mukalmuwa with the intention of marrying her. First informant stated

that the aforesaid two persons had assured him that their marriage would be arranged and, therefore, requested him and his family members not to lodge any complaint before the police. However, as there was no trace of the missing girl for about four days, the FIR in question was lodged.

3.1. On the basis of the aforesaid first information, Hajo P.S. Case No. 131/2003 came to be registered under Sections 366(A)/34 IPC. Appellant and co-accused Jahangir Ali were arrested. In the course of investigation, the dead body of the victim girl was found. At the conclusion of the investigation chargesheet was submitted against both the accused persons under Sections 366(A)/302/201/34 IPC. The offences under Sections 366(A) and 302 IPC being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions at Kamrup, Guwahati.

3.2. Trial Court framed charge against the accused persons under the aforesaid provisions to which they pleaded not guilty and claimed to be tried. To prove its case, prosecution examined as many as 14 witnesses. Co-accused Jahangir Ali examined himself as DW-1. After the evidence was recorded, statement of the accused persons including that of the appellant were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.). At the conclusion of the trial, learned Sessions Judge convicted and sentenced the appellant as well as the co-accused as above.

4. Aggrieved by the aforesaid conviction and sentence, both the accused persons preferred separate appeals before the High Court. While appeal of the appellant was registered as Criminal Appeal No. 88/2007, the other appeal was registered as Criminal Appeal No. 82(J)(2007). High Court vide the judgment and order dated 11.08.2010 (impugned judgment) set aside the conviction of the accused persons including that of the appellant under Section 366(A) IPC but affirmed their conviction under Sections 302/201/34 IPC. Sentences imposed for commission of the aforesaid offences by the Court of Sessions were maintained. The related appeals were accordingly dismissed.

5. Mr. Ajim H. Laskar, learned counsel for the appellant submits that it is a case of circumstantial evidence. High Court while discarding the extra-judicial confessions of the appellant made before some of the witnesses on the ground that those were made in the presence of the police, however held that the other two circumstances of last seen together and leading to discovery were proved against the appellant and on such basis, convicted the appellant under Section 302 IPC.

On the theory of last seen together, one of the two circumstances, learned counsel submits that though PW-2 is stated to have seen the two together, she herself deposed that there was neither any coercion by the appellant nor any force

applied by him while taking away the victim in the vehicle. PW-2 neither resisted nor raised alarm. Though the victim remained untraceable thereafter for several days, she again did not raise any alarm. He submits that High Court had accepted that there was no force applied by the appellant on the victim girl and that she had gone with him on her own volition.

Because of this, conviction of the appellant by the trial court under Section 366(A) IPC was set aside. It has come on record from the evidence tendered that the deceased was last seen alive together with the appellant on 22.08.2003. Dead body was allegedly recovered on 27.08.2003 after lodging of FIR on 26.08.2003. If this be the position, no credence can be given to the theory of last seen together to come to any definitive conclusion that it was the appellant and the appellant alone who had killed the victim girl.

5.1. Learned counsel submits that appellant had no reason or motive to cause the death of the victim girl. It has come on record that appellant and the victim girl were in a romantic relationship and that the victim girl had gone with the appellant on her own volition. Even the mother and brother-in-law of the appellant were reported to have told PW-1, father of the victim girl, that the two of them would get married. Therefore, there cannot be any conceivable reason or motive for the appellant to commit murder of the victim girl.

5.2. He submits that in a case of circumstantial evidence, motive plays an important role. It is an important link to complete the chain of circumstances. In the absence of any motive, the chain of circumstances is not complete in which case guilt of the accused cannot be said to be proved beyond all reasonable doubt. In support of this contention, learned counsel for the appellant has referred to a decision of this Court in Nandu Singh Vs. State of M.P.1

5.3. Mr. Laskar, learned counsel for the appellant, also submits that there was no recovery of the cash amount of Rs. 60,000.00 allegedly taken away by the victim girl from her house as she went with the appellant. In fact, no investigation was carried out by the police in this direction and consequently, no recovery of cash was made.

5.4. In so far the theory of leading to discovery is concerned, the same also does not inspire any confidence in as much as it was an extension of the extra-judicial confessions made by the appellant before some of the prosecution witnesses which were not accepted by the High Court since those were made in the police station and in front of the police while the appellant was under police custody. The extra-judicial confessions and the theory of leading to discovery are intrinsically connected; rather those are intertwined. If the extra-judicial confessions were discarded by the court as an inadmissible piece of evidence, by

the same logic, the theory of leading to discovery cannot be accepted as a valid piece of evidence.

5.5. Learned counsel thus submits that there is grave doubt about the veracity of the prosecution case. Not to speak of a complete chain of circumstances, even the two instances of circumstantial evidence i.e. theory of last seen together and leading to discovery, cannot be said to have been proved against the appellant by the prosecution witnesses beyond all reasonable doubt. As a matter of fact, the prosecution case has to fall as one of the circumstances i.e. extra-judicial confession has been disbelieved by the High Court. Therefore, the chain is not complete. In such circumstances, conviction of the appellant becomes wholly untenable. Consequently, the appellant is entitled to the benefit of doubt and acquittal.

6. Per contra, learned counsel for the State submits that both the trial court and the High Court have correctly convicted the appellant under Sections 302/201/34 IPC. The evidence on record clearly and correctly proves the commission of offence by the appellant.

6.1. He submits that the evidence on record reveals that from the time the victim girl went with the appellant till her death, she was in the custody of the appellant. High Court had rightly observed that the prosecution cannot be asked to explain what had happened after the victim girl left with the appellant. It is for the appellant to explain the same, which the appellant failed to do. From all the circumstances put together, the only inference that can be drawn is that it is the appellant and none else who had committed the crime.

6.2. Learned counsel for the State submits that although the extra-judicial confessions of the appellant made before PWs - 5, 6, 7, 10 and 11 would be hit by the provisions of Sections 25 and 26 of the Evidence Act, 1872 ('the Evidence Act' hereinafter), nonetheless, the statement of the appellant leading to discovery of the dead body of the victim girl would be an admissible piece of evidence under Section 27 of the Evidence Act.

6.3. FIR was lodged on 26.08.2004 and the dead body was recovered the following day. Though there is a time gap between the time the two of them were last seen together and the recovery of the dead body, the same would not be fatal to the prosecution case. Merely because there is a time gap between the time when the victim and the accused were last seen alive together and recovery of the dead body, that would not establish the innocence of the appellant. The accused has a duty and obligation to prove his innocence before the court and he cannot be allowed to remain silent once the prosecution discharges the initial burden.

6.4. Learned counsel for the State finally submits that there is no error or infirmity in the conviction of the appellant and, hence, no interference is called for. Therefore, the appeal should be dismissed.

7. Submissions made by learned counsel for the parties have received the due consideration of the court.

8. Let us first examine the evidence tendered by the prosecution witnesses. Amzad Ali is PW-1. He is the father of the deceased. He identified the accused-appellant in court. In his examination-in-chief, he stated that about 2 years back his daughter Marjina was walking along the road on foot with another girl. At that time, appellant and the other accused Jahangir forcefully took his daughter away and put her in a Tata Sumo vehicle. The incident happened around 03:30 PM. When he returned home, he came to know that the two accused persons had kidnapped his daughter.

Though he searched for her, he was unsuccessful. 2/3 days after the incident, PW-1 met the other accused Jahangir. On being asked, Jahangir told PW-1 that his daughter was in Mukalmuwa and that he need not worry about her. At that time, Farid (husband of elder sister of the appellant) was present. Farid told PW-1 not to worry; he would bring the girl and arrange her marriage with the appellant. PW-1 further deposed that his daughter had taken away Rs. 60,000.00 in cash from his house.

He stated that he lodged the first information before the police since his daughter was missing. Jahangir (accused No. 2) told PW-1 that they had killed his daughter and thrown her body away at Pandu. According to PW-1, when he alongwith the police went there, they found his daughter's body lying on the railway track at Pandu. He saw injuries on her head. Delay in lodging the first information was attributed to remaining busy searching for his daughter.

8.1. On behalf of both the accused persons, PW-1 was cross-examined. In his cross-examination, he stated that the dead body was recovered on the day following lodging of first information. He saw the dead body of his daughter at Pandu around 5 PM in the evening. Junu Begum was the name of his daughter's friend; they were classmates reading in the same school. He disclosed that the first information was written by Samsul (PW-6).

8.2. PW-1 further stated that his daughter Marjina had a love affair with the appellant since last 5 years. At the time of the occurrence, the daughter was about 16 years of age. He came to know about the incident from Junu Begum. He denied the suggestion that the two accused persons did not kidnap his daughter and that they did not kill her, further denying the suggestion that Junu Begum did not tell him that the accused persons had kidnapped his daughter.

8.3. While PW-1 admitted that the first information was written by Samsul (PW-6), he forgot whether PW-6 had read over the first information to him after writing the same. He further stated that he did not remember what was written in the first information.

9. PW-2 is Junu Begum. In her examination-in-chief, she stated that deceased Marjina @ Kali was her friend. They studied together. She further stated that she knew the appellant and identified him in the court. At about 3'o clock in the afternoon two years back, she and Marjina were walking along the road to the house of her elder sister Nabira. At that time, the two accused persons came in a Tata Sumo vehicle and forcefully took Marjina away. PW-2 deposed that before the incident, Marjina had told her that she loved the appellant. She further deposed that she came to know 4 days after the occurrence that the two accused persons had killed Marjina and left her body alone. Later, she saw Marjina's dead body in the house of PW-1.

9.1. PW-2 was cross-examined on behalf of both the accused persons. In her cross-examination, PW-2 stated that appellant had come first and had got Marjina into the car. The other accused person Jahangir was sitting in the vehicle. There were a few passengers also in the vehicle. She stated in her cross-examination that she did not raise any hue and cry but she informed the husband of appellant's elder sister Farid about the incident. PW-2 was categorical in stating that Marjina had left on her own accord.

9.2. PW-2 further stated in her cross-examination that when the Tata Sumo vehicle stopped, Marjina got into the said vehicle. Marjina did not carry any bag. She stated that she did not notice who were there in the vehicle.

10. PW-3 is Minuwara Begum. From her testimony, it is not discernible as to her relationship with the deceased or how she was presented as a witness by the prosecution. In her examination-in-chief, she stated that she knew the accused as well as the deceased. She identified the two accused persons in the court. She further stated that appellant had a love affair with the deceased. However, deceased had told her that if she did not go with him, she would be dead. Deceased had further told PW-3 that appellant wanted to take her to Andhra Pradesh for which she had to manage some money.

Father of the deceased had collected an amount of Rs. 60,000.00 by selling his land. On the date of occurrence, Marjina took away the money with her. PW-3 stated that she had seen the appellant going behind Marjina to the vehicle. Appellant's mother Aklima and his brother-in-law Farid had informed family members of Marjina that they would arrange the marriage of the appellant with Marjina and, therefore, they should not search for her. Later on, she came to know that appellant had killed Marjina.

10.1. In her cross-examination, PW-3 stated that she did not see any money in the hands of Marjina. According to her, appellant had pulled Marjina towards the vehicle though she did not hear Marjina raise any hue and cry. She however admitted that she did not inform anyone about the occurrence immediately. A meeting of villagers called 'mel' was held at night in the residence of Marjina. As PW-3 was invited, she had gone there. Influential persons of the village attended the said meeting.

11. Mother of the deceased Bulbuli Begum is PW-4. She identified the two accused persons in the court. She stated that about two years back, her daughter Marjina had gone missing from home. PW-2 had informed her that the appellant had taken Marjina away. Though they searched for their daughter, she could not be traced out. Appellant's mother Aklima and brother-in-law Farid came to their house and told them that they should not search for their daughter and that they would arrange the marriage of their daughter Marjina with the appellant.

She stated that accused Jahangir told her that appellant had killed his daughter Marjina. Later on, Marjina's dead body was recovered from Pandu. PW-4 stated that she saw injuries all over the dead body. Marjina was about 16 years of age at the time of occurrence. Marjina had taken away Rs. 60,000.00 in cash which PW-4 stated that she had kept it for purchasing some land. She acknowledged that before the occurrence, appellant and Marjina were in love.

11.1. In her cross-examination, PW-4 stated that on the day of occurrence, Marjina left home after her meal to go to the residence of her elder sister Alima. A good number of village people were present at the time when mother and brother-in-law of the appellant gave the proposal of marriage. She denied the suggestion that PW-2 had not informed them about the occurrence and that Jahangir (accused No. 2) had not come and informed them of appellant killing Marjina. She further denied the suggestion that the two accused persons had not kidnapped his daughter and had not killed her.

12. PW-5 is Anwar Hussain. In his cross-examination, PW- 5 stated that he knew the deceased Marjina Begum. He also knew the two accused persons whom he identified in court. In his evidence in chief, PW-5 stated that on 27.08.2003, police took the two accused persons to Hajo Police Station under arrest. According to PW-5, he alongwith some 40 persons from the village went to the police station. Appellant confessed before them that he had hit Marjina with a stone as a result of which she became senseless.

After that, he had killed her by strangulating her with his vest. PW- 5 stated that later on they found the dead body of Marjina near the railway track. He also stated that appellant had concealed the body in a 'pitoni' which is a marshy place but PW-5 contradicted himself by saying that he saw the corpse in the police

station. However, he added that appellant loved Marjina and took her away on the day of occurrence.

12.1. In his cross-examination, PW-5 stated that in the police station, he and the other villagers saw the two accused persons being taken out from the lockup. Police first interrogated Jahangir and thereafter the appellant. He admitted that he had not seen the appellant taking away Marjina. PW-5 denied the suggestion that appellant did not tell them that he had killed Marjina. However, he added that police had not interrogated him.

13. PW-6 is Samsul Haque, the scribe. In his evidence-inchief, he stated that he knew Amzad Ali (PW-1). As per version of PW-1, he wrote the 'ejahar' (first information), Ex.-1. He stated that he had read over the first information to PW-1 and obtained his thumb impression. Police took him alongwith the accused Jahangir and members of the public and recovered the dead body near the Pandu railway line. At that time, appellant was in jail. Police had seized a blood-stained vest which is Ex.-3. Accused Jahangir had confessed before the police and PW-6 that he had killed Marjina Begum. However, he contradicted himself by saying that appellant took the vest of Jahangir and killed Marjina by hanging her with the vest.

13.1. In his cross-examination, he stated that he was taken to Pandu in a police vehicle where the dead body was recovered. He was there alongwith the officer-in-charge of the police station and 4/5 policemen. There was no magistrate. He had put his signature on the seizure list in the police station. He admitted in cross-examination that he did not tell the police that Jahangir had given his vest by taking it off.

14. PW-7 is Jahidur Rahman. In his examination in chief, he stated that on hearing the news of Marjina's death, he went to the thana (police station). There he saw her dead body. He also saw the two accused persons in the thana. The two accused persons told before the police that they had killed Marjina by pressing her neck and thereafter had thrown her body near the railway line. He had heard that the two accused had kidnapped Marjina 2/3 days before the occurrence.

14.1. In his cross-examination, PW-7 stated that he had not seen the incident himself. At the time of interrogation of the accused, he was present alongwith Anowar Hussain and Samsur Ali.

15. PW-8 Mainul Haque stated in his examination in chief that on 27.08.2003, he had gone to the thana where he saw the dead body of Marjina. He also saw the two accused persons in the thana. When the police interrogated the two accused persons, they stated that they had taken the girl to Coochbehar from where they

returned and had been going along the railway line. They had injured Marjina by hitting her with stones after which they strangulated her with a vest.

15.1. However, in his cross-examination, he stated that he did not know with whom Marjina had eloped. He had gone to the police station on his own accord. In the police station, he saw the two accused persons in the room of the officer-in-charge. There were about 30 to 40 people present in the police station and all of them were in the room of the officer-in-charge.

16. PW-9 Dr. Amarjyoti Patowary had conducted the postmortem examination of the deceased. As per the postmortem notes, there were as many as 13 injuries on the face, neck, chest, waist, right forearm and on the left and right legs. He opined that death was due to asphyxia as a result of manual strangulation. All the injuries found on the body of the deceased were ante-mortem, caused by blunt weapon and homicidal in nature. He also opined that evidence of recent sexual intercourse was not detected. The deceased was not pregnant. He had carried out the postmortem examination on 27.08.2003 and opined that approximate time of death was 24 to 36 hours prior to such examination.

17. PW-10 is Abdul Hamid. In his deposition, he stated that he had heard that accused Bani Alam (appellant) had abducted Marjina Begum who did not return home. He heard after 4 days that dead body of Marjina Begum was found lying in a marshy land near the railway track at Jalukbari. He stated that he had gone to the thana the next day. In the thana, he found both the accused persons. Accused Bani Alam (appellant) told PW-10 and others in the thana that after abducting Marjina, he had pressed her neck. When he found that she was still alive, he hit her with stones causing her death. Thereafter, he had thrown her body in a marshy land near the railway track. According to him, accused Jahangir told them that both the accused persons had strangulated Marjina with the vest of Bani Alam (appellant).

17.1. In his cross-examination, PW-10 stated that policemen were present when the two accused persons narrated the incident. He had gone to the thana in a police vehicle like many others on being called by the police. Police did not record his statement.

18. Jamser Ali, who is the brother of deceased Marjina, is PW-11. He stated that he was called to the thana by the police. He went to the thana alongwith other villagers. In the thana, he saw both the accused persons. Accused Bani Alam Mazid (appellant) told them that he had abducted Marjina and had squeezed her throat with a vest. He also hit her with stones. After that he had concealed the dead body in a 'pitoni' (marshy land) near Pandu.

18.1. In his cross-examination, PW-11 stated that the two accused persons were handcuffed in the police station. Police were present when the two accused persons made their confessions.

19. The investigating officer deposed as PW-13. In his examination in chief, he stated that in the course of investigation, the two accused persons confessed before him that they had killed Marjina and had kept her dead body near the Pandu railway track under Jalukbari police station. They led the police accompanied by the circle officer to the place where the dead body was kept concealed. The circle officer had conducted inquest over the dead body. He stated that he had seized a half ganjee (vest) with blood stains, marked as Ex.-3.

19.1. In his cross-examination, PW-13 stated that he had arrested the two accused persons on 26.08.2003. He did not make any prayer before the concerned Chief Judicial Magistrate to get the confessional statements of the accused recorded. He further admitted that the blood stained ganjee (vest) was not sent to the Forensic Science Laboratory (FSL) for examination.

20. PW-14 is the circle officer Kamal Kumar Baishya. He stated that on 26.08.2003, he had received the requisition from the officer-in-charge of Hajo police station to hold inquest over the dead body of Marjina Begum. He had carried out the inquest in the presence of witnesses.

21. Though the appellant was confronted with the incriminating evidence against him for recording of his examination under Section 313 Cr.P.C., he stated in response that though he knew the deceased, he denied all the allegations made against him vis-à-vis, abduction and murder of Marjina Begum.

22. Before we appreciate the evidence, it will be apposite to briefly advert to the law relating to circumstantial evidence as this is a case where conviction is based on circumstantial evidence. In a recent decision of this Court in Ramu Appa Mahapatar Vs. State of Maharashtra2, this Court dealt with the limitations of an extrajudicial confession which is one of the instances of circumstantial evidence.

In that context, this Court following the consistent line of judicial precedents held that circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principle fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. Where a case rests on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. This Court held as under:

16. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.

23. In so far the present case is concerned, prosecution relied on three circumstances to prove the guilt of the appellant. These were: appellant and the victim were last seen together; extrajudicial confession made by the appellant before PW Nos. 5, 6, 7, 8, 10 and 11; and the fact of recovery of the dead body following the confessional statements of the appellant made to PW Nos. 5, 6, 7, 8, 10 and 11. High Court discarded the circumstance of extrajudicial confessions made by the appellant before PW Nos. 5, 6, 7, 8, 10 and 11 on the ground that those confessions were made in the presence of the police and thus would be hit by the provisions of Section 25 of the Evidence Act.

Thus, High Court had disbelieved one of the three circumstances put forth by the prosecution as part of the chain of circumstantial evidence to prove the guilt of the appellant. If this be the position, then it could not be said that the chain of circumstantial evidence was complete and that no other inference except the guilt of the accused was possible therefrom. As the chain got broken, appellant was entitled to the benefit of doubt as it could not be said that the circumstances put together established the guilt of the accused (appellant) beyond all reasonable doubt.

24. However, the High Court convicted the appellant on the strength of the remaining two pieces of circumstantial evidence holding that those two complete the chain wherefrom no other inference except the guilt of the appellant was possible.

25. In our view, the High Court clearly fell in error in coming to such a conclusion. When one of the three circumstances was disbelieved and discarded by the High Court, then the chain of circumstantial evidence could not have been held to be complete and proved and on that basis to hold the accused guilty of the offence. Each and every circumstance forming the chain of circumstantial evidence has to be proved.

26. Since the High Court convicted the appellant on the strength of the aforesaid two circumstances, let us deal with the same. Firstly, let us consider the circumstance of last seen together. PW-2 is the only witness who stated in her evidence that appellant had forcefully taken Marjina away in a Tata Sumo when both of them were walking along the road. However, she stated that Marjina had told her that she loved the appellant. In her cross-examination, she categorically stated that Marjina had gone with the appellant on her own accord and, therefore, she did not raise any hue and cry.

In fact, she stated that Marjina had got into the Tata Sumo vehicle when the same stopped near them and that she did not carry any bag. PW-3 (Minuwara Begum) stated that she had seen the appellant going behind Marjina to the vehicle though she did not see any money in the hands of Marjina. She did not hear Marjina raising any hue and cry. However, from her evidence, it is not discernible as to her relationship with the deceased or the appellant. It has also not come on record as to how she saw Marjina going away with the appellant; as to whether she was commuting along the road at that point of time; and whether she had seen Marjina in the company of PW-2.

27. It has further come on record that mother and brotherin- law of the appellant had come to the residence of PW-1 and assured him that his daughter was safe with the appellant and that they would arrange for their marriage. For four days, PW-1 did not lodge any complaint or first information though his daughter had gone missing. It was only on 26.08.2003 afternoon that the FIR was lodged and thereafter the dead body was recovered on the following day.

28. None of the witnesses stated that they had seen Marjina with cash or carrying any bag. Police also did not investigate this angle and there was no recovery of cash.

29. First and foremost, there are glaring discrepancies in the evidence of PWs 2 and 3 who allegedly had seen the deceased last alive in the company of the

appellant on 22.08.2003. Dead body was recovered 5 days thereafter on 27.08.2003 that too after lodging of FIR on 26.08.2003.

30. In State of Goa Vs. Sanjay Thakran3, this Court held that the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out.

However, in all cases, it cannot be said that the evidence of last seen together has to be rejected merely because there is a time gap between the accused and the deceased last seen together and the crime coming to light is after a considerable long duration. If the prosecution is able to lead evidence that likelihood of any person other than the accused being the author of the crime becomes impossible then the evidence of the circumstance of last seen together although there is a long duration of time in between can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. This Court held as follows:

34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out.

The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration.

There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the

circumstances in the chain of circumstances to prove the guilt against such accused persons.

Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.

31. This Court in Kanhaiya Lal Vs. State of Rajasthan4 held that the circumstance of last seen together does not by itself lead to the inference that it was the accused who had committed the crime. There must be something more to establish the nexus between the accused and the crime. Mere non-explanation on the part of the accused by itself cannot lead to proof of guilt against the accused. This Court held thus:

15. The theory of last seen-the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan5.

32. Anjan Kumar Sarma Vs. State of Assam6 is a case where this Court held that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.

33. Applying the legal principles culled out from the above decisions to the evidence of PW-2 and PW-3, it is clear that there was considerable time gap between the time the appellant and the deceased were last seen together alive and recovery of the dead body. Therefore, it cannot be said with any degree of certainty that it was the appellant and the appellant alone who had committed the offence.

34. This brings us to next circumstance of leading to discovery.

35. Section 27 of the Evidence Act deals with such information received from the accused which may be proved. Section 27 of the Evidence Act is couched in the language of a proviso and immediately follows Section 26. It is, therefore, necessary that the two sections are discussed conjointly. While Section 26 deals with confession made by an accused while in custody of police, Section 27 as noted above deals with such information received from the accused which may be proved. Section 26 of the Evidence Act, without the Explanation which is not relevant, is as follows:

26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

35.1. What Section 26 of the Evidence Act says is that no confession made by any person while he is in the custody of a police officer shall be proved as against such person unless it is made in the immediate presence of the Magistrate. This is an exception to the absolute bar of Section 25 which declares that no confession made to a police officer shall be proved as against a person accused of any offence. Section 27 on the other hand is a qualification of Section 26 and reads as under:

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

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

36. The contours of Section 27 was examined by the Privy Council in the case of Pulukuri Kottaya Vs. King-Emperor7, whereafter it was observed that the discovery of fact contemplated under Section 27 of the Evidence Act arises by reason of the fact that information given by the accused exhibited his knowledge or mental awareness as to its existence at a particular place. Relevant portion of the aforesaid decision is extracted hereunder:

S. 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a

person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved.

The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.

37. This Court in Vasanta Sampat Dupare Vs. State of Maharashtra8 referred to the observations made by the Privy Council in Pulukuri Kottaya (supra) and culled out the following principles:

23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in Pulukuri Kotayya v. King Emperor has held thus: it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.

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

38. In the case of Asar Mohammad Vs. State of Uttar Pradesh9, this Court referred to the word 'fact' appearing in Section 27 of the Evidence Act and held that such a fact need not be selfprobatory. The word 'fact' contemplated in Section 27 of the Evidence Act is not limited to 'actual physical material object.' Discovery of fact arises by reason that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its

existence at a particular place which includes discovery of the object, the place from which it is discovered and the knowledge of the accused as to its existence.

39. Applying the law relating to Section 27 of the Evidence Act as can be culled out from the aforesaid decisions, we find that the circumstance of leading to discovery is intrinsically connected with the circumstance of extra-judicial confessions made by the appellant and the other co-accused before PW-5, PW-6, PW-7, PW- 8, PW-10 and PW-11. We have already noted that the High Court had rejected the circumstance of extra-judicial confessions as being in-admissible evidence. It was in the course of such extrajudicial confessions that the said prosecution witnesses mentioned about the information given by the accused persons leading to discovery of the dead body.

According to PW-5, he along with some forty villagers had gone to the police station where after the appellant allegedly confessed his guilt and told PW-5 and others that he had concealed the dead body in a marshy place. But in his substantive evidence, PW-5 contradicted himself by saying that he saw the corpse in the police station. PW-6, the scribe, stated in his evidence that police took him along with the other accused Jahangir and members of the public and recovered the dead body near the railway track at Pandu. He stated that at that time appellant was in jail. So according to the version of PW-6, appellant was not taken by the police to the place from where the dead body was recovered.

Though he stated that co-accused Jahangir had confessed before him and the police that it was he who had killed Marjina Begum, he contradicted himself by saying that it was the appellant who had taken the vest from Jahangir and had killed Marjina by hanging her with the vest. In his cross-examination PW-6 admitted that there was no magistrate at the time when the dead body was recovered. There is an improvement in the version of PW-6 in the sense that PW-6 admitted in his cross-examination that he had not told the police that Jahangir has given his vest to the appellant.

40. The inconsistencies of the prosecution witnesses on the circumstance of leading to discovery continued. PW-7 in his evidence in chief stated that he saw the dead body of Marjina in the police station. Therefore, he was not a witness to the fact of recovery of the dead body. According to him, the two accused persons had told him before the police that they had killed Marjina by pressing her neck and thereafter had thrown her body near the railway line. This statement is clearly at variance with what the scribe PW-6 had stated. Similarly, PW-8 stated that when he had gone to the police station on 27.08.2003, he saw the dead body of Marjina there.

The two accused persons told the police before them that they had taken Marjina to Coochbehar from where they returned. As they were going along the railway

line, they injured Marjina by hitting her with stones after which they strangulated her with the vest. This statement of PW-8 again is wholly inconsistent with the versions of PW-6 and PW-7. In his cross38 examination PW-8 stated that he saw about thirty to forty people present in the police station when the accused persons were making their statement.

41. Such inconsistencies were further magnified when PW-10 deposed that appellant told him and others in the police station that after abducting Marjina he had pressed her neck. When he found that she was still alive he hit her with stones causing her death. Thereafter he had thrown her dead body in a marshy land near the railway track. According to him, accused Jahangir had told that both the accused persons had strangulated Marjina with the vest of the appellant.

However, in his cross-examination, he mentioned that police did not record his statement under Section 161 of the CrPC though he had gone to the police station in a police vehicle on being called by the police like the other villagers. So the evidence of PW-10 is of no consequence. Similarly, PW-11, brother of the deceased, stated that he was in the police station along with the other villagers when appellant told them that he had abducted Marjina, whereafter he had squeezed her throat with the vest. He also hit her with stones. After that, he had concealed the dead body in a marshy land near Pandu.

42. From the above, it is clear that except PW-6 none of the aforesaid witnesses have stated that they were present at the place from where the dead body was recovered by the police on being shown by the accused persons. They had only seen the dead body in the police station. But even the version of PW-6 is difficult to accept inasmuch as according to him it was the other accused Jahangir who led him and members of the public along with the police to a place near the Pandu railway track from where the dead body was recovered, the appellant being in jail at that time. Such statements of PW-6 have to be taken with a pinch of salt as he tied himself up in knots by stating that it was Jahangir who had confessed to killing Marjina.

43. PW-13, the investigating officer, however, stated that the two accused persons after confessing before him that they had killed Marjina led the police to the place where the dead body was kept concealed near the Pandu railway track.

44. After analysing the evidence on record, it is difficult to accept the prosecution case that the dead body of Marjina was recovered from the concealed place near the Pandu railway track at the instance of the appellant. Therefore, Section 27 of the Evidence Act cannot come to the aid of the prosecution.

45. PW-13, the investigating officer, stated that though he had seized the vest with blood stains, he did not send the same to the FSL for examination.

Therefore, there is no evidence on record to show that firstly the blood stains on the vest are human blood and secondly those matches the blood of the deceased. In his cross-examination, PW-13 also stated that he did not make any prayer before the concerned Chief Judicial Magistrate to get the confessional statements of the accused recorded.

46. Viewed in the above context, the circumstance of leading to discovery cannot be said to have been proved beyond all reasonable doubt as against the appellant. If that be the position, not only the chain of circumstantial evidence is not complete, all the circumstances put forth by the prosecution to prove the guilt of the appellant cannot be accepted as having been proved as valid pieces of evidence. Therefore, the appellant deserves to be given the benefit of doubt and is entitled to an acquittal on this count.

47. There is one glaring lacuna in the prosecution case which we would like to highlight. It has come on record from the evidence of PW-1 (father of the deceased) and PW-4 (mother of the deceased) that appellant's mother Aklima and brother-in-law Farid had told them that they need not worry about their daughter and that they would arrange the marriage of their daughter with the appellant.

In fact according to PW-1, Farid had told him that he would bring the girl and arrange her marriage with the appellant but these two persons were not examined by the police and presented as witness before the court. If indeed the version of PW- 1 and PW-4 are to be believed, both the mother and brother-in-law of the appellant knew the whereabouts of the deceased girl. Therefore, they were material witnesses. Non-examination of such material witness has definitely dented the prosecution case.

48. Before parting with the record, we are tempted to deal with one more aspect since it was argued by learned counsel for the appellant. It has come on record that the appellant and the deceased were in love. Mother of the appellant along with his brother-in-law had told PW-1, father of the deceased, that they would arrange the marriage of the two. Therefore there could not have been any motive for the appellant to cause the death of Marjina. Postmortem report has also ruled out recent sexual activity of the deceased. This coupled with the fact that there is no recovery of cash allegedly taken away by the deceased from her residence makes the prosecution narrative all the more suspect.

49. In Anwar Ali Vs. State of Himachal Pradesh10, this Court after referring to the previous decisions observed that in a case where direct evidence of eye witness is available, motive loses its importance. But absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.

50. Relying on the decision in Anwar Ali (supra), this Court in Shivaji Chintappa Patil Vs. State of Maharashtra11 observed that in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.

51. This Court in Nandu Singh (supra) summed up the legal position that in a case based on circumstantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and that in its absence, the case of the prosecution has to be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

52. Thus, having regard to the discussions made above, we are of the view that none of the circumstances put forth by the prosecution to prove the guilt of the appellant can be said to have been proved, not to speak of proving the complete chain of circumstances, to dispel any hypothesis of innocence of the appellant. When the prosecution failed to prove each of the circumstances against the appellant, the courts below were not justified in convicting the appellant.

53. Accordingly, the criminal appeal is allowed. Consequently, the judgment and order of the High Court dated 11.08.2010 as well as that of the Sessions Court dated 20.03.2007 are hereby set aside. Appellant is acquitted of the charges levelled against him and is set at liberty forthwith unless his custody is required in connection with any other crime.

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

.....J. [Ujjal Bhuyan]

New Delhi;

February 24, 2025.

1 2022 SCC Online SC 1454

2 2025 INSC 147

3 (2007) 3 SCC 755

4 (2014) 4 SCC 715

5 (2010) 15 SCC 588

6 (2017) 14 SCC 359

7 AIR 1947 PC 67

8 (2015) 1 SCC 253

9 (2019) 12 SCC 253

10 (2020) 10 SCC 166

11 (2021) 5 SCC 626

IN THE SUPREME COURT OF INDIA

Dr. Sunil Kumar Singh
Vs.
Bihar Legislative Council (Through Secretary) and Ors.

[Writ Petition (Civil) No. 530 of 2024]

HEADNOTE – Only 'proceedings in the Legislature' are immune from review based on allegation of 'procedural irregularities', there is no absolute bar on judicial review of 'legislative decisions'.

'Proceedings in the Legislature' and 'Legislative Decision' expounded

Proceedings in the Legislature: These comprise the formal steps, debates, and motions undertaken to facilitate deliberations within the House. It is a structured mechanism that ensures due consideration of a proposed measure, allowing for discussion, amendment, and scrutiny before reaching a final resolution. These procedural steps are not ends in themselves but are designed to channel legislative discourse towards a definitive outcome. Article 212(1) of the Constitution provides immunity for the manner of such proceedings, and hence, Constitutional Courts would exercise restraint when such proceedings are called into question on the grounds of procedural irregularity.

Legislative Decision: This is the culmination of the legislative procedure - the formal expression of the will of the House on a given matter. While 'Proceedings in the Legislature' provide the framework within which members exercise their deliberative functions, a 'Legislative Decision' is the authoritative determination that follows such deliberation. These decisions of the Legislature, though emanating from a coordinate branch of Government, are not immune from scrutiny by Constitutional Courts. Judicial review of Legislative Decisions is not an encroachment upon legislative dominion but a necessary safeguard to uphold constitutional supremacy.

JUDGMENT

Surya Kant, J.

1. The Petitioner has invoked the writ jurisdiction of this Court under Article 32 of the Constitution of India, laying challenge to Report No. 1/2024 dated 14.06.2024 (Impugned Report), submitted by the Ethics Committee of the Bihar Legislative Council (BLC) recommending his expulsion as a Member of Legislative Council (MLC). The consequential notification dated 26.07.2024

relieving the Petitioner from the membership of the BLC issued by the BLC's Secretariat (Impugned Notification), is also assailed.

A. FACTUAL MATRIX

2. The present controversy arises from allegations of unparliamentary conduct by the Petitioner, including the use of derogatory expressions in his capacity as an MLC within the House of the BLC. This conduct of the Petitioner prompted the initiation of proceedings against him by the Ethics Committee. The allegations were found to be substantiated, leading the Ethics Committee to recommend the Petitioner's expulsion from the BLC. Subsequently, a resolution to that effect was passed by a majority of the members of BLC, formalising the decision to expel and relieve the Petitioner. The facts giving rise to the present petition are set out hereinbelow:

2.1. The Petitioner is a member of the political party known as the Rashtriya Janata Dal (RJD). He was elected as a member of the BLC on 29.06.2020 for a period of six years. The Petitioner was also nominated as the Chief Whip by the RJD in the BLC.

2.2. The elections for the 17th Legislative Assembly in the State of Bihar were held in November 2020, wherein a coalition government, comprising the Janata Dal (United) (JDU) led by the incumbent Chief Minister along with the RJD and the Indian National Congress (INC), was formed. This coalition, however, wedged apart in January 2024, and a new alliance between the JDU and the Bharatiya Janata Party (BJP) was entered into to form the Government in the State.

2.3. Following these developments, the Hon'ble Governor of Bihar was scheduled to deliver his address on 13.02.2024, at the 206th Session of the BLC. As soon as the Governor's address was completed and during the motion of thanks, the Petitioner and another MLC, Md. Sohaib approached the well of the House and hurled indecent slogans against the Chief Minister.

They mocked him as "Paltu Ram", imitated his body language and sarcastically remarked that "the man who has not contested a single Mukhiya election till date is the Chief Minister of Bihar". The Petitioner then alluded to the Chief Minister as an 'expert in manipulations' and insinuated that he was "just like a snake sheds its skin every year". This indecorous fracas led to the proceedings of the House being indubitably obstructed, followed by a complaint on 19.02.2024 lodged against the Petitioner and Md. Sohaib before the Chairman of the BLC by a fellow MLC belonging to the Ruling Party JDU.

2.4. The Chairman of BLC issued a letter to the Petitioner and Md. Sohaib informing them about the complaint, which was then forwarded to the Ethics

Committee for necessary enquiry. The letter also required both the MLCs to remain present and join the enquiry proceedings on 03.05.2024 before the Ethics Committee.

2.5. Md. Sohaib joined the enquiry proceedings on 03.05.2024 and expressed regret for his conduct in writing and further assured a display of restraint and caution in the future.

2.6. The Petitioner, in stark contrast, did not appear before the Ethics Committee on the date fixed and instead sought exemption, citing engagements and scheduling conflicts due to the onset of the Lok Sabha elections. The Petitioner did not join even the subsequent proceedings and continued seeking exemption from appearing for one or the other reason, which are delineated for the sake of convenience:

Date of proceedings	**Requests from Petitioner**	**Response of the Ethics Committee**
03.05.2024	▪ The Petitioner was a star campaigner for his party in the ongoing Lok Sabha elections and was in charge of the Saran Constituency.	Exempted and directed to appear on 22.05.2024
22.05.2024	▪ Busy on account of himself being a candidate in elections of the Board of Directors, National Agricultural Cooperative Marketing Federation of India (NAFAED).	Exempted and directed to be present on 31.05.2024 as a last opportunity.
31.05.2024	▪ Tried to place the onus on the Ethics Committee by stating: "I do not know what is the hurry, haste and impatience that the Committee has again fixed the date 31.05.2025 to present the opinion". ▪ He demanded information regarding the charges against him and the necessary evidence corroborating such allegations.	Exempted, but the request regarding the relevant documents was denied on the grounds of confidentiality; however, Petitioner was permitted to peruse the same on the next date of proceeding, i.e. 06.06.2024.
06.06.2024	▪ Sought exemption on the	One last opportunity was given

	grounds of his father's illness.	to the Petitioner to present his side, and the Ethics Committee resolved to take action in case the Petitioner did not turn up for proceedings scheduled on 12.06.2024.

2.7. The Petitioner eventually appeared before the Ethics Committee for the first time on 12.06.2024, when a copy of the charges was duly supplied to him. The Petitioner instead of addressing the Ethics Committee on those charges, started questioning its very authority and legitimacy. Having chosen to continue his pattern of defiance, the Petitioner communicated to the Ethics Committee that it was not competent to question him, given his position as the Opposition's Chief Whip. Following a heated discussion between them, the Ethics Committee concluded the proceedings without the Petitioner having addressed any of the charges levelled against him. The next date of the proceedings was then fixed on 19.06.2024.

2.8. The Ethics Committee, in somewhat of an unusual manner, preponed the proceedings from 19.06.2024 to 14.06.2024 without any notice to the Petitioner. The Ethics Committee then discussed the behaviour of the Petitioner during the previous proceedings and concluded that his conduct was wholly unjustified. The Ethics Committee further mooted the demeanour of both the MLCs, i.e. the Petitioner and Md. Sohaib and closed the proceedings.

2.9. The Ethics Committee thereafter submitted the Impugned Report, recommending the expulsion of the Petitioner from membership of the BLC. As regards to Md. Sohaib, the Ethics Committee recommended his suspension for two days in the upcoming Session.

2.10. The Ethics Committee's report, along with its recommendations for taking punitive measures against the Petitioner as well as Md. Sohaib was presented and discussed on 26.07.2024 in the House. After due deliberations, the majority of the House accepted the recommendations and consequently, the Petitioner was expelled from his membership of the BLC forthwith. Md. Sohaib, on the other hand, was suspended for the first two days of the 208th Session of the House.

2.11. As a sequel thereto, the Secretariat of BLC issued the Impugned Notification dated 26.07.2024, relieving the Petitioner from membership of the BLC and notifying the resultant vacancy caused by such expulsion. The aforesaid measures have prompted the Petitioner to approach this Court through these writ proceedings.

2.12. We may hasten to add that during the pendency of this petition, Respondent No. 6, Election Commission of India (Election Commission), issued a Press Note dated 30.12.2024 declaring the bye-election for the seat held by the Petitioner before his expulsion. The election process was resolved to be completed before 25.01.2025. Considering the impact of the notified election on the outcome of this petition, vide order dated 15.01.2025 the declaration of the result of such bye-election was stayed.

B. CONTENTIONS ON BEHALF OF THE PETITIONER

3. Dr. Abhishek Manu Singhvi and Mr. Gopal Sankarnarayanan, learned Senior Counsels appearing on behalf of the Petitioner vehemently contended that the Impugned Report and the consequential Notification are illegal and unconstitutional. They argued that the actions against the Petitioner were actuated by mala fide and suffered from gross illegalities, both in procedure and substance.

4. Dr. Singhvi and Mr. Sankarnarayanan canvassed the following grounds in support of their submissions:

a) The expulsion of the Petitioner from the membership of BLC was violative of the principles of natural justice, fair and just play, as the relevant material, including the video clip containing his transgressions were not furnished to him. The Petitioner was denied access to the material evidence on the pretext that the proceedings of the House are confidential and could only be perused by him during the meetings of the Ethics Committee. The Petitioner was thus caused inexorable prejudice in the matter of preparing his defence.

b) The Ethics Committee explicitly assured the Petitioner on 12.06.2024 that charges would be framed only after receiving all the relevant material, for which the next date of proceeding was fixed on 19.06.2024. The Ethics Committee, however unilaterally and deliberately advanced the date of hearing to 14.06.2024 without his knowledge. The Petitioner has thus been condemned unheard, and in a manner which reeks of malice and amounts to gross illegality.

c) Not only this, the Ethics Committee's report dated 14.06.2024 was circulated selectively with the members belonging to the Ruling Party, and was kept confidential from the members belonging to the Opposition Parties. Such members being in the minority could not effectively participate in the proceedings.

d) In any event, the Petitioner has been hammered with severe punishment, disproportionate to the attributed misconduct and also in comparison to another MLC Md. Sohaib, who, despite facing somewhat similar allegations, was awarded suspension of two days from the upcoming Session.

e) It is settled law that a 'graded' approach is required where the House is disciplining its members. Deviation from such an approach in the case of the Petitioner is not based on any sufficient material, and the disproportionate punishment imposed on him falls foul of the Fundamental Rights enshrined in Articles 14, 19 and 21 of the Constitution of India.

C. CONTENTIONS ON BEHALF OF RESPONDENTS

5. Contrarily, Mr. Ranjit Kumar, learned Senior Counsel representing Respondent Nos. 1 to 5, strongly opposed the instant Writ Petition urging that the Impugned Report and Notification expelling the Petitioner from the BLC are based on concrete evidence. He submitted that the action against the Petitioner was taken following due process of law, which has been approved by the majority of the House and thus warrants no interference.

6. In this vein, while opposing the Writ Petition, Mr. Kumar advanced the following submissions:

a) At the outset, the Writ Petition is not maintainable. It is liable to be dismissed in terms of Article 212 (1) of the Constitution of India, which states that 'the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure'.

b) It is the prerogative of the House to regulate its Business and Procedure, and the decision so taken cannot be tested on the bedrock of proportionality. The issue of proportionality should be left to the wisdom of the House. In other words, the Court cannot examine the quantum of punishment imposed upon the Petitioner, as such a recourse would amount to reviewing the validity of the proceedings of the House.

c) The Ethics Committee adhered to the principles of audi alteram partem as the Petitioner was given reasonable opportunity of being heard. Such a plea is fortified by the fact that the Ethics Committee asked the Petitioner to join its proceedings on 03.05.2024, 22.05.2024, 31.05.2024, 06.06.2024 and 12.06.2024. In fact, it is the Petitioner who deliberately and for reasons best known to him, failed to avail such opportunity. He kept on either avoiding the proceedings or threatening the Ethics Committee with one or the other objection until 12.06.2024 when he entered appearance for the first time.

d) The Petitioner was duly served with the list of charges as soon as he appeared on 12.06.2024. He, however instead of addressing the charges, questioned the very legality and the authority of the Ethics Committee itself. The Petitioner, being a member of the House, is deemed to have knowledge of the formation of the Ethics Committee under Article 208 of the Constitution and the manner in which its proceedings are conducted.

e) The Petitioner cannot raise the plea of proportionality and seek parity with the other MLC, Md. Sohaib for the reason that the latter duly appeared before the Ethics Committee and cooperated in the proceedings. On the other hand, the Petitioner remained defiant and disregarded the prescribed procedure. Being the Chief Whip of the Opposition, he held a greater responsibility towards the policies, rules and constitutional authority of the House.

f) The Petitioner has a habit of degrading the authority of the House through his indecent and unparliamentary acts for which he was earlier also suspended from the House on 28.03.2022 in the 200th Session of the BLC.

7. Mr. Ankit Agarwal, counsel for Respondent No. 6-the Election Commission, submitted that in view of Section 151A of the Representation of People Act, 1951 (RP Act), the Commission was duty-bound to notify the elections as soon as the vacancy occurred. He further submitted that the Election Commission had nothing to add on the merits of the case.

8. Ms. Meenakshi Arora, learned Senior Counsel, entered appearance for the Intervener, Shri Lalan Prasad, who is the aspirant for election to the MLC seat declared vacant upon the expulsion of the Petitioner. She also asserted that the bye-election declared by the Election Commission for the vacant seat aligned with Section 151A of the RP Act. According to her Section 151A of the RP Act is triggered the moment a 'legal vacancy' occurs, mandating the immediate election to fill up the same.

D. ISSUES FOR CONSIDERATION

9. Having traversed the sequence of events as they emanated, the contentions put forth on behalf of the parties as well as the material on record, we are of the considered view that the following vital issues require analysis:

i. Whether the instant Writ Petition is maintainable in view of Article 212 (1) of the Constitution of India and whether the proceedings of the Ethics Committee are amenable to judicial review?

ii. Can this Court in exercise of its writ jurisdiction review the proportionality of the punishment imposed by the House?

iii. If so, whether the Petitioner's expulsion is disproportionate to the misconduct attributed to him and whether it merits any interference?

iv. If Issue No. (iii) is answered in the affirmative, whether this Court is empowered to determine the quantum of punishment that may be imposed on the Petitioner?

E. ANALYSIS

E.1. Whether the instant Writ Petition is maintainable in view of Article 212 (1) of the Constitution of India and whether the proceedings of the Ethics Committee are amenable to judicial review?

10. The Respondents have raised an objection against the very maintainability of the Writ Petition in view of Article 212(1) of the Constitution of India. Since this argument strikes at the core of the instant matter, we find it imperative to address this contention at the very outset. Article 212 (1) of the Constitution of India bars any enquiry regarding any proceeding in the Legislature on the grounds of alleged irregularity of procedure.

11. Having given our thoughtful consideration, we find ourselves unable to concur with the contentions asseverated by the Respondents that the decision of the Ethics Committee is shielded by the immunity proffered under Article 212(1). We say so because it is no longer res integra that there is no absolute bar on calling into question the decisions taken by the Legislature. The protection under Article 212(1) operates only with respect to the 'Proceedings in the Legislature' on the grounds of 'Procedural Irregularities'. It could not have been the intent of the lawmakers to circumscribe Constitutional Courts unconditionally from scrutinising the validity of the actions of the Legislature, which may encroach upon the Fundamental Rights of the members and/or citizens.

12. To simplify the understanding of the embargo postulated under Article 212(1), we deem it appropriate to distinguish the terms- 'Proceedings in the Legislature' and 'Legislative Decision'. These terms represent distinct concepts, each serving a different function in the law-making process.

13. To further explicate, the 'Proceedings in the Legislature' comprise the formal steps, debates, and motions undertaken to facilitate deliberations within the House. It is a structured mechanism that ensures due consideration of a proposed measure, allowing for discussion, amendment, and scrutiny before reaching a final resolution. These procedural steps are not ends in themselves but are designed to channel legislative discourse towards a definitive outcome. Article 212(1) of the Constitution provides immunity for the manner of such proceedings, and hence, Constitutional Courts would exercise restraint when such proceedings are called into question on the grounds of procedural irregularity.

14. A 'Legislative Decision', on the other hand, is the culmination of the legislative procedure-the formal expression of the will of the House on a given matter. While Proceedings of the Legislature provide the framework within which members exercise their deliberative functions, the Legislative Decision is the authoritative determination that follows such deliberation. These decisions of

the Legislature, though emanating from a coordinate branch of Government, are not immune from scrutiny by Constitutional Courts. Judicial review of Legislative Decisions is not an encroachment upon legislative dominion but a necessary safeguard to uphold constitutional supremacy.

15. In this regard, we deem it apposite to underscore the applicability of the principle of 'expression unius est exclusion alterius', namely, that whatever has not been included has, by implication, been excluded. Applying the aforesaid principle, we have no doubt in concluding that the prohibition under Article 212(1) operates only with respect to the scrutiny of 'Proceedings in the Legislature' on the touchstone of 'Irregularity of Procedure'. It does not oust the power of judicial review of the decisions of the Legislature, whether Legislative or Administrative, on the grounds of illegality or unconstitutionality.

16. Constitutional courts are entrusted with the responsibility of ensuring the lawfulness of the decisions of the Legislature rather than substituting their judgment to decide the rights of the parties. A decision-making authority, be it the Legislature or otherwise, while exercising its powers, must act within the limits prescribed by the Constitution. Any determination by the authority concerned, if found to be in excess of its constitutional authority or violative of Fundamental Rights, is subject to judicial probe. Such overarching decisions cannot be sustained to preserve integrity in the legal system by preventing excess and abuse of power.

17. Reverting to the facts of the instant case, the Impugned Report recommending the expulsion of the Petitioner was made by the Ethics Committee in the discharge of its administrative functions. These functions have been assigned in the Rules framed by the State Legislature under Article 208 of the Constitution. The Rules so enacted govern the internal functioning, discipline of the House and the procedure by which the House regulates its affairs.

However, such administrative actions, even though referable to the Rules formulated under Article 208 of the Constitution, do not constitute the legislative functions of the House. As discussed in the preceding paragraphs, the legislative functions pertain to lawmaking, deliberation, and policy formulation, whereas the present action of the Ethics Committee is purely administrative in nature, aimed at enforcing discipline and ethical standards amongst the members of the House.

18. The distinction between legislative and administrative functions is well recognized in constitutional jurisprudence. When a legislative body frames rules under Article 208 and subsequently enforces them through disciplinary measures, such enforcement is an exercise of administrative power rather than legislative power.

19. It is well established that administrative actions, even when undertaken by legislative bodies or their committees, are subject to judicial review where they affect the rights and interests of individuals. In fact, this Court in Ashish Shelar and Ors. v. The Maharashtra Legislative Assembly and Anr.[1] has held that the substantive disciplinary or rationality of the self-security measure inflicted upon the erring member is open to judicial review on the touch stone of being unconstitutional, grossly illegal, irrational or arbitrary.

20. There can thus be no doubt that if such an administrative decision is found to be arbitrary, mala fide, or in violation of constitutional rights, it is open to judicial intervention in the same manner as any other executive action of the State. Determining whether an impugned action or breach is an exempted irregularity or justiciable illegality is a matter of judicial interpretation and would undoubtedly fall within the ambit of Constitutional Courts.

21. We also clarify here that the scrutiny in the instant Writ Petition pertains to the recommendation of the Ethics Committee subsequently ratified by the majority of the House. This Court is not concerned with the procedure adopted either by the Ethics Committee or the House while making or acting on such recommendation. In this context, the present action resulting in civil consequences for the Petitioner, cannot be immune from judicial review under the pretext of legislative privilege.

22. We cannot be ignorant that the grounds raised before us traverse beyond mere procedural irregularity and challenge the Petitioner's expulsion on the footing of proportionality. Needless to say, the imposed punishment has a significant impact on the Petitioner's Fundamental Rights and a chilling effect on the representative democratic framework of our society, issues that we have dealt with in greater detail, in the later parts of this judgement.

23. Consequently, on an overall consideration of legal position, we are of the view that the Respondent's argument qua maintainability of the Writ Petition must fail. We hold that the action of the Ethics Committee neither forms part of the 'Proceedings of the Legislature' nor is it tantamount to a 'Legislative Decision'. Accordingly, entertaining the instant petition would not fall foul of the restrictions imposed by Article 212 (1) of the Constitution.

E.2. Can the Courts examine the proportionality of punishment imposed on a member while reviewing the validity of the action taken by the House?

24. Having held that the instant Writ Petition is maintainable, it would now be apposite to address the preliminary question of plausibility of judicial interference in the issue concerning the proportion of punishment, when examining the validity of the action taken by the House. We will undertake the

analysis of this issue through a twopronged approach: (i) the relevance and nature of the 'doctrine of proportionality'; and (ii) the role of Constitutional Courts in reviewing a decision taken by the House.

E.2.1. The Doctrine of Proportionality: A dynamic precept

25. The expression 'proportion' is derived from the Latin term proportio, which corresponds to comparative size, number or degree. The 'doctrine of proportionality' essentially signifies that any action should be steeped in reason or logic. This concept highlights the need for clear justification in decision-making, asserting that decisions made without sufficient objective reasoning are often at odds with intended goals. In order to holistically understand the 'doctrine of proportionality' and the manner in which it is applied, it is, therefore, imperative to examine its disposition in: (i) the domestic sphere; and (ii) in international jurisprudence.

E.2.1.1 The Domestic Sphere

26. The doctrine of proportionality in Indian jurisprudence is guided by the principle of selecting the most appropriate and least restrictive measures to achieve the intended objective. The courts' role is limited to ensuring a proper balance between the adverse effects of an action or penalty on an individual's rights, liberties, or interests and the purpose it seeks to serve. In summary, while there may be a range of discretionary choices, it is within the courts' purview to assess whether the chosen measure excessively infringes upon rights.

27. The test of proportionality, in this context, is satisfied by considering a myriad of factors such as fairness, justice, absence of vindictiveness, predominance of objectivity, adherence to natural justice, fair play, and the recognition of mitigating circumstances etc. These factors, while not exhaustive, are instrumental in maintaining the delicate balance between imposing consequences for wrongful actions and ensuring that such measures do not result in right-based transgressions.

28. In the Indian legal spectrum, the notion of proportionality finds its place in a multitude of legal issues. To instantiate:

(i) Service and Labour Laws

29. This Court has time and again highlighted the importance of proportionality when dealing with the question of punishment or disciplinary action for misconduct at the workplace, whether it be in public service or private organisations. The nature of the misconduct, the circumstances of the occurrence, the history and effect of the incident are all factors which ought to be taken into consideration.

30. For example, in Dev Singh v. Punjab Tourism Development Corpn. Ltd.[2], a public servant was penalised with dismissal from service for the offense of misplacing and losing an official file. This Court, in appeal, considered the facts that the employee was serving the Corporation for twenty years with a previously unblemished record, the misconduct was not deliberate or motivated, and the file was not shown to be of grave importance or sensitivity, reduced the punishment to withholding of increment of the employee.

On the other hand, in a case involving a delinquent employee who did not join duty upon transfer, the Court considered his extended absence of over 233 days and his refusal to visit the appointed doctor to substantiate his claim for medical absence, and concluded that the punishment of removal from service was proportionate to the misdemeanour.[3]

31. Thus, service laws in India are riddled with such like precedents, mandating employers, including the Government, to take all circumstances into account and undertake proportionate action against such offences.

(ii) Administrative Law

32. In similar parlance to service law, administrative law also places great importance on approaching decision-making with proportionality. For instance, blacklisting from Government tender auctions, which is a harsh punishment is considered proportionate in dire cases, such as where the contractor has embezzled funds in collusion with Government employees.[4] However, this Court has also protected contract awardees from withdrawal of the contract on mere hyper-technical grounds.[5]

33. Even beyond government auction, proportionality ought to go to the root of decision making by the Government. The litmus test that needs to be administered is whether the harshest or strongest measure is necessarily required to be implemented in a given case. In a situation where a lessee was in default of lease premium, rent, and interest due to underdeveloped surroundings, this Court held that the harsh step of resumption of the land as well as forfeiture of the already paid sum would be too harsh, when recovery proceedings are available.[6] On the other hand, this Court has also upheld the stronger step taken by the Railway Recruitment Board for re-test of limited candidates, when there was evidence of paper leaking and mass-cheating.[7]

(iii) Constitutional Law

34. Constitutional law is perhaps the area of law where the term proportionality is used most commonly. This is so because the proportionality test, initially identified in Modern Dental College & Research Centre v. State of M.P.,[8] is widely used to consider the vires of legislative as well as executive actions.

35. The test of proportionality, thus, applies to cases where action is brought to protect the right guaranteed by the Constitution or other laws. It largely seeks to identify whether the restriction sought to be placed on the right is proportionate to the objective sought to be achieved by the restriction. It often belies a comparison between the importance of the public purpose of the restriction on one hand and the public right on the other hand.

36. This comparison has played out distinctly in different circumstances. When dealing with the laws empowering the Executive to restrict internet in areas with underlying disturbances (like the Union Territories of Ladakh and Jammu & Kashmir), this Court has compared the importance of the right to speech and expression against that of national security concerns.[9] On the other hand, when considering the arguments in Association for Democratic Reforms v. Union of India[10], a Constitution Bench of this Court had the occasion to compare the importance of the right to financial privacy and the right to political transparency, which also led to the evolution of what is called the 'double proportionality standard'.

37. Perhaps the clearest application of proportionality principles on the touchstone of constitutional law has been in the case of Internet & Mobile Assn. of India v. RBI[11]. Here, this Court delved into various circumstances surrounding the use, merits, and demerits of virtual currencies, taking a view on the impact of its proliferation as well as curtailment on the economy, individual investors, and its exchanges, thus coming to the conclusion that the relevant RBI circulars had a disproportionate impact on the market vis-à-vis the RBI's aim to regulate virtual currencies.

(iv) Criminal Law

38. In criminal law, of course, the dispensation of justice strives to be ever more precise and perfect; this is doubtless because of the ramifications of a verdict in such trials, which militate against physical liberty and autonomy-an autonomy that is most dear to modern society. Even here, it is most noticeable that the principle of proportionality has been widely accepted and promulgated as the vital safeguard against prejudice, excessiveness, and unreasonableness.

39. We have consistently observed in cases of sentencing the considerations of proportionality taking centre stage, such as in Shivu v. Registrar General, High Court of Karnataka,[12] which held as follows:

"The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement

that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt."

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

[Emphasis Supplied]

40. In fact, this Court has consistently acknowledged that the degree of punishment should be commensurate to the gravity of the offence, such that it is consistent with the principle of proportionality. For illustration, nowhere in criminal law is the discourse on proportionality vaster than in cases of death penalty, where the mitigating and aggravating circumstances of the perpetrator are weighed in tandem and scrupulously studied.[13] Thus, a sort of 'balance sheet' is drawn up which aids in undertaking the exercise of satisfying proportionality.[14] What emerges, therefore, is that the application of proportionality is not severable from the outcomes of that exercise.

41. We may also hasten to note the use of this principle in bail matters, where the Court seeks to restrict its own discretion by levying proportionality. In a catena of decisions,[15] this Court has repeatedly cautioned against excessively stringent or disproportionate bail conditions as a side-effect of granting this important relief.

(v) Interpretation of Statutes

42. In our considered opinion, the principle of proportionality also finds purchase in something as fundamental as the interpretation of statutes, which, in turn, colours all the spheres of law we have previously laid out. Statutory interpretation is that unique tool a jurist possesses to give meaningful voice to the law enacted by the Legislature, and it has been our jurisprudence to always read proportionality into the laws we seek to interpret.

43. Indeed, many landmark judgments of this Court, which have interpreted key provisions of our legal code often operate with an in-built proclivity towards simulating proportionality. Take, for instance, the ruling in Maneka Gandhi v. Union of India,[16] wherein this Court held against excessive restrictions on liberty, especially those which are disproportionate to the State's purported objectives. Thus, one might legitimately argue the Indian experience with 'due process'

began with the reading of proportionality into our grund norm, i.e. the Indian Constitution.

44. Interpreting statutory provisions involves understanding and giving effect to the Legislature's intent, so as to avoid absurd or unjust outcomes-an idea that aligns with ensuring that the means adopted by a statute are commensurate with its ends. In essence, an interpretation should not lead to outcomes that unduly burden individuals or contradict the broader objectives of justice and fairness. This concern reflects a proportional mind set: that the impact of a statute should be weighed against its intended purpose, much as Indian courts have done in cases like Maneka Gandhi (supra) and Arnesh Kumar v. State of Bihar.[17] These cases clearly demonstrate the wide prevalence of the principle of proportionality in the application and implementation of law.

45. The doctrine of proportionality is also firmly entrenched in our Legislative Policy. Some notable examples include:

(a) the authority vested in Labour Courts and Industrial Tribunals under the Industrial Disputes Act, 1947 to modify the quantum of punishment imposed on a workman;

(b) the prescription of minimum and maximum sentences in Penal Laws, such as the Indian Penal Code, which is now succeeded by the Bharatiya Nyaya Sanhita, 2023

(c) the Statutory Rules and Bye-laws etc. regulating the service conditions of government employees as also those working in entities deriving their status from Article 12 of the Constitution. These legal provisions meticulously calibrate the imbibing of proportionality principles by the Indian Legislature. Thus, while a minor infraction may warrant a 'censure', serious offences such as the misappropriation of public funds may justifiably result in 'dismissal' from service.

E.2.1.2 International Jurisprudence

46. Beyond the spectrum of domestic laws, we find that the doctrine of proportionality is also widely applied in foreign jurisdictions, following a similar rationale to that employed by Indian courts.

Some instances include:

(i) Germany

47. In similar parlance to that of Indian constitutional jurisprudence, the doctrine of proportionality in German law is applied to every case of a state act constituting an 'eingriff' or encroachment, into a constitutional freedom or

property right.[18] To satisfy the proportionality requirement, the act of state under scrutiny must be:[19] (a) appropriate to promote its objective; (b) necessary to promote that objective; and (c) Adequate (balancing operation), i.e. the prejudice to the freedom or property right in question must not be inadequate in comparison with the weight of the interests supposed to justify the intervention.

48. To further demystify these factors, the suitability test (a) is fulfilled by demonstrating that the act in question be apt to promote the objective against which it is measured.[20] The necessity requirement (b) mandates that, among several equally effective means to achieve the objective, the least restrictive one must be chosen. An act of the state is deemed unnecessary if its objective can be achieved through a less intrusive method.[21] The adequacy test (c) assesses whether the benefit gained by restricting the right justifies the extent of the intrusion, ensuring that the objective's value outweighs the resulting loss.

(ii) European Union

49. In this instance, the principle of proportionality is laid down in Article 5(4) of the Treaty on the European Union (EU). It seeks to set actions taken by EU institutions within specified bounds. In EU law a proportionality test is applied both to EU acts and to acts of the Member States.[22]

50. Under this principle, EU when reviewing an act or a measure, analyses whether the same is:[23] (a) an appropriate or suitable measure; (b) in pursuit of a legitimate objective; (c) among the appropriate measures constitutes the least restrictive means (LRM); and (d) not manifestly disproportionate in terms of a cost versus benefits balance.

51. It is pertinent to mention that not all of these steps are applied in every case. Albeit, the LRM test and the manifestly disproportionate standard are often used as alternatives rather than in conjunction. Even when proportionality in the strict sense is applied, an explicit balancing of costs and benefits is uncommon. Instead, the manifestly disproportionate test serves as a rough measure of justice, as its terminology suggests.[24] It is designed to allow a relatively wide margin of discretion to the authorities whose measures are under review.

(iii) United States of America

52. American jurisprudence though it has made limited use of the term 'proportionality', notions akin to proportionality including balancing of constitutional values,[25] often appear in the US system of substantive doctrinal standards of constitutional judicial review.[26] Consequently, the US Courts have retained its two standards of strict scrutiny and rational basis scrutiny, when adjudicating challenges to State or Federal Legislation.

53. For the purposes of the present discussion, we will limit our analysis to the strict scrutiny test, which posits that a government action must be necessary to achieve a compelling government interest.[27] This method of constitutional analysis employs several inquiries that are also present in a traditional proportionality review. First, the Court must determine whether the Government action infringes on a fundamental right or discriminates against a suspect class.[28]

If it does, the Court must invalidate the government action unless it is necessary for the attainment of a compelling Government interest.[29] The Government interest involved must be sufficiently important to justify a suspect classification or Government invasion of individual autonomy.[30] The result is that the Government action is invalidated if the Court is able to find a less restrictive, yet equally effective, alternative to the proposed method.

54. It is therefore evident that the doctrine of proportionality is fundamentally embedded in the concept of fairness in action across domestic, foreign, and international legal systems. This principle ensures that measures taken are appropriate, necessary, and balanced in relation to the objectives they seek to achieve. Proportionality is deeply intertwined with the principles of the Rule of Law and natural justice, as it guards against arbitrary or excessive actions. Consequently, it is interpreted as an implicit requirement in almost every legal provision, unless it is explicitly barred by the legislation itself.

55. In the specific context of the instant appeal, what must therefore be borne in mind is that when contemplating the decision of expulsion of a Legal or Public Representative such as the Petitioner, inflicting punishment beyond the necessary period may suffer from the vice of being irrational and arbitrariness. Such action then becomes prone to challenge on the grounds of being illegal and unconstitutional.

E.2.2. Scrutinising the 'Action' of the House - The role of Constitutional Courts

56. In the aforesaid context, Constitutional Courts assume a crucial role in ensuring that the actions imposing punishments on members are proportionate and just. This is achieved through a structured approach that balances legislative authority with judicial oversight. This Court, in a recent decision in Ashish Shelar (supra), has eruditely held that:

"The sweep of Article 21 is expansive enough to govern the action of dismembering a member from the House of the legislative assembly in the form of expulsion or be it a case of suspension by directing withdrawal from the meeting of the Assembly for the remainder of the Session".

[Emphasis supplied]

57. Insofar as the specific punishment of expulsion is concerned, this Court, in Raja Ram Pal v. The Hon'ble Speaker of Lok Sabha,[31] recognised the power of the Legislature to expel a member. However, it laced the existence of such power with a word of caution. It was held that the "expulsion of a member is a grave measure and normally, it should not be taken". Needless to say, the expulsion of a member from the House constitutes a higher degree of deprivation and must only be sustained in exceptional circumstances.

58. There is no gainsaid that imposing a disproportionate punishment not only undermines democratic values by depriving the member from participating in the proceedings of the House but also affects the electorates of the constituency who remain unrepresented. It is accurately stated that in our representative democracy, the main function of a legislator is to act as a reflection of the people's will. That is to say, instead of being a free agent to follow their conviction, the legislator is an agent of the electorates and thus obligated to reflect the opinions and values of the people they represent.

59. The removal of a member from the House therefore is a significant issue for both the member and the constituency they represent. The democratic process relies on the active participation of all members, and even brief absences can impede a member's ability to contribute to critical legislative discussions and decisions. This underscores the importance of their presence in all parliamentary activities, as their absence can have far-reaching implications on the legislative outcomes and the representation of their constituency's interests. We clarify that while representation of the constituency is not the sole factor in determining the punishment to be imposed on a member, it nonetheless remains an important aspect that merits due consideration.

60. As stated, the absence of a duly elected representative disrupts the democratic process and undermines the voice of the electorate. In such a situation, if the punishment inflicted upon the member concerned appears to be prima facie harsh and disproportionate, Constitutional Courts owe a duty to undo such gross injustice and review the proportionality of such disqualifications or expulsions.

61. It is pertinent to add that the aforementioned responsibility involves a delicate balance where courts must act decisively to strike down excessively harsh actions that threaten our democratic fabric while simultaneously exercising restraint to avoid encroaching upon the legislative domain. We reiterate that courts must reflect a certain degree of deference to the legislative will and wisdom, intervening only when the action prescribed is so disproportionate that it shocks the intrinsic sense of justice.

62. Given the foregoing discussion, we hold that there is no absolute bar on the Constitutional Courts to examine the proportionality of the punishment imposed

on a member while reviewing the validity of the action taken by the House. By focusing on the proportionality of punishment, courts must ensure that justice aligns with constitutional values and societal norms, thereby upholding the integrity of the democratic process.

63. At this point, it must be added that the determination of what constitutes a disproportionate measure is inherently complex and context-dependent. Such assessment requires a nuanced scrutiny of the specific circumstances surrounding each case. This means that a one-size-fits-all definition is impractical while adjudicating proportionality and the courts must exercise their discretion in a prudent and judicious manner.

64. We deem it appropriate to outline a few guiding principles for courts to consider while scrutinising the proportionality of actions taken by the House against its member(s). We clarify that these parameters are not exhaustive, as considerations will inevitably vary from case to case. An indicative list of such parameters includes:

(a) Degree of obstruction caused by the member in the proceedings of the House;

(b) Whether the behaviour of the member has brought disrepute to the dignity of the entire House;

(c) The previous conduct of the erring member;

(d) The subsequent conduct of the erring member, such as expressing remorse, cooperation with the institutional scrutiny mechanism;

(e) Availability of lesser restrictive measures to discipline the delinquent member;

(f) Whether crude expressions uttered are deliberate and motivated or a mere outcome of language largely influenced by the local dialect;

(g) Whether the measure adopted is suitable for furthering the desired purpose; and

(h) Balancing the interest of society, particularly the electorates, with those of the erring members.

65. We are of the view that a scrutiny of the punishment given to the members by the House on the abovementioned framework will ensure that the legislative actions are justified, necessary, and balanced, protecting both the integrity of the legislative body and the rights of its members, as well as the larger societal objective.

It is also imperative that such legislative action remains mindful of the fundamental principle that the purpose of imposing punishment is not to serve as a tool for retribution but rather to uphold and enforce discipline within the House. The primary objective should be to maintain decorum and foster an environment of constructive debate and deliberation. Any punitive measure must be proportionate and guided by considerations of fairness, reasonableness, and due process, ensuring that it does not unduly stifle democratic participation or undermine the representative nature of the institution.

E.3. Was the Petitioner's expulsion proportionate to the offence alleged against him, and whether it merits any interference?

66. Since we have reiterated the power which vests in this Court to scrutinise the proportionality of punishment imposed on a member while reviewing the validity of the action taken by the House, we may now proceed to examine whether the punishment imposed on the Petitioner was proportionate or it merits any interference.

67. It needs no emphasis that there is no place for aggression and indecency in the proceedings of the Parliament or the Legislature. Members are expected to show complete respect and deference towards each other. This expectation is not merely a matter of tradition or formality; it is essential for the effective functioning of democratic processes. It ensures that debates and discussions are productive, focused on the issues at hand, and conducted in a manner that upholds the dignity of the institution. The right to speak inside the House cannot be harnessed as a tool to insult, humiliate or defame a fellow member, Ministers and most importantly, the Chair itself.

68. Based on the material placed on record, it is evident that the demeanour of the Petitioner in the House was abhorrent and unbecoming of a member of the Legislature. We are constrained to add that the Petitioner's subsequent evasive and high-handed demeanour before the Ethics Committee was even more egregious. We have no hesitation in observing that the Petitioner actively attempted to delay and obfuscate the proceedings by refusing to cooperate with the Ethics Committee. We have already elaborated on how the Petitioner sought exemption from appearing before the Ethics Committee on some pretext or another. Such behaviour was nothing but a brazen attempt to circumvent the authority of the Ethics Committee.

69. Even when the Petitioner finally appeared before the Ethics Committee, instead of answering the charges against him, he deemed it appropriate to question the authenticity and legitimacy of the Ethics Committee itself. The Petitioner, who has served as his party's Chief Whip in the BLC, cannot possibly claim that he was unaware of the provisions under which the Ethics Committee

was constituted and conducted its proceedings. The haughtiness demonstrated by the Petitioner before the Ethics Committee is, no doubt, highly undignified of a Public Representative.

70. At this stage, it is essential to mention that the Petitioner cannot draw any parity with the other delinquent member, Md. Sohaib, who duly cooperated with the Ethics Committee and expressed remorse for his conduct. The behavioural pattern of the Petitioner, on the other hand, underscores a deliberate attempt to undermine the regulatory process and thwart the dispensation of justice. We are also mindful of the fact that the Petitioner has demonstrated similar misconduct previously as well, for which he was suspended from the House for a brief period.

71. Be that as it may, notwithstanding the conduct of the Petitioner as elaborated hereinabove, we are at the same time of the considered view that the House, as custodian of constitutional values and democratic principles, ought to exercise magnanimity and rise above petty criticism and unwarranted remarks against its members. In doing so, they would exemplify the virtues of tolerance, restraint, and institutional maturity, thereby reinforcing the dignity, impartiality, and respectability of their office.

72. While we do not discount the fundamental principle that an individual must bear the consequences of their actions, we are equally mindful that the ramifications of such a decision extend beyond the Petitioner alone. The actions prescribed against the Petitioner will inevitably have a direct and significant impact on a vast number of stakeholders, particularly the constituents who have reposed their faith in the Petitioner as their representative. Their voices, aspirations, and democratic rights cannot be disregarded, and it is in furtherance of these principles that the needs and interests of the electorate must take precedence in any decision that affects their representation in a democratic forum.

73. While dealing with individuals, such as the Petitioner, it is imperative that disciplinary measures are undertaken with due regard to the principles of proportionality and fairness. The House, in the exercise of its authority to regulate its own proceedings and maintain order, must not lose sight of the necessity for a calibrated and judicious approach.

74. In fact, this aspect is already prescribed in the Rules governing the procedure of the BLC. In this regard, our attention was drawn to Rule 10, Chapter 36 of the Bihar Vidhan Parishad - Rules of Procedure and Conduct of Business, which provides for the penalties that the Ethics Committee may recommend. A perusal of the provision depicts that if the Committee finds a member violating the

code/rules, it may recommend: (a) Censure, (b) Reprimand, (c) Suspension from the House for a specified period; and (d) any other punishment as deemed fit.

75. This Court, in a series of decisions, has consistently held that punishment disproportionate to the offence or action is in direct violation of the Fundamental Rights enshrined in the Constitution of India, particularly Articles 14 and 21.[32] The expulsion of the Petitioner from the House not only raises concerns about the violation of Fundamental Rights but also impacts the legal rights of his constituents. We find that the disproportionate nature of the punishment imposed by the House in expelling the Petitioner pricks the conscience of this Court compelling it to intervene on the sheet anchor of justice and fairness.

76. Given the applicable provisions and the underlying objective of imposing penalties on members of the House, we are of the view that the primary purpose of imposing penalties is to discipline the members and ensure the smooth and orderly functioning of the House. A more measured and balanced approach would have sufficed to address the misconduct while upholding the dignity and decorum of the House.

77. We reiterate that the principle of proportionality is a cornerstone of our judicial system, and it mandates that the severity of the punishment must correspond to the gravity of the offence. Given the aforementioned analysis, we hold that the punishment meted out to the Petitioner was excessive and disproportionate to the nature of the offence he committed.

E.4. If Issue No. (iii) is answered in the affirmative, whether this Court is empowered to determine the quantum of punishment that may be imposed on the Petitioner?

78. Having held that the punishment of expulsion imposed on the Petitioner is harsh and disproportionate, the only natural corollary would then be to consider the appropriate quantum of punishment that should be imposed on the Petitioner and whether this Court can undertake such determination.

79. In ordinary course, when a court concludes that the punishment imposed by the disciplinary authority is disproportionate to the gravity of the misconduct, it does not generally substitute its own assessment of the appropriate penalty. Instead, the established judicial approach is to remit the matter to the disciplinary authority for reconsideration.

80. This principle stems from the recognition that the authority imposing the punishment is best placed to evaluate the nature of the misconduct and determine an appropriate sanction within the framework of service rules and regulations. Judicial restraint in such matters ensures that courts do not usurp the role of administrative authorities by engaging in executive decisionmaking.

81. Having said that, it is equally important to underscore that this Court is not devoid of the power to intervene in exceptional circumstances. In order to curtail perpetuating illegality, abridge prolonged litigation, prevent unnecessary hardship to the parties involved and to do complete justice, this Court in exercise of its powers under Article 142 of the Constitution, is vested with the authority to substitute the punishment where the facts and circumstances so warrant.[33]

82. We have already held that the expulsion of the Petitioner is disproportionate and undoubtedly infringes his Fundamental Rights guaranteed under Article 14 of the Constitution. Furthermore, the expulsion also has a direct impact on a vast number of stakeholders, particularly the electorates he represents. We cannot be oblivious of the fact that the Petitioner has already undergone almost 7 months of expulsion. He has also missed the 208th Session of the BLC held between 25.11.2024 and 29.11.2024, and since his term is expiring in the year 2026, the Petitioner is left with a short duration.

83. Considering the foregoing facts and circumstances, we are of the view that if this matter is now remanded to the Ethics Committee for reconsideration of the appropriate punishment, the ensuing process is likely to be protracted, which might deprive the Petitioner in participating in the ensuing Sessions.

84. In such situations, the constitutional mandate empowers this Court to transcend procedural limitations and provide equitable relief in cases where rigid adherence to legal provisions may result in injustice. When the established remedies fall short of addressing exceptional circumstances or fail to meet the demands of justice, this Court, as the final arbiter, must invoke its constitutional powers to bridge the gap and ensure a just, fair, and equitable resolution.

85. It is settled law that the extraordinary powers vested in this Court under Article 142 of the Constitution of India, may be invoked in cases where remitting the matter would result in undue delay and where the interests of justice demand a swift resolution. In view thereof, we are of the considered opinion that the exceptional situation before us warrants invocation of our powers under Article 142 of the Constitution to do complete justice between the parties.

86. Balancing the competing considerations, we hold that the period of expulsion already undergone by the Petitioner is deemed to be considered as a period of his suspension; and in our view, constitutes sufficient punishment for the misconduct displayed by him. Accordingly, the Impugned Report of the Ethics Committee and the subsequent Notification notifying the expulsion of the Petitioner deserves to be modified to that extent. As a segue thereto, the Petitioner is directed to be reinstated as member of the BLC with immediate effect.

87. We may clarify that the indulgence extended by this Court in reducing the punishment imposed on the Petitioner should not be misconstrued as condonation of his conduct. This Court has exercised its discretion squarely in the interests of proportionality and fairness. Consequently, the Petitioner is expected to uphold the dignity of the House and adhere to the standards of discipline befitting its members. Henceforth, it is incumbent upon the Petitioner to conduct himself with decorum and responsibility in legislative proceedings. Any deviation from this expectation or recurrence of misconduct will not be viewed lightly, and the concerned authority shall be at liberty to take appropriate action in accordance with law.

F. CONCLUSION AND DIRECTIONS

88. In view of the foregoing discussion and considering the totality of the facts and circumstances, we deem it appropriate to allow this Writ Petition in the following terms:

a) The objection raised by the Respondents against the maintainability of the instant petition is rejected. The issues raised in this Writ Petition do not fall within the restrictions outlined under Article 212 (1) of the Constitution of India.

b) There is no absolute bar on the Constitutional Courts to examine the proportionality of the punishment imposed on a Member while reviewing the validity of the action taken by the House.

c) The punishment meted out to the Petitioner was highly excessive and disproportionate to the nature of the misconduct committed by him.

d) The period of expulsion already undergone by the Petitioner shall be deemed as a period of his suspension from the House and will amount to be sufficient punishment for his misdemeanour. Accordingly, we set aside the Impugned Report of the Ethics Committee as well as the Notification of the BLC, only to the extent of nature of punishment it recommends to be imposed on the Petitioner.

e) The Petitioner is directed to be reinstated as a member of the BLC with immediate effect. However, he shall not be entitled to claim any remuneration or other monetary benefits for the period of his disbandment. The Petitioner shall be entitled to such other perks and privileges which any other similarly placed MLC is entitled to upon completion of their full tenure. For the limited purpose of post-tenure benefits, if any, the Petitioner shall be deemed to have served as MLC for the entire tenure.

f) Should the Petitioner indulge further in such misconduct upon his reinstatement, we leave it to the Ethics Committee or Chairperson of the BLC to take appropriate action, in accordance with law.

g) As an upshot of the foregoing, the Press Note dated 30.12.2024 issued by Respondent No. 6, Election Commission, declaring the bye-election for the seat earlier held by the Petitioner is hereby quashed, and any action taken pursuant to such Press Note is annulled.

89. The Writ Petition is disposed of in the above terms.

90. Pending interlocutory applications, if any, are also disposed of. Ordered accordingly.

.....J. [Surya Kant]

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

New Delhi

February 25, 2025

1 Ashish Shelar and Ors. v. Maharashtra Legislative Assembly and Anr.; (2022) 12 SCC 273.

2 Dev Singh v. Punjab Tourism Development Corporation Ltd. & Anr. ; (2003) 8 SCC 9.

3 LIC of India v. R. Dhandapani; (2006) 13 SCC 613.

4 Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors.; (2014) 14 SCC 731.

5 Vice-Chairman and Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty (P) Ltd. & Ors.; (2022) 16 SCC 527.

6 Teri Oat Estates (P) Ltd. v. U.T., Chandigarh & Ors.; (2004) 2 SCC 130.

7 Chairman, All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors.; (2010) 6 SCC 614.

8 Modern Dental College & Research Centre & Ors. v. State of M.P. & Ors.; (2016) 7 SCC 353.

9 Anuradha Bhasin v. Union of India & Ors.; (2020) 3 SCC 637.

10 Association for Democratic Reforms & Anr. v. Union of India & Ors.; 2024 SCC OnLine SC 150.

11 Internet and Mobile Association of India v. Reserve Bank of India; (2020) 10 SCC 274.

12 Shivu & Anr. v. Registrar General, High Court of Karnataka & Anr.; (2007) 4 SCC 713.

13 Bachan Singh v. State of Punjab; (1982) 3 SCC 24.

14 Lehna v. State of Haryana; (2002) 3 SCC 76.

15 Frank Vitus v. Narcotics Control Bureau & Ors.; 2024 INSC 479; Munish Bhasin and Ors v. State (Govt. of NCT of Delhi) and Anr.; (2009) 4 SCC 45; Mohammed Zubair v. State of NCT of Delhi and Ors.; 2022 SCC OnLine SC 897; Parvez Noordin Lokhandwalla v. State of Maharashtra & Anr.; (2020) 10 SCC 77.

16 Maneka Gandhi v. Union of India; (1978) 1 SCC 248.

17 Arnesh Kumar v. State of Bihar & Anr.; (2014) 8 SCC 273.

18 BVerfGE 16, 194 (at 201, 202).

19 Cf. G. LübbeWolff, The Principle of Proportionality in the Case-Law of the German Federal Constitutional Court, Human Rights Law Journal 2014, vol. 34, pg. 12.

20 BVerfGE 104, 337 (at 345).

21 BVerfGE 121, 317 (at 344).

22 Sauter W. Proportionality in EU Law: A Balancing Act? Cambridge Yearbook of European Legal Studies, 2013;15:439-466.

23 Case C-331/88 The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health ex parte Fedesa et al [1990] ECR I-4023 [13]; Principle of Proportionality, European Union, available here: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://eurlex.europa.eu/EN/legal-content/glossary/principle-ofproportionality.html&ved=2ahUKEwjR9aun6NSLAxXhzDgGHTAsHtcQFnoECCQQAQ&usg=AOvVaw14i3cuEILjPFx1jQZjNOuR.

24 Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA Ltd et al v Secretary of State for Health et al ECR I-10423 [80]-[84].

25 Kathleen M. Sullivan, The Justices of Rules and Standards, 106 Harv. L. Rev. 22, 61 (1992).

26 Erwin Chemerinsky, Constitutional Law 529-31 (Aspen Pub. 2001).

27 Griswold v. Connecticut, 381 U.S. 479, 503-504 (1965).

28 Clark v. Jeter, 486 U.S. 456, 461 (1988).

29 Griswold, 381 U.S. at 504.

30 Griswold, 381 U.S. at 504.

31 Raja Ram Pal v. The Hon'ble Speaker of Lok Sabha & Ors.; (2007) 3 SCC 184.

32 Ranjit Thakur v. Union of India & Ors.; (1987) 4 SCC 611; Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. v. J. Hussain; (2013) 10 SCC 106.

33 B.C. Chaturvedi v. Union of India and Ors.; 1995 (6) SCC 749.

IN THE SUPREME COURT OF INDIA

Suneeti Toteja
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 6898 of 2023]

HEADNOTE – Failure of the sanctioning authority to provide sanction within the stipulated time would not make the sanction a 'deemed sanction' because such a concept doesn't exist under Section 197 Cr.P.C.

Unlike the old Cr.P.C., the new criminal law i.e., Bhartiya Nagrik Suraksha Sanhita, 2023 ("BNSS") provides for the concept of deemed sanction. The new procedural law under proviso second to Section 218 (1) makes a provision of deemed sanction i.e., if a sanction is not received to prosecute the public servant within 120 days, the sanction would be considered as deemed sanction to prosecute the public servant.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. The present Criminal Appeal arises out of the order dated 16.11.2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Application u/s 482 No.8057/2022, wherein the High Court has dismissed the petition filed by the appellant herein for quashing of the summoning order dated 12.07.2022 and the chargesheet No.01/2022 dated 02.07.2022.

3. The appellant herein is stated to be an employee of the Bureau of Indian Standards (BIS). Briefly stated, the facts giving rise to the present case are that Dr. Manisha Narayan, the respondent No.2 herein (hereinafter referred to as "complainant") had filed FIR No.610/2018 dated 30.10.2018 at the Aliganj Police Station, District Lucknow. It was stated in the said FIR that during her tenure with the Food Safety and Standards Authority of India (hereinafter "FSSAI" or "authority") in New Delhi in the capacity of an Associate Director, she was sexually harassed on multiple occasions by Dr. S.S. Ghonkrorkta, the Enforcement Director therein.

Being aggrieved, she disclosed the same to her mother who then filed a complaint before the FSSAI for action to be taken under the provisions of the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter "POSH Act"). An Internal Complaints Committee (ICC) was constituted to investigate the allegations of the complainant and the enquiry was referred to the ICC on 04.12.2014.

The enquiry report of the ICC was submitted to the Chief Executive Officer of FSSAI on 22.06.2015, which found Dr. S.S. Ghonkrorkta to be guilty of the offences charged against him and thereby it was recommended to the Authority to register an FIR against him for offences under Sections 354, 509, 192, 197, 204, 218, 202 and 120B of Indian Penal Code, 1860 (hereinafter "IPC"), apart from taking appropriate disciplinary action against the other officers involved in the misconduct.

4. However, as per the complainant, since the Authority did not take any action against the persons involved in the offence and misconduct, she was compelled to file FIR No.610 of 2018 dated 30.10.2018, in respect of offences punishable under Sections 354, 509, 120B, 192, 197, 204, 218, 202, 468, 471 and 506 of IPC, against Dr. S.S. Ghonkrorkta and Mr. Sunil Kumar Bhadoria. It is pertinent to note that the appellant herein was neither part of the ICC proceedings, nor named in the FIR. Her name surfaced during the statement given by the complainant under Section 164 of the Code of Criminal Procedure (hereinafter "CrPC") on 14.10.2020.

5. Meanwhile, Dr. S.S. Ghonkrorkta challenged the investigation report of the ICC before the Central Administrative Tribunal, New Delhi (hereinafter "the Tribunal" for short) by filing O.A. No.1505 of 2016, and vide order dated 16.09.2016, the Tribunal directed the respondents therein not to act on the report of the ICC. In the said case before the Tribunal, the complainant was arrayed as respondent No. 6 and the FSSAI was represented by its officials who were arrayed as respondent Nos.3 and 7.

The appellant was posted on deputation during the period from 27.04.2016 to 25.07.2019 at the FSSAI, New Delhi. On 12.05.2016, the appellant herein was appointed as the Presiding Officer (PO) of the ICC. In her capacity as the PO of the ICC, she filed a short counter affidavit dated 16.01.2017 on behalf of respondent Nos.3, 6 and 7 therein before the Tribunal. In the said affidavit, the appellant largely defended the findings of the enquiry report submitted by the ICC.

However, the complainant later asserted that she had not authorized the appellant to file the counter affidavit on her behalf and that the said counter affidavit was filed without her knowledge and consent. In response, the FSSAI, represented by the respondent Nos.3 and 7 therein, filed a Misc. Application No.1658 of 2017 before the Tribunal, seeking the amendment of the counter affidavit filed by them

in O.A. No.1505 of 2016, since the complainant was willing to represent herself independently in the case. Subsequently, the appellant was repatriated to her parent Department BIS on 25.07.2019.

6. In the interregnum, the FIR had already been filed by the complainant on 30.10.2018, though it did not name the appellant as an accused person. On 16.06.2020, the statement of the complainant under Section 161 of the Code of Criminal Procedure, 1973, (for short "CrPC") was recorded but the appellant was not named therein as well. Thereafter, on 14.10.2020, the statement of the complainant was recorded under Section 164 of the CrPC and it is here that the allegations against the appellant were brought out.

These allegations primarily pertained to the counter affidavit filed by the appellant herein before the Tribunal. It was alleged that the appellant was representing the complainant before the Tribunal without her knowledge and consent and that the appellant had wrongfully submitted the affidavit before Tribunal to the effect that the complainant had authorized the appellant to represent her in those proceedings.

7. It was further alleged by the complainant that she was transferred from Delhi to Chennai during the pendency of the proceedings before the Tribunal, and when she gave a representation to cancel her transfer, the appellant threatened her by saying that if she does not want to go to Chennai, then she can take a study leave and quit the place, or else, she would be harassed. The appellant was also allegedly involved in threatening and pressurising the complainant to withdraw the case.

8. In pursuance of these allegations, the chargesheet No.1 dated 02.07.2022 was filed in the matter and the appellant herein was arrayed as accused No. 4 thereunder. The chargesheet stated that the sanction for the prosecution of accused No.4 and others was sought under Section 197 of the CrPC, but since the sanction was not granted within the stipulated time period, the sanction for prosecution was deemed to have been received and therefore the chargesheet was filed against the accused persons for the offences punishable under Sections 509, 120B, 192, 354A, 506, 202, 218, 204 and 197 of the IPC. The Special Chief Judicial Magistrate, Lucknow, vide order dated 06.10.2022, took cognizance of the chargesheet and offences stated thereunder and issued summons against the accused persons.

9. Being aggrieved, the appellant and two other co-accused persons filed a petition under Section 482 of the CrPC before the High Court, seeking quashing of the chargesheet No.1 dated 02.07.2022 and the summoning order dated 06.10.2022 passed by the Special Chief Judicial Magistrate, Lucknow. However, by the impugned order dated 16.11.2022 passed by the High Court of Judicature

at Allahabad, Lucknow Bench in Application u/s 482 No.8057/2022, the prayer of the appellant for the quashing of the chargesheet and the summoning order was dismissed. The High Court however reserved liberty to the appellant to approach the Magistrate in accordance with law and directed the trial court to release the appellant on bail.

10. It is this order of the High Court which has now been assailed by the appellant before this Court through the present Criminal Appeal.

11. We have heard learned senior counsel Ms. Rebecca John, appearing for the appellant herein; learned counsel appearing for the respondent-State; and learned counsel, Mr. Prashant Bhushan, appearing for complainant.

12. Learned senior counsel for the appellant has submitted that the High Court was not correct in refusing to quash the chargesheet and the summoning order with respect to the appellant, having regard to the facts and circumstances of the case. It was submitted that the appellant is a government servant who had acted in the course of her official duties and therefore, cognizance could not have been taken against the offences alleged against her in the absence of a valid sanction for prosecution granted by the concerned authority.

That the competent authority to grant sanction for prosecution of the appellant herein is the BIS. However, the Investigating Officer failed to send the letter seeking sanction directly to the BIS and had sent it to FSSAI on 02.12.2021, as a result of which the letter was received by the BIS only on 29.07.2022, which was way beyond the stipulated period of four months for granting sanction.

13. The learned senior counsel drew our attention to the letter Ref. No.HRD/7:062545 dated 22.09.2022 sent by BIS to the Additional Chief Secretary, Department of Home, UP Police Division/4, Lucknow. In the said letter, the BIS had prima facie found the appellant to have not been involved in the aforesaid crime, but the BIS sought the copy of the FIR and other relevant documents to take an appropriate decision in the matter of grant of sanction for prosecution with respect to the appellant.

It is further submitted that after perusal of the relevant FIR and chargesheet, BIS had sent another letter dated 14.11.2022, wherein BIS found that the appellant was in no way related to the allegations made in the chargesheet and thus it was not a fit case for grant of sanction for prosecution. Therefore, BIS had categorically denied the sanction for prosecution of the appellant in the said case vide its letter dated 14.11.2022.

14. Per contra, the learned counsel for the respondent-State have filed their counter affidavit, wherein they have defended the action of taking cognizance against the appellant and have sought the dismissal of this criminal appeal. It was

contended that the Investigating Officer had sought the sanction for prosecution, but upon not receiving the sanction, the Investigating Officer had sought a legal opinion and on the basis of the same, the officer had proceeded to file the chargesheet against the appellant.

Reliance has been placed by the counsel on the judgment of this Court in Vineet Narain vs. Union of India, AIR 1998 SC 889 ["Vineet Narain"], to contend that the time limit of three months for grant of sanction for prosecution has to be strictly adhered to and therefore, in light of the fact that no sanction was granted by the competent authority within the stipulated time period, the State was correct in proceeding on the basis of deemed sanction. Therefore, it is submitted that enough material was available on record to proceed against the appellant, and once the cognizance has been taken and the trial has commenced, it is not open for the proceedings to be quashed on the ground of refusal of sanction for prosecution.

15. Learned counsel, Sri Prashant Bhushan, has supported the impugned order and has also sought the dismissal of the present criminal appeal, since the trial court and the High Court have already taken the argument of sanction for prosecution into consideration. It was submitted that the appellant has concealed material facts before this Court, including the fact that the appellant and the other co-accused have filed applications before the trial court for seeking discharge in the matter.

That the appellant has annexed only the summoning order of the trial court to give an impression that the trial court had mechanically issued summons to the accused and not applied its mind, but in fact the trial court had also filed a separate detailed order dated 12.07.2022 while issuing process in the matter. It was also submitted that the appellant not only filed an affidavit before the Tribunal without the knowledge and consent of the complainant, but had also committed perjury by trying to protect the other accused persons of the Authority.

That there has been dereliction of duty by the appellant insofar as the appellant in her capacity as the presiding officer of the ICC was duty-bound to keep the complainant informed about the proceedings in the case and to proceed in furtherance of the findings of the ICC in its investigation report.

16. With respect to the contention that the complainant did not name the appellant in the FIR and the statement under Section 161 of the CrPC is concerned, learned counsel has submitted that the police had initially refused to file the FIR against the appellant herein since her name was not mentioned in the ICC report and later during the stage of recording of her statement under Section 161 of the CrPC, the police forced the complainant to restrict her statement to the

accused mentioned in the FIR. Thus, it was only later when statement was recorded by the Magistrate under Section 164 of the CrPC that the complainant felt it was safe to explain her stance with respect to the appellant herein.

17. Learned counsel for the complainant has reiterated the argument with respect to deemed sanction upon which the prosecution against the appellant was proceeded with and has submitted that the letter of BIS which expressly refused to grant sanction was issued beyond the stipulated period for granting sanction and therefore it does not amount to a denial of sanction for prosecution. Learned counsel has placed reliance on the judgment of this Court in Subramanian Swamy vs. Manmohan Singh, (2012) 3 SCC 64 ["Subramanian Swamy"], to contend that if no decision is taken by the sanctioning authority, then at the end of the extended time limit, sanction will be deemed to have been granted to the proposal for prosecution.

It was further submitted that the issue of sanction may be raised by the appellant either at the stage of cognizance or at any subsequent stage of the trial, so as to contend that since the cognizance has now been taken in the matter, the plea of sanction for prosecution may be taken by the appellant before the trial court when they appear in compliance with the summons or at the stage of discharge. Thus, there is no occasion to examine the issue of sanction for prosecution during the exercise of the powers under Section 482 of the CrPC.

18. We have considered the material on record and the extensive submissions advanced at the Bar. The short issue for consideration before this Court is, whether, in light of the facts and circumstances of this case and the position of law apropos to the sanction for prosecution, the High Court ought to have exercised its powers under Section 482 of the CrPC to quash the chargesheet and the summoning with respect to the appellant herein.

19. The appellant herein is a permanent employee of BIS since 06.09.1999. She was holding the post of Scientist E/Director & Head (FAD) in BIS. On 27.04.2016, she was relieved from BIS to take up her assignment as the Director at FSSAI on deputation basis. She was relieved on 25.07.2019 from the FSSAI and thereafter, she reported at BIS. Therefore, the appellant was at FSSAI from 27.04.2016 to 25.07.2019. During this tenure, the appellant took over the position of Presiding Officer of ICC after the erstwhile presiding officer was repatriated to BIS, Ministry of Health on completion of her tenure in April 2016.

The allegations of sexual harassment levelled by complainant date back to the year 2012. The enquiry under the provisions of the POSH Act took place during the year 2014-15 and the final enquiry report of the ICC was submitted on 22.06.2015 to the Chief Execution Officer of the Authority. Therefore, it is clear

that the appellant was not in the picture or involved in the dispute till the submission of the enquiry report of the ICC in June 2015.

20. The report of the ICC was assailed by the accused Dr. S.S. Ghonkrokta before the Tribunal by filing of O.A. No.1505 of 2016 on 16.03.2016. The appellant joined FSSAI, Delhi on 27.04.2016, after a month of filing of this Original Application before the Tribunal. In the subsequent month, she was appointed as the Presiding Officer of ICC. It is for the period thereafter, to which the allegations of the complainant pertain to.

21. The complainant in the present case has alleged that the appellant filed a counter affidavit before the Tribunal on her behalf, without the consent or knowledge of the complainant. The perusal of the said counter affidavit shows that the appellant had detailed the events that unfolded in the Authority from the time the sexual harassment complaint was filed by the complainant and till the completion of the enquiry by the ICC.

The counter affidavit reproduces the conclusions and recommendations of the ICC and has therefore sought dismissal of the Original Application filed by Dr. S.S. Ghonkrokta. Thus, the said counter affidavit does not reveal any aspersions made by the appellant or the Authority against the complainant, or any averment to defend the actions of the accused Dr. S.S. Ghonkrokta. The counter affidavit has been filed by the appellant in her official capacity as the Director, FSSAI and the Presiding Officer, ICC.

22. Be that as it may. The appellant respected the desire of the complainant to represent her case independently and therefore filed M.A. No.1658 of 2017 before the Tribunal, seeking to amend the counter affidavit filed earlier. Thus, there is no criminal intent on the part of the appellant to cheat the complainant or wrongfully represent her in the proceedings before the Tribunal. Further, the question is whether, the actions of the appellant were during the course of her official duties only requiring sanction for prosecution.

23. Now coming to the contentious issue of sanction for prosecution arising in the present case, the test to decide whether sanction is necessary in a particular case is, whether, the act is totally unconnected with the official duty or whether, there is a reasonable connection with the official duty. In the present case, the letter requesting sanction for prosecution was sent to FSSAI, Delhi by the Additional Chief Secretary, Department of Home (Police), Government of UP, but the same was not sent to BIS, even though at that time, the appellant had gone back to BIS from her deputation at FSSAI.

The letter seeking sanction for prosecution is said to have been received by BIS only on 29.07.2022. By that time, the chargesheet had already been filed and the

summoning order was issued by the Magistrate. Thereafter, BIS sought for further documents, including the FIR, and upon furnishing of the FIR and the chargesheet, BIS denied the sanction for prosecution of the appellant vide its letter dated 14.11.2022. This issue of sanction was decided by BIS within the stipulated period of four months. The relevant paragraph of the letter dated 14.11.2022 reads as under:

"2. To examine the matter, the related documents i.e. the report of Internal Complaints Committee (ICC) and the copy of FIR was sought from FSSAI vide BIS letter dated 25 Aug 2022 and 22 Sep 2022 respectively. On perusal of the records received, the following facts are observed:

i. The alleged offence (based on the complaint filed by Dr. Manisha Narayan against Dr. S. S. Ghonkrokta) took place during the period May 2012 to December 2012 and the ICC submitted its report in June 2015.

ii. Smt. Suneeti Toteja Scientist-E was relieved on 27 April 2016 (FN) from BIS to lake up her assignment on deputation as Director in FSSAl, long after the occurrence of the alleged incident and submission of the report by the ICC. She was relieved from FSSAl on 25 July 2019 and reported back to BIS on 26 July 2019.

iii. Dr S.S. Ghonkrokta had filed a case in CAT (O.A. No. 1505 of 2016) for setting aside the constitution of ICC. its proceedings and findings. Smt. Suneeti Toteja had signed the counter affidavit (to dismiss the referred OA) in this ease in her official capacity' as the presiding officer of the ICC. alter the erstwhile presiding officer Dr. Sandhya Kalra was repatriated to the Ministry of Health on completion of her tenure in April 2016."

24. The question therefore is whether the sanction was necessary in the present case for the prosecution of the appellant, or whether the Magistrate was correct in taking cognizance against the appellant without there being any sanction.

25. For the sake of convenience, the provisions of Section 197 CrPC are reproduced hereinunder:

"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-

(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, 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 subsection will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in subsection (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."

26. The object and purpose of the aforesaid provision was recently reiterated by this Court in the case of Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761, which reads as follows:

"22. the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, inter alia, a public servant.

There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under subsection (1) of Section 197 are "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".

Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to."

27. In Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy, 2023 SCC Online SC 578 disposed of by a three-Judge Bench of this Court on

20.04.2023, of which one of us (Nagarathna, J.) was a member, it was observed that the question of cognizance being taken in the absence of sanction and thereby Section 197 of the CrPC being flouted is not to be conflated and thereby confused with the question as to whether an offence has been committed. The salutary purpose behind Section 197 of the CrPC is protection being accorded to public servants. In paragraphs 28, 29 and 31, it was observed as under:

"(28) The State functions through its officers. Functions of the State may be sovereign or not sovereign. But each of the functions performed by every public servant is intended to achieve public good. It may come with discretion. The exercise of the power cannot be divorced from the context in which and the time at which the power is exercised or if it is a case of an omission, when the omission takes place.

(29) The most important question which must be posed and answered by the Court when dealing with the argument that sanction is not forthcoming is whether the officer was acting in the exercise of his official duties. It goes further. Even an officer who acts in the purported exercise of his official power is given the protection under Section 197 of the Cr.P.C. This is for good reason that the officer when he exercises the power can go about exercising the same fearlessly no doubt with bona fides as public functionaries can act only bona fide. In fact, the requirement of the action being bona fide is not expressly stated in Section 197 of the Cr.P.C., though it is found in many other statutes protecting public servants from action, civil and criminal against them.

(31) One ground which has found favour with the High Court against the appellant is that the appellant, according to the High Court, could raise the issue before the Magistrate.

(32) Here we may notice one aspect. When the question arises as to whether an act or omission which constitutes an offence in law has been done in the discharge of official functions by a public servant and the matter is under a mist and it is not clear whether the act is traceable to the discharge of his official functions, the Court may in a given case tarry and allow the proceedings to go on.

Materials will be placed before the Court which will make the position clear and a delayed decision on the question may be justified. However, in a case where the act or the omission is indisputably traceable to the discharge of the official duty by the public servant, then for the Court to not accept the objection against cognizance being taken would clearly defeat the salutary purpose which underlies Section 197 of the Cr.P.C. It all depends on the facts and therefore, would have to be decided on a case-to-case basis."

It was concluded that learned Magistrate had erred in the facts of the said case in taking cognizance against the appellant therein contrary to the mandate of Section 197 of the CrPC and on that short ground alone, the appeal was allowed and the proceedings challenged in Section 482 CrPC were quashed. However, it was observed that the same would not stand in the way of the competent authority taking a decision in the matter and/or granting sanction for prosecuting the appellant therein in accordance with law. 28. In another case titled Amrik Singh vs The State of PEPSU, AIR 1955 SC 309, this Court explained the scope of Section 197 of CrPC as follows:

"8. 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."

The Court thereunder further concluded that:

"12. 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."

29. As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC.

The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant

without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained.

30. The argument advanced by the respondent-State and the complainant with respect to "deemed sanction" is also not tenable. Section 197 of CrPC does not envisage a concept of deemed sanction. The chargesheet, as well as the counter affidavit of the respondent-State, have relied upon the judgment of this Court in Vineet Narain to contend that lack of grant of sanction by the concerned authority within relevant time would amount to deemed sanction for prosecution.

However, a perusal of the said judgment reveals that it did not deal with Section 197 CrPC and rather it dealt with the investigation powers and procedures of Central Bureau of Investigation and Central Vigilance Commission. While it did mention that the time limits for grant of sanction for prosecution must be strictly adhered to, there is no observation to the effect that lack of grant of sanction for prosecution within the time limit would amount to deemed sanction for prosecution.

31. Similarly, learned counsel for the complainant had placed reliance on the judgment of this Court in Subramanian Swamy to lend credence to the argument of deemed sanction for prosecution. However, even the said judgment does not in any manner lay down the notion of deemed sanction. First, the said judgment dealt primarily with the Prevention of Corruption Act, 1988 and the sanction for prosecution under that Act.

Secondly, G.S. Singhvi, J. while penning his separate but concurring opinion in the said judgment, had given some guidelines for the consideration of the Parliament, one of which is to the effect that at the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/ complaint in the court to commence prosecution within fifteen days of the expiry of the aforementioned time limit. However, such a proposition has not yet been statutorily incorporated by the Parliament and in such a scenario, this Court cannot read such a mandate into the statute when it does not exist.

32. Therefore, we are of the opinion that the learned Magistrate was not right in taking cognizance of the offence against the appellant herein without there being a sanction for prosecution granted by the competent authority. Further, the High Court erred in not considering the fact that the sanction for prosecution was not granted by the competent authority under Section 197 of the CrPC and eventually the sanction was expressly denied by the competent authority with respect to the allegations against the appellant.

The necessary sanction not having been granted has vitiated the very initiation of the criminal proceeding against the appellant herein. Consequently, the chargesheet, the summoning order and the consequent steps, if any, taken by the trial court pursuant to the same are liable to be quashed qua the appellant herein and are thus quashed.

The appeal is therefore allowed in the aforesaid terms.

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

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

New Delhi;

February 25, 2025

IN THE SUPREME COURT OF INDIA

Kanahaiya Lal Arya
Vs.
Md. Ehshan & Ors.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 21965 of 2022]

HEADNOTE – The landlord or property owner is the best judge of which portion of the rented premises should be vacated to meet their specific needs, and the tenant cannot oppose eviction merely on the grounds that the landlord owns other properties. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.

JUDGMENT

Pankaj Mithal, J.

1. Leave granted.

2. Heard Smt. Reshmi Rea Sinha, learned counsel for the appellant-landlord and Shri Ardhendumauli Kumar Prasad, learned senior counsel for the respondents-tenant.

3. The dispute in this appeal is for the eviction of the respondents-tenant from the premises in dispute i.e., a house existing on Holding No. 80, New Ward No. X, (Old Ward No. IV, Old Holding No. 211) of Chatra Municipality, Jharkhand.

4. The appellant, as the owner and landlord of the said house, filed Eviction Suit No.25/2001 against the respondents-tenant on the ground of default in payment of rent and refusal to vacate; and for personal need of the suit premises for establishing an ultrasound machine for his two unemployed sons.

5. The suit after contest was decreed by the court of first instance vide judgment and order dated 15.07.2006 on the ground of bona fide need of the appellant-landlord holding that the oral and documentary evidence proves the bona fide need of the appellant-landlord to install the ultrasound machine for his two unemployed sons. The appellant-landlord had established his capability to purchase such a machine and had proved his annual income to be Rs.4,00,000/-. He had also proved that the suit premises is the most appropriate place for the installation of such machines as there is a medical clinic and a pathology center

adjacent to it. The suit was, however, dismissed on the ground of default in payment of rent.

6. The aforesaid judgment and order of eviction passed by the court of first instance was reversed by the First Appellate Court and the same was also affirmed by the High Court in Second Appeal. Thus, aggrieved by the impugned judgment and order of the High Court of Jharkhand at Ranchi dated 18.08.2022 passed in Second Appeal No.317/20061, the appellant-landlord herein has preferred this appeal.

7. It may not be out of context to mention here that the appellant-landlord had not assailed the dismissal of the suit on the ground of default in payment of rent and as such the decree to that effect passed by the court of first instance has become final and conclusive. The appellant-landlord is, thus, confining his case for the decree of eviction only on the ground of bona fide need of establishing an ultrasound machine for the benefit of his two unemployed sons.

8. The submission of Smt. Reshmi Rea Sinha, learned counsel for the appellant-landlord, is that the First Appellate Court and the High Court manifestly erred in law in holding that he has failed to prove his bona fide need. No evidence was adduced by him to prove that his two unemployed sons have any expertise in handling the ultrasound machine.

The establishment and running of the ultrasound machine is ordinarily done by the doctors or the technicians employed and for that purpose it is not necessary that the sons themselves should have any expertise in running the same. Secondly, the partial eviction of the respondents-tenant in an earlier eviction Suit No.11/1981 from a portion under their tenancy and re-letting it to another person does not affect the bona fide need of the appellant-landlord. The aforesaid partial eviction was for the need of the brother-in-law of the appellant-landlord and not for his two unemployed sons. Also, the said eviction was in respect of a different portion and was much prior to the institution of the present suit or when the cause of action for the present suit arose.

9. To counter the above arguments, Shri Ardhendumauli Kumar Prasad, learned senior counsel for the respondents-tenant, submitted that in an earlier proceeding of their eviction from the suit premises, i.e., Eviction Suit No.11/1981, a compromise was arrived at between the parties whereunder the respondents-tenant were allowed to occupy the premises with respect to three pucca rooms constructed by appellant-landlord as tenant in perpetuity.

Therefore, the suit for eviction is not maintainable. Secondly, the appellant-landlord has sufficient accommodation available with him to start any new business either for himself or for his two unemployed sons and does not require

the suit premises bona fidely. The appellant-landlord has misused the partial eviction order passed earlier by letting out the said vacated premises to another person at a higher rent instead of using it for the purpose it was got vacated.

10. The law with regard to eviction of a tenant from the suit premises on the ground of bona fide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.

11. In the case at hand, the appellant-landlord may be having some other properties under tenancy of various persons but once he has decided to get the suit premises vacated for the bona fide need of establishing an ultrasound machine for his two unemployed sons, he cannot be forced to initiate such a proceeding against the other tenants. It is for the appellant-landlord to take a decision in this regard and once he has decided to get the suit premises vacated, no error or illegality could be pointed out in his decision. Secondly, it has come on record by clear finding of the court of first instance that the suit premises is the most suitable accommodation for establishing an ultrasound machine.

The reason being that it is situated adjacent to a medical clinic and a pathological centre and is the most appropriate place for establishing any medical machine. Moreover, the appellant-landlord has also proved his capacity to invest in purchasing/establishing an ultrasound machine and that his two sons are unemployed and as such the suit premises is required to establish them in business and to augment the family's income. Therefore, the bona fide need of the appellant-landlord stands duly established.

12. Insofar as the issue that his two unemployed sons do not have any expertise/training to run the ultrasound machine, the argument is without any substance. It is common knowledge that these days medical devices such as ultrasound machines are installed and established and are ordinarily run by the technicians or the medical experts who are engaged for the said purpose. The person establishing such devices or ultrasound machines himself need not have any expertise in running the same. Therefore, the Appellate Court and the High Court were not justified in disbelieving the bona fide need of the appellant-landlord solely on the ground that his two sons do not possess any expertise for running an ultrasound machine.

13. It may be important to note that the appellant-landlord had earlier filed Eviction Suit No.11/1981 for the eviction of the respondents-tenant from the part of the premises. The said suit travelled up to the High Court by way of Second Appeal No.40/1983. In the said appeal, a compromise dated 20.03.1988 was

arrived at between the parties and the suit was decided in terms of the said compromise.

The compromise reveals that the appellant-landlord had agreed that the respondents-tenant shall continue to be a tenant of the appellant with respect to three pucca rooms which have been re-constructed by the appellant-landlord after demolishing the portion under tenancy. There is no clause in the compromise deed which stipulates that the appellant-landlord will not initiate any proceeding for eviction against the respondents-tenant in future.

Naturally, there cannot be such a clause inasmuch as such a compromise does not intend to take away the right of the landlord to initiate eviction proceedings against the tenant if he defaults in payment of rent, makes material alterations damaging the property or otherwise ceases to use the same for his benefit and lets it out to an outsider. The aforesaid clause in the compromise that the respondents-tenant would continue to be a tenant of the appellant-landlord with respect to the said portion does not mean that the appellant-landlord has given up his right to initiate proceedings for eviction against him for all times to come.

14. Therefore, on the strength of the above compromise decree, it cannot be said that the present proceedings for eviction are not maintainable.

15. As would be evident from the above compromise, the decree for partial eviction from the premises occupied by the respondents-tenant was partially decreed in Second Appeal No.40/1983 on 31.03.1988 for the bona fide need of the appellant-landlord to establish his brother-in-law. The said need was altogether a different need. The said decree of the year 1988, even if not used for the purpose intended, it would not affect the rights of the appellant-landlord which accrues to him in the year 2001.

The need of the appellant-landlord for getting the suit premises vacated for establishing his two sons has to be seen on the date of filing of the suit i.e., 28.11.2001. On the said date, the need of the appellant-landlord stands established. The said need would not get eroded by any earlier decree of eviction of the year 1988.

16. Accordingly, in view of the facts and circumstances of the case, the appellant-landlord has proved his bona fide need for the suit premises. The appeal is allowed and the impugned judgment and order dated 18.08.2022 and 25.09.2006 of the High Court and the First Appellate Court respectively are set aside. The suit of the appellantlandlord stands decreed.

.....J. (Pankaj Mithal)

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

New Delhi;

February 25, 2025

1 Kahanaiya Lal Arya vs. Md. Ehshan & Ors.

IN THE SUPREME COURT OF INDIA

Hiralal Babulal Soni
Vs.
State of Maharashtra & Ors.
[Criminal Appeal No(S)._ 579-580 of 2012]

Nandkumar Babulal Soni
Vs.
State of Maharashtra & Ors. Etc.
[Criminal Appeal No(S)._581-583 of 2012]

Vijaya Bank & Anr.
Vs.
Central Bureau of Investigation & Ors.
[Criminal Appeal No(S)._584 of 2012]

HEADNOTE – Mere possession of the stolen property by the accused would not justify a conviction under Section 411 IPC unless it is proven that the accused had knowledge or reason to believe that the property was stolen.

JUDGMENT

Prashant Kumar Mishra, J.

1. These criminal appeals are disposed of by this common order as they are directed against the common judgment and order dated 16.07.2009 of the High Court of Judicature at Bombay whereunder the High Court dismissed the appeal of the appellant/Hiralal Babulal Soni (Criminal Appeal Nos. 579-580/2012) and the appeal of the appellant/accused No. 3 namely, Nandkumar Babulal Soni, (Criminal Appeal No. 581-583/2012) whereas the appeals of Mr. S.K. Sheenappa Rai (accused no.1), Devdas Shetty (accused no.2) and Vijaya Bank were allowed. We shall later notice the conviction and sentence awarded by the courts below.

2. The offence pertains to commission of fraud by remittance through fake Telegraphic Transfers1 and subsequent withdrawals to the tune of Rs. 6,70,00,000/- at Vijaya Bank, Nasik Branch, Maharashtra.

2.1 On 30.01.1997, one person disclosing as a representative of M/s. Globe International, a proprietary concern, approached the bank for opening an account which was not immediately accepted by the accused no. 1 (S.K. Sheenappa Rai), Branch Manager as he wanted to verify the documents as there was difference in signatures. However, since one Surendera Bhandary, Assistant General Manager, Vijaya Bank, Fort Branch, Bombay confirmed the letter of introduction issued by

him, the personal presence of the proposed account holder was dispensed with, and the account was opened.

2.2 It is the case of the prosecution that the documents submitted at the time of account opening were forged and the person representing the firm namely, Surendra Jain or the firm Globe International were fictitious. The account was eventually opened on 06.02.1997. On 25.04.1997, Nasik Branch received TT of Rs. 10,00,000/- in the account of Globe International and thereafter till 28.07.1997, 11 TTs were sent from Delhi issued by Vijaya Bank, Ansari Road Branch, New Delhi. On 06.08.1997, Vijaya Bank, Nasik Branch received TT of Rs. 4,00,000/- which was credited to the account of Globe International.

Thus, total amount of Rs. 6,70,00,000/- was credited in this account. Simultaneously, with the credit of TT amount, the same was withdrawn and subsequently, the TTs were found to be bogus and forged and the entire fraud was committed not only by accused nos. 1 and 2 but was done with the help of absconding and unknown persons like Mukesh Shah @ Mayur Desai or Ashok Agarwal @ Surender Jain and so on. On 12.08.1997, it was found that no payment of the said TTs was ever made at Vijaya Bank, Ansari Road Branch, Delhi. On this date, accused no. 1 informed Vijaya Bank, Fort Branch, Bombay about the fraud and the payments against 19 demand drafts for a total amount of Rs.1,61,44,000/- were stopped.

3. During the investigation, the Investigating Officer recorded the statements of the owner of Jewellary firms i.e. M/s. Chenaji Narsinghji2 and M/s. V.P. Jewellers and thereafter filed the chargesheet against accused nos. 1 and 2 by mentioning that further investigation is going on. Later, Central Bureau of Investigation3 found that most of the DDs were issued in favour of M/s. CN against the purchase of gold bars and the delivery of those gold bars were given to accused no. 3 or through him to Mayur Desai @ Mukesh Shah. CBI found link between absconding accused Mukesh Shah and accused no. 3 to whom gold bars were delivered from M/s. CN.

On 01.06.2001, a search was carried out at the shop of accused no. 3 effecting seizure of 205 gold bars and other documents. Thus, chargesheet was filed against accused no. 1 (S.K.Sheenappa Rai), accused no. 2 (M. Devdas Shetty), accused no. 3 (Nandkumar Babulal Soni) whereas accused no. 4 (Mayur Desai @ Mukesh Shah @ M.P. Jain @ Mukesh Jain) could not be traced and declared proclaimed offender by the Trial Court on 12.02.2002.

4. The Trial Court framed charges against the accused persons for offences under Section 120B read with Sections 403, 409, 411, 420, 471, 477A and 109 of the Indian Penal Code, 18604 read with Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. While the accused nos. 1 and 2

submitted that they are innocent; the account was opened as per the banking procedure; they have been given a clean chit in the departmental inquiry conducted by the Vijaya Bank.

The accused no. 3 set up a defence that he has no connection with either M/s.CN or with Mukesh Shah @ Mayur Desai and, thus, he is falsely implicated without there being any evidence against him. He claimed that the seized gold bars are his property, legally acquired by him. At the end of trial, accused nos. 1 and 2 were convicted for the offences under Sections 120B, 467, 409, 471, 477A, 403 of the IPC as also under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

Accused No. 1 was also held guilty of the offence punishable under Sections 403 and 465 read with Section 120B of the IPC and accused no. 2 was held guilty under Section 403 of the IPC. The accused no. 3 was held guilty of the offence punishable under Section 120B of the IPC as well as under Section 411 read with Section 120B of the IPC. The Trial Court directed that the muddemal articles consisting of 205 gold bars be returned to the accused no. 3.

5. While the accused persons preferred separate appeals challenging their conviction and sentence, the CBI preferred Criminal Appeal No. 638 of 2006 for challenging that part of the judgment of the Trial Court by which the gold bars were returned to accused no. 3. Criminal Appeal No. 363 of 2009 has been preferred by Hiralal Babulal Soni challenging the order regarding return of gold bars to accused no. 3.

6. The High Court under the impugned judgment has allowed the Criminal Appeal preferred by accused nos. 1 and 2 and their conviction and sentence has been set aside. The Criminal Appeal No. 428 of 2006 preferred by accused no. 3 (Nandkumar Babulal Soni) was dismissed. The Criminal Appeal No. 363 of 2009 (converted from Criminal Application No. 463 of 2007) preferred by Hiralal Babulal Soni was also dismissed. The Criminal Appeal No. 638 of 2006 preferred by CBI challenging the Trial Court's direction to return 205 gold bars to the accused no. 3 (Nandkumar Babulal Soni) has been allowed and the direction is quashed and set aside by the High Court. The property stood confiscated and placed at the disposal of the State Government.

7. Aggrieved by the High Court's judgment, accused no. 3 (Nandkumar Babulal Soni) has preferred Criminal Appeal Nos. 581-583 of 2012 challenging his conviction as also seeking return of 205 gold bars whereas Criminal Appeal No. 579-580 of 2012 has been preferred by Hiralal Babulal Soni and Criminal Appeal No. 584 of 2012 has been preferred by Vijaya Bank, both seeking return of gold bars.

Submissions:

8. Mr. Uday Gupta, learned senior counsel appearing for the appellant(s) has vehemently argued that the appellant is wrongly convicted for the offence under Section 411 of the IPC without there being any evidence against him. It is put forth by him that incomplete chain of circumstantial evidence has been relied upon for appellant's conviction which is legally unsustainable, and the appellant has been convicted only on the basis of suspicion. According to him, the yawning gap between the charge for the offence under Section 411 of the IPC and the evidence adduced by the prosecution. Learned counsel referred to the judgment in the matter of 'Kamal vs. State (NCT of Delhi)5.

9. Mr. A.P. Singh, learned counsel appearing for the Vijaya Bank/appellant has argued that since the gold bars have been acquired by using forged TTs/DDs by defrauding the bank, the gold bars should be returned to the bank. Learned counsel appearing on behalf of the appellant/Hiralal Babulal Soni has also prayed that on the basis of evidence on record, appellant/Hiralal Babulal Soni is entitled for return of the gold bars.

10. Per Contra, Ms. Suhasini Sen, learned counsel for the respondent (CBI) has argued that there is independent evidence on record to link the appellant (Accused No. 3) with Mukesh Shah @ Mayur Desai and the fraudulent transactions. She has also referred to the statements of PW-22 (Dhiraj Ganeshmal Jain), PW-26 (Prakash Kumar Deoraj Jain), PW-32 (Ashok Kumar Bhavarlal Jain) and PW-33 (Chandramohan A. Shetty) (IO). She would also refer to the evidence regarding the identification of the gold bars. Learned counsel would sum up the arguments with submission that the conviction of Accused No. 3 as well as the order of the High Court regarding the custody of the gold bars be upheld.

The nature of fraud - "Telegraphic Transfer"

11. At the relevant time, Vijaya Bank offered a service facility to all its customers whereby money could be remitted through the means of "Telegraphic Transfer" (TT). If a customer desired to remit funds urgently from one place to another, he could deposit cash and request the remitting branch to send the amount to the credit of a particular account. Upon receipt of money, the remitter branch would generate a code which was then sent via telegram to the concerned branch in which account of the beneficiary was operational. Upon decoding, the receiving branch would then credit the amount to the account of the beneficiary and send "Bank adjustment Requisition Form" (BARF) to the remitting branch which upon receiving the BARF would send a credit advice to the receiving branch.

Role of different persons including the accused:

12. One unknown person representing M/s. Globe International with its sole Proprietor being one Surender Kanti Lal Jain approached the bank for opening an account. Despite several irregularities in the process of opening of account, Accused No. 1 (S.K. Sheenappa Rai - acquitted), the Branch Manager, Vijaya Bank, Nasik Branch allowed the opening of the account. All the documents presented at the time of opening of the account were found bogus during the investigation. It was also found that the firm M/s. Globe International and its Proprietor Mr. Surender Kanti Lal Jain are fictitious. Mr. Surender Kanti Lal Jain was never identified or traced nor has been arrayed as an accused.

13. Accused No. 1 (S.K. Sheenappa Rai) and Accused No. 2 (M. Devadas Shetty) both officers of the bank allegedly credited the amount to the account of M/s. Globe International and also allowed withdrawal of the amount in conspiracy with Mr. Surender Kanti Lal Jain and Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah.

14. Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah was involved in cash withdrawals of Rs. 98,00,000/- at Vijaya Bank, Nasik Branch.

15. A sum of Rs. 2,59,78,504/- was withdrawn by preparing demand drafts in favour of M/s. CN and M/s. V.B. Jewellers by Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah. These demand drafts were honoured by Vijaya Bank, Fort Branch, Mumbai and Tamil Nadu Mercantile Bank, Mandvi Branch upon withdrawal of the said amount from the account of M/s. Globe International. The amount involved in these demand drafts were allegedly used against purchase of seized gold bars.

Discovery of fraud and investigation:

16. The accused no. 1 became suspicious of the transactions taking place in the account of M/s. Globe International. On 12.08.1997, he informed Vijaya Bank, Fort Branch, Mumbai about the fraud and the resultant payment against 19 demand drafts amounting to Rs. 1,61,44,000/- was stopped. On this date, there was a balance of Rs. 1,53,27,178/- in the account of M/s. Globe International, as against the total credit amount through 12 TTs amounting to Rs. 6,70,00,000/-. The bank initiated departmental proceedings against the accused nos. 1 and 2. However, subsequently, both of them were exonerated of all the charges.

17. On 04.09.1997, a formal complaint was lodged by Vijaya Bank and on 09.09.1997, the CBI registered the crime against the accused Nos. 1, 2 and Surender Kantilal Jain (not traced) as Proprietor of M/s. Globe International and against unknown private persons. The appellant/accused no. 3 was summoned by the CBI after 1½ years i.e. on 03.02.1999.

However, he denied his involvement in the alleged crime. After nearly 4 years i.e. 24.05.2001, the CBI conducted a search in the shop of appellant/Accused No. 3 on 28.05.2001. However, in the absence of appellant/Accused No. 3, the shop was sealed. On 30.05.2001, appellant/Accused No. 3 requested the Investigating Officer for removing the seal mentioning in his communication the details of cash, gold (in stock). The 205 gold bars mentioned in appellant/Accused No. 3's communication dated 30.05.2001 were later on seized by the CBI on 01.06.2001. The details of 205 gold bars were as under:

(i) 110 T.T. bars of ARY make;

(ii) 30 T.T. bars of HARMONY make;

(iii) 57 T.T. bars of Johnson Mathew make;

(iv) 06 T.T. bars of Credit Suisse make;

(v) 02 T.T. bars of PAMP Suisse make;

18. The CBI filed the chargesheet on 31.05.2002 whereupon the charges were framed, trial was conducted, and all the three accused were convicted by the Trial Court as mentioned infra. However, the High Court acquitted the Accused Nos. 1 and 2 but convicted the appellant/Accused No. 3 in Criminal Appeal Nos. 581-583 of 2012 for offence under Section 120B IPC and Section 411 IPC read with Section 120B IPC. ANALYSIS:

19. There being no appeal by the CBI challenging the acquittal of the Accused Nos. 1 and 2 by the High Court, our discussion would confine to the case against appellant/Accused No. 3 only.

20. The prosecution sought to prove the charges against the appellant/Accused No. 3 on the basis of evidence of PW-19- Praveen Champalal Jain (who was working with the firm Babulal Soni Bhutajilal Soni), PW-21- Bhavarlalji Jawaratrai Jain (owner and partner of M/s. CN), PW-22- Dhiraj Ganeshmal Jain (Manager of M/s. CN), PW-26- Prakash Kumar Devraj Jain (Manager of M/s. CN), PW-32-Ashok Kumar Bhavarlal Jain (owner of M/s. V.B. Jewellers) and PW-33-Chandramohan A. Shetty (Investigating Officer). To establish the identity of the gold bars, the prosecution examined PW-24 (Manish Srivastav), PW-25 (Sudhakar Tamhane), PW-27 (Dr. Piyush Bhansali), PW- 29 (Bien Nanavati) and PW-31 (Vinod Kumar Niranjanlal Jain).

21. The Trial Court having noted that the charge against appellant/Accused No. 3 is mainly for receiving dishonestly stolen property, recorded a finding in Para 94 of the judgment that the prosecution admittedly, have not brought any evidence

against appellant/Accused No. 3 in respect of the first part of the conspiracy i.e. receipt and coding, decoding of TTs.

The evidence of the aforementioned witnesses on the charge of conspiracy revolves around Mukesh Shah @ Mayur Desai (absconding), who purchased the gold bars along with appellant/Accused No.3. It is said that Mukesh Shah delivered the demand drafts to the appellant/Accused No.3 and appellant/Accused No.3 in turn delivered the said drafts to M/s. CN. The Trial Court mainly relied on Exhibit 119, a letter written by PW-26 (Prakash Jain) to the CBI on 02.01.2002 giving details of the markings of gold bars which were sold to M/s. Globe International.

In this letter, endorsement was made to the appellant/Accused No.3 basing which the Trial Court inferred that if appellant/Accused No.3 was not at all connected with the gold bars why letter was endorsed to him. Interestingly, the Trial Court has noted that the witnesses belonging to the jewellery firm have in their evidence denied any link of appellant/Accused No.3 with M/s. Globe International. Contrary to this, the Trial Court recorded a finding in para 103 that on the basis of this letter no inference can be drawn that the gold bars sold to M/s. Globe International were of the markings mentioned in the letter.

22. The Trial Court has also referred to the evidence of PW-32 (Ashok Kumar Jain) who was declared hostile. This witness gave a statement to the CBI about business relations between appellant/Accused No.3 and M/s. CN. However, he did not support the prosecution and in cross-examination he stated that he was compelled by the CBI to make such statement. Another important witness is PW-26 (Prakash Jain). However, he too was declared hostile. The Trial Court recorded that the entire evidence of these three hostile witnesses is conspicuously silent about the appellant/Accused No.3 and proceeded to infer that they did not want to support the prosecution. Basing on the evidence of hostile witnesses, the Trial Court concluded the following:

"108. Conversion of money into gold bars itself brings accused no. 3 near to the offence. If conversion would have been into land or savings certificates then that would have been a remote circumstance. Accused No. 3 is a jeweller and his family is in the same profession. In the evidence of PW-21 Bhawarlal Jawartaj and PW-26 Prakash Jain, they have stated that Mukesh Shah was a new party. Hence there is reasonable ground to believe that the dealings of gold bars through Nandlal Soni (Accused No. 3) was easily accessible and workable."

RECEIPT OF STOLEN PROPERTY BY APPELLANT/ACCUSED NO. 3

23. For proving the charge under Section 411 IPC against the appellant/accused no. 3, the prosecution relied on Section 106 of the Evidence Act to say that the

appellant/accused no.3 having been found in possession of 205 gold bars, it was for him to explain the source of acquisition. The Trial Court examined the witnesses i.e. PW-24 (Manish Srivastav), PW-25 (Sudhakar Tamhane), PW-27 (Dr. Piyush Bhansali), PW-28 (Anichandra Mahadeorao Bhujade), PW-29 (Biren Vinodchandra Nanavati) and PW-31 (Vinodkumar Niranjanlal Jain).

The prosecution tried to establish the negative fact that the gold claimed was not purchased from the brother of appellant/accused no. 3 i.e. Ambalal Soni who was also examined as defence witness. On the contrary, appellant/accused no. 3 set up a defence firstly, that there is a delay of four years in finding out the property though the name of appellant/accused no. 3 was already disclosed to the police much earlier, secondly, appellant/accused no. 3 himself is a jeweller and, thirdly, the gold bars are not proved to be the same stolen property due to the difference of markings.

24. The Trial Court discussed the statements of the above witnesses and the documentary evidence in detail and observed thus in para 115:

"115. Letter Exh 119 was given by Chenajee Narsingjee to CBI in 2002. At that time the prosecution was aware that the gold bars which are seized and produced before the court are of different brands. Prosecution ought to have been produced evidence to show that there was a stock of the same brands with Chenajee Narsinghjee and out of that stock some gold bars with markings of Harmony Suisse, Johnson Mathew, Arya were sold to Globe International. In the absence of this evidence and especially due to delay of four years in the recovery of the property the base of its identification is found weak and the degree of proof required is higher. The possibility of mistaken identification cannot be ruled out."

25. Having said so, as extracted above, the Trial Court proceeded to hold in para 120 that the property Article 2 (seized gold bars) before the Court is not proved as the same property which was sold by M/s. CN to M/s. Globe International. However, surprisingly, the trial court concluded that, the fact that the gold was sold through fraudulent demand drafts from M/s. CN to M/s. Globe International, it can be held that appellant/accused no. 3 has received stolen property with knowledge.

It was held that gold bars found with him may be a stolen property or he might have handed over to the absconding accused Mukesh Shah or any other accused. It was also held that after receiving the stolen property, it may change the hands, so accused may not have entertained the property but the fact that he has received the property is proved beyond reasonable doubt. Therefore, the evidence brought forth by the prosecution is sufficient to hold that accused is guilty under Section 120B and 411 of the IPC. Significantly, the Trial Court observes in the same breath in the following words in Para 120:

"120. However, the gold bars i.e. Article 2 may be or may not be the same gold bars which were sold by Chenajee Narsinghjee to Mr. Mukesh of Globe International. The distance between may and not is very vast and prosecution has to cover that distance to reach the destination of must, however, the prosecution in this case could not achieve that level of proof."

FINDINGS BY THE HIGH COURT:

26. While addressing the charge of commission of fraud the High Court observed that circumstantial evidence does not establish the guilt of the accused nos. 1 and 2 in committing fabrication of the documents and, therefore, the conclusions drawn by the Trial Court on this aspect are erroneous. In respect of the charge against the appellant/accused no. 3 his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, particularly his answer (to question no. 133 regarding the seizure of 205 gold bars from him) that these were legally acquired by him, the High Court proceeded to examine as to whether he has proved lawful acquisition of the gold bars and eventually concluded that the appellant/accused no. 3 has failed to prove his case about the acquisition of the seized gold from DW-1 (Ambalal), owner of M/s. Babulalji Bhutaji Soni.

The finding was recorded despite observing that the witnesses PW- 19, PW-21, PW-22, PW-26 and PW-32 have not fully supported the prosecution and have stated that against the demand drafts drawn in the name of M/s. CN and M/s. V.B. Jewellers, the gold was delivered to Mukesh Shah. It is also noted that M/s. CN was admittedly dealing with the appellant/accused no. 3 and the letter written by M/s. CN was endorsed to the appellant/accused no. 3 and further that the witnesses relating to M/s. CN have stated before the court that the gold which forms muddemal property was not the one which was sold by the said firm to Mukesh Shah of M/s. Globe International against the tainted demand drafts.

It seems, the High Court was impressed with the fact that at the time of search, the appellant/accused no. 3 resisted the CBI by wrongfully confining its officers. Basing this, the High Court observed that the act of resisting the police from taking search is not consistent with the innocence of the appellant/accused no. 3 and that if he had substantiated his case of lawful acquisition of gold, failure of the witnesses connected with M/s. CN to identify the seized gold would have become relevant as there is no description of gold except for quantity and weight in the bills under which the gold was allegedly sold to M/s. Globe International. The High Court proceeds to conclude that basing above evidence and finding; notwithstanding the delay in seizure, the clause (a) of Section 114 of the Evidence Act will have to be invoked.

27. While dismissing Hiralal's appeal for return of seized gold bars to him, basing an ex-parte decree in his favour, the High Court reasoned that in the ex-parte

decree the State was not a party and there is no proof that Hiralal has acquired the seized gold bars. The High Court, thus, dismissed the appeal preferred by the appellant/accused no. 3 as well as Hiralal while the appeal of the CBI against return of seized gold bars to the appellant/accused no. 3 has been allowed.

28. The circumstances considered by the courts below to sustain the appellant's conviction under Section 411 and 120B of the IPC can be summarised as follows:

(i) CBI officials were resisted at the time of search and seizure in the appellant's jewellery shop;

(ii) Letter issued by M/s. Chenaji Narsinghji to CBI (Exhibit-119) containing an endorsement in favour of the appellant;

(iii) Gold purchased by utilizing demand drafts drawn on the account of M/s. Globe International was stolen property;

(iv) The appellant have business relations with M/s. Chenaji Narsinghji and M/s. V.B. Jewellers;

(v) The appellant failed to substantiate his defence set up in his accused statement while answering question no. 133.

(vi) The appellant having failed to substantiate his defence, clause (a) of Section 114 of the Evidence Act will have to be invoked;

(vii) The evidence of handing over of demand drafts by the appellant to M/s. Chenaji Narsinghji and M/s. V.B. Jewellers and taking delivery of gold bars (finding by the Trial Court).

29. It is settled law that however, strong a suspicion may be, it cannot take place of proof beyond reasonable doubt. This Court in "Kamal vs. State (NCT of Delhi)" (supra) has held thus:-

"18. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved".

It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature

and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonablele doubt. In the light of these guiding principles, we will have to consider the present case."

30. In the case at hand, the Trial Court has held in para 120 that whether the gold bars which were sold by M/s. CN to Mr. Mukesh Shah of M/s. Globe International are the same or not has not been proved beyond reasonable doubt. It is held by the Trial Court that the distance between may and must is very vast and prosecution has to cover that distance to reach the destination of must, however, the prosecution in this case could not achieve that level of proof. With this finding of the Trial Court, it is surprising as to how the appellant can be convicted for committing offence under Sections 120B and 411 of the IPC. Once the courts below have found that the seized gold bars, (Article 2) are not the same gold bars, conviction under Sections 120B and 411 of the IPC cannot be sustained.

31. Similarly, the High Court impliedly held that witnesses connected with M/s CN have failed to identify the seized gold. However, in the opinion of the High Court, the same is not relevant because the appellant has failed to prove lawful acquisition of gold. We fail to understand, when the prosecution has failed to prove the identity of seized gold as being the same gold which were sold by M/s. CN to M/s. Globe International, how the appellant is liable to prove lawful acquisition of gold visà- vis the stolen gold.

32. In order to bring home the charge under Section 411 of the IPC, it is the duty of the prosecution to prove (i) that the stolen property was in the possession of the accused; (ii) that some persons other than the accused had possession of the property before the accused got possession of it and (iii) that the accused had knowledge that the property was stolen property (See: 'Trimbak vs. State of M.P'- AIR 1954 SC 39).

33. In "Mohan Lal vs. State of Maharashtra"6, this Court held that the prosecution has to prove that the accused was in possession of property which he had reason to believe that it was stolen property.

34. In "Shiv Kumar vs. State of M.P."7 this Court reiterated the essentials of the offence under Section 411 of the IPC:

"9. Assailing the legality of the guilty verdict against the appellant, Mr Lav Kumar Agrawal, the learned counsel would submit that the essential ingredients of Section 411 IPC offence are not at all made out as the prosecution has failed to adduce any evidence to show that the accused had knowledge that the seized articles were stolen from the looted truck. It is, therefore, argued that unless the knowledge of the accused on the nature of the articles sold by them is established, his conviction under Section 411 IPC cannot be sustained in law.

13. In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 IPC.

16. To establish that a person is dealing with stolen property, the "believe" factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.

17. Moreover, the appellant in usual course, sold utensils in his shop and nothing is unnatural about him possessing such household articles, as seized from him."

35. When the pre-requisite evidence to bring home the charge under Section 411 of the IPC is considered in the present case, even if it is proved that the appellant was handed over the demand drafts by Mr. Mukesh Shah and gold bars were purchased by the appellant from M/s. CN and M/s. V.B. Jewellers, still it was necessary for the prosecution to prove that the appellant either had knowledge or reason to believe that the demand drafts had been obtained through fraudulent process to make the gold bars as stolen property in the hands of the appellant or that the appellant was part of the conspiracy. Moreover, the appellant has not been charged and tried for the first part of the offence relating to criminal conspiracy vis-à-vis fraudulent TTs.

36. Yet another aspect of the case which needs consideration is invocation of Section 106 of the Evidence Act by the courts below. Under Section 106 of the Evidence Act if certain facts are established, a reasonable inference can be drawn regarding existence of certain other facts which are within the special knowledge of the accused. On this, we may profitably refer to this Court's judgment in "Nagendra Sah vs. State of Bihar"8

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

37. Significantly, the Trial Court has held that in para 115 that the prosecution ought to have produced evidence to show that there was a stock of the same brand with M/s. CN and out of that stock some gold bars with markings of Harmony Suisse, Johnson Mathew, Arya were sold to M/s. Globe International. In the absence of this evidence and especially due to delay of four years in the recovery of the property the very basis of its identification is found shattered, and the possibility of mistaken identification cannot be ruled out.

With this finding of the Trial Court, invocation of Section 114 of the Evidence Act is not at all permissible since the prosecution has failed to discharge its initial burden. The weakness in the defence or the appellant's failure to substantiate the fact while answering question (no. 133) in his accused statement cannot become the strength of the prosecution. The prosecution has to prove its case beyond all reasonable doubts by positively completing the chain of circumstances against the appellant, which the prosecution has utterly failed in the present case.

38. For all the aforestated reasons, we are inclined to allow the appeals preferred by the appellant/accused no. 3 (Nandkumar Babulal Soni). Accordingly, Criminal Appeal Nos. 581-583 of 2012 preferred by the appellant-Nandkumar Babulal Soni are allowed. His conviction and sentence under Sections 120B and 411 of the IPC is set aside. Since the seized gold bars were recovered from the appellant-Nandkumar Babulal Soni, he is entitled to the possession thereof. Therefore, we direct that the seized gold bars- 205 in number (Article 2) be handed over to the appellant- Nandkumar Babulal Soni.

39. In view of the fact that the identity of the seized property being the stolen property has not been established, Vijaya Bank is not entitled to the possession of

the seized gold. Accordingly, Criminal Appeal No. 584 of 2012 preferred by Vijaya Bank stands dismissed.

We, however, make it clear that the findings are for the purpose of the criminal appeal and will not come in the way of other remedies, if any, as may be available in law to the parties. Similarly, the Criminal Appeal Nos. 579-580 of 2012 preferred by Hiralal Babulal Soni seeking return of gold bars is also dismissed.

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

.....J. (Prashant Kumar Mishra)

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

New Delhi;

February 25, 2025

1 "TT"

2 'M/s. CN'

3 'CBI'

4 'IPC'

5 2023 INSC 678

6 (1979) 4 SCC 751

7 (2022) 9 SCC 676

8 (2021) 10 SCC 725

IN THE SUPREME COURT OF INDIA

Kaniskh Sinha
Vs.
State of West Bengal

Criminal Appeal Nos. of 2025
@ SLP (Cri) Nos. 8609-8614 of 2024)

HEADNOTE – A law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpretated by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.

JUDGMENT

Sudhanshu Dhulia, J.

1. Leave granted.

2. The appellants before this Court are husband and wife (appellant no.1 & 2, respectively), who are aggrieved by an order dated 27.06.2024 passed by the learned Single Judge of the Calcutta High Court by which the criminal revisions of the present appellants were dismissed. The appellants are accused in two different cases, the first registered as a First Information Report ('FIR') at police station Bhowanipur, Kolkata as FIR No.179 of 2010 dated 27.04.2010 under Sections 120B, 420, 467, 468, 469, 471 of the Indian Penal Code, 1860 ('IPC'), read with Section 66A (a)(b)(c) of the Information Technology Act, 2000 ('IT Act'). In the instant case, the complainant was Keyur Majumder. The second FIR which was initially moved as a complaint before the Ld. Magistrate, and the Ld. Magistrate in exercise of powers under Section 190 read with 156(3) of the Criminal Procedure Code, 1973 ('CrPC') directed registration of an FIR. The complainant in this case was Supriti Bandopadhyay, and the second FIR was registered as FIR No.298 of 2011 dated 08.06.2011 at police station Bhowanipur, Kolkata under Sections 466, 469, 471 read with 120B(ii) of IPC.

3. The nature of allegations in these two cases is similar against the appellants, relating to forgery, fraud, deception, cheating, damage caused to reputation, unlawful extraction of money, threat, misrepresentation and criminal conspiracy etc. In fact, six revisions were filed by the appellants before the Calcutta High Court regarding the filing of charge sheet, as well as against certain interim orders passed by the Lower Court. But that is not very relevant. What is relevant

is the only point which has been raised by the appellants in their revisions before the High Court, which was that not only are these FIRs motivated and false, and thus liable to be quashed, but also that the second FIR has been registered on the complaint which was filed before the Magistrate under Section 156(3) of CrPC, and it was not accompanied by an affidavit and therefore, the law as laid down by this Court in **Priyanka Srivastava Vs. State of Uttar Pradesh (2015) 6 SCC 287** has been violated as all such complaints should now be accompanied by an affidavit according to **Priyanka Srivastava** (supra). The learned Single Judge of the High Court was of the view that the directions of this Court in the above case could only operate prospectively and will not have any retrospective application, and will thus not be applicable to the complaint lodged against the appellants in the year 2010-2011.

The appellant no.1, all the same, who argued in person before the High Court, emphasised before this Court and would argue that all the judgments of this Court are retrospective in nature and therefore it cannot be said that this would not be retrospective particularly when it has not been specifically stated in the judgment of **Priyanka Srivastava** (supra) that it will operate prospectively.

Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpretated by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fidely done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

4. In **Priyanka Srivastava** (supra) this Court was seized with an issue where frivolous complaints were being filed before the Magistrate only to harass people and therefore, in order to check this trend, it was directed that all applications before the Court where Section 156(3) CrPC applications are made must be supported by an affidavit duly sworn by the applicant who seeks to invoke the jurisdiction of the Magistrate. Such a step could only be prospective in nature, and this is clearly reflected from the very language used by the Learned Judges in Priyanka Srivastava (supra), where it has been said as under:

> "30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would

be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

(Emphasis provided)

5. This Court in the above case then also issued directions that a copy of the judgment be sent to all the Chief Justices of the High Courts, who in turn will circulate the said copy to all the Magistrates, so that they remain "more vigilant and diligent while exercising the power under Section 156(3) CrPC".

It is necessary to mark the words in the above-quoted para 30 that "…a stage has come in this country…", and thus, the above directions could only be prospective. This would signify that what the Court intended was that from now onward it would be necessary that an application would be accompanied by an affidavit.

6. We are of the opinion that the High Court was right in holding that the direction that a complaint will be accompanied by an affidavit, will be prospective in nature. We thus find no merit in these appeals and hence, the appeals stand dismissed.

7. We have been informed that the charge sheet has been filed in both the cases. In case charges have not been framed by the Court, then the appellants would be at liberty to move an application for their discharge, which shall be considered in accordance with law.

8. Interim order(s), if any, stand(s) vacated.

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

.....J. [Sudhanshu Dhulia]

.....J. [Ahsanuddin Amanullah]

New Delhi

February 27, 2025

IN THE SUPREME COURT OF INDIA

Sachin Jaiswal
Vs.
M/s. Hotel Alka Raje & Ors.

[Civil Appeal Nos._____ of 2025
arising out of SLP (C) No. 18717 of 2022]

HEADNOTE – A contribution made by the partner to the partnership firm becomes the firm's property as per Section 14 of the Partnership Act, 1932 and neither the partner nor his legal heirs would have an exclusive right over the firm's property after the partner's death or retirement except the share in profit in proportion to the contribution made in partnership firm.

JUDGMENT

Sudhanshu Dhulia, J.

1. Leave granted.

2. The appellant before this court has challenged the order dated 09.03.2022 passed by the High Court of Judicature at Allahabad, in First Appeal No. 60/2021 by which the High Court has disposed of the First Appeal preferred by the appellant with certain clarifications.

3. Briefly, the facts necessary for our consideration are that father of the appellant, late Bhairo Prasad Jaiswal had vide registered sale deed dated 01.10.1965 purchased a plot of land admeasuring 4 bigha 10 biswa 5 biswansi situated at Mohalla Rikabganj, Faizabad. Then, in the year 1971, he entered into an oral partnership with his brother, namely Hanuman Prasad Jaiswal, which was later reduced into writing vide Partnership Deed dated 11.10.1972 and thus the partnership firm, M/s Hotel Alka Raje i.e. respondent No. 1 herein was constituted. The two brothers jointly constructed a building on the land and started running a hotel business under the name and style of 'Hotel Alka Raje'.

4. In 1982, two new partners, which are respondent Nos. 2 and 3 herein, were inducted in the firm vide Partnership Deed dated 07.06.1982. In 1983, late Bhairo Prasad Jaiswal wished to relinquish his rights from the land on which the hotel was constructed and thus, he executed a relinquishment deed dated 09.03.1983 duly registered, pursuant to which the property was released in favour of M/s Hotel Alka Raje (respondent No. 1 herein). This Relinquishment Deed further

stipulated that his legal heirs or successors will have no right, title or interest in the property.

5. Although he had relinquished his right and title from the property on which the hotel was constructed, late Bhairo Prasad Jaiswal still continued to run the hotel business along with the other three partners but due to old age, he was unable to devote much of his time to the business and thus, a Partnership Deed dated 01.12.2000 was entered into between the 4 partners, wherein the profits or losses of the partnership were to be divided as such that late Bhairo Prasad Jaiswal was to have a share of 10 paise in a rupee or 10% of the net profits or losses while the other three partners were to have 30% each.

6. On 30.05.2005, late Bhairo Prasad Jaiswal passed away and thereafter, a new Partnership Deed dated 02.06.2005 was executed between the three remaining partners, which included Shri Hanuman Prasad Jaiswal (brother of late Bhairo Prasad Jaiswal) and respondent Nos. 2 and 3 herein. The partnership firm continued with the abovementioned three partners till the year 2017, when Shri Hanuman Prasad Jaiswal wished to retire due to old age and thus, a supplementary partnership agreement dated 01.04.2017 was executed, as per which, Shri Hanuman Prasad Jaiswal was to retire from the partnership w.e.f. 01.04.2017 and along with respondent Nos. 2 and 3, a new partner i.e. respondent No. 4 herein was inducted into respondent No. 1firm.

7. Then a civil suit for declaration of title and decree of permanent injunction was filed by respondent Nos. 14 herein, on 22.11.2018 before the Civil Judge, Senior Division, Faizabad (hereinafter, 'Trial Court'). It was averred by the respondent-plaintiffs that in October 2018, the appellants, in order to stake a claim over the property on which the building of Hotel Alka Raje is situated, tried to take possession of the property, based on the claim that it was acquired by their late father, Bhairo Prasad Jaiswal.

In their written statement, the defense taken by the present appellant was that the land was purchased by their father, late Bhairo Prasad Jaiswal and thereafter a building was constructed on it by him. Nowhere has it been stated that the land was purchased and building was constructed out of their ancestral fund/property. Their entire grievance seems to be that they should also have been made a partner in the firm which was denied.

8. The suit filed by respondents-plaintiffs was decreed by the Trial Court vide judgment and decree dated 22.12.2020 holding that respondent Nos. 1 to 4 are the sole owners-in-possession of the property and that the appellants have no right, title or interest in the same. To arrive at this finding, the Trial Court placed much reliance on the Relinquishment Deed dated 09.03.1983, which was executed by late Bhairo Prasad Jaiswal and the Trial Court was of the opinion that the said

Relinquishment Deed, being a registered document has its veracity and there it is clearly mentioned in the same that late Bhairo Prasad Jaiswal had relinquished all his rights, title & interest in the property in favour of the firmM/ s Hotel Alka Raje, which is respondent No. 1 herein. Further, it was also mentioned in the deed that even the successors/heirs of late Bhairo Prasad Jaiswal would not have any share in the property.

9. Against the judgment and decree of the Trial Court, First Appeal was filed by the appellant herein along with other defendants to the suit. Vide Impugned Order dated 09.03.2022 the High Court disposed of the First Appeal with the following clarification with respect to the decree passed by the Trial Court:

"We, therefore, clarify the position to the effect that the decree rendered by the trial court shall be read in favour of the firm namely 'M/s Hotel Alka Raje' alone. We also clarify that the share of the partners particularly of late Bhairon Prasad Jaiswal shall stand inherited by his legal heirs to the extent mentioned in the last partnership deed entered in accordance with law. There is no other question raised by the appellants which is either urged or may call for any consideration. The first appeal is, accordingly, disposed ·of with the clarification as aforesaid."

In other words, the High Court has held that the only entity which could be said to be the owner-in-possession of the property, having rights, title and interest over the same is the partnership firm itself i.e., respondent No. 1 herein.

10. We have heard learned counsel for the appellant and although notice was served on all respondents, no appearance was entered on their behalf and this matter remained uncontested from the side of the respondents. It is submitted by learned counsel for the appellant that the High Court has committed an error in passing the aforesaid clarifications. It is further contended by the appellant that the High Court has passed the impugned order, without considering their submission that ownership rights/interest in a property cannot be transferred by way of a relinquishment deed and can only be done through the modes of transfer defined in the Transfer of Property Act, i.e. sale, mortgage, exchange or gift.

11. We shall now proceed to determine whether first, the High Court was correct in passing the aforesaid clarifications and secondly, whether the High Court fell into error by not taking into consideration the contention raised by the appellant as regards the fact that transfer of title over the property could not have taken place through a relinquishment deed.

Even though the property belonged to late Bhairo Prasad Jaiswal, once he entered into a partnership with his brother Hanuman Prasad vide partnership deed dated 11.10.1972 and consequently the partnership firmM/ s Hotel Alka Raje came into existence, the property, inclusive of the land and the building which was

constructed for running the hotel business, became a property of the firm by virtue of Section 14 of the Indian Partnership Act, 1932 (hereinafter, 'Partnership Act') which reads as under:

"14. The property of the firmSubject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm; and includes also the goodwill of the business. Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

The High Court has held that a bare perusal of Section 14 of Partnership Act would indicate that any property which is brought on the stock of the firm becomes the firm's perpetual property. In the opinion of the High Court, the Hotel which was constructed by late Bhairo Prasad Jaiswal on the property which he had bought in 1965, was his contribution to the firm and thus, the same was brought on to the stock of the firm and would become the 'property of the firm' as per Section 14 of the Partnership Act. In this regard, this is what the High Court has observed:

"The dispute before the trial. court does not appear to be with respect of the proportionate share of partners but for a declaration of the property of 'Hotel Alka Raje' to be the property of firm. The suit was instituted by the firm as plaintiff no. 1 whereas respondent nos. 2 to 4 were the coplaintiffs. It is not in dispute that 'Hotel Alka Raje' which was constructed upon two plots out of which one belonged to late Bhairon Prasad Jaiswal was contributed by him as a part and parcel of the partnership deed. The said property inclusive of the land and building for all legal consequences became a property of the firm namely 'M/s Hotel Alka Raje' situated at Rikabganj, Faizabad."

12. Having heard learned counsel for the appellant and having gone through the record, we are in complete agreement with the High Court on the aforesaid aspect. The High Court based its order on an interpretation of Section 14 of the Partnership Act and taking into consideration the fact that it was an admitted position that the property was contributed by late Bhairo Prasad Jaiswal to the partnership firm.

13. The law on this point is settled which is that separate property of an individual partner, can be converted into partnership property. In this context, reliance can also be placed upon a judgment of this Court in Addanki Narayanappa v. Bhaskara Krishnappa, 1966 SCC OnLine SC 6 in which this Court has held that irrespective of the character of the property, when it is brought in by the partner when the partnership is formed, it becomes a property

of the partnership firm, by virtue of Section 14 of Partnership Act. This Court held as follows:

"7. It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership.

The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

(emphasis supplied)

14. A similar view has been taken by the Full Bench of the Madras High Court in The Chief Controlling Revenue Authority vs. Chidambaram, Partner, Thachanallur Sugar Mills and Distilleries and Ors. AIR 1970 Mad 5 (FB), wherein it was held that Section 14 of the Partnership Act enables a partner to bring a property which belongs to him, by the 'evidence of his intention' to make it a property of the firm and in order to do so, no formal document or agreement would be necessary. The Full Bench has thus held as follows:

"First of all, as we earlier observed, under S. 14 of the Partnership Act, it is always possible for a partner to bring into the partnership, property belonging to him by the evidence of his intention to make it part of the assets of the partnership. There is a very early decision of the English Court, namely, Robinson v. Ashton which embodies this principle, where a man became a member of a partnership, and the agreement was that the business should be conducted at the mill belonging to him, and he was credited in the books of the partnership with the value of the Mills, Jessel M.R. said that it made no difference that his contribution was in the form of mill and machinery, and not in the form of money.

The property, therefore, became the property of the partnership. On the same principle of S 14, we have the decision of the Full Bench of the Calcutta High

Court in Premraj Brahmin v . Bhaniram Brahmin and the learned Judges pointed out that, by virtue of S. 14, property could be thrown into the partnership stock without any formal document, and would, therefore, become the property of the firm."

(emphasis supplied)

15. It is apparent from a perusal of the record that late Bhairo Prasad Jaiswal, first acquired the property in the year 1965 and then after constituting the partnership firm (respondent No. 1) in 1972, he jointly constructed a building over the property with his brother and partner, Hanuman Prasad Jaiswal, pursuant to which the building was constructed which was to run as a hotel. This leaves no room for any doubt that late Bhairo Prasad had brought the property in question to the stock of the partnership firm as his contribution to the same.

In fact, this is precisely the reason which prompted the High Court to clarify that the decree rendered by the Trial Court ought to be read in favour of the partnership firmrespondent No. 1 alone, as opposed to being read in favour of the firm along with the other three partners, i.e. respondent Nos. 24 herein, because the property had become the firm's property at the very moment late Bhairo Prasad Jaiswal started constructing the hotel on his land after constituting the partnership. The evidence of his intention to contribute the land and the building of 'Hotel Alka Raje' is quite clear.

16. We are also of the opinion that with the above findings there was no occasion for the High Court to separately address the contention put forth by the appellant regarding relinquishment and the legal aspects of it.

17. We therefore see no reason to take a view different from that of the High Court in this regard. There is absolutely no scope for our interference with the order of the High Court dated 09.03.2022 in the exercise of our jurisdiction under Article 136 of the Constitution of India.

18. Accordingly, the appeal stands dismissed.

.....J. [Sudhanshu Dhulia]

.....J. [Ahsanuddin Amanullah]

New Delhi;

February 27, 2025

IN THE SUPREME COURT OF INDIA

Sudershan Singh Wazir
Vs.
State (NCT of Delhi) & Ors.

[Criminal Appeal Nos. 536-537 of 2025]

HEADNOTE – An order granting bail can be stayed by the Court only in exceptional cases when a very strong prima facie case of the existence of the grounds for cancellation of bail is made out. The prima facie case must be of a very high standard.

JUDGMENT

Abhay S. Oka, J.

Factual Aspects

1. The appellant was arraigned as an accused in connection with a First Information Report (for short, 'the FIR') for the offences punishable under Sections 302, 201 and 34 of the Indian Penal Code, 1860 (for short, 'the IPC'). He was not named in the FIR and was formally arraigned as an accused in the 3rd Supplementary Chargesheet under Section 302, 201, 34, 120B IPC read with 25, 27 of the Arms Act.

The learned Additional Sessions Judge passed an order dated 20th October 2023 discharging the present appellant in connection with all the offences subject to furnishing a personal bond in the sum of Rs.25,000/- with one surety of like amount to the satisfaction of the Jail Superintendent. Pursuant to the said order of discharge, the appellant was released from custody on the same day after he furnished the bond.

2. A revision application was filed by the first respondent- NCT of Delhi, challenging the order of discharge before the High Court of Delhi. A prayer was made in the revision application for stay of the order of discharge. By the first impugned order dated 21st October 2023, while issuing a notice in the revision application, the learned Single Judge of the High Court stayed the discharge order. It was an ex-parte order of stay, which was extended from time to time.

An application was filed under Section 390, read with Section 482 of the CrPC, by the first respondent in the revision application seeking a direction against the appellant to surrender to judicial custody on the ground that the discharge order

has already been stayed. By the second impugned order dated 4th November 2024, the learned Single Judge of the High Court held that on account of the stay granted by the High Court, the appellant cannot avail the benefit of the discharge order.

Therefore, the High Court observed that if the custody of the appellant is not secured, the order of stay granted by the first impugned order will become ineffective. Therefore, by the second impugned order, the appellant was directed to surrender before the Trial Court and was granted liberty to apply for bail thereafter. While issuing notice on 11th November 2024, this Court stayed the second impugned order. However, this Court clarified that the High Court was free to proceed with the hearing of the revision application.

SUBMISSIONS

3. Shri Siddharth Luthra, the learned senior counsel appearing for the appellant, submitted that the High Court ought not to have stayed the order of discharge. The consequence of the stay order is that the trial will proceed against the appellant, though he has been discharged. He submitted that unless the order of discharge is set aside, the trial cannot proceed. He submitted that the appellant has been discharged for the cogent reasons recorded and that the order cannot be nullified by granting a stay.

He submitted that the grant of stay to the discharge order would virtually amount to allowing the revision application without examining the merits or demerits of the discharge order. He submitted that the appellant has complied with the directions issued by the Sessions Court of furnishing bail in accordance with Section 437A of the CrPC. Therefore, the presence of the appellant is secured, if at all, he is required to face trial.

4. Shri Satya Darshi Sanjay, the learned Additional Solicitor General (ASG) appearing for the first respondent-NCT of Delhi, strenuously urged that though a strong prima facie case was made out to proceed on the basis of the charge sheet filed against the appellant, the learned Sessions Judge has passed an order of discharge. He pointed out that it is a very serious case of murder of a former Member of the Legislative Council of Jammu and Kashmir and the Chairman of Jammu and Kashmir Gurudwara Prabandhak Committee. He submitted that apart from the CCTV footage, there is evidence of CDR and eye-witnesses. He submitted that the order of discharge is perverse.

He submitted that the learned Judge of the High Court had recorded a prima facie finding in the first impugned order that the learned Sessions Judge had overlooked material evidence. Inviting our attention to Sections 397 and 401 of the CrPC, the learned ASG submitted that the High Court has the power to stay

or suspend the operation of the impugned order. In fact, as per sub-section (1) of Section 401 of the CrPC, the High Court while dealing with a revision application, is empowered to exercise all the powers of the Court of Appeal under Sections 386, 389, 390 and 391 of the CrPC.

Therefore, after admitting the revision application for hearing, the High Court had power under Section 390 of the CrPC to direct that the appellant should be committed to prison. He urged that considering the prima facie finding recorded in the first impugned order, the High Court had every justification to order the appellant to be taken into custody.

5. Shri Arjun Deewan, the learned counsel appearing for the fifth respondent (a son of the deceased), has also made detailed submissions. He relied upon a decision of the Constitution Bench in the case of State of Uttar Pradesh v. Poosu & Ors1. He relied upon paragraph No.10 of the decision, which reads thus:

"10. This is the rationale of Section 427. As soon as the High Court on perusing a petition of appeal against an order of acquittal, considers that there is sufficient ground for interfering and issuing process to the respondent, his status as an accused person and the proceedings against him, revive. The question of judging his guilt or innocence in respect of the charge against him, once more becomes sub judice."

6. He submitted that once a revision application against the order of discharge is admitted, the status of the appellant as an accused is revived and therefore, the trial must proceed against him and he has to be taken into custody. He relied upon a decision of this Court in the case of Amin Khan v. State of Rajasthan & Ors2 and submitted that the power under Section 390 of the CrPC has been correctly exercised by passing the second impugned order. He also relied upon a decision of this Court in the case of State of Maharashtra v. Mahesh Kariman Tirki & Ors3. He submitted that a higher Court can always stay the order of discharge.

7. The learned senior counsel appearing for the appellant, in response to the submissions of the respondents, relied upon the 154th Report of the Law Commission of India, by which a recommendation was made to incorporate Section 437A in the CrPC. He also relied upon a decision of this Court in the case of Parvinder Singh Khurana v. Directorate of Enforcement4.

CONSIDERATION OF SUBMISSIONS REVISIONAL JURISDICTION OF THE HIGH COURT

8. Firstly, we will examine the power of the High Court of revision. It is governed by Sections 397 and 401 of the CrPC. The corresponding provisions in

the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') are Sections 438 and 442 respectively. Sections 397 and 401 of the CrPC read thus:

"397. Calling for records to exercise powers of revision.-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.-All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

401. High Court's powers of revision.-

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

(emphasis added)

Hence, while exercising the revisional jurisdiction under Section 401, the High Court has all the powers of the Appellate Court under Sections 386, 389, 390 and 391 of the CrPC. The corresponding provisions under the BNSS are Sections 427, 430, 431 and 432 respectively. In view of what is provided under Section 397(1), the High Court has the power to suspend the operation of the order impugned in the revision application. The question is whether the power to grant a stay can be exercised for staying an order of discharge.

9. Section 386 provides for the procedure for the hearing of appeals. Section 389 of the CrPC, on its plain reading, is applicable when the order impugned is an order of conviction. It deals with suspension of sentence pending an appeal against conviction. Section 390 of the CrPC is the provision which deals with an appeal against acquittal. Section 391 of the CrPC deals with the power of the Appellate Court to take further evidence. Section 390 reads thus:

"390. Arrest of accused in appeal from acquittal.-

When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any Subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail." When an appeal against the order of acquittal is filed, the High Court has the power to order the arrest of the accused and his production before it or any subordinate court. After the accused is produced, there is a discretion in the Court to either commit him to prison or admit him to bail. As Section 390 has been made expressly applicable to Section 401, the power under Section 390 can be exercised in a revision against an order of discharge.

ORDER OF DISCHARGE

10. Before we go to the power of the revisional Court to stay the order of discharge, it is necessary to consider the effect of discharge. In a trial before a Court of Sessions, the power to discharge is conferred on the Court by Section 227 of the CrPC. In the case of a trial of a warrant case, there is a similar power to grant a discharge under Section 245 of the CrPC. We are concerned with

Section 227, which deals with discharge and Section 228, which deals with the framing of charge, which read thus:

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.-

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

(emphasis added)

11. Under Section 226 of the CrPC, after the order of commitment, when the accused appears or is brought before the Court of Sessions, the prosecutor has to open his case by describing the charge levelled against the accused by stating what evidence is proposed to prove the guilt of the accused. At that stage, the Sessions Court has to consider the record of the case. The record of the case will be the charge sheets.

The Sessions Court is under an obligation to hear the submissions of the accused and the prosecution as provided in Section 227 of the CrPC. After hearing the parties, if the Sessions Court is of the opinion that there is a ground for presuming that the accused has committed an offence, it may proceed to frame a charge in writing against the accused. The charge can be framed only after the

Court comes to a conclusion that there is a ground for presuming that the accused has committed an offence.

12. After considering the material on the charge sheet and the submissions of parties, if the Court concludes that there is no sufficient ground for proceeding against the accused, the Court must discharge the accused for the reasons recorded. Thus, an order of discharge is passed when there is no sufficient material to proceed against the accused. When a discharge order is passed, the person discharged ceases to be an accused.

The position of a discharged accused is on a higher pedestal than that of an accused who is acquitted after a full trial. The reason is that a charge can be framed, and an accused can be tried only when there is sufficient material in the charge sheet to proceed against him. An order of discharge is passed when the charge sheet does not contain sufficient material to proceed against the accused. Therefore, he is discharged at the threshold. After an accused is discharged under Section 227 of the CrPC, he is set at liberty as he ceases to be an accused.

POWER TO STAY THE ORDER OF DISCHARGE

13. An order staying the order of discharge is a very drastic order which has the effect of curtailing or taking away the liberty granted to the accused by the discharge order. As a result of the order staying the order of discharge, the order of discharge ceases to operate, and the Sessions Court can proceed to frame charges against the accused and try him further. Thus, the stay of the discharge order has a grave consequence of depriving an accused of the liberty granted under the discharge order.

The grant of stay to the order of discharge amounts to the grant of final relief, as the trial can proceed against him. An interim order can be granted pending disposal of the main case only if the interim order is in the aid of final relief sought in the main case. If the discharge order is ultimately set aside by grant of final relief in the revision, the accused has to face the trial. Therefore, the order staying the order of discharge by way of interim relief cannot be said to be in the aid of final relief.

14. It is only in rare and exceptional cases where the order of discharge is ex-facie perverse that the revisional Court can take the extreme step of staying that order. However, such an order should be passed only after giving an opportunity of being heard to the accused. Moreover, while granting the stay, the Court must mould the relief so that the trial does not proceed against the discharged accused. If the trial against a discharged accused proceeds, even before the revision application against an order of discharge is decided, the final outcome of the revision will become fait accompli.

15. In the case of Parvinder Singh Khurana4, this court dealt with the power of the Court to stay the order granting bail pending final disposal of the proceedings filed for cancellation of bail. In paragraphs 11 to 13 of the said decision, this Court held thus:

"11. While issuing notice on an application for cancellation of bail, without passing a drastic order of stay, if the facts so warrant, the High Court can, by way of an interim order, impose additional bail conditions on the accused, which will ensure that the accused does not flee. However, an order granting a stay to the operation of the order granting bail during the pendency of the application for cancellation of bail should be passed in very rare cases. The reason is that when an undertrial is ordered to be released on bail, his liberty is restored, which cannot be easily taken away for the asking.

The undertrial is not a convict. An interim relief can be granted in the aid of the final relief, which could be finally granted in proceedings. After cancellation of bail, the accused has to be taken into custody. Hence, it cannot be said that if the stay is not granted, the final order of cancellation of bail, if passed, cannot be implemented. If the accused is released on bail before the application for stay is heard, the application/proceedings filed for cancellation of bail do not become infructuous. The interim relief of the stay of the order granting bail is not necessarily in the aid of final relief.

12. The Court dealing with the application for cancellation of bail can always ensure that notice is served on the accused as soon as possible and that the application is heard expeditiously. An order granting bail can be stayed by the Court only in exceptional cases when a very strong prima facie case of the existence of the grounds for cancellation of bail is made out. The prima facie case must be of a very high standard.

By way of illustration, we can point out a case where the bail is granted by a very cryptic order without recording any reasons or application of mind. One more illustration can be of a case where material is available on record to prove serious misuse of the liberty made by the accused by tampering with the evidence, such as threatening the prosecution witnesses. If the High Court or Sessions Court concludes that an exceptional case is made out for the grant of stay, the Court must record brief reasons and set out the grounds for coming to such a conclusion.

13. An ex-parte stay of the order granting bail, as a standard rule, should not be granted. The power to grant an ex-parte interim stay of an order granting bail has to be exercised in very rare and exceptional cases where the situation demands the passing of such an order. While considering the prayer for granting an ex-parte stay, the concerned Court must apply its mind and decide whether the case

is very exceptional, warranting the exercise of drastic power to grant an ex-parte stay of the order granting bail.

Liberty granted to an accused under the order granting bail cannot be lightly and casually interfered with by mechanically granting an ex-parte order of stay of the bail order. Moreover, the Court must record specific reasons why it concluded that it was a very rare and exceptional case where a very drastic order of exparte interim stay was warranted. Moreover, since the issue involved is of the accused's right to liberty guaranteed by Article 21 of the Constitution, if an exparte stay is granted, by issuing a short notice to the accused, the Court must immediately hear him on the continuation of the stay."

(emphasis added)

16. We may note here that the order of discharge stands on a higher pedestal than the order granting bail. By grant of bail, the status of the accused does not cease to be that of an accused, but when the order of discharge is passed, he ceases to be an accused. The power of the Court to stay the order granting bail can be exercised only in rare and exceptional cases. As a discharged accused stands on a still higher pedestal than an accused released on bail, the law laid down in the case of Parvinder Singh Khurana4 will apply more strictly and rigorously while dealing with the application for grant of stay of the order of discharge.

17. In the case of State of Maharashtra v. Mahesh Kariman Tirki & Ors3, a bench of the Bombay High Court, while finally hearing an appeal against an order of conviction of the accused after a full-fledged trial, passed an order of discharge only on the ground of the absence of sanction. The High Court did not advert to the merits of the conviction. Considering this peculiar order, this Court passed a drastic order of stay while issuing notice on Special Leave Petition against the order of discharge. Therefore, the said order is of no relevance to this case.

SECTION 390 OF CrPC

18. As we have held earlier, in view of Section 401(1) of the CrPC, the revisional Court can exercise power under Section 390 in a given case. As can be seen from Section 390, when an appeal is preferred against an order of acquittal, the High Court is empowered to issue a warrant directing that the accused be arrested and brought before it or any sub-ordinate Court. The Court, before which the accused is brought, may commit him to prison pending disposal of the appeal or admit him to bail. Once an appeal against acquittal is admitted, the status of the person acquitted as an accused can be said to be restored. That is what is held in the case of State of Uttar Pradesh v. Poosu & Ors.1

The object of Section 390 of the CrPC is that if ultimately the order of acquittal is converted into the order of conviction, the accused must be available for

undergoing sentence. The second object of Section 390 is that when an appeal against acquittal is finally heard, the accused's presence at the hearing can be secured. Therefore, there is a power vested in the High Court to arrest an acquitted accused and bring him before it or the Trial Court. The object is that the accused remains under the jurisdiction of the Court dealing with the appeal against acquittal.

It is well settled that an order of acquittal further strengthens the presumption of innocence of an accused. Therefore, as a normal rule, where an order under Section 390 of the CrPC is passed, the accused must be admitted to bail rather than committing him to prison. It is well-settled in our jurisprudence that bail is the rule, and jail is the exception. This rule must be applied while exercising power under Section 390 of the CrPC, as the position of the acquitted accused is on a higher pedestal than an accused facing trial.

When an accused faces trial, he is presumed to be innocent until he is proven guilty. In the case of an acquitted accused, as stated earlier, the presumption of innocence is further strengthened because of the order of acquittal. Only in extreme and rare cases by way of exception can an order committing an acquitted accused to prison be passed under Section 390.

19. When a revision application challenging the order of discharge is admitted for hearing, the High Court may exercise power under Section 390 by directing the person discharged to appear before the Trial Court and by directing the Trial Court to admit him to bail on appropriate terms and conditions. If such an order is passed after the admission of the revision application against the order of discharge, it is a sufficient safeguard for ensuring the presence of the discharged accused at the time of hearing of the revision application and for undergoing trial, if the order of discharge is set aside.

If the discharge order is eventually set aside, such an order under Section 390 of the CrPC passed in an admitted revision application against the discharge order will be in the aid of final relief. As held earlier, while exercising power under Section 390 of the CrPC, the normal rule is that the acquitted accused should not be committed to custody, and a direction should be issued to admit him to bail. This normal rule should apply all the more to cases where the challenge is to the order of discharge, as the order of discharge is on a higher pedestal than an order of acquittal.

20. Passing an order under Section 390 directing the discharged accused to admit to bail is sufficient to procure the presence of the discharged accused at the time of hearing of the revision application and for undergoing trial if the order of discharge is set aside.

OUR VIEW ON THE FACTS OF THE CASE

21. Now, coming to the facts of the case, the first impugned order has been passed ex-parte while issuing notice by which the order of discharge was stayed. There is nothing placed on record to show that till the second impugned order was passed, at any time, the High Court had given an opportunity to the appellant to be heard on the prayer for stay. The second impugned order runs into as many as twenty-six pages and involves 62 paragraphs, which, in substance, holds that as the order of discharge was no longer operative, the status of the appellant as an accused has been restored, and therefore, he shall be forthwith taken into custody.

22. In our view, the ex-parte order of stay of the order of discharge should not have been passed by the High Court. The consequences of such an order are very drastic as alluded to hereinabove. Hence, the ex-parte order of stay is entirely illegal. Consequently, the second impugned order deserves to be set aside. 23. In the present case, after passing the order of discharge, the Sessions Court passed a further order on the same day by directing the release of the appellant on furnishing a personal bond of Rs.25,000/- and one surety in the like amount to the satisfaction of the concerned Jail Superintendent. Apparently, the Sessions Court exercised power under Section 437A of the CrPC, which reads thus:

"437A. Bail to require accused to appear before next appellate Court.-

(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

24. The bail bonds furnished by the appellant in terms of the order dated 20th October 2023 were for ensuring his presence when notice of the proceedings against an order of discharge is served. Thus, the validity of the bail bonds may have expired. Hence, we propose to direct the appellant to furnish bail in terms of Section 390 of the CrPC.

25. Accordingly, we pass the following order:

a. The impugned orders dated 21st October 2023 and 4th November 2024 are, hereby, quashed and set aside;

b. The High Court will decide the revision application without being influenced by any observations made in this judgment. It will be open for the first respondent-NCT of Delhi, and the fifth respondent to apply before the High Court for giving necessary priority to the disposal of the revision application;

c. We direct the appellant to appear before the Sessions Court within four weeks from today and furnish bail effective till disposal of the revision application on such terms and conditions as may be fixed by the Sessions Court. If the appellant fails to comply with the above directions, he shall be forthwith taken into custody and sent to judicial custody till the disposal of the revision application; and

d. While admitting the appellant to bail, the Sessions Court shall impose usual conditions. In addition, a condition of cooperating with the High Court for early disposal of the revision application shall be also imposed. If the High Court finds that the appellant is not cooperating with the early disposal of the revision application, it will be open for the High Court to cancel the bail after hearing the appellant.

26. The appeals are allowed on the above terms.

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

.....J. (Ujjal Bhuyan)

New Delhi;

February 28, 2025.

1 (1976) 3 SCC 1

2 (2009) 3 SCC 776

3 (2022) 10 SCC 207

4 2024 SCC OnLine SC 1765 : 2024 INSC 546

2. Study Material-G.K.

MAKING OF INDIAN CONSTIUTTION

The **Constituent Assembly,** formed in 1946, played a crucial role in drafting the **Indian Constitution**, ensuring it reflected the nation's diverse cultural, social, and political fabric. Led by prominent figures like Jawaharlal Nehru, Dr. B.R. Ambedkar, and Sardar Vallabhbhai Patel, the Assembly engaged in comprehensive debates on federalism, fundamental rights, and governance, shaping the document's core principles.

The Constitution, adopted on November 26, 1949, and enforced on January 26, 1950, symbolized India's shift to a sovereign republic. This landmark event introduced a parliamentary democracy built on the principles of justice, liberty, and equality, laying the groundwork for the country's governance and development.

What is a Constituent Assembly?

The Constituent Assembly is an institution specifically conceived to design or amend a Constitution, with the authority to establish the norms that govern the political and social framework of a territory. In India, the Constituent Assembly was formed in November 1946 under the Cabinet Mission Plan (1946) as a partly elected and partly nominated body.

- It convened for the first time on December 9, 1946, to draft and formulate the Constitution of India, seen as essential for implementing self-determination.
- After its final session on January 24, 1950, the Constituent Assembly served as the **provisional Parliament** from January 26, 1950, until the first general elections in 1951-52 established the new Parliament.

Historical background of the Constituent Assembly

The Constituent Assembly of India arose from the nation's aspiration to frame its Constitution as a step toward self-determination and the end of British colonial rule. This need was driven by the inadequacy of British-imposed constitutional frameworks, like the Government of India Acts of 1919 and 1935, which limited self-governance while retaining British control over critical areas like defense, finance, and foreign affairs, leaving Indians with little real power.

- As a result, this disparity fueled dissatisfaction and strengthened the resolve for a sovereign, independent governance system.

- Furthermore, leaders like Mahatma Gandhi, Jawaharlal Nehru, and Dr. B.R. Ambedkar emphasized that only a Constitution created by Indians could represent the country's diverse social, cultural, and political landscape.
- The timeline below highlights the evolution of this idea, culminating in the Constituent Assembly's role in framing India's Constitution and paving the way for complete independence.

1934	The idea of a Constituent Assembly for India was put forward for the first time by **M.N.Roy**, a pioneer of the communist movement in India.
1935	Indian National Congress first demanded a Constituent Assembly to frame the Constitution of India.
1938	**J.L. Nehru** declared that the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected based on **Adult Franchise**.
1940	First time in principle, the demand for a Constituent Assembly was accepted by the British in the **August offer of 1940.**
1942	**Sir Stafford Cripps** came to India with a draft proposal to frame an independent Constitution, which was rejected by the Muslim League.
1946	**Cabinet Mission** was sent to India, which rejected the idea of two Constituent assemblies. Hence, Elections were held as per the Cabinet Mission plan of 1946 to establish the Constituent Assembly.

Composition of Constituent Assembly

The Constituent Assembly comprised members who were partly elected and partly nominated. The elected members were indirectly elected by members of the provincial legislative Assembly, who were elected on the limited franchise.

<table>
<tr><td colspan="3">Total Strength of the Constituent Assembly (389)</td></tr>
<tr><td colspan="2">British India (296)</td><td>Princely states (93)</td></tr>
<tr><td colspan="2">Note: Members of the Muslim League who were originally from Pakistani territory withdrew from the Indian Constituent Assembly. As a result, strength decreased from 296 to 229.</td><td>Note: The strength of the princely kingdoms decreased from 93 to 70 when members of the Muslim League withdrew from the Indian Constituent Assembly.</td></tr>
<tr><td>• From 11 governors' provinces. (292)</td><td>• From the four Chief Commissioners' provinces, one from</td><td></td></tr>
</table>

	each. **(4)**	
• Seats allocated to each British province were divided among three principal communities- **Muslims, Sikhs, and General**, in proportion to their population. • The representatives of each community were elected by members of that community in the provincial legislative Assembly, and voting was Proportional Representation through Single Transferable Vote.		• Representatives of Princely states were to be nominated by their respective heads.

Making of the Indian Constitution Timeline

The Indian Constitution was made by the Constituent Assembly, which came into existence as per the provisions of the **Cabinet Mission of May 1946.** Its task was to formulate a Constitution for facilitating the appropriate transfer of sovereign power from British authorities to Indian hands.

- **9 December 1946:** The Constituent Assembly sat for the first time.
- **11 December 1946:**Rajendra Prasad as President, Harendra Coomar Mookerjee and V.T. Krishnamachari as the Vice Presidents were elected, and B. N. Rau as Constitutional legal advisor was appointed.
- **13 December 1946:** Jawaharlal Nehru introduced the famous "Objective Resolution" in the Assembly, which laid down the philosophy of the Constitution of India.
    - It is geared toward fostering economic and political security in India through a written Constitution and declaring India a Sovereign, Democratic Republic.
    - It fostered the formulation of a federal with the even-handed distribution of powers between the Centre and the states.
    - It strives to secure equality, justice, and freedom of thought, expression, belief, faith, association, and associated action for each subject of the country.
    - It is geared toward providing necessary protection to the minority and backward section of society.
    - It strives to secure the integrity of the territory of the Indian republic and follow the law of any civilized nation to secure rights on land, sea, and air.
- **22 January 1947:** The Resolution was unanimously adopted by the Assembly.

- **July 1947- Indian Independence act, 1947:** The Act made the following changes in the position of the Constituent Assembly:
- The Assembly was given **complete autonomy** and the power to draft any Constitution it chose.
- The **Act gave the Assembly the authority to annul or amend any law passed by the British Parliament** regarding India.
- The Assembly was also given **legislative authority.** As a result, the Assembly was elected as India's first free Parliament (Dominion Legislature). **Dr. Rajendra Prasad** presided over meetings of the Assembly as the Constituent body, and **G.V. Mavlankar** presided over those of the Assembly as the Legislative body.
- **July - October 1947:** Preparation of **the first draft by the Constitutional advisor,** Constitutional Advisor started putting together the first draft of the Constitution by aligning the reports already discussed and adopted.
- **22 July 1947:** The Constituent Assembly adopted the National flag.
- **October 1947- February 1948:** Deliberations in Drafting Committee and resultant draft Constitution, Drafting committee produced the **draft Constitution** by February 21, 1948,which contained 315 Articles and 8 Schedules.
- **4 November 1948 - 9 November 1948 (First reading):** Drafting committee published the draft Constitution of India in February 1948. The draft was introduced in the Assembly in November 1948.
- **15 November 1948 – 17 October 1949 (Second reading):** Clause-by-clause draft discussion was conducted in the Assembly.
- **May 1949:** The Constituent Assembly accepted and approved India's membership of the British **Commonwealth**.
- **14 November 1949 - 26 November 1949 (Third reading):** The Assembly finished the third reading.
- **26 November 1949:** The Constituent Assembly **passed and adopted** the Constitution of India.
- **24 January 1950:** The Constituent Assembly elected **Dr. Rajendra Prasad** as the first President of India and, adopted the **National anthem** and **National song**.

When did the Constitution come into force?

As per the provisions in the Constitution, it **formally commenced on January 1950,** bringing it into force in its entirety. This date was chosen to commemorate the declaration of **'Poorna Swaraj' by J.L. Nehru** at an annual session of the Congress in Lahore in 1929.

- Some of the Constitution's provisions, included in **Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, and 393,** relating to citizenship,

elections, a provisional parliament, temporary and transitional laws, and short titles, came into effect on **November 26, 1949.**

- The remaining provisions of the Constitution took effect on **January 26, 1950,** and the entire Constitution was enforced. This day is celebrated as **Republic Day**.

Committees of the Constituent Assembly

The Constituent Assembly, at various points during the Constitution-making process, appointed several committees on different aspects of the Constitution to conduct preliminary research and deliberations within smaller groups.

Constituent Assembly Organizational Committee

The **Organizational Committee** of the Constituent Assembly was established to ensure the smooth functioning of the Constitution-making process. Each committee, with a distinct purpose, addressed areas such as rules, finances, state negotiations, procedural matters, and more, contributing to the efficient drafting of India's Constitution.

Committee	**Chairperson**
Rules of procedure committee	Rajendra Prasad
Steering committee	Rajendra Prasad
Staff and finance committee	Rajendra Prasad
Credentials committee	A. K. Ayyar
Order of Business committee	K. M. Munshi
States (negotiating) committee	J. L.Nehru
Flag committee	Rajendra Prasad
Committee on functions of Constituent Assembly	G. V. Mavlankar

Constituent Assembly Principal Committees and their sub-committees

Other than the Organizational Committee, the Constituent Assembly also formed several **Principal Committees** to address key aspects of the Indian Constitution. Following are the principal committees and their sub-committees formed during this period.

Committee	**Chairperson**
Advisory committee on fundamental rights, minorities, Tribal areas and excluded areas	Sardar Patel
Union powers committee	J. L. Nehru
Union Constitution committee	J. L. Nehru
Provincial Constitution committee	Sardar Patel
Drafting committee	Dr. B. R. Ambedkar

Constituent Assembly Other Sectoral Committees

In addition to the organizational and principal committees, the Constituent Assembly established several **Sectoral Committees** to address various issues related to the nation's governance, which are as follows.

Committee	Chairperson
Ad-hoc committee on citizenship	S. Varadachariar
Committee on chief commissioner's provinces	N. Gopalaswami Ayyangar
Experts committee on Financial Provisions of Constitution	N. R. Sarkar
Sub-committee on minority safeguards for West Bengal and East Punjab	Sardar Patel

Criticism of Constituent Assembly

Several scholars and Constitutional experts have criticized the Constituent Assembly on various grounds. These are as follows:

- **Not a representative Body:** Its members were not directly elected based on the universal adult franchise.
- **Not a Sovereign Body:** It was created by the British proposals, and its sessions were held with the permission of the British Government.
- **Time-Consuming:** It took an unduly long time to frame the Constitution, on the other hand the American Constitution was formed in 4 months.
- **Dominated by Congress**: **Granville Austin** commented that "The Constituent Assembly was one party body in an essentially one-party country. The Assembly was the Congress, and the Congress was India".
- **Lawyer-Politician Domination**: Scholars maintain that they dominated the Constituent Assembly and are not representative of other sections.
- **Dominated by Hindus**: **Winston Churchill** commented that the Constituent Assembly represents "Only one major community in India".

3. Study Material-Language

IDIOMS

S.No.	Idioms & Phrases	Meaning
1.	Rank and File	Ordinary People
2.	By fits and starts	In short periods, not regularly
3.	A wee bit	A little
4.	Out of the wood	Free from difficulties and dangers
5.	Under his thumb	Under his control
6.	At one's wits end	In a state where one does not know what to do
7.	Between the devil and the deep sea	Between two dangers
8.	Burn the midnight oil	Work or study hard
9.	Call a spade a spade	Speak frankly and directly
10.	Come off with flying colors	Be highly successful
11.	Hoping against hope	Without hope
12.	Hit the nail on the head	Do or say the exact thing
13.	An axe to grind	A personal interest in the matter
14.	To get rid of	Dispose of
15.	At daggers drawn	Bitterly hostile
16.	To play ducks and drakes	To act foolishly or inconsistently
17.	To take the bull by the horns	To tackle a problem in a bold and direct fashion
18.	Rain cats and dogs	Rain heavily
19.	To move heaven and earth	To make a supreme effort
20.	No avail	Without any result
21.	Bark up the wrong tree	Accuse or denounce the wrong person
22.	Keep one at bay	Keep one at a distance
23.	Make a clean breast of it	Confess – especially when a person has done a wrong thing
24.	Have a card up one's sleeve	Have a secret plan in reserve
25.	Like a cat on hot bricks	Very nervous
26.	Cat and dog life	Life full of quarrels
27.	Cock and bull story	Made up story that one should not believe
28.	Cry for the moon	Ask for the impossible
29.	The pros and cons	The various aspects of a matter in detail
30.	Be in a tight corner	In a very difficult situation
31.	Cross one's t's and dot	Be precise, careful and one's i's

		exact
32.	At arm's length	To keep at a distance
33.	Out of the question	Impossible
34.	Out of the way	Strange
35.	Show a clean pair of heals	Run away
36.	Keep one's fingers crossed	The anxiety in which you hope that nothing will upset your plans
37.	In the nick of time	Just at the last moment
38.	Sitting on the fence	Hesitate between two decisions
39.	Spread like wild fire	Spread quickly
40.	The gift of the gab	Talent for speaking
41.	By hook or by crook	By fair or foul means
42.	Feather one's own nest	Make money unfairly
43.	Throw out of gear	Disturb the work
44.	Take to one's heels	Run away
45.	Tooth and nail	With all one's power
46.	Die in harness	Die while in service
47.	Take a leaf out of one's book	Imitate one
48.	Leave no stone unturned	Use all available means
49.	A man of straw	A man of no substance
50.	Read between the lines	Understand the hidden meaning
51.	In cold blood	Deliberately and without emotion
52.	A thorn in the flesh	A constant source of annoyance
53.	Smell a rat	Suspect something foul
54.	Harp on the same string	Dwell on the same subject
55.	Bury the hatchet	End the quarrel and make peace
56.	Leave one in the lurch	Desert one in difficulties; leave one in a helpless condition
57.	Like a fish out of water	In a strange situation
58.	At one's beck and call	Under his control
59.	To make both ends meet	To live within one's income
60.	In hot water	In trouble
61.	Nip in the bud	Destroy in the early stage
62.	Stick to one's guns	Remain faithful to the cause
63.	To eat humble pie	To apologize humbly and to yield under humiliating circumstances
64.	In high spirits	Very happy
65.	Put the cart before the horse	Put or do things in the wrong order
66.	To all names	To abuse
67.	On tenterhooks	In a state of suspense and anxiety
68.	Wash one's dirty linen	Discuss unpleasant in public-private matters before strangers

69.	To bell the cat	To face the risk
70.	A hard nut to crack	A difficult problem
71.	Let the cat out of the bag	Reveal a secret
72.	A big gun	An important person
73.	Kill two birds with one stone	To achieve two results with one effort
74.	Take one to task	Rebuke
75.	Gain ground	Become Popular
76.	To blow one's own	To praise one's own trumpet achievement
77.	A bosom friend	A very close friend
78.	A brown study	Dreaming
79.	Turn a deaf ear	Disregard / ignore what one says
80.	A close shave	Narrow escape
81.	Turn over a new leaf	Change for the better
82.	Make up one's mind	Decide
83.	In the long run	Eventually; ultimately
84.	Bring to light	Disclose
85.	Pay off old scores	Take revenge
86.	Hard and fast rules	Strict rules
87.	At the eleventh hour	At the last moment
88.	A close shave	Narrow escape
89.	To cut a sorry figure	To make a poor show
90.	With a high hand	Oppressively
91.	Burn one's fingers	Get into trouble by interfering in other's affairs
92.	Laugh one's head off	Laugh heartily
93.	Chew the cud	Ponder over something
94.	Play second fiddle	Take an unimportant part
95.	Above board	Honest and open
96.	Through thick and thin	Under all conditions
97.	Put a spoke in one's wheel	To upset one's plans
98.	At sixes and sevens	In a disordered/disorganized manner, chaotic
99.	At home	Comfortable
100.	Alpha and omega	The beginning and the end
101.	At sea	Confused and lost
102.	A bosom friend	A very close friend
103.	At one's beck and call	At one's service
104.	By leaps and bounds	Rapidly
105.	To burn one's boats	Go back on a decision
106.	To beat about the bush	Talk irrelevantly

107.	To burn candle at both ends	To waste lavishly
108.	Take one to task	Rebuke
109.	A bone of contention	A source of quarrel
110.	Add fuel to the fire	To aggravate the situation
111.	An acid test	A critical test
112.	At a snail's pace	Very slowly
113.	A bolt from the blue	Something unexpected
114.	To build castles in the air	Make imaginary schemes
115.	Once in a blue moon	Something that happens very rarely
116.	Beating around the bush	Avoiding the main topic
117.	Cry over spilled milk	Complaining about a loss or failure from the past
118.	Chip on your shoulder	When someone is upset about something that happened a while ago
119.	Piece of cake	Something that is easy to understand or do
120.	Golden handshake	A big sum of money given to a person when he/she leaves a company or retires
121.	Spill the beans	To disclose a secret
122.	Blessing in disguise	Something good and useful that did not initially seem that way
123.	Mean business	Being Serious or Dedicated
124.	Come hell or high water	Possible obstacles in your path
125.	Apple of one's eye	Being cherished
126.	Bite off more than you can chew	Not able to complete a task due to lack of ability
127.	The best of both worlds	The benefits of widely differing situations, enjoyed at the same time
128.	Feeling a bit under the weather	Feeling slightly ill
129.	Icing on the cake	Something that turns good into great
130.	Cost an arm and a leg	Be very expensive
131.	Jump the bandwagon	To join a popular activity or trend
132.	Ball is in your court	When it is up to you to make the next decision or step
133.	To be in the doldrums	To be in low spirits
134.	To sit on the fence	To remain neutral
135.	Break the ice	To initiate a social conversation or interaction

136.	Hear it on grapevine	To hear rumors about something or someone
137.	Can't judge a book by its cover	Cannot judge something primarily on appearance
138.	It takes two to tango	Actions or communications need more than one person
139.	Let the cat out of the bag	To reveal the secret carelessly or by mistake
140.	Black and blue	Full of Bruises
141.	Be on cloud nine	Be very happy
142.	Last straw	The final problem in a series of problems
143.	A bird's eye view	A view from a very high place that allows you to see a very large area
144.	A litmus Test	A method that helps to know if something is correct
145.	At the drop of a hat	Willingness to do something instantly
146.	Afraid of one's own shadow	To become easily frightened
147.	A house of cards	A poor plan
148.	Fool's paradise	False sense of happiness
149.	Get a raw deal	To not be treated as well as other people
150.	Give cold shoulder	To ignore
151.	Hand to mouth	Live on only basic necessities
152.	Make a face	To show dislike or disappointment through facial expressions
153.	It's Greek to me	Something that is not understandable
154.	To pour oil on troubled waters	To make peace
155.	Don't put all your eggs in one basket	Do not put all your resources in one basket (in one place or thing)
156.	To put in a nutshell	To say in a few words or to make something concise
157.	Back out	To withdraw from a promise or contract
158.	Blow up	To explode
159.	Back Up	To support and sustain
160.	Back Upon	To be relevant
161.	Break Down	Failure in something
162.	Break off	To end or discontinue
163.	Break Up	To disperse / dissolve
164.	Bring up	To rear

165.	Call forth	To provoke
166.	Call out	To shout
167.	Call upon	To order
168.	Carry on	To continue
169.	Cast away	To throw aside
170.	Catch up with	To overtake
171.	Come off	To take place
172.	Cry Down	To make little of
173.	Catch up with	To overtake
174.	Cry out against	To complain loudly against
175.	Cut out	Designed for
176.	Drop in	To Visit Casually
177.	Drop out	To fall
178.	Fall back	To Recede; To Retreat
179.	Fall down	From a higher position to a lower one
180.	Fall off	To Withdraw; To Drop Off
181.	Fall under	To come under
182.	Get along	To Prosper; To Progress; To Proceed
183.	Get on with	To Live Pleasantly Together; To Progress
184.	Get into	To be involved in
185.	Give in	To Surrender; To Yield
186.	Give over	Not to do any longer
187.	Go after	To Follow; To Pursue
188.	Go Down	To be accepted
189.	Go without	To remain without
190.	Go by	To follow
191.	Hang about	To Loiter near a place
192.	Hang upon	To depend upon
193.	Hold out	To Endure; To Refuse to yield; To continue; To offer
194.	Hold to	Abide By
195.	Keep off	To ward off
196.	Keep up with	To keep pace with
197.	Knock out	To win by hitting another one
198.	It takes two to tango	Both people involved in a bad situation are responsible for it
199.	Last straw	The final problem in a series of problems
200.	Keep something at bay	Keep something away
201.	Kill two birds with one stone	To solve two problems at a time

		with just one action
202.	Let sleeping dogs lie	Leave something alone if it might cause trouble
203.	Open the floodgates	Release something that was previously under control
204.	Out of the blue	Happen unexpectedly
205.	Out on a limb	Do something risky
206.	Over the Top	Totally excessive and not suitable for the occasion
207.	Pen is mightier than the sword	Words and communication have a greater effect than war
208.	Push one's luck	Trying to obtain more than what one has
209.	Reap the harvest	Benefit or suffer as a direct result of past actions
210.	Roll up sleeves	To get yourself prepared
211.	See eye to eye	To be in agreement with
212.	Shot in the dark	A complete guess
213.	Sink your teeth into	Do something with a lot of energy and enthusiasm
214.	Take with a grain/pinch of salt	To doubt theaccuracy of information
215.	Skating on thin ice	Do or say something risky
216.	Tight spot	A difficult situation
217.	Strike while the iron is hot	To act at the right time
218.	Take the plunge	Venture into something of one's interest despite the risks involved
219.	Take a nosedive	Rapid drop or decrease in value
220.	Think the world of	Admire someone very much
221.	Stand in a good stead	To be useful or be of good service to someone
222.	Take a back seat	Choose to be less important in a role
223.	Wave a dead chicken	Do something useless
224.	Whale of a time	Enjoy a lot
225.	Wrap one's brain around	Concentrate on something to understand
226.	Zero in on something	Focus all attention on one thing
227.	Above all	Chiefly, Mainly
228.	On Account of	Due to
229.	On no account	Not for Any Reason
230.	A Fidus Achates	A faithful friend or a devoted follower

231.	The Heel of Achilles	A Weak Point
232.	An Adonis	A very handsome man
233.	To assume airs	To affect superiority
234.	To stand aloof	To keep to oneself and not mix with others
235.	To lead to the altar	To marry
236.	An Ananias	A Liar
237.	An Apollo	A Man with Perfect Physique
238.	To Upset the Apple Cart	To disturb the peace
239.	Apple Pie Order	In perfect order
240.	Arcadian Life	A blissful, happy, rural and simple life
241.	To take up arms	To fight or go to the war
242.	To Grind	To have some selfish objective in view
243.	To break the back of anything	To perform the most difficult part
244.	To backbite a person	To speak disguise about someone
245.	He has no backbone	He has no will of his own
246.	To cause bad blood	To Cause Enmity
247.	Bag and Baggage	With all one's belongings
248.	To keep the ball rolling	To keep things going
249.	Barmecide feast	Imaginary Benefits
250.	Bee-line	The shortest distance between two places
251.	Behind one's back	Without one's Knowledge
252.	Behind the scenes	In Private
253.	To hit below the belt	To act unfairly in a contest
254.	To bite the dust	To be Defeated in Battle
255.	A Wet Blanket	A person who discourages enjoyment or enthusiasm
256.	In Cold Blood	Deliberately
257.	A blue Stocking	A learned/educated or intellectual woman
258.	At First Blush	At first sight
259.	A Bolt from the Blue	Something completely unexpected that surprises you
260.	One's bread and butter	One's means of livelihood
261.	To breadth one's last	To Die
262.	To make bricks without straw	To attempt to do something without proper materials
263.	To kick the bucket	To die
264.	Good wine needs no bush	There is no need to advertise something good

265.	To burn the candle at both ends	To expend energy in two directions at the same time
266.	If the cap fits, wear it	If you think the remarks refer to you, then accept the criticism
267.	Care killed the cat	Don't fret and worry yourself to death
268.	To Catch one's eye	To attract attention
269.	To take the chair	To preside a meeting
270.	She is no chicken	She is older than she says
271.	To pick and choose	To make a careful selection
272.	To square the circle	To attempt something impossible
273.	Every cloud has a silver lining	Adverse conditions do not last forever
274.	Close fisted	Mean
275.	Cut your cloth according to your cloth	Live within your income
276.	A cock and bull story	A foolishly incredible story
277.	To be cock sure	To be perfectly sure or certain
278.	To throw cold water upon anything	To discourage efforts
279.	Off color	Not in the usual form
280.	To commit to memory	To learn by heart
281.	Too many cooks spoil the broth	Where there are more workers than necessary
282.	Crocodile tears	Hypocritical Tears
283.	By hook or by crook	By fair or foul means
284.	Cut and dried	Readymade
285.	Up to date	Recent
286.	Evil days	A period of misfortune
287.	Halcyon Days	A time when there are peace and happiness in the land
288.	To step into dead man's shoes	To come into an inheritance
289.	Go to the devil	Be off
290.	Devil's bones	Dice
291.	Devil's Playthings	Playing Cards
292.	Give a dog a bad name and hang him	Once a person loses his reputation
293.	Every dog has his day	Sooner or later, everyone has his share of good fortune
294.	To throw dust in one's eyes	To try to deceive someone or mislead someone
295.	A white elephant	A useless possession which is extremely expensive to keep
296.	To set the Thames on fire	To do something sensational or

		remarkable
297.	A burnt child dreads the fire	One who has had a previous unpleasant experience is always scared of situations where such experiences are likely to be repeated
298.	A fish out of water	Anyone in an awkward
299.	Foul play	Cheating
300.	To jump from a frying pan into fire	To come out of one trouble and get into a worse
301.	All that glitters are not gold	Things are not always as attractive as they appear
302.	To die in harness	To continue at one's occupation until death
303.	Make hay while the sun shines	Take advantage of all opportunities
304.	Lock, stock and barrel	The whole of everything
305.	A miss is as good as a mile	Comes nowhere near it. If someone narrowly misses the target it still is treated as a missed one or failure.
306.	To move heaven and earth	To exert all efforts
307.	One swallow does not make a summer	It is unreliable to base one's conclusions on only a single test or incident
308.	If wishes were horses, beggars might ride	If wishing could make things happen, then even the most destitute people would have everything they wanted
309.	A nine days' wonder	An event which relates a sensation for a time but is soon forgotten
310.	Yellow press	Newspapers which publish sensational and unscrupulous stories and exaggerates the news to attract readers.
311.	A ball park figure	A general financial figure
312.	To balance the books	To make certain that the amount of money spent is not more than the amount of money received.
313.	A cash cow	A product or service that makes a lot of money for a company
314.	Devil's Advocate	To present a counter argument
315.	Don't give up the day job	You are not very good at

		something. You could not do it professionally.
316.	To cook the books	To modify financial statements
317.	To get the sack	To be dismissed from your job
318.	To be snowed under	To be very busy
319.	To work your fingers to the boneOrTo sweat blood	To work really hard
320.	Hear it on the grapevine	To hear rumors
321.	In the heat of the moment	Overwhelmed by what is happening in the moment
322.	Not a spark of decency	No Manners
323.	Speak of the devil!	This expression is used when the person you have just been talking about arrives
324.	Whole nine yards	Everything. All of it
325.	Your guess is as good as mine	To have no idea about anything

4. Current Affairs

FEBRUARY 2025

1. Which country is hosting the Artificial Intelligence (AI) Action Summit 2025? – **France**
2. Which Union Minister recently launched the nationwide MDA campaign to eliminate Lymphatic Filariasis? – **J.P. Nadda**
3. Which organization has signed an MoU with DPIIT for logistics and infrastructure development? – **Korea Transport Institute**
4. Who recently resigned as the CM of Manipur? – **N. Biren Singh**
5. Who has been appointed as the new India Subcontinent Sub-Cluster and Banking Head of Citibank? – **K. Balasubramanian**
6. In which boxing category did Lovlina Borgohain win the gold medal at the 38th National Games? – **75 kg category**
7. Who has been recently appointed as the Director in the Ministry of Steel? – **Maimun Alam**
8. Which organization has signed an MoU with DPIIT for logistics and infrastructure development? – **Korea Transport Institute**
9. Where will the Olympic Esports Games 2027 be held? – **Riyadh**
10. Who is organizing the "Donate Organs, Save Lives" initiative? – **ICC**
11. What is the name of the largest structure discovered in the known universe? – **Quipu**
12. Who launched India's first indigenous automated biomedical waste treatment plant "Srijanam"? – **Dr. Jitendra Singh**
13. Against which team did Matthew Breetzke score 150 runs on his ODI debut? – **New Zealand**
14. Who will release the Devolution Index Report on 13 February 2025? **– Prof. S. P. Singh Baghel**
15. Where did DRDO showcase indigenous advanced technologies and innovations? – **Aero India 2025**
16. For how many years has the Union Cabinet extended the tenure of the Safai Karamchari Commission? – **3 years**
17. Where will the next AI Summit be held? – **India**
18. Who won the National Snooker Championship 2025? – **Pankaj Advani**
19. Who won the Chennai Open 2025 men's singles tennis title? – **Kyrian Jacquet**
20. Where is the 14th Asian Fisheries and Aquaculture Forum being held? – **New Delhi**
21. Who became the first Indian to score 4,000 international runs against England? – **Virat Kohli**

22. Who co-chaired the AI Action Summit in Paris? – **PM Narendra Modi and President Emmanuel Macron**
23. Which organization collaborated with ICAR to organize the 14th Asian Fisheries Forum? – **Asian Fisheries Society (AFS)**
24. Which Indian snooker player has won 36 national titles? – **Pankaj Advani**
25. Which French tennis player won his first ATP title at Chennai Open 2025? **– Kyrian Jacquet**
26. What is the theme of the 14th Asian Fisheries and Aquaculture Forum 2025? – "**Greening the Blue Growth in Asia-Pacific"**
27. Against which country did Virat Kohli complete 4,000 international runs? **– England**
28. Who was defeated by Pankaj Advani in the National Snooker Championship 2025 final? – **Brijesh Damani**
29. To boost India's startup ecosystem, **DPIIT has partnered with Rukam Capital and Bootstrap Incubation.**
30. Brahmagiri Wildlife Sanctuary, recently in the news, is located in **Karnataka.**
31. Which new digital platform has SEBI recently launched? – **'Mitra'**
32. Which Indian cricketer has been appointed as an event ambassador for ICC Champions Trophy 2025? – **Shikhar Dhawan**
33. Constantine Tassoulas has recently been elected as the new President of which country? – **Greece**
34. In which country was India's new consulate recently inaugurated? – **France**
35. The name of Foy Sagar Lake has recently been changed. In which state is this lake located? – **Rajasthan**
36. Bangladeshi woman cricketer Shohely Akhter has been banned by ICC for **corruption-related charges.**
37. National Women's Day is celebrated every year on **February 13.**
38. Nokia has appointed **Justin Hotard** as its new **CEO.**
39. Ministry of Skill Development and Entrepreneurship (MSDE) and National Skill Development Corporation (NSDC) jointly launched 'AI for Entrepreneurship' micro-learning module **- Intel India**
40. Which ministry is organizing the Prime Minister's Yoga Awards 2025- **Ministry of AYUSH**
41. Who inaugurated the 'Aadi Mahotsav 2025' in New Delhi- **President Droupadi Murmu**
42. For how many months has World No. 1 tennis player Jannik Sinner been suspended by WADA? **3 months**
43. Which country is India conducting the 6th edition of the joint military exercise 'Dharma Guardian' with- **Japan**
44. How much prize money has ICC announced for the winner of the Champions Trophy 2025- **2.24 million USD**

45. Katarniaghat Wildlife Sanctuary, which was in discussion recently, is located in which state – **Uttar Pradesh**
46. Recently launched Mutual Credit Guarantee Scheme for MSMEs and expanded Swajurymi Fund – **Finance Minister Sitharaman**
47. Who has been appointed as India's 26th Chief Election Commissioner? - **Gyanesh Kumar**
48. What was the primary objective of the workshop recently conducted by the Office of the Chief Controller of Accounts (CCA) of the Ministry of Mines? - **Providing information on the functionality and benefits of the e-Bill system**
49. Under the AI for Entrepreneurship initiative launched by the Government of India, how many lakh youths are targeted to be trained? - **1 lakh**
50. In which country was the statue of Tamil poet and philosopher Thiruvalluvar recently unveiled? - **Philippines**
51. Who was recently honored with the title of Honorary Knighthood in the UK? - **N. Chandrasekaran**
52. Where is the 5th Multilateral Naval Exercise 'Komodo' being conducted? - **Indonesia**
53. Which Union Minister inaugurated the one-day conference 'Waste Recycling and Climate Change 2025'? - **Bhupender Yadav**
54. With whom has TRIFED signed an MoU to promote the tribal economy? - **Tea Trunk**
55. Which organization has the Department of Telecommunications (DoT) partnered with to strengthen telecom infrastructure? - **International Telecommunication Union (ITU)**
56. India assumed the BOBP-IGO chairmanship from Bangladesh on **February 21, 2025, in Malé, Maldives.**
57. Rohit Sharma became the second fastest player to score 11,000 ODI runs, achieving the feat in **261 innings.**
58. The Indian government extended Chief Economic Advisor V. Anantha Nageswaran's tenure by two years until **March 31, 2027.**
59. LIC launched the 'One Man Office' initiative on February 17, 2025, to **enhance digital services for policyholders.**
60. The Pusa Krishi Vigyan Mela 2025 will be held in New Delhi from February 22-24, with the theme **'Advanced Agriculture – Developed India.'**
61. Tata Power partnered with AWS to accelerate **India's smart energy transition.**
62. Mohammed Shami joined the elite club of bowlers with 200 ODI wickets.
63. Mount Dukono, recently erupted, is located in **Indonesia.**
64. PM Kisan 19th Installment: **PM Modi released from Bhagalpur, Bihar (Rs. 22,000 crore to 9.8 crore farmers).**
65. PM's Principal Secretary-2: Shaktikanta Das appointed as the first-ever **Principal Secretary-2 to PM Modi.**

66. **Fastest 14,000 ODI Runs:** Virat Kohli achieved the milestone in 287 innings, surpassing Tendulkar (350) & Sangakkara (378).
67. Financial Literacy Week: RBI launched from 24-28 Feb 2025 focusing on **"Financial Literacy – Women's Prosperity".**
68. PM Narendra Modi unveiled the design of the new integrated terminal at **Gopinath Bordoloi International Airport, Guwahati.**
69. Jaipur to host the 12th Regional 3R and Circular Economy Forum from **3-5 March 2025.**
70. SECI signed an MoU with the Madhya Pradesh government for a 200 MW solar project and a **1000 MW battery energy storage system in Dhar**.
71. Union Minister Dr. Mansukh Mandaviya inaugurated the first two-day **Regional Dialogue on Social Justice in New Delhi.**
72. ILO Director-General Gilbert F. Houngbo attended the Regional Dialogue on **Social Justice in New Delhi.**
73. Exercise 'Sagar Kavach' conducted along West Bengal's 158 km coastline on **21-22 February 2025.**
74. Indian Coast Guard led a two-day coastal security drill 'Sagar Kavach' to test response mechanisms against **maritime threats.**
75. Guwahati airport's new terminal design features a bamboo orchid theme reflecting **Assam's biodiversity.**
76. 3R and Circular Economy Forum in Jaipur to focus on achieving SDGs and carbon neutrality in the **Asia-Pacific region.**
77. Madhya Pradesh to develop large-scale solar and battery storage projects in collaboration with **SECI.**
78. The India-Japan joint military exercise 'Dharma Guardian' began at the **Fuji Training Area in Japan.**
79. TRIFED signed an MoU with NIFT and HPMC to promote **tribal entrepreneurship.**
80. SBI has revised India's FY25 GDP growth estimate down to **6.3%**.
81. DPIIT partnered with Paytm to **strengthen India's startup ecosystem.**
82. The Union Civil Aviation Minister inaugurated the **'Udaan Yatri Café' at Chennai Airport.**
83. Muthoot Finance received RBI approval to open **115 new branches**.
84. DRDO and the Indian Navy successfully tested the Naval **Anti-Ship Missile (NASM-SR).**
85. US President Donald Trump recently appointed Dan Bongino as the **Deputy Director of the FBI.**

6. Union Budget 2025-26

Budget Highlights

- **Expenditure:** The government is estimated to spend Rs 50,65,345 crore in 2025-26, 7.4% higher than the revised estimate of 2024-25. Interest payments account for 25% of the total expenditure, and 37% of revenue receipts.
- **Receipts:** The receipts (other than borrowings) in 2025-26 are estimated to be Rs 34,96,409 crore, about 11.1% higher than the revised estimate of 2024-25. Tax revenue which forms major part of the receipts is also expected to increase by 11% over the revised estimate for 2024-25.
- **GDP:** The government has estimated a nominal GDP growth rate of 10.1% in 2025-26 (i.e., real growth plus inflation).
- **Deficits:** Revenue deficit in 2025-26 is targeted at 1.5% of GDP. This is lower than the revised estimate of 1.9% in 2024-25. Fiscal deficit in 2025-26 is targeted at 4.4% of GDP, lower than the revised estimate of 4.8% of GDP in 2024-25.
- **Debt:** The central government aims to reduce its outstanding liabilities to around 50% of GDP by March 2031. In 2025-26, outstanding liabilities are estimated to be 56.1% of the GDP.

Main Tax Proposals in the Finance Bill

- **Changes in new income tax regime:** Tax slabs under the new tax regime have been modified. The proposed tax structure is shown in Table 1. Annual income of up to Rs 12 lakh will receive 100% rebate on the taxable income. Earlier, this only applied to income of up to seven lakh rupees. The old tax regime remains unchanged.
- **Compliance mechanism:** Time-limit to file updated returns for any assessment year is increased from two to four years with a penalty of 60% and 70% of the income tax and interest

Table 1: Tax Slabs under New Tax Regime

Tax Rate	Current Income Slab	Proposed Income Slab
Nil	Up to Rs 3 lakh	Up to Rs 4 lakh
5%	Rs 3 lakh to Rs 7 lakh	Rs 4 lakh to Rs 8 lakh
10%	Rs 7 lakh to Rs 10 lakh	Rs 8 lakh to Rs 12 lakh
15%	Rs 10 lakh to Rs 12 lakh	Rs 12 lakh to Rs 16 lakh
20%	Rs 12 lakh to Rs 15 lakh	Rs 16 lakh to Rs 20 lakh

payable for third and fourth year, respectively.

- **Increase in limits for TDS and TCS:** The annual limit for TDS on rent will be six lakh rupees. The threshold for TCS on remittances has increased from seven lakh rupees to Rs 10 lakh. TCS will not be levied on remittances for education upto the amount of loan taken from a specified financial institution. The minimum threshold for TDS or TCS has also been increased for interest and dividends.

25%	-	Rs 20 lakh to Rs 24 lakh
30%	Above Rs 15 lakh	Above Rs 24 lakh

- **Customs:** Customs duty has been reduced on some items but Agriculture Infrastructure and Development Cess (AIDC) has been introduced. The overall tax has remained similar to earlier levels. However, there has been a shift from customs duty to cess, resulting in a lower proportion to be shared with states. Items include solar cells and motor vehicles.
- **Income tax exemption for startups:** Startups incorporated up to April 1, 2025 can currently avail income tax exemption for three consecutive years during the first ten years of operation. This period has been extended to cover startups incorporated upto April 1, 2030.
- **International Financial Services Centre (IFSC):** For several tax exemptions, the commencement date of operations of an IFSC unit has been extended to March 31, 2030. Tax exemptions have been granted or extended for some activities such as transfer of equity of ship-leasing units.
- **NGOs:** Tax exemption under Section 12A is valid for five years, and requires renewal after that. The validity has been increased to 10 years for institutions with income up to five crore rupees in each of the previous two years.

Policy Highlights

- **Finance and Economy:** The FDI limit for the insurance sector will be increased from 74% to 100% for companies which invest their entire premium in India. A new income tax bill will be introduced.
- **Governance:** A high-level committee for regulatory reforms will be set up for reviewing all non-financial sector regulations, certifications, licenses, and permissions. The committee will make recommendations within a year. A mechanism will be set up under the Financial Stability and

Development Council to evaluate the impact of current financial regulations. It will also formulate a framework for development of the financial sector. An investment friendliness index of states will be launched in 2025. Jan Vishwas Bill 2.0 will be introduced to decriminalise over 100 provisions across multiple laws.

- **Industry and Commerce:** To improve credit access, credit guarantee cover will be increased: (i) from five crore rupees to Rs 10 crore for micro and small enterprises, (ii) from Rs 10 crore to Rs 20 crore for start-ups, and (iii) up to Rs 20 crore for exporter MSMEs. Investment and turnover limits for classification of MSMEs will be at least doubled. For micro enterprises registered on the Udyam portal, 10 lakh credit cards with a credit limit of Rs 5 lakh will be provided within the first year of the scheme.
- **Infrastructure:** Each infrastructure-related ministry will formulate a three-year pipeline of projects that can be implemented in public-private partnership mode. A second asset monetisation plan will be launched for 2025-30. National Geospatial Mission will be started to modernise land records and urban planning. India Post will be transformed as a large public logistics organisation and will be repositioned to provide several services in rural areas. A modified UDAN scheme will be launched to improve connectivity to 120 new destinations and carry four crore passengers in next 10 years. A Maritime Development Fund with a corpus of Rs 25,000 crore will be set up, with 49% contribution by the government. Broadband connectivity will be provided to all government secondary schools and primary health centres in rural areas.
- **Energy:** Additional borrowing of 0.5% of GSDP will be allowed to states based on electricity distribution reforms and augmenting intra-state transmission capacity. The Atomic Energy Act and the Civil Liability for Nuclear Damage Act will be amended to allow private sector partnerships for development of nuclear energy. A Nuclear Energy Mission will be launched for the development of small modular reactors with an outlay of Rs 20,000 crore.
- **Urban and Rural Development:** Urban Challenge Fund of one lakh crore rupees will be set up to implement projects for development of cities. A scheme worth Rs 15,000 crore will be established to complete the construction of one lakh housing units in stressed projects.
- **Agriculture:** The central government will launch a six-year mission to achieve self-reliance in pulses. Central agencies will procure three pulses, as much as offered, from farmers over the next four years. In addition, programmes will be launched for availability of high-yield variety seeds and increasing cotton productivity. Prime Minister Dhan-Dhaanya Krishi Yojana will be implemented to improve productivity and crop diversification in 100 low-productivity districts. Loan limit under the

Modified Interest Subvention Scheme will be increased from three lakh rupees to five lakh rupees for loans availed through the Kisan Credit Card.

- **Labour and Employment**: PM SVANidhi Scheme to provide affordable loans to street vendors will be revamped to provide UPI-linked credit cards with Rs 30,000 limit, enhanced bank loan, and capacity-building support. Gig workers will be provided access to healthcare under Ayushman Bharat. A scheme will be launched to provide loans up to two crore rupees to five lakh women, scheduled castes, and scheduled tribes first-time entrepreneurs. Another scheme for socio-economic upliftment of urban workers will be implemented to help improve incomes.
- **Education:** In the next year, 10,000 additional seats will be added in medical colleges and hospitals with a goal of adding 75,000 seats in next five years. Additional infrastructure will be created in five IITs started after 2014 to facilitate education for 6,500 more students. Under the PM Research Fellowship scheme, 10,000 fellowships will be provided for technological research in IITs and IISc.

Budget estimates of 2025-26 as compared to revised estimates of 2024-25

- **Total Expenditure:** The government is estimated to spend Rs 50,65,345 crore in 2025-26. This is an increase of 7.4% over the revised estimate of 2024-25.
- **Revenue expenditure** is estimated to increase by 6.7% and capital expenditure by 10.1% over the revised estimate of 2024-25. Allocation towards major schemes - MGNREGS and PM-KISAN is the same as the revised estimates for 2024-25. Expenditure on subsidies is estimated to be similar to the revised estimate of 2024-25. Establishment expenditure (which includes pension and salary) is estimated to increase by 3% over the revised estimate of the previous year.
- **Total Receipts:** Government receipts (excluding borrowings) are estimated to be Rs 34,96,409 crore, 11.1% higher than the revised estimate of 2024-25. The gap between these receipts and the expenditure will be plugged by borrowings, budgeted to be Rs 15,68,936 crore, roughly the same as the revised estimate of 2024-25.
- **Transfer to states:** The central government will transfer Rs 25,59,764 crore to states in 2025-26, an increase of 12.5% over the revised estimate of 2024-25. Transfer to states includes tax devolution of Rs 14,22,444 crore and grants worth Rs 11,37,320 crore. Within this Rs 1,50,000 crore have been allocated for capital expenditure loans.
- **Deficits:** Revenue deficit is targeted at 1.5% of GDP, lower than the revised estimate for 2024-25 (1.9% of GDP). Fiscal deficit is targeted at 4.4% of GDP in 2025-26, lower than the revised estimate for 2024-25 (4.8% of GDP). The lower fiscal deficit is on account of higher growth in

receipts at 11.1% as compared to expenditure growth at 7.4%.

- **GDP growth estimate:** The nominal GDP is estimated to grow at a rate of 10.1% in 2025-26.

7. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair.

1. General Knowledge	2. Law
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10. International Affairs and Institutions 11. Development in the field of: (i) Science and Technology (ii) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
3. CLAT 1. General Knowledge 2. A Guide for CLAT	

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7. Vacancies of Judicial Services (As on 28.02.2025)

S.N.	State	Vacancies	Important Dates
1.	Gujarat Judicial Service	212	**Form Filing Starts –** 01/02/2025 **Last Date of Filing Forms –** 01/03/2025 **Prelims Exam –** 23/03/2025 **Mains –** 15/06/2025
2.	Assam Judicial Service	22	**Form Filing Starts –** 17/02/2025 **Last Date of Filing Forms –** 05/03/2025
3.	Karnataka Judicial Service	158	**Form Filing Starts –** 10/02/2025 **Last Date of Filing Forms** –12/03/2025
4.	Rajasthan Judicial Service	44	**Form Filing Starts –** 01/03/2025 **Last Date of Filing Forms –** 31/03/2025