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Year – 2025

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NEWSLETTER

July 2025

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1. US 25% tariffs and its impact on India

US President Donald Trump's announcement of a 25 per cent tariff on Indian imports, along with a penalty for procuring military equipment and energy from Russia, comes barely a day before the intended deadline to conclude agreements. It has key consequences.

One, it puts India at a disadvantage in comparison to competitors. **Two,** it put the onus back on the Indian side to fast-track its negotiations for an interim deal with the US. Indications are that the outer limit for a deal, currently pegged at around October from New Delhi's perspective, might need to be brought forward.

What complicates the equation for India is that the Chinese are at an advanced stage of negotiations towards a deal, which could have a favourable tariff rate and potential waivers on secondary tariffs, which include the tariff on account of Russian oil imports and the proposed 10 per cent BRICS tariff.

Though Trump did not specify the rate of penalty for India on account of Russian oil and defence imports, earlier statements made by Trump indicate that it could be to the tune of 100 per cent.

This way, India stands to potentially lose the US tariff advantage vis-a-vis China at least till the time a deal is struck, even if Beijing, too, faces the same penalty for importing from Russia. Beijing does stand to have a first-mover advantage as it has already wrapped up its negotiations ahead of India with the US. A final China deal, however, is still elusive.

However, some experts said that Trump's charges regarding non-tariff barriers by India are unlikely to stand up to scrutiny as India's tariffs are WTO compliant.

Think tank Global Trade Research Initiative (GTRI) said that by refusing to cross its red lines, particularly on agriculture, India has helped avoid "the trap of a one-sided deal". "India's tariffs are WTO-compliant, non-tariff barriers are common globally, and discounted Russian oil has helped India manage inflation during global volatility…India is not alone; over 90 countries face similar US pressure. A deal may still emerge, but only on fair terms. For now, India's principled stand has avoided the trap of a one-sided deal, and that's a success," GTRI said in a statement.

Trump had cut short a deadline for Moscow to make progress toward a Ukraine war peace deal or see its oil customers slapped with secondary tariffs of 100 per cent in 10-12 days. “So I think anyone who buys sanctioned Russian oil should be ready for this,” US Treasury Secretary Scott Bessent had said.

Chinese officials had responded saying China was a sovereign nation with energy needs, and oil purchases would be based on the country’s internal policies, Bessent said. “The Chinese take their sovereignty very seriously. We don’t want to impede on their sovereignty, so they would like to pay a 100 per cent tariff,” Bessent said.

China is the largest buyer of Russian oil, at about 2 million barrels per day, followed by India (just under 2 million a day) and Turkey. China had agreed to cut tariffs on US goods to 10 per cent from 125 per cent in May, while the US had agreed to lower tariffs on Chinese goods to 30 per cent from 145 per cent.

The Trump administration had set a deadline of August 1 to wrap up agreements with the US President having threatened tariffs of up to 25 per cent on Indian imports if the elusive bilateral trade agreement between the two countries is not in place by that date.

“They are going to pay 25 per cent,” Trump had said on Tuesday. US Trade Representative Jamieson Greer had told CNBC on Monday that the trade agreement with India would need more discussion between the two countries.

Trump had, in April, set the tariff on Indian goods imported into the US at 26 per cent on April 2, before pausing his so-called “reciprocal” levies.

India deal

Given how talks between Indian and US negotiators have proceeded, an interim deal still seems distant and is unlikely to be clinched before September, with October a possible outer deadline.

Indications are a sixth round of talks between the two negotiating teams will take discussions forward in August.

For New Delhi, a tariff of 25 per cent is bad news, but something that policy circles seem to have already factored in. This rate essentially means going back to nearly the reciprocal tariff level, which was 26 per cent.

However, the penalty implies an additional setback for India. The resolve from the Indian side would be to push the interim deal in the meantime, to ensure that Indian goods manage a discounted headline tariff, as has been wrangled by other countries that have struck a deal over the last couple of weeks.

Without the BRICS levy and the penalty, India's 25 per cent compares reasonably well with countries such as Indonesia (19 per cent) and Vietnam (20-40 per cent) that have wrapped up deals, and could have had an advantage over the current levels of tariffs faced by China (30-34 per cent) and Bangladesh (35 per cent).

The equation changes when the additional levies are factored in, especially the one triggered by Russian purchase. There is no clarity yet on how that will be applied.

Once the interim deal is clinched, if the final US headline tariff on India ends up between 10 per cent and 15 per cent, the tariff points offered to the UK and Japan, respectively, New Delhi would have reasons to be satisfied.

The advantage starts to taper off once the tariff goes over 15 per cent and inches up closer to 20 per cent, as was offered to Vietnam. A trans-shipment clause, of the kind slapped on Vietnam which levies an additional 20 per cent tariff, could be a problem for India too, given that a lot of Indian exports have inputs and intermediate goods in sectors such as pharma, engineering goods and electronics coming in from outside, including China.

Also, New Delhi will be closely looking for clarity on the final American duty offer on China, given its belief that Trump will maintain a tariff differential.

US and Chinese officials wrapped up two days of discussions in Stockholm on Tuesday, with no breakthrough announced. After the talks, China's top trade negotiator Li Chenggang declared that the two sides agreed to push for an extension of a 90-day tariff truce struck in mid-May, without specifying when and for how long this extension kicks in.

For Indian negotiators, extra tariffs on steel and aluminium, over and above the baseline, is an added complication, alongside the proposed BRICS tariff. Trump's insistence on zero duty access to the Indian markets, like in its deals with Vietnam and Indonesia, is also a problem for India.

New Delhi is, however, willing to offer concessions on high-value purchases that the US is keen to package as part of its tariff-setting exercise, like the way it got the EU and Japan to sign up for a commitment on investments and purchases of

American goods. India may be open to purchasing three big-ticket items from the US: defence equipment, natural gas imports and nuclear reactors.

On specific sectors such as auto or consumer non-durables, India is likely to follow a quota system that progressively opens up market access over a span of multiple years, like it did in the UK deal signed last week.

Once the official level discussions wrap up by mid-August, there is a sense that a final call on the deal could come down to a conversation between the two leaders, Prime Minister Narendra Modi and Trump.

This is especially so since it is Trump who is the trade negotiator-in-chief. For India, the best-case scenario would be to get a deal of some sort now, and then build on that in the future negotiations that could run into 2026, experts said. With Trump announcing the tariffs and penalties on India, that phone call could come in earlier.

Exporters struggle

Meanwhile, as the uncertainty continues, India's exporters are struggling to navigate the way forward because buyers in the US are not clear as to what the final tariff will be, and are consequently holding back orders.

The higher tariffs that the US has imposed on China means a number of Chinese manufacturers are now also rerouting shipments to Europe at throwaway prices, which is impacting India's exports to the EU as well. India, like other countries, had frontloaded shipments ahead of the reciprocal tariff deadline for the ongoing Spring-Summer season, but there is now a question mark over the orders for the Fall-Winter season from October to March.

The higher-than-anticipated US tariff rate could also dent India's growth prospects, economists said.

"When the US had initially imposed tariffs, we had lowered our forecast of India's GDP expansion to 6.2% for FY2026, presuming a tepid rise in exports and a delay in private capex. The tariff (and penalty) now proposed by the US is higher than what we had anticipated, and is therefore likely to pose a headwind to India's GDP growth. The extent of the downside will depend on the size of the penalties imposed," Aditi Nayar, Chief Economist, ICRA said.

2. e-Zero FIR

In a significant development for India's legal and technological landscape, the Union Home Ministry's recent notification on the e-Zero FIR initiative marks a notable step forward in the digitisation of and access to justice for cybercrime victims. Initially launched as a pilot project in Delhi, the initiative aims to assess the system's efficacy before a nationwide rollout. The e-Zero FIR is an electronic adaptation of the Zero FIR mechanism, rooted in Sections 173(1) and 173(1)(ii) of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS). According to Union Home Minister Amit Shah, *"Launched as a pilot project for Delhi, the new system will automatically convert cyber financial crimes filed at NCRP or 1930 to FIRs, initially above the threshold limit of Rs 10 lakh. The new system, which will drive investigations swiftly cracking down on cybercriminals, will soon be extended to the entire nation,"* he stated on X (formerly Twitter). While this initiative holds genuine transformative potential, its effective implementation will require ongoing evaluation, legal scrutiny, and equitable expansion.

The e-Zero FIR pilot project currently active in Delhi is supposed to seamlessly convert complaints of financial cybercrime over INR10 lakh into First Information Reports (FIRs) via data pipelines connecting between the e-FIR platform operated by Delhi Police and the Crime and Criminal Tracking Network & Systems (CCTNS) at the National Crime Records Bureau (NCRB). This infrastructure fills a long-standing gap caused by discretionary delays in registering FIRs; an underlying issue which has been repeatedly flagged by the Courts. The Supreme Court and various High Courts have stressed the police's obligation to register FIRs without exception in matters of cognisable offence. The e-Zero FIR system supports this mandate in both spirit and function. In principle and design, the initiative is revolutionary. By implementing the Zero FIR concept which allows a police station to register a cognisable offence regardless of territorial jurisdiction; the government seems to fulfil two crucial promises: **accessibility** and **accountability**. Beyond speeding up FIR registration, the initiative facilitates early-stage evidence preservation which is vital in combating fast-moving cyber-financial crimes that often leave little digital trace if not acted upon swiftly. More importantly, this reform represents a clear shift in the burden of action; transferring it from the victim who is often a professional or a business on the losing side to the State. These victims have historically faced the dual hardship of financial loss and bureaucratic red tape. Typically, the additional burden of completing a rather complicated administrative process through a formal route that seems to obscure action rather than facilitate it.

Nevertheless, the current structure of the initiative has its own set of limitations which needs to be acknowledged. The INR 10 lakh cap, while a judicious ceiling for the pilot project automatically disqualifies a substantial majority of victims of

cybercrime. Mid-level frauds in the range of INR 50,000 and INR 9,00,000 are neither insignificant nor infrequent. For most people and small enterprises, these figures amount to months of earnings or operating capital. A future revision of this threshold or its removal is necessary to ensure inclusivity and fairness. Further, there is also the issue of potential misuse. Automation minimizes the need for human judgment, which can be both a strength and a vulnerability. Without robust Standard Operating Procedures (SOPs), oversight mechanisms, and triage protocols, the system risks being misused through frivolous or malicious complaints thereby defeating its own purpose.

For the initiative to succeed on a national level, interoperability between States not just within Delhi must be prioritised. Uniformity in response, training for cybercrime cells, and synchronisation with digital payment systems (for fund freezing and tracing) is necessary. The e-Zero FIR's strength lies in its vision: *a future where digital crimes meet a digital-first response*. By aligning jurisdiction-neutral policing with technological automation, it removes long-standing chokepoints in justice delivery. But to become a true equaliser, this tool must evolve into a national standard with broader inclusion, thoughtful safeguards, and vigilant implementation.

3. Important Supreme Court Cases

July 2025

S.N.	Subject	Case Reference
1.	Secretly recorded telephonic conversation of the spouse is admissible as evidence in matrimonial proceedings.	Vibhor Garg Vs. Neha, decided on 14.07.2025
2.	A plea of 'res judicata' cannot be decided in an application filed under Order VII Rule 11 CPC for rejection of a plaint. Res judicata is an issue to be decided in trial and cannot be summarily decided in an application to reject the plaint.	Pandurangan Vs. T. Jayarama Chettiar and Anr., decided on 14.07.2025
3.	Defendants cannot seek abatement of a suit on account of the death of some co-defendants when their counsel has knowingly suppressed the fact of their death. Such non-disclosure, despite the lawyer's obligation under Order XXII Rule 10A CPC cannot later be used to claim the benefit of abatement.	Binod Pathak and Ors. Vs. Shankar Choudhary and Ors., decided on 14.07.2025
4.	Grant of mandatory injunction under Section 39 of the Specific Relief Act, 1963 is discretionary, and can be granted only upon the breach of an enforceable legal obligation. A mandatory injunction cannot be granted unless there exists a legal right and there's a breach of that legal right. Summarized the conditions for granting a mandatory injunction.	Estate Officer, Haryana Urban Development Authority and Ors. Vs. Nirmala Devi, decided on 14.07.2025
5.	Criminal proceedings related to rape offences can be quashed based on settlement in exceptional circumstances, subject to the facts of the case.	Madhukar and Ors. Vs. State of Maharashtra and Anr., decided on 14.07.2025
6.	Pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.	Kathyayini Vs. Sidharth P.S. Reddy and Ors., decided on 14.07.2025
7.	There is a need to enact a law for awarding compensation in cases of wrongful incarceration.	Kattavellai @ Devakar Vs. State of Tamil Nadu, decided on 15.07.2025

8.	Pension is an employee's right to property, which is a constitutional right, that cannot be denied without the authority of law, even if an employee was compulsorily retired on account of misconduct.	Vijay Kumar Vs. Central Bank of India and Ors., decided on 15.07.2025
9.	Reiterated that the summons issued by the police/investigating agency to an accused for appearance as per Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) cannot be served electronically.	Satender Kumar Antil Vs. Central Bureau of Investigation & Anr., decided on 16.07.2025
10.	Exclusion of natural heirs from a Will can be a circumstance raising suspicion against its valid execution, though that factor alone will not invalidate it. The existence of such a suspicious circumstance would require a closer scrutiny of the execution of the Will.	Gurdial Singh (D) through LRS. Vs. Jagir Kaur (D) and Anr. Etc., decided on 17.07.2025
11.	Suggested all High Courts to incorporate a rule that accused persons should mandatorily mention in their bail applications the earlier bail applications, if any, filed by them, and also their criminal antecedents.	Kaushal Singh Vs. State of Rajasthan, decided on 18.07.2025
12.	When a joint and indivisible 'decree' is passed involving multiple plaintiffs or defendants, the entire appeal will abate as per Order XII Rule 3 CPC, if the legal representatives of any deceased party are not substituted in time. Failure to bring the legal heirs on record in such cases may result in conflicting or inconsistent decrees, warranting complete abatement of the appeal. Otherwise, it will lead to a conflicting or inconsistent decree, which is impermissible in cases involving joint and indivisible decrees.	Suresh Chandra (D) through LRS. & Ors. Vs. Parasram & Ors., decided on 18.07.2025
13.	No arrest in Sec. 498A FIRs for 2 Months. Refer cases to Family Welfare Committees. Ordered an IPS officer and her parents to issue an unconditional	Shivangi Bansal Vs. Sahib Bansal, decided on 22.07.2025

	public apology to her ex-husband, and his family for the "physical and mental trauma" caused by multiple criminal cases filed against them during their matrimonial dispute.	
14.	Magistrate's order for FIR under Sec. 156(3) not vitiated merely because complainant didn't avail remedy under Sec. 154(3). The Magistrate's order directing a police investigation can be irregular but cannot be termed illegal if the complaint discloses a cognizable offence and the magistrate applied his mind before ordering the investigation; therefore, the order cannot be faulted.	Anurag Bhatnagar and Anr. Vs. State (NCT of Delhi) and Anr. decided on 25.07.2025
15.	An amendment to a complaint can be made at the post-cognizance stage, provided that no 'prejudice' is caused to the accused and the complainant's cross-examination is awaited.	Bansal Milk Chilling Centre Vs. Rana Milk Food Private Ltd. and Anr., decided on 25.07.2025
16.	Sudden braking of a vehicle in a highway, where vehicles are expected to go fast, can amount to negligence. Awards 91 Lakhs compensation to youth who lost leg in accident.	S. Mohammed Hakkim Vs. National Insurance Co. Ltd. and Ors., decided on 29.07.2025
17.	The right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India. The state should take the responsibility for the development maintenance of the roads directly under its control.	Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. Vs. M.P. Road Development Corporation and Anr., decided on 30.07.2025

IN THE SUPREME COURT OF INDIA

Vibhor Garg
Vs.
Neha

[Civil Appeal No._____ of 2025
arising out of SLP (Civil) No. 21195 of 2021]

HEADNOTE – Secretly recorded telephonic conversation of the spouse is admissible as evidence in matrimonial proceedings.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. The present civil appeal has been filed assailing the judgment dated 12.11.2021 passed by the High Court of Punjab and Haryana in CR No. 1616 of 2020 (O&M), wherein the High Court has allowed the civil revision petition filed by the respondent herein.

Factual Background:

3. Briefly stated, the facts of the present case are that the marriage between the appellant-husband and the respondent-wife was solemnized on 20.02.2009. A daughter was born out of the said wedlock on 11.05.2011. Due to marital discord between the parties, the appellant filed a divorce petition being CIS No. DMC/405/2017 under Section 13 of the Hindu Marriage Act, 1955 before the Family Court, Bathinda, on 07.07.2017. The divorce petition was subsequently amended and filed again on 03.04.2018.

3.1 When the aforesaid case was listed for evidence, the appellant herein submitted his affidavit of examination-in-chief on 07.12.2018. Later, an application was moved by the appellant-husband on 09.07.2019 seeking permission to submit his supplementary affidavit by way of examination-in-chief along with memory cards/chips of the mobile phones, compact disc (CD) and transcript of conversations recorded in memory cards/chips of the mobile phones.

In the said application, the appellant stated that various telephonic conversations happened between the parties during the period from November 2010 to December 2010, as well as between August 2016 and December 2016 and the same had been recorded by the appellant and stored in the memory cards/chips of the mobile phones. The appellant had also prepared the transcripts of those

recorded conversations. Thus, the appellant prayed that he may be allowed to file his supplementary affidavit by way of his examination-inchief along with memory cards/chips of the respective mobile phones, CD and transcripts of the conversations so recorded in memory cards/chips of the respective mobile phones.

3.2 The respondent herein opposed the application on the ground that the examination-in-chief was already completed and moreover, the admissibility of memory card/chips along with CD and transcripts is in dispute and these electronic instruments cannot be exhibited. The respondent therefore sought the dismissal of the application filed by the appellant.

3.3 The learned Principal Judge, Family Court, Bathinda allowed the application filed by the appellant on 29.01.2020, on the ground that the conversation between the parties is relevant for the adjudication of the controversy between the parties and there is no bar on the admissibility of such a tape recording. The Family Court observed that the appellant is only wanting to prove the conversation between him and the respondent and not with respect to a third party.

Reliance was placed by the Family Court on Section 14 of the Family Courts Act, 1984 ("F.C. Act" for short) which allows a Family Court to receive any evidence, statement, report, documents, etc., which is helpful in adjudicating the dispute between the parties and also on Section 20 of the F.C. Act, which has an overriding effect on the general rules of evidence. Thus, the appellant was allowed to prove the CD pertaining to the conversation between him and the respondent subject to its correctness. Consequently, on 18.02.2020 the appellant tendered by way of evidence the transcript of the audio recording, the original memory card of the phone and the CD prepared from the said memory card.

3.4 Being aggrieved by the order dated 29.01.2020 passed by the learned Principal Judge, Family Court, Bathinda, the respondent-wife filed a civil revision petition before the High Court of Punjab and Haryana being CR No. 1616 of 2020 (O&M). On 05.03.2020, the High Court issued notice in the matter and granted an interim order of stay on the order dated 29.01.2020.

3.5 By the impugned judgment dated 12.11.2021, the High Court allowed the civil revision petition filed by the respondent and thereby set aside the order dated 29.01.2020 passed by the Principal Judge, Family Court, Bathinda. It was held that the CD tendered in evidence by the appellant-husband contained conversations between the husband and the wife recorded surreptitiously without the consent or knowledge of the wife and acceptance of the same in evidence would constitute a clear infringement of the right to privacy of the wife. While the High Court did not dispute that the Family Court is not bound by the strict rules of evidence, it held that the CD cannot be accepted in view of the right to

privacy of the wife, which is a facet of the right to life accorded by the Constitution of India.

3.6 In the impugned order, the High Court supported its reasoning by placing reliance on the following judgments of various High Courts:

i. Deepinder Singh Mann vs. Ranjit Kaur, 2014 SCC OnLine P&H 4826

ii. Tripat Deep Singh vs. Paviter Kaur, 2018 (3) RCR (Civil) 71

iii. Rayala M. Bhuvaneswari vs. Nagaphanender Rayala, AIR 2008 AP 98

iv. Anurima @ Abha Mehta vs. Sunil Mehta s/o Chandmal, (2016) 2 RCR (Civil) 773

v. Vishal Kaushik vs. Family Court, 2016(1) RLW 693 (Raj.)

3.7 The crux of the observations made by the High Courts in all these judgments was that the recorded conversations between a husband and a wife cannot be made the basis for deciding a petition under Section 13 of the Hindu Marriage Act, 1955 since courts cannot judge under what circumstances the recorded statements were made by the parties. That recording any such conversation without the knowledge of the other partner would amount to violation of the right to privacy. On the basis of this reasoning, the High Court passed the impugned judgment in favour of the respondent herein.

3.8 Being aggrieved by the judgment dated 12.11.2021 passed in CR No. 1616 of 2020 (O&M), the appellant-husband has preferred the present civil appeal. This Court issued notice in the matter on 12.01.2022 and granted an interim stay of the proceedings in CIS No. DMC/405/2017 pending before the Court of Principal Judge, Family Court, Bathinda, Punjab.

3.9 However, on 03.12.2024, this Court directed that pending disposal of the present civil appeal, the Family Court shall continue the evidence of PW-1 pursuant to what had been recorded on 18.02.2020, though as a matter of safeguard, the recording of evidence and subsequent cross-examination was to happen in-camera. The transcription of the said recording of the evidence of PW-1 and cross-examination was directed to be placed in a sealed cover.

3.10 Subsequently, on 19.12.2024, this Court appointed Ms. Vrinda Grover, learned Advocate, as an amicus curiae to assist this Court in the case. The learned amicus has placed her written note of submissions before this Court and has advanced detailed submissions on the different facets of the issue facing this Court in this present case.

Submissions:

4. We have heard the learned counsel for the appellant Sri Ankit Swarup; learned senior counsel for the respondent Sri Gagan Gupta; and the learned amicus curiae Ms. Vrinda Grover. We have perused the material on record.

Submissions of Amicus Curiae:

4.1 The learned amicus has submitted that with the increase in accessibility to technology, covert recording of audio and video conversations has become an easier option for parties which would have direct implications for the nature and kind of evidence that will be presented before the law courts. The issue before this Court regarding admissibility of covertly recorded communications between spouses in matrimonial proceedings lies at the intersection of rights emanating from Article 21 of the Constitution of India, the erstwhile Indian Evidence Act, 1872 ("Evidence Act", for short) and the F.C. Act which requires all three Acts to be harmoniously construed in the interest of justice.

4.2 The learned amicus submitted with reference to the provisions of the F.C. Act that an interpretation which incentivises surveillance and covert recording of interactions and communications without the consent and knowledge of the other married partner militates against the letter and spirit of conciliation, which is the central objective of the statute as stated in the preamble to the F.C. Act.

That a conjoint reading of Section 122 of the Evidence Act and Section 14 of the F.C. Act shows that there is no explicit legal bar on covertly recorded audio/video recordings being produced as evidence in proceedings between parties to the marriage. However, certain considerations, including the avowed objective of the law to promote conciliation between parties to a marriage, the deleterious impact of covert recording and surveillance on matrimonial relations and the breach of the right to privacy of the spouse subjected to covert recording warrant that these elements of law, procedure, rights and public interest be harmonised in the interest of justice.

4.3 Learned amicus has brought to our attention the divergent views taken by various High Courts on the issue of admissibility of evidence with respect to the recording of conversations in proceedings between a husband and wife.

4.4 As per the compilation of case law submitted by the learned amicus for the perusal of this Court, the High Courts in the following cases have allowed the communication between the parties and other private information to be placed on record or summoned as evidence:

i. Deepti Kapur vs. Kunal Julka, 2020 SCC OnLine Del 672

ii. Preeti Jain vs. Kunal Jain, AIR 2016 Raj 153

iii. Kethana Lokesh vs. Rahul R. Bettakote, 2024 SCC OnLine Kar 6368

iv. Jil vs. State of Gujarat, 2024 SCC OnLine Guj 4363

v. Essaki Ammal @ Chitra vs. Veerabhadra @ Kumar, 2012 (4) CTC 743

vi. Havovi Kersi Sethna vs. Kersi Gustad Sethna, 2011 SCC OnLine Bom 120

4.5 However, the High Courts in the following cases have disallowed production of phone call recordings, text messages and other private materials as evidence:

i. Anurima @ Abha Mehta vs. Sunil Mehta s/o Chandmal, (2016) 2 RCR (Civil) 773

ii. Abhishek Ranjan vs. Hemlata Chaubey, Misc. Petition No. 1300/2023 decided on 29.08.2023

iii. Saroj vs. Aashish Yadav, Misc. Petition No. 1422/2024 decided on 02.08.2024

iv. Ram Talraja vs. Sapna Talreja, Misc. Petition No. 949/2022 decided on 26.04.2022

v. Aasha Lata Soni vs. Durgesh Soni, 2023 SCC OnLine Chh 3959

vi. Rayala M. Bhuvaneswari vs. Nagaphanender Rayala, AIR 2008 AP 98

vii. Deepinder Singh Mann vs. Ranjit Kaur, 2014 SCC OnLine P&H 4826

viii. Tripat Deep Singh vs. Paviter Kaur, 2018 (3) RCR (Civil) 71

ix. Neha vs. State of Haryana, 2020 SCC OnLine P&H 4469 x. Vishal Kaushik vs. Family Court and Anr., 2016(1) RLW 693 (Raj.)

xi. Dharmesh Sharma vs. Tanisha Sharma, 2024 SCC OnLine HP 5208

4.6 Therefore, in light of the above propositions, the learned amicus advocated for a set of guidelines to be formulated that may aid the Family Courts in exercising their discretion under Section 14 of the F.C. Act while dealing with admissibility of audio/video recordings as evidence between a husband and a wife. Some factors suggested by the learned amicus for providing guidance in the exercise of judicial discretion are enumerated as follows:

a) A proximate and temporal nexus of the audio/video recording to the facts in issue or relevant facts.

b) The intention of defaming, harassing or prejudicing the spouse, or prolonging the litigation by placing on record the audio/video recording.

c) Burden of proof on the party producing the covert recording to demonstrate that it is the least restrictive and intrusive method of proving the claim, in line with the doctrine of proportionality.

d) Exercise of care and caution while giving weightage to such evidence by considering the context in which the conversation happened and was recorded covertly by one of the parties.

e) Control, ownership and access that each party to the marriage has to electronic recording devices since the socioeconomic differential between parties to the marriage based on gender may have a direct bearing on their ability, capacity and opportunity to make covert audio/video recordings.

f) Authenticity and accuracy of the recordings is also an important factor, since the electronic audio/video recordings are highly vulnerable to manipulation. However, while dealing with the issue of determining the authenticity of the audio/video recordings, the learned amicus sounded a note of caution that this might increase the burden on the already scarce Forensic Science Laboratory (FSL) resources and lead to delay in the proceedings.

4.7 Lastly, it was submitted that specific directions are required to ensure that the audio/video recordings are filed, maintained and stored in a manner which safeguards the privacy of parties before the Family Court. Reliance was placed on the recently notified Delhi Family Courts (Amendment) Rules, 2024, which inserted Chapter VI, Rule 17 in the existing Rules, with regard to "protecting the privacy of parties or persons".

The said amendment prohibits parties from extracting in the pleadings the contents of a document which is of a sensitive nature and which is likely to affect the right to privacy or cause embarrassment, without the leave of the court and "a document" is said to include the electronic recordings as well. Further, the Family Court has been directed to keep in view the requirements of protecting the right to privacy and dignity of parties while applying the Rules to a given situation.

4.8 Therefore, it was suggested by the learned amicus that this Court may pass appropriate directions for exercise of judicial discretion under Section 14 of the F.C. Act and in the interim, consider directing all the States and Union Territories

to adopt and follow the mandate under Chapter VI Rule 17 of the Delhi Family Courts Rules, 1996.

Submissions on behalf of the Appellant:

5. Learned counsel Sri Ankit Swarup appeared for the appellant-husband and urged that the impugned order ought to be set aside. It was submitted by the learned counsel that in matrimonial proceedings involving allegations of cruelty, the parties are bound to recreate issues and events which were otherwise confined to the matrimonial home and the bedroom and away from the public eye. These proceedings involve a discussion on the aspects of the private married life of parties.

Often in such cases, there is neither any third-party witness to prove the allegations nor is there proof by documentary evidence. This is where modern technology and electronic devices can help in bringing such evidence to the court room. If an argument of privacy is permitted to be raised, it will impinge upon the right to fair trial accorded to the other spouse and the appellant herein would be unsuccessful in proving cruelty of the respondent and thereby be deprived from seeking divorce before the Family Court.

5.1 It was submitted that as per the exception contained in Section 122 of the Evidence Act, the communication between married persons can be disclosed in matrimonial proceedings like divorce. Further reliance was placed on Sections 14 and 20 of the F.C. Act to contend that the objective of these overriding provisions is to secure the right to fair trial of married persons and to effectively deal with the private dispute between the parties and that is why these provisions allow the Family Courts to deviate from the strict rules of evidence and admit into evidence materials that are necessary for the adjudication of the dispute. While the respondent has taken the defence of right to privacy, it is not an absolute right and has to be balanced with the right to fair trial of the appellant.

5.2 Learned counsel for the appellant drew our attention to the judgments rendered by different High Courts to contend that right to privacy cannot be a defence to shun relevant evidence in the form of audio/video recordings or some other technologically collected private data. Apart from the High Court judgments which have allowed the evidence of recorded conversations and private information between the spouses and which have been cited by the learned amicus before us, learned counsel for the appellant placed reliance on a judgment of the Karnataka High Court, Dharwad Bench in Deepali vs. Praveen, 2023:KHCD: 11968, wherein also the High Court allowed a CD containing video recording and WhatsApp messages sent by the wife to be placed on record by the husband in a divorce proceeding, in light of the exception carved out under Section 122 of the Evidence Act.

In addition, learned counsel also placed reliance on a judgment of the Calcutta High Court in Norendra Nath Mozumdar vs. State, AIR 1951 Cal 140, to contend that the protection under Section 122 of the Evidence Act cannot exist in suits between married persons when one of the spouses is in litigation against the other, for, to prevent disclosure in that event will be to defeat justice.

5.3 Learned counsel for the appellant also placed before us the recommendation made by the Law Commission in its 69th report with respect to Section 122 of the Evidence Act, wherein it had recommended creating an explicit exception to the bar of Section 122 in the proceedings between married persons. Reliance was also placed on a judgment of the Bombay High Court in Vilas Raghunath Kurhade vs. State of Maharashtra, 2010 SCC OnLine Bom 1967, wherein the court suggested an appropriate amendment to Section 122 of the Evidence Act to check the blanket ban on any type of communication which may not withstand the requirements of the modern times so as to do complete justice in a case.

5.4 Therefore, learned counsel for the appellant submitted that the appellant may be allowed to place the recorded conversations before the Family Court through his supplementary affidavit of examination-in-chief and the same may be considered by the Family court in light of the relevance of the evidence led and the cross-examination of the appellant with respect to the same.

Submissions on behalf of the Respondent:

6. Learned senior counsel Sri Gagan Gupta who appeared for the respondent-wife, with reference to her counter affidavit, questioned the authenticity and admissibility of the purported conversations sought to be produced. It was submitted that the appellant had not mentioned anything about these recorded conversations in his pleadings and therefore, he cannot be allowed to bring in evidence something that does not have any foundational basis in any of the pleadings hereinbefore.

6.1 It was further submitted that permission to bring on record such evidence is fraught with inherent and imminent danger as the court would never be able to ascertain the circumstances in which the alleged conversation was held or the manner in which the conversation was initiated or continued. The same is a unilateral act of one of the spouses without knowledge or consent of the other spouse and in the present case, the same relates to the years 2010 and 2016 and has been deliberately delayed to be filed in Court as late as in July 2019 and thus causes serious prejudice to the respondent herein inasmuch as while the appellant was as per his own admission indulging in call recording/phone tapping ever since 2010, the respondent cannot be expected to have complete memory of such old conversations between the husband and wife which were not documented.

That the respondent would have no means to verify the genuineness and completeness of the said purported phone conversations. Thus, even if the respondent can be said to have the right of cross-examination or of forensic examination of the purported material, the said right would be an illusory right in the facts of this case.

6.2 Learned senior counsel for the respondent has stressed upon the right to privacy of the respondent and has highlighted that the conversations sought to be produced were recorded without the knowledge or consent of the respondent. Marriage is said to be a sacrosanct relationship and it is not expected of spouses either to illegally record the conversations between them or to produce them as evidence. Permission to lead such evidence would amount to licensing a married couple to betray the trust at any given moment and judicial recognition of the same would result in every married couple doubting their partner and becoming careful and apprehensive and running a risk of every conversation being recorded which could not be the objective behind either Section 122 of the Evidence Act, or Sections 14 and 22 of the F.C. Act.

6.3 In light of the same, learned senior counsel submitted that the unilateral and illegal recording of a private conversation by one spouse without informing the other spouse cannot be said to be a "communication" at all and thus any such purported evidence of any such alleged conversation is not admissible in law. Therefore, as per the learned senior counsel, there is no infirmity in the impugned judgment and the same ought to be upheld in entirety.

Points for consideration:

7. Having heard learned counsel for the appellant and learned senior counsel for the respondent as well as learned amicus, the following points would arise for our consideration.

a) Whether the High Court was justified in setting aside the order of the Family Court and thereby declining permission to the appellant herein to corroborate his evidence in the form of what has been recorded on his mobile phone and by means of a compact disc (CD) and transcription of the same containing the communication made by the respondent-wife to the appellant husband in order to prove his case for seeking divorce?

b) What order?

Section 122 of the Evidence Act:

8. Section 122 of the Evidence Act reads as follows:

"122. Communications during marriage.- No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other."

(underlining by us)

8.1 In the case of M.C. Verghese vs. T.J. Ponnan, AIR 1970 SC 1876, the three-Judge Bench of the Supreme Court, while dissecting the provision, held as follows:

"13. The section consists of two branches - (1) that a married person shall not be compelled to disclose any communication made to him during marriage by his spouse; and (2) that the married person shall not except in two special classes of proceedings be permitted to disclose by giving evidence in Court the communication, unless the person who made it, or his representative in interest, consents thereto."

(underlining by us)

8.2 In the above case, this Court was dealing with a complaint of defamation by the appellant therein (Verghese). The appellant therein claimed that the respondent therein (Ponnan) had written some letters to his wife (Rathi), which contained defamatory material against the appellant. The appellant claimed to be in possession of those letters and sought to make a case of defamation based on those letters. The same was being objected to on the ground that the communication in the letters was barred under Section 122 of the Evidence Act. This Court, while ruling in favour of the appellant therein, observed as follows:

"14. A prima facie case was set up in the complaint by Verghese. That complaint has not been tried and we do not see how, without recording any evidence, the learned District Magistrate could pass any order discharging Ponnan. Section 122 of the Evidence Act only prevents disclosure in giving evidence in court of the communication made by the husband to the wife. If Rathi appears in the witness box to give evidence about the communications made to her husband, prima facie the communications may not be permitted to be deposed to or disclosed unless Ponnan consents. That does not, however, mean that no other evidence which is not barred under s. 122 of the Evidence Act or other provisions of the Act can be given.

15. In a recent judgment of the House of Lords Rumping v. Director of Public Prosecutions, (1962) All E.R. 256 Rumping the mate of a Dutch ship was tried

for murder committed on board the ship. Part of the evidence for the prosecution admitted at the trial consisted of a letter that Rumping had written to his wife in Holland which amounted to a confession. Rumping had written the letter on the day of the killing, and had handed the letter in a closed envelope to a member of the crew requesting him to post it as soon as the ship arrived at the port outside England.

After the appellant was arrested, the member of the crew handed the envelope to the captain of the ship who handed it over to the police. The member of the crew, the captain and the translator of the letter gave evidence at the trial, but the wife was not called as witness. It was held that the letter was admissible in evidence. Lord Reid, Lord Morris of Borth-Y-Gest, Lord Hodson and Lord Pearce were of the view that at common law there had never been a separate principle or rule that communications between a husband and wife during marriage were inadmissible in evidence on the ground of public policy.

Accordingly except where the spouse to whom the communication is made is a witness and claims privilege from disclosure under the Criminal Evidence Act. 1898, (of which the terms are similar to S. 122 of the Indian Evidence Act though not identical), evidence as to communications between husband and wife during marriage is admissible in criminal proceedings.

16. The question whether the complainant in this case is an agent of the wife because he has received the letters from the wife and may be permitted to give evidence is a matter on which no opinion at this stage can be expressed. The complainant claims that he has been defamed by the writing of the letters. The letters are in his possession and are available for being tendered in evidence. We see no reason why inquiry into that complaint should, on the preliminary contentions raised, be prohibited. If the complainant seeks to support his case only upon the evidence of the wife of the accused, he may be met with the bar of S. 122 of the Indian Evidence Act. Whether he will be able to prove the letters in any other manner is a matter which must be left to be determined at the trial and cannot be made the subject-matter of an enquiry at this stage."

(underlining by us)

8.3 Another complexity posed before this Court in the aforesaid case was that by the time the matter reached this Court, the wife of the respondent therein had already taken a decree of divorce from the respondent therein and therefore it was prayed that the bar under Section 122 would no longer apply. This Court negated the said argument as under:

"18. When the letters were written by Ponnan to Rathi, they were husband and wife. The bar to the admissibility in evidence of communications made during

marriage attaches at the time when the communication is made, and its admissibility will be adjudged in the light of the status at the date and not the status at the date when evidence is sought to be given in court."

(underlining by us)

8.4 In the aforesaid case, this Court held that Section 122 only prevents disclosure in giving evidence by the other spouse in court of the communication made. It does not mean that other evidence, which is not barred under this Section or other provisions of the Act, is barred. The latter part of the Section states the exceptions to the rule of privilege, namely, (a) in suits between married persons (i.e., husband and wife), i.e., divorce proceedings or other cases, or (b) proceedings in which one of them is prosecuted for any crime against the other. In these cases, there is no privilege.

8.5 In the case of Ram Bharosey vs. State of U.P., (1954) 1 SCC 284, a three-Judge Bench of this Court had to deal with the deposition of PW-2, who was the wife of the appellant-accused therein. In her deposition, she had stated about seeing the appellant come down the roof of the house in the morning, taking bath and then having a conversation with her. The part of the wife's statement where the appellant told her that he would give her jewels and that he had gone to the middle house to get them were held to be inadmissible under Section 122 of the Evidence Act but the part of the deposition that talked about the wife seeing the appellant in the morning was held to be admissible. The Court observed as follows with reference to the deposition of the wife in light of Section 122 of the Evidence Act:

"3. The middle house referred to in this deposition is the house in which Manna was living. The argument of the appellant is that his statements to P. W. 2 that he would give her jewels, and that he had gone to the middle house to get them were inadmissible under Section 122 of the Evidence Act, being communications made to his wife. This is plainly so, and the Courts below ought not to have taken this evidence into consideration.

6. Firstly, there is the evidence of P. W. 2 that the accused was seen in the early hours of the 27th May 1952 while it was still dark, coming down the roof of his house, that he went to the bhusha kothri and came out again and had a bath and put on the dhoti again. This is not inadmissible under Section 122, as it has reference to acts and conduct of the appellant and not to any communication made by him to his wife."

(underlining by us)

8.6 In the case of Appu Alias Ayyanar Padayachi vs. State, AIR 1971 Mad 194, the Madras High Court was dealing with a confession made by the appellant-

accused therein to his wife which was in the presence of other witnesses. While the wife was not allowed to disclose that communication due to the bar under Section 122, it was allowed to be disclosed by the other witnesses present at the scene. The Madras High Court observed as follows:

"6. But, as observed in Queen v. Donaghue, (1899) ILR 22 Mad 1 at page 3, the communication between a husband and his wife is not protected if it can be proved without their assistance, for, in these communications there is no question of any compulsion or permission to the wife or the husband to disclose it. The section protects the individuals and not the communication of it. Viscount Radcliffe in Rumping v. Director of Public Prosecutions, 1962-3 All ER 256 at 265 observed that such communications could be proved by some other form of testimony as that of a witness who had overheard their confidence or by the production of a letter which contained the confidence, but had passed into other hands.

In other words, the law does not protect the communications as such, but only excludes the spouse from being a witness to prove it. Thus marital communications could be proved by the evidence of the over-hearers, even though the wife herself could not have been called to testify to them. The decision in R. v. Smithies, 1832-5 C and P 332, R. v. Simons, 1834-6 C and P 540 and R. v. Bartlett, 1837-7 C and P 832 are to this effect. In 1834-6 C and P 540, two over-hearers were allowed to prove at the trial what the husband, who was tried, had told his wife in confidence."

(underlining by us)

8.7 Section 122 of the Evidence Act deals with rule of privilege protecting disclosure of all communications between persons married to one another made during marriage, except in certain cases, i.e., in litigation between themselves. According to Sarkar's Law of Evidence, 20th Edition, Volume 2, the provisions of the Section may be summarised as under:

(i) The privilege extends to all communications made to a person during marriage, by any person to whom he or she has been married, but not to communications before marriage.

(ii) The communication need not be confidential. The rule applies to communications of every nature.

(iii) The rule of privilege applies equally whether or not the witness or his or her spouse is a party to the proceeding. It extends to all cases, i.e., to cases between strangers as well as to suits or proceedings in which the husband or wife is a party.

(iv) The privilege extends to communications made to a spouse and not to those made by a spouse. But the privilege is conferred not on the witness (unless the witness happens to be the spouse who made the communication), but on the spouse who made the communication; the witness cannot therefore waive it at his or her will, nor can the court permit disclosure even if he or she is willing to do it (Nawab Howladar vs. Emperor, 1913 SCC OnLine Cal 447. It is only the spouse who made the communication or his or her representative in interest who can consent to give up the privilege.

8.8 From a reading of the above section and the judgments, the following principles and interpretations can be culled out:

(i) Unlike Section 120 of the Evidence Act, which deals with competency of a husband or a wife to be a witness in a civil or criminal proceeding involving the other, Section 122 of the said Act deals with the admissibility of privileged communications made by a married person to a partner during the subsistence of the marriage.

(ii) Section 122 of the Evidence Act is worded in two parts - one, dealing with 'compellability' and the other, dealing with 'permissibility'. These two parts are separated by a semi-colon, which shows that the two parts are separate and have to be read disjunctively.

(iii) The first part deals with 'compellability'. Here, if one of the spouses is not willing to disclose the communication made to the other, the latter cannot be compelled by any court, authority or person, which by law is otherwise competent to compel the person to give evidence, to disclose what their married partner communicated to the said spouse during the time when the marriage was subsisting. This is a blanket bar which cannot be relaxed in any situation. This protects the right to privacy between a married couple.

(iv) The second part deals with 'permissibility'. This is an even greater restriction than the first part. Here, even if one of the spouses is willing to disclose the communication made to him/her, the Court still cannot permit it to be taken as evidence, unless the other spouse who made that communication, or their representative-in-interest, consents to the disclosure of such communication. In other words, without the consent of the spouse who made the communication, the court cannot permit the other spouse to disclose that communication. Another way of looking at it is that if one of the spouses is willing to disclose the communication, then it is not the court that can give consent to the disclosure but it is actually the other spouse who made that communication who can consent to disclosing it.

(v) The second part, relating to 'permissibility', is then followed by two exceptions which are - a. proceedings in suits between married persons, b. proceedings in which one married person is prosecuted for any crime committed against each other. Therefore, it means that in these two given scenarios, the requirement of taking consent from the other spouse before being permitted to disclose the communication is done away with. [Ref.: M.C. Verghese vs. T.J. Poonan, (1969) 1 SCC 37]

(vi) The provision is neither an absolute bar on any person nor on the communication. It puts a specific and limited bar on a married person from disclosing the communication made to him/her by his/her spouse during the subsistence of a marriage between them.

(vii) If the marriage was subsisting at the time when the communications were made, the bar prescribed by Section 122 of the Evidence Act will operate. The bar to the admissibility in evidence of communications made during marriage attaches at the time when the communication is made and its admissibility will be adjudged in light of the status on the date and not the status at the date when evidence is sought to be given in court.

(viii) The provision applies vis-à-vis a legally wedded wife and not to any other kind of relationship. [Ref.: Shankar vs. State of T.N, (1994) 4 SCC 478]

(ix) The prohibition of disclosure under the Section applies even after the marriage is no longer subsisting, if the "communication", whose disclosure is sought to be prohibited, is only the one that was made during the subsistence of the marriage.

(x) The bar from disclosure under the provision applies to the spouse to whom the communication was made and not to the spouse who made the communication. For example, if X and Y are married, then X cannot disclose what Y told to her and Y cannot disclose what X told to him. But X can disclose what she told to Y and Y can disclose what he told to X.

(xi) Hence, under this Section, it is only the spouses who are barred from disclosing what was said to them by the other spouse. The bar is not on other persons like the family members, kith and kin or third-parties who may have heard or overheard that communication. [Ref.: Appu vs. The State, AIR 1971 Mad 194]

(xii) The bar does not also apply to the communication made to a third party even if the same communication was made to that third party which was made to the spouse. For example, X tells something to spouse Y. X tells the same thing to friend Z. Then Y is barred under this section to disclose that communication, but not Z.

(xiii) The use of the blanket word "any communication" means that the bar in the Section applies to disclosing all kinds of communication and not just private/confidential communication. The communication may also be oral or written or sign language.

(xiv) However, the use of the word "communication", followed by the phrase "made to him", denotes that the communication here should not be read as 'conversation' or a 'dialogue'. When communication is made to a person, it would mean that a message or information has been conveyed by one person to the other. This can be understood by an illustration. Suppose in a trial for the murder of a person 'Z', the husband 'Y' is being tried as an accused. The wife 'X' comes to the witness box to depose about the conversation that happened between X and Y on the day of the crime. X deposes as under:

"On that night, when my husband Y came back home, his clothes were drenched in blood. I was scared to see that. I asked Y, "What happened? Whose blood is this? Did you kill someone?" Y replied back in anger and said, "Z had been troubling me for a long time, so today I killed him." Shocked to hear this, I further asked "Where is the body? What did you kill him with?" Y replied in a whispering tone and said, "I killed him using a knife and buried the body in the park."

(underlining by us)

Now, in the above deposition, the part in plain italics was what the wife herself thought or experienced. That part is not barred by Section 122 of the Evidence Act. Further, the part in bold was what the wife told to the husband. That part is also not barred by Section 122. But the underlined part was the communication that was made by the husband to the wife. Therefore, under Section 122, the wife is barred from disclosing the said communication without the consent of the husband, and the Court cannot permit the wife to disclose that communication and that part of the deposition would not form part of the record. The Court will have to delete that part from the deposition.

(xv) The bar in the Section is with respect to "disclosure" of 'communication' by the 'spouse', and not to that "communication" per se. The spouse cannot be compelled or permitted to get into the witness box and disclose the communication, but that communication may be brought before the court through any other means. The bar under Section 122 of the Evidence Act does not mean that no other evidence can be given for that communication which is not barred under Section 122 or other provisions of the Evidence Act.

For example, husband 'Y' wrote a letter to wife 'X', telling her that he has committed a murder. Now as per Section 122 of the said act, the wife 'X' is

barred from disclosing this communication. But if during investigation of the crime, the police find these letters and bring them before the Court in evidence then the bar of Section 122 of the said Act will not be attracted. [Ref.: Appu vs. The State, AIR 1971 Mad 194, and M.C. Verghese vs. T.J. Poonan, (1969) 1 SCC 37]

(xvi) The bar under Section 122 of the Evidence Act is limited to disclosing of communications made to that spouse but is not attracted for the acts that were seen by the spouse or experienced by the spouse. For example, when husband 'Y' comes to wife 'X' and tells her that "I killed Z", then X is barred from disclosing this communication. But X is not barred from disclosing if she secretly saw Y killing Z. [Ref.: Ram Bharosey vs. State of U.P., (1954) 1 SCC 284]

9. The issue that arises for our consideration in this case is, whether the conversation between spouses secretly recorded by one of them could be permitted to be made admissible in evidence. However, this one issue has three elements which this Court will have to address:

a) Whether a secretly recorded conversation can be permitted to be given in evidence?

b) Whether in light of the Evidence Act and the F.C. Act, a conversation between spouses can be permitted to be given in evidence in a proceeding for divorce?

c) Whether such a recorded evidence should be disallowed solely on the ground that it is violative of the privacy of one of the spouses?

9.1 The first issue deals with the aspect of the validity of discreetly recorded digital evidence. The second issue deals with spousal privilege under the Evidence Act and the relaxation of the rules of evidence by the F.C. Act. The last issue deals with spouse's right to privacy and the ambit of such privacy.

Validity of secretly obtained evidence:

9.2 This Court has often had the occasion to deal with the issue of using illegal and immoral ways to procure evidence against a person without the knowledge of the person. It is often alleged by accused persons that the investigation authorities did not follow legal methods and procedures to obtain the evidence against them. Sometimes recording devices and phone-tapping mechanisms are resorted to for the purpose of collecting relevant evidentiary material.

In such cases, the view taken by this Court has been that merely the fact that an evidence was not obtained strictly in accordance with law does not absolutely bar the admissibility of such an evidence. The Court, while appreciating such evidence, may have to tread with caution and be assured about the accuracy and

reliability of such evidence but the said evidence cannot be said to be irrelevant and/or inadmissible merely on the argument that it was illegally obtained.

9.3 In the case of Yusufalli Esmail Nagree vs. The State Of Maharashtra, AIR 1968 SC 147 ("Yusufalli Nagree"), a threejudge bench of this Court was dealing with a case of corruption wherein a conversation was secretly recorded by the police by laying a trap and concealing a microphone in the room of the accused. The conversation was recorded on a tape recorder. The admissibility of this recorded conversation was objected to on the ground that this was recorded without the knowledge of the accused and the accuracy of the conversation recorded on the tape recorded was challenged.

This Court, speaking through Bachawat, J., rejected these arguments made by the accused. While this Court refused to lend its approval to the police practice of tapping telephone wires and setting up hidden microphones for the purpose of tape recording, it held that the fact that the tape recording was done without the knowledge of the accused is not in itself an objection to its admissibility in evidence because the accused in this case was free to talk or not to talk; his conversation was voluntary and there was no element of duress, coercion or compulsion.

It was further observed that the imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 7 of the Evidence Act. This Court further observed with respect to the balance to be struck between the relevance and caution while dealing with a tape-recorded conversation as follows:

"6. If a statement is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with."

(underlining by us)

9.4 In furtherance to the above view came the judgment of this Court in the case of R. M. Malkani vs. State of Maharashtra, (1973) 2 SCR 417 ("R.M. Malkani"), wherein the validity of a tape-recorded conversation was in question. This Court, while allowing the tape-recorded conversation to be admitted in evidence, observed the following:

"Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under section 7 of the Evidence Act."

9.5 The aforesaid test laid down by this Court has become a locus classicus on the issue of determining the admissibility of a tape-recorded conversation. The three-fold test of relevance, identification and accuracy has to be satisfied before a Court admits a recorded conversation in evidence. However, the fact that the conversation was recorded without the consent and knowledge of the person speaking is not a prohibition on the admissibility of the evidence, as laid down by the Evidence Act and read into the statutory provisions by this Court.

Applicability of Section 122 of the Evidence Act to a proceeding for divorce:

10. As explained above, Section 122 of the Evidence Act deals with two parts - compellability and permissibility. The facts of the present case concern only the applicability of the second part of Section 122, i.e., the one dealing with permissibility. The husband in this case would have ordinarily been barred from disclosing any form of communication that was disclosed by the wife to him by virtue of being a privileged communication under Section 122.

But due to the exception provided in that Section, the bar on the disclosure of such communication is lifted since the communication sought to be disclosed in the present case is in a proceeding between the husband and the wife, i.e., the petition filed by the husband for divorce under Section 13 of the Hindu Marriage Act. Therefore, such a privileged communication is not barred from being disclosed and brought before the Court and the objection taken by the wife with respect to Section 122 of the Evidence Act is not acceptable.

10.1 Looking at it from another angle, under Section 122 of the Evidence Act, what is barred in the present case is the disclosure of the communication made by the wife to the husband by the latter standing in the witness box. But the communication that was made to the husband is itself not barred. The phone on which the conversation was recorded is no different from an eavesdropper.

The restriction under Section 122 does not apply to the communication that was made by the wife to the husband and the same can also be proved by means other than the husband himself coming to the witness box to disclose that communication. However, the overriding exception in the second part of the

section with regard to disclosure in a proceeding between the spouses would apply; and under the exception, the doctrine of privileged communication would not apply.

10.2 Section 14 of the F.C. Act gives a wide discretion to the Family Courts in deciding matrimonial disputes since they can go beyond the strict rules of evidence in terms of relevance and admissibility while admitting any evidence which they think is relevant for the adjudication of the dispute at hand. However, we do not think that adverting to Section 14 of the F.C. Act is required in the present facts when the Evidence Act itself permits such a communication to be admitted in evidence by way of an exception.

The powers under Section 14 of the F.C. Act would normally be resorted to in a scenario where the Evidence Act creates some prohibition with respect to relevance or admissibility of any evidence. But if the Family Court is of the opinion that it is expedient to go beyond the procedural technicalities of the Evidence Act for adjudicating the dispute, in such a case, the Family Court is allowed to take that evidence on record, notwithstanding what is stated in the Evidence Act. But the exercise of this extraordinary power under Section 14 of the F.C. Act is not warranted in this case.

10.3 Some arguments have been made by the learned amicus about the fact that permitting such an evidence would jeopardise domestic harmony and matrimonial relationship inasmuch as it would encourage snooping on the spouse, thereby fracturing the very objective of Section 122 of the Evidence Act. We do not think such an argument is tenable. If the marriage has reached a stage where spouses are actively snooping on each other, that is in itself a symptom of a broken relationship and denotes a lack of trust between them. The said snooping cannot be said to be a consequence of the Court admitting the evidence obtained by snooping.

In fact, snooping between partners is an effect and not a cause of marital disharmony. The privacy of communication exists between spouses, as has been recognised by Section 122, but the said right of privacy cannot be absolute and has to be read also in light of the exception provided in Section 122 of the Evidence Act. When Section 122 itself recognises and protects spousal privacy in the first part of the Section then, the said right has to be construed in terms of Section 122 only and has to be subject to the exception contained therein. In other words, when the right to privacy of communication between spouses is the very basis of Section 122 then the exceptions to these should also flow only from Section 122 of the Evidence Act.

10.4 During the years when this Court decided cases such as Yusufalli Nagree and R.M. Malkani, bugging, snooping, tapping were considered acts that had a

clear element of invading the privacy of an individual for the purpose of gathering concrete evidence. Devices like tape-recorders and microphones were carefully placed in a space wherein the conversations could be secretly recorded and the entire process was not as easy as clicking a button on a mobile phone. Even in those times, the Courts have encouraged the need for having better evidence for adjudication than to close the doors of technology and refuse to accept the material in front of them on the mere ground that privacy would be breached.

10.5 On the other hand, before a Court of law, a relevant piece of conversation available on an electronic device should not be allowed to be shut out when it is the best evidence available for deciding the dispute. The erstwhile Evidence Act is a legislation that was more than a century old and therefore obviously could not encapsulate all the technologically varied challenges which the modern technology poses before us. Yet, what the said legislation remarkably conveys is that the purpose of the law of evidence is not to create barriers but to break them to ensure that a clearer picture is created in the mind of the judge so as to decide a dispute before it.

This is why when the evidence is not direct, the legislation allows a judge to rely on circumstantial evidence; it allows presumptions of fact and law and adverse inferences to be drawn from the conduct of parties and witnesses so that a fair and reasonable conclusion can be reached from the material on record. Now, in today's day and age, when the technological advancement has made it easier to record and recreate moments of past and present for reference in future, then to say that such better forms of evidence and material would not be admissible on the ground of they being in violation of the right to privacy would amount to defeating the very object of the Evidence Act. That was the reason for the Parliament to amend the Evidence Act by incorporating Section 65B which specifically deals with electronic evidence.

10.6 Section 65A deals with special provisions as to evidence relating to electronic records. The contents of electronic records may be proved in accordance with the provisions of Section 65B. Section 65B of the Evidence Act speaks of the admissibility of the electronic records. Sections 65A and 65B read as under:

"65-A. Special provisions as to evidence relating to electronic record.- The contents of electronic records may be proved in accordance with the provisions of Section 65-B.

65-B. Admissibility of electronic records.-

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be

treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

Section 122 of the Evidence Act and Right to Privacy:

11. Learned amicus as well as learned counsel and learned senior counsel for the respective parties have relied upon a number of judgements of the High Courts in support of their rival contentions. Having regard to the view which we have taken in the matter, we find that the conclusions arrived at in the case of Preeti Jain vs. Kunal Jain, AIR 2016 Raj 153; Jil vs. State of Gujarat, 2024 SCC OnLine Guj 4363; Essaki Ammal @ Chitra vs. Veerabhadra @ Kumar, 2012 SCC OnLine Mad 2093; Havovi Kersi Sethna vs. Kersi Gustad Sethna, 2011 SCC OnLine Bom 120; Deepti Kapur vs. Kunal Julka, 2020 SCC OnLine Del 672 are just and proper inasmuch as tape recorded/digitally recorded conversation between the spouses was permitted to be let in as evidence in support of the contentions raised by the parties, having regard to the parameters laid out under Section 122 of the Evidence Act.

11.1 However, in the cases of Anurima @ Abha Mehta vs. Sunil Mehta s/o Chandmal, (2016) 2 RCR (Civil) 773; Abhishek Ranjan vs. Hemlata Chaubey, Misc. Petition No. 1300/2023 decided on 29.08.2023 by High Court of Madhya Pradesh at Jabalpur Bench; Saroj vs. Aashish Yadav, Misc. Petition No. 1422/2024 decided on 02.08.2024 by High Court of Madhya Pradesh at Indore Bench; Ram Talraja vs. Sapna Talreja, Misc. Petition No. 949/2022 decided on 26.04.2022 by High Court of Madhya Pradesh at Indore Bench; Aasha Lata Soni vs. Durgesh Soni, 2023 SCC OnLine Chh 3959; Rayala M. Bhuvaneswari vs. Nagaphanender Rayala, AIR 2008 AP 98; Deepinder Singh Mann vs. Ranjit Kaur, 2014 SCC OnLine P&H 4826; Tripat Deep Singh vs. Paviter Kaur, 2018 (3) RCR (Civil) 71; Neha vs. State of Haryana, 2020 SCC OnLine P&H 4469; Vishal Kaushik vs. Family Court, 2016(1) RLW 693 (Raj.); Dharmesh Sharma vs. Tanisha Sharma, 2024 SCC OnLine HP 5208; and Kethana Lokesh vs. Rahul R. Bettakote, 2024 SCC OnLine Kar 6368 decided on 19.06.2024 passed by the High Court of Karnataka at Bengaluru, the High Courts declined to permit the conversation recorded by one of the spouses to corroborate the contention as being in violation of the right to privacy under Article 21 of the Constitution of India. Hence, it is necessary to dilate upon the contours of the right to privacy in the context of Article 21 of the Constitution with reference to the recent dicta of this Court rendered by Constitution benches.

11.2 In K.S. Puttaswamy (Privacy-9J.) vs. Union of India reported in (2017) 10 SCC 1, ("Puttaswamy"), Chelameswar and Bobde JJ. enunciated that the constitutional right to privacy under Article 21 is limited to the relationship between the citizen and the State. Bobde J. (as he then was) drew a distinction between 'common law rights' and 'fundamental rights' by observing thus:

"397. we can dismantle a core assumption of the Union's argument: that a right must either be a common law right or a fundamental right. The only material distinctions between the two lie in the incidence of the duty to respect the right and in the forum in which a failure to do so can be redressed. Common law rights

are horizontal in their operation when they are violated by one's fellow man, he can be named and proceeded against in an ordinary court of law. Constitutional and fundamental rights, on the other hand, provide remedy against the violation of a valued interest by the "State". It is perfectly possible for an interest to simultaneously be recognised as a common law right and a fundamental right".

11.2.1 However, Nariman J. observed that Article 21 was couched in a negative form in order to interdict State action that fell afoul of its contours. But right to privacy being a fundamental right could be both against the government as well as private individuals. The discussion in Puttaswamy was restricted to the right to privacy under Article 21 primarily against State action.

11.2.2 Kaul J. suggested horizontal application of the right to privacy by holding that:

"593. (in) today's world, privacy is a limit on the Government's power as well as the power of private sector entities".

Later in the judgement, he concluded that the right to privacy is a fundamental right, and that it:

"644. is a right which protects the inner sphere of the individual from interference from both State and non- State actors".

Further, once again emphasising that technology has made it possible for non-State actors to 'enter citizens' houses', he held that:

"646. privacy is one of the most important rights to be protected both against State and non-State actors and be recognised as a fundamental right". However, Kaul J began his judgement by observing that:

"584. (the) right to privacy is claimed qua the State and non-State actors. Recognition and enforcement of claims qua non-State actors may require legislative intervention by the State".

He thus recognised that in the status-quo, while enforcing the right to privacy against private bodies might be desirable, it was perhaps not yet possible.

11.2.3 The opinion by Chandrachud, J. (as he then was) was authored on behalf of himself, Khehar J., Agrawal J. and Nazeer J. Chandrachud J did not dilate as such on the public-private aspect of the right to privacy as was done by the other Judges on the Bench. He held that the protection of privacy as a constitutional right embodies both 'negative' and 'positive' freedoms. From a negative perspective, it protects the individual from unwanted intrusions (note that here, Chandrachud J did not limit it to intrusions by the State). From a positive

perspective, it 'obliges' the State to adopt measures for protecting individuals' privacy.

He then quoted the entry on the right to privacy in the Max Planck Encyclopaedia of Comparative Constitutional Law as an 'apt' description of this facet. The entry opined that the 'negative' right to privacy entails protection against unwanted intrusion by both State and private actors. Chandrachud J, unlike Bobde J, did not separate common law and fundamental rights in terms of their enforceability against separate bodies. Instead, he merely emphasised that simply because privacy was a common law/statutory right, it was not proscribed from also being recognised as a constitutional right.

11.3 Subsequently, in Kaushal Kishor vs. State of U.P. (2023) 4 SCC 1 ("Kaushal Kishore"), one of the questions that a five-judge Constitution bench decided was whether a fundamental right under Articles 19 or 21 could be claimed other than against the State/State instrumentalities. Ramasubramanian, J., writing for the majority, referred to 'Horizontal Effect' as a constitutional concept, and proceeded to list a number of cases where the Supreme Court had applied fundamental rights obligations horizontally. He then opined that in Puttaswamy, the Supreme Court had framed a 'tool' that establishes guidelines for horizontal application. According to him, this 'tool' was expressed in Bobde J's opinion, the relevant extract of which has been reproduced above.

11.3.1 Ramasubramanian, J. relied on this separation of common law rights and fundamental rights to support his conclusion that Article 19/21 rights can indeed be enforced against non-State entities. While considering the question whether a fundamental right under Articles 19 and 21 can be claimed against anyone other than the State or its instrumentalities, it was clarified that the question is not about "claim" but about "enforceability".

The further question whether Part III of the Constitution has a "vertical" or "horizontal" effect was also considered and it was observed that wherever constitutional rights impact the relations between private individuals, they are said to have "a horizontal effect". When a constitutional right regulates the Government and State actors in their dealings with private individuals, they are said to have "a vertical effect". After discussing the approach of constitutional courts in overseas jurisdiction on "verticality vs. horizontality", reference was made to Article 12 of the Constitution of India which defines the expression "the State".

It was observed that there are some Articles in Part III of the Constitution where the mandate is directly to the State and there are other Articles where without injuncting the State, certain rights are recognised to be inherited, either in the citizens of the country or in persons. Referring to Part III of the Constitution, it

was observed that the Articles therein relate to citizens and persons. It was further observed that the rights conferred by Articles 15(2)(a) and (b), 17, 20(2), 21, 23, 24, 29(2), etc. are enforceable against non-State actors also. As already noted, Article 21 deals, inter alia, with the right to privacy.

11.3.2 While referring to Puttaswamy, it was observed that the original thinking of this Court that the fundamental rights can be enforced only against the State has changed over a period of time and that such rights can be enforced even against authorities, instrumentalities of the State, agencies of the State, those entities which enjoy monopoly status conferred by the State or where there is "deep and pervasive control" by the State with regard to the "nature of duties/functions performed". Therefore, Question No.2 was answered by the majority as follows:

"A fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities."

11.3.4 In the aforesaid judgment, Question No.3 was formulated thus:

"Whether the State is under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or private agency?"

It was clarified by Ramasubramanian, J. that the word "citizen" ought to be read as "person" as Article 21 states that "no person shall be deprived of his life or personal liberty". In the context of personal liberty, it was observed that technological eavesdropping except in accordance with the procedure established by law was frowned upon by this Court in People's Union for Civil Liberties (PUCL) vs. Union of India, (1997) 1 SCC 301. Earlier mobile phones were not in vogue and the State monopoly in communication was yet to be replaced by private players such as intermediaries/service providers. The infringement of the right to privacy by private players is now rampant and therefore, fundamental right to privacy can be enforced against non-State actors.

In this regard, reliance was placed on the judgment of this Court in Maneka Gandhi vs. Union of India, (1978) 1 SCC 248 wherein it was observed that any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or

oppressive. If the procedure prescribed does not satisfy the requirement of Article 14, it would be no procedure at all within the meaning of Article 21.

12. In view of the aforesaid discussion, we firstly observe that Section 122 of the Evidence Act is not assailed in these proceedings. Secondly, under Section 122 of the said Act, privileged communication between the spouses is protected in the context of fostering intimate relationship. However, the exception under Section 122 of the Evidence Act has to be construed in light of right to a fair trial which is also an aspect of Article 21 of the Constitution of India. When we weigh the respective rights of the parties in a trial within the parameters of Section 122 of the Evidence Act, we do not think that there is any breach of right to privacy in the instant case.

In fact, Section 122 of the aforesaid Act does not recognise such a right at all. On the other hand, the said Section carves out an exception to right to privacy between spouses and therefore cannot be applied horizontally at all. In this regard, we reiterate that as per procedure established by law, Section 122 of the Evidence Act does not touch upon the aspect of right to privacy as envisaged under Article 21 of the Constitution, let alone invade upon such right. The reason is because Section 122 of the Evidence Act recognises the right to a fair trial, right to produce relevant evidence and a right to prove one's case against a spouse so as to avail the relief sought for by a party.

12.1 As already discussed, Section 122 of the Evidence Act deals with both compellability as well as permissibility. The first part deals with compellability while the second part deals with permissibility. The second part dealing with permissibility is followed by two exceptions which are - a) proceedings in suits between married persons; and b) proceedings in which one married person is prosecuted for any crime committed against each other. Under the exception, the requirement of taking consent from other spouse before disclosing the communication is done away with.

Therefore, the exception has been carved out in Section 122 of the Evidence Act itself to state that such privilege between spousal communication does not extend to a case of litigation between the spouses themselves. In such a situation, the spouses would have the right to prove their respective cases and therefore can let in such evidence which is permitted under Section 122 of the Evidence Act, if one could use the expression "spill the beans".

12.2 However, in Kaushal Kishore, one of us (Nagarathna, J.) authored a partly dissenting opinion by observing thus -

"260.3. While the content of a certain common law right, may be identical to a fundamental right, the two rights would be distinct in two respects : first,

incidence of the duty to respect such right; and second, the forum which would be called upon to adjudicate on the failure to respect such right. While the content of the right violated may be identical, the status of the violator, is what is relevant".

"263. Therefore, the primary object of Part III of the Constitution was to forge a new relationship between the citizens and the State, which was the new site of Governmental power. The realm of interaction between citizens inter se, was governed by common law prior to the enactment of the Constitution and continued to be so governed even after the commencement of the Constitution because as recognised hereinabove, the common rights and remedies were not obliterated even after the Constitution was enacted.

These inalienable rights, although subsequently placed in Part III of the Constitution, retained their identity in the arena of common law and continued to regulate relationships between citizens and entities, other than the State or its instrumentalities. It is therefore observed that the incidence of the duty to respect Constitutional and fundamental rights of citizens is on the State and the Constitution provides remedies against violation of fundamental rights by the State. These observations are in consonance with the recognition by this Court in People's Union for Civil Liberties v. Union of India [People's Union for Civil Liberties v. Union of India, (2005) 2 SCC 436] ("People's Union for Civil Liberties") that the objective of Part III is to place citizens at centre stage and make the State accountable to them".

"264. On the other hand, common law rights regulate the relationship between citizens inter se. Although the content of a common law right may be similar to a fundamental right, the two rights are distinct insofar as, the incidence of duty to respect a common law right is on citizens or entities other than State or its instrumentalities; while the incidence of duty to respect a fundamental right, except where expressly otherwise provided, is on the State.

Remedies against violation of fundamental rights by the State are constitutionally prescribed under Articles 32 and 226; while common law remedies, some of which are statutorily recognised, are available against violation of common law rights. Such remedies are available even as against fellow citizens or entities other than State or its instrumentalities. To this extent, horizontality is recognised in common law. Further to some extent certain fundamental rights are recognised statutorily and some others are expressly recognised in the Constitution as being applicable as horizontal rights between citizens inter se such as Articles 15(2), 17, 23 and 24".

"268.7. Thus, recognising a horizontal approach of fundamental rights between citizens inter se would set at naught and render redundant, all the tests and

doctrines forged by this Court to identify "State" for the purpose of entertaining claims of fundamental rights violations. Had the intention of this Court been to allow fundamental rights, including the rights under Articles 19 and 21, to operate horizontally, this Court would not have engaged in evolving and refining tests to determine the true meaning and scope of "State" as defined under Article 12. This Court would have simply entertained claims of fundamental rights violations against all persons and entities, without deliberating on fundamental questions as to maintainability of the writ petitions.

Although this Court has significantly expanded the scope of "State" as defined under Article 12, such expansion is based on considerations such as the nature of functions performed by the entity in question and the degree of control exercised over it by the State as such. This is significantly different from recognising horizontality of the fundamental rights under Articles 19 and 21, except while seeking a writ in the nature of habeas corpus. Such a recognition would amount to disregarding the jurisprudence evolved by this Court as to the scope of Article 12 of the Constitution".

12.3 It must be reiterated that the content of a common law right may be similar to that of a fundamental right, but they are distinguished by the incidence of their duties on private entities and the State respectively. Therefore, one can foist similar obligations on private bodies and the State, while separating the avenues by which these obligations are enforced.

12.4 In our view, Section 122 of the Evidence Act does not concern itself with right to privacy vis-à-vis spouses which is evident on a reading of the Section and on discerning its plain meaning. The 69th report of the Law Commission of India in 1977 observed that the section is "based on the abiding communication between the husband and wife, which is of such a nature that their mutual communications are not always to be regarded on the same footing as communications between person who have no such intimate tie".

It prefaced this by noting that the law of evidence has generally demonstrated a "degree of solicitude towards the sanctity of marriage", and also referred to Best CJ's opinion in Doker vs. Hasler, (1824) 171 E.M. 992, that "the happiness of the marriage requires that the confidence between man and his wife should be kept for ever inviolable". Similarly, the 1853 report of the English Commission on Common Law Procedure had observed that the 'happiness' of human life depends on a large part upon the "inviolability" of domestic confidence, and that the "alarm and unhappiness" caused to society by the disclosure of confidential communications outweighs the disadvantage in terms of a loss of evidence during trials.1

12.5 Therefore, the Delhi High Court observed in RIT Foundation vs. Union of India, 2022 SCC OnLine Del 1404, that the Law Commission Report makes it clear that the "raison d'etre for the spousal privilege (is) the "higher degree of confidence that goes with a marriage". This was also the view taken by the Delhi High Court in an earlier case - S.J. Choudhary vs. State 1984 SCC OnLine Del 185 - where it held that the "prohibition under Section 122 of the Evidence Act is based on the ground that the admission of such testimony is likely to disturb the peace of the family and weaken the feeling of mutual confidence".

12.6 Clearly therefore, the founding rationale for Section 122 of the said Act, as has been recognised by the Law Commission and subsequently by certain High Courts, was to protect the sanctity of marriage and not the right to privacy of the individuals involved. Therefore, in adjudicating situations where the privilege under Section 122 of the Act is not granted, as in suits between a couple (an exception provided for in Section 122 itself), the right to privacy is not a relevant consideration, since it is not the rationale under which spousal communications were deemed privileged under Section 122 of the Act.

Conclusion:

13. In view of the aforesaid discussion, we set aside the impugned order dated 12.11.2021 passed by the High Court in CR No.1616 of 2020 (O & M) and restore the order passed by the Family Court dated 29.01.2020 passed by the learned Principal Judge, Family Court, Bhatinda.

The Family Court is directed to take on record the supplementary affidavit filed by way of examination-in-chief along with memory card/chip of the mobile phones, compact disc (CD) and transcript of the conversation recorded in memory card/chips of the mobile phones for the relevant period and consider the same as evidence, in accordance with law. The appeal is allowed and disposed of in the aforesaid terms.

We place on record our sincere appreciation to the valuable assistance rendered by the learned amicus Ms. Vrinda Grover. We direct the Registry of this Court to pay a sum of Rs.1,00,000/- as honorarium for the valuable services rendered by the learned amicus.

Parties to bear their respective costs.

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

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

New Delhi;

1 Report of the 69th Law Commission of India on the Indian Evidence Act, 1872, page 636.

IN THE SUPREME COURT OF INDIA

Pandurangan
Vs.
T. Jayarama Chettiar & Anr.

[Civil Appeal No. 7743 of 2025
arising out of SLP (C) No. 18230 of 2025 Diary No. 11882 of 2021]

HEADNOTE – A plea of 'res judicata' cannot be decided in an application filed under Order VII Rule 11 CPC for rejection of a plaint. Res judicata is an issue to be decided in trial and cannot be summarily decided in an application to reject the plaint.

JUDGMENT

Pamidighantam Sri Narasimha, J.

1. Delay Condoned.

2. Leave granted.

3. This appeal by the plaintiff arises out of the judgment of the High Court of Madras1 dismissing the Civil Revision Petition against the order passed by the District Munsif cum Judicial Magistrate, Portonovo2 allowing Defendant No. 1's objection to the plaint under Order VII Rule 11 of the Civil Procedure Code3 on the ground of res judicata. For the reasons to follow, we have allowed the appeal and held that the objection of res judicata cannot be taken to bar the suit under Order VII, Rule 11, CPC.

4. The facts relevant for the adjudication of the present appeal are that the appellant had purchased the disputed property from one Mr. Hussain Babu in 1998, who had in turn purchased it from Ms. Jayam Ammal in 1991. Appellant contends that while being in peaceful possession of the property, when an advocate-commissioner sought to inspect his property he made necessary enquiries and came to know that defendant No. 1, claiming to be a co-owner filed a suit4 for partition against Ms. Jayam Ammal and others and also secured an ex parte decree5 in his favour.

It is in execution of that ex parte decree that the advocate-commissioner was appointed by the Court. Compelled by these circumstances, the appellant instituted the present suit6 for declaration of title and permanent injunction. It is the specific contention of the appellant that the ex parte decree had been fraudulently and collusively obtained, and it is also not binding on him.

5. The defendant opposed the suit by filing a written statement. Pending disposal of the suit, the defendant filed an Interlocutory Application7 under Order VII, Rule 11 of CPC contending that the plaintiffs suit is barred by res judicata as the earlier ex parte decree has attained finality. The appellant countered it by contending that he was not a party to the earlier suit and therefore the principle of res judicata would not apply.

6. There is no doubt about the fact that the appellant is not a party to the suit decided on 29.07.1997. At the same time, there is also no doubt about the fact that the appellant claims title from Hussain Babu who was the third defendant in the earlier suit. However, the circumstances in which the ex parte decree came to be passed, the alleged collusion between the parties in that ex parte and also the reason for the ex parte suit attaining finality are all specifically raised and contested in the present suit by the appellant. It is for this reason that the appellant also sought a decree for declaration.

7. In order to appreciate the claim and contest of the appellant, the relevant portions of the plaint are reproduced herein for ready reference;

"7. When plaintiff has been in peaceful possession and enjoyment of the suit property his vendors brother Rasool informed him that an advocate-commissioner is going to inspect the property. Plaintiff was naturally shocked. When further probed he informed the plaintiff that one Jayarama Chettiar had filed a suit against one Jayam Ammal wife of Rangasami Chettiar and others for partition in O.S. No.298 of 1996 on the file of the subordinate judge, Cuddalore and Jayam Ammal died immediately after suit and her daughter Selvi did not contest the suit and allowed it to go ex parte.

Hussain Babu who is a party defendant to the suit was away in Abu Dhabi and he honestly believed that Selvi will contest the suit and protest the interest of the purchaser. Plaintiff was kept in the dark about the pendency of the suit. At the time of purchase,he was not put on notice. If it has been done, he would not have ventured into the sale. Plaintiff's vendors father did not mention about the pendency of the suit at the time of sale. Plaintiff honestly believed that the property is free of any encumbrance and believed so he purchased the property.

8. Now plaintiff finds that the suit ended in an ex parte decree. The property was sold by Jayam Ammal on 13.10.1991 to Hussain Babu. At that time no suit was pending. Suit was laid much later in 1993 and Jayam Ammal died immediately after suit. Second defendant her daughter allowed an ex parte decree to be passed. Hussain Babu the purchaser from Jayam Ammal believed when second defendant promised that she will take care of the defence. Plaintiff has not been in the picture. As stated above everything was suppressed, plaintiff submits that the ex parte decree is collusive and after the ex parte decree a show of resistance was

made by second defendant. It is quite apparent that the decree passed ex parte is a collusive one and so provisions of section 52 of the Transfer of property Act cannot be attracted.

9. Plaintiff came to know of all this when his vendor's representative told him a week ago that an advocatecommissioner is going to inspect the property. So, plaintiffs are filing the suit for declaration that the preliminary decree passed in O.S.No.298 of 1996 on the file of the subordinate judge, Cuddalore is not binding on the plaintiff.

10. Plaintiff now finds that the 1st defendant has played a fraud on court in filing the suit in the sub court Cuddalore to suit his convenience when the Subordinate Judge's Court Cuddalore has no territorial jurisdiction to entertain the plaint. There are six items in the said suit. The plaint in O.S. No.298 of 1996 reasons that item 4 was allotted to his father in the partition, items 2,3, and 5 were purchased by his father in the name of Jayam Ammal item 6 is a saw will. Items 2 to 6 are situated in Parangipettai village. So, the suit should have been instituted in the sub court Chidambaram.

But to suit his convenience a property desiring one cent item situate in Naduveerapattu is included to invoke the jurisdiction of the sub court Cuddalore. This property does not belong to Ist defendant's father. This is a clear case of fraud. So the decree passed in O.S. No.298/96 by a court has no territorial jurisdiction is wholly invalid and 1st defendant has not derived any right to the property under a decree which is void.

11. The suit property as stated above belonged to Jayam Ammal by purchase and the 1st defendant has no claim over the same.

12. The preliminary decree in O.S. No. 298/96 on the file of the subordinate judge, cuddalore is not binding on the plaintiff as it is a collusive decree."

8. In Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors8, this court held that the adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC, the court held:

"25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."

(emphasis supplied)

9. Issue relating to whether the ex parte decree is obtained by collusion, or whether the defendant No. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the appellant is a bonafide purchaser or not need to be examined in detail. This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit. Res judicata cannot be decided merely on assertions made in the application seeking rejection of plaint.

As held by this Court in V. Rajeshwari v. T.C. Saravanabava,9 identifying similarity in causes of action should be a matter for trial where documents from the first suit are studied and analysed. Res judicata cannot be a matter of speculation or inference. In Keshav Sood v. Kirti Pradeep Sood,10 this Court took a strong view against the plea of res judicata being raised in applications seeking rejection of plaint and held as follows:

"5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits."

10. From the order passed by the Trial Court it is apparent that there is neither consideration nor analysis of the case set up by the appellant in plaint. Further,

the Trial Court questioned the legality of plaintiff's action on the ground that, "he did not raise any objection regarding the decree passed in O.S. No. 298/96. Therefore, this Court comes to the conclusion that the plea of fraud raised by the 1st respondent is not acceptable one." With this view of the matter, the Trial Court rejected the objection of the appellant to the applicability of Order VII, Rule 11 CPC by holding;

"12. The respondents counsel submitted that such a type of question cannot be decided as preliminary issue. In support of his contention. They have filed our Hon'ble court judgment 2009(4) LW 432, and 2007 A.L.W 580, 2000(3) MLJ 342,2002(1)LW 398. But those are dealing with regarding court fees. But as far as the case on hand is concerned. It is not regarding court fees. Therefore the above said citations is not apply to this suit. For the above said reasons and explanations. The petition is allowed. No cost."

11. We are not in agreement with the approach and reasoning adopted by the Trial Court. The appellant's revision under Article 227 was similarly dismissed by the High Court holding that the decision of the Trial Court does not warrant interference.

12. While we clarify that we have not expressed any opinion on the question as to whether the ex parte decree in O.S. No. 298/96 dated 29.07.1997 would or would not operate as res judicata barring the present suit, we hold that enquiry into this question could not have been decided under Order VII, Rule 11 CPC, particularly in the context of the specific averments made by the appellant in the plaint about the ex parte decree, the circumstances surrounding the said transaction and the prayer in the suit for declaration and the consequential relief.

13. For the reasons as indicated hereinabove, we allow the appeal, set aside the order passed by the High Court in CRP (PD) No. 1454 of 2014 dated 20.03.2019 and restore the suit O.S. No. 60 of 2009 before the District Munsif cum Judicial Magistrate Portonovo to its original number. In view of the fact that the suit is of the year 2009, there shall be a direction for expeditious disposal of the suit.

14. While concluding, we clarify that we have not expressed any opinion on the merits of the case and all the grounds raised by the defendants, including those relating to res judicata are kept open for final determination.

15. With these observations, this appeal stands allowed. The parties shall bear their own costs.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Joymalya Bagchi]

New Delhi;

July 14, 2025

1 Judgment and order dated 20.03.2019 in CRP(PD) No. 1454/2014.

2 Dated 27.01.2014 in I.A. No. 12 of 2010 in O.S. No. 60 of 2009.

3 Hereinafter "CPC"

4 O.S. No. 298 of 1996

5 Dated 29.07.1997 in O.S. No. 298/1996 passed by the Sub-Court, Cuddalore.

6 O.S. No. 60 of 2009

7 I.A. No. 12 of 2010 in O.S. No. 60 of 2009

8 (2021) 9 SCC 99

9 (2004) 1 SCC 551.

10 Civil Appeal No. 5841 of 2023.

IN THE SUPREME COURT OF INDIA

Binod Pathak and Ors.
Vs.
Shankar Choudhary and Ors.

[Civil Appeal No. 7706 of 2025
arising out of SLP (C) No. 1536 of 2015]

HEADNOTE – Defendants cannot seek abatement of a suit on account of the death of some co-defendants when their counsel has knowingly suppressed the fact of their death. Such non-disclosure, despite the lawyer's obligation under Order XXII Rule 10A CPC cannot later be used to claim the benefit of abatement.

JUDGMENT

J. B. Pardiwala, J.

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

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1. Leave Granted.

2. This appeal arises from the judgment and order passed by the High court of Judicature at Patna dated 22.10.2014 (hereinafter referred to as the "Impugned

Order") in Second Appeal No. 190 of 2008 by which the Second Appeal filed the respondents herein; the original defendants, came to be allowed thereby setting aside the judgment and order passed by the First Appellate Court allowing the First Appeal filed by the appellants herein; the original plaintiffs, and decreeing the suit in their favour.

3. For the sake of convenience, the appellants herein shall be referred to as the original plaintiffs and the respondents herein shall be referred to as the original defendants.

A. FACTUAL MATRIX

4. The plaintiffs instituted Title Suit No. 106 of 1984 in the Court of the Sub Judge - (I) Gopalganj (hereinafter, the "title suit") for declaration of title and recovery of possession of suit land bearing Khewat Nos. 11 and 12 respectively, revisional survey Nos. 688, 689 and 690 respectively under Khata Nos. 571 and 574 respectively situated in the Village Harkhauli, P.S. Mirganj, District Gopalganj.

5. We need not go into the details of the nature of the suit instituted by the plaintiffs as we are inclined to dispose of this appeal on a neat question of law and remand the matter to the High Court for fresh consideration on merits.

6. In the aforesaid title suit instituted by the original plaintiffs referred to above, the trial court framed the following issues:-

(i) Is the suit, as framed, maintainable?

(ii) Have the plaintiffs got a valid cause of action or right to sue?

(iii) Whether the ancestors of Defendant nos. 7 to 10 had acquired occupancy right in respect of the suit land?

(iv) Have the plaintiffs got subsisting title and possession over the suit lands at the time of vesting of the intermediary interest in the state of Bihar as also on the date of proceeding under Section 145 of the Code of Criminal Procedure, 1973 (for short, the "Cr.P.C.")?

(v) To what relief or reliefs, if any, are the plaintiffs entitled to in the aforesaid suit?

7. Upon appreciation of the oral as well as documentary evidence on record the trial court recorded a finding that the plaintiffs had failed to establish their case and accordingly the suit came to be dismissed vide the judgment and decree dated 05.07.1989.

8. The original plaintiffs being dissatisfied with the judgment and order passed by the trial court dismissing the suit went in First Appeal before the Court of Additional District Judge - (I), Gopalganj. The appeal came to be registered bearing Title Appeal No. 60/1989 renumbered as Title Appeal No. 58 of 2007.

9. The appeal filed by the plaintiffs came to be allowed by the First Appellate Court vide the judgment and order dated 02.06.2009.

10. The First Appellate Court while allowing the First Appeal of the plaintiffs held as under:-

"18. In view of aforesaid finding I hold that plaintiffs have title on the suit land and they have been illegally dispossessed by the defendants, so plaintiffs title on suit land mentioned in schedule 2,3 and 4 of plaint is hereby upheld and the plaintiffs are entitled for recovery of possession of suit land. Plaintiffs have claimed mesne profit, but the lower court neither framed issue nor decided the same but in the light of aforesaid finding plaintiffs are entitled to mesne profit from the date of dispossession upto getting possession on the suit land which has to be determined by the lower court in separated proceeding if it will be initiated by the plaintiffs after delivery of possession.

Hence, the appeal is allowed with cost, the judgment and decree of the lower court is hereby set aside and the suit is decreed with cost. The plaintiffs have title and possession on schedule K. 2, 3 and 4 of the plaint and they are entitled for mesne profit from date of dispossession upto the date of getting delivery of possession. Defendants (respondents) are directed to deliver possession of the suit land to the plaintiffs within thirty days from today failing which plaintiffs (appellants) will be entitled to get delivery of possession according to the process of law.

I have already recorded finding that defendants (respondents) have constructed house and structures on suit land during pendency of the suit so plaintiffs will have obtain to take delivery of possession either with house or structures by evicting persons residing in it or if they so like they may apply for demotion of house and structures at the cost of the defendants and to take vacant possession of the suit land. Pleaders fee Rs. 1000/- and Pleader's clerk fee Rs. 250/-."

11. The original defendants being dissatisfied with the judgment and order passed by the First Appellate Court referred to above challenged the same before the High Court by way of Second Appeal. In the Second Appeal, the High Court formulated the following substantial questions of law:-

i. "Whether the judgment and decree of the appellate court could be said to be illegal in view of the same having been passed against several dead respondents, i.e. respondent nos. 3, 6(gh), 8, 9, 11 and 12?

ii. Whether the entry in the concerned 'record of right can be presumed to be the entry in favour of the erstwhile intermediary as his private land?

iii. Whether in absence of any finding regarding the method and manner of dispossession as alleged by the plaintiffs, the relief of restoration of possession could have been granted especially when the plaintiffs have not adduced any evidence on this aspect of the matter?

iv. Whether the finding of the appellate Court that in absence of plea taken in the written statement no such plea can be allowed to be taken by the defendants is sustainable in law when both the parties had understood the respective cases and adduce evidence?"

12. It appears from the materials on record that when the aforesaid Second Appeal was taken up for hearing it came to the notice of the High Court that some of the respondents before the First Appellate Court i.e., some of the original defendants had passed away and their legal heirs were not brought on record. The High Court took the view that in the absence of the legal heirs being substituted in accordance with the provisions of Order XXII Rule 4 of the Code of Civil Procedure, 1908 (for short, the "CPC") the First Appellate Court could not have heard the First Appeal on merits and decided the same in favour of the plaintiffs. The High Court took the view that the First Appeal had already stood abated as the decree was joint and indivisible.

13. The High Court held that in case of joint and indivisible decree the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and the appeal would be liable to be dismissed.

14. The High Court while allowing the Second Appeal filed by the defendants held as under:-

"At this juncture, it would be pertinent to mention that the judgment and decree in the suit has been passed on 25.07.1989 and the appeal thereafter came to be decided on 02.06.2008 reversing the judgment and decree in the suit and granting the decree to the plaintiff as prayed. The memo of this second appeal has been filed on 27.06.2008 by the original defendant no. 2 Bihari Choudhary, defendant no. 4 Baijnath Chaudhary and defendant no. 5 Harilal Choudhary along with the substituted heirs of the deceased defendant no. 1 Khobhari Choudhary and deceased defendant no. 6 Yamuna Choudhary.

The appellant no. 7 Dhananjay Choudhary in this appeal is the substituted heir of Yadunandan Choudhary who was one of the substituted heirs of deceased defendant no. 6 Jamuna Choudhary in the appellate court below. From the

perusal of the memo of the instant appeal, it further transpires that the respondent nos. 10 to 13 in this appeal' have been impleaded as heirs of deceased defendant no. 3 Sheonath Choudhary. On behalf of the appellants, it has been emphatically submitted that the defendant no. 3-respondent no. 3 (in the appellate court below) namely Sheonath Choudhary died on 07.05.1997 and similarly the substituted respondent no. 6 (Gha) (one of the substituted heirs of the deceased defendant no. 6 Yamuna Choudhary in the appellate court below) died on 29.09.2000 during the pendency of the appeal in the court below.

It has been further pointed out that the substituted respondent no. 7 (ka) Most. Dipiya (one of the substituted heirs of the deceased defendant no. 7 Mangaru Bhagat) died on 07.08.1999, the defendant no. 8- respondent no. 8 Bacha Bhagat died on 05.04.2003 and respondent no. 9 Nagina Bhagat also died on 05.11.2005 during the pendency of the appeal in the court below. From the order dated 14.11.2008 passed in this appeal, it becomes evident that the fact of death of the aforesaid defendant respondents during the pendency of the appeal in the court below has been admitted by the plaintiff-respondents and it has been also admitted that their heirs could not be substituted in the said appeal.

Examined in the backdrop of these facts, it is vivid that the deceased defendant no. 3-respondent no. 3 Sheonath Choudhary was one of the purchasers of the suit land and similarly the deceased respondent no. 6 (Gha) was one of the substituted heirs of the original purchaser (Yamuna Choudhary) of the suit land. The remaining deceased respondent nos. 7(ka), 8 and 9 in the appeal in the court below were the heirs of the vendor of the defendant no. 1 to 6. The impugned judgment and decree by the appellate court below granting the declaration of title and entitlement of recovery of possession in favour of the plaintiffs has been passed against these deceased persons as well, along with the other respondents.

In view of the nature of the decree as prayed for and granted by the appellate court below being joint and inseverable, it is evincible therefore that the same has been passed against the defendant no. 3-respondent no. 3 Sheonath Choudhary, respondent no. 6 (gha) Sheonandan Choudhary and some other respondents as abovementioned who were already 'dead and their interest was not represented. Tested on the anvil of the aforesaid principle the conclusion is inevitable that the decree dismissing the suit as against the aforesaid deceased respondents had attained finality and could not have been varied or overturned in absence of their heirs and legal representatives by the appellate court below.

In other words, the appeal before the appellate court at the time of passing of the decree had become defective (not properly constituted) as all the necessary parties for the determination of the controversy were not before the court and the nonsubstitution of the heirs of the deceased respondents was fatal to the entire appeal. The proposition by the learned senior counsel on behalf of the plaintiff-

respondents on the strength of the decision of the Apex Court in the case of K. Naina Mohamed (supra), in the peculiar facts and circumstances of this case as mentioned, is clearly misplaced. In the said decision the purchaser was already on record to represent the interest of his deceased vendors and, in fact, it was the purchaser who filed the appeal as well as contested the second appeal thereafter.

In the present case, one of the purchasers and one of the substituted heirs of another purchaser of the suit land died during the pendency of the appeal and their interest remained unrepresented as no substitution was admittedly done. Similarly, no rule has been laid down in the said decision prescribing that the provision of Order 22 Rule 10 A shall override the mandatory provision relating to abatement as contained in Order 22 Rule 4 C.P.C. for want of substitution of a defendant/respondent who was a necessary party.

In this fact situation, this Court is inclined to hold that the impugned judgment and decree passed by the appellate court below cannot be stained in law, and the same is, accordingly, set aside. The substantial question of law, as formulated in this regard, is accordingly answered in favour of the appellants. In view of the aforesaid conclusions, there remains no necessity for determining the other substantial questions of law as framed/suggested. In the result, this appeal is allowed. In the facts and circumstances, there shall be no order as to cost."

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

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellants / Original Plaintiffs.

16. Mr. Gagan Gupta, the learned counsel appearing for the plaintiffs vehemently submitted that the High Court committed a serious error in passing the impugned judgment and order. He would submit that the impugned judgment and order passed by the High Court is in gross violation of the provisions of Order XXII Rule 10A of the CPC. He would submit that respondents / defendants in the First Appeal deliberately omitted to bring it to the notice of the plaintiffs that some of the defendants had passed away.

According to the learned counsel, the respondents in the First Appeal not only failed to bring it to the notice of the First Appellate Court about the passing away of some of the defendants but allowed the First Appeal to be heard on merits. The failure on the part of the respondents to bring to the notice of the plaintiffs as well as to the Court concerned the factum of death of some of the defendants could be said to be in gross violation of Order XXII Rule 10A of the CPC.

17. Mr. Gupta submitted that even while conceding to the fact that some of the respondents before the First Appellate Court had passed away and their legal heirs were not brought on record, still the appeal as a whole could not be said to have stood abated. In this regard, Mr. Gupta has given a chart indicating why the First Appeal could not be said to have wholly abated in absence of the legal heirs being brought on record. The chart indicates as follows:-

S.N	**Respondent**	**Position before the Trial Court**	**Position before the High Court**	**Position before this Court**	**Particulars**
1.	Hari Lal Choudhary (First Sale Deed)	Defendant No. 5	Appellant No. 6	Respondent No. 6	No Dispute w.r.t abatement
2.	Yamuna Choudhary (Second Sale Deed)	Defendant No. 6	His LRs were Appellants Nos. 11 & 12	His LRs are Respondents Nos. 8,11 and 12	No Dispute w.r.t abatement
3.	Khobari Choudhary (Third Sale Deed)	Defendant No. 1	His LRs were Appellants Nos. 1-3	His LRs are Respondents Nos. 1-3	No Dispute w.r.t abatement
4.	Bihari Choudhary (Third Sale Deed)	Defendant No. 2	Appellant No. 4	Respondent No. 4	No Dispute w.r.t abatement
5.	Sheonath Choudhary (Fourth Sale Deed)	Defendant No. 3	His LRs were Appellants Nos. 10-13	His LRs are Respondents Nos. 30-33	Dispute w.r.t. abatement (As he died on 07.5.1997 during First Appeal however in the Second Appeal his LRs were Impleaded.
6.	Baijnath Choudhary (Fourth Sale Deed)	Defendant No. 4	Appellant No. 5	Respondent No. 5	No Dispute w.r.t abatement

18. Mr. Gupta thereafter, by way of one another chart pointed out that all those respondents who passed away during the pendency of the First Appeal before the district court were only "Performa respondents". The said chart reads as under:-

S.N	Respondent	Position before the High Court	Position before this Court	Particulars
1.	Sheo Nandan Choudhary (Died on 07.05.1997)	His LRs were Appellant No. 10 & Respondent Nos. 14-20	His LRs are Respondents Nos. 10 and Nos. 36-41	His LRs were not impleaded in First Appeal but he has no connection with the impugned sale deeds and LRs were impleaded in the High Court.
2.	Dipiya (Died on 07.08.1999)	Not a Party.	Not a Party.	No connection with the impugned sale deeds or the proceedings.
3.	Bachha Bhagat (Died on 05.04.2003)	Not a Party.	Not a Party.	No connection with the impugned sale deeds or the proceedings.
4.	Nagina Bhagat (Died on 05.11.2005)	Not a Party.	Not a Party.	No connection with the impugned sale deeds or the proceedings.
5.	Md. Islam (Died on 08.03.2001)	His LRs were Respondents Nos. 27 & 28	His LRs are Respondents Nos. 46 & 47	No connection with the impugned sale deeds or the proceedings.
6.	Sheo Dhari Bhagat (Died on 08.07.2008 i.e., after the passing of the judgment in First Appeal)	His LRs were Respondents Nos. 29 & 30	His LRs are Respondents Nos. 48 & 49	No connection with the impugned sale deeds or the proceedings.

19. In such circumstances referred to above, the learned counsel appearing for the plaintiffs prayed that there being merit in his appeal the same may be allowed and an appropriate order be passed with a view to do substantial justice between the parties.

ii. Submissions on behalf of the Respondents / Original Defendants.

20. Mr. Shantanu Sagar, the learned counsel appearing for the defendants on the other hand 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 judgment and order. According to the learned counsel the High Court is right in saying that provisions of Order XXII Rule 4 CPC would override the provisions of Order XXII Rule 10A of the CPC.

21. In such circumstances referred to above, the learned counsel prayed that there being no merit in the present appeal, the same may be dismissed.

C. ANALYSIS

22. 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?

23. We regret to state that we are thoroughly disappointed with the manner in which the High Court dealt with the Second Appeal and more particularly the understanding of the High Court as regards the position of law on the issues in question. Such procedural errors are not expected at the level of any High Court. It is not in dispute that the provisions of Order XXII Rule 10A of the CPC were not complied with.

24. While the First Appeal was being heard, the defendants could have brought to the notice of the First Appellate Court that some of the respondents had passed away and the appeal had stood abated. Had the defendants brought this fact to the notice of the First Appellate Court, the Court could have looked into the matter accordingly. It appears that the defendants being fully aware of the death of some of the respondents kept quiet and allowed the First Appellate Court to proceed with the hearing of the First Appeal on merits. When the First Appeal came to be allowed and the matter reached the High Court in Second Appeal that the issue as regards the abatement came to be raised.

i. Relevant Statutory Provisions.

25. Order XXII Rule 1 of the CPC reads thus:-

"1. No abatement by party's death if right to sue survives.- The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives."

26. Order XXII Rule 2 of the CPC reads thus:-

"2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.-

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record,. and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants"

27. Order XXII Rule 4 and 4A, of the CPC reads thus:-

"4. Procedure in case of death of one of several defendants or of sole defendant.-

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where- (a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application with the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.

4A. Procedure where there is no legal representative.-

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may be order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court- (a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and (b) shall as certain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person."

28. Rule 1 of Order XXII of the CPC provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. Rule 4, Order XXII of the CPC prescribes that where a defendant dies, on an application made by the plaintiff, the Court shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

It cannot be disputed that such an application has to be filed within the time limit prescribed by law; otherwise, the suit would stand abated against the deceased defendant. A clear provision is to be found to that effect in sub-rule (3) of Rule 4. Obviously in case of failure to bring the legal representative on record within prescribed time, the suit having abated, the plaintiff will have to seek the remedy of setting aside abatement in accordance with the provisions of law. ii. Order XXII, Rule 10A of the CPC.

29. With enforcement of 1976's amendment to the CPC, once a party to the suit dies, a duty is cast upon the lawyer representing such party, to communicate the fact of death to the opposite party in terms of provisions contain in Rule 10A of Order XXII of the CPC. It is nobody's case that there was compliance of this rule in the case at hand by the advocate appearing for the defendants.

Unless this primary obligation is discharged and it is established with cogent evidence that the opposite party had sufficient opportunity to know and, had, in fact, knowledge of the death of the defendant, the plea of abatement of the suit at the instance of party having failed to comply with the obligation mentioned under Rule 10A of Order XXII of the CPC cannot be entertained. Nobody can be allowed to reap the benefit of his own lapse and to non-suit the plaintiff.

30. Order XXII, Rule 10A reads thus:-

"10A. Duty of pleader to communicate to Court death of a party.-

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 thereupon 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."

31. Rule 10A has been newly inserted by the Code of Civil Procedure (Amendment) Act, 1976.

32. Rule 10A is intended to avoid delay in making an application for bringing legal representatives of the deceased party on record. It seeks to mitigate the hardship arising from the fact that a party to a suit may not come to know about the death of the other side during the pendency of the proceedings. In such a situation, it would be appropriate to ask the advocate of the party to give intimation of the death of the party represented by him so as to enable the other side to take appropriate steps.

33. The Law Commission stated thus:-

"A new rule is proposed to be inserted to the effect that where a pleader comes to know of the death of a party to the suit, he shall inform the court, and the court, in its turn, shall give notice to the plaintiff of the death. Such a provision will, to some extent reduce the complications that arise by reason of the plaintiff's ignorance of the death of a defendant."

34. In the Statement of Objects and Reasons for the Code of Civil Procedure (Amendment) Bill, 1976, it was observed:-

"Clause 76-Sub-clause (v).-New Rule 10-A is being inserted to impose an obligation on the pleaders of the parties to communicate to the Court the death of the party represented by him."

35. The Joint Committee also said:-

"Clause 73 (Original clause 76).-(iii) During the course of evidence, a point was raised, that, on the death of the client, the contract with the pleader comes to an end and so the obligation of the pleader to act on behalf of his client ceases on the death of the client. The Committee, however, feel that it should be made obligatory on the part of the pleader to inform the Court about the death of his client and for this purpose the contract between the pleader and the party should be deemed to subsist.

Sub-rule (1) of new proposed Rule 10-A of Order 22 has been amended accordingly. The Committee feel that in view of the amendment made in sub-rule (1) of new proposed Rule 10-A proposed sub-rule (2) in Rule 10-A is not necessary as the provision is likely to cause hardship to the pleader. Sub-rule (2) of the new proposed Rule 10-A of Order 22 has been omitted accordingly."

36. Rule 10A, as inserted by the Amendment Act, 1976, imposes an obligation on the pleader of the parties to communicate to the court the fact of the death of the party represented by him.

37. Rule 10A of Order XXII should be read with Rule 4 of Order III of the Code. Rule 4 of Order III reads thus:-

"4. Appointment of pleader.-

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."

38. Order III, Rule 4 prescribes the manner of appointment of a pleader and also the limit upto which such appointment remains in force. Every appointment of a pleader will be continued inter alia until the client or the pleader dies. As a general rule, therefore, on the death of the client his contract with the pleader comes to an end. So also, his authority to act on behalf of his client expires.

39. Rule 10A, as inserted by the Amendment Act, 1976 carves out an exception to the above general rule and casts a duty upon the advocate appearing for the party to intimate the court about the death of his client. For this purpose, a deeming fiction has been created that the contract between the (deceased) client and the pleader subsists to that limited extent. [See: Gangadhar v. Raj Kumar, (1984) 1 SCC 121]

40. Rule 10A of Order XXII is salutary in nature. It has been introduced to mitigate hardship arising from the fact that a suit, appeal or other proceeding may take long time and a party to a suit, appeal or other proceeding may die and the other party may not be aware of such a situation. Rule 10A seeks to do justice over technicalities by requiring an advocate appearing for the party to intimate the court about the death of his client and provides an opportunity to the other

side to take necessary steps to bring heirs and legal representatives of the deceased party on record. Rule 10A is thus not an empty formality. Preeminent object of the rule is to do full and complete justice.

a. Rationale behind Order XXII Rule 10A.

41. An "innovative provision" in the form of Rule 10A has been introduced by the Amendment Act, 1976 in the Code to avoid procedural technicality scoring march over substantial justice.

42. In Gangadhar (supra), dealing with the object underlying Rule 10A, this Court observed that it was introduced to mitigate the hardship arising from the fact that the party to a suit or appeal, as the case may be, may not come to know about the death of the other party during the pendency of such suit or appeal. A suit or appeal takes years to come up for hearing and it is very difficult to expect the other party to be a watch-dog for day-to-day survival of his opponent. Then when the suit / appeal comes up for hearing, it comes to the light that not only one of the parties to the suit / appeal had died but the time for substitution had also run out and the suit or appeal had abated.

It is with a view to avoid technicalities and to do full and complete justice that an important provision has been inserted in CPC, in the form of Order XXII Rule 10A, requiring the advocate appearing for the party to inform death of his client to the court so as to enable the other side to take appropriate steps to bring on record legal representatives of the deceased. For that purpose, a deeming fiction is introduced that the contract between the dead client and pleader will subsist to the limited extent to supply information to the court about the death of his client. This Court stated that: -

"The Legislative intention of casting a burden on the learned advocate of a party to give intimation of the death of the party represented by him and for this limited purpose to introduce a deeming fiction of the contract being kept subsisting between the learned advocate and the deceased party was that the other party may not be taken unawares at the time of hearing of the appeal by springing surprise on it that the respondent is dead and appeal has abated. In order to avoid procedural justice scoring a march over substantial justice Rule 10-A was introduced by the Code of Civil Procedure (Amendment) Act of 1976 which came into force on February 1, 1977."

(Emphasis supplied)

b. Nature of the salutary provision of Order XXII Rule 10A.

43. Rule 10A is procedural in nature. No penalty is provided for non-compliance with the rule. The provision is not "absolutely mandatory" [See: United Bank of India v. Kanan Bala, (1987) 2 SCC 583].

44. The new provision has been inserted with a view that just delay in preferring substitution application may not be put forward a ground for dismissal of the application. Since a lawyer for the party is obliged to inform the court about the death of his client, his failure to do so should be treated as good and sufficient ground for condonation of delay. [See: Kathpalia v. Lakhmir Singh, (1984) 4 SCC 66].

I. Distinction between the legal maxims 'ex injuria ius non oritur' and 'nullus commodum capere potest de injuria sua propia'.

45. The genesis of the provision of Rule 10A of the Order XXII lies in the doctrine of 'clean hands'. The doctrine of 'clean hands' originates from the Roman Law, and finds expression in two latin maxims being (i) ex injuria ius non oritur and (ii) nullus commodum capere potest de injuria sua propia, which mean "from wrong, no right arises" and "no one can take advantage of their own wrong", respectively. [See: Schwebel, Stephen M. "Clean Hands, Principle" Eds., Rüdiger Wolfrum, Oxford University Press, 2009].

46. Although the aforesaid two maxims, semantically appear to be one and the same, with the courts often applying the two interchangeably, yet there lies a very fine but pertinent distinction between the two maxims. The two maxims are comparable to each other but they are not interchangeable, and differ in their scope. Aaron X. Fellmeth and Maurice Horwitz in the "Guide to Latin Maxims in International Law" 1st Ed., Oxford University Press, has explained the maxim ex injuria ius non oritur as follows:-

"A right does not arise from wrongdoing." A maxim meaning that one cannot generally rely on a violation of law to establish a new legal right or to confirm a claimed right. E.g., "As Lauterpacht has indicated the maxim ex injuria ius non oritur is not so severe as to deny that any source of right whatever can accrue to third persons acting in good faith. Were it otherwise the general interest in the security of transactions would be too greatly invaded and the cause of minimizing needless hardship and friction would be hindered rather than helped." Advisory Opinion on Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. Rep. 16, 167 (separate opinion of Judge Dillard). An alternative formulation is Ius ex iniuria non oritur. Compare with Nullus commodum capere (potest) de sua iniuria propria."

(Emphasis supplied)

47. On the other hand, they have explained the maxim 'nullus commodum capere potest de injuria sua propia' as follows:-

"No advantage (may be) gained from one's own wrong." A maxim meaning that the law will not recognize or validate any profit a person derives from his own wrongdoing. For example, one may not destroy evidence of the extent of damages caused by one's illegal act, then counter a claim for damages based on that act by pointing to the lack of evidence. E.g., "[T]he State must not be allowed to benefit by its inconsistency when it is through its own wrong or illegal act that the other party has been deprived of its right or prevented from exercising it."

(Emphasis supplied)

48. A perusal of the aforesaid makes it abundantly clear, that while the maxim 'ex injuria ius non oritur' is a principle governing the general spirit of the jurisprudence of "rights", that a right cannot emanate or emerge from a wrongful act, the maxim 'nullus commodum capere potest de injuria sua propria', on the other hand, confirms the general rule of equity and prudence that no one can benefit from their own wrongdoing.

The scope of the latter is wider than the former. The first maxim explains that the legitimacy of a right stands vitiated if such right, which otherwise would have been legitimately exercisable, accrues from a wrongdoing of the person claiming under or exercising such right. Although, under the law, a right may arise even if from a wrongdoing, yet if exercise of such right is allowed, it would malign the very jurisprudential underpinning of 'right' and 'duty'.

A right has a legal sanctity and backing to it, in order for it to have a legitimising effect, since the jural correlative of a right is duty. More particularly, the term "right" is very specific to not include every benefit, profit or advantage. The maxim solidifies the faith in law that no wrong action will be given a legal validity. The legal validity of a right flows from other legal norms or from a source of law [See: Niel MacCormick, "Rights in Legislation", Law, Morality and Society: Essays in Honour of H.L.A. Hart, P.M.S. Hacker, and Joseph Raz (eds). 189-206, Oxford: Clarendon Press (1977)].

49. The maxim, 'nullus commodum capere potest de injuria sua propria', on the other hand, lays itself as a rule of equity. An advantage falling from wrongdoing may be a legal or illegal advantage. The maxim dictates that, be that as it may, no profit or advantage of a person's wrongful act may be validated by the seal of law. It may very well happen, that the advantage may be legal or illegal, but the validation of law will not be extended to it by the law.

Thus, the courts that have the discretion to allow or disallow the availment of such advantage in ordinary circumstances, are constrained to not permit a person who has committed a wrongful act to benefit from the advantageous position afforded to him because of such wrongful action as a matter of justice, equity and fairness. Fellmeth and Horwitz rightly extend an illustration, that when a person himself destroys evidence, he cannot take shelter of the defence of lack of evidence. The advantage falling from the wrong will not be validated by the courts of law.

50. The interpretation of Order XXII Rule 10A is a manifestation of the latter and not the former i.e., the cornerstone of its nature and the effect is the maxim 'nullus commodum capere potest de injuria sua propria' or no one should derive benefit from their own wrong. This is because of the procedural nature of the provision as held in Kanan Bala (supra) and a catena of other decisions of this Court. Although, the provision aims to do justice over technicalities by casting a duty upon the pleader to apprise the court as-well as all parties about the demise of his client, yet it does not prescribe any penalty for the non-compliance of the same, wilful or inadvertent.

A pleader may not be put to the perils of any penalty for his failure in performing the duty under Rule 10A in law, yet it does not mean that such failure would also be of no bearing in equity or of inconsequence to the ultimate abatement of the suit or appeal. The benevolent object underlying Order XXII Rule 10A to ensure complete justice on one hand and the contrasting patent absence of any penalty for noncompliance on the other, would simpliciter be irreconcilable, without the resort to the maxim 'nullus commodum capere potest de injuria sua propria'.

It would be preposterous to say that a court of conscience would take no cognizance of such a failure in duty of the pleader in deciding whether the suit or appeal could be said to be abated for want of any application in the stipulated time in terms of sub-rule (3) of Rule 4, Order XXII, and allow an erring party through its pleader to derive undue advantage thereof. To ignore such lapses in equity would render Rule 10A completely otiose and do violence to the legislative intent behind it.

51. Thus, the principle that no party can take advantage of his/her own wrong i.e. 'nullus commodum capere potest de injuria sua propria' is squarely attracted in the event of a failure in complying with the provision of Rule 10A of Order XXII of the CPC, and any abatement as a result of such wrongdoing or failure ought not to be validated by the courts.

52. In Kusheshwar Prasad Singh v State of Bihar, (2007) 11 SCC 447, it was held that the aforesaid maxim is based on elementary principles, is fully recognised in

courts of law and of equity, and, admits of illustration from every branch of legal procedure. The relevant observations read as under:-

"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can_take undue advantage of his own wrong).

15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this_Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim. which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

(emphasis supplied)

53. We would like to remind the High Court of this very important legal maxim of 'nullus commodum capere potest de inuria sua propria'. It is the duty of the court to ensure that dishonesty or any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by abusing of the process of the court. No one should be permitted to use the judicial process for earning undeserved gains

for unjust profits. The courts' constant endeavour should be to ensure that everyone gets just and fair treatment.

54. We may clarify with a view to obviate any possibility of confusion that the maxim 'ex injuria ius non oritur' is different from the maxim 'nullus commodum capere potest de inuria sua propria' for the reason that the former pertains to a 'right' that may become available to a wrongdoer due to the wrongful act and the latter relates to an 'advantage' or 'benefit' that a wrongdoer may derive from his wrongful conduct. Although both are in essence a byproduct of the doctrine of equity and share a common genealogy under the doctrine of clean hands, the field in which they operate are different and distinct.

In case of the first maxim, had the right not emanated from a wrongful act, it would have been cemented in law and the person in whose favour such right had accrued, could have pleaded for vindication of the same, with sufficient guarantee, that his plea would be accepted by the court. However, in the case of the second maxim, if the advantage was not being derived from a wrongful act, the courts would nevertheless still have the discretion to hold whether the person in whose favour such advantage had arisen, could avail such advantage or not.

While in such a case there would be no embargo on the courts to deny the advantage to the person eligible to benefit from the same, the courts could still rule that such person could not avail the benefit. Having considered the cases in which there is no wrong done by the person deriving the right or benefit from their actions, we shall now see how the wrongful action affects the conclusion of the courts in both such scenarios as-well.

The answer to this is straightforward. In the first case, when a right accrues to the person who has committed the wrongful act due to such act, and while the law regards it as an enforceable right, yet the courts are armed with power to deny the vindication of such rights, which they ordinarily could not have done. Put it differently, while the existence of such rights is undeniable in the eyes of law, yet the exercise or enforceability of such rights would nevertheless be deniable by the courts in equity. The way the maxim envisages the application of this principle is based on one another well-known principle; that equity cannot supplant the law.

When the courts deny the right that may have accrued by a wrongdoing, the courts in essence are not denying the right itself i.e., they are not supplanting the right emanating from a law, rather, they are drawing upon the reservoir of equity within their conscience, to withhold its enforcement, not to contradict the law, but to ensure that the law does not become an instrument for legitimizing its own violation through the hands of courts who are expected and reposed of the faith to uphold the law in the first place. Hence, under the first maxim, the courts cannot

deny such rights, as they flow from the law, but any vindication or enforcement can be if they require the touch of courts, by invoking a higher standard of fairness that guards against the instrumentalization of legal rights as vehicles of injustice.

55. Whereas, when it comes to the second maxim, irrespective of how the advantage has accrued, it is not an enforceable advantage. The reason being a simple one, that they are simply not a 'right' so as to have the force or backing of any law. In the absence of any enforceability flowing from a law or legal norm, the enforcement or vindication of such advantage as a natural corollary can only flow from the discretion of the courts, who are required to supply the legal formalities to make them enforceable in the first place.

Hence, the courts in the case of the latter, being a court of conscience, built upon the edifice of fair-play, would prohibit inurement of any such benefit lacking the backing of law by virtue of this discretion and as a matter of fairness disallow a person who has committed the wrongful action to avail the benefit or advantage derived from his own wrong. The second maxim encapsulates the aforesaid principle and mandates that courts, having the conscience of justice, equity and fairness, ought to necessarily disallow the benefit of the wrong to such a person.

56. This distinction marks a crucial difference in the scope of the two maxims; in the former, equity steps in after the law has recognized a right, to decide whether justice permits its enforcement; in the latter, however, equity acts more preemptively, interrogating the moral propriety of allowing any gain from potentially tainted conduct. In either case, where no wrong is committed, the courts duty remains guided by legal principle, more so in the case of the second maxim. However, in the instance of the first maxim, once wrongdoing results in contaminating the jural relation of 'rights and duty', a shift occurs, where equity steps in in the sphere of entitlement from such 'rights'.

57. On the basis of the aforesaid, we are of the considered view that the underlying ethos of Order XXII, Rule 10A is not based on the maxim of 'ex injuria ius non oritur'. A 'right' accrues in the eyes of law through two principal channels: first through the force of any law or statute itself, and secondly, through acts enabled by the law that possess the normative force to create enforceable claims backed by the operation of law or facilitated by conventional legal norms such as a gift, will, consent, contract etc., acts that have the capacity to create legal rights. Any legal norm, must possess normativity and generality, which together must have such an effect that the norm ought to become valid in law or through the law, in order for it to give birth to a right. In other words, only those acts which attain legal validity inherently within the legal system or through its mechanism can be said to give rise to a 'right'.

58. In the case on hand, the respondents or the original defendants have pleaded for the abatement of the suit due to non-substitution of legal heirs therein by the plaintiff, within the statutorily prescribed period of time. Abatement of suit is not a right that accrues to a party when the other party has failed to substitute legal heirs within the specified period of limitation. Abatement may be disallowed by the court if it has sufficient cause for condoning the delay of the party that ought to have filed for the substitution of legal heirs. In fact, Rule 10A was enacted for the purpose to allow for mitigation of the legal effects of delay and can be used to request for condonation of delay.

59. The question of allowing abatement of suit is one of discretion and therefore, an advantage. Under Rule 10A of Order XXII, the duty of a pleader to apprise the court as well as the other parties to the suit or appeal of the death of his client is a duty of candour and propriety as a responsible officer of the court. The failure of a party to perform the duty under Rule 10A constitutes a wrongful act and such party must not be allowed to avail the benefit arising therefrom in the form of abatement of suit.

II. Duty of Pleader.

60. Rule 10A of Order XXII, as inserted by the Amendment Act, 1976 imposes an obligation on the pleader appearing for the party to intimate death of his client to the court. But there is difference of opinion as to whether the duty imposed on the pleader is confined to factum of death of a party or also to furnish names and particulars of legal representatives.

61. According to one view, there is no obligation on the pleader appearing on behalf of the deceased party to furnish or supply list of legal representatives of the deceased.

62. According to the other view, however, the pleader has not only to inform the court as to death of the party but he must also furnish particulars of legal representatives.

63. However, we are of the view that providing merely an information with regard to the fact of death is not sufficient compliance of the Rule 10A of the CPC. unless and until the counsel furnishes the information with regard to the details of the persons on whom and against whom the right to sue survives and the information under Rule 10A of the CPC. and the object behind it would remain incomplete as the parties would still be labouring to inquire who are the legal representatives and find out as to upon whom and against whom the right to sue survives.

64. This Court in Perumon Bhagvathy Devaswom Perinadu Village v. Bhargavi Amma (Dead) by Lrs. and Others reported in (2008) 8 SCC 321 has explained

the principles applicable in considering applications for setting aside the abatement and as summarised such principles as under:-

"12. In State of M.P. v. S.S. Akolkar [(1996) 2 SCC 568] this Court held: (SCC pp. 569-70, paras 6-7)

"6. Under Order 22 Rule 10-A, it is the duty of the counsel, on coming to know of the death of a party, to inform it to the court and the court shall give notice to the other party of the death. By necessary implication delay for substitution of legal representatives begins to run from the date of knowledge.

7. It is settled law that the consideration for condonation of delay under Section 5 of the Limitation Act and setting aside of the abatement under Order 22 are entirely distinct and different. The court always liberally considers the latter, though in some case, the court may refuse to condone the delay under Section 5 in filing the appeals. After the appeal has been filed and is pending, the Government is not expected to keep watch whether the contesting respondent is alive or has passed away. After the matter was brought to the notice of the counsel for the State, steps were taken even thereafter; after due verification belated application came to be filed. It is true that Section 5 of the Limitation Act would be applicable and delay is required to be explained. The delay in official business requires its broach and approach from public justice perspective."

(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)

65. The High Court in its impugned judgment and order has with a great air of conviction observed that Order XXII Rule 10A of the CPC is not mandatory and would not override the mandatory provisions relating to abatement as contained in Order XXII Rule 4 of the CPC. We are afraid, the understanding of the High Court is not correct.

66. The legislative intention of casting a burden on the advocate of a party to give intimation of the death of the party represented by him and for this limited purpose to introduce a deeming fiction of the contract being kept subsisting between the advocate and the deceased party was that the other party may not be taken unaware at the time of hearing of the appeal by springing surprise on it that the respondent is dead and appeal has abated. In order to avoid procedural justice scoring a march over substantial justice the Rule 10A was introduced by the Code of Civil Procedure (Amendment) Act of 1976 which came into force on February 1st, 1977. Unfortunately, the High Court took no notice of the wholesome provision and fell back on the earlier legal position which automatically stands modified by the new provision and reached an unsustainable conclusion.

67. It is not the question of Order XXII Rule 10A being directory or mandatory. The court should know how to apply the provision in the facts of each case. The line of reasoning adopted by the High Court if upheld would render Order XXII Rule 10A otiose.

68. Before we close this matter, we would like to observe that it is not even the case of the defendants that the plaintiffs had knowledge of the death of some of

the defendants. If such would have been the position, then probably the applicability of the Order XXII Rule 10A would have been inconsequential.

69. In the present appeal the plaintiffs as well as the defendants have filed their written submissions. The defendants in their written submissions have talked about the merits of the case but very conveniently have not said a word as to why it was not brought to the notice of First Appellate court when the First Appeal was taken up for hearing that the first appeal had in fact stood abated with the death of some of the defendants. Why the lawyer appearing for the defendants also kept quiet and proceeded to argue the matter on merits? This smacks of lack of good faith.

70. In the aforesaid context we may refer to and rely upon a decision of this Court in P. Jesaya (dead) by Lrs. v. Sub-collector and Anr. reported in (2004) 13 SCC 431 wherein the only contention taken up in appeal before this Court was that one of the respondents in the appeal before the High Court had died during the pendency of that appeal. It was contended that his heirs were not brought on record and therefore the appeal before the High Court had abated. It was also submitted that as the appeal had abated, the judgment delivered by the High Court was non-est and could not have been enforced. In the case at hand the appeal stood abated according to the High Court before the First Appellate court whereas in P. Jesaya (supra) it had stood abated before the High Court. This is the only difference.

71. This Court observed that although the arguments were attractive, yet one must keep in mind Order XXII Rule 10-A of the C.P.C. This Court observed that it is obligatory on the pleader of the deceased to inform the court and the other side about the factum of the death of a party. This Court observed thus: -

"4. Though the arguments are attractive one must also keep in mind Order 22 Rule 10 of the Code of Civil Procedure. It is obligatory on the pleader of a deceased to inform the court and the other side about the factum of death of a party. In this case we find that no intimation was given to the court or to the other side that the first respondent had died. On the contrary a counsel appeared on behalf of the deceased person and argued the matter.

It is clear that the attempt was to see whether a favourable order could be obtained. It is clear that the intention was that if the order went against them, then thereafter this would be made a ground for having that order set aside. This is in effect an attempt to take not just the other side but also the court for a ride. These sort of tactics must not be permitted to prevail. We, therefore, see no reason to interfere. The appeal stands dismissed. There will be no order as to costs."

(Emphasis supplied)

72. Had the lawyer of the defendants or the defendants themselves would have brought to the notice of the First Appellate court that some of the defendants had died then probably the defendants could have taken steps to first get the abatement set aside and bring the legal heirs on record.

D. CONCLUSION

73. In such circumstances referred to above we are left with no other option but to partly allow this appeal and set aside the impugned judgment and order passed by the High Court.

74. We are inclined to remand the matter to the High Court for fresh hearing of the second appeal keeping in mind the principles of law as discussed in this judgment.

75. In the result, this appeal succeeds and is hereby partly allowed. The impugned judgment of the High Court is set aside.

76. The matter is remanded to the High Court. The Second Appeal No. 190 of 2008 is restored to its original file and shall be heard afresh and decided on its own merits after giving opportunity of hearing to both the parties.

77. We clarify that so far as the question whether the decree can be said to be joint and indivisible or otherwise shall be looked into by the High Court while hearing the Second Appeal afresh. If the High Court reaches the conclusion that the decree is joint and indivisible and with the death of some of the defendants, the entire First Appeal could be said to have abated then it shall remand the matter to the First Appellate Court so as to give an opportunity to the plaintiffs to prefer an appropriate application for setting aside of the abatement and bring the legal heirs on record and thereafter hear the first appeal once again on its own merits.

78. In the event the High Court reaches the conclusion that the First Appeal as a whole could not be said to have stood abated as the nature of the decree is such that it cannot be said to be joint and indivisible then the High Court shall hear the Second Appeal on its own merits on other issues involved in the litigation.

79. Since this litigation is of 1984, we direct the High Court to take up the Second Appeal No. 190 of 2008 for fresh hearing and decide the same within a period of three months from the date of receipt of the writ of this order. High Court shall inform about the disposal of the second appeal to this Court.

80. The Registry is directed to circulate one copy each of this judgment to all the High Courts.

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

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

New Delhi;

July 14, 2025

IN THE SUPREME COURT OF INDIA

Estate Officer, Haryana Urban Development Authority and Ors.
Vs.
Nirmala Devi

[Civil Appeal No. 7707 of 2025
arising out of SLP (C) No. 15148 of 2017]

[Civil Appeal No. 7708 of 2025
@ SLP Civil No. 25549 of 2017]

[Civil Appeal No. 7709 of 2025
@ SLP(C) No. 20604 of 2017]

[Civil Appeal No. 7710 of 2025
@ SLP(C) No. 20614 of 2017]

[Civil Appeal No. 7711 of 2025
@ SLP(C) No. 20608 of 2017]

[Civil Appeal No. 7712 of 2025
@ SLP(C) No. 20640 of 2017]

[Civil Appeal No. 7713 of 2025
@ SLP Civil No. 18218 of 2025
@ Diary No. 9756 of 2017]

[Civil Appeal No. 7714 of 2025
@ SLP(C) No. 15152 of 2017]

[Civil Appeal No. 7715 of 2025
@ SLP(C) No. 15306 of 2017]

[Civil Appeal No. 7716 of 2025
@ SLP(C) No. 15273 of 2017]

[Civil Appeal No. 7717 of 2025
@ SLP(C) No. 15146 of 2017]

[Civil Appeal No. 7718 of 2025
@ SLP(C) No. 25553 of 2017]

[Civil Appeal No. 7719 of 2025

@ SLP(C) No. 20617 of 2017]

[Civil Appeal No. 7720 of 2025
@ SLP(C) No. 20642 of 2017]

[Civil Appeal No. 7721 of 2025
@ SLP(C) No. 15274 of 2017]

[Civil Appeal No. 7722 of 2025
@ SLP(C) No. 25547 of 2017]

[Civil Appeal No. 7723 of 2025
@ SLP(C) No. 25555 of 2017]

[Civil Appeal No. 7724 of 2025
@ SLP(C) No. 20616 of 2017]

[Civil Appeal No. 7725 of 2025
@ SLP(C) No. 20607 of 2017]

[Civil Appeal No. 7726 of 2025
@ SLP(C) No. 15147 of 2017]

[Civil Appeal No. 7727 of 2025
@ SLP(C) No. 949 of 2018]

[Civil Appeal No. 7728 of 2025
@ SLP(C) No. 4787 of 2018]

[Civil Appeal No. 7729 of 2025
@ SLP(C) No. 30437 of 2018]

[Civil Appeal No. 7730 of 2025
@ SLP(C) No. 30436 of 2018]

[Civil Appeal No. 7731 of 2025
@ SLP(C) No. 30438 of 2018]

[Civil Appeal No. 7732 of 2025
@ SLP(C) No. 30439 of 2018]

[Civil Appeal No. 7733 of 2025
@ SLP(C) No. 12014 of 2021]

[Civil Appeal No. 7734 of 2025
@ SLP(C) No. 12015 of 2021]

[Civil Appeal No. 7735 of 2025
@ SLP(C) No. 12016 of 2021]

HEADNOTE – Grant of mandatory injunction under Section 39 of the Specific Relief Act, 1963 is discretionary, and can be granted only upon the breach of an enforceable legal obligation. A mandatory injunction cannot be granted unless there exists a legal right and there's a breach of that legal right.

Summarized the conditions for granting a mandatory injunction as developed over time by a catena of decisions as under:
(i) Obligation: There must be a clear obligation on the part of the defendant.
(ii) Breach: A breach of that obligation must have occurred or be reasonably apprehended
(iii) Necessity: It must be necessary to compel the performance of specific acts to prevent or rectify the breach.
(iv) Enforceability: The court must be able to enforce the performance of those acts.
(v) Balance of Convenience: The balance of convenience must be in favour of the party seeking the injunction.
(vi) Irreparable Injury: The injury or damage caused by the breach must be irreparable or not adequately compensable in monetary terms.

JUDGMENT

J. B. Pardiwala, J.

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

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1. Delay condoned in Diary No. 9756 of 2017. Leave granted in all the Special Leave Petitions.

2. Since the issues involved in all the captioned appeals are same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. This batch of appeals arises from a common judgment and order passed by the High Court of Punjab and Haryana dated 12.08.2016 by which the Second Appeals filed by the appellant herein came to be dismissed, affirming the judgment and order passed by the First Appellate Court affirming the decrees passed by the trial court in favour of the respondents herein.

A. HISTORY OF THE LITIGATION

4. Our order dated 05.03.2025 by itself would give more than a fair idea as regards the history of this litigation and the issues involved in the matter. Our order dated 5.03.2025 reads thus:

"ORDER

1. We heard Ms. Aishwarya Bhati, the learned Additional Solicitor General appearing for the Haryana Urban Development Authority i.e. the petitioners - herein and the learned counsel appearing for the respective respondents in each of the petitions before us.

2. Having heard the matter for quite some time, we have been able to understand the controversy involved in this litigation. What we have been able to understand prima facie is that in the State of Haryana, there is a very unusual policy with respect to land acquisition. If the Government wants to acquire land for public purpose, it proceeds in accordance with the provisions of Land Acquisition Act. However, it has its own policy of even providing alternate plots of land to the oustees. It all started in the year 1989 with the issue of Notification under Section 4 of the Land Acquisition Act. In 1990, the Section 6 Notification came to be issued. In the year 1992, the awards were passed.

3. We were taken through the relevant features of the policy relating to allotment of residential plots/commercial sites to the oustees. The same is at Annexure 'P1' in the first matter before us.

4. Thereafter, we were taken through the various pleadings in the plaint which is at Annexure 'P6'.

5. Prima facie, it appears that the suits filed by the individuals/oustees are one invoking Section 39 of the Specific Relief Act, 1963.

6. We also take notice of the fact that in some of the cases, the Trial Court dismissed the Suits whereas few came to be allowed.

7. However, the fact is that all these petitions arise from a common Judgment and order passed by the High Court dismissing in all 27 Second Appeals.

8. Today, Ms. Bhati, the learned Additional Solicitor General invited our attention to the order passed by this Court dated 8-5-2017, the same reads thus:-

"Delay condoned Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said Policy. Issue notice restricted to the question of correctness of the general direction made by the High Court in granting allotments to all claimants who may not be similarly situated. In the meantime, there shall be stay of execution."

9. The plain reading of the aforesaid order would indicate that at the relevant point of time, a statement was made on behalf of the Authority that they were ready and willing to consider the claims of the oustees in accordance with the policy of 2016.

10. Therefore, this Court thought fit to issue notice limited to the general direction which has been issued by the High Court in its impugned judgment and order, referred to above. To the aforesaid, there is a strong objection at the end of

the learned counsel appearing for the individual oustees. Their claim is that they are entitled to the benefit of the Policy of 1992 and not 2016.

11. To a very specific question put to them as to why they are objecting to the Policy of 2016, the reply was that the rates have been increased over a period of years. They want allotment at the rate which were prevalent in accordance with 1992 policy and not in accordance with 2016 policy. This aspect will have to be looked into.

12. Ms. Bhati put forward three contentions. First, all those oustees who had actually not applied in accordance with the policy prevalent at the relevant point of time, could not have instituted the suits invoking Section 39 of the Specific Relief Act. According to Ms. Bhati, such suits by itself were not maintainable.

13. Her second contention is that each co-sharer is not entitled to individual plots and the third contention is with regard to limitation.

14. Before we proceed to hear these matters finally, we want the following information to be placed on record for better and effective determination of the issues falling for our consideration:-

(i) in how many cases before us, the concerned outstee(s) had not applied at all;

(ii) How many had actually applied;

(iii) the fine distinguishing features between the policy of 1992 and 2016 respectively;

(iv) how many suits were allowed, whereas how many were dismissed by the Trial Court.

15. We would also request Ms. Bhati, the learned ASG to make us understand the purport of the judgment delivered by this Court in "Brij Mohan and Others vs. Haryana Urban Development Authority & Anr. (2011) 2 SCC 29 (Civil Appeal No.1 of 2011), decided on 3-1-2011.

16. In the last paragraph of the impugned order passed by the High Court, we find reference of Udai Singh's case. It appears that the entire impugned judgment is based on the ratio of Udai Singh's case.

17. We are informed that Udai Singh's Judgment was carried to this Court by way of Special Leave to Appeal (Civil) Nos.8766-8767/2023 which came to be dismissed by this Court vide order dated 24-11- 2025.

18. We would also like to know from Ms. Bhati whether the High Court was justified in relying on the dictum as laid in the Udai Singh's case.

19. Let the aforesaid information come on record by way of an affidavit.

20. Post these matters on 25-3-2025 as Item No.1 to be treated as Part-heard."

5. In pursuance of our order dated 5.03.2025 referred to above, the appellant through its Estate Officer has filed an additional affidavit answering the four specific questions put by us.

6. To the first two questions put by us, the reply of the appellant is as under:

"(i & ii) In reply to the information as sought for in para 14(i)(ii) of the order dated 05.03.2025, it is submitted that from the subsequent paras it is evident that any of the respondent did not submit application as per the specific format provided in brochure issued seeking allotment of plot under Oustees quota and further failed to pay 10% of the earnest money as mentioned over there.

Therefore, it cannot be said any of the concerned oustees had applied seeking allotment of plot under Oustees quota as per the brochure issued by the petitioner authority inviting applications for an allotment of plot. It is submitted that as per condition of the brochure issued by the petitioner authority the application shall be deemed to be valid only in those cases where the application so submitted are accompanied by earnest money. In present case any of the respondent has not submitted the earnest money with the application if any so submitted.

iv.) In respect to para 14(iv) of the order it is submitted that in total 30 civil suit instituted (26 in respect to impugned order dated 12.08.2016), (3 in respect to impugned order dated 30.07.2019) & (1 in respect to impugned order dated 07.01.2016) by the respondents and out of 30 civil suits, 12 civil suits were dismissed and 18 civil suits decreed by the Ld. Civil Judge. A chart in respect to each suit dismissed/decreed has been annexed with this additional affidavit.

28. I say and submit that under all the policies framed by petitioner HDUA from time to time and amended the requirement of the public notice/advertisement to be issued inviting applications from the interested persons including the oustees and the applications are to be submitted in the prescribed format along with earnest money and terms and conditions of the brochure so issued the application shall be deemed to be valid application if the same has been submitted with earnest money.

29. I say and submit that when the applications have not been submitted in the prescribed format that to without the earnest money therefore the respondents are not entitled for any relief and it will amount to wind full gain if the respondent to

have been fully compensated in accordance with statutory scheme for the land acquired for public purpose by the state if despite have not paid a single penny if they are giving their plot as per the 1992 rates."

7. As regards the distinguishing features between the Policy of 1992 and the revised Policy of 2016 respectively, the appellant has explained the same in the following manner:

"DISTINGUISHING FEATURES BETWEEN THE POLICY OF 1992 AND POLICY OF 2016

Terms and conditions of Policy dated 18.03.1992	Terms and conditions of Policy dated 11.08.2018	Modifications done in policy dated 01.08.2016 as modified on 08.05.2018
VI) Claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, Haryana Urban Development Authority concerned before the sector is floated for sale.	2. An oustee shall be entitled to seek allotment of plot in the same sector for which land has been acquired for residential/commercial purpose. However, where the land has only been acquired for any non-residential purpose such as industrial institutional group housing sites, completely commercial sector etc. then such an oustee shall be entitled to seek allotment of plot in the adjoining sector. Adjoining sector for this purpose shall mean the sector with boundaries abutting to the said sector. Where there are more than one sector adjoining to the sector for which land has been acquired in that case an oustee shall be entitled to make an application in any one sector of his choice. However, where any such application is made in more than one sector then only his	2. An oustee shall be entitled to seek allotment of plot in the same sector for which land has been acquired for residential/commercial purpose and in case the plots are not available in the same sector for which land has been acquired for residential/commercial purpose, then such an oustee may also be considered for allotment in an adjoining sector except where the land was acquired prior to 10.09.1987. Where the land has only been acquired for any nonresidential purpose such as industrial, institutional, Group Housing sites and completely commercial sector etc. then such an oustee shall be entitled to seek allotment of plot in an adjoining sector. Adjoining sector for this purpose shall mean any sector where boundary abuts that of the said sector.

	one application in any such sector at the discretion of the HUDA Authority shall be considered and earnest money in respect of other applications shall automatically stand forfeited and no claim for such forfeiture shall lie in future.	However, if no plot is available for one or more oustees in any of the adjoining sectors, then a sector adjoining to any of the original and adjoining sectors, may be considered for purpose of allotment of plots. An oustee shall be free to apply for allotment of an ouste quota plot in one, more or all the adjoining sectors. It is clarified that once any of these applications is successful all remaining applications shall be automatically assumed to have been cancelled.
	3. The application of an oustee shall be considered against the plots determined under oustees quota as per the instruction issued vide memo no. UB-A-62016/2213 dated 04.121.2015. The number of plots shall be determined on basis of total available plots advertised.	3. The application of an oustee shall be considered against the plots determine under oustee quota as per the instruction issued vide Memo No. UB-A-6-2016/2213 dated 04.12.2015. The percentage of plots shall be determined on the basis of plots in a sector and it shall be ensured that number of plots allotted under all the reserved categories shall not exceed maximum limit of 50% of the plots in a sector. The charge in number of plots in a sector subsequently should be taken into account for determining the reservation of oustees quota plots.
	4. An oustee shall have the right to make such application only till the plots	

	are available for oustees in the sector as per condition no. 2 and 3 above.	
i) Plots to the oustees would be offered if the land proposed to be acquired is under the ownership of oustees prior to the publication of the notification under section 4 of the Land Acquisition Act and if 75% of more of the total land owned by the land owners in that sector is acquired.	6. An oustee should have been the owner of the land as on the date when the notification under Sec. 4 of the Land Acquisition Act, 1894 is issued. Any subsequent purchaser of land after said notification has been issued will not be entitled to make such application. Any application made by such purchaser shall entail automatic rejection of application and forfeiture of earnest money. However, the forfeiture of earnest money will be done only after giving opportunity of hearing to the defaulting applicant. 7. An oustee shall be eligible to make such application only if 75% or more of his total land in the concerned revenue estate is acquired. For this purpose, the total land to be considered for such determination will mean the land comprised in the same revenue Estate(s) where the concerned sector is situated.	
iii) The above policy shall also apply in case there are a number of cosharers of the land which has been acquired. If the acquired land measures more than	8. The eligibility of each co-sharer for allotment of plot under oustees quota shall be determined on the basis of his individual holding i.e. each co-sharer will be entitled to seek allotment of plot on basis of his own individual holding.	

one acre. Then for the purpose of granting benefits under this policy, the determining factor should be the area owned by each co sharer respectively as per his her share in the joint holding. In case the acquired land of the co sharer is less than one acre, only one plot of 250 sqd would be allotted in the joint name of the co sharers. (Amended vide Memo No.A-11P-93/7996-8013 dated 12.03.1993 as under: 2. Benefit under oustees policy shall be restricted to one plot according to the size of the holding irrespective of the number of co-sharers.		
vii) The commercial sites/building are sold by auction. The sites/buildings be also allotted to oustees on reserve price as and when the auction of the same is held. While putting such sites/buildings to public auction, the oustees who want to	10. No commercial site will be allotted to the oustees	

purchase the sites /buildings could represent before hand for them. However, if the area acquired of the commercial site is equivalent or less to the area of booth shop cum flat being auctioned by HUDA they may be given a booth /SCO sites keeping in view the size of acquisition under this policy. (Amended vide Memo No.A-11P-98/24402-22 Dated: 28.08.1998.)		
	13. A co-sharer in the land will not be eligible to claim allotment of plot if he had given a no objection certificate in favour of his co-sharer and on account of submission of such no objection certificate a plot was allotted to such co-sharer in any previous floatation of plots for oustees.	
v) As per the policy the oustees shall be entitled to a developed plot/plots, the size of which would depend upon the area of his acquired land subject to a maximum of 500 syd. The oustee	14. An o ustee who has already been allotted a plot under the oustees policy on any previous occasion as a co-sharer shall not be entitled to stake claim for allotment of plot under oustees quota.	

shall be entitled to this benefit under this policy only once in the same town where the land of a person situated / located. However, in cases where the land of a person situated in the same town is acquired in pockets at different times. The owner shall be entitled to claim the benefit on account of the entire area acquired at different times for purposes of claiming the benefit under this policy.		
	15. An oustee who has made an application for allotment of plot under oustees policy on any previous occasion and said application either is pending for decision or was rejected on any ground and said rejection order was impugned before any Court of law or authority or forum of any nature and matter has been remanded back to the authority for fresh decision shall be informed of the decision in Bhagwan Singh's case and Sandeep's case and may also be advised to apply for allotment of plot in fresh advertisement which will be issued after determination of reservation and their earnest money may be refunded	In Clause 15 of the guidelines, following clause may be added 15(a). Where an application is made by an oustee in an advertisement issued afresh, the price of plot that may be charged from him if he is successful in draw of lots out of plots reserved for oustees shall be the rate as advertised in a new advertisement in cases where the allotment of plot could not be effected despite determination of his eligibility, the prevalent price at the time of application by the oustee in pursuance to an advertisement may be charged alongwith simple interest @ 11% per annum till date. It is clarified that

	along with interest @ 55% per annum from date of deposit till date of payment. However, where litigation is pending then the court of law authority or forum where it is pending may be informed of the aforesaid decision and efforts may be made to get the litigation disposed of in terms specified herein.	eligibility for the purpose as aforesaid shall be treated as determine only when Sachin completed and satisfied all the formalities/conditions as per the applicable policy.
	16. The applications of the oustees as received shall be put in draw of lots and eligibility of only those oustees who are successful in draw of lots shall be determined. Mere submission of such application or success in draw of lots shall not create any vested right for such allotment as eligibility will be determined only after oustee is declared successful in draw of lots.	
	17. The list of applicants shall be compiled within a period of 15 days of closing of the scheme and draw shall be held within a period of 30 days of closing of scheme for advertised plots. The eligibility of the oustees who are successful in draw of lots shall be determined within a further of if any outstay who is declared as successful in draw of Lords is found in eligible as per policy then his draw shall be cancelled the plot which will become available on	

	account of such cancellation of draw me again be put to draw of lots out of remaining out these who were earlier and unsuccessful in the same bro the earnest money of successful applicants may be refunded their after no inter shell be payable on the said amount if it is a refunded within a. of from closing of 1226 - HSVP policies and structures the scheme otherwise interest @ 55% per annum may be paid on earnest money after expiry of 6 months till date of payment.	

8. So far as the fourth question is concerned as to how many suits were allowed and how many came to be dismissed, the information provided by the appellant is as under:

"iv.) In respect to para 14(iv) of the order it is submitted that in total 30 civil suit instituted (26 in respect to impugned order dated 12.08.2016), (3 in respect to impugned order dated 30.07.2019) & (1 in respect to impugned order dated 07.01.2016) by the respondents and out of 30 civil suits, 12 civil suits were dismissed and 18 civil suits decreed by the Ld. Civil Judge. A chart in respect to each suit dismissed/decreed has been annexed with this additional affidavit."

(emphasis supplied)

i. Few Salient Features of the Policy of 1992

9. Although we have given a fair idea as regards the distinguishing features of the Policy of 1992 and the Policy of 2016 as modified in 2018 referred to above, we are of the view that for better and effective adjudication of the issue in question we must highlight few salient features of the Policy of 1992. The salient features of the Policy of 1992 and in what manner the oustees were expected to apply for the plot in accordance with the policy, has been highlighted by the appellant in its written submissions as under:

"ISSUANCE OF BROCHURE/ADVERTISEMENT FOR INVITING APPLICATIONS FOR ALLOTMENT OF PLOT UNDER OUSTEES QUOTA

(i) BROCHURE/ADVERTISEMENT DATED 01.10.1992

The Petitioner Authority issued a brochure on 01.10.1992 for a free hold residential plot in Sector 19 Part - II and Sector 20 in Kaithal. The salient features are:

(i) The application is to be addressed to the Estate Officer, HUDA as:

"To

The Estate Officer,
Haryana Urban Development Authority,
Kurukshetra

Dear Sir,

I/we request that I/WE may be allotted a residential site as stated on reverse side in Sector 19(Part ii) & Sector 20. I/We agree to conform to abide by the terms and conditions as contained in the Haryana Urban Development Authority Act, 1977 and in the rules and Regulations applications thereunder. I/we own no residential plot/house in my / our name(s) or in the name(s) of my/our dependent family/member(s)/spouse in Kaithal Urban Estate if applying under General Category or any Urban Estate of Haryana if applying under any Gender Category or any Urban Estate of Haryana if applying under any Reserve Category.

Yours faithfully,

Signature of Applicant(s)"

(ii) Terms and conditions for the allotment of Residential Plot:

"1(i) Only such applications shall be deemed to be valid as are accompanied by specified earnest money equivalent to 10% of the tentative sale price in the form of cash receipt/demand draft in favour of the Estate Officer, Kurukshetra drawn at the place at which the application is deposited. However, Earnest Money shall not be accepted in cash by the Estate Officer, Kurukshetra, Bank branches will accept cash also.

(iii) The application form to be submitted was serial no. ed and the price of

PRICE RS. 5/- AT THE COUNTER
Rs. 15/- by Registered Post.
Indian Postal Orders are not accepted.
No responsibility of postal delay.

(iv) The last date for receipt of application is 01.10.1992.

(ii) BROCHURE/ADVERTISEMENT DATED 22.12.1999

The salient features are:

(i) there is prescribed application with serial no. seeking allotment of residential plot.

(ii) The application is to be addressed in the prescribed format to the Estate Officer, HUDA.

(iii) Terms and Conditions:

"1(i) Only such applications shall be deemed to be valid as are accompanied by specified earnest money equivalent to 10% of the tentative sale price in the form of a cash receipt/demand draft in favour of the concerned Estate Officer, HUDA drawn at the place at which the application is deposited. However, earnest money shall not be accepted in cash by the concerned Estate Officer, HUDA Bank branches will accept cash also.

3. The price is tentative to the extent that any enhancement in the cost of land awarded by the Competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority, within 30 days or in such specified period of its demand.

OTHER NOTES:

1. No interest shall be payable on the money for the applicant for the period for which the same remains lying with the authority.

3. An application without the prescribed earnest money shall not be entertained and is liable to be rejected outright.

4. The applicants under the reserved categories shall not be eligible without the requisite certificates/documents. 6. Affidavit, wherever required, shall be furnished on judicial stamp paper worth Rs. 3/- duly attested by a Magistrate 1st Class/Executive Magistrate.

7. Allotment of plots and all matters connected therewith shall be governed by the provisions contained in the HUDA Act and Rules /Regulations framed thereunder as amended from time to time.

8. Dispute if any regarding allotment related matters should be settled within the jurisdiction of the concerned Estate Officer, HUDA."

The price of the brochure mentioned as Rs. 20.00

(iii) PUBLIC NOTICE / ADVERTISEMENT DATED 13.03.2025

(i) Oustees to apply alongwith application money Rs. 50,000/- for the concerned sector.

(ii) the claims of the oustees will be decided in terms of the policy dated 11.08.2016 and 08.05.2018.

(iii) The terms and conditions available on HSVP website.

1. Any land owner whose land is acquired prior to 10.09.1987 by Urban Estate Department are not eligible against the advertisement at hand for which separate advertisement has been issued.

3. As held by Hon'ble High Court in Rajiv Manchanda's case (supra), the policy applicable to an oustee is the one which is in force when an application is made pursuant to an advertisement issued by HUDA and in pursuance of which the plot is allotted. Therefore, for deciding the claims of oustees the applicable policy would be policy dated 04.12.2015, 11.08.2016 and 08.05.2018 as per which only the entitlement and eligibility shall be decided.

4. the allotment shall be made on the current reserve price mentioned in the table attached and in case finalization of allotment takes time, for any reason in that eventuality bank rate of interest be charged till the date of allotment on the rate mentioned in the advertisement.

(v) It is pertinent to mention here that in regard to advertisement dated 13.03.2025 number of oustees have already applied online paying Rs. 50,000.00.

(vi) That earlier as per advertisement, the closing date was 31.03.2025 and now the same has been extended to 31.05.2025.

(vii) It is submitted that from the above, it is evident that there is a prescribed form of application with serial no. and the same is to be submitted with earnest money. (True copies of the advertisement dated 01.10.1992, 22.12.1999 and

public notice dated 13.03.2025 are being annexed marked as ANNEXURE A-7, Pg. 68-82.)

(viii) At the outset it is submitted that in regard to advertisement/brochure dated 01.10.1992 and 22.12.1999 any of the respondents did not submit any application as per prescribed format and even did not deposit the earnest money. Therefore, any application submitted by any of the respondents not in the prescribed form with earnest money cannot said to be submission of application and once they failed to comply with the mandatory condition of the policy/advertisement cannot claim entitlement of a plot under oustee policy."

10. In addition to the aforesaid, the appellant has narrated the following facts as regards the applicability of the policy etc. The same reads thus:

"The Petitioner Authority introduced a scheme whereby a plot is offered to the oustees whose land has been acquired. Size of the plot is decided as per criteria and the area of land acquired. The person whose land has been acquired may apply to the Estate Officer, concerned as and when oustees claim for sector are invited along with copy of Award, Nakaljamabi or registry as the case may be alongwith 10 % earnest money.

(i) It is submitted that the petitioner Authority from time to time issued policies for the allotment of residential plots/ commercial sites to the land owners those have become oustees due to acquisition of their respective land. The relevant oustees policies in regard to the present batch of SLP's are as under:

Petitioner-HUDA vide Memo No. A-2-92/2076 dated 18.03.1992 (policy) decided to offer a plot to the Oustees in case where the land has been acquired (P-1 Pg. 31-33 with SLP No. 15148 of 2017 Paper Book). The relevant terms and conditions as mentioned in the said policy are as under:

(i) Plots to the oustees would be offered if the land proposed to be acquired is under the ownership of oustees prior to the publication of the notification under section 4 of the Land Acquisition Act and if 75 % or more of the total land owned by the Landowners in that sector is acquired.

(ii) Oustees whose land acquired is:

(a) Less than 500 sq. yards would be offered a plot of 50 sq. yards.

(b) Between 500 sq. yds. And one acre would be offered a plot of 250 sq. yds.

(c) From 1 acre and above would be offered a plot of 500 sq. yds where 500 or where 500 sq. yds. Plots are not provided in the layout plan two plots of 250 sq. yds. Each may be given.

(iii) The above policy shall also apply in case there are no. of co-sharers of the land which has been acquired. If the acquired land measures more than one acre. Then for the purpose of granting benefits under this policy, the determining factor should be the area owned by each co-sharer respectively as per his/her share in the joint holding. In case the acquired land of the co-sharer is less than one acre, only one plot of 250 yds. Would be allotted in the joint name of the co-sharers.

(vi) Allotment of plots to the oustees will be made at the allotment rate advertised by the Haryana Urban Development Authority for that sector, Land owners will be given compensation for their land which is acquired.

(vii) Claim of the oustees for allotment of plots under this Policy shall be invited by the Estate Officer, Haryana Urban Development Authority concerned before the Sector is floated for sale.

(viii) ...

(A true copy of Memo dated 18.03.1992 is annexed herewith marked as ANNEXURE A-1, PG. 46-48)

(ii) It is submitted that the Petitioner Authority in its 55th meeting held on 29.01.1993 approved the procedure for inviting, scrutinizing and finally accepting the claims of oustees and further modified the earlier policy dated 18.03.1992 on 12.03.1993 (P-3 Pg. 40-41) to the effect that (i) Benefit under the policy is not to be allowed to those oustees who have got residential/commercial plot from HUDA in the urban estate.

(ii) Benefit shall be restricted to one plot according to the size of the holding irrespective of the no. of co-sharers.

(A true copy of memo dated 12.03.1993 is annexed herewith marked as ANNEXURE A-2, pg. 49-50.)

(iii) It is submitted that after passing of the judgment by the Hon'ble High Court in the case of HUDA v. Sandeep Kumar, during the pendency of the SLP's issued a Memo dated 11.08.2016, i.e., another policy called as Policy of 2016.

(iv) In the said memo it was specifically mentioned that the judgment dated 25.04.2012 passed by the Hon'ble High Court in LPA No. 2096 of 2011 titled as HUDA v. Sandeep has been upheld by the Hon'ble Supreme Court vide order dated 06.03.2014 passed in SLP © No. 27256 of 2012 titled as HUDA v. Sandeep whereby the special leave petition has been dismissed and as such the order passed by the Hon'ble High Court has been affirmed.

(v) It is submitted that in order to ensure the implementation of the directions as issued in the case of Sandeep Kumar (supra) by the Hon'ble High Court and to ensure settlement of the oustees claim the Memo dated 11.08.2016 was issued. The relevant salient features of the said memo dated 11.08.2016(Policy of 2016) are as follows:

1. An oustee shall have to submit an application for allotment of plot under the oustees quota alongwith earnest money in pursuance of advertisement inviting claim for such allotment.

2. ... (amended subsequently vide memo dated 08.05.2018)

3. ...(amended subsequently vide memo dated 08.05.2018)

4. ....

5. The allotment of plot to the oustees will be made through draw of lots.

6. And oustee should have been the owner of the land as on the date when the notification under Section 4 of the Land Acquisition Act, 1894 is issued. Any subsequent purchase of land after said notification has been issued will not be entitled to make such application. Any application made by such purchaser shall entail automatic rejection of application and for feature of earnest money. However, the forfeiture of earnest money will be done only after giving opportunity of hearing to the defaulting applicant.

7. ...

8. The eligibility of each co-sharer for allotment of plot under oustee quota shall be determined on the basis of his individual holding each co-sharer will be entitled to seek allotment of plot on basis of his own individual holding.

9. ....

10. ....

11. ....

12. An oustee who has already got the benefit of allotment of plot from Haryana Urban Development Authority in any reserved category including under oustee policy shall not be eligible to seek allotment of plot under oustee quota.

13. A co-sharer in the land will not be eligible to claim allotment of plot if he had given a no objection certificate in favour of his co-sharer and on account of

submission of such no objection certificate, a plot was allotted to such co-sharer in any previous flotation of plots for oustees.

14. An oustee who has already been allotted a plot under the oustees policy on any previous occasion as a co-sharer and shall not be entitled to stake claim for allotment of plot under oustees quota.

15. (amended subsequently vide memo dated 08.05.2018)

16. The applications of the oustees as received shall be put in draw of lots and eligibility of only those oustees who are successful in draw of lots shall be determined. Mere submission of such application or success in draw of lots shall not create any vested right for such allotment as eligibility will be determined only after oustee is declared successful in draw of lots.

17. ...

18. ... (A true copy of memo dated 11.08.2016 is annexed herewith marked as ANNEXURE A-3, PG. 51-57)

(vi) It is submitted that the policy dated 11.08.2016 was clarified vide Memo dated 08.11.2016. (A true copy of memo dated 08.11.2016 is annexed herewith marked as ANNEXURE A-4 PG. 58-59.

(vii) It is submitted that the said policy dated 11.08.2016 was amended vide Memo dated 08.05.2018 where clause 2, 3, 11 and 15 of the guidelines dated 11.08.2016 amended and clause 19 was added. A true copy of memo dated 08.05.2018 is annexed herewith marked as ANNEXURE A-5 PG. 60-64.

(viii)It is submitted that the petitioner authority has already filed a comparative chart distinguishing the policies of 1992 and 2016 as asked for by this Hon'ble Court in Para 14(iii) of its order dated 05.03.2025 with the additional affidavit filed on 25.03.2018 (A-2, pg 29-31 with the additional affidavit), however, another copy of being annexed herewith marked as Annexure A-6 pg. 65-67.

(ix) It is submitted that a bunch of special leave petition listed for hearing on 08.05.2017 and the Hon'ble court pleased to pass the order as:

"Delay condoned. Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the Policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said policy. Issue notice restricted to the question of correctness of the general direction made by the High Court in granting allotments to all claimants who may not be similarly situated. In the meantime, there shall be stay of execution."

(x) It is submitted that the said policy dated 11.08.2016 was formulated in view of the directions issued by the Hon'ble Court in the case of Sandeep Kumar and even the advertisement of public notice issued in 2025 inviting the applications for allotment of plots is also based on the policy dated 11.08.2016.

(xi) It is submitted that even in the judgment dated 22.11.2017 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh Manchanda vs. HUDA 2018 (2) PLR 422 there was issue in regard to the policy dated 11.08.2016. The said question NO. 14 is reproduced hereunder for ready reference:

"Whether the policy dated 11.08.2016 or any part of the thereof is illegal?

(xii) It is submitted that the Hon'ble High court while passing the judgment dated 21.11.2017 dealt with all the clauses of the policy dated 11.08.2016 and upheld the same.

(xiii) It is submitted that in the case of HUDA vs. Sandeep Kumar & Ors. the Hon'ble High court while answering question No. 3 arrived at the finding that the condition for allotment of a plot for the reason that 75% of the land has been acquired cannot be said to be unjustified and the landowner is the owner of the remaining land, the policy makers has found as a part of rehabilitation process and it to the object of rehabilitate.

(xiv) It is submitted that in regard to applicability of the oustees policy, the Hon'ble High court in the case of Rajiv Manchanda vs. HUDA passed in Writ Petition No. 22252 of 2016 in Para 72 held that the policy applicable to an oustee is 1 which is in force when an application is made pursuant to an advertisement issued by HUDA and in pursuance to which the plot is allotted. In present case, the respondents have not submitted the applications seeking allotment of plot and the latest advertisement in 2025 has been issued where it has been mentioned that the policy dated 11.08.2016 will be applicable, therefore, in the case of respondents also the said policy will be applicable."

ii. Institution of the Suits under Section 39 of the Specific Relief Act, 1963 for seeking Mandatory Injunction for Enforcement of The Policy.

11. It appears from the materials on record that suits were instituted with almost stereotyped plaints. One such plaint of Suit No. 538 of 2007 instituted by one Smt. Nirmala Devi w/o Shishpal Verma r/o Kaithal reads thus:

"Suit For Mandatory Injunction

It is submitted as under:

1. The plaintiff was the absolute owner in possession of the land measuring 225 sq. yards being 15/1518 share out of the total land mesuring 37 kanal 19 Marla comprised in Khewat no. 416 mn, khatoni No. 549 min, Rect. No. 117, Killa No. 6/2, 11, 12, 13/1, 13/2, 14/1, 14/2/1, 15/1 situated within the revenue estate of Patti Kaiseth seth Kaithal vide regd sale deed no. 2629/1 dated 21/9/89.

2. Hereinafter the land fully detailed and described in para no. 1 of the plaint shall be called the suit land for the aske of the brevity.

3. That the suit land is situate within the Municipla limits of Kaithal Distt kaithal.

4. That total land of plaintiff i.e. suit land fully mentioned in para no. 1 of the plaint has been acquired by defendants for the purose of devleopment of sector 19 & 20 of HUDA Kaithal as residential sector and plaitiff is not having any other land in sector 19 & 20 HUDA Kaithal.

5. That the plaintiff has been totally ousted from the suit land.

6. That the suit land has been acquired in the year 1992 by defendants for the purpose of developmnet of sector 19 & 20 of HUDA, Kaithal as residential sector.

7. That there is policy of the defendant vide memo no. 2/92/2082 dated 18.03.1992 and vide advertisement of defendants for the allotment of freehold residential house at Kaithal.

8. That the policy dated 18.03.1992 vide memo no. 2/92/2082 is reproduced as under:

i. The plots to the oustees would be offered in the land proposed to be acquired is under the ownership of oustees prior of the publication of the notification under section 4 of the Land Acquisition Act, and if 75% of the total land owned by the land owner in that sector is acquired.

ii. Oustees whose land acquired is:

a. Less than 500 sq. yards should be offered a plot of 250 yards.

b. Between 500 and one acre should be offered a plot of 250sq. yards.

c. From one acre and above should be allotted a plot of 500 sq. yards or where 500 sq. yards plots are not provided to the layout plan, two plots of 250 sq. yards each may be given.

iii. That the above said policy shgall be applied in case there area no. of cosharers of the land which has been acuired, if the acquired land measures more than one care then for the purose of granting benefit under the policy, the determing factor should be the area owned by the each cosharers respectively, as per his/her share in the joint holding. In case the acquired land of the cosharers is less than one acre only one plot of 250 sq. yards would be allotted in the joint name of cosharers.

iv. That if the land of any landowner is released from acquisition, he would not be eligible to avail of any benefit under this policy (in respect of the area of land released).

v. That as per the policy, the oustee shall be entitled to develop a plot/plots the size of which would depend upon area of his acquired land subject to a maximum of 500 sq. yards. The oustee shall be entitled to this benefit under this policy only one the same town where the land of a person is situated located. However, in case where the land of a person sitauted in the same town is acquired in pockets at different times, the owner shall be entitled to claim the beneift on account of the entire land acquired at differne times, for the purposes of claiming the benfits under this policy.

vi. The claim of the oustees of allotment of plot under this policy shall be invited by the Estate Oficer, HUDA concerned before the sector is floated for sale

vii. The commercial sites/buildings are sold by the auctions. The sites/buildings be also allotted to the oustees on reserved price, as and when the auction of the said is held. While puttingh such sites/buildings to public auction to the oustees who wants to purchase the sites/building would represent before hand for them. However, if the area acquried of the commercial site is equivalent or less to the area of booth/shop cum flat being auctioned by HUDA, they may be given a booth/SCO site keeping in view the size of acqusition under this policy.

9. That the defendants have reserved the plot no. 175 to 200, of 500 sq. yards for the oustees in sector 20 HUDA Kaithal and plot nos. 930, 936, to 948, 778, 772 in sector 19(2) U/E Kaithal of 500 sq. yards for the oustees, and the plots, of 250 sq. yards bearing no. 10, 20, 30, 40 , 120 ,130, 150, 160, 170, 263, 273 , 283, 300, 344, 354, 364, 369, 406, 434, 438, 516 has been reserved for the oustees in sector 20.

10. That in the year 1992, the application were invited from the plaintiff for release of free holder presidential develop plots HUDA Kaithal. And the plainitff in accordance with the policy full detailed in para no. 7 of the plaint duly applied for the release of freehold residential develop plot vide regd. Notice dated

19.12.2006 and vide reg. dated 19.12.2006 which have been duly received by the defendants.

11. That the defendants have already allotted the plot to one Ravinder Parkash and one Kavinder Parkash sons of Manohar Lal Jain under the similar circumstances as that of the plaintiff and which Act of the defendants is totally discriminatory.

12. That the defendants in spite of submissions as stated above, failed to take any action for rerlease of ree hold residential develop plot.

13. That the defendants again invited the application from the plaintiff for release of free hold residential develop plot in Jan, 2000 and the plaintiff duly applied with all the formalities.

14. That the plaintiff in accordance with the policy and advertisement fully detailed and described above, applied to the defendants for release of ree hold residential develpo plots vide red. Notices stated above which was duly received by the defendants.

15. That the total land of the plaintiff is 225 sq. yds. has been acquired and the plaintiff is entitled to the plot of 50 sq. yard as per the policy dated 18.03.1992 on the reserved price of 1992.

16. The plaintiff is not goverened by the policy dated 12.03.1993.

17. That the defendants are under legal obligations to allot the freehold residential plot of 50 sq. yard to the plaintiff as per the policy dated 18.03.1992 and for which the plaintiff represented the defendants many time as stated above, but defendants have failed to take any action and have finally refused and hence this suit.

18. That the cause of action has accrued to the plaintiff and against the defendants within the territorial jurisdiction on this learned court as therefore got the jurisdiction to entertain and try this suit.

19. That the value of the suit for the purposes of court fee and jurisdiction is Rs. 200/- and accordingly court fee is affixed.

20. That the plaintiff prays a decree for mandatory injection directing the defendants to deliver the free hold residential develop plot of 50 sq. yards as mentioned in Para no. 7 of the plaint be passed with costs in favour the plaintiff and against the defendants. Any other relief to which plaintiff is found entitled to may also be granted to him."

12. By and large identical written statements were filed by the appellant herein as defendants. One such written statement filed in the above referred suit reads thus:

"Written Statement on behalf of defendants.

The defendants submit as under:

Preliminary objections:

1. That the suit filed by the plaintiff is not maintainable in the eye of law. The plaintiff is not entitled to any plot as per oustees policies of HUDA.

2. That the plaintiff has no locus standi to file the present suit in the Hon'ble court because he has not deposited 10 % earnest money along with his application which was mandatory to be deposited as per brochure issued by HUDA for inviting applications for allotment of residential plots to the landowners whose land was acquired for floating the HUDA sector. In one Writ Petition No. 13548 of 2001 the Hon'ble High Court of Punjab and Haryana Chandigarh has held that such oustees who did not deposit the earnest money alongwith their application they have no legal right to claim allotment of plots and the rule of estoppels stands against them as they had waived the relinquished their right.

3. That the suit of the plaintiff is time barred.

Reply on Merits:

1. That para no.1 of the plaint relates to description of land which is a matter of record. The plaintiff be directed to prove the alleged facts by cogent evidence.

2. That para no.2 of the plaint needs no reply.

3. That para no.3 of the plaint is wrong and denied. The plaintiff be directed to prove the alleged facts by cogent evidence.

4. That para no.4 of the plaint is wrong hence denied.

5. That para no.5 of the plaint is wrong and denied and not admitted to be correct.

6. That para no.6 of the plaint is a matter of record.

7. That para no.7 of the plaint is also a matter of record.

8. That para no.8 of plaint along with its sub clauses (i) to (vii) are matter of record, needs no reply.

9. That para no.9 of the plaint is also matter of record and needs no reply.

10. That para no.10 of the plaint is wrong and denied. The plaintiff did not deposit the earnest money along with his application, so he has no legal right to claim the allotment of plot and he had waived and relinquished his right.

11. That para no.11 of the plaint is wrong and denied. The case of the plaint is not similar as that of Ravinder Parkash mentioned in this para.

12. That para no.12 of the plant is wrong and denied. The complete and detailed reply has already been given in above in pre objection same may kindly be read as part of reply of this para.

13. Para no.13 of the plant is wrong and denied.

14. That para no.14 of the plaint is wrong and denied. The plaintive has not deposited the 10% money with his application, so he has waived his right if any.

15. The para no.15 of the plaint is a matter of record. The plaintiff be directed to prove the alleged facts by cogent evidence.

16. Para no.16 of the plant is wrong and denied.

17. Para no.17 of the plant is wrong and denied. The plaintiff is not entitled to any free hold residential plot as he had waived and relinquished his right as he had no deposited the 10 % earnest money with the application form.

18. Para no.18 of the plant is wrong and denied. The plaintiff has got no cause of action against the defendants.

19. That para no.19 of the plaint is legal needs no reply.

20. That para no.20 of the plaint is wrong and denied. The suit of the plaintiff is against law and facts, false and frivolous the same may kindly be dismissed with special costs."

(emphasis supplied)

13. Thus, what is discernible from the averments made in the written statement is that the plaintiffs failed to deposit 10 per cent of the earnest money along with an appropriate application addressed to the authority concerned in accordance with the Policy of 1992. In the absence of any application with deposit of 10 per cent earnest money the benefits of the Policy of 1992 could not have been extended. Such was the stance of the appellant herein as defendants before the trial court.

14. On the other hand, the case of the plaintiffs before the trial court was that it was not mandatory to deposit 10 per cent of the earnest money. However, the fact

remains that the suits came to be instituted almost after a period of fifteen years from the date of the Policy of 1992.

iii. Impugned Judgment of the High Court

15. The High Court in its impugned judgment took the view that the entire controversy could be said to be covered by the decision of this Court rendered in the case of Brij Mohan (supra) and the Full Bench decision of the Punjab and Haryana High Court in Jarnail Singh (supra). Saying so, the High Court though fit to dismiss all the Second Appeals thereby affirming the original decree passed by the trial court in favour of the plaintiffs (oustees) & some cases the judgment and order passed by the First Appellate Court allowing the appeals filed by the original plaintiffs.

16. However, what is important for us to take notice of something in the impugned judgment are the submissions canvassed by the learned Advocate General, State of Haryana. The High Court in its impugned judgment has recorded the submissions canvassed by the learned Advocate General as under:

"Mr. B.R. Mahajan, learned Advocate General, Haryana, assisted by Mr. Deepak Balyan, Advocate, in support of grounds of appeal has raised the multifold arguments which reads thus:

i) the pre-requisites of the policy dated 18.03.1992 had not been fulfilled by the plaintiff for allotment of a plot under the oustee policy as the court below has not gone into that question and without any reason ordered for allotment of plot to the plaintiff.

ii) the court below has filed to take into consideration the fact that the case of the plaintiff was not considered due to non-compliance of Rule 5 of Haryana Development (Disposal of Land and Buildings) Regulations 1978 (hereinafter referred to as 1978 Regulations) which deals with the procedure in case of sale or lease of land or building by allotment, in essence, the purchaser is required to make an application to the Estate Officer concerned and it should be accompanied by 10% of the price/premium in the form of a demand draft table to the Estate officer.

iii) The intended allottees under the oustee policy had not fulfilled the essential terms and conditions of the advertisement, brochure and 1978 Regulations. In the instant case, there was no advertisement against which the plaintiff had sought allotment of the plot."

(emphasis supplied)

17. Thus, the main plank of the submission canvassed on behalf of the State was that the oustees had failed to abide by the essential terms and conditions of the advertisement, brochure of the 1978 Regulations etc. In short, the argument before the High Court was that the oustees had failed to duly apply in a prescribed format with the Estate Officer in accordance with the Scheme with deposit of 10 per cent price/premium in the form of a demand draft payable to the Estate Officer.

18. In the aforesaid context, we may only observe that none of the submissions canvassed by the State have been dealt with by the High Court in its impugned judgment. When it was the specific case of the State that no applications in the prescribed format were preferred by the oustees with 10 per cent deposit of the requisite amount then it was expected of the High Court even while considering Second Appeal under Section 100 of the CPC to look into this aspect of the matter. Even the trial court does not seem to have considered this aspect of the matter including the First Appellate Court.

19. It was also brought to our notice by the learned counsel appearing for the respondents (oustees) that allotment letters were issued at the rate prescribed in accordance with the 1992 Policy subject to the outcome of the Special Leave Petitions and once such allotment letters are issued then there is no question in saying that the oustees had failed to apply in accordance with the terms and conditions of the scheme. In what circumstances such allotment letters were issued by the Estate Officer has been explained by the appellant in its written submissions. The same reads thus:

"16. It is submitted that after passing of the order by Ld. District Judge and Ld. Civil Judge, some of the respondents filed Execution Petition before the Executing court for the execution of the order passed by the Trial court.

17. It is submitted that the Ld. Civil Judge issued warrant of arrest of the Estate Officer of the Petitioner Authority. The said letter is reproduced hereunder for ready reference:

"To

Director General of Police

Panchkula (Haryana)

Whereas the Judgment Debtor Lajpat Rai S/o Shiv Dayal R/o Kaithal, Tehsil and Distt. Kaithal was adjudged by a decree of the Court in Suit No. RBT382/2007 on 11.11.2011 to order that the suits of plaintiffs are decreed with costs to the effect that the plaintiffs of CS -I and CII are held entitled for separate freehold residential plots measuring 250 sq. yards each and the plaintiffs or CS-I to CS-III

are liable to deposit the prices of the respective plots as were applicable at the time of floating of Sec 19, Urban Estate, Kaithal formalities for allotment of plots be completed by defendants within two months from the even date under initiation to plaintiffs in writing. But defendants fail to comply all the condition which were imposed on them, executing this process to bring the said defendant before the court with all convenient speed.

You are hereby directed to arrest the said Estate Officer HUDA and produce before me. Here fail not. If the Estate Officer HUDA fulfil the above said condition, he shall not be arrested. Youa re further commanded to return this warrant on or before the 31.05.2019 with an endorsement certifying the day on which and manner in which it has been executed or the reason why it has not been executed.

Given under my hand and the seal of the court, this 28.05.2019.

Amit Sharma

Civil Judge (Senior Div) Kaithal"

It is submitted that the application have not submitted in the prescribed format and even the earnest money was not paid but due to the order passed by the Civil Judge in regard to the arrest of the Estate Officer, the petitioner authority under compulsion issued allotment letter at the current rate subject to outcome of The special leave petitions pending before this Hon'ble Court. (A true copy of the one of such applications arrest warrant and allotment letter is annexed herewith marked as Annexure A-12 pg. 126-132.

18. It is submitted that similarly in some other cases also, where the application has not been submitted in the prescribed format, the earnest money has not been paid but since, the suit has been decreed therefore, the Execution petition filed and in Execution petition since the Ld. Civil judge issued the warrant of arrest, therefore the Petitioner Authority under compulsion issued allotment letter at the current price subject to outcome of the special leave petition."

iv. Filing of the Special Leave Petitions before this Court

20. What is now important for us to note is the order passed by a coordinate bench dated 08.05.2017 at the time of issuing notice. The order reads thus:

"Delay condoned. Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the Policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said Policy. Issue notice restricted to the question of correctness of the general

direction made by the High Court in granting allotments to all claimants who may not be similarly situated. In the meantime, there shall be stay of execution."

(emphasis supplied)

21. Thus, the appellant made itself explicitly clear before this Court that it would abide by the policy framed on 11.08.2016 and every eligible oustee would be accommodated according to the said policy. On such statement being made, this Court issued notice restricted to the question of correctness of the general directions issued by the High Court in its impugned judgment as regards granting allotments to all claimants who may not be similarly situated. This Court also stayed the execution of the decree.

22. The controversy before us as on date is in a limited compass, i.e., whether the respondents as oustees are entitled to the benefit of the scheme of 1992 or the scheme of 2016 as further modified in 2018 referred to above.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellants

23. Ms. Aishwarya Bhati, the learned A.S.G., appearing for the appellants vehemently submitted that only those oustees are entitled to seek allotment of a plot under the policy who had filed appropriate application in a prescribed format, seeking allotment of plot with the deposit of the requisite earnest money. As regards this submission of Ms. Bhati, the following has been highlighted in the written submissions filed by the appellant:

"(i) The Petitioner Authority issued advertisement inviting applications for allotment of plot under oustees quota in 1992 and 2000 whereas it has been mentioned in the preceding paras and as is evident from the documents placed on record that the application was to be submitted in the prescribed format alongwith the earnest money.

(ii) It is submitted that from the perusal of the brochure so issued in 1992 and in 2000, it is evident that the application form is to be purchased upon payment as the same is serial no. ed also. Not only this, even in the brochure itself, the letter is to be addressed to the Estate Officer for the submission of the

(ix) It is submitted that even in the procedure so prescribed by the Petitioner Authority in respect to allotment of plot under oustees quota, there is a condition of the inviting applications to be submitted in the prescribed format."

24. The second submission canvassed by Ms. Bhati is as regards the price of the plot under the policy. This argument has been elaborated in the following manner:

"(i) It is submitted that as far as price of plot so allotted under oustees quota is concerned, the Hon'ble High Court in the case of Rajiv Manchanda vs HUDA in question no. 8 and that in a case where the land was acquired in 1992 the oustees is liable to pay the price fixed in the advertisement by which the applications are invited and pursuant to which advertisement the plot is actually allotted to the oustees.

(ii) It is submitted as far as the present specially petitions are concerned the respondents as mentioned here in above failed to submit the application in the prescribed format and even failed to deposit the earnest money therefore in fact the application submitted if any cannot be set to be submission of application as per advertisement/policy

(iii) It is submitted that in the case of HUDA and ors. v. Sandeep and Ors. decided on 25.04.2012, the Hon'ble Court while deciding the issue in regard to the price to be charged under Question No. 8 held that the price that can be charged is the price prevailing at the time of allotment. The extract from the judgement reads as under:

"17. Where there is a scheme but it does not regulate the allotment price it may be possible for the court to direct the State Government/Development Authority to allot plots to land-losers at a reasonable cost, in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment its terms cannot be ignored. If any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot as the code to ignore the terms of an existing or prevailing scheme and demand allotment at cost price."

(iv) It is submitted that the judgment passed by this Hon'ble court in Brij Mohan vs. HUDFA 2011(2) SCC 29 is of no help to the oustees. Two questions arose for consideration in that case before this Hon'ble Court.

In respect of first question i.e. whether HUDA should charge only the actual land cost plus development charges for the plots allotted to an oustee and not the market price/normal allotment price; the court returned a finding that the Land Acquisition Act, 1894 contemplates only benefits like solatium, additional amount and higher rate of interest to the oustees and not allotment of plots at cost p rice. HUDA or the State Government does not have any scheme providing for allotment of plots at actual cost of oustees. Therefore, it is not possible for the

Court to direct the State Government or the Development Authority to allot plots to the oustees at a reasonable cost.

In respect of second question i.e. what is the meaning of the words 'normal allotment rate', the court found that as a matter of fact the land-loser has made an application in the year 1990 for allotment of plot. A direction was issued by the Court in the year 1992 but the HUDA delayed allotment to the appellants. Therefore, the rate for which plots were initially offered was ordered to be charged. The said Question has been answered keeping in view the facts of the aforesaid case, wherein application was submitted by an oustee but still plot was not allotted to him.

The said judgment does not lay down that the 'normal allotment rate' in all circumstances shall be the rate when the sector is first floated for sale. As a matter of fact, the norma allotment rate would be the rate advertised by the HUDA in pursuance of which applications are invited from the general public and the oustees, in pursuance of which the plots are allotted.

(v) It is submitted that even otherwise in the case of Brij Mohan the applications submitted by the applicants but in present case no application in the prescribe format with earnest money has been submitted therefore it cannot be said that the respondents submitted any application in view of this the case of Bridge Mohan is distribution from the facts and circumstances of the present case.

(vi) It is submitted that admittedly none of the respondent have deposited the earnest money as per the advertisement of 1992 and/or 2004 cannot claim the price as per 1992.

(vii) it is submitted that in view the above and as per the policy in existence the respondents cannot claim the price of 1992.

(viii) It is submitted that the Hon'ble court in the case of Rajiv Manchanda v. HUDA while passing the judgment dated 22.11.2017 in Civil writ petition no. 22252 of 2016 while answering the question no. 8 in regard to fixation of price in para 57 held that an oustee including 1 whose land was acquired prior to 1987 is liable to pay the price fixed in the advertisement by which the applications are invited from the oustee and pursuant to which advertisement of the plot is actually allotted to the oustee.

(ix) It is submitted that since, no application in the prescribed format has been submitted by any of the respondents and even otherwise the earnest money has not been paid therefore, the respondents cannot ask for any price of 1992 especially when the no application has been submitted or if any application has been submitted, the same is not in the prescribed format with the earnest money which was the precondition for entitlement of allotment of plot.

(x) It is submitted that when the respondents have not submitted the applications in the prescribed format that too without the earnest money therefore, the respondents are not entitled for any relief and it will amount to wind full gain if the respondent to have been fully compensated in accordance with statutory scheme for the land acquired for public purpose by the state if despite have not paid a single penny if they are giving their plot as per the 1992 rates.

(xi) It is submitted that as it has been mentioned hereinabove the petitioner authority has already issued public notice inviting the applications from the oustees and the application is to be submitted online with Rs.50,000.00. It is submitted that any of the respondent can submit the application if so desired to avail the benefit of oustees policy dated 11.08.2016."

25. The third submission of Ms. Bhati is that the respondents could not have instituted a civil suit after a period of almost 14 to 20 years of passing of the final award. She would submit that the suits filed by the individual respondents under Section 39 of the Specific Relief Act, 1963 were not maintainable, more particularly, when none of the respondents had applied for the plot in a prescribed format with deposit of earnest money. This argument has been further elaborated as under:

"(i) It is submitted that admittedly the acquisition proceedings concluded in 1992 upon passing of the award and the State Government issued and advertisement inviting the application for allotment of plot under the oustees quota in 1992 itself but the respondents instituted Civil suit after 14- 20 years which is barred by Article 113 of the Limitation Act where the limitation of 3 years for the institution of the suit has been provided

(ii) It is submitted that the respondents field to comply with the terms and conditions as a numerated in the advertisement issued from time to time inviting the applications for allotment of plot under out these Kota their food the suit instituted under section 39 of Specific Relief Act for mandatory injunction not maintainable and the Ld. Civil Court dismissed one civil suits on the ground of maintainability and limitation.

(iii) It is further submitted that even the Appellate court in some of the cases dismissed the appeals affirmming the order pass by the Civil judged dismissing the Civil suit.

(iv) It is submitted that there is bar under section 50(2) of Haryana Development Authority Act, 1977 to the jurisdiction of the Civil Court to entertain any suit or proceeding in any matter

(v) It is submitted that the Hon'ble High Court in Regular Second Appeal being RSA No. 3833 of 2010 titled as HUDA vs. Kashmiri Lal vide its judgment dated

06.08.2012 arrived at the conlusion that the suit is barred by limitaion because the plaintiff applied for the allotment of plot in the year 1992 and the suit was filed after 15 years.

(vi) It is submitted that the Special leave petitoins preferred against he said order dated 06.08.2012 being SLP C NO. 8766-8767 of 2013 titled as Kashmiri lal vs. EO HUDA dismissed by this Hon'ble court vide order dated 15.07.2016.0

(vii) It is submitted that suit for mandatory injunction under Section 39 was not maintainable as there was no breach of an obligation. Ld. Civil judge ought not to have directed to allot a plot especially when the terms and conditions in regard to submission of application in the prescribed format with earnest money has not been complied with and further there is a bar of jurisdiction in the Act itself.

(viii) It is submitted that this Hon'ble court in the caose State of Kerala vs. UOI 2024 (7) SCC 183, has discucsed about section 39 of the Specific Relief Act and held that there should be test in regard to (i) Prima facie case (ii) balance of convenience (iii) irreparable injury. In the present case, although there was no prima facie case, yet the Ld. Civil Judge erroneously decreed the Civil Suit in some of the cases, whereas in other similar cases the Civil Suit so instituted were dismissed."

26. The fourth submission of Ms. Bhati is as regards the status of a cosharer in respect to allotment of plot under the scheme. This submission has been elaborated in the following manner:

"(i) It is submitted that in regard to the allotment of plot under oustees quota to the co-sharer it is submitted that initially in the policy dated 18.03.1992 wherein clause (iii) of the said policy it is mentioned that in case there are no. of co-sharer of the land which has been acquired and if the acquired land measures more than 1 acre than for the purpose of granting benefit under this policy the determining factor would be the area of co-sharer respectively as per his/her shareholding and in case the acquired land of the co-sharer less than only one plot of 200 sq. yards in the joint name of co-sharers.

(ii) It is submitted that subsequently the said policy dated 18.03.92 was amended and the same was modified to the effect that "benefit under oustees policy shall be restricted to 1 plot according to the holding irrespective of co-sharers".

(iii) It is submitted that in the policy dated 18.03.1992 in regard to offering of the plot to the land owners it was mentioned that:

(a) Less than 500 sq. yards would be offered a plot of 50 sq. yards.

(b) Between 500 sq. yds. And one acre would be offered a plot of 250 sq. yds.

(c) From 1 acre and above would be offered a plot of 500 sq. yds. Where 500. Where 500 or where 500 sq. yds. Plots are not provided in the layout plan, two plots of 250 sq. yds. Each may be given.

(iv) It is submitted that in the policy dated 11.08.2016 in clause 8 about the eligibility of co-sharer it is mentioned that the eligibility of each co-sharer for allotment of plot under oustees quota shall be determined on the basis of individual holding i.e. each co-sharers will be entitlement to seeking allotment of plot on the basis of his owned individual holding.

Further in Clause 13 of the said policy in regard to the eligibility of co-sharer who has given no objection certificate in his co-sharer it has been mentioned that a co-sharer in the land will not be eligible to claim allotment of plot if had given a no objection certificate in favour of the co-sharer and on account of submission of such no objection certificate a plot was allotted such co-sharer in prevailing flotation of plot for the oustees. It has also been made in case of any previous occasion a plot under the oustees policy has been allotted in that a co-sharer will not be entitled for allotment of plot under oustees quota."

27. In the last, Ms. Bhati invited our attention to few relevant provisions of law. The same read thus:

"(i) The Specific Relief Act, 1963

"Section 39. Mandatory injunction - When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

(ii) Limitation Act

Article 113	Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues

Section 3: Bar of limitation - (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has been set up as a defence.

(2) For the purposes of this Act-

(a) A suit is instituted:

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wind up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted:

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

(iii) HUDA Act and Rules.

"Section 50 of HUDA Act, 1977.

(i) Save as of otherwise expressly provided in the Act, every order passed or direction issued by the State government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or legal proceeding.

(ii) No Civil Court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter the cognizance of which can be taken and disposed of by the authority empowered by this Act or the rules or regulations made thereunder.

Regulation 5 of Haryana Urban Development (disposal of Land and Buildings) Regulations 1978, which lays:

"5. Procedure in case of sale or lease of land or building by allotment:

(i) In the case of sale or lease of residential and industrial land or building by allotment the intending purchaser shall make an application to the State Officer concerned in the prescribed form (annexed to these regulations) as given in Forms A and B respectively.

(ii) No application under sub-regulation (1) shall be valid unless it is accompanied by such amount may be determined by the Authority, which shall not be less than ten per cent of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated at the

local place of the Estate Officer concerned or any other such place as the Estate Officer may specify"

(iii) xxxx"

28. In such circumstances referred to above, Ms. Bhati very fairly submitted that although the suits were liable to be dismissed yet the appellant is ready and willing to allot the plots to the respondents if eligible otherwise, in accordance with the scheme of 2016.

29. She would submit that the appellant has already issued a public notice inviting appropriate applications from the oustees and such applications are to be submitted online with payment of Rs. 50,000/- towards earnest money.

30. What we have been able to gather from the aforesaid is that allotment letters were issued to the oustees but at the revised rate of Rs. 1122 per sq. yd. in accordance with the 2016 policy.

31. In such circumstances referred to above, Ms. Bhati submitted that this Court may pass an appropriate order, directing the appellant to consider the applications that may be filed online in accordance with the policy of 2016.

ii. Submissions on behalf of the Respondents

32. Dr. Surender Singh Hooda, the learned senior counsel appearing for the respondents in SLP No. 4787 of 2018 vehemently submitted that this Court may not interfere or rather disturb the concurrent findings recorded by three courts below. So far as the entitlement of the oustees to claim plots in accordance with the scheme of 1992 is concerned, the entire controversy is squarely covered by a decision of this Court in the case of Brij Mohan and Others v. Haryana Urban Development Authority reported in (2011) 2 SCC 29.

33. He further submitted that the issue as regards restricting the allotment of one plot to the oustees who have a joint holding came to be concluded by a Full Bench of the High Court of Punjab and Haryana in the case of Jarnail Singh & Ors. vs. State of Punjab reported in (2010) 10 P&H CK 0212.

34. Dr. Hooda submitted that so far as his matter is concerned, the same is distinguishable on facts with the other connected matters. He pointed out that his client had submitted an application with the appellant authority for allotment of plot under 1992 scheme. Even a draw was held where the application of his client's father was cleared successfully and a plot in Sector 20 was earmarked.

35. He further pointed out that the suit filed by his client came to be decreed. The decree came to be affirmed right up to the High Court. The principal argument of

Dr. Hooda is that if the policy of 2016 is applied it would impose a substantial financial burden on the oustees.

36. Relying on the decision of this Court rendered in Brij Mohan (supra) referred to above, he would submit that the oustees are entitled to allotment of plots in accordance with the policy that was floated and advertised at the time of the land acquisition proceedings i.e. 1992 and not as per any subsequent revised policy.

37. Mr. Rajiv Raheja, the learned counsel appearing for the respondents in SLP No. 20614 of 2017 and connected matters 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 judgment and order. His principal argument is that the policy of 2016 cannot be applied with retrospective effect.

38. Mr. Sidharth Mittal, learned counsel appearing for the respondents in SLP No. 20640 of 2017 would submit that so far as the price of allotment of plots is concerned, the same has been settled by this Court in Brij Mohan (supra).

39. The sum and substance of the submissions canvassed on behalf of the respondents is that they are ready and willing to deposit the requisite amount for the purpose of allotment of plots in accordance with the policy of 1992. In short, their case is that they are ready and willing to deposit the amount of Rs. 863 per sq. yd. but the demand of the revised rate of Rs. 1122 per sq. yd. is not tenable in law.

40. In such circumstances referred to above, learned counsel appearing for the respondents prayed that there being no merit in these appeals those may be dismissed and the impugned judgment and order passed by the High Court may be affirmed.

C. ANALYSIS

41. 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 respondents herein are entitled to claim plots as oustees at the rate prescribed by the 1992 policy or at the rate prescribed by the revised policy of 2016?

42. Before adverting to the rival submissions canvassed on either side, we must look into the two judgments; one of this Cout in Brij Mohan (supra) and the other of the Full Bench of the Punjab and Haryana High Court in the case of Jarnail Singh (supra).

43. In Brij Mohan (supra), this Court dealt with the following two questions:

(i) Whether HUDA should charge only the actual land cost plus development charges for the plots allotted to oustees/land-losers, and not the market price/normal allotment price?

(ii) What meaning should be ascribed to the words 'normal allotment rate' used in the scheme for allotment to oustees?

44. In Brij Mohan (supra), this Court elaborately interpreted the policy dated 18.03.1992 and answered the aforesaid two questions as such:

"10. No doubt, the contention that allotment of plots to land losers should be at actual cost (acquisition cost of land plus development cost), appears to be reasonable and attractive. That should be the ultimate goal in a changing scenario favouring acquisitions which are land loser- friendly. The arguments of the appellants do certainly make out a case for such a scheme to create a better settlement and rehabilitation policy in regard to land acquisitions. If there was any statutory provision in the Land Acquisition Act, 1894 ('Act' for short) or other scheme, providing for allotment at cost price, a land loser could certainly claim allotment in terms of the scheme.

But the Statute contemplates only benefits like solatium, additional amount and higher rate of interest to the land losers and not allotment of plots at cost price. Nor does the State Government or HUDA have any scheme providing for allotment of plots at actual cost to land losers. We are informed that State of Haryana is now proposing to introduce a more attractive and land-loser friendly rehabilitation and resettlement policy, which contemplates allotment of bigger residential/commercial/industrial plots to land losers and oustees. But that is for the future.

11. Where there is a scheme but it does not regulate the allotment price, it may be possible for the court to direct the State Government/Development Authority to allot plots to land losers at a reasonable cost, and in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment, its terms cannot be ignored. If any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot ask the court to ignore the terms of an existing or prevailing scheme and demand allotment at cost price.

The scheme of HUDA contemplates allotment of plots only in terms of the scheme, that is at normal allotment rates. This benefit is extended in addition to the benefits under sections 23(1A), 23(2) and 28 of the Act, and therefore the scheme provides for allotment at normal allotment rate. Necessarily, the allotment and the price to be charged, will have to be strictly in accordance with

such HUDA Scheme. In this case the HUDA scheme requires the land loser-allottee to pay the normal allotment rates for the plots to be allotted to them under the scheme.

Therefore, a land loser cannot claim allotment of a plot at acquisition cost of land plus development cost or at any other lesser price. The decision in Hansraj H. Jain was a case where the scheme did not provide for any allotment price, and the price demanded was Rs.13,200/- per sq.m. as against the compensation of Rs.4 per sq.m. which in effect was 3300 times the acquisition price. It was on those peculiar facts and circumstances, this court thought it fit to direct the respondents therein to adopt the acquisition cost plus development cost as the allotment price. That principle will not apply where there is a specific scheme which provides the rate of allotment.

Re : Question (ii)

11. As noticed above, the scheme requires the allottees under the scheme for land-losers/oustees, to pay the normal allotment rates for the allotted plots. The question is what is the meaning of the term 'the normal allotment rate'. No doubt, the term would ordinarily refer to the allotment rate prevailing at the time of allotment. If an acquisition is made in 1985 and the developed layout in the acquired lands is ready for allotment of plots in 1990, and allotments are made in the years 1990, 1991, 1992, 1993, 1994 and 1995 at annually increasing rates, a land-loser who is allotted a plot in 1990 will naturally be charged a lesser price.

But if his application is kept pending by the Development Authority for whatsoever reason and if the allotment is made in 1992, he may have to pay a higher price; and if the allotment is made in 1995 he may have to pay a much higher price. The question is whether any discrimination should be permitted depending upon the whims, fancies and delays on the part of the authority in making allotments. To take this case itself, the application for allotment was made in 1990.

On 9.9.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the allotment rate was shown as Rs.1032 per sq.m. (Rs.863/- per sq.yd) for plots of 300 sq. m. In the year 1993, the allotment price was increased to Rs.1342/- per sq.m. (Rs.1122/- per sq.yd.) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready for allotment. Should the land loser who promptly made the application in 1990 be made to suffer, because of the inaction on the part of HUDA in making the allotment? We get the answer in the HUDA scheme itself."

45. In Jarnail Singh (supra), the Full Bench of the Punjab and Haryana High Court held that every co-sharer is entitled to a plot as per his entitlement, although his land is joint with others. The Full Bench held that every co-sharer has an independent right to allotment to plot under the oustee quota. It is the share of the co-sharers which is acquired, and the compensation is paid independently to all co-sharers and the entire compensation is not paid to one co-sharer on behalf of all. In such circumstances, a co-sharer is entitled to separate plot as per his share, if eligible, in accordance with law. In Jarnail Singh (supra), the Full Bench struck down Clause 6(V) of the Policy dated 26.09.1994 and held that it had no reasonable nexus with the object to be achieved, as the basic purpose of the policy of HUDA is to rehabilitate the oustees.

46. The Writ Petitions ultimately came to be disposed of with the following orders and directions:

"1. The oustees, whose land is compulsorily acquired for a public purpose, form a class in itself, having a rational basis with the object of re-settlement;

2. Clause 6(v) of the Policy dated 26.9.1994 is struck down as it has no reasonable nexus with the objective to be achieved;

3. A co-owner, as per the eligibility criteria fixed by the State Government, shall be entitled to be considered for allotment of plot irrespective of the fact that his holding of land is joint with other co-owner;

4. However, the oustees, as a class in themselves, would be entitled to reservation of plots to such an extent as the State Government may deem appropriate;

5. That the State Government shall be at liberty to reframe policy for reservation of plots to constitutionally permissible classes and within limit of 50% of plots; and

6. That till such time an appropriate policy is framed, the State Government or its instrumentalities shall not allot plots under the oustees quota."

i. Dictum as laid by this Court in Brij Mohan (Supra) and the Ratio Decidendi.

47. This Court has rendered plethora of decisions explaining how to cull out the ratio decidendi of a judgment and identify the principles which have precedential value. It is now well settled that not every observation in a judgment of this Court is binding as precedent. Only the ratio decidendi or the propositions of law that were necessary to decide on the issues between the parties are binding. Observations by the judge, even determinative statements of law, which are not part of her reasoning on a question or issue before the court, are termed obiter

dicta. Such observations do not bind the Court. More simply, a case is only an authority for what it actually decides.

48. A Constitution Bench of this Court in Islamic Academy of Education v. State of Karnataka reported in 2003 INSC 391 pithily observed:

"2. The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

(emphasis supplied)

49. In Secunderabad Club v. CIT reported in 2023 INSC 736 this Court, had the occasion to delineate how to cull out the ratio decidendi of a judgment and identify the principles which have precedential value. This Court observed:

"14. According to the well-settled theory of precedents, every decision contains three basic ingredients:

(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi."

(emphasis supplied)

50. Further, a simple test that has been invoked by this Court to determine whether a particular proposition of law is to be treated as the ratio decidendi of a

case is the "inversion test" formulated by Professor Eugene Wambaugh. The test mandates that to determine whether a particular proposition of law is part of the ratio decidendi of the case, the proposition is to be inversed. This means that either that proposition is hypothetically removed from the judgment, or it is assumed that the proposition was decided in reverse. After such removal or reversal, if the decision of the Court on that issue before it would remain the same then the observations cannot be regarded as the ratio decidendi of the case.

51. In State of Gujarat v. Utility Users' Welfare Assn. reported in (2018) 6 SCC 21, the test was explained thus:

"113. In order to determine this aspect, one of the well-established tests is "the Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called The Study of Cases [Eugene Wambaugh, The Study of Cases (Boston: Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the "Wambaugh Test" or "the Inversion Test" as the means of judicial interpretation. "the Inversion Test" is used to identify the ratio decidendi in any judgment. The central idea, in the words of Professor Wambaugh, is as under:

"In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also. [Eugene Wambaugh, The Study of Cases (Boston: Little, Brown & Co., 1892) at p. 17.] "

114. In order to test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi is what is absolutely necessary for the decision of the case. "In order that an opinion may have the weight of a precedent", according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.], "it must be an opinion, the formation of which, is necessary for the decision of a particular case".

(emphasis supplied)

52. The test was affirmed by a three-Judge Bench of this Court in Nevada Properties (P) Ltd. v. State of Maharashtra reported in (2019) 20 SCC 119 wherein it was held thus:

"13. It follows from the aforesaid discussion that the decision in Tapas D. Neogy [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] did not go into and decide the issue: whether immovable property would fall under the expression "any property" under Section 102 of the Code. We say so by applying the inversion test as referred to in State of Gujarat v. Utility Users' Welfare Assn. [State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21], which states that the Court must first carefully frame the supposed proposition of law and then insert in the proposition a word reversing its meaning to get the answer whether or not a decision is a precedent for that proposition.

If the answer is in the affirmative, the case is not a precedent for that proposition. If the answer is in the negative, the case is a precedent for the original proposition and possibly for other propositions also. This is one of the tests applied to decide what can be regarded and treated as ratio decidendi of a decision. Reference in this regard can also be made to the decisions of this Court in U.P. SEB v. Pooran Chandra Pandey [U.P. SEB v. Pooran Chandra Pandey, (2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736], CIT v. Sun Engg. Works (P) Ltd. [CIT v. Sun Engg. Works (P) Ltd., (1992) 4 SCC 363] and other cases which hold that a decision is only an authority for what it actually decides.

What is of the essence in a decision is its ratio. Not every observation found therein nor what logically flows from those observations is the ratio decidendi. Judgment in question has to be read as a whole and the observations have to be considered in light of the instances which were before the Court. This is the way to ascertain the true principles laid down by a decision. Ratio decidendi cannot be decided by picking out words or sentences averse to the context under question from the judgment."

(emphasis supplied)

a. Wambaugh's Test / Inversion Test

53. The Inversion Test propounded by Wambaugh is based on the assumption that the ratio decidendi is a general rule without which a case must have been decided otherwise. Inversion Test is in the form of a dialogue between him and his student. He gave following instructions for this:

1. Frame carefully the supposed proposition of law.

2. Insert in the proposition a word reversing its meaning.

3. Inquire whether, if the court had conceived this new proposition to be good and had had it in mind, the decision could have been the same.

4. If the answer is affirmative, then, however, good the Original Proposition may be, the case is not a precedent for that proposition.

5. But if the answer be negative, the case is a precedent for the Original Proposition and possibly for other propositions also.

54. Thus, when a case turns only on one point the proposition or doctrine of the case, the reason for the decision, the ratio decidendi, must be a general rule without which the case must have been decided otherwise. A proposition of law which is not ratio decidendi under the above test must, according to Wambaugh, constitute a mere dictum.

55. However, Rupert Cross criticized the Inversion Test on the ground that "the exhortation to frame carefully the supposed proposition of law and the restriction of the test to cases turning on only one point rob it of most of its value as a means of determining what was the ratio decidendi of a case, although it has its uses as a means of ascertaining what was not ratio".

56. Thus, the merit of Wambaugh's test is that it provides what may be an infallible means of ascertaining what is not ratio decidendi. It accords with the generally accepted view that a ruling can only be treated as ratio if it supports the ultimate order of the court.

b. Halsbury's Test

57. The concept of precedent has attained important role in administration of justice in the modern times. The case before the Court should be decided in accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent.

58. Lord Halsbury explained the word "ratio decidendi" as "it may be laid down as a general rule that that part alone of a decision by a Court of Law is binding upon Courts of coordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi".

59. In the famous case of Quinn v. Leathem, Lord Halsbury said that:

"Now, before discussing the case of Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one

is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

60. Thus, according to Lord Halsbury, it is by the choice of material facts that the Court create law.

c. Goodhart's Test

61. In 1929, Goodhart had argued that the ratio of a case must be found in the reasons for the decision and that there is no necessary connection between the ratio and the reasons. He laid down following guidelines for discovering the ratio decidendi of a case:

1. Ratio decidendi must not be sought in the reasons on which the judge has based his decision.

2. The reasons given by the judge in his opinion are of peculiar importance, for they may furnish us with a guide for determining which facts he considered material and which immaterial.

3. A decision for which no reasons are given does not necessarily lack a ratio; furthermore, the reasons offered by a court in reaching a decision might be considered inadequate or incorrect, yet the court's ruling might be endorsed in later cases - a 'bad reason may often make good law'.

4. Thus, ratio decidendi is whatever facts the judge has determined to be the material facts of the case, plus the judge's decision as based on those facts. It is by his choice of the material facts that the judge creates law.

62. If we accept Goodhart's conception of ratio decidendi, we could explain why hypothetical instances are unlikely to be accorded the same weight as judicial precedents as hypothetical instances are by definition obiter dicta. Also, this conception of ratio decidendi links the doctrine of precedent with the principle that like cases be treated alike. Any court which considers itself bound by precedent would come to the same conclusion as was reached in a prior case

unless there is in the case some further fact which it is prepared to treat as material, or unless fact considered material in the previous case is absent.

63. Applying the three tests referred to above, so as to understand the ratio of the decision of the Court rendered in Brij Mohan (supra) and its binding effect we have no hesitation in taking the view that the case on hand is not covered by the dictum as laid in Brij Mohan (supra). We find it difficult to accept the vociferous submission canvased on behalf of the respondents that so far as the rate at which the allotment is to be made is squarely covered by the dictum as laid in Brij Mohan (supra).

64. Ms. Bhati the learned ASG is right in her submission that so far as the first question answered by this Court in Brij Mohan (supra) is concerned i.e. whether HUDA should charge only the actual land cost plus development charges for the plots allotted to an oustee and not at the market price/normal allotment price; this Court returned a finding that the land acquisition Act, 1894 contemplates only benefits like solatium, additional amount and higher rate of interest to the oustees and not allotment of plots at cost price. HUDA or the State Government does not have any scheme providing for allotment of plots at actual cost of oustees. In such circumstances, it is not permissible for the Court to direct the State Government or the development authority to allot plots to the oustees at the reasonable price.

65. In so far as the second question answered by this Court in Brij Mohan (supra) is concerned i.e. what is the meaning of the expression "normal allotment rate", this Court found that as a matter of fact the land-loser had made an application in the year 1990 for allotment of plot. A direction was issued by this Court in the year 1992 but HUDA delayed the allotment to the appellants therein. In such circumstances, the rate for which the plots were initially offered was to be charged.

66. The second question answered in Brij Mohan (supra) is keeping in mind the facts of the case wherein the application was submitted by an oustee but still the plot was not allotted to him.

67. Ms. Bhati is right in her submission that the dictum as laid in Brij Mohan (supra) should not be read as laying down an absolute proposition of law that the "normal allotment rate" in all circumstances shall be paid when the sector is first floated for sale. As a matter of fact, the normal allotment rate would be the rate advertised by HUDA in pursuance of which the plots are allotted. In the case on hand the picture is hazy in so far as the fact whether appropriate applications in the prescribed format were preferred in accordance with the Policy of 1992 with deposit of the earnest money as stipulated in the scheme itself.

68. However, with all that has been said by us as aforesaid we are still inclined to direct the appellant to allot the plots to the eligible oustees in accordance with the Policy of 2016. It shall be open for the eligible oustees i.e., the respondent herein to apply online in accordance with the Policy of 2016 with the requisite deposit of the amount. If such application is filed online with the deposit of the requisite amount, the appellant shall consider the same and process the online application accordingly.

ii. Maintainability of the Suit filed under Section 39 of the Specific Relief Act, 1963 for seeking Mandatory Injunction for Enforcement of the Obligations in terms of the Scheme of 1992.

69. Although it is not necessary for us to look into Section 39 of the Specific Relief Act, 1963 (for short, the Act, 1963) or consider whether the suits instituted by the respondents herein invoking Section 39 of the Act were maintainable in law, yet for the benefit of the courts below we would like to explain the scope and purport of Section 39 of the Act, 1963. We say so because irrespective of the question whether suits were maintainable in law or not we have decided to give the respondents herein the benefit of the 2016 Scheme.

70. Section 39 of the Act 1963 reads thus:

"39. Mandatory injunctions.- When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

71. The term "obligation" in Section 39 referred to above has been defined under Section 2(a) of the Act 1963. The same reads thus:-

"obligation" includes every duty enforceable by law;"

72. Obligation is a tie or bond which obliges one to do or suffer something. The term as defined in the Act 1963, means any duty enforceable by law and, therefore, excludes all imperfect obligations, such as moral, social and religious duties, as the performance of those duties cannot be enforced by law. As the present definition includes any duty enforceable by law, it includes:-

(a) Obligations arising out of law of torts as well as of contract.

(b) Obligations arising out of trust.

(c) Obligations arising out of a statute.

73. In the case on hand, the suits were instituted by the respondents herein for mandatory injunction seeking allotment of plots in accordance with the scheme of 1992 floated by the State of Haryana.

74. This Section requires that the defendant or the party concerned must be prevented from breach of an obligation under the contract. It further requires that certain special acts, which flow from such obligation, must be specifically proved. The acts must have reference to an enforceable obligation. The breach of obligation and performance and compulsion to perform certain acts in relation to such obligation must be specifically established before a mandatory injunction can be granted. The plaintiff in a suit instituted by him under Section 39 of the Act 1963 is obliged to satisfy the court with appropriate pleadings and cogent evidence that the defendant is committing breach of a particular obligation which is binding on him and there are certain acts which are capable of being enforced by the court in view of the terms of the policy of allotment of plot so far as the case on hand is concerned.

75. Mandatory injunction by its nature embodied under Section 39 of the 1963 Act is discretionary. The granting of mandatory injunction is a matter of judicial discretion of the court and it can be granted only in a case which falls strictly within the four corners of the provision - Section 39 of the Act 1963. The two elements which govern Section 39 of the Act 1963 for the grant of mandatory injunction are (i) the necessity to prevent breach of an obligation by the intervention of the court and (ii) that such acts should be of that nature capable of enforcement by the court.

Yet another ingredient is also available which is crucial in the matter of grant of mandatory injunction that it should be 'amenable for exercise of judicial discretion'. A relief which is not amenable for exercising judicial discretion of the Court cannot be granted by way of a mandatory injunction. It should satisfy not only breach of an obligation and the necessity of its prevention, but also the availability of judicial discretion to be exercised. A mere breach of an obligation or necessity to prevent the same alone cannot be brought under the purview of mandatory injunction unless the same is amenable for exercising discretion by the Court. a. Conditions for granting a Mandatory Injunction.

76. The Conditions for granting a mandatory injunction as developed over time by a catena of decisions of this Court may be summarized as under:

i) Obligation: There must be a clear obligation on the part of the defendant.

ii) Breach: A breach of that obligation must have occurred or be reasonably apprehended

iii) Necessity: It must be necessary to compel the performance of specific acts to prevent or rectify the breach.

iv) Enforceability: The court must be able to enforce the performance of those acts.

v) Balance of Convenience: The balance of convenience must be in favour of the party seeking the injunction.

vi) Irreparable Injury: The injury or damage caused by the breach must be irreparable or not adequately compensable in monetary terms.

77. Specific relief may, in brief be explained as relief in specie. It is the remedy which aims at the exact fulfilment of the obligation. The term 'obligation' as used in the Specific Relief Act in its wider juristic sense covers duties arising either ex-construction or ex-delicto. Every duty enforceable at law is obligation. The definition clause of the Act of 1963 does not allow narrow interpretation of the word 'obligation' to restrict it to a contractual duty alone. The definition of the word 'obligation' as used in the Act of 1963 is wide enough and the definition cannot be equated with the definition of the word 'obligation' used in the English Law.

'Obligation' may be said to be a bond or tie, which constrains a person to do or suffer something, it implies a right in another person to which it is co-related, and it restricts the freedom of the obligee with reference to definite acts and forbearance; but in order that it may be enforced by a Court, it must be a legal obligation. The definition of 'obligation' in Section 2 of the Specific Relief Act is so wide that any breach of legal obligation may give a cause to the affected party. The definition of the word 'obligation' in Section 2 of the Act of 1963 should be interpreted in a way which may serve the cause of the society.

78. Before we talk about the legal rights of the oustees and the legal obligations on the part of the authorities, so far as the enforcement of the scheme for allotment of plots is concerned, we must look into some law on this subject:

i. The question of allotment of the plots to the oustees, came up for consideration before this Court in State of U.P. Vs. Smt. Pista Devi & Ors. reported in AIR 1986 SC 2025, wherein the Court was called upon to consider the acquisition of land by Meerut Development Authority. The Court directed that where large tracts of land for the purposes of land development in urban areas is acquired, the developing authority should provide a house or shop site of reasonable size on reasonable terms to each of the expropriated persons, who have no houses or shops/buildings in the urban area in question. The said direction was issued in view of the provisions of Section 21(2) of the Delhi Development Act, 1957,

which contemplates settlement of those land-owners, whose land has been acquired.

ii. In State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. reported in (2011) 7 SCC 639, this Court negated the argument that in case of land acquisition, the plea of deprivation of right to livelihood under Article 21 is sustainable. It was held to the following effect:

"26. It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.

27. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands.

"10. A blinkered Vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws. lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens." (Mahanadi Coalfields Ltd. Vs. Mathias Oram (2010) 11SCC 269)

For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide State. of UP. v. Pista Devi AIR 1986 SC 2025, Narpat Singh v. Jaipur Development Authority AIR 2002 SC 2036, Land Acquisition Officer v. Mahaboob (2009) 14 SCC 54, Mahanadi Coalfields Ltd. v. Mathias Dram (2010) 11see 269 and. Brij Mohan v. HUDA (2011)2 see 29.) The fundamental right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in [the] social system".

28. However, in case of land acquisition, "the plea of deprivation of right to livelihood under Article 21 is unsustainable". (Vide Chameli Singh v. State of U'P. (1996) 2 sec 549 and Samatha v. Slate of A.P. (1997) 8 SCC191). This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide Lachhman Dassv, Jagat Ram (2007) 10 see 448 and Amarjit Singh v. State of Punjab (2010) 10 see 43). However, in Jilubhai Nanbhai Khachar v. State of Gujarat 1995 Supp. (1) scc 596, this Court held: (SCC pp. 620 & 632, paras 30 & 58)

"30. Thus it is clear that right to property under Article 300- A is not a basic feature or structure of the Constitution. It is only a constitutional right.

58. The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles."

(Emphasis supplied)

iii. This Court in Narmada Bachao Andolan Vs. Union of India reported in (2000) 10 SCC 664 held as under: (SCC pp. 702-03, para 62)

"62. The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress."

(Emphasis supplied)

iv. In State of Kerala v. Peoples Union for Civil Liberties reported in (2009) 8 SCC 46, this Court held as under: (SCC p. 95, paras 102-03)

"102. Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question? 103. If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore,' a distinction must be borne between a right of rehabilitation, required to be provided when the land of the members of the Scheduled Tribes are acquired vis-a-vis a prohibition imposed upon the State from doing so at all."

(emphasis supplied)

79. In the Narmada Bachao Andolan (supra), under the head 'land for land', this Court observed that Constitution requires removal of economic inequalities and provides for provision of facilities and opportunities for a decent standard of living and protection of economic interests of the weaker segments of the society. Every human has a right to improve his standard of living. The Court concluded that allotment of land in lieu of land acquired in view of the Rehabilitation & Resettlement Policy (for short 'R&R 'Policy'), the State Authorities are under obligation to allot land to the allottees as far as possible. The expression 'as far as possible' has been explained in para 38, which reads as under:

"38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretiori/decision unless it is found to be palpably arbitrary. (Vide Iridium India Telecom Ltd. v. Motorola Inc. (2005) 2 see 145 and High Court of Judicature for Rajasthan v. Veena Verma (2009) 14 SCC 734). Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case."

80. The Court further held that the Government has the power and competence to change the policy on the basis of ground realities and that State Government is competent to frame policy and a public policy can be challenged, where it offends some constitutional or statutory provisions. It observed as under:

"35. In State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117, this Court while examining the State policy fixing the rates for reimbursement of medical expenses to government servants held: (SCC pp. 129-30, paras 25-26 & 29)

"25. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. [t is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court "would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

26. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.

29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."

36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Şingh Vijay Pal Singh v. State of U.P. (2007) 6 SCC 44, Villianur 1yarkkai Padukappu Maiyam v. Union of India (2009) 7 sec 561 and State of Kerala v. Peoples Union for Civil Liberties (2009) 8 see 46.)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

(emphasis supplied)

81. This Court in Narmada Bachao Andolan (supra) has held that it is impermissible in law to read a part of the document in isolation. The document is to be read as a whole. (see para 44). In Jage Ram & others v. Union of India & others reported in 1995 Supp (4) SCC 615, this Court considered the earlier judgment in Pista Devi's case and held that since the acquisition is only for defence purposes, the allotment of alternative 'site would create innumerable complications and that allotment of alternative sites 'depends upon the purpose of acquisition as well. It was held to the following effect:

"1. The only question raised in these two writ petitions is whether an observation is to be made by this Court to the effect that the petitioners would be entitled to allotment of alternative sites by the Delhi Development Authority; It is true that the lands of the petitioners were acquired for a defence purpose, viz., establishment of Radar. They were duly paid the compensation demanded of. One of the reliefs sought in the writ petitions is that since they have been displaced from their holdings, they need some site for construction of their houses and that, therefore the Government of India may make an effort to provide them alternative Sites. We are aware of the decision rendered by this Court in State of UP, vs. Pista Devi AIR 1986 SC 2025 (See at p. 260).

But it depends upon the acquisition for which it was made. In that case, acquisition related to planned development of housing scheme by Meerut Development Authority. Therefore, though no scheme was made providing alternative sites to those displaced persons whose lands were acquired and who themselves needed housing accommodations, a direction was given to the Meerut Development Authority to provide alternative sites for their housing purpose. Since the acquisition is only for defence purpose and if the request is acceded to, it would create innumerable complications, we are constrained not to accede to forceful persuasive argument addressed by Mr. RP. Gupta, learned counsel for the petitioners."

82. In S. Gurdial Singh & others v. Ludhiana Improvement Trust reported in (1995) 5 SCC 138, considering Pista Devi's case, this Court observed that the benefit of providing alternative sites should not be uniformly and mechanically extended to all the cases unless there is any express scheme framed by appropriate authorities and the scheme is in operation. This Court was considering the allotment of alternative sites for commercial purposes, as a local displaced persons in terms of acquisition of land by the Improvement Trust. It was observed as under:

"4. It is then contended, relying upon-the decision of this Court in State of U.P. v. Pista Devi AIR 1986 SC 2025 that the appellants are entitled to allotment of alternative sites for commercial purpose. Therein, the land was acquired for housing development and the persons whose properties were sought to be displaced were directed to be provided housing accommodation under the schemes formed thereunder. The general ratio therein cannot be uniformly and mechanically extended to all the cases unless there is any express scheme framed by appropriate authorities and the scheme is in operation. Under these circumstances, we cannot give any express direction in this behalf. However, when the grievance was made by the appellants, an admission was made in the counter-affidavit filed in the High Court thus:

"The petitioners could get a plot of land as local displaced persons in lieu of their acquired land according to rules on the subject."

(Emphasis supplied)

83. In Amarjit Singh & ors. v. State of Punjab & ors. reported in (2010) 10 SCC 43, it has been held that rehabilitation is not a recognized right either under the Constitution or under the provisions of the Land Acquisition Act. Any beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the landowners. The rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution and that acquisition made in exercise of power of eminent

domain for public purpose and that individual right of ownership over land must yield place to the larger public good. It was held as under:

"16. As regards the question of rehabilitation of the expropriated landowners, Mr. Subramanium, submitted that rehabilitation was not a recognised right either under the Constitution or under the provisions of the Land Acquisition Act. Any, beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the landowners. The benefit of such measures is however subject to the satisfaction of all such conditions as may be stipulated by the Government in regard thereto. The policy relied upon by the appellants being only prospective cannot be made retrospective by a judicial order to cover acquisitions that have since long been finalised.

49. We must, in fairness to Mr. Gupta mention that he did not suggest that rehabilitation of the oustees was an essential part of any process of compulsory acquisition so as to render illegal any acquisition that is not accompanied by such measure. He did not pitch his case that high and in our opinion rightly so. The decisions of this Court in New Reviera. Coop. Housing Society v. Land Acquisition Officer (1996) 1 SCC 731 and Chameli Singh v. State of U.P. (1996) 2 SCC 549 have repelled the contention that rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution so as to render any "compulsory acquisition for public purpose bad for want of any such measures.

50. In New Reviera case (supra). this Court held that if the State comes forward with a proposal to provide alternative sites to the owners, the Court can give effect to any such proposal by issuing appropriate directions in that behalf. But a provision for alternative sites cannot be made a condition precedent for every acquisition of land.

In Chameli Singh case (supra) also the Court held that acquisitions are made in exercise of power of eminent domain for public purpose, and that individual right of ownership over land must yield place to the larger public good. That acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the State hence cannot be taken to deprive the right to livelihood especially when compensation is paid for the acquired land at the rates prevailing on the date of publication of the preliminary notification.

51. There is, thus, no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any

such acquisition violates the right to livelihood of the owners who may be dependent on the land being acquired from them."
(emphasis supplied)
84. Thus, from the above-referred judgments, it is evident that acquisition of land does not violate any constitutional/ fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned.
85. We looked into one of the judgments of the trial court rendered in Civil Suit No. 538 of 2007 titled "Smt. Nirmala Devi, W/o Sh. Shishpal Varma, resident of Kaithal vs. The Estate Officer, Haryana Urban Development Authority, Kaithal & Ors.". We take notice of the fact that the said suit came to be dismissed by the trial court essentially on two grounds. First on the ground that the plaintiff had failed to apply with the authorities concerned in a specified format with deposit of the earnest money at the rate of 10% of the total price as mentioned in the details provided in the brochure, and secondly on the ground that the suit was hopelessly time-barred as the same came to be instituted after a period of 14 years from the date of the advertisement/notice. The relevant findings recorded by the trial court read thus:-

"12. However, as per the brochure issued by the defendants in the year 1992, placed on record as Ex.P6, the prospective applicants, including the outees, were required to apply in a specified format with deposit of earnest money at the rate of 10% of the total cost as mentioned in the details provided in the said brochure. However, the plaintiff never applied for the said plot under the oustees quota in the year 1992 in response to the said advertisement/brochure before the last date of application.

As per the averments of the plaintiff herself, as contained in the plaint, the plaintiff had applied for the said plot only on 19.12.2006, i.e. after about 14 years of the said advertisement/notice. Although the plaintiff has submitted in her plaint that she had applied for the release of a free-hold residential developed plot in January 2000, no documentary evidence in the form of a copy of application or postal receipt etc., has been placed on record.

In the case titled as Smt. Bhagwanti vs. HUDA 2002 (4) RCR (Civil) 21 (P&H) a division Bench of the Hon'ble High Punjab and Haryana High Court has held that where the petitioners submitted their application for allotment of plots after the prescribed date, the authority is not expected to wait for more than four years to apply at his/her convenience and then proceed to make allotment to others. In the present case too, a fair opportunity was granted to all concerned to apply. However, the plaintiff failed to avail of that opportunity. That being the case, the plaintiff has to thank herself for failure to get any plot.

13. Besides, as per a mandatory condition, as mentioned in the brochure, the applicants were supposed to deposit earnest money at the rate of 10% of the total cost of the plot. Rule 5 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, requires that the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to the regulation) and no application shall be valid unless it is accompanied by such amount as may be determined by the authorities which shall not be less than 10% of the price/premium. In the present case, the plaintiff has neither pleaded the payment of the earnest money nor placed on record any evidence regarding the payment of earnest money at the rate of 10%.

17. It is an admitted fact that the land of the plaintiff had been acquired by the defendants in the year 1992 and the plaintiff had applied for the release of a free-hold residential developed plot under the oustees quota on 19.12.2006 and the present suit was filed on 1.8.2007. In other words, the plaintiff had applied for the plot after 14 years of the acquisition of her land and has filed the present suit after 15 years of the said acquisition. As per article 113 of the Limitation Act, 1993, the period of limitation for an injunction suit is three years from the date when the right to sue accrues to the plaintiff.

I find merit in the contention of Ld. Counsel for the defendants that the cause of action had arisen in favour of the plaintiff in the year 1992 itself when her land had been acquired by the defendants. It is pertinent to mention here that throughout her plaint, the plaintiff has not specified the date as to when the cause of action accrued in her favour. Therefore, the suit of the plaintiff having been filed after 15 years of the cause of action having arisen in her favour, the same is not only hopelessly time-barred but the plaintiff is also guilt of delay, laches and acquiescence on her part and is therefore not entitled to the equitable and discretionary relief of injunction. Therefore, issue No. 4 is also decided in favour of the defendants and against the plaintiff."

(emphasis supplied)

86. The plaintiff Smt. Nirmala Devi preferred civil appeal in the court of the Additional District Judge bearing Civil Appeal No. 47 of 2012. The First Appeal came to be allowed. The matter of concern is that there is no discussion worth the name by the first appellate court as regards the findings recorded by the trial court referred to above. The reason for us to say that it is a matter of concern is because right from the inception the appellant herein has been saying that none of the oustees, at least the respondents before us, had applied in the requisite format for allotment of plots with the deposit of the earnest money.

If this part of the obligation would have been performed or discharged by the oustees in accordance with the scheme then perhaps HUDA could have been

called upon to perform its part of the obligation. It is only if the plaintiff would have performed its part of the obligation according to the scheme, then Section 39 of the Specific Relief Act, 1963 could have been invoked to compel the HUDA as defendant to perform its part of the obligation. This aspect unfortunately has not been looked into even by the High Court.

87. We also looked into one of the judgments of the trial court allowing the suit filed by one Dixit Lal s/o Sh. Sunder Lal resident of Kaithal. We are referring to the judgment rendered by the trial court in Civil Suit No. 228/1 of 2009 decided on 21.11.2009.

88. In the said suit the entire line of reasoning is different. The trial court while decreeing the suit in favour of the plaintiff held as under:

"10. Plaintiff has claimed that no plot was allotted to him despite various requests made by him. Smt. Bimlesh mother of the plaintiff examined as PW-1 has deposed that plaintiff had applied for allotment of plot under the oustees quota, but the copy of the application was not readily available with him. She has further deposed that in the year 2007 as well she had approached the defendants at the time of allotment of plots in Sector-19 and 20 HUDA, Kaithal but her request was not considered by the defendants; whereas similarly placed persons had been allotted plots under the court orders. Shri Lakhi Ram, Clerk from the office of Haryana Urban development Authority. Kaithal examined as DW-1. Has deposed that plaintiff had not applied for allotment of plot nor had she deposited 10% of the earnest amount despite advertisement Ex. D3.

11. Admittedly, there is no proof on record to show that the plaintiff had applied for a plot under the oustees quota. A perusal of Ex. D3 shows that the booking of the plots was open for general category as well as the oustees from 02.09.1992 till 01.10.1992. No doubt the earnest money has been specified against each category of land, but the said advertisement cannot be said to be in consonance with the policy of 1992 of Haryana Urban Development Authority which is applicable.

According to the said policy, Haryana Urban Development Authority was required to offer to the oustees in proportion to their acquired land. Only after making an offer, the Haryana Urban Development Authority could take the plea that the offer has not been accepted by the oustees by not applying for the plot within the given time. The oustees who make the application pursuant to such advertisement can be asked by Haryana Urban Development Authority to deposit 10% of the earnest money.

Any revision or modification in the policy of 1992 cannot bar the claim of the persons whose land had been acquired two prior to the said modification. In the

present suit the land of the plaintiff was acquired in the year 1989 and award was passed on 26.02.1992 and the modification in the policy made by Haryana Urban Development Authority in the year 1993 cannot have a retrospective effect.

12. In Civil Writ Petition No. 19927 of 2009 titled as Sandeep Vs. State of Haryana and others decided on 16.05.2011 by Hon'ble Mr. Justice Raniit Singh, Judge Hon'ble Punjab and Haryana High Court, Chandigarh, it has been observed as under:-

"Majority of the claim are being denied on the ground that application is not sent with 10% of the price of the plot. This is also not in conformity with the policy so formulated. The HUDA concededly has not kept in register to keep the claims of the allottees live. The requirement of depositing 10% of the price would arise only if the claims are first invited as per the policies and it has to be through press a newspaper, the price, as per the policy instructions dated 12.03.1993, is to be deposited once the claim is finally accepted by the competent authority and when the sector scheme is floated.

It is on account of these violations that majority of the oustees are being made approach this court through various writ petitions. In order to set the position right and as one time measure it is appropriate to direct HUDA to invite claims of all the oustees through an advertisement in the newspaper giving them sufficient time to make applications. Those who make applications pursuant to such an advertisement may be asked to deposit 10% of the price, if the plots are still available. Their claims be considered in the light of the policies formulated by HUDA."

13. The Haryana Urban Development Authority has not performed its obligation in inviting the claim of oustees as laid down in the policy dated 19.03.1992 and subsequent policy. The said policy required. Haryana Urban Development Authority to invite the claim of the oustees separately before floating any Sector. The land looser have option to buy first before applications are invited from general public. In the present case as well as the claim of the oustees were invited while inviting the claim of the general public. It cannot be denied that once the claim of the oustees is invited along with general public, the possibility of first satisfying the claim of the oustees would stand defeated.

Merely because the plaintiff has not produced any proof with regard to his application for allotment of plot would not defeat her right as it was the duty of the Haryana Urban Development Authority to first make a clear offer with regard to allotment. The land of the plaintiff was admittedly acquired by the defendants and no plot has been allotted to the plaintiff till date in lieu of the said acquisition. The plaintiff has a right to receive the preferential plot under the oustees quota and in order to redress his grievance plaintiff has filed the present

suit. The plaintiff has a locus standi to file the present suit and the suit is maintainable."

89. Thus, while allowing the suit the trial court in no uncertain terms observed that there was no proof or any evidence worth the name on record to indicate that the plaintiff had applied for a plot under the oustee quota yet it proceeded to say that the advertisement issued by HUDA was not in any conformity with the policy of 1992 and in such circumstances the oustees were not obliged to prefer any application in the prescribed format with deposit of 10 per cent of the price.

90. Although we are not convinced with the line of reasoning adopted by the trial court while allowing the suit as referred to above, as affirmed upto the High Court yet even assuming for the moment that the advertisement was not in conformity with the Scheme of 1992 there is no explanation worth the name at the end any of the oustees why the suits were instituted after a lapse of almost 14 to 20 years, more particularly, when the land of respective oustees came to be acquired in 1992.

91. Well, it may be argued and quite legitimately that the term "obligation" in Section 39 of the Act, 1963 may not be always mutual. Section 39 deals with mandatory injunctions, which can be used to prevent the breach of an obligation and at times compel the performance of specific acts necessary to prevent that breach. The obligation, in this context, refers to a duty enforceable by law, and while it can be reciprocal in some cases (like a contract), it can also be a unilateral duty such as a trustee's obligation to a beneficiary.

However, it would all depend on the individual facts of each case. When the scheme in question specifically provides that an oustee shall file an application in a specified format with deposit of the requisite amount towards earnest money then it is a part of the obligation on the part of the oustee to do so before he calls upon the State to allot the plot in accordance with the terms of the scheme.

92. There is no explanation worth the name why it took 14-20 years for the plaintiffs to institute their respective suits for mandatory injunction under Section 39 of the Act 1963. Whether Article 58 of the Limitation Act would apply or Article 113 of the Limitation Act, the period of limitation would be 3 years. By no stretch of imagination, it can be said that the case on hand is one of recurring cause of action so as to bring the suit within the period of limitation though instituted almost after a period of 14-20 years.

93. In such circumstances referred to above, we could have taken the view that the suits themselves were not maintainable as they should have been dismissed only on the ground of limitation far from being not maintainable under Section 39 of the Act 1963.

94. However, as observed earlier, since we are inclined to grant the benefit of the scheme of 2016, we are not non-suiting the respondents (original plaintiffs) completely.

D. CONCLUSION

95. We summarise our final conclusion and dispose of all the appeals with the following directions:

(i) The respondents are not entitled to claim as a matter of legal right relying on the decision of Brij Mohan (supra) that they should be allotted plots as oustees only at the price as determined in the 1992 policy.

(ii) The respondents are entitled at the most to seek the benefit of the 2016 policy for the purpose of allotment of plots as oustees.

(iii) We grant four weeks time to all the respondents herein to prefer an appropriate online application with deposit of the requisite amount in accordance with the policy of 2016. If within a period of four weeks any of the respondents herein prefer any online application in accordance with the scheme of 2016 then in such circumstances the authority concerned shall look into the applications and process the same in accordance with the scheme of 2016. We clarify that it will be up to the authority to look into whether the respondents are otherwise eligible for the allotment of plots or not.

(iv) We make it clear that there shall not be any further extension of time for the purpose of applying online with deposit of the requisite amount.

(v) We understand that some of the respondents may be very rustic and illiterate and may not be in a position to apply online, in such circumstances we permit them to apply by preferring an appropriate application or otherwise addressed to the competent authority with deposit of the requisite amount.

(vi) We make it clear that the entire exercise shall be completed within a period of eight weeks from the date of the receipt of the online application that may be filed by the respondents.

(vii) The State of Haryana as well as HUDA shall ensure that land grabbers or any other miscreants may not form a cartel and try to take undue advantage of the allotment of plots. At the end it should not happen that unscrupulous elements ultimately derive any benefit or advantage from allotment of land to the oustees. In this regard the State and HUDA will have to remain very vigilant.

(viii) We believe that since the allotment of plot is with a laudable object and not for any monetary gain, a condition should be imposed at the time of allotment

that the allotee shall not be entitled to transfer the plot to any third party without the permission of the competent authority and in any case not within five years from the date of the allotment.

(ix) This litigation is an eye opener for all States in this country. If land is required for any public purpose law permits the Government or any instrumentality of Government to acquire in accordance with the provisions of the Land Acquisition Act or any other State Act enacted for the purpose of acquisition. When land is acquired for any public purpose the person whose land is taken away is entitled to appropriate compensation in accordance with the settled principles of law. It is only in the rarest of the rare case that the Government may consider floating any scheme for rehabilitation of the displaced persons over and above paying them compensation in terms of money.

At times the State Government with a view to appease its subjects float unnecessary schemes and ultimately land up in difficulties. It would unnecessarily give rise to number of litigations. The classic example is the one at hand. What we would like to convey is that it is not necessary that in all cases over and above compensation in terms of money, rehabilitation of the property owners is a must. Any beneficial measures taken by the Government should be guided only by humanitarian considerations of fairness and equity towards the landowners.

(x) Ordinarily, rehabilitation should only be meant for those persons who have been rendered destitute because of loss of residence or livelihood as a consequence of land acquisition. In other words, for people whose lives and livelihood are intrinsically connected to the land.

(xi) We have made ourselves very explicitly clear that in cases of land acquisition the plea of deprivation of right to livelihood under Article 21 of the Constitution is unsustainable.

96. All the appeals are disposed of in the aforesaid terms.

97. The Registry is directed to circulate one copy each of this judgment to all the High Courts.

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

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

New Delhi;

July 14, 2025

IN THE SUPREME COURT OF INDIA

Madhukar and Ors.
Vs.
State of Maharashtra and Anr.

[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No. 7212 of 2025]

Prabhakar
Vs.
State of Maharashtra and Anr.

[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No. 7495 of 2025]

HEADNOTE – Criminal proceedings related to rape offences can be quashed based on settlement in exceptional circumstances, subject to the facts of the case.

At the outset, the offence under Section 376 IPC is undoubtedly of a grave and heinous nature. Ordinarily, quashing of proceedings involving such offences on the ground of settlement between the parties is discouraged and should not be permitted lightly. However, the power of the Court under Section 482 Cr.P.C. to secure the ends of justice is not constrained by a rigid formula and must be exercised with reference to the facts of each case.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeals arise from a common order dated 07.03.2025 passed by the High Court of Judicature at Bombay, Aurangabad Bench in Criminal Application Nos. 2561 and 2185 of 2024, whereby the High Court dismissed the petitions filed under Section 482 of the Code of Criminal Procedure, 19731 seeking quashing of criminal proceedings initiated against the appellants herein.

3. The facts giving rise to the present appeals are as follows:

3.1. FIR bearing Crime No. 302 of 2023 dated 20.11.2023 ("1st FIR") was registered at Mehunbare Police Station, District Jalgaon under Sections 324, 141, 143, 147, 149, 452, 323, 504, and 506 of the Indian Penal Code, 18602 against the appellants in SLP(Crl) No.7212 of 2025.

3.2. A second FIR bearing Crime No. 304 of 2023 dated 21.11.2023 ("2nd FIR") was registered at the same police station under Sections 376, 354- A, 354-D, 509, and 506 IPC against the appellant in SLP(Crl) No.7495 of 2025, giving rise to Sessions Case No. 29 of 2024.

3.3. The 1st FIR alleged that on 19.11.2023, the appellants formed an unlawful assembly and assaulted the complainant and her family members, including her father Prabhakar (appellant in SLP(Crl) No.7495 of 2025), allegedly due to his role in causing the divorce of one of the appellants.

3.4. The 2nd FIR, filed the following day, contained grave allegations against Prabhakar, including sexual assault and criminal intimidation. It was alleged that he had sexually exploited the complainant over the time, recorded videos of the act, and interfered with her subsequent matrimonial alliances.

3.5. However, in March 2024, the complainant in the 2nd FIR filed an affidavit before the High Court expressing her desire not to pursue the prosecution and stating that she had no objection to grant of bail to the accused. She further affirmed that the matter had been amicably resolved, and she had received Rs. 5,00,000/- towards marriage-related expenses.

3.6. Based on the above, the appellants moved Criminal Applications Nos. 2561 and 2185 of 2024 before the High Court under Section 482 CrPC seeking quashing of both FIRs. By a common order dated 07.03.2025, the High Court rejected both applications, holding that an offence under Section 376 IPC being of a serious and non-compoundable nature, could not be quashed merely on the basis of a settlement or monetary compensation. The Court concluded that the compromise could not form the basis for quashing proceedings in such cases.

3.7. Aggrieved thereby, the appellants have approached this Court.

4. We have heard learned counsel for the parties.

5. It is brought to our attention that both parties have categorically taken the stand before this Court that they have resolved their disputes amicably and are desirous of moving on with their lives. The complainant in the 2nd FIR, now married and residing with her husband, has expressed that continuation of the prosecution would cause further disruption in her personal life and that she has no wish to support the charges or pursue the matter any further.

6. At the outset, we recognise that the offence under Section 376 IPC is undoubtedly of a grave and heinous nature. Ordinarily, quashing of proceedings involving such offences on the ground of settlement between the parties is discouraged and should not be permitted lightly. However, the power of the

Court under Section 482 CrPC to secure the ends of justice is not constrained by a rigid formula and must be exercised with reference to the facts of each case.

7. In the present matter, we are confronted with an unusual situation where the FIR invoking serious charges, including Section 376 IPC, was filed immediately following an earlier FIR lodged by the opposing side. This sequence of events lends a certain context to the allegations and suggests that the second FIR may have been a reactionary step. More importantly, the complainant in the second FIR has unequivocally expressed her desire not to pursue the case. She has submitted that she is now married, settled in her personal life, and continuing with the criminal proceedings would only disturb her peace and stability.

Her stand is neither tentative nor ambiguous, she has consistently maintained, including through an affidavit on record, that she does not support the prosecution and wants the matter to end. The parties have also amicably resolved their differences and arrived at a mutual understanding. In these circumstances, the continuation of the trial would not serve any meaningful purpose. It would only prolong distress for all concerned, especially the complainant, and burden the Courts without the likelihood of a productive outcome.

8. Therefore, having considered the peculiar facts and circumstances of this case, and taking into account the categorical stand taken by the complainant and the nature of the settlement, we are of the opinion that the continuation of the criminal proceedings would serve no useful purpose and would only amount to abuse of process.

9. Accordingly, the appeals are allowed. The impugned order of the High Court dated 07.03.2025 is set aside. FIR No. 302 of 2023 and FIR No. 304 of 2023, along with all proceedings arising therefrom, including Sessions Case No. 29 of 2024, stand quashed.

10. Pending applications, if any, are disposed of.

.....J. (Vikram Nath)

.....J. (Sanjay Kumar)

New Delhi

July 14, 2025

1 CrPC

2 IPC

IN THE SUPREME COURT OF INDIA

Kathyayini
Vs.
Sidharth P.S. Reddy & Ors.

[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No. 1105 of 2024]

HEADNOTE – Pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeal assails the order passed by High Court of Karnataka on 23.11.2023 in Writ Petition No.23106 of 2021, whereby it allowed the Writ Petition preferred by respondent Nos. 1 and 2, and quashed the criminal proceedings against them in two complaint cases, C.C. No. 892/2021 and C.C. No. 897/2021 whereby they were charged for offences punishable under Sections 120B, 415, 420 read with Section 34 of Indian Penal Code, 1860.1

3. Brief facts leading to present appeal are summarised below:

3.1 The appellant is the daughter of Sri. K.G.Yellappa Reddy and Smt. Jayalakshmi. The couple had eight children- three sons and five daughters. The three sons are Sudhanva Reddy, Guruva Reddy (Dead) and Umedha Reddy. The five daughters are Smt. Lalitha, Smt. Jayashree, Smt. Rita (Dead), Smt. Bhavani and Smt. Kathyayini (present appellant). Respondent Nos. 1 and 2 namely Sidharth P.S.Reddy and Vikram P.S.Reddy are sons of Sudhanva Reddy.

3.2 Appellant's parents had jointly purchased the land bearing Sy.No.35, Extent-19 guntas situated at Dodda Thogur in Bengaluru by a registered sale deed dated 17.02.1986. Her father K.G.Yellappa Reddy was the only son of late Gurappa Reddy and he purchased the above property from the sale of certain ancestral properties. Appellant's parents are no more.

The above land of an extent of 19 guntas was acquired by the Bengaluru Metro Rail Corporation Limited and a total compensation of Rs. 33,00,00,000/- (Rupees thirty-three crores only) was awarded and disbursed. The appellant was under a

bonafide belief that compensation amount would be for the whole family and equitably disbursed among all the eight children of K.G.Yellappa Reddy and Smt. Jayalakshmi.

3.3 However, the appellant was shocked to know that her elder brother-Sudhanva Reddy and his two sons, who are respondent Nos. 1 and 2 herein, hatched a criminal conspiracy by preparing false and incorrect papers in order to deprive her of her legitimate share. They created a false and wrong family tree dated 18.01.2011 by bribing the village accountant, Narasimhaiah. The family tree reflected as if appellant's parents had only three sons i.e. Sudhanva Reddy, Guruva Reddy and Umedha Reddy. The five daughters of Yellappa Reddy, including the appellant, were not shown in the family tree. The village accountant allegedly did not conduct any inquiry before issuing the family tree.

3.4 Further, respondent Nos. 1 and 2 created an allegedly fraudulent partition deed dated 24.03.2005 with respect to the said land. In this wrongful act, they were abetted by appellant's brothers Guruva Reddy and Umedha Reddy. It appears from the partition deed that K.G.Yellappa Reddy divided the land in three equal parts and bequeathed it to Sidharth P.S.Reddy and Vikram P.S.Reddy, Guruva Reddy and Umedha Reddy.

3.5 Based on the partition deed, the brothers of appellant have claimed the compensation awarded by the Bengaluru Metro Rail Corporation Limited. The appellant states that in the partition deed there was a reference to the five daughters of K.G. Yellappa Reddy, but the officials of the Bengaluru Metro Rail Corporation Limited did not ask for a proper family tree and released a sum of Rs.1,80,00,000/- (Rupees One crore and eighty lakhs only) to appellant's brothers. The appellant further claims that the properties of the family were never partitioned, and since she was not a party to the partition, the partition deed is not binding on her. She claims that all the eight children of her parents were entitled to 1/8th share in the aforesaid compensation and all other properties of her parents.

3.6 Meanwhile, appellant's eldest brother Sudhanva Reddy had many wives and in order to avoid multiple claims, he had divided his claim over the property in favour of his first wife Latha's sons, who are respondent Nos. 1 and 2 herein. However, when demand drafts were received by these two sons, they refused to part with the money with their father. Prajwal Reddy, one of the sons of Sudhanva Reddy from his second wife-Pushpa filed a civil suit being O.S.No.714/2017 against Sudhanva Reddy, claiming his share. As Sudhanva Reddy has not received any share of money from his two sons from the other wife, he revealed the truth about the falsity of the partition deed dated 24.03.2005.

He also said that he had given a letter to the Managing Director of Bengaluru Metro Rail Corporation Limited stating that the partition deed was fabricated by Guruva Reddy, Umedha Reddy, Sidharth P.S.Reddy and Vikram Reddy. Due to this letter given by Sudhanva Reddy, the Karnataka Industrial Area Development Board ("KIADB") stopped the payment of further amount and deposited Rs. 5,59,000,00/- (Rupees five crore fifty nine lakhs only) with the Trial Court. However, till now KIADB has released total Rs. 27 crores as compensation and it has been credited to the accounts of Sidharth P.S.Reddy, Vikram P.S.Reddy, Umedha Reddy and Ashok Reddy.

4. The appellant came to know of the disbursement on 06.10.2017 whereupon she questioned her brothers about their fraudulent acts. Upon being confronted, the brothers allegedly abused her and threatened to eliminate her if any further action was taken. The appellant registered a complaint before police on 14.11.2017. Based on her complaint the police registered FIR No. 270/2017 on 18.11.2017 under Sections 506, 34, 471, 420, 474, 120-B, 468, 464 read with Section 34 of IPC against Sudhanva Reddy, Narsimhaiah (the village accountant) and Sidharth Reddy, stating that Sudhanva Reddy and his two sons colluded with village accountant to create a fabricated family tree and a partition deed. On the strength of these documents, they were successful in appropriating substantial amount of compensation of Rs. 33 Crores depriving the sisters of their share.

5. Another complaint was lodged jointly by appellant and Smt. Jayshree, another daughter of K.G.Yellappa Reddy on 20.11.2017, alleging the same allegations, based upon which, a case being Cr.No.145/2017 was registered against Sudhanva Reddy, Narsimhaiah, Sidharth Reddy and Vikram Reddy. 6. During the course of investigation, the City Crime Branch of Bangalore police seized the bank accounts of Ashok Reddy, Sidharth P.S. Reddy, Vikram P.S.Reddy and Umedha Reddy by exercising the power conferred under Section 102 Code of Criminal Procedure, 19732.

This seizure of the accounts was challenged by all four accused persons by filing applications under Sections 451 and 457 of CrPC, requesting to de-freeze their respective bank accounts. On 24.03.2018, the Trial Court rejected their applications. It reasoned that the amount of compensation credited to the accounts of applicants is directly involved in the criminal case registered against them.

7. Aggrieved by this order, all four accused preferred Criminal Revision petitions before Sessions Court. Their petitions were dismissed by Sessions Court by order dated 03.12.2018.

8. Aggrieved by the order of Sessions Court all four accused persons preferred Criminal Petition Nos. 34/2019, 35/2019, 36/2019 and 37/2019 before the Hight

Court. The High Court dismissed these petitions on 07.04.2021. It held that bank accounts fall within the meaning of 'property' under Section 102(1) of CrPC and the Investigating Officer is empowered to seize any such Bank account in which he notices suspicion about commission of an offence.

The petitioners therein had pointed out non-compliance of a requirement of submission of report to Magistrate by the Investigating Officer immediately after freezing of the Bank accounts. However, the High Court held that de-freezing of Bank accounts merely on such technical ground may lead to the possibility of accused persons siphoning huge amount of funds available in their accounts. Thus, it concluded that mere non-compliance of submission of report as required under Section 102(3) of CrPC would not vitiate the seizure.

9. Aggrieved by this order of the High Court, Respondents preferred Special Leave Petitions No. 7532-7533 before this Court, which were dismissed on 08.10.2021.

10. Meanwhile, police filed a charge sheet in both the FIRs in Crime No. 270/2017 and Crime No. 145/2017 on 12.01.2021 for the offences under Sections 120B, 415, 420 read with Section 34 of IPC against Accused No.1-Sudhanva Reddy (deceased), Accused No. 2- Sidharth Reddy, Accused No. 3 Vikram Reddy, Accused No. 4- Umedha Reddy and Accused No. 5-Ashok Reddy. The Trial Court on 13.01.2021 took cognizance in both the criminal complaints and registered C.C.No.892/2021 and C.C.No.897/2021 for the aforesaid offences and issued summons to the accused persons, including respondent Nos. 1 and 2.

11. On 28.08.2021 a Memorandum of Understanding was executed between Umedha Reddy, Ashok Reddy and the appellant. On the basis of the compromise, the proceedings as against Umedha Reddy and Ashok Reddy were quashed.

12. During the course of the proceedings, it was brought to the notice of the Trial Court that the appellant and her sister Smt. Jayshree, have jointly filed a civil suit being O.S.No.274/2018 for partition by metes and bounds and separate possession of the properties belonging to the family. They are also seeking reliefs of partition of equal share of compensation, permanent injunction restraining the defendants from transferring or creating any charges on suit property and declaration that the Partition deed dated 24.03.2005 is void. Further, another civil suit being O.S.No. 124 of 2018 has been filed by Smt. Jayashree seeking permanent injunction restraining defendants, including the respondents herein, from operating and withdrawing the amount under compensation award deposited in their bank accounts.

13. In December 2021, respondent Nos. 1 and 2 filed a Writ Petition for quashing of the charge sheet and of the order taking cognizance dated 13.01.2021. The

High Court, by the Impugned order, allowed the Writ Petition and thereby quashed the prosecution of Respondents Nos. 1 and 2 in both the complaint cases.

14. The High Court noted that the statement of the Sub-Registrar makes it certain that the thumb impression found on the partition deed dated 24.03.2005 was the thumb impression of Yellappa Reddy. Therefore, an offence as alleged either under Sections 468 or 471 IPC is not made out. Further, the partition deed referred above was drawn up on 24.03.2005 and the respondents, in an effort to get their names entered in the revenue records, have brought up a family tree dated 18.01.2011 in line with the partition deed dated 24.03.2005. The High Court noted that, no doubt when respondents had obtained the family tree, they were bound to disclose the names of daughters of late Yellappa Reddy.

But since the attempt by the respondents was to get their names entered in the revenue records based on the partition deed dated 24.03.2005, it cannot be held that the respondents had committed an offence under Section 420 IPC. It may be that they had misrepresented about the family of Yellappa Reddy but that in itself was not an offence punishable under Section 420 IPC. The High Court thus concluded that, considering the suit for partition is already pending where the compensation determined by the Bengaluru Metro Rail Corporation Limited, is secured, it is appropriate that criminal proceedings initiated against the respondents is put to an end.

15. Aggrieved by the impugned order passed by the High Court, the complainant-appellant preferred the present appeal before this Court.

16. We have heard the learned Senior Counsel/Counsels for both the sides and have perused the material on record.

17. It is clear from the facts that a prima facie case for criminal conspiracy and cheating exists against respondent Nos. 1 and 2. It appears that they, along with their uncles Guruva Reddy and Umedha Reddy, have attempted to defraud their aunts by creating a forged family tree and partition deed with a motive to gain all the monetary award for land in question bypassing the appellant and her sisters. They succeeded in their plan until Sudhanva Reddy revealed it to the authorities by a letter.

The High Court has erroneously relied upon the statement of Sub-Registrar who stated that partition deed dated 24.03.2005 was presented for registration on 26.03.2005 and due to health reasons concerning K.G.Yellappa Reddy, his thumb impressions were secured at his house in presence of the Sub-Registrar. However, we must note this statement of the Sub-Registrar has not been put to cross examination. It would be unwise to rely on unverified testimony of a Sub-

Registrar to ascertain the genuineness of Partition deed. The High Court erred in heavily relying on his statement to conclude that the Partition deed was genuine and thus no offence is made out against the respondents under Sections 463 and 464 IPC.

18. Further, the High Court could not find any justification to deny that respondents misrepresented the family tree. The Court itself has acknowledged that respondents were bound to disclose the names of daughters of K.G.Yellappa Reddy and Jayalakshmi in the family tree. Considering the fact that both the partition deed and the family tree were used in gaining the monetary compensation awarded for the land, it is necessary that genuineness of both the documents is put to trial.

19. We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of K. Jagadish v. Udaya Kumar G.S. and another3, this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:

"8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law."

20. In Pratibha Rani v. Suraj Kumar and another4, this Court summed up the distinction between the two remedies as under:

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred.

The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section

405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law."

21. The aforesaid view was reiterated in Kamaladevi Agarwal v. State of W.B. and others5,

"17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

22. After surveying the abovementioned cases, this Court in K. Jagadish (supra) set aside the holding of High Court to quash the criminal proceedings and held that criminal proceedings shall continue to its logical end.

23. The above precedents set by this Court make it crystal clear that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons. In present case certainly such prima facie case exists against the respondents.

Considering the long chain of events from creation of family tree excluding the daughters of K.G.Yellappa Reddy, partition deed among only the sons and grandsons of K.G.Yellappa Reddy, distribution of compensation award among the respondents is sufficient to conclude that there was active effort by respondents to reap off the benefits from the land in question. Further, the alleged threat to appellant and her sisters on revelation of the above chain of events further affirms the motive of respondents. All the above factors suggest that a criminal trial is necessary to ensure justice to the appellant.

24. Therefore, we set aside the Impugned order of High Court dated 23.11.2023 in Writ Petition No.23106 of 2021. Accordingly, we direct the Trial Court to continue its proceedings against respondent Nos. 1 and 2 in accordance to law.

25. Accordingly, the appeal is allowed as above.

.....J. (Vikram Nath)

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

New Delhi

July 14, 2025

1 IPC.

2 CrPC

3 (2020) 14 SCC 552.

4 (1985) 2 SCC 370

5 (2002)1 SCC 555

IN THE SUPREME COURT OF INDIA

Kattavellai @ Devakar
Vs.
State of Tamil Nadu

[Criminal Appeal No. 1672 of 2019]

HEADNOTE – There is a need to enact a law for awarding compensation in cases of wrongful incarceration.

JUDGMENT

Sanjay Karol, J.

For convenience and ease of reference, this judgment is divided into the following parts:

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FAULTY INVESTIGATION .....

CONCLUSION .....

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

H.R Khanna J., in **State of Punjab v. Jagir Singh**[1]

1. A visit to the forest, while a narrow escape for two persons, turned fatal for another two. The genesis allegedly was greed, with the accused person wanting to take away jewellery to put to his use, but the end result was far worse. Two people who were in the prime of their youth were hastily and brutally made to meet their maker, well before they should have. This Court is now tasked with examining the correctness of guilt of the person (the appellant) who, according to the State, was responsible for this barbarity.

THE CHALLENGE

2. The present Appeal arises from the judgment and order dated 13th March 2019, in Referred Trial [MD] No.1 of 2018 passed by the High Court of Judicature at Madras, Madurai Bench, which, in turn, was preferred against the judgment dated 07th March 2018 in Special Sessions Case No.9 of 2013 passed by the Principal District and Sessions Judge, Theni, whereby the conviction of the Appellant under Section 302, 376 and 397 of the Indian Penal Code, 1860[2], came to be affirmed. The Trial Court imposed the death penalty on the Appellant-convict, which also came to be affirmed by the High Court.

FACTUAL PRISM

3. The incident in question, relates to the unfortunate death of two young people. The prosecution case as emerging from the record, as also set out by the Courts below, is as follows:

3.1 On 14th May 2011, a young man named Ezhil Muthalvan[3], left his house on his father's motorbike under the pretext of playing cricket. Similarly, the second victim[4] left home that morning telling her parents that she was going to college. Unbeknownst to either set of parents, the two victims went to Suruli Falls, which was apparently a popular meeting point for friends and lovers.

3.2 Already there, was another couple, one Rajkumar (PW-5) and Bhagyalakshmi[5] (not examined), eating food. The two victims were also seated a short distance away, approximately 60 meters from them. It is alleged that the appellant-convict, first came to PW-5 and his partner asking Bhagiyalakshmi, to part with her jewellery, which she did but upon finding that they were not made of gold and instead were imitation made of brass, he threw the same back at her and approached the victims. PW-5 and his partner subsequently fled from the place having noticed the former having some conversation with the victims.

3.3 The appellant-convict is said to have threatened the victims to part with money and gold, which they refused. Such refusal, according to the prosecution is what led to him killing the victims.

3.4 Given that D-2 was missing, her father Ganesan (PW-4) lodged a complaint dated 15th May 2011 with All Women Police Station, Theni, being Crime No.30 of 2011 under Section 366 of IPC alleging that D-1, son of Thanganathi (PW-2) had kidnapped his daughter.

3.5 On 15th May 2011, Ramesh (PW-11) who was the proprietor of a tea stall near the Falls, informed forest officials that a bike of Hero Honda make had been parked, unattended near his tea stall for the last two days. On receipt of such information, Forest Officials, namely, Thangaraj (PW-1) and Chelladurai (PW-6) came to the spot and informed higher officials as also the Sub-Inspector of Police, Rayappanpatti Police Station about such fact. The said vehicle was taken and parked at the forest bungalow. On 18th May 2011, having come to know of this from a local person Pitchai, PW-2 (father of D-1) went there and identified the bike to be belonging to him.

3.6 Thinking that since the bike was in the vicinity of the jungle, D-1 must be nearby, they requested for grant of permission to search the forest area. However, they were asked to come the next day. Upon conducting the search the following day, they found the two victims whose bodies had decomposed considerably, lying face down. Certain relatives were brought in, and due identification of the bodies was conducted.

3.7 PW-1 made a complaint pursuant to which Ramakrishnan (PW-38) the then Sub-Inspector of Police, Cumbum North Police Station, registered the case as Rayappanpatti P.S. Cr.No.145/11 under Section 174 Cr.P.C., and forwarded the same to the Judicial Magistrate Court, Uthamapalayam, and also to the higher officials through Mr. L. Prasath, Spl. Sub Inspector (PW-39). Vinoji (PW-52) Inspector of Police, Cumbum North Police Station, took reigns of the investigation. Dr. Juliana Jeyanthi (PW-37) conducted the postmortem of the victims at the spot of the crime and noticed the following injuries, while concluding that both the deaths were homicidal in nature, having occurred 5-6 days prior to the autopsy:-

"D1

1) A chop wound of size 36 cms x 12 cms through and through noted over the front, both sides and back of the neck leaving a tag of skin of the length 4cms at the bruise side of the back of the neck with the surrounding bruise injuring the underlying muscles vessels, nerves and bones. Margins were regular.

On dissection:
The wound passed downwards and inwards below the seventh cervical vertebra, vertebral column and spinal cord with the surrounding bruise.

D2

1) A chop wound of size 12 cms x 4.5 cms x 2.5 cms noted over the left side of the face extending from left eye to the left side of the chin with the surrounding bruise injuring the underlying muscles, vessels an nerves. Margins were regular. On dissection: The wound passed downwards and inwards injuring the underlying muscles, vessels and nerves, with the surrounding bruise.

2) A chop wound of size 12 cms x 4.5 cms x through and through noted over the right wrist joint, with the surrounding bruise injuring the underlying muscles, vessels, nerves and bones. Margins were regular. Right hand was missing.

On dissection:
The wound passed downwards and inwards injuring the underlying muslces, vessels, nerves and bones with the surrounding bruise.

3) Chop wounds of sizes 2 cms x 1.5 cms x through and through, 2 cms x 1 cm x through and through, 1.5 cms x 1 cm x through and through and 1 cm x 1 cm x through and through seen over left second, third and fourth fingers with the surrounding bruise injuring the underlying muscles, vessels, nerves and bones. Margins were regular.

On dissection:
The wound passed downwards and inwards injuring the underlying muscles, vessels, nerves and bones with the surrounding bruise.

4) A chop wound of size 23 cms x 10 cms x through and through noted over the middle of the right leg with the surrounding bruise injuring the underlying muscles, vessels, nerves and bones. Margins were regular. The chopped right leg was missing.

On dissection:
The wound passed downwards and inwards injuring the underlying muscles, vessels, nerves and bones with the surrounding bruise.

5) A chop wound of size 8 cms x 6 cms x through and through noted over the left ankle joint, with the surrounding bruise injuring the underlying muscles, vessels, nerves and bones. Margins were regular.

On dissection:
The wound passed downwards and inwards injuring the underlying, muscles, vessels, nerves and bones with the surrounding bruise.

6) A stab wound of size 4.5 cms x 3 cms x 2.5 cms noted over the back of the right arm with the surrounding bruise injuring the underlying muscles, vessels and nerves. Margins were regular. One end was pointed and the other end was rounded.

On dissection:
The wound passed downwards and inwards injuring the underlying muscles, vessels and nerves with the surrounding bruise.

7) Vaginal introits was torn (5cms x 3 cms x 2 cms) at 6'O clock position with the surrounding bruise injuring the surrounding muscles, vessels, nerves. Margins were irregular. Hymen was torn. Vagina freely admitted one finger."

3.8 PW-5 apparently came to know of the untimely deaths of the victims and went to the Police Station on 20th May 2011 to inform the investigators of the events that took place on the 14th May 2011.

3.9 'Taking cue' from such information, the suspicion of investigators zeroed in upon the appellant-convict who was eventually arrested on 28th May 2011. Upon such arrest, he gave a voluntary confession and effected recovery of certain material objects from his own residence as also that of his mother-in-law. The then I.O., noting that both the appellant-convict and the victims belonged to backward communities, added a charge under Section (3)(2)(v) of the Scheduled

Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989[6], along with two counts of Section 302; as also 379 and 376 IPC.

3.10 On 6th June 2011, the Police conducted a T.I. parade wherein PW-5 positively identified the appellant-convict.

3.11 In total, to establish its case, the prosecution examined 56 witnesses and exhibited 77 documents as also 29 material objects. The appellant-convict pleaded his innocence but, however, did not examine any witnesses or lead any other evidence.

TRIAL COURT JUDGMENT

4. Charges were framed against the accused on 8th October 2013 under Sections 302, 376, 392 r/w 397 IPC and (3)(2)(v) of the SCST Act. The case rests entirely on circumstantial evidence. The Principal District and Sessions Judge, Theni, in Special Session Case 09/2013 vide judgment dated 7th March 2018 found the accused (appellant-convict) before us guilty of the offences under Section 302, 376 and 379, but declared not guilty under Section 392. It was also observed that the charge under SCST Act could not be taken into consideration. The punishment as awarded is extracted as under:-

"1. Enemy is sentenced to life for murdering Ezhilmuthalvan under I.P.C. section 302, and penalty Rs.2,000/- is also levied, if failed to pay the penalty, he should undergo 2 months of imprisonment.

2. Enemy is sentenced to death under I.P.C. section 302 for murdering the girl accompanied by Ezhilmuthalvan, death sentence should be carried out by hanging him on neck until he dies, and no other penalty is sentenced as the maximum punishment of death penalty is declared.

3. Enemy is sentenced to life under I.P.C. section 376 for the crime proven against him, and penalty of Rs.2,000/- is also levied, if failed to pay the penalty, he should undergo 2 months of imprisonment.

4. This court is issuing the order that enemy is sentenced to 7 years of severe imprisonment, and penalty of Rs.1,000/- is also levied, if failed to pay the penalty, he should undergo 1 month of imprisonment.

5. As it is determined that enemy is not the criminal under I.P.C. section 397, the court releases him under Cr.P.C. section 235(1) determining that he is not the criminal under the alternate accusation under I.P.C section 392 accused on him and, this court determines that Prevention of Atrocities rule against schedule and schedule tribe cannot be taken into consideration to grant punishment along with I.P.C. section 302, 376, 397 which has been accused upon the enemy.

6. As the enemy is sentenced to death for number one crime under I.P.C section 302, it is declared that all the penalties sentenced under other sections should be carried out along with the death penalty.

7. It is declared that the judgment declared on this case and all the documents should be sent to Chennai High Court to ensure the death penalty sentenced to the enemy under the Code of Criminal Procedure, section 366(1)

8. Action should be taken to execute the death penalty sentenced to the enemy only after the death penalty sentenced to the enemy is ensured by the Honourable High Court, Chennai, under the Code of Criminal Procedure, section 368."

THE IMPUGNED JUDGMENT

5. Since the sentence imposed by the Trial Court was that of death by hanging, the matter travelled up to the High Court in terms of Section 366 of the Code of Criminal Procedure, 1973[7], being Referred to Trial [MD] No.1 of 2018. The High Court considered the evidence on record under the following heads:-

(a) Last seen theory;

(b) Arrest, confession and recovery;

(c) T.I. Parade;

(d) DNA Test; and

(e) Motive

The following is a tabular representation of the evidence considered against each of the above heads:

Sl. No.	**Heading**	**Description**
1.	Last seen theory	PWs -2, 3, 5, 8, 25
2.	Arrest, confession and recovery	PWs-5, 18, 19, 31, 32, 52 & 54 ; Exhs.P-8, P-5.
3.	T.I. Parade	PW-5
4.	DNA Test	PWs-34, 37, 42; Exhs.P-52
5.	Motive	PW-5

Having examined the documents and exhibits as above, the High Court found the following circumstances to be established beyond reasonable doubt against the Appellant-convict:-

"(a) On the date of occurrence, D1 and D2 left their respective house and came to the place of occurrence on their own by bike (MO.1).

(b) D1 and D2 were lastly seen alive by PW5 with the accused.

(c) The accused was seen with weapon by PW25 on the date of occurrence.

(d) The link between the recovery of MOs.10 and 18 from the accused and the offence.

(e) The offence of rape committed by the accused was proved through scientific evidence namely DNA report.

(f) Adverse inference against accused."

6. Challenging his conviction and sentence, the Appellant-convict has approached this Court. We have heard Ms. V. Mohana, learned senior counsel for the Appellant-convict and Mr. V. Krishnamurthy, learned senior counsel for the State. To be determined is whether the Courts below were justified in handing down judgments of conviction for the offences, as alleged and in connection therewith sentencing him to death.

RIVAL CONTENTIONS

(a) Appellant

7. The arguments advanced on behalf of the appellant can be summarised, inter alia, as follows:

Firstly, the learned senior counsel submitted that PW-5 was, on the whole, an unreliable witness. Going so far as to say that he was a planted witness introduced by the Police. She highlighted that PW-5's conduct of silence regarding the incident was unnatural, particularly as he was aware through Bhagyalakshmi, that D-2 her collegemate had not attended college the next day. His assumption that D-1 and D-2 ran away to get married (which is the only plausible explanation for non-reporting) is without basis since he himself admitted to having no prior knowledge of any such plans or their relationship to such an extent;

Secondly, the non-examination of Bhagyalakshmi, is the absence of a material witness as she is the link between PW-5, D-1 and D-2, since the former did not know the two victims directly but only through her;

Thirdly, the T.I.P conducted is unbelievable given it was conducted after a considerable delay of nine days from the date of arrest of the appellant-convict. His identity was well-known by such time since there had been news reports regarding the incident. Further, by PW-5's own admission, the Police authorities had informed him prior to the TIP that one Kattavellai @ Devakar had committed the offence. Still further, he also states that within a week of his statement to the Police, PW-5 saw the appellant-convict at the Cumbum Police Station;

Fourthly, the testimony of PW-25 is vague and unreliable. He has not identified the accused particularly such as through clothes recovered from the appellant-convict nor through T.I.P;

Fifthly, there is no basis for suspicion against the appellant-convict as on 28th May 2011. The story of the prosecution is that the genesis of the suspicion is the attempted suicide by the Appellant-convict on 22nd May 2011. However, no credible explanation has been offered for the suspicion. The FIR pertaining to the attempted suicide was registered on 23rd May 2011. However, no steps in connection therewith were taken and neither was any information given to Royappanpatti Police Station. PW-52 and 54 (I.Os) both state that they learnt of the suicide only after the arrest;

Sixthly, the circumstances of arrest are suspicious since no records have been produced regarding appellant-convict's admission in the hospital during the period 22nd - 25th May 2011. There are no independent witnesses to the arrest since PW-16 states that he was called there ten minutes after the arrest. He has also accused the police of torture at the police station;

Seventhly, the disclosure statement and the subsequent recovery of articles is surrounded by suspicious circumstances - for instance, PW-4 identified the chain in Court and deposed that he was shown a gold chain by the police, it is unclear whether this was the same chain that belonged to D-2. None of the witnesses mentioned any distinctive feature thereof. The FIR makes a mention of a gold chain of 2.5 sovereigns but does not mention the 'ohm' dollar; the weapon allegedly used for the commission of the offence is not subjected to any forensic examination; the clothes recovered from the house of the appellant-convict are not subjected to any forensic examination and cannot be linked to the crime. The disclosure statement does not specify all articles such as the jute bag, tiffin box and, therefore, their recovery is not a consequence of the disclosure statement. The independent witness, PW-16 does not depose the exact location of the materials recovered from the house of the appellant-convict;

Eighthly, the DNA evidence cannot be relied on since there are several gaps in the chain of custody leaving open the possibility of tampering. PW-37 states that she took the vaginal swab and handed them over to the Constable on duty but correspondingly PW-41 does not make any mention thereof when the samples were packaged, sealed, kept at one location, safely or otherwise, sent to another location etc., the record thereof is absent. The semen sample of the Appellant-convict was taken on 13th June 2011, and they were allegedly sent to FSL, Chennai. There is no record of the same being sent, returned and/or thereafter being stored, preserved or disposed of. A blood sample was collected from the appellant-convict, but PW-37, the doctor concerned, does not testify thereto, nor does PW-52, the concerned I.O., record anything regarding the same; and Ninthly, motive has not been established. Various articles other than the gold chain, also belonging to the victims such as mobile phone, ring etc., were neither recovered from the spot of the crime nor from the Appellant-convict. Further, it is not the pleaded case of the prosecution that he disposed of the articles. In making the above submissions, the learned senior counsels referred to certain decisions of this Court, which we have perused and considered.

(b) Respondent

8. The Respondent-State submitted, inter-alia, as follows:

First, relying on the observation of the High Court that PW-5, upon finding out of the death of D1 and D2, he himself went to the Police Station, it is submitted that there is no actual delay in reporting of the incident by PW-5;

Second, calling into question the T.I.P. conducted and the identification made therein, is unjustified since PW-5 himself has never stated that prior to the T.I.P., he had seen the picture of the convict appellant. The pictures shown to him, in fact, were only of habitual offenders. PW-25 who states that he had seen the appellant-convict with a sickle on the date of the offence, corroborates and lends strength to the statement of PW-5;

Third, regarding the confession statement (Ext.P-8) it is submitted that whether or not the object discovered would be considered relevant or not has to be decided in accordance with State of Himachal Pradesh v. Jeet Singh[8]. It is submitted that the credibility of recovery is sought to be questioned by the appellant saying that the exact location of the recovery has not been disclosed, however, it has been - his house, temple near the forest and mother-in-law's house. In regards gold chain, the submission that PW-4 has categorically identified the chain recovered, as belonging to D-2; and

Fourth, the testimony of PW-37 clearly establishes the factum of rape upon D-2. DNA evidence, i.e., vaginal swab, has been clearly and properly maintained,

preserved and utilised. This is said in reference to testimony of PWs 27, 48 and 34 and exhibits P-37, P-49, P-21, P-29 and P-30.

ANALYSIS AND FINDINGS

9. In all 56 witnesses were examined by the prosecution.

10. Unquestionably, there is no eyewitness to the crime. The appellant-convict has been directed to be sent to the gallows on the basis of circumstantial evidence which, in the considered view of the Courts below, forms a chain so complete that it rules out any and all other possibility of any other person, except the accused alone, having killed D-1 and D-2.

11. The law on this count is exceptionally well settled, and although it does not require to be elaborately restated, we will refer to a few judgments for the purposes of immediate recall.

11.1 In Hanumant v. State of M.P[9], a three-Judge Bench of this Court, speaking through Mehr Chand Mahajan, J., (as his Lordship then was) observed thus:

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

11.2 Sharad Birdhichand Sarda v. State of Maharashtra[10] lays down the 'Panchsheel Principles' which are extracted below:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri)

p. 1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Bird's Eye View of the Testimonies

12. Let us now undertake an individual examination of each of the circumstances found to be proved by the Courts below, reproduced supra. In doing so, a bird's eye view of the relevant PWs is necessary.

12.1 PW-1 was the Forest Guard, Surulipatti. He has deposed in connection with the bike using which D-1 had come to the location where he ultimately met his end. He was informed of the unattended bike, which he later parked at the forest bungalow after informing the higher authorities. He also testified to being a member of the search party that discovered the bodies of the two victims. He described the identification undertaken by the relatives of the deceased and that he lodged a complaint with the concerned police station regarding the events. He made a positive identification of the motorbike (M.O.-1) and the clothes worn by D-1. In his cross-examination, it has come forth, upon the filing of complaint the concerned inspector came to the location and confiscated the corpse.

12.2 PW-2 is the father of D-1. He deposed that when his son did not return, he individually searched for him, however, to no avail. He stated that PW-4's second daughter Kousalya, called the younger brother of D-1 inquiring about D-2, when it was revealed that even D-1 had not returned home. It is in this context that a complaint was made before the All Women Police Station, Theni, alleging that D-1 had kidnapped D-2. He submitted that prior to these unfortunate events, he had suspected the involvement of four persons, namely, Arjunan, Amnbazhagan, Viji and Francies. As such he approached the High Court wanting the investigation of the case to be transferred to the CBCID, which was accepted. It has also come in his testimony that he came to know of the arrest of the Appellant-convict through the newspaper.

12.3 Chellandiammal, PW-3 is the mother of D-1. She deposed that on 19th May 2011, certain members of her family went to search the forest where bodies of D-1 and D-2 were found. Although she was not a member of search party, but she has described the condition in which the same were found. She deposed that bodies were brought to the village where she identified D-1 and, thereafter, cremated per customs. In her cross-examination, it is revealed that she did, in fact, go to Suruli on 19th May 2011. She made a categorical statement about the identification of Jewellery worn by D-2 through her parents.

12.4 PW-4 is the father of D-2. He stated that when D-2 did not return, through Kousalya, they inquired from D-1's brother about the whereabouts of D-2 when they found that D-1 was also missing. He levelled accusations against D-1 for eloping with his daughter and as such filed a complaint with the All Women Police Station, Theni. Upon discovering the body of the victims, the gold chain which was the alleged prime reason for this act of extreme violence was found and positively identified. She was also wearing a gold ring which, however, was not recovered.

He testified that the doctors conducted the post-mortem at the spot of the crime itself and thereafter handed the corpses to them for performing final rites. In the cross-examination, it is admitted that even though D-2 was missing, he did not file a missing person's complaint regarding his daughter. Regarding the complaint filed before the All-Women Police Station, Theni, here only we may partly refer to the testimony of PW-51, Peula Mary, who was the Inspector of Police at that time has deposed of having perused the Police Station Petition N/2011 filed by PW-4 as taken down by Katturrani (PW-50).

She deposed that her course of action would have been to call both D-1 and D-2 and enquire about their whereabouts. PW-4 told her that since both the parties belong to the same caste, they would settle the matter without the intervention of the police or the authorities, as such the said complaint was closed. Thereafter, on another complaint made by PW-4 on 19th May 2011 at 6:00 am alleging that D-1 and his parents had kidnapped D-2, this witness registered, Crime No.30/2011 under Section 366 IPC to an unknown outcome.

12.5 PW-5 is the star-witness of the prosecution. The circumstances of the last-seen theory and motive are largely dependent on his testimony. In fact, the hangman's noose purely rests on his testimony. Considering the same it would be appropriate to extract the same in its entirety.

"DEPOSITION OF WITNESS (CHAPTER XXIII CODE OF CRIMINAL PROCEDURE) IN THE COURT OF THE PRINCIPAL DISTRICT AND

SESSIONS JUDGE,
THENI

SPL.S.C.NO.9/2013
DEPOSITION OF P.W. 5

Chief Examination:-

I am residing at Kadamalaikundu. I am an Auto Driver by profession. At the time of the occurrence of the case, I was studying 3rd Year Economics in the College of Madurai Kamaraj University, Aundipatti. I am having relationship with one Bagyalakshmi, D/o Subburaj of Theni. Bagyalakshmi was studying B.Ed., in Annai Womens College, Aanaimalaiyanpatti. I know deceased Ezhilmuthalvan. I know his lover Kasturi also. My lover Bagyalakshmi and Kasturi were friends. Hence, I know Kasturi and Ezhilmuthalvan. Ezhilmuthalvan is belonging to SC Pallar community. His lover Kasturi is also belonging to SC Pallar Community. I know the accused present here. Previously, I saw the Accused for the first time inside Suruli Falls Forest.

On 14.05.2011, I and Bagyalakshmi went to Suruli by bus. Ezhilmuthalvan and Kasturi came to Suruli by bike. After having talked in the hill forest, I and Bagyalakshmi were sitting at a distance of about 60 meters for taking food. At that time, the accused herein came to us with a sickle in his hand and demanded the chain and Earring worn by Bagyalakshmi. I told him that the jewels worn by Bagyalakshmi are not gold jewels and they are covering jewels. For which, the Accused shouted as to whether you will give it or I will hack you. Out of fear, Bagyalakshmi gave the jewels worn by her. The Accused received it, verified and threw away since they are covering jewels.

When Bagyalakshmi took the said jewels, the Accused told us, "Are you worthy of love affair? Get lost". After sending us, he went to the place where Ezhilmuthalvan was. After some time, when I went to bring Ezhilmuthalvan, the Accused was threatening Ezhilmuthalvan and Kasturi to give the jewels. I thought that the Accused will threaten them like he threatened us and then he will leave them, myself and Bagyalakshmi came down. After coming down, I phoned Ezhilmuthalvan's cell phone. But Ezhilmuthalvan did not attend the phone. Then, I and Bagyalakshmi took the bus and came to Theni and I dropped Bagyalakshmi at Theni and went to my village.

On the next day, Bagyalakshmi phoned me and said that Kasturi did not come to the college. We were of the assumption that both of them might have gone to get married. Thereafter, Bagyalakshmi informed me over phone that Ezhilmuthalvan and Kasturi have been murdered in a suspicious manner. Then I was enquired at Royappanpatti Police Station. Then, police have informed me that

Ezhilmuthalvan and Kasturi were murdered by one Kattavellai @ Dhivakar of K.M. Patti and that police have confiscated the jewels of Kasturi. They asked me whether I can identify the person if I see him. I said that I can identify. On 06.06.2011, they brought me to Central Prison, Madurai. They conducted identification parade there. There were 9 persons. Judge was present.

The Judge told me to identify the person who was seen by me at the place of occurrence by touching him. I have identified the person who was seen by me at the place of occurrence by touching him. He told me to wait outside and after changing the persons, he told me to identify. Similarly, I have identified three times. Thereafter, on 15.06.2011, they brought me to Bodi Court. The Judge has obtained secret statement from me. I have given statement in respect of the occurrence took place. The statement given by me was recorded in the court and my signature was obtained therein. The signature shown to me is the signature I put up in the Court. My 164 Cr.P.C statement is Ex. P.2. Royappanpatti Police, Cumbum Police and DSPs have enquired me with regard to this case.

31.07.2014 - Spl S.C. No. 9/2013

On 20.05.2011, I was enquired at Royappanpatti, Cumbum and Uthamapalayam I was enquired for 3 days. Firstly, Royppanpatti Police enquired me on 20th Royappanpatti Police did not enquire. DSP Pandiarajan has enquired on 2th I went to Royappanpati Police did not enquire. DSP Pandiarajan has enquired On 20th I went to Royappanpatti Police. On 21st at 3.00 Hours, I went to Royappanpatti Police. SI in Royappanpatti Police enquired me. I don't remember as to whether Royappanpatti Police and Uthamapalayam DSP have written what I have stated. They did not obtain my signature for the said 3 days. On 22nd, I was enquired at Cumbum Police Station.

I don't remember as to whether they have written anything there. Even thereafter, I was enquired at Cumbum and Theni CBCID Office. Undertaking was obtained from me at Collector Office that I have to come for enquiry as and when called. On 14th, I saw Kasturi for the first time in Hill area. Even after the Accused chased us away, I went to the hill area again. I went there to bring them. We used to go that side and they also used to come there then and there. Kasturi and Bagyalakshmi have decided to go there on the date of occurrence. She brought Dosa. We ate it. I did not notice whether Kasturi brought food. We ate it separately so as to be secluded.

When the Accused threatened us by showing the sickle, I did not have the thought to call Ezhilmuthalvan by shouting. I thought that he will threaten and go away and hence I did not take it as serious Kasturi and Ezhilmuthalvan did not see the Accused threatening us. It is a dense forest. Normally even those who are near won't be visible. I don't know whether the jewels worn by Kasturi are gold

jewels. If asked whether the accused has the chance for seeing them, there is chance. It is not correct that the Accused did not threaten me. If it is said that I have alerted through cell phone that the Accused is coming, I phoned only after coming down. I can't do anything due to anxiety.

It is not correct that he did not threaten me and that I am suppressing it. We can reach the basement within 10 minutes. I trued to talk through cell phone, but it was not reached. It is not correct that I have not tried anything and I am lying. I did not say it thinking that he will threaten the deceased like he threatened me. If it is said can we four of us intercept the Accused, the Accused has sickle in his hand. If it is asked whether I have informed either in the house of Kasturi or in the house of Ezhilmuthalvan, even after hearing the news through Bagyalakshmi that Kasturi did not come to the College on 16.05.2014, I did not inform. Previously, they did not tell me that they are going to elope and marry.

It is not correct that I did not go to Suruli along with Bagya Lakshmi and that if I went there, I would have given the information. Lastly, when phoned on 14th, it was replied as Not available. Hence, I have not phoned again. After 14th up to 20th I did not tell anyone either about the threatening of the accused or about the threatening of Ezhilmuthalvan. After 20th, for the first time, I told Uthamapalayam Police Station about the treatening by the Accused. About within a week, I saw the Accused at Cumbum Police Station. On 20, 21 and 22, Police have shown many photos and asked me to identify. They asked me at Suruli. Uthamapalayam Police have asked me.

I don't know whether the covering jewels worn by Bagyalakshmi were confiscated by the Police. Bagyalakshmi also did not ask me. I did not give any separate complaint about the Accused threatened me. It is not correct that I did not go to Suruli and that there was no such occurrence took place. It is not correct that I am giving false evidence as taught by the Police. It is not correct that I have given statement in Judicial Magistrate Court as taught by the Police. It is not correct that I am giving false evidence since the Police have threatened me that they will implead me in the case.

My lover Bagyalakshmi and Kasturi are friends. Hence, I know Kasturi and Ezhilmuthalvan. If it is asked whether I have stated in the police enquiry that Ezhilmuthalvan is belonging to SC Pallar Community and his lover Kasturi is also belonging to S.C Pallar Community, I have stated that. After we were sent, when we went up to bring Ezhilmuthalvan, the accused was threatening Ezhilmuthalvan and Kasturi with the sickle to give their jewels. If it is asked as to whether I have told in the police enquiry as to whether I thought that the Accused will threaten them also like he threatened, I and Bagyalakshmi came down."

12.6 PW-16 was the village administrative officer. He testified that upon the arrest of the Appellant-convict on 28th May 2011, he gave a voluntary confession statement. He also deposed that the latter brought them to his house from where certain material objects were recovered and thereafter the house of his mother-in-law from where a chain was recovered (M.O. 10).

12.7 Maheswari (PW-17), Mayakkal (PW-18) and Raja (PW-19) have deposed in connection with a gold chain which PW-4 has positively identified as belonging to D-2. Hence, they are dealt with collectively. PW-18 having received a chain through her daughter-in-law gave it to PW-17, who pledged it with the Cumbum Primary Agricultural Cooperative Society for Rs.10,000/-. PW-19 testifies that the said amount along with interest of Rs.52/- was returned on 27th May, 2011.

12.8 PW-31, namely, Dr. S. Chellapandian, was the doctor who examined the appellant-convict when he was brought to the Government Medical College Hospital, Theni having consumed an unidentified poison. While under treatment the doctor came to know about his involvement in the offences subject matter of appeal. The appellant-convict was discharged on 25th May 2011.

12.9 PW-32, namely, Udaiyali was the Special Sub Inspector, Gudalur South Police Station. He received information on 25th May 2011 that the appellant-convict had been admitted to hospital having consumed poison. Accordingly, he registered Gudalur North PS Crime No.120/2011, under Section 309 IPC. In connection therewith he also recorded the statement of one Vijaya, mother of the convict-appellant.

12.10 PW-34, namely, Dr. Kamalashi Krishnamoorthy, the Additional Director and Director (I/c) of Forensic Science Department, Chennai, had examined the DNA extracted from semen stains and the vaginal swab. She has concluded the DNA present on both the stains and the swab match. 12.11 PW-37 is Dr. Juliana Jeyanthi, who conducted the postmortem of the two victims. We have already noted supra, the injuries sustained by them, earlier in this judgment. She has further testified that the convict-appellant had no injuries whatsoever; she has also stated that she may have handed over (though not certain) the vaginal swabs taken by her to the constable on duty.

12.12 PW-38, namely, Ramakrishnan, was the Sub Inspector of Police, Cumbum North Police Station at the relevant time. He was the one who registered FIR in Crime No.145/2011 under the category of suspicious death, upon receipt of a complaint from PW-1. He testified to the transferring of the case to CBCID on 6th September 2011.

12.13 PW-41, namely, Mohd. Abul Rashid, was the Special Sub Inspector of Police, Cumbum North Police Station. He was appointed to assist the

Investigating Officer (PW-52). He conducted the inquest of the body of D-2. The body was handed over to him which he then handed over to PW-37, accompanying her to the hospital therefor, and after the postmortem he gave the same to the relatives of the victims. The organs of the victims were received by him and sent to the regional FSL at Madurai for chemical analysis. Later, Viscera was handed over to the Judicial Magistrate's Court at Uthamapalayam.

12.14 PW-42, Pandiarajan, who then was a Head Constable at Royappanpatti Police Station, stated that upon instructions of the Inspector of Police, Cumbum PS, on 29th June 2011 he took two vaginal swabs taken from the body of D-2 and deposited the same with the Judicial Magistrate's Court at Uthamapalayam. There is a corresponding entry in the Pocket Note maintained at Royappanpatti PS. Regarding the said vaginal swabs, PW-27, Vijayendran, an employee at FSL Madurai, deposed that he received the vaginal swabs of D-2 through sealed letter dated 29th June 2011.

12.15 PW-52, Vinoji was the main Investigating Officer of the case. Since I.Os. are the charioteers of an investigation, their testimony has to be accorded necessary importance and attention. Having taken charge of the case, he went to the spot of the crime and prepared the observation mahazar and rough sketch and confiscated certain articles from there such as hair pins, bangles, blood stained sand and also sand otherwise. Subsequently, he went to the spot where the body of D2 was discovered and undertook the same processes. He carried out enquiry from the witnesses present there after having completed the inquest upon D2. The next day, he confiscated the bike of D1 and recorded statements of certain witnesses.

On 28th May 2011 he recorded the confession statement of the Appellant-convict. In his cross-examination, it is revealed that he has no recollection of the number of persons present at the place of occurrence; he had not himself prepared the observation mahazar and sketch - neither does he recall as to who the concerned constable was, who had prepared such documents. He had not obtained their statements under Section 161(3) Cr.P.C;

It has also come on record that despite a search, the amputated parts of the deceased's body were not recovered; regarding the collection of bloodstained sand, it was suggested that the same was not collected neither it was sent for testing; regarding the Appellant-convict it comes forth in the cross-examination that he had no information as to the latter being admitted at the Government Hospital; when it comes to the vaginal swab, he is unclear about its status and in whose possession the same was safely kept.

He simply stated that had it been given to the police officials, it would have been mentioned in the case diary; the source of suspicion which made him pursue the

appellant-convict as a suspect and make enquiries is unclear; he further admits that the confession statements of the Appellant-convict were not written by him, nor does he recall the particulars of the assistant who allegedly wrote the same. He also states that such assistant had not signed upon the statements and it had only been signed by the Village Administrative Officer, Village Assistant, Appellant-convict and himself; he denies having brought into the case, as witnesses PW-16 and Manikandan from other villages and no person from the village concerned where the offence took place, so as to make it easier for him to get testimonies in favour of the case put forth by the prosecution.

12.16 PW-54, namely, R. Pandiarajan, took reins of the investigation from Inspector of Police, Cumbum North P.S. on the basis of the order of District Superintendent of Police dated 28th May 2011. In the chief examination, the witness has listed out the various persons he examined in the course of investigation. His cross-examination reveals that he did not know as to how he came to have the knowledge of the Appellantconvict's attempt of suicide. Further, it has been stated therein that there is no clarity as to which of the two victims was killed first; and that it would not be wrong to say that PW-37 handed over the sample taken to the Constable on duty.

12.17 PW-55, MXB. Stanli, took over investigation from PW-54. In his cross-examination, he states that PW-54 ought to have gone to the scene of occurrence on 19th May 2011 as per Rules; according to him it is not correct that a semen sample was taken from the Appellant-convict and kept in the custody of the police department till 13th June 2011; he has confirmed the giving of a confession statement and recovery of material objects at the instance of Appellant-convict; the factum of the latter's possession of a mobile phone remained un-investigated.

12.18 PW-56 - Tr. Dayalan Tamilselvan, was the DSP, CBCID, Madurai. He undertook investigation in accordance with the order of the Additional Director General of Police, CBCID, Chennai. The examination-inchief details the process of investigation, carried out on various dates. Further, it is admitted that there is no specific reason for the non-examination of Bhagyalakshmi.

13. We now proceed to consider each of the circumstances held to be proven against the Appellant-convict by the courts below.

Circumstance One: The arrival of D1 &D2 at the scene of the crime

14. The first circumstance is that D-1 and D-2 came to the scene of the occurrence on their own. While that is a true statement of fact as evidenced by the testimonies of PW-2, 3 and 4, we are at a loss to understand how that is a circumstance that can be; ought to be and is proved as a circumstance against the

accused. The two lovers had plans to meet, and so they did. They left their houses under completely different pretexts, which is also not an occurrence out of the ordinary or the usual when young, budding romances are often sought to be hidden from family, which is evidenced by the fact that the parents of the victims were not aware of the relationship between them.

Had it been the case that the Appellant-convict, by some act, had encouraged or furthered the reason for D1 and D2 coming to the spot of the crime, then it could have been a suggested thought and premeditation on his part, qualifying to be counted as a circumstance against his innocence. This, most certainly, is not the pleaded case of the prosecution. This circumstance, therefore, is only a circumstance in name and of no value whatsoever.

Circumstance Two: Last Seen Theory

15. The next circumstance that is to consider is the last seen theory. It is well established that this is a weak piece of evidence and cannot be the sole basis of conviction.[11] We may further refer to certain judgments that expand upon the application of this theory.

15.1 In Ravasaheb v. State of Karnataka[12], a three Judge Bench (which included two of us, Nath and Karol JJ.) observed thus:

"29. On its own, last seen theory is considered to be a weak basis for conviction. However, when the same is coupled with other factors such as when the deceased was last seen with the accused, proximity of time to the recovery of the body of the deceased, etc. The accused is bound to give an explanation under Section 106 of the Evidence Act, 1872.

If he does not do so, or furnishes what may be termed as wrong explanation or if a motive is established - pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon. [Satpal v. State of Haryana [Satpal v. State of Haryana, (2018) 6 SCC 610] and Ram Gopal v. State of M.P. [Ram Gopal v. State of M.P., (2023) 5 SCC 534]]" [See also: Sanjay v. State of U.P.[13]]

15.2 The application of Section 106 of the Indian Evidence Act, 1872, doesn't absolve the prosecution of its duty to establish its case against the accused, beyond reasonable doubt. [See: Sawal Das v. State of Bihar[14] and Shivaji Chintappa Patil v. State of Maharashtra[15]]

15.3 In applying the last-seen theory, Courts should keep in mind the totality of the circumstances, or the case put forward by the prosecution. In other words, also to be seen is, what preceded and followed the accused person being last seen with the deceased. [See: Surajdeo Mahto v. State of Bihar[16]]

15.4 In Veerendra v. State of M.P.[17], referring to Nizam (supra) it was observed that when the time between the 'last seen' and the 'time of occurrence' is significant, conviction thereon would not be advisable or sustainable.

15.5 The converse of the above is that the theory comes into play "where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible." [See: Bodhraj v. State of J&K[18], State of U.P. v. Shyam Behari[19] and Sambhubhai Raisangbhai Padhiyar v. State of Gujarat[20]]

16. The two witnesses relied on by the prosecution to establish the evidence of last seen are PW-5 and PW-25. The High Court found the evidence of PW-5 to be inspiring in confidence, rejecting the argument advanced on behalf of the Appellant-convict that his silence from 14th May 2011 to 20th May 2011 renders his testimony doubtful. This was done on the ground that the reaction of PW-5 - relief of having escaped the negative consequence of attempted robbery of Bhagyalakshmi's jewels; the assumption that D1 and D2 would have faced something similar; would be alive and well; also, would have gone into the forest to get married, an entirely plausible manner of perceiving the event having taken place. The question is - Is it so?

17. The evidence of PW-5 stands extracted in toto, supra. On independent analysis, while we acknowledge the point of view of the High Court that no two persons can act in the same manner, we are unable to record our agreement with the findings returned qua this witness. It is a settled proposition of law that if two interpretations of a given situation are possible, the one favouring the accused will be taken. But, at the same time, the principle in judging the conduct of a person is the reasonable man test.

The examination that we must undertake is whether the act of PW-5 satisfies this understanding. Certain questions, therefore, arise. First and foremost, why did he not inform anyone about the occurrence between the 14th and the 20th; Second, having seen that the Appellant-convict was threatening D1 and D2, and finding that D1 did not pick up the phone when this witness called after coming down the hill-ordinarily should have raised sufficient concern in PW-5 to have taken further steps, for instance, himself intervening, to support D1 and D2 against the actions of the Appellant-convict, or alerting the forest rangers of unruly behaviour, contacting police authorities or informing them of the near theft/threat they had received as also seen others receiving et cetera; yet further when Bhagyalakshmi informed PW-5, that on the next day D2 did not attend college, yet again there was no action on part of PW-5 - In fact, stoic silence, any which way.

He testified that they assumed that the AppellantCrl. convict would let D1 and D2 go, as he did to them, and that they would have gone off into the woods to get married. Striking quite the opposite tone, in his cross-examination it appears that there had been no discussion whatsoever of this possibility. The question then is how such an assumption could be justified. The High Court held this exploration to be valid and possible but then the record speaks differently.

These circumstances, taken cumulatively, appear to be sufficient enough to ring alarm bells and yet he sat quietly and waited till the 20th May 2011 to inform any of the investigating authorities or any other person in regards to what he had seen at the hill. Can this be termed as the conduct of a reasonable man or, in other terms be so plausible that it be chalked out to differences in human behaviour. Considering the above discussion, we find the testimony of PW-5 who is the star witness of the prosecution to be full of holes, stretches and surmises. With far too much emphasis being given on the possibility of such an action being reasonable.

Knowing both the victims, having seen them be threatened, finding them missing from everyday activity and even out of contact, and yet not even uttering so much as a whisper to anybody, is hard to conceive as reasonable. In our considered view, therefore, there are sufficient holes in the testimony of PW-5 for it to be cast in doubt. This then takes us to the question as to whether he is a witness worthy of credence and his testimony believable. We are afraid not so. Particularly, as he himself admits having been repeatedly questioned by all the investigating officers.

18. The next witness relied on by the prosecution to establish last seen is PW-25 who is a Forest Guide. His statement is limited to the fact of seeing the Appellant-convict with a Sickle or 'Aruval', which is the alleged murder weapon, on the day of the occurrence. In ordinary circumstances, this would have been an important piece of evidence.

However, in the attending facts and circumstances of this case, particularly that the Appellant-convict was employed as a 'coconut cutter' as can be seen from the testimony of PW-23, further substantiated by the testimonies of PW-10 and PW-24, who are also similarly placed men, this job is done with the use of an 'Aruval', and so, it cannot be held to be strange that a person who is, in the course of his employment, regularly using such an instrument has it in his possession. In other words, the evidence of PW-25 is a mere statement and cannot help, in any way in the case against the Appellant-convict.

Circumstance Three: Arrest, Confession and Recovery Arrest

19. The next aspect to be considered is the arrest of the Appellant-convict. The sequence of events leading up to the arrest is that the bodies of the victims were

discovered on 19th May, 2011; PW-5 spoke to the investigating authorities on 20th May 2011; as a consequence of unrelated actions, the Appellant-convict attempts suicide, such attempt is thwarted-he is admitted to the Government Medical College Hospital, Theni, on 22nd May, 2011 brought by certain constables; he was later sent to K. Vilakku Hospital and discharged on 25th of May, 2011, after having received treatment at the hands of PW-31; and he is arrested on 28th May 2011. The High Court judgment, curiously, records that the investigating authorities, "taking a cue" from the statement of PW-5, arrested the Appellant-convict on 28th May, 2011. However, the record is unclear how such an arrest order was passed.

20. PW-31, in his cross-examination states that while the Appellant-convict was admitted under his care, he came to know either on the day of the latter's admission, or the next day, that he was involved in a murder investigation. For clarity, it may be stated that this occurrence happened either on 22nd or 23rd of May 2011. We notice that PW-32, who, at the relevant point of time, was a Special Sub Inspector, Gudalur South PS, states that he received information on 25th May, 2011 that the Appellant-convict had been admitted there. It has come forth in his statement that when he reached, the latter was accompanied only by his mother. Apparently, his mother's statement was also recorded; however, the same is not on record. There is an apparent difference in the sequence of events, as narrated by these two witnesses.

21. The Appellant-convict came to be arrested, according to the prosecution, on 28th May, 2011 (which fact he denies in his statement under section 313 Cr.P.C.). PW-16, who is the Village Administrative Official, testified that the Inspector of Police, Cumbum, arrested him and relayed such information. The only reason for such an arrest is suspicion. As we have already observed, the other statement relating to the arrest of the Appellant-convict is that he was arrested, taking a cue from the statement of PW-5.

The record is conspicuously silent as to the genesis of the suspicion the authorities cast upon him or what cue or hint they took from the statement of PW-5. So, how one thing led to another is unclear. We may also observe that it is strange that the Courts below did not emphasize how such an arrest came to be, particularly when none of the witnesses examined for the prosecution stated with ample clarity regarding the same. The arrest of the Appellant-convict itself is cast under serious doubt, since the circumstances leading to the same are missing from the record.

Various questions that ought to have been answered were in fact not done so - such as what led the police to suspect him, when this suspicion arose; what processes were undertaken to lend credence to such suspicion, before making an arrest, et cetera. The High Court, in para 32 of the impugned judgment, records

that the Appellant-convict had been arrested in the presence of PW-16 and one Manikandan. This appears to be incorrect on the face of the record. The cross-examination of PW-16 reads:

"if it is said that the accused was arrested at about 11:30 AM on 28 May 2011 by the Inspector of police, he was brought for enquiry. The Inspector caught the accused at 11:30 AM and informed me after 15 minutes. He informed me through cell phone. I was in the office of the Village Administrative Officer, Surulipatti, when the Inspector informed me. 10 minutes after I left, police have enquired. The enquiry was started where the accused was caught."

(Emphasis supplied)

It is clear that at the time of arrest, there was no independent witness. The evidence of Manikandan, if taken, is not on record.

Confession

22. The appellant convict made two confession statements before the police authorities, Ex. P.8 dated 28th May, 2011 and Ex. P.75 dated 31st May, 2012. The evidentiary value of such a confession has been considered many a times before this Court. In Nikhil Chandra Mondal v. State of W.B.[21] B.R Gavai, J., (as his Lordship then was) discussed the law as follows:

"16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.

17. Reliance in this respect could be placed on the judgment of this Court in Sahadevan v. State of T.N. [Sahadevan v. State of T.N., (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] This Court, in the said case, after referring to various earlier judgments on the point, observed thus : (SCC pp. 412-13, para 16)

"16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the 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."

23. Keeping in view the aforesaid principles of law, we have perused both the confessions. In the first confession dated 28th May, 2011 after giving a background of his upbringing and also previous involvement in petty crimes, coming to the instant crime he admitted that he struck a blow on D1 who, as a result thereof, started bleeding. PW-54, to some extent corroborates this stating that he had recovered sand both with and without blood near the corpse of D2. However, contrary to this version of events, PW-28 who is the Scientific Officer at the Regional Laboratory states that from the material recovered, there was no blood to be found.

The confessional statement records that having hacked the body of D2, he threw the severed limbs in the nearby bushes but, it is a matter of record that despite an extensive search, they could not be located. It is also unclear that a man, who by his own admission, has been in the past involved in petty crimes would take stolen articles not only back to his own home but also give one of them to be pledged in order to get money - the natural question is that once he has stolen the said chain, it would be easier to dispose it of and get whatever money it is worth rather than using it as collateral to get money from other, more legitimate sources leaving open the possibility of it being traced back.

24. That apart, we find that the record is silent as to why there was a need to record a second confession more than a year after the date of offence. The Deputy Superintendent of Police upon order of the Additional Director General of Police, CBCID, Chennai, commenced investigation in the matter following the latter's order dated 13th August, 2011 and, thereafter, enquired and examined various witnesses. Given that the Appellant-convict was already in custody, the recording of a second confession without any reason therefor, or clearly stating

that the Appellant-convict upon his own volition wished to give a second confession, in our view, is unjustified.

As recorded supra, it has been held that if the circumstances surrounding the recording of the confession are suspicious, placing reliance thereon is totally unsafe, and that too without any corroboration. We find there to be an apparent lack of corroboration to any of the statements made by the Appellant-convict and as such, find that the confessions are truly unreliable. This is, of course, over and above the settled position of law that confessions made to a police officer are wholly inadmissible as evidence in a Court of law.

Recovery

25. The Courts below have found that since, in the confessions given by the Appellant-convict, certain information regarding the location of material objects was divulged, that limited portion of the confession becomes admissible according to Section 27 of the Indian Evidence Act,1872. That is the correct proposition in law. Reference may be made to some judgments of this Court as follows:

25.1 Surya Kant J., writing for a Bench of three Hon'ble Judges of this Court in Bijender v. State of Haryana[22], held as under:

"16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [Vijay Thakur v. State of H.P., (2014) 14 SCC 609 : (2015) 1 SCC (Cri) 454]

We may hasten to add that circumstances such as: (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1], Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223], State of Rajasthan v. Talevar [State of Rajasthan v. Talevar, (2011) 11 SCC 666 : (2011) 3 SCC (Cri) 457] and Bharama Parasram Kudhachkar v. State of Karnataka [Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431 : (2015) 1 SCC (Cri) 395])

17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the court ought to stretch the benefit of doubt to the accused. It is nearly three centuries old cardinal principle of criminal jurisprudence that "it is better that ten guilty persons escape, than that one innocent suffer" [W. Blackstone, Commentaries on the Laws of England, Book IV, c. 27 (1897), p. 358. Ed. : see R. v. John Paul Lepage, 1995 SCC OnLine Can SC 19.]. The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent".

(Emphasis supplied)

25.2 Earlier in K. Chinnaswamy Reddy v. State of A.P.[23], a three-Judge Bench had summarised the situation as under:

"Pulukuri Kotayya v. King-Emperor [(1946) 74 IA 65] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered Section 27 of the Indian Evidence Act, which is in these terms:

"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."

This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27.

The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words "so much of such information as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that "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".

26. In the preceding paragraph, we have considered the law laid down by this Court on that issue. Let us now consider the circumstances in which the recovery was made from the locations as disclosed. It cannot be questioned that such recovery would be relevant since the Appellant-convict could have affected the recovery only if he had specific knowledge of the location. This, however, in our view, is not sufficient to take the recovery of the objects as a circumstance against the Appellant convict. This we say for the reason that the objects recovered also have to be verified and tested. Now, this was not done. His statement is said to have led to the recovery of - (i) a sickle, (ii) a jute bag, (iii) a green coloured lungi, (iv) a blue colour checked shirt, and (v) a red and yellow colour striped towel from his house.

27. How any and/or all of these articles related to the alleged murder of two victims and rape of one of them is undemonstrated from the record. None of the relatives of either D1 or D2 have testified to any of these belongings being that of the victims.

28. Still further, we would separately deal with the recovery of each of the articles relating to the guilt of the Appellant-convict:

(a) Sickle- The sickle, M.O. 18, has not been sent for FSL-in other words, on what basis is it established that this very sickle was used to hack the victims? Also, sickle is an easily available item for a person like the accused whose work is to cut coconut. No blood was found on the weapon. Even the doctor doesn't state that the injuries on the body of the deceased could have been caused with the same. There is a total disconnect with the weapon and the injuries resulting into death. None has also testified the weapon to be owned by the Appellant-convict.

(b) Semen or Blood- There is no forensic report as to the recovery of either semen or blood on the clothes so recovered; the manner in which it was preserved and kept in whose custody.

(c) Jute Bag- There is no identification of the owner and possessor of the jute bag.

(d) Black bag, a different box and a book- recoveries were also made of a black bag, a different box, and a book - M.Os.23, 24 and 25, from the bushes near Karuppasamy Temple. These items, too, were not verified or ownership established. In other words, how they are to be considered to be the 'material objects' for the purpose of this case? More so, when these items were recovered on the basis of confessional statement of the accused himself, as recorded by PW-

52, but the confessional statement is in itself not reliable, even otherwise to what effect.

(e) Gold chain - Further, insofar as the gold chain is concerned, it is the uncontroverted testimony of PW-16 that a chain of such a design is readily available in stores. That apart, the testimony of PW-18 reveals that she came into possession of the said chain through her adopted daughter, who is the wife of the Appellant convict. Such wife, namely Pavithra, was not examined to establish the chain's ownership or the source of such acquisition on her part.

The parents of D-2 have indeed identified the chain (M.O.10) as hers, but we record our surprise that only the chain was produced before them for identification and none of the other material allegedly recovered at the instance of the Appellant-convict. Be that as it may, even if the identification of the chain by the parents of D2 is taken at face value, even then, to affix the gauntlet of guilt upon the Appellant-convict on this count alone, would be entirely unwarranted.

Circumstance Four: The Incident of Rape and DNA Evidence

28. According to the prosecution, since the vaginal swabs collected from D2 show penetrative sexual assault and since the DNA found, matches that of the Appellant-convict, the factum of rape is established. The case put up by the Appellant-convict, on the other hand, is that DNA evidence, in the facts and circumstances of this case is unreliable, and therefore, the fact of rape cannot be established. The primary ground urged in this regard is concerning the chain of custody of the DNA. A sequence of events concerning DNA evidence, as per the prosecution may be useful to be noted at this stage:

19.05.2011	**PW 37 (Asst. Professor Medical Department)** - Internal organs were sent to FSL, Madurai (Pg.128) - Two Vaginal Swabs were collected and sent to FSL, Chennai. **PW 56 (D.S.P CBCID)** - Vaginal Swabs were kept in Royappanppatti Police Station. (Pg.219)
31.05.2011	**PW 30 (Assistant Director FSL, Madurai)** - Internal Organ received in laboratory from FSL, Theni (Pg.105) **PW 41 (Sub-inspector PS Cumbum)** - Brought internal organ of D2 to FSL, Madurai (Pg.144) - Handed over the VISCERA to Doctors | and handed over to Judicial Magistrate
06.06.2011	**Pw 28 (Scientific Officer)** - Received Wooden Box at Regional Laboratory, Madurai from

	Judicial Magistrate, Uthamapalayam. (Pg.100)
29.09.2011	**PW 27 (Scientific Officer)** - After analysis the Swab, Sent the same to FSL Chennai. **PW 42 (Head Constable)** - Collected samples from Government College took them to FSL Madurai (Pg.147)
30.11.2011	**PW 34 (Asst. Director FSL, Chennai)** - Received Blood Stain through HC 934 Constable. (PW.48) **PW 41 (Sub-inspector PS Cumbum)** - Received organs of body from doctor, went to Police Station and handed over to Judicial Magistrate Court. (Pg.144)

29. The first limb of considering the DNA evidence is the vagina swabs taken from D-2. PW-37 in her chief examination, stated that once she took the said samples, they were sent to FSL Madurai, for DNA test, but striking an entirely different tone in her cross-examination, she said that having taken these samples she 'might have' handed over the said swabs to the constable on duty. It is noteworthy to observe here itself that PW-41, who was the constable on duty, makes no such mention of having received the swabs from PW-37. PWs 52 and 54 both state that upon collection, the samples remained with PW-37 at the Government Hospital. Per contra, PW-56 states that the samples were kept at Royappanpatti Police Station.

PW-42, who is a police carrier, states that he collected the samples from the Government Medical College and took them to the Regional Forensic Science Laboratory, Madurai, on 29th June, 2011. This means they were sent to the FSL after a delay of 41 days, having been taken on 19th May, 2011. The prosecution has not been able to explain the reason as to why this delay took place. We find force in the argument made on behalf of the Appellant-convict that the circumstances under which the samples were sent from FSL, Madurai to FSL, Chennai, are unclear. PW-27, who is a Scientific Officer only states that after his analysis of the swab, he sent the same to the DNA wing of the FSL Chennai.

No reason is forthcoming as to why and under whose orders the same were sent to a different city. The final DNA report was prepared by PW-34. He, however, in his evidence does not mention when the samples were received by him or his office. Nor does he depose the conditions in which the sample was received. In this regard, the Appellant-convict contended that the swab itself was received by speed post. We find that to be an incorrect statement of facts. PW-34 states that the report prepared by him was DNA 152/2011.

A perusal of the annexure to the DNA report[24] shows the label given to the document sent by speed post as matching that of the report prepared by PW-34. So, it is clear that the report was what was sent by speed post, not the swab itself. That apart, had it actually been that the swab was sent by speed post, we would be nothing short of aghast. Time and again, this Court has emphasized the importance of maintaining the sanctity of these samples and, the investigating authorities actually doing something so glaringly irresponsible would be an affront to any and all observations that have been made by this Court over the years.

30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of vital evidence, etc.

Similar questions arise in connection with the semen sample taken from the accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. PW- 56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned. It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer forthcoming from the record.

31. In Anil v. State of Maharashtra[25] this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected.

We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions.

32. One such instance where DNA evidence had to be rejected, fairly recently, was a three-Judge Bench decision in Manoj v. State of M.P.[26]. The Appellants in the said case had been sentenced to death by the 1st Additional Sessions Judge, Indore, for the murder in the course of the robbery of 3 women. Ultimately, the Court commuted the death sentence to life imprisonment with a minimum 25 years sentence; while dealing with such evidence, it made detailed references to a 2007 paper titled DNA Profiling In Justice Delivery System published by the Central Forensic Science Laboratory, Kolkata and the previous judgments of this Court wherein the topic of DNA has been dealt with, as also the 185th report of the Law Commission of India. In this case, DNA was rejected on the ground that recovery, which was affected, was made from an open place, and the likelihood of its contamination cannot be ruled out. It is also observed that the bloodstains found on the articles were disintegrated, and the quantity was insufficient to run any classification tests.

33. Rahul (supra) was a case concerning the kidnap, rape and murder of a woman, wherein 3 persons were convicted by the Special Fast-Track Court, Dwarka Courts in Sessions Case No.91 of 2013. These persons had kidnapped a woman as she returned from work, proceeded to do horrible things to her, and then dumped her lifeless remains in a field, from where it was discovered four days later.

The DNA evidence, here, was rejected because it remained in the police Malkhana for two months and in such time, the possibility of tampering could not be ruled out. It was also held that neither the Trial Court nor the High Court had examined the underlying basis of the findings in the DNA reports or whether the techniques used had been reliably applied by the concerned expert. As such, it was concluded that the DNA profile, in the absence of such evidence, had become highly vulnerable when the collection and sealing of the samples sent for examination was not free from suspicion.

34. Prakash Nishad v. State of Maharashtra[27] was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence had to be rejected by this Court on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

35. This case, incidentally, if not unfortunately, is another one of the like of the above. Despite the presence of DNA evidence, it has to be discarded for the

reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant-convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with.

Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology. It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or investigators, have been careless in the handling of such sensitive evidence.

Circumstance Five: Motive

36. It is settled law that, in a case of circumstantial evidence as this one is, motive forms one of the chains of circumstance which can collectively point to the guilt of the accused. According to the prosecution, robbery was the Appellant-convict's motive for ending the lives of D1 and D2. On first blush, this hypothesis appears to be attractive for the reason that the robbery of gold ornaments worn by Bhagyalakshmi at the first instance, and subsequently D2, is what eventually gave way to the crimes for which he stands convicted concurrently by the Courts below.

The counsel for the Appellant-convict seeks to dispel the presence of motive by stating that there were other instruments/ornaments of the two victims, which could have been taken by the Appellant-convict and put to his own use or sold off for one sum of money or another; however, that was not the case. The ring worn by D2 and the mobile phone of D1, which undoubtedly were in their possession, were neither found in the possession of the Appellant-convict nor near the scene of the crime.

37. It has come on record that the Appellant-convict, due to various factors, had taken to crime. As we have already discussed, it is not the case of the prosecution that the said objects were taken by the Appellant-convict and then misused or sold. When the identity of the gold chain could not be unquestionably established and the fact that the other goods that were in possession of the victims at the time of the crime were also not recovered from or at the instance of the Appellant-convict, we find it difficult to ascribe any motive on his part.

Circumstance Six: Test Identification Parade

38. The investigating authorities conducted a test identification parade - asking PW-5 to identify the Appellant-convict from a long line of habitual offenders. He did so thrice. This has been taken as another circumstance against the convict Appellant. Before proceeding to the merits of this circumstance, let us appreciate the law on this point.

38.1 No provision of law casts an obligation upon the investigating authorities to conduct a test identification parade. If it is conducted, the provision that governs is Section 162, Cr.P.C. [See: Munshi Singh Gautam v. State of M.P.[28]; Malkhansingh v. State of M.P.[29]; Visveswaran v. State[30]; and Ashok Debbarma v. State of Tripura[31].]

38.2 The onus to show that the T.I.P. has been conducted in accordance with law lies on the prosecution, and only after this burden stands prima facie discharged, does the question of considering objections in this regard arise. [See: Umesh Chandra v. State of Uttarakhand[32].]

38.3 It is not a substantive piece of evidence. Its only purpose is for the investigating authorities to analyse the correctness, or lack thereof, of the direction in which they are steering the investigation. [See: Hari Nath v. State of U.P.[33]; and Iqbal v. State of U.P.[34]]

38.4 If the prosecution does not establish, by examination of witnesses to the T.I.P., and the Magistrate entrusted therewith, it cannot be said that it was conducted per law. [See: Umesh Chandra (supra).]

38.5 There is no hard and fast rule about delay in conducting T.I.P. being fatal to the case of the prosecution. In certain cases, relatively small delay has been considered fatal yet in others, a delay of as much as 40 days is not fatal. [See: Raja v. State[35]35.]

38.6 The prosecution must establish that prior to the test identification parade being conducted, the witness had no opportunity to see the accused. In other words, the accused must be kept 'baparda'. [See: Gireesan Nair v. State of Kerala[36]; and Budhsen v. State of U.P.[37].]

38.7 If the above has not been ensured, the evidence of the T.I.P. becomes inadmissible. It has also been held that if, prior to the T.I.P. the witness has the opportunity to see even the photograph of the accused person, such process becomes inconsequential. [See: Maya Kaur Baldevsingh Sardar v. State of Maharashtra[38]; C. Muniappan v. State of T.N.[39]; and Sk. Umar Ahmed Shaikh v. State of Maharashtra[40].]

38.8 Dock identification by the informant, even in the absence of T.I.P., can be accepted, but generally, as a matter of prudence, a witness's identification of an

accused in Court is sought to be corroborated by the identification by the former of the latter in previously conducted identification proceedings [Rajesh v. State of Haryana[41]; and Mukesh v. State (NCT of Delhi)[42].]

38.9 Considering the facts and circumstances of the case at hand, it is open for the Court to draw an adverse inference against the witness, should they put forth a refusal to participate in the identification proceedings. [See: Mohd. Anwar v. State (NCT of Delhi)[43].]

39. It is plain as day that the above principles were not observed in the present case. We are constrained to record our astonishment as to how the Courts below considered the identification proceedings as a circumstance accruing against the Appellant-convict. It is undoubted that PW-50, in his testimony, gives sufficient detail as to the procedure followed in conducting the T.I.P., and on that count, no assault can be made thereon, however, as the preceding paragraph establishes, there are other equally crucial factors.

It is a matter of record that PW-5 (the witness who participated in the T.I.P.), in his testimony, stated that about a week after he gave information to the concerned police about the incident of 14th May, 2011, he saw the Appellantconvict at the said police station. Most importantly, as has come on record, the police officials had informed him about the Appellant-convict committing the crime.

As held by Budhsen (supra) as far back as the year 1970, by Suryamoorthy v. Govindaswamy[44] in 1989, Suresh Chandra Bahri v. State of Bihar[45] in 1995, Mulla v. State of U.P[46] in 2010, i.e., well before the judgment of the learned Trial Court was pronounced, that if the said witness had the opportunity to see the accused, in any form, after the incident the subject matter of testimony, but prior to the identification proceedings, it would render the same to be ineffective. Then, in our view, the courts below committed an error of elephantine proportions in considering these proceedings as forming one of the chains of circumstances against the Appellant-convict.

Two Additional Points

One: Other Suspects Remained Unexplored

40. Most importantly, PW-2, the father of D1 in his testimony deposed that he feared the involvement of four other persons. In order to have that possibility sufficiently explored, he filed a case before the High Court seeking transfer of the investigation to CBCID. PW-56, the Investigating Officer on behalf of the CBCID submitted that on 8th August, 2011, he recorded the statements of PW-5 (Rajkumar), Bhagyalakshmi, and suspects - Francis, Arjunan, Ambazhagan.

These statements are not on record. How these statements were pursued, verified, and taken to their logical conclusion is unknown to record, more so, to the findings of the Courts below. PW-56, in his own deposition, also does not give any details as to what they may have said to him during his examination. Curiously, if Bhagyalakshmi had been examined by him, why her statement was not produced before the Trial Court is a question which remains unanswered. The prosecution has nowhere stated that PW-2's suspicion on these persons was unfounded or misguided. That being the case, the non-pursuance of these suspects is a circumstance to be taken against the prosecution case.

Two: Non-examination of Bhagyalakshami

41. PW-5 in his testimony states that he knew both the victims, D1 and D2 through Bhagyakshami. Undisputably, D2 and she were friends. She was obviously there at the time of the incident. She was the one who had informed PW-5 that D2 did not attend college the next day. Further, she was the one who told PW-5 that they had been murdered in suspicious circumstances which led the latter to go to the police on 20th May, 2011 and tell them his version of events on the fateful day of 14th May 2011.

All of these essential happenings have a link, i.e., the lover of PW-5. Then, why she remained unexamined by the prosecution is a mystery. Still further, it has come on record, as we have noticed supra that PW-56 recorded her statement. However, how it escaped the attention of both the Courts below that the statement was not on record, is surprising. She could have given essential testimony for the last seen theory to be applied to the present case; she could have deposed as to the relationship between D1 and D2; the possibility of an elopement which formed the basis of PW-5 not approaching the authorities even after he came to know from her that D2 did not attend college.

She could have further been an additional witness in the T.I.P., which would have lent credence to the prosecution case. Undoubtedly, she would have been a material witness, and her non-examination is a negative circumstance against the prosecution's case. We are supported in our conclusion by the observations made Takhaji Hiraji v. Thakore Kubersing Chamansing[47], which are extracted as follows:

"19. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to

draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.

On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

FAULTY INVESTIGATION

42. A common thread that can be seen to be running through the entire process that has culminated by way of this judgment, is that of faulty investigation. Since we have already discussed the evidence on record in detail, we may only point out various instances:

A) The identity of the accused could not be sufficiently protected leading to its disclosure well before the T.I.P. was conducted;

B) Although there is no straight-jacket formula as to when T.I.P. can be/cannot be conducted, the delay in doing so has to be examined in the facts and circumstances of the case. The nineday delay herein is entirely unexplained;

C) Lack of coordination between investigating agencies. Bhagyalakshmi has not been arrayed as a witness, despite examination by PW-56 who is the person concerned at the CBCID. The other investigating officer did not examine her despite a clear link to the deceased persons and the star witness of the prosecution;

D) Requisite care regarding the sensitive evidence (DNA etc.) was not taken in the slightest. There are large gaps in the chain of custody which are unexplained;

E) Surprisingly and shockingly, we may say that the postmortem of the deceased persons was conducted at the spot of the crime without due regard to the possibility of contamination, effect of such examination being conducted in the open, etc. None of the Courts below have found this to be objectionable;

F) Possibility of ruling out the involvement of third party in the crime.

DNA- A NECISSITATED ADDENDUM

43. As we have discussed earlier in this judgment, the DNA evidence collected has been rendered unusable. It suffers from various shortcomings in as much as there is large amount of unexplained delay; the chain of custody cannot be established; possibility of contamination cannot be ruled out etc. We have also referred to instances in the recent past where, similar to the case at hand the DNA evidence was rendered unusable on account of similar lapses.

A perusal of the various documents released by a number of bodies such as the Standard Operating Procedure for Crime Scene Investigation issued by the Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India[48]; Guidelines for collection, storage and transportation of Crime Scene DNA samples issued by the Central Forensic Science Laboratory, Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India[49]; a Forensic Guide for Crime Investigators (Standard Operating Procedures) issued by LNJN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India[50] show that, although, procedures have been suggested, there is no uniformity nor there is a common procedure which is required to be followed by all investigating authorities.

This, obviously, has the potential to have an impact on the cases investigated. When it comes to procedure followed by the police generally, differences therein are understandable keeping in view the difference in society, regional complexities as also other factors given the wide length and breadth of the Country, however, the same yardstick cannot be applied when it comes to sensitive evidence such as DNA for the concerns, causes of its dilution in evidentiary value and requirements for it to be collected and maintained in pristine condition is not subject to the same factors. So, even though 'Police', 'Public Order' are subjects mentioned in List-II of the Seventh Schedule of the Constitution of India that in itself cannot permit differing procedures and sensitivities to such evidence, to rule the roost. The aspects in which we find there to be errors committed regularly are in fact procedural aspects which aid the sanctity of the evidence.

44. This lack of a common procedure to be followed, is concerning. As such, we issue the following directions which shall be followed henceforth, in all cases where DNA Evidence is involved:

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The

document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48- hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

The Directors General of Police of all the States shall prepare sample forms of the Chain of Custody Register and all other documentation directed above and ensure its dispatch to all districts with necessary instruction as may be required.

CONCLUSION

45. Consequent to the above discussion, we have no hesitation in holding that none of the circumstances posited by the prosecution are found to be conclusively proved against the Appellant-convict. The chain of circumstantial evidence in no way points to a singular hypothesis, that is the guilt of the accused, ruling out his innocence or involvement of none else in the crime. As a result, the conviction of the Appellant-convict is vacated. He is directed to be released forthwith if not required in any other case. The appeal is allowed.

46. Recently, this Court, in a case concerning violation of the Prevention of Money Laundering Act, 2002[51] and where the accused person had been in prolonged detention, made some observations regarding Article 21 of the Constitution of India. They are extracted below for reference:

"28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

Kattavellai @ Devakar has secured a clean acquittal here as well. Let it be clarified that we are not commenting as to whether the day of reckoning with this question has arrived, but we may only see that in case such an approach is adopted, we would not be breaking new ground but only affirming our commitment to the constitutional guarantee of Right to Life under Article 21 of the Constitution of India. The Law Commission of India in its 277th report titled 'Wrongful Prosecution Miscarriage of Justice: Legal Remedies' dealt with this issue.

However, the Report confined the understanding of 'wrongful prosecution' to include only malicious prosecution, and the prosecution initiated without good faith. It does not, therefore, directly deal with the situation with which we are confronted. In this case, as is obvious, the accused was taken into custody, and it is the judicial process that has taken such a long time to come to a conclusion. The worrying feature here is that the conviction had no legs to stand on whatsoever and yet the Appellant-convict has been in custody for years.

In foreign jurisdictions such as the United States of America[52], acquittal after a long period of incarceration has led Courts to direct States to award compensation to the persons who suffered behind bars, only to be eventually held innocent. This right to compensation has been recognised by both Federal and State statutes. There are two ways that compensation can be claimed - tort

claims/civil rights suits/moral bills of obligation and, statutory claims. Given the variety of statutes across jurisdictions grounds for compensations/procedures vary significantly.

Well, it is for the legislature to consider this aspect.

The Registry is directed to send a copy of this judgment to all High Courts and also the Directors General of the Police of all States to ensure necessary compliance. The Police Academies of the States are requested to examine the necessity of conducting training of the Investigating Officers to ensure full compliance with the requisite precautions and procedures in accordance with the directions issued herein above.

Pending applications, if any, shall stand disposed of.

.....J. (Vikram Nath)

.....J. (Sanjay Karol)

.....J. (Sandeep Mehta)

New Delhi

July 15, 2025.

1 (1974) 3 SCC 277

2 Hereinafter referred to as "IPC"

3 Hereinafter D1

4 Hereinafter D2

5 Numerous spellings have been used throughout the record for this name. For the purpose of this judgment, we use 'Bhagyalakshmi'

6 Hereinafter SCST Act

7 Hereinafter referred to as "Cr.PC"

8 (1999) 4 SCC 370

9 (1952) 2 SCC 71

10 (1984) 4 SCC 116

11 Nizam v. State of Rajasthan, (2016) 1 SCC 550

12 (2023) 5 SCC 391

13 2025 SCC OnLine SC 572

14 (1974) 4 SCC 193

15 (2021) 5 SCC 626

16 (2022) 11 SCC 800

17 (2022) 8 SCC 668

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20 (2025) 2 SCC 399

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22 (2022) 1 SCC 92

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24 page 215 of the Appellants Convenience compilation

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26 (2023) 2 SCC 353

27 (2023) 16 SCC 357

28 (2005) 9 SCC 631

29 (2003) 5 SCC 746

30 (2003) 6 SCC 73

31 (2014) 4 SCC 747

32 (2021) 17 SCC 616

33 (1988) 1 SCC 14

34 (2015) 6 SCC 623

35 (2020) 15 SCC 562

36 (2023) 1 SCC 180

37 (1970) 2 SCC 128

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39 (2010) 9 SCC 567

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IN THE SUPREME COURT OF INDIA

Vijay Kumar
Vs.
Central Bank of India and Ors.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No._____ of 2025 @ D No. 39502/2024]

HEADNOTE – There is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law. When an authority is vested with the discretion to grant pension less than full pension admissible under the Pension Regulations, all procedural safeguards in favour of the employee including prior consultation must be strictly followed.

JUDGMENT

Joymalya Bagchi, J.

1. Delay condoned. Leave granted.

2. Appeal is directed against judgment dated 22.04.2024 passed by the Patna High Court to the extent the Court upheld reduction of onethird of the pension payable to the appellant under the Central Bank of India (Employees') Pension Regulations, 19951.

3. Appellant while working as Chief Manager, a scale IV officer in the respondent No.1bank was served with a Memorandum of Charge alleging that, during his tenure as Branch Manager, Dhanbad Branch he sanctioned loans in respect of 12 accounts, inter alia, without proper appraisal of income, non-verification of KYC compliance, without postsanction inspection etc. exposing the bank to potential financial loss of huge amount.

4. A.K. Roy, Assistant General Manager (a scale V officer) was appointed as the Inquiry Authority (IA). During the inquiry, appellant attained superannuation on 30.11.2014 but the enquiry was continued under Regulation 20(3)(iii) of Central Bank of India (Officers') Service Regulations, 19792. He submitted inquiry report holding the appellant failed to discharge his duties with utmost integrity and honesty which was unbecoming of a Bank officer and exposed the Bank to huge financial loss for his pecuniary gain. Inquiry report was served on the appellant, and he replied to it.

After considering his reply disciplinary authority i.e., Deputy General Manager (a scale VI officer) upheld the findings of the inquiry officer and imposed major

penalty of compulsory retirement under Rule 4 (h) of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 19763 with effect from date of superannuation. Appellant submitted an appeal before appellate authority i.e., Field General Manager (a scale VII officer).

5. During pendency of the appeal, Regional Manager, Purnea, a scale IV officer, i.e., equivalent to scale of the appellant, on 05.08.2015 recommended minimum payable pension under compulsory retirement i.e., twothird pension to the appellant. Field General Manager by order dated 07.08.2015 concurred with the Regional Manager and recommended award of twothird compulsory retirement pension. Thereafter, on 30.12.2015 the said Field General Manager as the appellate authority dismissed the appellant's appeal and upheld the penalty imposed on the latter.

6. The appellant initially approached the High Court challenging validity of Regulation 20(3)(iii) of Service Regulations which enabled the Bank to continue disciplinary proceedings even after superannuation and for setting aside the order of compulsory retirement including disbursal of full retiral benefits but subsequently he restricted his challenge only to disbursal of full retiral benefits.

7. During hearing High Court was informed while the Bank had not passed any order forfeiting gratuity, it had taken decision to award twothird of the pension payable to the appellant. In these circumstances, High Court while directing release of gratuity upheld the decision of the Bank to reduce onethird of the pension payable to the appellant.

8. Being aggrieved by the reduction of onethird pension, appellant has approached this Court. Bank has contested the appellant's plea and produced additional documents, namely, recommendation letter of Regional Manager, Purnea for grant of minimum pension and the sanction letter of such pension by Field General Manager awarding twothird pension to the appellant.

9. Mr. Neeraj Shekhar contended pension is not a bounty and appellant's right to pension is constitutionally protected under Article 300A. Such right could not be taken away save and except by a clear prescription of law. High Court erred in holding that a compulsorily retired employee is not entitled to pension at all unless an order under regulation 33(1) of the Pension Regulations is passed. Regulation 33 (1) and (2) must be harmoniously construed to mean in cases where penalty of compulsory retirement is imposed, such employee has a right to receive pension not less than twothird of the full pension and such deduction can be made only after prior consultation with the Board of Directors.

10. Per contra, Mr. Dhruv Mehta, learned Senior Counsel submitted a plain reading of regulation 33 (1) and (2) would show the clauses are mutually

exclusive and operate in different circumstances which do not overlap each other. As per clause (1), an authority higher than the authority competent to impose compulsory retirement penalty may grant pension at a rate not less than twothird whereas clause (2) permits the competent authority awarding compulsory retirement to award less than full pension in exercise of its original, appellate or reviewing powers.

Only in the latter case consultation with Board of Directors is necessary. As the pension was reduced by the Field General Manager, a scale VII officer who is an authority higher in rank than the disciplinary authority, a scale VI officer no prior consultation was necessary, and the impugned decision did not call for interference.

11. The controversy centres around interpretation of regulation 33 of the Pension Regulations which provides for compulsory retirement pension as follows:

"33. Compulsory Retirement Pension

1. An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than twothirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

2. Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

3. A pension granted or awarded under clause (1) or, as the case may be, under clause (2), shall not be less than the amount of rupees three hundred and seventyfive per mensem."

12. Clause (1) provides for granting pension at a rate not less than twothird and not more than full pension by an authority higher than the authority competent to impose penalty of compulsory retirement. Clause (2) enjoins whenever a competent authority passes an order awarding pension less than full compensation pension in exercise of original, appellate or review powers, Board of Directors must be consulted before such order is passed. In no case the pension awarded shall be less than Rs.375/per mensem.

13. 'Competent Authority' is defined in both Discipline and Appeal Regulations and Pension Regulations as an authority appointed by the Board for the purpose

of such regulations. In the Discipline and Appeal Regulations, it is further clarified Competent Authority must be superior to the delinquent and not an officer holding rank lower than scale IV officer. Clause 3(b) of Discipline and Appeal Regulations read with Schedule4 shows that an officer not below rank of Assistant General Manager and holding a rank higher than the disciplinary authority is the appellate authority under such regulation.

A combined reading of the provisions in both the regulations would indicate a Field General Manager (holding a rank superior to disciplinary authority and higher than Assistant General Manager) is not only an authority superior to the disciplinary authority empowered to reduce pension under clause (1) but also the appellate authority under Discipline and Appeal Regulations who could exercise appellate powers to reduce pension under clause (2) of Pension Regulations.

14. The bank would argue as pension was reduced under regulation 33(1) by Field General Manager as an authority superior to disciplinary authority competent to impose penalty, no prior consultation with Board was necessary, unlike cases where Competent Authority i.e., disciplinary authority while awarding compulsory retirement directs pension less than full compensation pension.

15. Such argument is fallacious for following reasons. Clause (2) permits the Competent Authority to award pension in exercise of not only original but also appellate or reviewing powers. If the expression 'Competent Authority' in clause (2) is restricted to disciplinary authority alone, reduction of pension in exercise of appellate or review power would become nugatory. Any interpretation which renders words or expressions in a statute otiose ought to be eschewed.5

16. Given this situation to accept the bank's interpretation that the two clauses ought to be read independent of one another would give rise to a piquant situation where the self same authority, i.e., Field General Manager reducing pension under clause (1) would not require prior consultation with the Board which is mandatory while exercising similar power under clause (2). To avoid this anomaly whenever a superior authority reducing pension under regulation 33(1) is also appellate authority or reviewing authority who is empowered to exercise power under clause (2), the requirement of prior consultation with the Board must be held to be mandatory, failing which requirement of such prior consultation may be circumvented by the bank to the prejudice of the employee.

17. There is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law. When an authority is vested with the discretion to grant pension less than full pension admissible under the Pension Regulations, all procedural safeguards in favour of the employee including prior consultation must be strictly followed.

18. High Court failed to read the regulation in its proper perspective and went a step ahead to hold that a compulsorily retired employee would not be entitled to any pension unless an order is passed under regulation 33 (1). A combined reading of the clauses in regulation 33 clearly indicates that the pension payable to an employee who has been compulsorily retired as a penalty shall not be less than twothird of his full pension or Rs. 375 per mensem, whichever is higher. The word 'may' occurring in clause (1) does not give discretion to superior authority to award pension less than twothird of the full pension.

High Court misinterpreted the word 'may' in the clause to hold that grant of pension is discretionary. The word 'may' must be read in its proper context, that is to say, it was used in the regulation not to vest discretion in the superior authority to grant pension less than twothird of full pension payable but to clarify that the aforesaid clause will not entitle a compulsorily retired employee to pension if he is not otherwise entitled to such pension on superannuation on that day. For example, if an employee is compulsorily retired without completing 'qualifying service' making him eligible to pension under the regulations.

19. In fine, we hold clause (1) and clause (2) of regulation 33 must be read conjointly and in all cases when the full pension admissible to a compulsorily retired employee under the regulations is reduced, a prior consultation with the Board is necessary.

20. It would be argued the Field General Manager's order to reduce pension may be placed before the Board for expost facto approval. Whether 'prior consultation' is mandatory or a post facto approval would suffice would depend on various factors including nature of consultation, status of the authority consulted, and the rights affected by the decision.

21. A plain reading of regulation 33 would show award of pension less than full pension is to be done with prior consultation of the Board of Directors. Such prior consultation with the highest authority of the Bank i.e., Board of Directors must be understood as a valuable mandatory safeguard before an employee's constitutional right to pension is curtailed. In these circumstances, a post facto approval cannot be a substitute of prior consultation with the Board before the decision is made. Reference may be made to Indian Administrative Service (S.C.S.) Association, U.P. & Ors. vs. Union of India & Ors.6 wherein the parameters to decide whether prior consultation is mandatory or directory have been succinctly elucidated:

"26. The result of the above discussion leads to the following conclusions:

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved

to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate builtin insulation, as fair procedure, consultation is mandatory and nonconsultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules.

The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament.

The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for nonconsultation."

22. Mr. Mehta finally in a last bid endeavour requested us to invoke powers under Article 142 to do complete justice and endorse the decision of the reduction of pension in the present case.

23. Though it is claimed that the delinquent acts of the appellant had caused an approximate loss to the tune of Rs. 3.26 crores to the bank, no evidence relating to the computation of such loss was either considered by the disciplinary authority or by the appellate authority. Further, no opportunity of hearing was given by the authorities prior to reducing his pension. No exceptional case to exercise our extraordinary powers under Article 142 is made out.

24. Accordingly, we allow the appeal and set aside the order of the High Court and order of the Field General Manager dated 07.08.2015 reducing pension without prior consultation of the Board of Directors. It shall be open to the Bank to take appropriate decision regarding reduction of pension after giving an opportunity of hearing to the appellant and with prior consultation of the Board within two months from the date of this judgment failing which the appellant shall be entitled to full pension from the date of superannuation.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Joymalya Bagchi)

New Delhi;

July 15, 2025.

1 Hereinafter, Pension Regulations.

2 Hereinafter, Service Regulations.

3 Hereinafter, Discipline and Appeal Regulations.

4 Schedule to Discipline and Appeal Regulations "2. Any Officer employee of the Bank higher in rank and status than the Disciplinary Authority but no lower in rank and status than an Assistant General Manager shall be competent to act as the Appellate Authority within the meaning of Regulation 17."

5 Rao Shiv Bahadur Singh v. State of Uttar Pradesh, (1953) 2 SCC 111.

6 (1993) Supp (1) SCC 730.

IN THE SUPREME COURT OF INDIA

Satender Kumar Antil
Vs.
Central Bureau of Investigation & Anr.

[IA No. 63691 of 2025]
[MA No. 2034 of 2022]
[MA No. 1849 of 2021]
[Special Leave Petition (Crl.) No. 5191 of 2021]

HEADNOTE – Reiterated that the summons issued by the police/investigating agency to an accused for appearance as per Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) cannot be served electronically.

BNSS provides for the electronic service of notice, it can be availed only in situations where it is specifically allowed; since electronic service is not specifically mentioned in Section 35, it cannot be resorted to.

E-service can be effected only in situations where it is specifically allowed by the legislature.

JUDGMENT

1. IA No. 63691 of 2025 has been filed by the State of Haryana seeking modification of the order dated 21.01.2025, passed by this Court in MA No. 2034/2022 in MA No. 1849/2021 in SLP (Crl.) No. 1591/2021.

2. Vide the aforesaid order, this Court had directed all the States and Union Territories to issue a Standing Order to their respective police machinery to issue notices under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC, 1973")/Section 35 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as "BNSS, 2023") only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

3. It was held that service of the aforesaid notices through WhatsApp or other modes of electronic communication, cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

4. It was also held that the Standing Orders must be issued strictly in accordance with the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v.

State (NCT Delhi), 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51.

SUBMISSIONS ON BEHALF OF THE APPLICANT

5. At the outset, it is submitted by the learned counsel appearing on behalf of the Applicant/State of Haryana that a notice under Section 35 of the BNSS, 2023 is only an information to the concerned person that he is required to join the investigation, and is not liable to be arrested at that time. Service of notice through the mode of electronic communication is required to ensure that the concerned person does not evade service of notice, and that precious resources of the State are not wasted.

6. Section 64 of the BNSS, 2023 has been brought to the attention of this Court. Placing reliance on the Proviso to Section 64(2) of the BNSS, 2023 he submitted that it permits the service of summons via the mode of electronic communication also, which would indicate that there is no bar in serving of summons through the mode of electronic communication. Therefore, when BNSS, 2023 statutorily recognizes electronic mode of service of summons issued by the Court, then the notice issued under Section 35 of the BNSS, 2023 should also be permitted to be served through the electronic mode.

7. Placing reliance upon Section 71 of the BNSS, 2023, it is submitted that sub-section (1) provides for service of summons to witnesses through the mode of electronic communication. Even if one were to contend that proviso to Section 64(2) of the BNSS, 2023 permits service of summons via the mode of electronic communication only in those cases where the summons bear the image of a Court's seal, Section 71 of the BNSS, 2023 is an overriding provision as there is no requirement of the Court's seal therein.

8. A careful reading of Section 64(2) and Section 71 of the BNSS, 2023 would indicate that the former relates to system-generated summons, i.e., the e4 Summons App, hence the requirement of the Court's seal to make them look authentic, whereas, the latter relates to physical summons duly signed, scanned and transmitted electronically, because of which there is no separate requirement of any watermark seal. A notice under Section 35 of the BNSS, 2023 falls within the same category as a summons under Section 71 of the BNSS, 2023, and therefore must be permitted to be transmitted electronically.

9. Placing reliance upon Section 530 of the BNSS, 2023, it is submitted that the intent of the legislature is clear, relating to the use of technology in streamlining criminal proceedings. The aforesaid section lays down that trials, inquiries and proceedings may be held through the mode of electronic communication. Therefore, excluding service of notice under Section 35 of the BNSS, 2023

through the mode of electronic communication, would be an exception to the entire scheme of affairs.

10. Insofar as the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v. State (NCT Delhi), 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51, it is submitted that these judgments were delivered when the CrPC, 1973 was in operation and the BNSS, 2023 had not come into effect. Unlike the BNSS, 2023 the CrPC, 1973 had no provision that contemplated the service of summons or notice through the mode of electronic communication, and therefore such directions were issued. Hence, the guidelines issued in the aforesaid judgment have no bearing on or applicability to the provisions of BNSS, 2023.

SUBMISSIONS ON BEHALF OF THE AMICUS CURIAE

11. The learned Senior Counsel/Amicus Curiae submitted that notice served through WhatsApp or other modes of electronic communication is not contemplated as a mode of service under Section 35 of the BNSS, 2023 since the same is not in accordance with Chapter VI of the BNSS, 2023, and hence cannot be treated as a valid mode of serving notice under Section 35 of the BNSS, 2023.

12. It is submitted that summons are to be served personally on the person, as per the regular mode of service. The newly added proviso to Section 64(2) of the BNSS, 2023 permits the mode of electronic communication as a means to serve summons, only in those cases where the summons bear the image of the Court's seal. Since a notice issued under Section 35 of the BNSS, 2023 is not from the Court, the Investigating Agency must necessarily adhere to the regular mode of service.

13. It is further submitted that Section 530 of the BNSS, 2023 states that all trials, inquiries and proceedings under the BNSS, 2023 may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. The legislature, in its wisdom, has excluded investigations from the scope of the aforesaid section, thereby meaning that the same have been consciously omitted from the purview of the procedures which are permissible through electronic means. Hence, the aforesaid section clearly does not permit service of notice under Section 35 of the BNSS, 2023 through WhatsApp or other modes of electronic communication.

14. Finally, it is submitted that since a notice under Section 35 of the BNSS, 2023 is issued by the Investigating Agency, and the breach thereof leads to arrest and deprivation of the liberty of an individual, it is appropriate that such a notice be

served in person on the accused, and not through the mode of electronic communication.

DISCUSSION

15. The Legislature, envisaging the extensive reliance on modern means of communication in the present times, has recognised the mode of electronic communication within the ambit of the BNSS, 2023.

Section 2 of the BNSS, 2023

"2. Definitions

(i) "electronic communication" means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio-video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government."

16. Notably, the Legislature has clearly demarcated the extent of permissible usage of modes of electronic communication, under the BNSS, 2023. The same is evident from the language employed in Section 530 of the BNSS, 2023.

Section 530 of the BNSS, 2023

"530. Trial and proceedings to be held in electronic mode.-

All trials, inquires and proceedings under this Sanhita, including-

(i) issuance, service and execution of summons and warrant;

(ii) examination of complainant and witnesses;

(iii) recording of evidence in inquiries and trials; and

(iv) all appellate proceedings or any other proceeding, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means."

17. Section 530 of the BNSS, 2023 states that all trials, inquiries, and proceedings may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. Categories mentioned thereunder would clearly show that it is not only meant for the accused persons, but also for the

complainant and witnesses. Further, the mode of electronic communication is only one of the modes available, and its usage is discretionary.

18. The issue before us lies within a narrow compass - whether the usage of electronic communication can also be extended to the procedure governing the service of a notice, contemplated under Section 35 of the BNSS, 2023. To answer the same, a purposive interpretation must be given to the BNSS, 2023, especially the aforementioned provision.

NOTICES BY THE INVESTIGATING AGENCY

19. The BNSS, 2023, keeping in tune with the erstwhile provisions of the CrPC, 1973 provides for situations where a person may be arrested by the Investigating Agency, without a warrant. Section 35 of the BNSS, 2023

"35. When police may arrest without warrant.-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest,

his reasons in writing: Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under subsection (5) of Section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

(emphasis supplied)

20. Section 35 of the BNSS, 2023 provides for arrest of persons by the Investigating Agency, ensuring that the concerned person appears before the Investigating Agency and cooperates with the investigation. The provision delineates the prerequisites that must be fulfilled before a person can be arrested without a warrant, keeping in mind the laudable objective of safeguarding the liberty of an individual. The legislative intent behind the provision is that of restricting arbitrary arrests.

21. Section 35(3) of the BNSS, 2023 mandates the service of a notice whenever the Investigating Agency, on the basis of a reasonable complaint, credible information or suspicion, determines that a person may have committed a cognizable offence, but does not deem the arrest of such person necessary. In such a scenario, the Investigating Agency is mandated to issue a written notice directing the person to appear before it, or at such other place as may be specified in the notice.

22. Section 35(4) of the BNSS, 2023 imposes a duty on the recipient of the notice to the effect that once the notice is served, the person must comply with every term of the notice. Section 35(5) of the BNSS, 2023 provides that as long as the

person to whom the notice is issued, appears as is required and continues to comply with the notice, they cannot be arrested in relation to the alleged offence. Arrest may be made only if the Investigating Agency records specific reasons as to why the arrest is necessary.

23. Section 35(6) of the BNSS, 2023 lays down the procedure to be followed in case of non-compliance with the notice issued by the Investigating Agency under Section 35(3) of the BNSS, 2023. Non-compliance with a notice does not ipso facto mandate arrest, as there lies a discretion with the Investigating Agency, which must be of the opinion that the arrest of the concerned person is necessary for the purpose of investigation. In other words, failure to comply with the notice does not lead to automatic arrest. Rather, it is the last resort available to the Investigating Agency, after due exercise of discretion regarding the necessity of arrest.

24. Therefore, the abovementioned provision contains an element of substantivity, which becomes evident from the discretion provided to the Investigating Agency. The substantive element is in the nature of a safeguard, especially when the liberty of an individual is involved.

25. The protection of one's liberty is a crucial aspect of the right to life guaranteed to each and every individual, under Article 21 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution'). The procedure encapsulated in Section 35(6) of the BNSS, 2023, seeks to secure this fundamental right, from encroachment by the relevant Authority, and therefore, any attempt to interpret the provision as a mere procedural one, would amount to rewriting the provision itself.

26. Thus, service of a notice under Section 35 of the BNSS, 2023 needs to be carried out in a manner that protects this substantive right, as non-compliance with the notice can have a drastic effect on the liberty of an individual.

27. The Legislature, in its wisdom, has specifically excluded the service of a notice under Section 35 of the BNSS, 2023 from the ambit of procedures permissible through electronic communication, that have been delineated under Section 530 of the BNSS, 2023.

28. While interpreting a statute, the legislative intent is to be gathered from a plain and simple reading of the language employed in the provisions, in a purposive manner, thereby upholding the objective behind the enactment. On a plain reading of the BNSS, 2023, the restrictions imposed by the Legislature on the use of electronic communication, to only certain procedures, precludes the use of electronic communication for any other procedure, for which it has not been specifically permitted by the BNSS, 2023.

29. This interpretation is countenanced by the objective sought to be achieved by the BNSS, 2023. As highlighted hereinbefore, the essence of Article 21 of the Constitution imbues the BNSS, 2023, which reflects the laudable objective of safeguarding the liberty of an individual, while facilitating the investigation into and adjudication of offences. The abovementioned restrictions on the usage of the mode of electronic communication, have been imposed in order to safeguard the right to life and personal liberty, guaranteed to an individual by the Constitution, from being impinged during the course of criminal investigation and proceedings.

30. Hence, it is manifestly apparent that the Legislature has particularly specified the circumstances in which usage of modes of electronic communication is permissible, being circumstances which do not have a bearing on the liberty of an individual.

SUMMONS BY THE COURT

31. Another line of reasoning presented before this Court, is regarding the permissibility of the usage of electronic communication for the issuance of summons by the Court, under the BNSS, 2023. To consider the same, this Court must delve into the nature of proceedings pertaining to a notice under Section 35 of the BNSS, 2023 vis-a-vis a summons under Sections 63, 64 and 71 of the BNSS, 2023.

32. We first wish to highlight the difference between investigation, inquiry and judicial proceedings, as contemplated under the BNSS, 2023.

Section 2 of the BNSS, 2023

"Section 2. Definitions-

***

(k) "inquiry" means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;

(l) "investigation" includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;"

(emphasis supplied)

It is to be noted that the purpose of an investigation by an Investigating Agency, is markedly distinct from that of an inquiry or judicial proceedings by the Court. While the former is to investigate an offence, the latter is a search towards the truthful determination of an occurrence. Therefore, the procedure of one cannot be read into the other.

Section 63 of the BNSS, 2023

"63. Form of summons.-

Every summons issued by a Court under this Sanhita shall be,-

(i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; or

(ii) in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature."

(emphasis supplied)

33. A summons under Section 63(i) of the BNSS, 2023 is issued by a Court in writing, in duplicate, which shall be signed by the presiding officer of such Court, or by such other officer as directed by the High Court from time to time, and shall bear the seal of the Court.

34. A new form of summons has been contemplated by the legislature in the BNSS, 2023. Under Section 63(ii) of the BNSS, 2023, a summons issued by a Court can be in an encrypted or any other form of electronic communication, and shall bear the image of the seal of the Court or digital signature.

Section 64 of the BNSS, 2023

"64. Summons how served.-

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant:

Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as the State Government may, by rules, provide.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons:

Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide."

(emphasis supplied)

35. Section 64 of the BNSS, 2023 pertains to how summons shall be served. We are concerned with Section 64(2) of the BNSS, 2023 which mandates that a summons shall be served personally on the person summoned, if practicable, by delivering or tendering one of the duplicates of the summons. The proviso to Section 64(2) of the BNSS, 2023 provides a discretion of also serving summons by electronic communication, only when they bear the image of the Court's seal in a manner and form that the State Government may provide by rules.

36. From a cumulative reading of Sections 63 and 64 of the BNSS, 2023, the argument on behalf of the applicant that Section 64(2) of the BNSS, 2023 relates to system-generated summons i.e., the e-Summons App, hence the requirement of the Court's seal to make them look authentic, falls to the ground because, irrespective of the summons being issued under Section 63(i) or Section 63(ii) of the BNSS, 2023, it shall necessarily bear the seal of the Court, or the image of the seal of the Court, when the summons is being served.

Section 71 of the BNSS, 2023

"71. Service of summons on witness.-

(1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by electronic communication or by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received or on the proof of delivery of summons under sub-section (3) of Section 70 by electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons has been duly served."

(emphasis supplied)

37. Section 71 of the BNSS, 2023 provides for the service of summons on witnesses. We are concerned with sub-section (1) which states that a Court issuing a summons to a witness may direct a copy of such summons to be served by electronic communication.

38. The contention of the applicant that a notice under Section 35 of the BNSS, 2023 falls within the same category as a summons under Section 71 of the BNSS, 2023, and therefore, since the latter allows electronic mode of service, the former must also be permitted to be transmitted electronically, cannot be accepted, for the simple reason that a summons under Section 71 of the BNSS, 2023, has no immediate bearing on the liberty of an individual in case of its non-compliance. However, a notice under Section 35 of the BNSS, 2023 could have an immediate bearing on the liberty of the individual in case of its non-compliance, as laid down under Section 35(6) of the BNSS, 2023.

39. Furthermore, a summons issued by a Court under Sections 63 or 71 of the BNSS, 2023, and a notice issued by the Investigating Agency under Section 35 of the BNSS, 2023 travel on different footings and cannot be equated with each other. A summons issued by a Court is a judicial act, whereas a notice issued by the Investigating Agency is an executive act. Hence, the procedure prescribed for a judicial act cannot be read into the procedure prescribed for an executive act.

EXPLICIT MENTION OF THE USAGE OF ELECTRONIC MODE IN THE CONTEXT OF THE INVESTIGATING AGENCY

40. We further wish to take note of the fact that the BNSS, 2023 does not entirely preclude the use of electronic communication by the Investigating Agency. The Legislature has envisioned the use of electronic communication, during the course of investigation, and upon completion of investigation by the Investigating Agency, specifically provided for under Sections 94(1) and 193(3) of the BNSS, 2023 respectively.

Section 94(1) of the BNSS, 2023

"94. Summons to produce document or other thing-

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order."

Section 193(3) of the BNSS, 2023

"193. Report of a Police Officer on the completion of investigation-

(3)(i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond or bail bond;

(g) whether the accused has been forwarded in custody under Section 190;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 64, 65, 66, 67, 68, 70 or Section 71 of the Bharatiya Nyaya Sanhita, 2023;

(i) the sequence of custody in case of electronic device;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given."

41. The usage of electronic communication by the Investigating Agency, has only been provided for effecting the procedure under Sections 94 and 193 of the BNSS, 2023.

42. Section 94 deals with issuance of summons, in an electronic form, to produce a document. Section 193 deals with the usage of electronic communication for forwarding the report to a Magistrate, upon completion of the investigation, or to

inform the progress of the investigation to the informant or victim. None of these procedures have any bearing on the liberty of an individual.

43. Hence, when viewed from any lens, we are unable to convince ourselves that electronic communication is a valid mode of service of notice under Section 35 of the BNSS, 2023, since its conscious omission is a clear manifestation of the legislative intent. Introducing a procedure into Section 35 of the BNSS, 2023, that has not been specifically provided for by the Legislature, would be violative of its intent.

44. For the aforesaid reasons, IA No. 63691 of 2025 seeking modification of the order dated 21.01.2025, stands dismissed. As a consequence, order dated 21.01.2025, passed by this Court in MA No. 2034/2022 in MA No. 1849/2021 in SLP (Crl.) No. 1591/2021 stands confirmed.

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

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

New Delhi;

July 16, 2025

IN THE SUPREME COURT OF INDIA

Gurdial Singh (D) through LRS.
Vs.
Jagir Kaur (D) and Anr. Etc.

[Civil Appeal No(s). 35093510/ 2010]

HEADNOTE – Exclusion of natural heirs from a Will can be a circumstance raising suspicion against its valid execution, though that factor alone will not invalidate it. The existence of such a suspicious circumstance would require a closer scrutiny of the execution of the Will.

JUDGMENT

Joymalya Bagchi, J.

1. The appeals are directed against the common judgment and decree dated 13.11.2009 passed by the Punjab & Haryana High Court in R.S.A. No.837 of 1996 and R.S.A. No.958 of 1996 setting aside the concurrent findings of the Trial Court and the First Appellate Court, and declaring the 1st respondent as the owner and in possession of the suit land.

Facts

2. One Maya Singh was owner of land measuring 67 kanals 4 marlas in village Sathiala1. Appellant is the nephew of Maya Singh. 1st respondent is Maya Singh's wife. Gurpal Singh (hereinafter referred to as 2nd respondent) claimed to be the adopted son of Maya Singh and 1st respondent. Maya Singh died on 10.11.1991. On 27.10.1992, the suit land was mutated in favour of 1st respondent.

Apprehending that 1st respondent was taking steps to alienate the property, appellant filed a Suit RBT No. 329/1992 by propounding a Will executed by Maya Singh on 16.05.1991, bequeathing the land to him. In this suit, appellant contended his uncle, Maya Singh was married to one Joginder Kaur who had predeceased him and 1st respondent was not his lawfully wedded wife or 2nd respondent, their adopted son.

3. Whereas respondents filed another suit seeking declaration that 1st respondent is the lawfully wedded wife of Maya Singh and 2nd respondent is their adopted son.

4. Trial Court dismissed the respondents' suit holding that 2nd respondent was not the adopted son of Maya Singh and decreed the appellant's suit declaring that

the Will dated 16.05.1991 propounded by the latter was genuine and by virtue of the Will, he was the lawful owner of the suit land. However, the Court held 1st respondent is the lawfully wedded wife of Maya Singh.

5. 1st respondent preferred two appeals challenging the dismissal of her suit as well as against the judgment and decree passed in the appellant's suit. The appeals were disposed of by the Additional District Judge, Amritsar (hereinafter referred to as the "First Appellate Court") upholding the judgment and decree passed in the appellant's suit.

6. Being aggrieved, 1st respondent filed Second Appeals being RSA No.958 of 1996 and RSA No.837 of 1996. The High Court framed the following substantial question of law:

"Whether the execution of Will dated 16.05.1991, set up by Gurdial Singh, was duly proved?" Holding that the suspicious circumstance namely, nonmention of 1st respondent who is the wife of the testator Maya Singh and the reasons for her disinheritance in the Will exposed absence of 'free disposing mind' of the testator, High Court reversed the concurrent findings of the Trial Court and First Appellate Court and held 1st respondent was the owner and was entitled to possession of the suit land.

7. Being aggrieved by the impugned judgment, the appellant is before us. During the pendency of the appeal, both the appellant and 1st respondent died and have been substituted by their respective legal representatives.

8. The principal issue which falls for consideration is as follows:

Whether, in the facts and circumstances of the case, nonmention of the status of 1st respondent as wife of the testator and failure to give reasons for her disinheritance in the Will dated 16.05.1991 is a suspicious circumstance which exposes lack of a free disposing mind of the testator, rendering the Will invalid?

Arguments

9. Mr. Manoj Swarup, learned Senior Counsel argued that the Will is a registered one and its execution has been lawfully proved. Appellant had examined PW2 Surinder Kumar, Scribe of the Will and PW3 Chanan Singh, one of the attesting witnesses. PW2 deposed he scribed the Will at the instance of Maya Singh. It was read over to Maya Singh and the latter had signed in presence of the attesting witnesses Chanan Singh (PW3) and Pesra Singh.

PW3 stated he was the attesting witness and the Will was presented before SubRegistrar where it was again read over to the testator. Their evidence could not be discredited during cross-examination. Mere nonmention of 1st

respondent's name cannot be a ground to hold that the Will is not a genuine one. It was further contended that the monies left by Maya Singh had been given to 1st respondent and she was also entitled to his pension.

10. Per contra, Mr. Arun Bhardwaj, learned Senior Counsel submitted 1st respondent was the lawfully wedded wife of Maya Singh. Relationship between the couple was good as would be evidenced from 1st respondent's deposition that she was living with Maya Singh till his death. The Trial Court glossed over this evidence and came to a perverse finding that she had not served Maya Singh. While relations between the couple were good, appellant disputed 1st respondent's status as the wife of Maya Singh. Nonmention of 1st respondent's name and the reasons for her disinheritance in the Will must be viewed from this sinister design of the appellant.

His effort not only to disinherit the 1st respondent but also to deny her the very status as his wife is eloquent in the omission of her status as wife in the Will. Viewed from this perspective, the tenor of the Will demonstrates the masked voice and intention of the appellant and not the free disposing mind of the testator. Courts below erred in applying the correct legal principles and erroneously held that this suspicious circumstance did not vitiate the Will.

Proof of Will: Legal Principles

11. A Will has to be proved like any other document subject to the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, that is examination of at least of one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved.

Onus lies on the propounder not only to prove due execution but dispel from the mind of the court, all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will out of his free volition without coercion or undue influence, would the Will be accepted as genuine. In Smt. Jaswant Kaur v. Smt. Amrit Kaur and others2, this Court referring to H. Venkatachala Iyengar vs. B.N. Thimmajamma & Ors.3 enumerated the principles relating to proof of Will:

"10. ***** **** **** ****

"1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will.

That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will.

And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

The Court further held:

"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

12. Similarly in Ram Piari vs. Bhagwant & Ors.4 this Court held when suspicious circumstance exists, Courts should not be swayed by due execution of the Will alone:

"3. Unfortunately none of the courts paid any attention to these probably because they were swayed with due execution even when this Court in Venkatachaliah case [AIR 1959 SC 443 : 1959 Supp 1 SCR 426] had held that, proof of signature raises a presumption about knowledge but the existence of suspicious circumstances rebuts it."

13. There is no cavil when suspicious circumstances exist and have not been repelled to the satisfaction of the Court, the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered one5.

Parameters to ascertain 'suspicious circumstances' vitiating a Will:

14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. In Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.6 the Court held any and every circumstance is not a "suspicious" circumstance.

"8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

The Court quoted the Privy Council's elucidation in Hames v. Hinkson 7 of suspicious circumstances as follows:

"17 where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth."

It was again reiterated in PPK Gopalan Nambier vs. PPK Balakrishnan Nambiar & Ors.8 that suspected features should not be mere fantasies of a doubting mind.

"5. It is trite that it is the duty of the propounder of the will to prove the will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind."

15. It is from this prism, we need to examine whether the High Court was justified in reversing the concurrent findings of the Trial Court and the appellate court and holding the Will was vitiated due to existence of suspicious circumstances.

Findings of the Trial Court

Trial Court dealt with this issue in the following manner:

"As discussed above, defendant No. 1 is the widow of Maya Singh deceased. In Smt. Bhagya Wati Jain's case (supra) it was held that deprivation of legal heir from succession may be one of the suspicious circumstances along with other but that by itself is not sufficient ground to raise presumption against the Will. Admittedly, defendant No. 1, who is widow of Maya Singh, has been disinherited. Statement of Jagir Kaur defendant No. 1 who appeared as DW3 reads as follow:

"I was married with Maya Singh, I lived with Maya Singh as his wife till his death. We took Guirpal Singh as our adopted son. He is the son of my sister. At the time of adoption Gurwas distributed. Maya Singh was in service and I draw pension. We are in possession of the land in suit. Maya Singh never told me having executed a Will in favour of the plaintiff. He was not on speaking terms with the plaintiff. I reside in the house of Maya Singh". Jagir kaur has no where stated that the served Maya Singh during his life time. That she actually resided with Maya Singh on the day the Will was executed i.e. on 16.5.91. She is again silent whether she performed the last rites of Maya Singh.

In the circumstances if Maya Singh did not mention about her in the Will the same is not required to be explained by the plaintiff. No doubt Arjan Singh and Naranjan Singh have stated that last rites were performed by the defendant No. 1. But their statements are to corroborate the statement of the defendant No. 1 and when the defendant No. 1 herself is silent about the service rendered to Maya Singh, statement of Arjan Singh and Naranjan Singh did not prove that Maya

Singh was actually served and lived with defendant No. 1. As stated above there is nothing against Surinder Kumar and Chanan Singh PWs who proved the due execution of the Will by Maya Singh and if the widow had been deprived, of the Will cannot be discarded on this sole ground."

Findings of the First Appellate Court

First Appellate Court upheld the findings of the Trial Court holding:

"From this catena of judicial pronouncements there can be no manner of doubt that mere deprivation of a legal; heir or mere non mention of such legal heir's name in the testamentary disposition, in itself, does not invalidate the will. A careful perusal of the will would reveal that the same purport to beat the signatures of testator Maya Singh (since deceased) in English. It is an admitted case of the parties that Maya Singh had been serving as a Havaldar in the Army and had retired from Military service which implies that he was an educated person. The will in dispute is a registered document on which the signatures of the testator or of the attesting witnesses have not been challenged by Jagir Kaur.

There is nothing on the record, if Maya Singh was suffering from any mental incapacity to execute the will. The written statement of Jagir Kaur is quite silent with regards to the fact that Maya Singh was not in sound state of disposing mind. She has alleged that Maya Singh deceased was suffering from paralysis for the last more than 10 months before his death. Assuming it to be so, he might had been treated upon. Evidence regarding his treatment could have been produced by Jagir Kaur. There is no such evidence to the effect that he was paralytic without there being evidence, this plea remains unsubstantiated. Jagir Kaur, appearing as DW3 stated in her cross examination that Maya Singh had executed a will in her favour.

She has not set up the same in her written statement nor produced the sesame on record for the reasons best known to her. Therefore, an adverse inference can be drawn to the effect that no valid will has been executed by Maya Singh deceased in her favour. Further, there is no allegation from the side of Jagir Kaur defendant that the marginal witnesses of the will Ex. P. 1 or the Sub Registrar by whom the same was registered were in collusion with the legatee Gurdial Singh. There is no gain saying the fact that Jagir Kaur is drawing pension of Maya Singh being his widow. Ex. P. 7, is the certified copy of the order dated 29.9.1994 which purport to have been handed down by Commissioner (Appeals) Jalandhar Division.

In its concluding paragraph, it has been mentioned that the petitioner (referring to Gurdial Singh) has explained that respondent No. 1 (referring to Jagir Kaur) was given the entire money left by the deceased (Maya Singh) and she was also entitled to get pension. My be that due to adjustment of pension and other

deposits, Maya Singh had deprived Jagir Kaur of her state in the will and for that he did not think it proper to make reference to her in the disputed will."

Findings of the High Court

High Court reversed these findings and held as under:

"The complete silence on the part of the executant qua his wife, while executing the Will, renders the will a suspicious document and leads to the inference that the same had not been executed by the executant of his free disposing mind. Rather it leads to the inference that the propounder of the Will might have influenced the executant to execute the Will in his favour. In these circumstances, the Courts below erred in holding that the Will dated 16.5.1991 was a genuine document."

Analysis

16. We are conscious that deprivation of a natural heir, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of the Will is to interfere with the normal line of succession.9 However, in Ram Piari (supra), this Court held prudence requires reason for denying the benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicion as it does not give inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act.10

17. It was rightly indicated in Leela Rajagopal vs. Kamala Menon Cocharan11 when unusual features appear in a Will or unnatural circumstances surround its execution, the Court must undertake a close scrutiny and make an overall assessment of the unusual circumstances before accepting the Will. The Court held as follows:

"13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it.

The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this

Court on the subject including the decisions referred to and relied upon before us."

18. What boils down from this discussion is that suspicious circumstance i.e. nonmention of the status of wife or the reason for her disinheritance in the Will ought not to be examined in insolation but in the light of all attending circumstances of the case. It would be argued that proof of signatures on the Will and its registration dispels such suspicious circumstance. On a first blush, this submission appears to be attractive till one delves further into the peculiar and unique circumstances of the case.

19. Appellant's case was not only to propound the Will in his favour but even to deny the very status of 1st respondent as Maya Singh's wife. When one reads the contents of the Will, appellant's stand is stark and palpable in its tenor and purport. The Will is a cryptic one where Maya Singh bequests his properties to his nephew i.e. the appellant, as the latter was taking care of him. However, the Will is completely silent with regard to the existence of his own wife and natural heir, i.e. the 1st respondent, or the reason for her disinheritance. Evidence on record shows 1st respondent was residing with Maya Singh till the latter's death. Nothing has come on record to show the relation between the couple was bitter.

As per the appellant, she was nominated by Maya Singh and was entitled to receive his pension which demonstrates the testator's conduct in accepting 1st respondent as his lawfully wedded wife. Further, the Trial Court erroneously observed that nonperformance of last rites of Maya Singh by 1st respondent hinted at sour relations between the couple. Ordinarily, in a Hindu/Sikh family, last rites are performed by Male Sapinda relations. Given this practice, 1st respondent not performing last rites could not be treated as a contra indicator of indifferent relationship with her husband during the latter's lifetime.

In this backdrop, it cannot be said Maya Singh had during his lifetime, denied his marriage with 1st respondent or admitted that their relation was strained, so as to prompt him to erase her very existence in the Will. Such erasure of marital status is the telltale insignia of the propounder and not the testator himself. A cumulative assessment of the attending circumstances including this unusual omission to mention the very existence of his wife in the Will, gives rise to serious doubt that the Will was executed as per the dictates of the appellant and is not the 'free will' of the testator.

20. In this background, we have no hesitation to hold that nonmention of 1st respondent or the reasons for her disinheritance in the Will, is an eloquent reminder that the free disposition of the testator was vitiated by the undue influence of the appellant.

21. We are not impressed with reference to Dhanpat vs. Sheo Ram (deceased) through LRs. & Ors.12 that mere nonmention of some natural heirs would not vitiate the Will. In Dhanpat (Supra), the wife who had been disinherited, herself admitted that she had been ousted by her husband.

On the other hand, DW3 unequivocally stated that she was living with her husband till his death and the specious rationale given that she may have been disinherited as Maya Singh's monies had been settled in her favour and she was entitled to pension is hardly convincing. No evidence was led to show whether the quantum of money said to be settled in favour of 1st respondent was reasonable and would satisfy the conscience of a man of ordinary prudence with regard to her complete expungement in the Will.

22. For the aforesaid reasons, we affirm the impugned judgment and dismiss the appeals. Pending application (s), if any, stands disposed of.

.....J. (Sanjay Karol)

.....J. (Joymalya Bagchi)

New Delhi,

July 17, 2025

1 Hereinafter referred to as "the suit land".

2 (1977) 1 SCC 369.

3 1959 Supp (1) SCR 426.

4 (1993) 3 SCC 364.

5 AIR 1962 SC 567, Para 23.

6 (1982) 1 SCC 20.

7 AIR 1946 PC 156.

8 1995 Supp (2) SCC 664.

9 (1995) 4 SCC 459, (2004) 2 SCC 321 and (1995) Supp 2 SCC 665.

10 (1990) 3 SCC 364, Para 2.

11 (2014) 15 SCC 570.

12 (2020) 16 SCC 209.

IN THE SUPREME COURT OF INDIA

Kaushal Singh
Vs.
State of Rajasthan

[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No(s). 2254 of 2025]

HEADNOTE – Suggested all High Courts to incorporate a rule that accused persons should mandatorily mention in their bail applications the earlier bail applications, if any, filed by them, and also their criminal antecedents.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The appellant, being a Judicial Officer of the District Judge Cadre1 in the judicial services of the State of Rajasthan, has approached this Court through this appeal by special leave in order to assail the strictures passed against him in order dated 3rd May, 20242 passed by a learned Single Judge of the High Court of Judicature for Rajasthan Bench at Jaipur3 while deciding the S.B. Criminal Miscellaneous Bail Application No. 4677 of 2024.

4. The chronological list of events, relevant and essential for disposal of the appeal are noted hereinbelow.

5. First Information Report4 No. 224 of 2022 was registered at Police Station Gegal, District Ajmer on 23rd October, 2022 against various accused persons including Sethu @ Angrej and Sethu @ Haddi, for the offences punishable under Sections 147, 323, 341, 325, 307, 427 read with section 149 of Indian Penal Code, 18605.

6. Sethu @ Haddi was arrested on 21st November, 2022 whereas Sethu @ Angrej was arrested on 25th November, 2022 in connection with the aforesaid FIR. The High Court granted bail to Sethu @ Haddi vide order dated 16th December, 2022.

7. It may be mentioned here that while passing the order dated 16th December, 2022, the High Court observed that the allegation of inflicting the lethal injury

was against the accused Sethu @ Angrej from whom the case of the applicant therein (Sethu @ Haddi) was different.

8. At this stage, we are persuaded to note that the said FIR does not bear any reference to the offence under Section 307 IPC simpliciter being invoked in the case. As per the formal FIR, the offences under the various other sections of IPC mentioned above were applied against the accused in the said case. However, subsequent to the procurement of the medical reports, the Investigation Officer added offences punishable under Sections 325 and 307 IPC to the case. The report under Section 173(2) CrPC came to be filed against the accused persons nominated in FIR No. 224 of 2022 for the offences under Sections 147, 341, 323, 325, 307 and 427 read with Section 149 of IPC vide chargesheet dated 20th December, 2022.

9. The accused Sethu @ Angrej moved an application for bail which was dismissed by the Judicial Magistrate, Court No. 2, Ajmer on 17th December, 2022. Thereafter, said accused applied for bail under Section 439 of the Code of Criminal Procedure, 19736 and fortuitously, the same came to be listed before the appellant-Judicial Officer who was holding the charge of the Sessions Court in the capacity of a Link Officer. As many as three separate bail applications arising out of FIR No. 224 of 2022, to be specific, Bail Application Case No. 1244 of 2022 (Sachin Sen and Anr. v. State of Rajasthan); Bail Application Case No. 1246 of 2022 (Tarachand alias Taru v. State of Rajasthan) and Bail Application Case No. 1247 of 2022 (Sethu alias Angrez v. State of Rajasthan) were listed before the appellant-Judicial Officer on 19th December, 2022.

10. It appears that while arguing the bail applications, the contention which was raised before the Court was that the case of the bail applicants was not different from that of Sethu @ Haddi, who had been enlarged on bail by the High Court vide order dated 16th December, 2022.

11. The appellant-Judicial Officer seems to be carrying some misconception that the lifethreatening injuries were attributed to the said Sethu @ Haddi and thus, the case of the applicants before him was not different from the said accused (Sethu @ Haddi). Applying the principle of parity and based on the order passed by the High Court in the case of Khet Singh and Another v. State of Rajasthan7, the appellant-Judicial Officer granted bail to all the aforesaid accused persons. It transpires that while considering the bail applications of accused Sethu @ Angrej, the appellant-Judicial Officer omitted to consider his criminal antecedents.

12. The complainant in FIR No. 224 of 2022 moved for cancellation of bail granted to the accused, Sethu @ Angrej by filing an application under Section 439(2) of CrPC before the learned Sessions Judge, which came to be allowed

vide order dated 6th July, 2023. The learned Sessions Judge observed that the learned counsel for the accused Sethu @ Angrej misled the Court while seeking bail on his behalf.

13. Being aggrieved, the accused Sethu @ Angrej approached the High Court by way of S.B. Criminal Miscellaneous Bail Application No. 4677 of 2024 which came to be decided by the learned Single Judge of the High Court vide order dated 3rd May, 2024. While rejecting the bail application of the accused Sethu @ Angrej, the High Court passed strictures against the appellant herein observing that, he being a Judicial Officer, had passed the order granting bail to Sethu @ Angrej dated 19th December, 2022 in a grossly inappropriate and cavalier manner while ignoring the criminal record of the said accused.

14. Additionally, an observation was made by the learned Single Judge that the accused Sethu @ Angrej was the principal accused in the case, as he caused the lethal injury to the injured Pappu. The High Court observed that appellant-Judicial Officer, while deciding the bail application, omitted to consider the order dated 16th December, 2022 and granted bail to the said accused ignoring the principles laid down by the High Court in the case of Jugal v. State of Rajasthan8, wherein it was mandated that the Presiding Officer granting bail to the accused is under an obligation to incorporate the criminal record of the applicant in a tabular form and that the judgment of the High Court in the case of Khet Singh (supra) was improperly applied while granting bail to the said accused.

15. The High Court concluded in the impugned order dated 3rd May, 2024 that this act of the appellant-Judicial Officer tantamounted to indiscipline, negligence and so also, ignorance and disobedience of the orders/judgments passed by the High Court. Observing so, it was directed that the copy of the impugned order dated 3rd May, 2024 be placed before the Chief Justice of the Rajasthan High Court for perusal.

16. Being aggrieved by the observations made and strictures passed against him, the appellant- Judicial Officer is before this Court by way of this appeal with special leave.

17. We have heard and considered the submissions advanced by learned counsel for the appellant-Judicial Officer and have gone through the impugned order. 18. Suffice it to say that the law is well-settled by a catena of decisions rendered by this Court that High Courts should ordinarily refrain from passing strictures against the judicial officers while deciding matters on the judicial side. Reference in this regard may be made to in Re: 'K', A Judicial Officer9. In paragraphs 15, 16 and 17, this Court dealt with the validity and legality of strictures passed by

the High Court against a Judicial Officer serving as a member of the district judiciary which are reproduced hereinbelow for ready reference:

"15. In the case at hand we are concerned with the observations made by the High Court against a judicial officer who is a serving member of subordinate judiciary. Under the constitutional scheme control over the district courts and courts subordinate thereto has been vested in the High Courts. The control so vested is administrative, judicial and disciplinary. The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. "Pardon the error but not its repetition".

The power to control is not to be exercised solely by wielding a teacher's cane; the members of subordinate judiciary look up to the High Court for the power to control to be exercised with parent-like care and affection. The exercise of statutory jurisdiction, appellate or revisional and the exercise of constitutional power to control and supervise the functioning of the district courts and courts subordinate thereto empowers the High Court to formulate an opinion and place it on record not only on the judicial working but also on the conduct of the judicial officers.

The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied, however, the High Courts have to remember that criticisms and observations touching a subordinate incorporated judicial in officer judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being undone.

Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. The same Judge who found himself persuaded, sitting on judicial side, to make observations guided by the facts of a single case against a Subordinate Judge may, sitting on administrative side and apprised of overall meritorious performance of the Subordinate Judge, may irretrievably regret his having made those observations on judicial side, the harming effect whereof even he himself cannot remove on administrative side. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him.

This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court - a situation not very happy from the point of view of the functioning of the judicial system. May be for the purpose of pleading his cause he has to take the assistance of a legal practitioner and such legal practitioner may be one practising before him. Look at the embarrassment involved. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues. If all this is avoidable, why should it not be avoided?

16. We must not be understood as meaning that any conduct of a subordinate judicial officer unbecoming of him and demanding a rebuff should be simply overlooked. But there is an alternate safer and advisable course available to choose. The conduct of a judicial officer, unworthy of him, having come to the notice of a Judge of the High Court hearing a matter on the judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him but avoiding in the judicial pronouncement criticism of, or observations on the "conduct" of the subordinate judicial officer who had decided the case under scrutiny. Simultaneously, but separately, in office proceedings may be drawn up inviting attention of Hon'ble Chief Justice to the facts describing the conduct of the Subordinate Judge concerned by sending a confidential letter or note to the Chief Justice.

It will thereafter be open to the Chief Justice to deal with the subordinate judicial officer either at his own level or through the Inspecting Judge or by placing the matter before the full court for its consideration. The action so taken would all be on the administrative side. The Subordinate Judge concerned would have an opportunity of clarifying his position or putting forth the circumstances under which he acted. He would not be condemned unheard and if the decision be adverse to him, it being on administrative side, he would have some remedy available to him under the law. He would not be rendered remediless.

17. The remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. In Judges by David Pannick (Oxford University Press Publication, 1987) a wholesome practise finds a mention suggesting an appropriate course to be followed in such situations:

"Lord Hailsham explained that in a number of cases, although I seldom told the complainant that I had done so, I showed the complaint to the Judge concerned. I

thought it good for him both to see what was being said about him from the other side of the court, and how perhaps a lapse of manners or a momentary impatience could undermine confidence in his decision."

(emphasis supplied)

19. The said judgment has been relied on by a 3- Judge bench of this Court in Sonu Agnihotri v. Chandra Shekhar & Ors10 where this Court again implored that the Courts higher in the judicial hierarchy should refrain from commenting on the conduct and calib of judicial officers. Reference may be made to Paragraph 15 of Sonu Agnihotri (supra), reproduced hereinbelow:

"15. The Courts higher in the judicial hierarchy are invested with appellate or revisional jurisdiction to correct the errors committed by the courts that are judicially subordinate to it. The High Court has jurisdiction under Article 227 of the Constitution of India and Section 482 of the CrPC to correct the errors committed by the courts which are judicially subordinate to it. We must hasten to add that no court can be called a "subordinate court". Here, we refer to "subordinate" courts only in the context of appellate, revisional or supervisory jurisdiction. The superior courts exercising such powers can set aside erroneous orders and expunge uncalled and unwarranted observations.

While doing so, the superior courts can legitimately criticise the orders passed by the Trial Courts or the Appellate Courts by giving reasons. There can be criticism of the errors committed, in some cases, by using strong language. However, such observations must always be in the context of errors in the impugned orders. While doing so, the courts have to show restraint, and adverse comments on the personal conduct and calibre of the Judicial Officer should be avoided. There is a difference between criticising erroneous orders and criticising a Judicial Officer. The first part is permissible. The second category of criticism should best be avoided. The reasons are already explained by this Court in Re: 'K', A Judicial Officer.

There are five reasons given in paragraph 15 of the decision why judicial officers should not be condemned unheard. As observed in the decision, the High Court Judges, after noticing improper conduct on the part of the Judicial Officer, can always invite the attention of the Chief Justice on the administrative side to such conduct. Whenever action is proposed against a judicial officer on the administrative side, he gets the full opportunity to clarify and explain his position. But if such personal adverse observations are made in a judgment, the Judicial Officer's career gets adversely affected.

16. The Judges are human beings. All human beings are prone to committing mistakes. To err is human. Almost all courts in our country are overburdened. In

the year 2002, in the case of "All India Judges' Association (3) and Ors. v. Union of India and Ors., this Court passed an order directing that within five years, an endeavour should be made to increase the judge-to-population ratio in our trial judiciary to 50 per million. However, till the year 2024, we have not even reached the ratio of 25 per million. Meanwhile, the population and litigation have substantially increased. The Judges have to work under stress. As stated earlier, every Judge, irrespective of his post and status, is likely to commit errors.

In a given case, after writing several sound judgments, a judge may commit an error in one judgment due to the pressure of work or otherwise. As stated earlier, the higher court can always correct the error. However, while doing so, if strictures are passed personally against a Judicial Officer, it causes prejudice to the Judicial Officer, apart from the embarrassment involved. We must remember that when we sit in constitutional courts, even we are prone to making mistakes. Therefore, personal criticism of Judges or recording findings on the conduct of Judges in judgments must be avoided."

(emphasis supplied)

20. Furthermore, in the present case, the fact remains that the strictures and/or the scathing observations were made by the learned Single Judge of the High Court to the detriment of the appellant- Judicial Officer without providing him any opportunity of explanation or showing cause. In addition, thereto, we find that the entire foundation of the High Court's order seems to be based on the judgment in the case of Jugal (supra) which stands reversed by this Court in the case of Ayub Khan v. State of Rajasthan11 vide judgment dated 17th December, 2024.

21. In this background, we are of the firm opinion that the strictures passed by the High Court against the appellant-Judicial Officer were uncalled for and hence, the same are expunged. The impugned order is modified to that extent.

22. Before parting, we would like to state that, accounting for the criminal antecedents of the accused while considering the bail applications has been the subject matter of concern for Courts across the country. The rules and orders of the Punjab and Haryana High Court, to be specific, Rule 5 of Chapter 1-A(b) Volume-V specifically provide as below:

"5. Bail applications.- In every application for bail presented to the High Court the petitioner shall state whether similar application has or has not been made to the Supreme Court, and if made shall state the result thereof. The petitioner/applicant shall also mention whether he/she is/was involved in any other criminal case or not. If yes, particulars and decisions thereof. An application which does not contain this information shall be placed before the bench with the necessary information."

23. We feel that every High Court in the country should consider incorporating a similar provision in the respective High Court Rules and/or Criminal Side Rules as it would impose an obligation on the accused to make disclosures regarding his/her involvement in any other criminal case(s) previously registered.

24. It is, therefore, provided that a copy of this order shall be communicated to the Registrar Generals of all the High Courts so that incorporation of a similar Rule in the respective Rules can be considered, if such provision does not exist from earlier.

25. The appeal is allowed accordingly.

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

.....J. (Vikram Nath)

.....J. (Sanjay Karol)

.....J. (Sandeep Mehta)

New Delhi;

July 18, 2025.

1 Hereinafter referred to as the "appellant-Judicial Officer".

2 Hereinafter referred to as the "impugned order".

3 Hereinafter referred to as the "High Court".

4 For short 'FIR'.

5 For short, "IPC".

6 For short, "CrPC".

7 2021 SCC OnLine Raj 4096.

8 2020 SCC OnLine Raj 2691.

9 (2001) 3 SCC 54.

10 2024 SCC OnLine SC 3382

11 2024 SCC OnLine SC 3763.

IN THE SUPREME COURT OF INDIA

Suresh Chandra (D) through LRS. & Ors.
Vs.
Parasram & Ors.

[Civil Appeal Nos._____ of 2025
arising out of SLP (C) Nos.15900-15902/2022]

HEADNOTE – When a joint and indivisible 'decree' is passed involving multiple plaintiffs or defendants, the entire appeal will abate as per Order XII Rule 3 CPC, if the legal representatives of any deceased party are not substituted in time.

Failure to bring the legal heirs on record in such cases may result in conflicting or inconsistent decrees, warranting complete abatement of the appeal. Otherwise, it will lead to a conflicting or inconsistent decree, which is impermissible in cases involving joint and indivisible decrees.

Summarized the law governing the determination of the issue as to whether abatement of an appeal on non-substitution of a deceased party is partial or whole, as under:

1. The answer to the question whether the entire appeal abates or it abates partially qua the deceased party alone, will depend on facts of each case and, therefore, no exhaustive statement about the circumstances in which the entire appeal would abate can be made.

2. As a matter of course courts will not proceed with an appeal
(a) when the success of the appeal may lead to the court coming to a decision which is in conflict with the decision between the appellant and the deceased respondent which had become final with respect to the same subject-matter between the appellant and the deceased respondent;
(b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and
(c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say, it would not be successfully executed.

3. In a case of “joint and indivisible decree” or “joint and inseverable or inseparable decree”, the abatement of appeal in relation to one or more of the appellant(s) or respondent(s) on account of failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal because proceeding qua the surviving party or parties may give rise to inconsistent or contradictory decrees.

4. The question as to whether the decree is joint and inseverable, or joint and severable or separable, must be decided, for the purposes of abatement or dismissal of the entire appeal, only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-àvis the remaining parties would suffer the vice of contradictory or inconsistent decrees.

5. A decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other which means that the two decrees are mutually irreconcilable or totally inconsistent, that is, if laid side by side, the only impression would be that one is in the teeth of the other.

6. Where the plaintiffs or appellants have distinct, separate and independent rights of their own i.e., not inter-dependent upon the other, and for the purpose of convenience, or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as a combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree.

7. Existence of a joint right as distinguished from tenancy-in-common is not the criterion of a joint or inseverable or inseparable decree. The joint character of the decree will take colour from the nature of the decree challenged.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. These appeals arise from Civil Suit No.13 of 1983 (renumbered 16A of 1997), which was dismissed by the trial court and decreed by the first appellate court. On second appeal1 before the High Court2, by the impugned order dated 21.02.2022, the appeal of the appellant(s) herein was declared to have abated due to non-substitution of the legal representatives (for short LRs) of Ram Babu (i.e., appellant no.2 in the second appeal) within time. By the second impugned order dated 04.08.2022, the High Court rejected the applications3 preferred for condonation of delay in applying to set aside abatement and for substitution of the LRs of deceased Ram Babu.

FACTS:

3. The facts relevant for deciding the present appeal are as follows:

(i) Suit No.13 of 1983 (renumbered as 16A of 1997) was instituted against Suresh Chandra (predecessor-ininterest of the appellants herein) and Ram Babu by the respondent seeking declaration, recovery of possession, mesne profits in respect of a house.

(ii) Plaintiff claimed exclusive title over the suit property through its ancestor Tej Singh and pleaded that the defendants were his tenant.

(iii) Defendants i.e., Suresh Chandra and Ram Babu, filed a joint written statement in the suit.

(iv) Suresh Chandra died during the suit proceeding, his LRs, namely, the appellants, also filed their written statements.

(v) In the written statement, while denying the alleged tenancy, the defendants claimed title over the suit property through their ancestor late Gokul Prasad who, according to them, had derived exclusive interest in the suit property through a partition with his brothers in the year 1947.

(vi) The trial court dismissed the suit against which an appeal was preferred by the plaintiff.

(vii) The first appellate court decreed the suit of the plaintiff against which the LRs of Suresh Chandra and Ram Babu filed the second appeal.

(viii) During the pendency of the second appeal, appellant no.2 (Ram Babu) died on 19.08.2015. Information of his death was given to the Court on 04.04.2016. However, his LRs were not brought on record within time.

(ix) The High Court vide first impugned order dated 21.02.2022 declared the appeal to have abated.

(x) To set aside abatement and to substitute the LRs of Ram Babu two set of applications were filed along with delay condonation applications. One set, namely, MCC No.700 of 2022 was filed by the appellants (i.e., LRs of Suresh Chandra, who were already on record) and the other set, namely, MCC No.697 of 2022 was filed by LRs of Ram Babu. Both were rejected by second impugned order dated 04.08.2022. 4. Aggrieved by the aforesaid orders, the appellants are before us.

5. We have heard Shri Jayant Mehta, learned Senior Counsel for the appellants; Shri N.K. Mody, learned Senior Counsel for the contesting respondent; and have perused the record.

APPELLANTS' SUBMISSIONS

6. The learned counsel for the appellants submitted that, on non-substitution of legal heirs of a dead coappellant, to determine whether the appeal abated partially, or wholly, what needs to be examined first is whether the surviving appellant has an independent right to pursue the appeal. If yes, whether he could seek for reversal of the entire decree under appeal. If not, then whether the decree in favour of the surviving appellant would result in a decree contradictory or conflicting with the one qua the deceased party.

According to him, the appellants' (L.Rs of Suresh Chandra's) right was independent of the deceased appellant (Ram Babu) and as under Order XLI Rule 44 of the Civil Procedure Code, 19085 one of the defendants can seek reversal of the whole decree, when the decree is based on ground common to all, there could be no abatement of the appeal. In the alternative, it was submitted that abatement can always be set aside when substitution of LRs is applied for by showing sufficient cause for the delay. It was contended that the appellants as well as LRs of deceased Ram Babu applied for substitution by showing sufficient cause for the delay, therefore, the High Court ought to have set aside the abatement and proceeded to decide the appeal on merit. Certain decisions6 were cited by appellants' counsel which shall be dealt with, if considered necessary.

RESPONDENT'S SUBMISSIONS

7. Per contra, the learned counsel for the contesting respondent submitted, firstly, the heirs of Ram Babu have neither filed Special Leave Petition nor have joined as petitioners, though impleaded as proforma- respondents, therefore the order rejecting their substitution application cannot be questioned. Secondly, the decree against the defendants was joint and indivisible, therefore, if the decree stands against Ram Babu, a decree in favour of Suresh Chandra (through LRs) would result in a conflicting decree.

Further, the provisions of Order XLI Rule 4 do not exclude the applicability of Order XXII Rule 3. Thus, once all defendants join to file an appeal, death of one of the appellants would necessitate a substitution, if the right to sue does not survive on the surviving appellants alone. Therefore, Order XLI Rule 4 would not come to the rescue of the appellants. Hence, the whole appeal abated. To buttress his submissions learned counsel for the contesting respondent cited certain decisions7 which we shall deal with, if considered necessary.

ISSUES

8. Based on the rival submissions, following issues fall for our consideration:

(a) Whether the order rejecting application(s) seeking condonation of delay for setting aside abatement and substitution of legal representatives of deceased-appellant Ram Babu suffers from any legal infirmity?

(b) If the answer to (a) is in the negative, whether the second appeal abated wholly or partially, or not at all, on account of non-substitution of LRs of deceased defendant-appellant no.2 (i.e., Ram Babu)?

ANALYSIS

Issue (a)

9. Issue (a) arises for our consideration because the High Court rejected two set of applications. One filed by LRs of Ram Babu and the other filed by LRs of Suresh Chandra (i.e., the surviving appellants of the second appeal) who were already impleaded. Both were filed after the High Court had declared the appeal to have abated for non-substitution of LRs of Ram Babu. No doubt, the Court has power to condone the delay in filing an application for setting aside abatement as well as for substitution and can set aside the abatement in exercise of its power under Order XXII Rule 98 of CPC. But before condoning the delay the Court must consider whether sufficient cause has been shown for condonation.

10. In the instant case, death of Ram Babu took place on 19.08.2015; 90 days period of limitation to move an application for substitution9, and 60 days limitation period to set aside abatement10, expired in the month of January 2016 itself. Importantly, through IA No.1621 of 2016 filed by the respondent, the Court was informed about the death of Ram Babu in 2016 itself, yet no application was moved till 2022.

In fact, the applications were filed after the appeal was declared to have abated. Besides that, the surviving appellant(s) and the deceased appellant were close relatives, therefore, it cannot be believed that they were not aware of the death of co-appellant Ram Babu. In these circumstances, if the High Court found there was no sufficient cause to condone the delay, no fault can be found with its order as to justify our interference under Article 136 of the Constitution. Issue (a) is decided accordingly.

Issue (b)

11. Now the question arises whether the second appeal abated wholly or partially on death of sthe deceased appellant.

GENERAL PRINCIPLES RELATING TO ABATEMENT OF AN APPEAL

12. Before we set out to address the aforesaid issue, an overview of the provisions governing abatement of an appeal under the CPC would be apposite. Order XXII Rule 111 of the CPC lays down the general principle that if the right to sue survives, the suit shall not abate on death of either the plaintiff or the

defendant. Order XXII Rule 1112 makes it clear that all previous rules i.e., rules 1 to 10 of Order XXII would apply to appeals and for that purpose reference to the word 'plaintiff' would include an appellant; 'defendant' would include a respondent; and suit would include an appeal.

As a logical corollary thereof, the right to sue includes the 'right to appeal'. Rule 213 of Order XXII deals with a situation where one of the plaintiffs or defendants to a suit dies and the right to sue survives to the surviving plaintiff(s) or defendant(s). In a situation governed by Rule 2, the suit does not abate; only a note is to be put that the right to sue survives to the surviving plaintiff(s) or defendant(s). Order XXII Rule 314 deals with a situation where one of two or more plaintiffs dies and the right to sue survives, though not to the surviving plaintiff(s) alone, or where the sole plaintiff dies and the right to sue survives.

In such a case, if within time limited by law no application is made for substituting the legal representatives of the deceased plaintiff or plaintiffs, the suit would abate so far as the deceased plaintiff is concerned. Rule 415 of Order XXII is a provision corresponding to Rule 3 to deal with a situation where one of several defendants or the sole defendant dies and the right to sue survives, though not against the surviving defendant alone.

13. A plain reading of Rules 3 and 4 of Order XXII of the CPC would create an impression that in absence of substitution of the legal representatives of the deceased plaintiff or defendant, or the deceased appellant or respondent, as the case may be, abatement is qua the deceased plaintiff or defendant alone, in the context of a suit, or the deceased appellant or respondent alone, in the context of an appeal, provided the right to sue does not survive to the surviving plaintiff(s) or appellant(s) alone, or against the surviving defendant(s) or respondent(s) alone, as the case may be. Though this is all that Rules 3 and 4 declare, the law has evolved that in certain kinds of litigation the consequences of abatement qua a party are not limited to the deceased party alone; rather, it affects the litigation in its entirety.

14. As to when an appeal would abate in its entirety for non-substitution of legal representatives of a deceased party depends upon the facts and circumstances of an individual case. The law in this regard has been discussed in detail and summarized by a five-Judge Bench of this Court in Sardar Amarjit Singh Kalra (Dead) by LRs and Others v. Pramod Gupta (Smt.) (Dead) by LRs and Others16 as under:

"21. ..... (a) In case of "joint and indivisible decree", "joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would

prove fatal to the entire appeal and require to be dismissed in toto, as otherwise inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject-matter vis-à-vis the others;

(b) the question as to whether the court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially;

(c) existence of a joint right as distinguished from tenancy-in-common alone is not the criterion but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the decree challenged;

(d) where the dispute between two groups of parties centered around claims or was based on grounds common relating to the respective groups litigating as distinct groups or bodies - the issue involved for consideration in such class of cases would be one and indivisible; and

(e) when the issues involved in more than one appeal dealt with as a group or batch of appeals, are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals.

30. The question, therefore, as to when a proceeding before the court becomes or is rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and that in case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased.

31. But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard and fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny

substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it.

At times, one or the other parties on either side in the litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent their share of proportion of rights is concerned and may drop out of context, bringing even the proceedings to a conclusion so far as they are concerned. If all such moves are allowed to boomerang adversely on the rights of the remaining parties even to contest and have their claims adjudicated on merits, it would be a travesty of administration of justice itself.

32. The area of differences in the catena of decisions brought to our notice is not so much with reference to the principles to be applied to different nature of decrees but only as to which of the decree(s) falls, when or under what circumstances under one or the other of the classification i.e. joint and inseverable or joint and severable or separable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, the manner they were asserted by the parties themselves and the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardized formula was avoided and the matter left for the consideration of courts, on the peculiar nature of the cases coming for determination.

33. Even assuming that the decree appealed against or challenged before the higher forum is joint and several but deals with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned.

As and when it is found necessary to interfere with the judgment and decree challenged before it, the court can always declare the legal position in general and restrict the ultimate relief to be granted by confining it to those before the court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis-à-vis the other part, which had become final.

As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be

more conducive and better conform to a fair, reasonable and proper administration of justice.

34. In the light of the above discussion, we hold:

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other."

(Emphasis supplied)

15. In State of Punjab vs. Nathu Ram17, which was noticed and followed by the five-Judge Bench in Sardar Amarjit Singh (supra), this Court enumerated certain tests to determine whether the whole appeal would abate on account of non-

substitution of the legal representatives of one or some of the deceased parties. In this regard it was observed:

"6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court.

The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to court passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say, it would not be successfully executed."

(Emphasis supplied)

16. In Ram Sarup vs. Munshi18 there was a decree of pre-emption against the defendant-appellants who had bought the property from the co-defendants in the suit. One of the appellants died and his legal representatives were not brought on record. The issue which fell for consideration was whether the whole appeal abated, or the abatement was qua the deceased appellant only.

Argument on behalf of the surviving appellants was whatever might be the position as regards the share to which the deceased appellant was entitled in the property purchased, the interest of the deceased was distinct and separate from that of the others and that the abatement could, in any event, be only partial and would not affect the continuance of the appeal by the surviving appellants at least as regards their share in the property. To deal with the above argument, this Court called for the sale deed by which the appellants had purchased the property. Upon consideration of the sale deed, the Court found that it was not a case of sale of any separated item of property in favour of the deceased appellant but of one set of properties to be enjoyed by vendees in equal shares. Based on that, the five-Judge Bench of this Court held:

"It is clear law that there can be no partial preemption because pre-emption is the substitution of the pre-emptor in place of the vendee and if the decree in favor of the pre-emptor in respect of the share of the deceased Mehar Singh has become final it is manifest that there would be two conflicting decrees if the appeal should be allowed and the decree for pre-emption insofar as appellants 2 to 5 are concerned is interfered with. Where a decree is a joint one and a part of the decree has become final, by reason of abatement, the entire appeal must be held to be abated."

(Emphasis supplied)

17. Having regard to the aforesaid decisions, the law governing determination of the issue as to whether abatement of an appeal on non-substitution of a deceased party is partial or whole, can be summarized as under:

1. The answer to the question whether the entire appeal abates or it abates partially qua the deceased party alone, will depend on facts of each case and, therefore, no exhaustive statement about the circumstances in which the entire appeal would abate can be made.

2. As a matter of course courts will not proceed with an appeal (a) when the success of the appeal may lead to the court coming to a decision which is in conflict with the decision between the appellant and the deceased respondent which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say, it would not be successfully executed.

3. In a case of "joint and indivisible decree" or "joint and inseverable or inseparable decree", the abatement of appeal in relation to one or more of the appellant(s) or respondent(s) on account of failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal because proceeding qua the surviving party or parties may give rise to inconsistent or contradictory decrees.

4. The question as to whether the decree is joint and inseverable, or joint and severable or separable, must be decided, for the purposes of abatement or dismissal of the entire appeal, only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-àvis the remaining parties would suffer the vice of contradictory or inconsistent decrees.

5. A decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually

self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other which means that the two decrees are mutually irreconcilable or totally inconsistent, that is, if laid side by side, the only impression would be that one is in the teeth of the other.

6. Where the plaintiffs or appellants have distinct, separate and independent rights of their own i.e., not inter-dependent upon the other, and for the purpose of convenience, or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as a combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree.

7. Existence of a joint right as distinguished from tenancy-in-common is not the criterion of a joint or inseverable or inseparable decree. The joint character of the decree will take colour from the nature of the decree challenged.

ILLUSTRATIVE CASES WHERE ENTIRE APPEAL STOOD ABATED ON NON-SUBSTITUTION OF A DECEASED PARTY

18. Now, we shall examine those decisions where this Court held appeal to have abated in its entirety on non-substitution of legal representatives of one of the deceased parties.

19. In Hemareddi vs. Ramachandra19, one Govindareddi, the propositus died, leaving behind two sons and a daughter. The plaintiffs were children of one of the two sons. The second defendant was the wife of the other son. The suit properties were alleged to be the properties of the joint family of Govindareddi and his sons. Suit was filed for injunction as also for declaration that defendant no.1 is not the adopted son.

Trial court dismissed the suit and upheld the adoption. Against which, an appeal was filed. During the pendency of the appeal, one of the plaintiff-appellants died. His LRs were not brought on record. The High Court took the view that the entire appeal abated. The matter travelled to this Court. The question that fell for consideration was whether the whole appeal abated, or it abated qua the deceased appellant only. Upholding the decision of the High Court, this Court reasoned thus:

"17. The appeal having abated in regard to the late brother, the decree of the trial court has become final qua the deceased brother of the appellant. The effect of the same is that the adoption is found legal. The result of the appeal being allowed to proceed further and succeed in the appeal would be the passing of a decree by the High Court. The said decree would be to the effect that the adoption is invalid. The suit which was jointly filed by the appellant and his late brother would have to be decreed whereas the suit filed by the appellant and his

late brother stands dismissed by the trial court. Both the decrees cannot stand together. There would be irreconcilable conflict. The defendants are common. They would be faced with two decrees regarding the same subject matter which are irrevocably conflicting."

20. In State of Punjab vs. Nathu Ram (supra), the State acquired on lease certain parcels of land belonging to Labhu Ram and Nathu Ram for military purposes under the Defence of India Act, 1939. Labhu Ram and Nathu Ram, brothers, refused to accept the compensation offered to them by the Collector and applied to the Punjab Government through the Collector, under rule 6 of the Punjab Land Acquisition (Defence of India) Rules, 1943.

The State Government referred the matter to an arbitrator under rule 10, who, after inquiry, passed an award ordering the payment of an amount higher than what was offered by the Collector. The State Government appealed against the award to the High Court of Punjab. During the pendency of the appeal, Labhu Ram, one of the respondents, died. The High Court held that the appeal abated against Labhu Ram and that its effect was that the appeal against Nathu Ram also abated. The State Government appealed to this Court. While dismissing the appeal, this Court, inter alia, observed:

"9. the award of the arbitrator in each of these cases was a joint one, in favor of both the respondents Labhu Ram and Nathu Ram. To illustrate the form of the award, we may quote the award for the year 1945-46 in the proceedings leading to Civil Appeal No.635 of 1957. It is:

"On the basis of the report of S Lal Singh, Naib Tehsildar (Exhibit PW9/1) and Sheikh Aziz Din, Tehsildar, (Exhibit PW9/2), the applicants are entitled to sum of Rs. 4140 on account of rent, plus Rs.3872/ 8/0 on account of income tax etc., due to the inclusion of Rs. 6193/8/0 in their total income, plus such sum as the petitioners have to pay to the Income Tax Department on account of the inclusion of Rs. 4140 in their income as awarded by this award."

The result of the abatement of the appeal against Labhu Ram is therefore that his legal representatives are entitled to get compensation on the basis of this award even if they are to be paid separately on calculating their rightful share in the land acquired, for which this compensation is decreed. Such calculation is foreign to the appeal between the State of Punjab and Nathu Ram. The decree in the appeal will have to determine not what Nathu Ram's share in this compensation is, but what is the correct amount of compensation with respect to the land acquired for which this compensation has been awarded by the arbitrator. The subject matter for which the compensation is to be calculated is one and the same.

There cannot be different assessments of the amount of compensation for the same parcel of land. The appeal before the High Court was an appeal against a decree jointly in favour of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab, to include both the joint decree holders in the appeal. In the absence of one joint-decree holder, the appeal is not properly framed. It follows that the State appeal against Nathu Ram alone cannot proceed."

While holding so, the argument on behalf of the State that Labhu Ram had an equal share in the land acquired and, therefore, the appeal against Nathu Ram alone could deal with half the amount of the award was rejected, reasoning thus:

"10. The mere record of specific shares in the revenue records is no guarantee of their correctness. The appellate court will have to determine the share of Nathu Ram and necessarily the share of Labhu Ram in the absence of his legal representatives. This is not permissible in law. Further, the entire case of Labhu Ram and Nathu Ram, in their application to the Government for the appointment of an arbitrator, was that the land jointly belonged to them and had been acquired for military purposes, that a certain amount had been paid to them as compensation, that they received that amount under protest and that they were entitled to a larger amount mentioned in the application and also for the income tax they would have to pay on account of the compensation received being added to their income. Their claim was a joint claim based on the allegation that the land belonged to them jointly. The award and the joint decree are on this basis and the appellate court cannot decide on the basis of the separate shares."

The aforesaid observations make it clear that a mere assertion that surviving party's own share could be determined would not save the proceeding from abatement on non-substitution of the legal representatives of the deceased co-sharer if the pleadings reflected a joint claim based on an allegation that the subject matter of the suit belonged to them jointly.

21. In Venigalla Koteswaramma vs. Malampati Suryamba and Others20, a suit was instituted, inter alia, for partition, separate possession of plaintiff's one-fourth share and recovery of mesne profits in respect of immovable properties described in Schedule A and movable properties described in Schedule B of the plaint. The plaintiff pleaded, inter alia, that plaintiff and defendants 1 to 3 were siblings, born from the first wife of the propositus; on death of his first wife, propositus married another lady on whom suit properties vested after the death of the propositus; however, the second wife died intestate and issue less; as a result, the plaintiff and defendants 1 to 3 became owners of the suit properties, each having one-fourth share.

The said suit was instituted by impleading several other defendants who had been intermeddling with the suit properties. In the suit, the defendants 1 to 3 supported the plaintiff's case. However, the other defendants contested the suit by setting up their rights through the second wife of the propositus either under an agreement or a Will, or other instruments. The trial court discarded the Will and the agreement and decreed the suit in part while excluding certain properties. Against the trial court decree, two separate appeals were filed.

One by those who claimed under the agreement; and the other by those who claimed under the Will. During the pendency of the appeal, defendant no.2 died, but no application was made for substitution of his legal representatives. The High Court, however, proceeded to decide the appeals on merit by dismissing the appeal of those who claimed under the Will and allowing the appeal of those who claimed under the agreement. As a result, the property covered by the agreement was excluded from partition. Against such modification of the decree, the plaintiff filed an appeal by special leave before this Court.

In the appeal before this Court, one of the points urged was that the whole appeal before the High Court had abated due to non-substitution of the legal representatives of deceased defendant no.2 and, therefore, the High Court's decree is liable to be set aside. This Court accepted the submission and after surveying several decisions including five-Judge Bench decision of this Court in Sardar Amarjit Singh (supra) observed:

"45.1. When we apply the principles aforesaid to the present case, it is not far to seek that the said appeal by Defendants 16 to 18, after having abated against Defendant 2 could not have been proceeded against the surviving respondents i.e., the plaintiff and Defendants 1 and 3. This is for the simple reason that the trial court had specifically returned the findings that the agreement Ext. B-10 was not valid and Defendants 16 to 18 (appellants of AS No.1887 of 1988) derived no rights thereunder. The trial court has also ordered that Defendants 13, 14 and 16 were liable for mesne profits in respect of the immovable properties in their possession belonging to Annapurnamma till they deliver possession of those items to plaintiff and defendants 1 to 3.

Such findings in relation to the invalidity of the agreement Ext. B-10 and consequential decree for partition, for delivery of possession and for recovery of mesne profits attained finality qua Defendant 2 Malempati Radha Krishnamurthy; and his entitlement to one-fourth share in the suit properties (including the property covered by Ext. B-10) also became final when the appeal filed by Defendant 16 to 18 abated qua him. If at all the appeal was proceeded with and the alleged agreement Ext. B-10 was upheld (which the High Court has indeed done), inconsistent decrees were bound to come in existence and have in fact come in existence.

45.2. As noticed, the High Court has proceeded to hold that Ext. B-10 agreement is valid and binding on the plaintiff and Defendants 1 to 3. This part of decree is in stark contrast, and is irreconcilable, with the decree in favour of Defendant 2 which has attained finality that the said agreement Ext. B-10 is neither valid nor binding on Defendant 2. The High Court has gone a step further to say that the plaintiff and Defendants 1 to 3 were under obligation to execute sale deed in favour of defendant 16 to 18. Though making of such an observation in this suit, that heirs of Annapurnamma were under obligation to execute a sale deed in favor of defendant 6 to 18, remains seriously questionable in itself but, in any event, this observation could not have been made qua the deceased Defendant 2.

46. When the inconsistencies galore are writ large on the face of the record, the inescapable conclusion is that the appeal filed by Defendants 16 to 18 could not have proceeded further after its abatement against Defendant 2 (Respondent 3)."

(Emphasis supplied)

22. In Sunkara Lakhminarasamma vs. Sagi Subba Raju and Others21, three suits were instituted. Suits A and B were, inter alia, for: (a) partition; (b) setting aside alienation; and (c) eviction of certain defendants from some of the properties. Suit C was for specific performance of an agreement to sell in respect of one of the suit properties. Trial court dismissed suits A and B, but partly decreed suit C to the extent of one-third of the property. The first appellate court affirmed the decree. Three second appeals were filed before the High Court. Two second appeals arising from suits A and B were dismissed whereas second appeal arising from suit C was allowed and the suit for specific performance was decreed fully in terms prayed for.

Before this Court, the contentions of appellants i.e., plaintiffs in suits A and B were that Wills relied by defendants were not proved; moreover, those bequests conferred no right, therefore, remaining defendants, who claimed as transferees from the legatee, were liable to be evicted. The respondents in the aforesaid case, refuted those contentions and pleaded that the appeals were not maintainable since a number of defendants (purchasers from the legatee), were deleted from the array of parties, and some of the defendants have died and their legal representatives were not brought on record; as a result, the decree passed in favour of such defendants had attained finality.

In other words, the validity of the Wills as well as the sale deeds stood confirmed qua the deceased/deleted defendants and, therefore, the appeals, pending against other defendants, were liable to be dismissed in view of the fact that if any order is passed adverse to the interest of the remaining defendants (i.e., respondents in the appeal), it would be in conflict with the judgment and decree which stood

confirmed as against the deceased/ deleted defendants. Accepting the aforesaid submissions of the respondents, a three-Judge Bench of this Court held:

"13. In the matter on hand, the absence of certain defendants who have been deleted from the array of parties along with the absence of legal representatives of a number of deceased defendants will prevent the court from hearing the appeals as against the other defendants. We say so because in the event of these appeals being allowed as against the remaining defendants, there would be two contradictory decrees in the same suit in respect of the same subject-matter. One decree would be in favor of the defendants who are deleted or dead and whose legal representatives have not been brought on record; while the other decree would be against the defendants who are still on record in respect of the same subject matter.

The subject matter in the suit is the validity of the two Wills. The courts including the Division Bench of the High Court have consistently held that the two Wills are proved, and thus Veeraswamy being the beneficiary under the two Wills had become the absolute owner of the suit properties in question. Such decree has attained finality in favor of the defendants who are either deleted or dead and whose legal representatives have not been brought on record. In case these appeals are allowed in respect of the other defendants, the decree to be passed by this court in these appeals would definitely conflict with the decree already passed in favour of the other defendants.

14. As mentioned supra, the court cannot be called upon to make two inconsistent decrees about the same subject matter. In order to avoid conflicting decrees, the court has no alternative but to dismiss the appeals in their entirety.

15. In view of the above, the appeals fail not only on the ground of non-maintainability, but also on merits, and are dismissed."

(Emphasis supplied)

23. In Budh Ram and Others vs. Bansi and Others22 plaintiffs instituted a suit for declaration to the effect that they and proforma defendant no.6 were co-owners and co- sharers in joint possession to a certain extent of the property in dispute. They also prayed for permanent prohibitory injunction to restrain the defendants 1 to 5 from ousting them. Defendant no.6, namely, Smt Parwatu, did not enter appearance in the suit. However, defendants 1 to 5, who were appellants before this Court, contested the suit by claiming title over the suit land through adverse possession.

The trial court decreed the suit in favour of the plaintiffs and defendant no.6. Against the trial court decree the defendants 1 to 5 preferred an appeal to the High Court in which defendant no.6 was arrayed as one of the respondents.

However, during the pendency of appeal, defendant no.6 died but no substitution was brought within time. Later, when substitution application was filed, it was dismissed for want of sufficient cause for the delay. Consequent thereto, the High Court held that as the trial court had passed a joint decree, the appeal stood abated in toto. Challenging the order of the High Court, appeal was laid before this Court. Affirming the order of the High Court, this Court observed:

"19. In the instant case a declaratory decree was passed in favor of the respondent plaintiffs and Smt Parwatu to the effect that they were coowners, though, they had specific shares but were held entitled to be in joint possession. The appellant applicants had sought relief against Smt Parwatu before the first appellate court as there was a decree in her favour, passed by the trial court where Smt Parwatu had been impleaded by the appellant applicants as pro forma respondent.

In such a fact situation, she had a right to contest the appeal. Once a decree had been passed in her favor, a right had vested in her favor. On her death on 19-11-2000, the said vested right devolved upon her heirs. Thus, the appeal against Smt. Parwatu stood abated. In the instant case, the first appellate court rejected the application for condonation of delay as well as the substitution of LRs of Smt Parwatu, Respondent 4 therein.

20. The only question remains as to whether the appeal is abated in toto or only in respect of the share of Smt Parwatu. The High Court has rightly reached the conclusion that there was a possibility for the appellate court to reverse the judgment of the trial court and in such an eventuality, there could have been two contradictory decrees, one in favor of Smt Parwatu and the other, in favor of the present appellants. The view taken by the High Court is in consonance with the law laid down by this court consistently. The facts of the case do not warrant any further examination of the matter."

(Emphasis supplied)

24. In Pandit Sri Chand and Others vs. Jagdish Parshad Kishan Chand and Others23 five persons stood sureties for satisfaction of the decree under a common surety bond which recited that the five sureties mortgaged the properties specified in the schedule thereto and jointly and severally agreed that if any decree was passed against X they shall comply with the same and in default the amount payable under the decree subject to a ceiling shall be realized from the properties mortgaged. In the suit, decree was passed which was put to execution. Sureties raised multiple objections to execution of the decree against them.

The execution court rejected the objection and the appellate court (i.e., the High Court) confirmed the order of the execution court. The matter was appealed to this Court by three out of the five sureties. During the pendency of the appeal

here, one of the appellants died. Application for bringing his LRs on record being belated was dismissed for want of sufficient cause for the delay. During hearing of the appeal, the respondent counsel contended that the appeal had abated in its entirety as the heirs had not been brought on record and the ground on which the judgment of the High Court proceeded was common to all the parties. Accepting the submission of the respondent counsel, this Court held:

"6. The order of the High Court holding that the sureties are liable to satisfy the claim notwithstanding the objections raised by Basant Lal has become final. In the appeal filed by the appellants 1 and 3 if this court holds that the High Court was in error in deciding that the surety bond was not enforceable because it was not registered, or that the first respondent has done some act which has discharged the sureties from liability under the bond, there would unquestionably be inconsistent orders - one passed by the High Court holding that the surety bond was enforceable, and the other, the view of this Court that it is not enforceable. 9. When the decree in favor of the respondents is joint and indivisible, the appeal against the respondents, other than the deceased respondent cannot be proceeded with if the appeal against the deceased respondent has abated."

25. The underlying principle in the aforesaid decisions is that in respect of the subject matter of a suit or a proceeding arising therefrom, the court cannot pass inconsistent decrees. In consequence, if, due to non-substitution of LRs of a deceased party, the decree qua the deceased party has attained finality by abatement of proceedings qua him, the Court cannot proceed further if a reversal or modification of the decree under appeal would result in conflicting or inconsistent decrees. Therefore, in such a situation, the appeal would abate in its entirety.

ORDER XLI RULE 4 CPC CANNOT PREVENT ABATEMENT OF AN APPEAL OF THE DECEASED CO-APPELLANT ON NON-SUBSTITUTION OF HIS LRS

26. Now, we shall consider whether the provisions of Order XLI Rule 4 of CPC can prevent abatement of an appeal of the deceased co-appellant on non-substitution of his LRs.

27. Order XLI Rule 4 of CPC provides that where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or the defendants may appeal from the whole decree, and thereupon the appellate court may reverse or vary the decree in favor of all the plaintiffs or defendants, as the case may be.

28. Interplay between the provisions of Order XXII and Order XLI Rule 4 of CPC came for consideration before a three-Judge Bench of this Court in Rameshwar Prasad and Others vs. Shambehari Lal Jagannath and Another24. In that case nine persons including one Kedar Nath instituted a suit for ejectment and recovery of rent against two defendants on the allegation that defendant 1 was the tenant-in-chief who had sub-let the premises to defendant 2. The suit for ejectment was decreed against both the defendants, and for arrears of rent against defendant 1. On appeal by defendant 2, the District Judge set aside the decree for ejectment against defendant 2 and confirmed the rest of the decree against defendant 1. Against this decree, 9 original plaintiffs filed second appeal in the High Court.

During the pendency of appeal, appellant 3 died. No application for bringing his legal representatives on the record was made within the prescribed time. Later, however, two applications were filed in the High Court. One, for condonation of the delay in filing the application for substitution and the other for substitution in which it was prayed that the sons of Kedar Nath, the deceased, be substituted in place of the deceased. Those two applications were rejected with the result that the appeal stood abated as against Kedar Nath. When the appeal of the appellants, other than Kedar Nath, came up for hearing, a preliminary objection was taken for the respondent that the entire appeal had abated.

On behalf of the surviving appellants it was contended that the deceased belonged to a joint Hindu family and other members of the family were already on the record and that it was not necessary to bring on record any other person. The court allowed parties to file proof of the deceased being a member of the joint Hindu family. On exchange of affidavits in that regard, a serious dispute regarding existence of a joint Hindu family surfaced. Consequently, at the hearing of the appeal, the only point urged on behalf of the surviving appellants was that they were competent to continue the appeal in view of Order XLI Rule 4 of CPC. This contention, however, was rejected by the High Court and the appeal was declared to have abated. Aggrieved by this, the appellants appealed to this Court.

One of the contentions raised before this court was that the surviving appellants could have instituted the appeal against the entire decree in view of the provisions of Order XLI Rule 4 of the Code; that they were, therefore, competent to continue the appeal even after the death of Kedar Nath and that the court could have reversed or varied the whole decree in favor of all the original plaintiffs and could have granted relief with respect to the rights and interests of Kedar Nath as well. Rejecting the aforesaid contention, this Court, in reference to the provisions of Oreder XLI Rule 1 of CPC, held:

"These provisions enable one of the plaintiffs or one of the defendants to file an appeal against the entire decree. The second appeal filed in the High Court was not filed by any one or by even some of the plaintiffs as an appeal against the whole decree, but was filed by all the plaintiffs jointly, and, therefore, was not an appeal to which the provisions of Rule 4 of Order 41 could apply. The appeal could not have been taken to be an appeal filed by some of the plaintiffs against the whole decree in pursuance of the provisions of Rule 4 of Order 41 from the date when the appeal abated so far as Kedar Nath was concerned. If the appeal could be treated to have been so filed, then, it would have been filed beyond the period prescribed for the appeal.

At that time, the decrees stood against the surviving plaintiffs and the legal representatives of Kedar Nath. The legal representatives could not have taken advantage of Rule 4 of Order 41. It follows that Rule 4 of Order 41 would not be available to the surviving plaintiffs at that time. Further, the principle behind the provisions of Rule 4 seems to be that any one of the plaintiffs or defendants, in filing such an appeal, represents all the other non-appealing plaintiffs or defendants as he wants the reversal or modification of the decree in favor of them as well, in view of the fact that the original decree proceeded on a ground common to all of them. Kedar Nath was alive when the appeal was filed and was actually one of the appellants.

The surviving appellants cannot be said to have filed the appeal as representing Kedar Nath. Kedar Nath's appeal has abated and the decree in favor of the respondents has become final against his legal representatives. His legal representatives cannot eject the defendants from the premises in suit. It will be against the scheme of the Code to hold that Rule 4 of Order 41 empowered the Court to pass a decree in favor of the legal representatives of the deceased on hearing an appeal by the surviving appellants even though the decree against him has become final. This court said in State of Punjab versus Nathu Ram:

"The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in absence of the legal representatives of the deceased respondent, the appellate court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the court will do is one to which exception can or cannot be taken."

No question of the provisions of Rule 4 of Order 41 overriding the provisions of Rule 9 of Order 22 arises. The two deal with different stages of the appeal and provide for different contingencies. Rule 4 of Order 41 applies to the stage when an appeal is filed and empowers one of the plaintiffs or defendants to file an

appeal against the entire decree in certain circumstances. He can take advantage of this provision, but he may not. Once an appeal has been filed by all the plaintiffs the provisions of Order 41, Rule 4 became unavailable.

Order 22 operates during the pendency of an appeal and not at its institution. If some party dies during the pendency of the appeal, his legal representatives have to be brought on record within the period of limitation. If that is not done the appeal by the deceased appellant abates and does not proceed any further. There is thus no inconsistency between the provisions of Rule 9 of Order 22 and those of Rule 4 of Order 41 CPC. They operate at different stages and provide for different contingencies. There is nothing common in their provisions which make the provisions of one interfere in any way with those of the other.

We do not consider it necessary to discuss the cases referred to at the hearing. Suffice it to say that the majority of the High Courts have taken the correct view that the appellate court has no power to proceed with the appeal and to reverse and vary the decree in favor of all plaintiffs or defendants under Order 41, Rule 4 when the decree proceeds on a ground common to all the plaintiffs or defendants, if all the plaintiffs or the defendants appeal from the decree and any of them dies and the appeal abates so far as he is concerned under Order 22 Rule 3."

29. The decision of this Court in Rameshwar Prasad (supra) was followed in Pandit Sri Chand (supra) and the same principle of law has been adopted in a recent two-Judge Bench decision of this Court in Goli Vijayalakshmi and Others vs. Yenduj Sathiraju (Dead) through LRs and Others25 where this Court declined to accept the argument that despite non-substitution of LRs of a deceased appellant, the other appellants could prosecute the appeal with the aid of Order XLI Rule 4 of CPC. The relevant portion of the judgment is extracted below:

"23. The submission of the learned counsel for the appellants is that even if the appeals stood abated qua Appellant 2, the other appellants would be entitled to prosecute the appeals relying on the principle of Order 41 Rules 4 and 33 CPC. Suffice it to say that once the appeal stood abated against Appellant 2 (Defendant 2) and the decree which stands confirmed qua Appellant 2 (Defendant 2) cannot indirectly be reopened to challenge at the behest of persons claiming through him by relying on provisions of Order 41 Rules 4 and 33 CPC as prayed for."

30. In Mahabir Prasad vs. Jage Ram and Others26, this Court explained Rameshwar Prasad (supra) in the light of an earlier decision of this Court in Ratan Lal Shah vs. Firm Lalmandas Chhadammalal27 and thereby limited its applicability to a situation where the deceased party was a co-appellant and not the one impleaded as a proforma-respondent.

In Mahabir Prasad (supra) this Court held that if a decree is made on common ground against the plaintiffs or the defendants and the appeal against the same is filed by any one or some of the plaintiffs, or defendants, as the case may be, by impleading the remaining of those plaintiff(s) or defendant(s) as proforma-respondent(s), on non-substitution of LRs of such proforma respondent(s) the appeal would not abate as the appellants would be entitled to prosecute the appeal with the aid of Order XLI Rule 4 of CPC. The relevant portion of the judgment is extracted below:

"5. In support of their view the High Court relied upon the judgment of this court in Rameshwar Prasad v. Shyam Beharilal Jagannath. That was a case in which nine persons instituted a suit for a decree in ejectment and for recovery of rent against two defendants and obtained a decree. In appeal the District Judge set aside the decree, against one of the defendants. The plaintiffs filed a second appeal in the High Court and when the appeal was pending one of the plaintiffs (appellants in the High Court) died. No application for bringing his legal representatives on the record was made within the prescribed time.

The respondents objected that the entire appeal had abated because the interest of the surviving appellants and of the deceased appellant was joint and indivisible and that in the event of the success of the appeal there would be two inconsistent and contradictory decrees. The surviving appellants claimed that the appeal was maintainable on the ground that without impleading the plaintiff who had died they could have appealed against the entire decree in view of the provisions of Order 41, Rule 4 of the Code of Civil Procedure and on that account they were competent to continue the appeal, even after the death of one of the joint decree holders and abatement of the appeal so far as he was concerned, and the court had the power to hear the appeal and to reverse or vary the whole decree.

This court held that the provisions of Order 41, Rule 4 of the Code of Civil Procedure were not applicable for the second appeal in the High Court was filed by all the plaintiffs jointly, and the surviving appellants could not be said to have filed the appeal as representing the deceased appellant. The Court further held that the appellate court had no power to proceed to hear the appeal and to reverse or vary decree in favor of all the plaintiffs or defendants under Order 41, Rule 4 of the Code of Civil Procedure, when the decree proceeded on the ground common to all the plaintiffs, or defendants, if all the plaintiffs or the defendants appealed from the decree and any of them died, and the appeal abated in so far as he was concerned under Order 22, Rule 3 of the Code of Civil Procedure.

Rameshwar Prasad case is obviously distinguishable from the present case. In Rameshwar Prasad case all the plaintiffs whose suit had been dismissed had filed an appeal and thereafter one of them died and his heirs were not brought on the record. In the present case there is an order against the decree holders but all the

decree holders did not appeal; only one of them appealed and the other two were joined as party respondents.

6. In a later judgment of this court in Ratan Lal Shah v. Firm Lalmandas Chhadammalal the plaintiffs obtained joint decree against two persons - Ratan Lal and Mohan Singh. Against the decree Ratan Lal alone appealed to the High Court of Allahabad. Mohan Singh was impleaded as a party respondent to the appeal. Notice of appeals sent to Mohan Singh was returned unserved, and no steps were taken to serve him with notice of the appeal. The High Court dismissed the appeal holding that there was a joint decree against Ratan Lal and Mohan Singh in a suit founded on a joint cause of action and the decree against Mohan Singh had become final.

The appellant could not, on that account claimed to be heard in his appeal; if he was heard and his claim was upheld, the High Court observed that there would be two conflicting decisions between the same parties and in the same suit based on the same cause of action. This court set aside the judgment of the High Court observing that even though Mohan Singh was not served with notice of appeal, the appeal filed by Ratan Lal was maintainable, in view of the provisions of Order 41 Rule 4 of the Code of Civil Procedure. In Ratan Lal Shah case this court allowed the appeal to be prosecuted, even though one of the joint decree-holders impleaded as a party respondent had not been served with the notice of appeal.

In the present case one of the respondents had died and his heirs have not been brought on the record. No distinction in principle may be made between Ratan Lal Shah case and the present case. Competence of the appellate authority to pass a decree appropriate to the nature of the dispute in an appeal filed by one of several persons against whom a decree is made on a ground which is common to him and others is not lost clearly because of the person who was jointly interested in the claim has been made a party respondent and on his death his heirs have not been brought on the record.

Power of the appellate court under Order 41, Rule 4, to vary or modify the decree of a subordinate court arises when one of the persons out of many against whom a decree or order has been made on a ground which was common to him and others has appealed. That power may be exercised when other persons who were parties to the proceeding before the subordinate court and against whom a decree proceeded on a ground which was common to the appellant and to those other persons are either not impleaded as parties to the appeal or are impleaded as respondents. The view taken by the High Court cannot therefore be sustained."

(Emphasis supplied)

31. Upon consideration of the decisions on the interplay between the provisions of Order XLI Rule 4 and Order XXII of CPC qua abatement of an appeal, the law that emerges is summarized below:

i. Rule 4 of Order XLI applies to the stage when an appeal is filed and empowers one of the plaintiffs or defendants to file an appeal against the entire decree in certain circumstances. A plaintiff or defendant can take advantage of this provision, but he may not. Therefore, once an appeal is filed by all the plaintiffs or defendants aggrieved by the decree, the provisions of Order XLI, Rule 4 become unavailable.

ii. Rule 4 of Order XLI is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are having the same interest as the appellant, even though they have not appealed against the decree. This is so, because it is not the law that when a decree is passed on a ground common to all the parties, the appeal is to be filed by all the parties or not at all.

iii. Order XXII applies without exception to all proceedings covered by it. It operates during the pendency of a proceeding including an appeal and not at its institution. Therefore, if an appellant dies during the pendency of the appeal, his legal representatives must be brought on record within the period of limitation. If that is not done, the appeal by the deceased appellant abates.

iv. Where an appeal is filed by any one or some of the plaintiffs, or defendants, aggrieved by the decree, by impleading other such plaintiff(s) or defendant(s) as proforma-respondent(s), in the event of death of such proforma-respondent, the benefit of the provisions of Order XLI Rule 4 would be available to continue the appeal regardless of substitution of LRs of such proforma-respondent.

v. There is no inconsistency between the provisions of Order XXII and those of Rule 4 of Order XLI CPC. They operate at different stages and provide for different contingencies. There is nothing common in their provisions which make the provisions of one interfere in any way with those of the other.

DECISIONS CITED ON BEHALF OF THE APPELLANTS

32. Now we shall consider the decisions cited by the learned counsel for the appellants. The decisions cited by the learned counsel for the appellant are referred to in footnote 6, which shall be dealt with serially below:

(a) Delhi Development Authority vs. Diwan Chand Anand and Others28: In this case two out of six persons, in whose favour the deeds of conveyance were executed, instituted a suit against the state-respondents including DDA by

impleading the remaining co-owners as defendants. The suit was decreed by trial court against which DDA filed appeal impleading plaintiffs as well as other defendants, who were alleged co-owners, as respondents. One of the plaintiff-respondent and some of the defendant-respondent who were co-owners died during the pendency of the appeal.

On ground of non-substitution of all the heirs of deceased plaintiff-respondent and the legal representatives of the deceased defendant-respondent(s) who were also one of the coowners, the appellate court declared the appeal to have abated. When the matter travelled to this court, it was, inter alia, argued on behalf of the appellant that the suit was instituted by some of the co-owners for self and on behalf of the other co-owners, as is permissible in law, and since some of the heirs of the deceased plaintiff-respondent were already on record, the appeal would not abate on non-substitution of the legal representatives of deceased defendant-respondent as their estate stood duly represented by the other co-sharer, namely, the plaintiff-respondent. In that context, this Court while setting aside the decision of the High Court observed:

"34. As observed and held by this court in A. Vishwanatha Pillai29, the co-owner is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has the right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property.

It is observed that, therefore, one co-owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs - two coowners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants 9 to 39 and when some of the respondent-defendants in appeal died, it can be said that estate is represented by others, more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives some of the co-sharers, respondent- defendants in appeal, the appeal would abate as a whole."

(Emphasis supplied)

In our view, this decision would not be of much help to the appellants herein because here there was no suit by co-sharer(s) for self as well as for other non-suing cosharer. Even the appeal was jointly filed by both the defendants against the decree and not by one of them with the aid of Order XLI Rule 4 CPC.

Therefore, the surviving co-sharer was not representing the estate of the deceased co-sharer.

(b) Sakharam (since deceased) Through LRs & Another vs. Kishanrao30: In this case one of the two plaintiff-respondents in a second appeal died and the High Court dismissed the appeal as having abated on non-substitution of his LRs. In that context, this Court while allowing the appeal observed:

"6. When two plaintiffs joined together and secured a decree of declaration and possession of an immovable property, the death of one of the decree holders will not make the second appeal abate. As against the surviving successful plaintiff, the cause of action survived. Abatement occurs only when the cause of action does not survive upon or against the surviving party."

In our view, the aforesaid decision, which is by a two-Judge Bench, cannot be taken as a binding precedent since it does not at all deal with the possibility of conflicting or inconsistent decrees arising from abatement of appeal qua the deceased plaintiff-respondent. In fact, the judgment does not at all deal with earlier binding precedents of larger Benches including the one rendered by a five-Judge Bench which we have discussed in the earlier part of this judgment. We, therefore, hold the same to be per incuriam.

(c) Gurnam Singh (Dead) through LRs and Others vs. Gurbachan Kaur (Dead) by LRs.31: In this case, it was held by this Court that where parties to an appeal had expired and the legal representatives of the deceased parties were not brought on record the proceedings would abate and the decree passed in ignorance thereof would be a nullity. In our view, this judgment is of no help to the appellant.

(d) State of Punjab vs. Shamlal Murari32: This decision does not deal with the issue of abatement. We, therefore, find it not relevant for discussion.

(e) Baij Nath & Another vs. Ram Bharose and Others33: In this case a Full Bench of the Allahabad High Court held:

"36. ...

1. If, in a suit, a plaintiff, makes a claim against a number of defendants on common grounds and all the defendants also contest the suit on common grounds and the suit is decided in favor of the plaintiff against all the defendants, an appeal filed by all the defendants can be heard in favor of the remaining defendants after one of the appealing defendants has died during the pendency of the appeal and his legal representatives have not been brought on record so that his appeal has abated, only if the rights and interests of the surviving defendants were not joint and indivisible with those of the deceased defendant, and in the

event of the success of the appeal, it does not lead to two inconsistent and contradictory decrees.

2. While the appeal of the remaining defendants can be heard, the decision in it will not enure to the benefit of the legal representatives of the deceased defendant appellant."

(Emphasis supplied)

In our view, the above decision of the Allahabad High Court makes it clear that the appeal filed can be heard in favour of the remaining defendant-appellants only if the rights and interests of the surviving defendants were not joint and indivisible with those of the deceased defendant, and in the event of the success of the appeal, it does not lead to two inconsistent and contradictory decrees which is also the law laid down by five-Judge Bench of this Court in Sardar Amarjit Singh Kalra (supra).

CONTINUANCE OF APPEAL MAY RESULT IN INCONSISTENT OR CONTRADICTORY DECREES

33. In the instant case, the civil suit was instituted by the first respondent (i.e., Parasram), inter alia, for declaration of title and possession of suit property by claiming that his grandfather (i.e., Tej Singh) was the sole owner of the suit property which he got constructed from his own funds and was recorded as such in the municipal records since 1938; that on his death in 1965, plaintiff's father's (i.e., Ramswarup) name was mutated in municipal records on 1.3.1967 and he became owner in possession; in between, defendants presented application for mutation which was rejected with liberty to them to bring a suit before competent court, which they did not; that tenants have been residing in the suit property since 1937 and they used to pay rent to the plaintiff's grandfather and on his death to the plaintiff's father; that on 9.10.1979, partition was carried out, according to which, suit property came to the share of the plaintiff and plaintiff's name was recorded in municipal records vide resolution dated 31.1.1981; that defendants had been residing in the third floor of the disputed building as tenants of previous owner on a monthly rent of Rs.50/- p.m. and since 9.10.1979 they are tenants of the plaintiff; that defendants encroached upon the vacant portion of the ground floor of the disputed building and opened a Hotel for their son, in respect of which plaintiff served notice on 12.12.82, but despite service of notice, possession has not been handed over; that, in fact, defendants sublet certain portion of ground floor to Raghuveer without the permission of the plaintiff, for this reason also, plaintiff is entitled to possession of the building from the defendants; that defendants denied ownership of the plaintiff and on this ground also plaintiff is entitled to possession. Thus, by claiming termination of tenancy, suit was instituted.

34. Defendants Suresh Chandra and Ram Babu filed written statement, inter alia, claiming that disputed building has never been in the ownership of Tej Singh, if his name was mutated in the revenue record it was by playing fraud. Similarly, if father of the plaintiff got his name mutated it was by fraud, which confers no right or title. Defendants claimed title and possession over the suit property extending for last 38 years as owners thereof. They denied tenancy and claimed that father of the defendants, namely, Gokul Prasad, received the property in mutual partition held with his brothers, namely, Tej Singh, Jwala Prasad, Gajadhar Prasad in the year 1947 and after the death of Gokul Prasad in the year 1950, defendants became complete owners in possession over disputed buildings. With the aforesaid averments, they prayed for dismissal of the suit.

35. The trial court dismissed the suit, inter alia, holding that plaintiffs failed to prove that they were the exclusive owner of the suit property and they also failed to establish that defendants were tenants thereof.

36. Aggrieved with the judgment and decree of the trial court, the first respondent filed civil appeal. The first appellate court allowed the appeal and decreed the plaintiff's suit, inter alia, holding that plaintiff is the owner of the suit property; defendants' father Gokul Prasad did not get the property in partition, therefore defendants who claim through Gokul Prasad are not the owners, rather are tenants.

37. The aforesaid facts make it clear that the defendants claimed a joint interest in the suit property flowing from their father Gokul Prasad whereas the plaintiff claimed title through his own father with an additional claim that the defendants were his tenants through his predecessors-ininterest. The first appellate court accepted plaintiff's case and held the plaintiff to be owner of the suit property and defendants to be its tenants. In such circumstances, if, on non-substitution of the legal representatives of one of the defendant-appellants, the second appeal abated qua him, the decree as against him, holding him to be tenant and plaintiff the owner, attained finality.

Therefore, if the second appeal is allowed to proceed, on it being allowed, possibility of conflicting and contradictory decrees, in respect of same subject matter, coming into existence cannot be ruled out because one, which attained finality, held the plaintiff to be owner of the suit property and the deceased defendant its tenant whereas the other could hold the surviving defendant to be its owner.

What is important is that both defendants had set up a common defense of having a joint title over the suit property flowing through their father, who, admittedly, was not found owner by the first appellate court. In such circumstances, the decree that came into existence was an indivisible/inseparable decree and if the

second appeal had been allowed to proceed there was possibility of conflicting decrees coming into existence, hence, abatement of the second appeal qua the deceased defendant-appellant would result in abatement of the entire second appeal. Issue (b) is decided in the above terms.

CONCLUSIONS:

38. In the light of discussion above, we summarize our conclusions as under:

(a) The finding returned by the High Court that there was no sufficient cause for condonation of delay in filing application for substitution and setting aside abatement does not suffer from any illegality or perversity as to warrant an interference.

(b) On abatement of second appeal qua the second appellant Ram Babu, the entire second appeal abated as continuance of the second appeal would have given rise to a possibility of inconsistent decrees i.e., one in favour of the plaintiff against the deceased defendant-appellant and the other in favour of the surviving defendant appellant, even though both defendants claimed joint interest in the suit property flowing from their father.

(c) As the second appeal was jointly filed by the two defendants, the benefit of the provisions of Order XLI Rule 4 CPC was not available to the surviving defendant appellant to continue with the second appeal and seek for reversal or modification of the decree operating against the deceased-appellant as well.

39. In view of our conclusions above, we find no merit in these appeals. The same are accordingly dismissed. Pending application(s), if any, stand disposed of. Parties to bear their own costs.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Manoj Misra)

New Delhi;

July 18, 2025

1 Second Appeal No.446 of 2001

2 The High Court of Madhya Pradesh at Gwalior

3 MCC No.697 and MCC No.700 of 2022

4 **Order XLI Rule 4. One of several plaintiffs or defendants may obtain reversal of whole decree where it**

proceeds on ground common to all.- Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

5 CPC

6 Decisions cited by the appellant: (i) Delhi Development Authority v. Diwan Chand Anand, (2022) 10 SCC 428; (ii) Sakharam v. Kishanrao, 2022 SCC OnLine SC 2035; (iii) Gurnam Singh v. Gurbachan Kaur, (2017) 13 SCC 414; and (iv) State of Punjab v. Shamlal Murari, (1976) 1 SCC 719; (v) Baij Nath v. Ram Bharose, AIR 1953 All 565 =1953 SCC OnLine All 43.

7 Decisions cited by contesting respondent's counsel: (i) Baij Nath v. Ram Bharose, AIR 1953 Allahabad 565 = 1953 SCC OnLine All 43; (ii) State of Punjab v. Nathu Ram, AIR 1962 SC 89 = 1961 SCC OnLine SC 137; (iii) Ram Sarup v. Munshi, AIR 1963 SC 553 = 1962 SCC OnLine SC 168; (iv) Pandit Shri Chand and others v. Jagdish Parshad Kishan Chand and others, AIR 1966 SC 1427 = 1966 SCC OnLine SC 206; (v) Badni v. Shri Chand, AIR 1999 SC 107; (vi) Hemareddi (dead) through Legal Representatives v. Ramchandra Yallappa Hosmani, (2019) 6 SCC 756; Delhi Development Authority v. Divan Chand Anand & Ors. (supra); Ashok Transport Agency v. Awadesh Kumar & Ors., (1999) SCC 567; Gurnam Singh v. Gurbachan Kaur (supra); Amba Bai v. Gopal, (2001) 5 SCC 570; and Venigalla Koteswarmma v. Madampati Suryamba, (2021) 4 SCC 246.

8 Order XXII Rule 9. Effect of abatement or dismissal. - (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Indian limitation Act, 1877 (15 of 1877), shall apply to applications under subrule (2).

Explanation.- Nothing in this rule shall be construed as barring, in any later suit, a defense based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.

9 Article 120 of the Schedule to The Limitation Act, 1963

10 Article 121 of the Schedule to The Limitation Act, 1963

11 **Order XXII Rule 1-No abatement by party's death if right to sue survives.-** The death of a plaintiff or

defendant shall not cause the suit to abate if the right to sue survives.

12 **Order XXII Rule 11 - Application of Order to appeals.-** In the application of this Order to appeals so far as may be, the word 'plaintiff' shall be held to include an appellant, the word 'defendant' a respondent, and the word 'suit' an appeal.

13 **Order XXII Rule 2-Procedure where one of several plaintiffs or defendants dies and right to sue survives.-** Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

14 **Order XXII Rule 3-Procedure in case of death of one of several plaintiffs or of sole plaintiff.-** (1) Where

one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court on the application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application the defendant, the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

15 **Order XXII Rule 4- Procedure in case of death of one of several defendants or of sole defendant.-** (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make an any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the court shall, in considering the application under the said Section 5 have due regard to the fact of such ignorance, if proved.

16 (2003) 3 SCC 272

17 Referred to in Footnote 7

18 Referred to in Footnote 7

19 Referred to in Footnote 7

20 Referred to in Footnote 7

21 (2019) 11 SCC 787

22 (2010) 11 SCC 476

23 Refer to Footnote 7

24 1963 SCC OnLine SC 146 : AIR 1963 SC 1901 : (1964) 3 SCR 549

25 (2019) 11 SCC 352

26 (1971) 1 SCC 265

27 (1969) 2 SCC 70

28 See Footnote 6

29 A. Vishwanatha Pillai v. LAO, (1991) 4 SCC17

30 See Footnote 6

31 See Footnote 6

32 See Footnote 6

33 See Footnote 6

IN THE SUPREME COURT OF INDIA

Shivangi Bansal
Vs.
Sahib Bansal

[Transfer Petition (C) No. 2367 of 2023]

[T.P. (Crl.) No(s). 631-633/2023]

[SLP (Crl.) No. 7869/2022]

[SLP (Crl.) No. 11848/2022]

[SLP (Crl.) No. 2282/2023]

HEADNOTE – No arrest in Sec. 498A FIRs for 2 Months. Refer cases to Family Welfare Committees. Ordered an IPS officer and her parents to issue an unconditional public apology to her ex-husband, and his family for the "physical and mental trauma" caused by multiple criminal cases filed against them during their matrimonial dispute.

Directed that the guidelines framed by the High Court Allahabad will remain in effect and should be implemented by the authorities.

The guidelines of the High Court were as follows:

(i) No arrest or police action to nab the named accused persons shall be made after lodging of the FIR or complaints without concluding the "Cooling-Period" which is two months from the lodging of the FIR or the complaint. During this "Cooling-Period", the matter would be immediately referred to Family Welfare Committe(hereinafter referred to as FWC) in the each district.

(ii) Only those cases which would be transmitted to FWC in which Section 498-A IPC along with, no injury 307 and other sections of the IPC in which the imprisonment is less than 10 years.

(iii) After lodging of the complaint or the FIR, no action should take place without concluding the "Cooling-Period" of two months. During this "Cooling-Period", the matter may be referred to Family Welfare Committee in each districts.

(iv) Every district shall have at least one or more FWC (depending upon the geographical size and population of that district constituted under the District

Legal Aid Services Authority) comprising of at least THREE MEMBERS. Its constitution and function shall be reviewed (25) periodically by the District & Sessions Judge/Principal Judge, Family Court of that District, who shall be the Chairperson or Co-chairperson of that district at Legal Service Authority.

(v) The said FWC shall comprise of the following members :-
(a) a young mediator from the Mediation Centre of the district or young advocate having the practices up to five years or senior most student of Vth year, Government Law College or the State University or N.L.Us. having good academic track record and who is public spirited young man, OR
(b) well acclaimed and recognized social worker of that district having clean antecedant, OR;
(c) retired judicial officers residing in or nearby district, who can devote time for the object of the proceeding OR;
(d) educated wives of senior judicial or administrative officers of the district.

(vi) The member of the FWC shall never be called as a witness.

(vii) Every complaint or application under Section 498A IPC and other allied sections mentioned above, be immediately referred to Family Welfare Committee by the concerned Magistrate. After receiving the said complaint or FIR, the Committee shall summon the contesting parties along with their four senior elderly persons to have personal interaction and would try to settle down the issue/misgivings between them within a period of two months from its lodging. The contesting parties are obliged to appear before the Committee with their four elderly persons (maximum) to have a serious deliberation between them with the aid of members of the Committee.

(viii) The Committee after having proper deliberations, would prepare a vivid report and would refer to the concerned Magistrate/police authorties to whom such complaints are being lodged after expiry of two months by inserting all factual aspects and their opinion in the matter.

(ix) Continue deliberation before the Committee, the police officers shall themselves to avoid any arrest or any coercive action pursuant to the applications or complaint against the named accused persons. However, the Investigating Officer shall continue to have a peripheral investigation into the matter namely preparing a medical report, injury report, the statements of witnesses.

(x) The said report given by the Committee shall be under the consideration of I.O. or the Magistrate on its own merit and thereafter suitable action should be taken by them as per the provision of Code of Criminal Procedure after expiry of the "Cooling-Period" of two months.

(xi) Legal Services Aid Committee shall impart such basic training as may be considered necessary to the members of Family Welfare Committee from time to time(not more than one (26) week).

(xii) Since, this is noble work to cure abrasions in the society where tempos of the contesting parties are very high that they would melow down the heat between them and try to resolve the misgivings and misunderstandings between them. Since, this is a job for public at large, social work, they are acting on a pro bono basis or basic minimum honrarium as fixed by the District & Sessions Judge of every district.

(xiii) The investigation of such FIRs or complaint containing Section 498A IPC and other allied sections as mentioned above, shall be investigated by dynamic Investigating Officers whose integrity is certified after specialized training not less than one week to handle and investigate such matrimonal cases with utmost sincerity and transparancy.

(xiv) When settlement is reached between the parties, it would be open for the District & Sessions Judge and other senior judicial officers nominated by him in the district to dispose of the proceedings including closing of the criminal case.

JUDGMENT

Augustine George Masih, J.

1. The Transfer Petition (C) No. 2367 of 2023 has been filed by the wife - Shivangi Bansal / Shivangi Goel for transfer of HMA No. 1395/2020, titled as "Sahib Bansal Vs. Shivangi Bansal" seeking transfer of the case from the Principal Judge, Family Court, Rohini Court, Delhi to the Court of competent jurisdiction at Hapur (Uttar Pradesh).

On the other hand, TP (Crl.) No. 631-633 of 2023 is filed by the husband Sahib Bansal seeking transfer of (i) ST 19/2020 arising out of FIR No. 567/2018 lodged at PS Pilakhwa, Hapur titled State Vs. Manju Bansal & Ors. pending before Additional District and Sessions Judge, Fast Track Court -I, Hapur; (i) CC No. 248/2019 under the DV Act titled as "Shivangi Bansal & Anr. Vs. Sahib Bansal" pending before the Judicial Magistrate First, Hapur, UP and (iii) Complaint No. 3692/2020 u/s 406 IPC titled as "Shivangi Bansal Vs. Sahib Bansal & Ors." pending before the CJM, Hapur Court, UP, to the competent District Court Rohini in Delhi.

2. Additionally, SLP(Crl.) No. 7869 of 2022 and 11848 of 2022 have been filed by Shivangi Bansal/Shivangi Goel against the order dated 13.06.2022 passed by the High Court of Allahabad, allowing the revision petitions filed by Mukesh Bansal (father of Sahib Bansal/ Cr. Revision no. 1122 of 2022) and Manju Bansal

(mother of Sahib Bansal/ Cr. Revision no. 1187 of 2022), respectively. Further, SLP(Crl) No. 2282/2023 has been filed by Sahib Bansal against the order dated 13.06.2022 passed by the Hon'ble High Court of Allahabad rejecting the revision filed by Sahib Bansal (Cr. Revision no. 1126 of 2022).

3. The brief facts leading to the petitions are as follows:

3.1 The petitioner-wife and Respondent-husband were married on 05.12.2015 at the Umrao Farmhouse, Delhi as per Hindu rites and customs. A daughter namely Ms. Raina (minor) was born out of the wedlock on 23.12.2016 at Fortis Hospital, Shalimar Bagh, New Delhi, who is presently 8 years old. After their marriage, the parties resided at 44, Kapil Vihar, Pitampura, Delhi- 110034, which was their matrimonial home along with the parents of the husband/ Sahib Bansal and thereafter, from 30.04.2017 the parties along with their daughter started residing at 130, Rajdhani Enclave, Pitampura Delhi 110034.

3.2 Owing to matrimonial discord and several disputes arising between the parties and their family members, they separated on 04.10.2018, and since then they have been living separately.

4. After their separation, the parties have filed several cases/ complaints/ legal proceedings etc. against each other and their family members before various Courts/ Authorities, out of which several cases/ complaints/ proceedings are pending, the details whereof are provided hereinbelow.

4A. Case(s) filed by the Wife against the Husband and his family members/relatives:

i. State vs. Manju Bansal & Ors. (FIR No. 567/2018): Criminal case under IPC Sections 498A, 323, 504, 506, 307, 376, 511, 120B, 377, 313, 342 and Sections 3 & 4 of the Dowry Prohibition Act; pending before the Additional Sessions Judge, Fast Track Court-1, Hapur, UP.

ii. Shivangi Bansal & Anr. vs. Sahib Bansal & Ors. (CC No. 248/2019): Domestic Violence case under Section 12 of the Protection of Women from Domestic Violence Act filed before Judicial Magistrate First, Hapur, UP.

iii. Shivangi Bansal & Anr. vs. Sahib Bansal (CC No. 285/2020): Continued domestic violence proceedings pending before Judicial Magistrate, Fast Track Second, Hapur, UP.

iv. Shivangi Bansal & Anr. vs. Sahib Bansal & Ors. (CC No. 769/2019): Separate DV case against family members of Sahib Bansal pending before Judicial Magistrate, Fast Track Second, Hapur, UP.

v. Shivangi Bansal vs. Sahib Bansal & Ors. A227 (7618/2021) Complaint under Section 406 IPC): Criminal complaint for criminal breach of trust pending before Chief Judicial Magistrate, Hapur, UP.

vi. Shivangi Bansal vs. State of UP & Ors. (Complaint Case No. 3692/2020): complaint filed by Shivangi Bansal under Section 406 IPC pending before Chief Judicial Magistrate, Hapur, UP.

vii. Shivangi Bansal vs. Sahib Bansal (Case No.136/2019): Petition under Section 125 CrPC seeking maintenance for minor daughter pending before Family Court, Hapur, UP.

viii. Shivangi Bansal vs. Sahib Bansal (Divorce Petition No. 730/2022): Petition under Section 13(1) of the Hindu Marriage Act seeking divorce; filed before Principal Judge, Family Court, Hapur.

ix. Shivangi Bansal vs. Sahib Bansal (Transfer Petition (C) No. 2367/2023): Petition seeking transfer of HMA No. 1395/2020 from Family Court, Rohini, Delhi to Family Court, Hapur; pending before Supreme Court of India.

x. Shivangi Bansal vs. State of UP & Ors. (SLP (Crl.) No. 7869/2022): Special Leave Petition challenging Allahabad High Court's order quashing FIR against Mukesh Bansal (father-inlaw); pending before the Supreme Court.

xi. Shivangi Bansal vs. State of UP & Ors. (SLP (Crl.) No. 11848/2022): Special Leave Petition challenging Allahabad High Court's order quashing FIR against Manju Bansal (mother-inlaw); pending before the Supreme Court.

xii. Shivangi & Ors vs. State of NCT of Delhi & Ors. (MC No. 4588/2023, Crl MA 17543/2023): Petition filed before the Delhi High Court for quashing FIR No. 816/2021 (PS Subhash Place) filed by husband against wife's family.

xiii. Income Tax Notice - Mukesh Bansal (ITBA/INV/S/131/2023-24/1055092506(1)152): Income Tax Investigation Notice issued by DDIT/ADIT (INV)-7(2), New Delhi.

xiv. Income Tax Notice - Manju Bansal (ITBA/INV/S/131/2023-24/1055092442(1)153): Income Tax Investigation Notice issued by DDIT/ADIT (INV)-7(2), New Delhi.

xv. Income Tax Notice - Chirag Mukesh Bansal (ITBA/INV/S/131/2023-24/1055002405(1)153): Income Tax Investigation Notice issued by DDIT/ADIT (INV)-7(2), New Delhi.

4B. Case(s) filed by the Husband against the Wife and her family members/ relatives:

i. State vs. Gaurav Goel & Shivangi Bansal - FIR No. 816/2021, criminal case under IPC Sections 365, 323, 341, 506, and 34, pending in Mahila Court, Rohini, Delhi, with charge framed.

ii. State vs. Satish Mittal & Ors. - FIR No. 583/2022, filed under IPC Sections 354, 385, 506, 509, and 34 at PS Subhash Place, Delhi.

iii. Mukesh Bansal vs. Shivangi Bansal - Ct Case No. 8101/2022, criminal complaint under Sections 200/156 CrPC for defamation under Sections 500 and 501 IPC, pending before Chief Judicial Magistrate, Rohini.

iv. Sahib Bansal vs. Shivangi Bansal - HMA No. 1395/2020, divorce petition under Section 13(1) of the Hindu Marriage Act, pending in Family Court, Rohini.

v. Sahib Bansal vs. Union of India - WP(Q) No. 1470/2023, writ petition filed in Delhi High Court challenging IPS candidature of wife.

vi. Cr. Case No. 402/2019, PS Pilkhuwa, Hapur, UP; Criminal case against Rajesh Goel & Ors. under Sections 323, 504, 506 & 294 IPC.

vii. Sahib Bansal vs. Shivangi Bansal - Guardianship Case No. 47/2024, petition under Sections 7 and 25 of the Guardianship and Wards Act, pending in Family Court, Rohini.

viii. Sahib Bansal vs. State of UP & Ors. - TP(Crl) 631- 633/2023, transfer petition in Supreme Court seeking transfer of three cases from Hapur, UP to Rohini, Delhi; matter pending. ix. Sahib Bansal vs. State of UP & Ors. - SLP (Crl) 2282/2023, special leave petition against Allahabad High Court order rejecting criminal revision; pending in Supreme Court. x. Sahib Bansal vs. State of UP - SLP (C) D No. 35261/2024, civil special leave petition against maintenance order passed by Allahabad High Court, pending in Supreme Court.

4C. Additionally, there are incidental matters/cases/ proceedings filed by third parties in view of the matrimonial discord between the parties. These are:

i. Complaint Case No. 07/2020, Filed under Sections 323, 324, 325, 356, 504, 506 IPC and 3(1)(10) of SC/ST Act at PS Hapur Nagar by Vijay Pal Gautam, Advocate in Hapur, UP.

ii. Complaint Case No. 09/2022, Babita vs. Chirag Bansal & Anr. filed under Sections 323, 354B, 376, 511, 504, 506 IPC and 3(1)(10) of SC/ST Act at PS Hapur Nagar. Court: High Court of Allahabad, UP.

iii. Defamation Case No. 799/2023, Filed by Satish Kumar Mittal vs. Chirag Bansal, Mukesh Bansal, Manju Bansal before CJM, Hapur. Criminal Revision No. 170/2024 filed before District & Sessions Judge, Hapur, UP. -

iv. OS No. 15/2020, Land dispute between SBM Developers (P) Ltd. and Sandhya Goel pending before Civil Judge (JD), Khair, Aligarh, UP.

v. Civil Revision No. 97/2024, Land dispute between Sandhya Goel and SBM Developers (P) Ltd. pending before District Courts, Aligarh, UP.

5. Both parties wish to amicably resolve all disputes, including matters of child custody, and settle all pending litigations as mentioned in Para 4 above with full and final satisfaction to avoid any future litigation and maintain peace between them, in the present proceedings itself.

6. Heard Mr. Sidharth Luthra, learned senior counsel for the wife and Mr. Vikas Singh, learned senior counsel for the husband.

7. Considering the facts and circumstances of the case as also the submissions advanced the ends of justice will be served by making the following observations and directions.

8. We have seen that since the separation of the parties on 04.10.2018, their daughter, Ms. Raina has been under the custody of the mother/ Shivangi Bansal/Shivangi Goel. In that view of the matter, it is hereby ordered that the mother shall have the custody of the child. The father, Sahib Bansal and his family shall have supervised visitation rights to meet the child for the first three months and thereafter based on the comfort and wellbeing of the minor girl child, Ms. Raina, on the first Sunday of every month at the place of education of the child from 9:00 AM to 5:00 PM, or as permitted under the rules and regulations of the school. They shall have the right to spend half of the child's vacations period with the child.

Neither of the parties shall, in any manner, create any hindrance or impediment in the visitation rights. The parties are directed to conduct themselves in a manner that is conducive to the well-being and emotional health of the minor child and to extend their full cooperation in ensuring the smooth implementation of the above arrangement. In case of any difficulty/change/dispute regarding the visitation, both the parties shall consult through the good offices of their respective counsels; it has been agreed by the parties to authorise Mr. Sudarshan Rajan (on

behalf of Ms. Shivangi Bansal/Shivangi Goel) and Mr. Sanjeet Trivedi (on behalf of Mr. Sahib Bansal) to mediate and resolve issues if any in this regard.

9. Considering the fact that the Wife has voluntarily agreed to forgo and waive her claim to any alimony or maintenance from the husband and that she shall have no claim over any moveable and immoveable property owned and possessed by the husband and his family members or any such property that may be owned and possessed by the husband and his family members in the future, no order for maintenance is being passed in favor of the Wife.

10. As the wife has voluntarily agreed to take care of all the expenses of the daughter and would thus not claim any maintenance amount from the husband for the maintenance of the daughter, the order of maintenance of Rs. 1,50,000/- per month as passed by the High Court of Allahabad, Uttar Pradesh directing the husband to pay to the wife for the maintenance of the child, shall not be executed by the wife and is hereby quashed.

11. To bring an end to the protracted legal battle between the parties and to secure complete justice, all pending criminal and civil litigations filed by either party against the other, including but not limited to those against the Wife, the Husband, and his family members, in any court or forum in India as mentioned in Paras 4A, 4B and 4C (i) to (iii) above, are hereby quashed and/or withdrawn. Additionally, the incidental matters/ cases/ proceedings filed by third parties against the husband/wife and his/her family members & relatives, related/unrelated to the matters between the parties are hereby quashed and/or withdrawn. The respective courts/authorities are directed to treat these proceedings as terminated and shall not be challenged in any court of law in future.

12. Both the parties i.e., Shivangi Bansal / Shivangi Goel and Sahib Bansal, and their families have undertaken that there are no other proxy proceedings initiated by her/him against the husband/wife and his/her family members and relatives, till date. If any such proceeding(s) is/are found to be initiated/pending at later stage, the same would be tantamount to contempt of this Hon'ble Court.

13. In addition to the cases mentioned in Para 4 above, if there are cases, petitions, complaints made by the wife (and/or her family) or by the husband (and/or his family) or either incidental to the above matrimonial disputes or otherwise, in any other forum against each other or against their family members, not in knowledge of the other party, the same will stand quashed by virtue of this order.

14. Shivangi Bansal/Shivangi Goel and Sahib Bansal (wife and husband respectively) and the family members of both husband and wife shall not file or

initiate any future litigation, petition, case, complaint or otherwise arising out of these or related matters, in any judicial or quasi-judicial or regulatory or administrative forum or any other forum. For the larger peace and tranquillity of both the parties and their families, the husband and wife mutually agreed and have undertaken to unconditionally withdraw all allegations/ averments in all complaints / pleadings / petitions / representations / documents prepared and / or filed by the parties or their family members / relatives or their representatives against each other and their family members / relatives before any Court of Law / Regulatory / Administrative/ Statutory/ Tribunal forums and / or any other Authority.

15. The husband and the wife have further agreed and undertaken, for the larger peace of both the parties and their families, not to meddle and interfere in each other's life, professions, businesses including having no connection with business rivals, service, employment, and they further agreed and undertook not to do any act or promote or cause any act to be done which may be detrimental to each other's personal and professional interests directly or indirectly and shall not collaborate with any such party to cause harm to the business.

16. The remarks and observations made against Shivangi Bansal in the final judgment and order dated 13.06.2022 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 1126 of 2022 are hereby expunged.

17. Shivangi Bansal's mother i.e., Smt. Sandhya Goel shall transfer property situated at Mauza Tappal, Parghana-Tappal, Tehsil-Khair, District-Aligarh-Khata No. 258 in Gata no. 1653/2 measuring 0.357 hector and Gata No. 1656 measuring 1.060 hector total 2 Kita total rakwa 1.417 hector in which share of rakwa 0.9446 hector and of Khata No. 1101 in Gata no.1656/5K rakwa 0.153 hector in which share of rakwa 0.031 hector, total rakwa 0.97566 hector, as a gift deed, to the husband Sahib Bansal and all the expenses for the said transfer to be borne by Sahib Bansal.

Transfer of said property shall be done on as is where is basis. There are litigations with respect to the above-mentioned property currently pending before the Ld. Civil Judge, Khair, Aligarh and before District Court Aligarh. Sahib Bansal shall step into the shoes of Mrs. Sandhya Goel and bear all related expenses post the transfer of the abovementioned property including litigation cost. Complete pleadings and documents relating to these litigations will be handed over to Shri Sahib Bansal in seven days from today.

The documents i.e., originals/certified copies of the sale deed of the property in question is stated to be not available with the Petitioner or her mother Mrs. Sandhya Goel as they are lost. Mrs. Sandhya Goel shall lodge a complaint with the police within seven days of this order and supply copy thereof to Sahib

Bansal forthwith. In future, there shall be no claim by Shivangi Bansal/Shivangi Goel or her family on the said land. At the time of transfer/registry of the property, Mr. Sudarshan Rajan/his associates (on behalf of Ms. Shivangi Bansal/Shivangi Goel) and Mr. Sanjeet Trivedi/his associates (on behalf of Mr. Sahib Bansal) will be present to ensure no hindrance and the orderly execution of the process.

18. The Court hereby directs that police protection shall be provided to the Husband and his family.

19. Shivangi Bansal/Shivangi Goel shall never use her position and power as an IPS officer or any other position that she may hold in future, position and power of her colleagues/superiors or other acquaintances anywhere in the country, against the husband, his Family Members and Relatives by way of initiating any proceedings before any Authority or Forum through any third party/official or causing any bodily or mental injury to the husband and his family, in any manner whatsoever.

20. As a result of the cases filed by the wife, the Husband remained in jail for a period of 109 days and his father for 103 days and the entire family suffered physical and mental trauma and harassment. What they have suffered cannot be resituated or compensated in any manner. Shivangi Bansal/Shivangi Goel and her parents shall tender an unconditional apology to the husband and his Family members which shall be published in the national edition of the renowned one English and one Hindi newspaper.

Such apology shall also be published and circulated on all social media platforms like Facebook, Instagram, YouTube and other similar platforms. The expression of apology herein shall not be construed as an admission of liability and shall have no bearing on the legal rights, obligations, or consequences arising under law. The apology shall be published within 3 days from the date of this Order and must be in the following form, without any alteration:

"I Shivangi Bansal/Shivangi Goel, D/o Sh. Rajesh Goel, R/o. RS - Niwas, Gandhi Colony, Pilkuwa, UP, hereby sincerely apologise on my and on behalf of my parents for any of my words, action or stories which may have hurt or caused annoyance to the feelings of members of Bansal family namely, Sh. Mukesh Bansal, Smt. Manju Bansal, Sh. Sahib Bansal, Sh. Chirag Bansal and Smt. Shipra Jain. I understand that the various allegations and legal battles have created an atmosphere of animosity and have deeply impacted your wellbeing.

While the legal proceedings have now concluded with the dissolution of our marriage and the quashing of pending litigations between the parties, I understand that the emotional scars may take time to heal. I sincerely hope that

this apology can be a step towards finding some peace and closure for all of us. It is regretted and I sincerely hope for peace and an amicable future for both the families. For peace, good health, prosperity and happiness of both families going forward, I sincerely hope that Bansal family will accept my this unconditional apology.

However, dark the past may be, it cannot hold the future captive. I take this opportunity to express my gratitude to the Bansal Family that through my life experience with them, I became a more spiritual person. As a practicing Buddhist, I sincerely wish and pray for peace, security and happiness of each member of Bansal family. Here, I reiterate that Bansal Family is most welcome to meet and get to know the girl child born out of the wedlock who is at no fault whatsoever.

With respect and regards.

Shivangi Goel/Shivangi Bansal"

21. The above apology is made to bring about amicable closure to the protracted legal battle and associated emotional and mental stress. It is without prejudice to/for either party. It shall not ever be used against Shivangi Bansal/Shivangi Goel before any Court of Law, Administrative / Regulatory / Quasi-Judicial Body / Tribunal against her interests now or in future. Any breach of the said condition shall be considered as Contempt of this Hon'ble Court on the part of Sahib Bansal, parents and his family members.

22. As this matter is being settled by the present order, all allegations made by either party, their family members, or their representatives against each other on various social media platforms, including interviews and statements by the wife or husband that directly allege against each other and/or their family, shall be deleted from the web.

23. Each Party agrees and undertakes to, either directly or indirectly, knowingly or unknowingly: (i) not publish, repeat, disseminate or report any statement or comment, nor take, encourage, induce or voluntarily participate in any action, that would negatively comment on, disparage, defame or call into question the contents of the present order including the cases and proceedings mentioned in Para - 4 above or any documents or pleadings filed therein or orders passed therein (ii) not act in any way with respect to each other which would damage their reputation and present or future activities. Sahib Bansal and his brother Chirag Bansal shall be at liberty to use and intimate the fact of this order for the purpose of his marriage and any issue relating thereto.

24. Both parties, their parents and family members undertake to this Court that they shall abide by the terms, conditions and directions as recorded above.

Default on the part of any of the party will amount to contempt giving a right to the other party to directly approach this Court in Contempt.

25. In terms of the above observations, directions and conditions/settlement, we deem it appropriate to invoke our power under Article 142 of the Constitution of India and order for dissolution of marriage between Shivangi Bansal/Shivangi Goel and Sahib Bansal. The decree of divorce shall be drawn up accordingly.

26. The transfer petitions and special leave petitions are disposed of in terms of the above order. The guidelines framed by the High Court of Allahabad in the impugned judgment dated 13.06.2022 in Criminal Revision No. 1126 of 2022 vide paras 32 to 38, with regard to 'Constitution of Family Welfare Committees for safeguards regarding misuse of Section 498A, IPC shall remain in effect and be implemented by the appropriate authorities.

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

.....CJI. [B. R. Gavai]

.....J. [Augustine George Masih]

New Delhi;

July 22, 2025.

IN THE SUPREME COURT OF INDIA

Anurag Bhatnagar and Anr.
Vs.
State (NCT of Delhi) and Anr.

[Special Leave Petition (Criminal) No. 18084 of 2024]

[Special Leave Petition (Crl.) No. 18087 of 2024]

[Special Leave Petition (Crl.) No. 18094 of 2024]

[Special Leave Petition (Crl.) No. 18091 of 2024]

[Special Leave Petition (Crl.) No. 18095 of 2024]

HEADNOTE – Magistrate's order for FIR under Sec. 156(3) not vitiated merely because complainant didn't avail remedy under Sec. 154(3).

The Magistrate's order directing a police investigation can be irregular but cannot be termed illegal if the complaint discloses a cognizable offence and the Magistrate applied his mind before ordering the investigation; therefore, the order cannot be faulted.

JUDGMENT

Pankaj Mithal, J.

1. In Special Leave Petition (Crl.) No.18084 of 2024 and in Special Leave Petition (Crl.) No.18087 of 2024, the challenge is to the judgment and order of the High Court in Crl.M.C.2833 of 2005 and Crl.M.C.3244 of 2005 dated 3rd September, 2024 whereby petitions seeking quashing of the order dated 1st July, 2005 passed by the Metropolitan Magistrate, New Delhi and the criminal proceedings pursuant to the FIR No.380 of 2005 were dismissed.

2. In Special Leave Petition (Crl.) No.18094 of 2024, Special Leave Petition (Crl.) No.18091 of 2024 and Special Leave Petition (Crl.) No.18095 of 2024, challenge is to the judgment and order of the High Court again dated 3rd September, 2024 whereby petitions seeking quashing of the order dated 3rd June, 2004 passed by the Metropolitan Magistrate, New Delhi and the criminal proceedings pursuant to the FIR No.326 of 2004 were refused on the same and identical grounds as contained in the above referred judgment passed in Crl.M.C.2833 of 2005 and Crl.M.C.3244 of 2005.

3. Since, in all the above SLPs, the facts and contentions are similar, they are being considered and decided by this Court vide common judgment by taking SLP(Crl.) No.18084 of 2024 as the lead case and by narrating the facts as stated therein.

4. Heard Shri Ranjit Kumar, Shri Jayant Bhushan, and Shri Rajat Nair, learned counsel for the parties.

5. The short question arising for consideration in Special Leave Petition (Crl.) No.18084 of 2024 is whether the High Court in exercise of its power under Section 482 of Code of Criminal Procedure1 or under Article 226/227 of the Constitution is justified in refusing to quash the FIR No.380/2005 registered at Police Station, Defence Colony, Delhi, under Sections 420, 120-B and 34 of the Indian Penal Code2 and the order dated 01.07.2005 passed by the Metropolitan Magistrate, New Delhi, directing for the registration of the aforesaid FIR.

Factual Background:

6. The facts leading to the present dispute are that the complainant M/s Sunair Hotels Limited3 was allotted land at Bangla Sahib Road, New Delhi, for the purposes of construction and operation of a hotel. The said construction and operation of the hotel, apart from land, required substantial financial investments which were not readily available with SHL.

7. A non-banking finance company VLS Finance Limited4 through its directors and senior officers (the accused) Shri M. P. Mehrotra, Shri Somesh Mehrotra, Mr. Harsh Allagh, Mr. Anurag Bhatnagar, Mr. K.K. Soni & Mr. Pankaj Shrimali, upon acquiring knowledge of the above hotel project approached SHL with the desire to join the project as financial consultants. They assured SHL that it would launch a public issue of 10 lakh equity shares of Rs.10/- each on a premium of Rs.100/- per share so as to resolve its financial crises. Accordingly, SHL entered into a Memorandum of Understanding5 with VLS on 11.03.1995. The MoU inter alia provided that VLS would invest Rs.7 crore as equity and give Rs.10 crore as an interest-bearing security deposit.

On the other hand, SHL were to contribute Rs.22 crore. VLS valued the shares of SHL at Rs.60/- per share and promised to bring a public issue of 10 lakh equity shares at a premium of Rs.100/- per share. SHL, however, later discovered that the promise of VLS to issue shares at a premium of Rs.100/- per share was legally not possible due to the guidelines of the Securities and Exchange Board of India6, which required a company to have three-year track record of consistent profitability. SHL being a new venture could not have met the said criteria. VLS being an experienced and expert in financial matters deliberately concealed the above guidelines and deceived SHL so as to gain control over the hotel venture.

8. SHL in view of the arbitration clause contained in the MoU dated 11.03.1995, initiated arbitration proceedings against VLS alleging that it had not kept its promises. In the said arbitration proceedings, VLS filed a counter-claim seeking return of its entire deposit of Rs.10 crore with interest. The said arbitration proceedings concluded on 18.07.2015 with an award wherein the claim set up by SHL was dismissed, with a direction to SHL to refund security amount of Rs.10 crore to VLS along with interest from the date of deposit till payment. The said award of the arbitral tribunal is a subject matter of challenge before the High Court of Delhi under Section 34 of the Arbitration & Conciliation Act, 1996.

9. Some time in the year 2000, VLS discovered fraudulent conduct on part of SHL and its directors. It, therefore, filed a complaint on 14.02.2000 leading to the registration of FIR No.90/2000 at Police Station, Connaught Place, against SHL under Sections 406, 409, 420, 421, 422, 467, 468, 471 and 477-A of the IPC. VLS filed another complaint on 19.02.2002 leading to FIR No.99/2002 again at Police Station, Connaught Place, against some of the directors and office bearers of the SHL under Sections 406, 420, 424, 467, 468, 471, 477 and 120-B of IPC alleging that approximately Rs.15 crore was siphoned off by them from the accounts of SHL. A third complaint was filed by VLS on 27.02.2002 on the basis of which FIR No.148/2002 was registered at Police Station, Defence Colony, under Sections 384, 406, 409, 467, 471 and 120-B of the IPC against some of the office bearers of the SHL.

10. It is alleged that in retaliation to the aforesaid complaints/FIRs lodged by VLS, on 03.06.2004 SHL filed a complaint with an application under Section 156(3) CrPC against the officials of the VLS. On this application, Metropolitan Magistrate vide order dated 03.06.2004 directed registration of an FIR and accordingly, FIR No.326/2004 was registered at Police Station, Connaught Place, under Sections 406, 409, 420, 424 and 122-B IPC. It was alleged in the said complaint/FIR that VLS has failed to fulfil its obligations under the MoU dated 11.03.1995. It had deposited only Rs.8 crore as security instead of Rs.10 crore, as agreed upon. It failed to bring out the public issue of SHL as agreed and that VLS played fraud upon SHL so as to induce them into signing the MoU on terms which were against the guidelines of SEBI.

11. VLS and its officers filed multiple petitions under Section 482 CrPC, a few read with Article 227 of the Constitution before the Delhi High Court seeking quashing of the order of Metropolitan Magistrate dated 03.06.2004 directing for the registration of FIR and for the quashing of the FIR No.326/2004 registered in pursuance thereof. The operation of the order dated 03.06.2004 was stayed by the High Court by an interim order dated 28.07.2004. The stay order halted all police actions and it was made absolute some time in 2009 with no substantive progress so far.

12. In this background, SHL on 01.07.2005 straight away filed an application under Section 156(3) CrPC before the Metropolitan Magistrate, Patiala House Court, New Delhi, whereupon on the same day an order was passed directing for registration of the FIR, pursuant to which FIR No.380/2005 under Sections 420, 120-B and 34 IPC was registered. In pursuance to the aforesaid FIR which is the bone of contention in the present petition, investigations were completed as there was no stay in that regard and a chargesheet was filed way back in the year 2020 or 2021.

13. In the aforesaid facts and circumstances, VLS and some of its officers moved the High Court under Section 482 CrPC for the quashing of the FIR No.380/2005 and the order of the Metropolitan Magistrate dated 01.07.2005 directing for the registration of the aforesaid FIR.

14. The above petitions filed by the VLS and its officers have been dismissed by the High Court by the order impugned, holding that the order of the Metropolitan Magistrate dated 01.07.2005 is a speaking order passed after due application of mind. The dispute raised in the FIR cannot at this stage be held to be a civil dispute only as VLS itself had filed FIRs in connection with the disobedience of the same MoU which establishes that VLS accepts involvement of some criminal element in the violation of the MoU giving rise to the disputes.

The issue whether the dispute arising between the parties out of the same MoU is of a civil nature or involves criminality cannot be adjudicated at this stage without the parties having led evidence. Moreover, since the investigations in pursuance of the impugned FIR have been completed and chargesheets have been filed against the accused persons, there is no reason or justification to interfere with the FIR in exercise of powers under Section 482 CrPC or Article 226/227 of the Constitution.

Submissions of the Parties:

15. On behalf of the VLS, it has been argued that the lodging of the instant FIR is a clear abuse of process of the court. Therefore, the High Court ought to have invoked its inherent jurisdiction to quash the said FIR. The Metropolitan Magistrate has ordered for registration of the FIR without there being any complaint to the police authorities as mandated under Section 154(3) of CrPC.

The order under Section 156(3) of CrPC has been obtained by material suppression and concealment of relevant facts, especially with regard to the previous FIRs lodged by SHL and those registered against it. It is a cryptic order which has been passed in a routine manner without application of mind. The dispute as raised in the application under Section 156(3) is primarily a civil

dispute with no criminality attached to it. There are no specific allegations against the accused persons.

16. In defence on behalf of the SHL, it has been contended that the FIR is not liable to be quashed at this stage once the matter has been thoroughly investigated and the chargesheets have been filed. The appropriate remedy, if any, for the VLS is to ask for the quashing of the chargesheets. When the investigating agency during investigation has already tested the veracity of the allegations made in the FIR, it is not open for the court to go into the same at this stage. The court is not empowered to act as an investigating agency and to take a different view in exercise of powers under Section 482 CrPC. The Metropolitan Magistrate, upon pursual of the complaint, has opined that a cognizable offence has been made out and has, thus, passed the order of registration of the FIR which cannot be termed as illegal in any manner.

Points for determination:

17. On the basis of the submissions of the parties, the following points crop up for determination:

(i) Whether an application under Section 156(3) of the CrPC could have been filed without approaching the police authorities;

(ii) Whether the order dated 01.07.2005 passed by the Metropolitan Magistrate is an order passed without application of mind, irrespective of the fact that it states that the parties were "heard" and the documents were "perused";

(iii) Whether the High Court can deny quashing of the order dated 01.07.2005 passed by the Metropolitan Magistrate and the FIR registered pursuant to it for the reason that the investigations have been completed and the chargesheets have been filed against the accused persons;

(iv) Whether the nature of dispute raised in the offending FIR is of a civil nature and there is no involvement of criminality when both sides have previously lodged FIRs originating from the same MoU dated 11.03.1995; and

(v) Whether the present FIR amounts to a successive FIR based upon the same allegations as contained in an earlier FIR No.326/2004 and as such cannot be investigated independently.

18. Now, having outlined the points for determination, we consider it appropriate to deal with the above points serially/sequentially.

Point (i): Whether an application under Section 156(3) CrPC could have been filed without approaching the police authorities?

19. It is a settled law that one of the modes for setting criminal law into motion is by giving information to the police authorities in accordance with Section 154 CrPC whereupon if a cognizable offence is prima facie made out to the satisfaction of the police, it may investigate into the offence even without the permission of the Magistrate. The information so given is ordinarily called the "First Information", though this terminology has not been used under the CrPC.

20. Section 154 of CrPC, inter alia, provides that information relating to the commission of a cognizable offence can be given orally or in writing to the officer-in-charge of the police station and if it is given orally, it shall be reduced in writing, which shall then be read out to the person giving the information and shall be signed by him. A copy of the information so received and reduced into writing, upon being entered into the book kept for the purpose, shall be given forthwith to the informant.

21. Sub-section (3) of Section 154 CrPC lays down that if the information of a cognizable offence given to the officer-incharge of the police station is not being recorded or is being refused to be recorded, the informant may send the substance of the said information to the Superintendent of Police concerned in writing and by post, who upon being satisfied that such information discloses a cognizable offence will either direct for the investigation of the offence or may himself investigate the same.

22. A plain and simple reading of Section 154 CrPC as a whole makes it imperative upon the informant to first approach the officer-in-charge of the police station for the purposes of lodging an FIR in respect of a cognizable offence and where the Police refuses to record such information, the remedy is to approach the concerned Superintendent of Police. It is only when no action is taken even by the Superintendent of Police and the information of commission of a cognizable offence is not being recorded by the officer-in-charge of the police station or even by the Superintendent of Police, that the person aggrieved or the informant may move the court of the Magistrate concerned to get the FIR registered and lodged with the concerned police station.

23. Sub-section (3) of Section 156 CrPC simply empowers the Magistrate to order an investigation of a cognizable offence.

24. Section 190 of the CrPC empowers the Magistrate to take cognizance of an offence in three contingencies, namely: (i) upon receiving a complaint of facts constituting the offence; (ii) upon a police report of such facts; and (iii) upon information received from any person other than the police officer or upon his own knowledge that such an offence has been committed.

25. In view of the provisions of Section 190 read with Section 156(3), the Magistrate is empowered to take cognizance of any offence not only on the basis of the police report submitted under Section 173 of the CrPC consequent to the investigation pursuant to the FIR but also upon receiving a complaint of facts from any person, other than the police officer or on his own motion.

26. On a conspicuous reading of the provisions of Sections 154, 156 and 190 of the CrPC together, it is crystal clear that an informant who wants to report about a commission of a cognizable offence has to, in the first instance, approach the officer-in-charge of the police station for setting the criminal law into motion by lodging an FIR. However, if such an information is not accepted by the officer-in-charge of the police station and he refuses to record it, the remedy of the informant is to approach the Superintendent of Police concerned. It is only subsequent to availing the above opportunities if he is not successful, he may approach the Magistrate under Section 156(3) CrPC for necessary action or of taking cognizance in accordance with Section 190 of the CrPC.

27. In the instant case, a bare perusal of the application filed under Section 156(3) of the CrPC dated 01.07.2005 would reveal that the informant therein had simply stated that an offence under Sections 420, 120-B and 34 of the IPC have been committed and that the informant had approached the "police officials" several times but in vain, but the application is completely silent as to when did the informant approach the Police or the Superintendent of Police.

The application nowhere states that the informant has ever approached the officer-in-charge of the police station for lodging the FIR in accordance with Section 154 of the CrPC or that on refusal to record such information he has availed the remedy of approaching the Superintendent of Police concerned. The mere bald allegation without any details or proof thereof, that the police authorities were approached several times is not acceptable.

28. In Sakiri Vasu vs. State of U.P.7 it had been observed that if a person has a grievance that the police station is not registering the FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the person aggrieved to file an application under Section 156(3) CrPC before the Magistrate concerned. In other words, the court reiterated that the proper procedure has to be availed of and followed before moving the Magistrate under Section 156(3) CrPC.

29. It is well recognized in law that the person aggrieved must first exhaust the alternative remedies available to him in law before approaching the court of law. In other words, he cannot ordinarily approach the court directly.

30. In the case at hand, the fact reveals that the informant had neither approached the officer-in-charge of the police station or the Superintendent of Police concerned as contemplated under Sections 154(1) and 154(3) of the CrPC but has directly gone to the Magistrate under Section 156(3) of the CrPC. In such a situation, the Magistrate ought not to have ordinarily entertained the application under Section 156(3) so as to direct the Police for the registration of the FIR, rather, it ought to have relegated the informant to first approach the officer-in-charge of the police station and then to the Superintendent of Police.

31. The Magistrate while passing the order dated 01.07.2005, directing for the registration of the FIR in exercise of power under Section 156(3) has not considered the above aspect as to whether the informant had exhausted his remedies available in law before approaching him under Section 156(3) of the CrPC.

32. In the facts and circumstances of the case, as the informant had directly moved the Magistrate under Section 156(3) of the CrPC without exhausting his statutory remedies, the Magistrate could have avoided taking action on the said application and could have refused to direct for the registration of the FIR. However, as entertaining an application directly by the Magistrate is a mere procedural irregularity and since the Magistrate in a given circumstance is otherwise empowered to pass such an order, the action of the Magistrate may not be illegal or without jurisdiction.

33. To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count.

34. The Magistrate by the order dated 01.07.2005 has simply directed for the registration of the FIR so as to set the criminal law in motion but has not exercised his power under Section 190 of the CrPC of taking cognizance thereof. In such a situation, the order so passed by the Magistrate, though irregular, is of no prejudice to any party, much less to the VLS. Therefore, it is not appropriate for this court to interfere in the matter or with the order of the Magistrate dated 01.07.2005 or with the order impugned passed by the High Court.

Point (ii): Whether the order dated 01.07.2005 passed by the Metropolitan Magistrate is an order passed without application of mind, irrespective of

the fact that it states that the parties were "heard" and the documents were "perused"?

35. Section 156 of the CrPC provides for the power of the police officer to investigate a cognizable offence. It inter alia vide sub-section (3) empowers the Magistrate to order an investigation in a cognizable case. No doubt, sub-section (3) does not specifically provide that the Magistrate in passing such an order of investigation has to pass a speaking order or has to apply his mind to the contents of the application or the material produced in support of it. Nonetheless, it is a well recognized principle of law that whenever any power is bestowed upon a judicial authority, it is incumbent that it should be exercised on the basis of sound legal principles by application of mind and by a speaking order. Therefore, a reasoned order upon application of judicious mind is inherent while passing an order under Section 156(3) of the CrPC.

36. In Union of India vs. Mohan Lal Capoor8 it has been observed that reasons are links between the material on which the conclusions are based. They disclose how the mind is applied to the subject-matter for a decision. They reveal rational nexus between facts considered and the conclusions reached. Only, in this way, opinions or decisions can be recorded which may be manifestly just and reasonable.

37. It is well accepted vide Alexander Machinery (Dudley) Ltd. vs. Crabtree9 that failure to give reasons amounts to denial of justice as reasons are live links between mind of the decision-taker to the controversy in question and the decision or the conclusion arrived at.

38. The provisions of Section 156 (3) of the CrPC have subsequently been interpreted and it has been held that the Magistrate while directing for registering an FIR has to apply his independent mind based upon legal principles and the order so passed has to be a reasoned order. The provision so interpreted exists from its inception. Merely because a judgment by the Court has simply interpreted and reiterated the established principles of law that ought to have been into practice, it would not mean that such principles would be applicable prospectively only from the date of its interpretation. The interpretation made later on would not mean that the provision had a different meaning prior to its above interpretation.

Therefore, the High Court manifestly erred in holding that at the relevant time there was no requirement of application of mind and for passing a speaking order, as the judgments of the higher courts holding otherwise have been penned down subsequently. In other words, the provision as it stands and interpreted, requires passing of the speaking order on application of mind from the very beginning. Moreover, a speaking order is a part and an essential component of the principles

of natural justice, which are applicable to every judicial order. Therefore, it was but natural for the Magistrate to pass a reasoned order, irrespective of the interpretation of the provision subsequently which was in line with the principles of natural justice.

39. The order of the Magistrate dated 01.07.2005 clearly states that the Magistrate had "heard" the counsel on the application under Section 156(3) and had "perused" the complaint which reveals commission of a cognizable offence. The said order is reproduced below:

"Fresh Complainant received along with application U/s 156 (3) Cr.P.C. Be checked and registered. Heard on the application U/s 156(3) Cr. P.C. Ld. Counsel for the complainant has relied upon a judgement of Allahabad High Court which is reported as "2005 CRL L.J. 2028". The perusal of the complaint reveals the commission of cognizable offence and the SHO Police Station Defence colony is directed to get the case registered and investigate the matter U/s 156 (3) Cr. P.C the compliance report be called for 05.10.2005."

40. The mere stating in the order that the counsel has been heard and the application and the material produced have been perused, may not be indicative of the fact that the Magistrate had actually applied his mind to the controversy in issue. However, the fact that the perusal of the application and complaint attached to it, satisfied the Magistrate that it discloses a cognizable offence, is very material and relevant which proves the application of mind by him. Once such a satisfaction has been recorded by the Magistrate, even if wrongly, it is not liable to be interfered with in exercise of inherent powers by the higher courts.

The powers vested in the court either under Section 482 CrPC or Article 226/227 of the Constitution of India are not for the purposes of appreciating the evidence or examining the correctness of the evidence collected during investigation to record a different conclusion other than recorded by the Magistrate that he is satisfied that a cognizable offence has been disclosed in the application/complaint. Moreover, when information disclosing commission of cognizable offence is conveyed to the police station, the officer-in-charge of the police station cannot refuse to register the FIR.

Therefore, if an FIR has not been registered for any reason at the police station and the Magistrate is satisfied that the information discloses a cognizable offence, he can certainly direct for its registration obviously on compliance of the provisions of Section 154(3) of the CrPC. This is exactly what has been done by the Magistrate by way of his order dated 01.07.2005 though ignoring the remedy under Section 154(3) of the CrPC which, as said earlier, amounts to mere procedural irregularity.

41. In these facts and circumstances, for the reason that the Magistrate not only heard the counsel and perused the documents but has even considered the case law cited and has opined that the information discloses a cognizable offence, implies that he has actually applied his mind to the contents of the application before passing the impugned order directing for the registration of the FIR. Therefore, we find no fault with the order of the High Court in refusing to quash the order dated 01.07.2005 on the above score.

Point (iii): Whether the High Court can deny quashing of the order dated 01.07.2005 passed by the Metropolitan Magistrate and the FIR registered pursuant to it for the reasons that the investigations have been completed and the chargesheets have been filed against the accused persons?

42. We are conscious of the fact that investigation pursuant to the impugned FIR and the submission of the chargesheets thereof would have no lawful existence if the FIR itself is bad or the order directing registration of the FIR is found to be illegal.

43. In the present case with which we are dealing, we have already opined earlier that there is no legal flaw in the order passed by the Magistrate dated 01.07.2005 directing for the registration of the FIR. The order clearly states that the Magistrate is satisfied that the allegations indeed make out a cognizable offence for the purposes of investigation. The said satisfaction recorded by the Magistrate cannot be disturbed in exercise of inherent powers. Therefore, if in pursuance of the said order, the FIR has been registered which discloses a cognizable offence, the same cannot be struck down at this stage.

The powers conferred upon the court under Section 482 CrPC or Article 226/227 of the Constitution of India are discretionary in nature and it is not obligatory upon the court to exercise the said inherent power in each and every case, even if the order impugned suffers from minor procedural irregularity, provided there is no miscarriage of justice. Thus, in a case where pursuant to the order of the Magistrate, which is not illegal or without jurisdiction, an FIR has been registered which discloses a cognizable offence and, thereafter, upon investigation, chargesheets have been submitted, there is apparently no justification for the court to exercise discretionary jurisdiction so as to quash the FIR or the order of the Magistrate.

44. Once much water has flown down the bridge subsequent to the order of the registration of FIR and the registration of FIR, giving rise to a fresh cause of action to challenge the chargesheets, we are of the opinion that the High Court has rightly refused to exercise its discretionary jurisdiction so as to interfere with the FIR as the investigations have been completed and the chargesheets have been filed.

Point (iv): Whether the nature of dispute raised in the offending FIR is of a civil nature and there is no involvement of criminality when both sides have previously lodged FIRs originating from the same MoU dated 11.03.1995?

45. The allegations in the application moved under Section 156(3) CrPC and the material in support thereof reveals that SHL is contending breach of the conditions of MoU dated 11.03.1995 and that it has been induced and deceived by VLS for entering into the aforesaid MoU. VLS has cheated SHL and its officers by making a false promise which was legally impossible to be carried out. The allegations of breach of conditions of the MoU or of making a false promise by itself may not give rise to any criminal action as no criminality is attached to it.

However, there are elements of inducement, criminal conspiracy and cheating which are also borne out from the allegations made in the application and the complaint, which if proved, may amount to commission of an offence. Therefore, once such allegations are made out, it is difficult for the court in exercise of its inherent jurisdiction to interfere with the FIR, only for the reason that some of the disputes are of civil nature which may or may not be having any criminality attached to it.

46. It is well settled by a catena of decisions of this Court, especially in State of Haryana & Ors. vs. Ch. Bhajan Lal Singh & Ors.10, that the discretion to quash an FIR at a nascent stage has to be exercised with great caution and circumspection. In this connection, it would be beneficial to refer to an old case of Privy Council in King Emperor vs. Nazir Ahmad Khwaja11 wherein the law was well settled that the courts would not thwart any investigation or that the courts should be very slow in interfering with the process of investigation. It is only in rare cases where no cognizable offence is disclosed in the FIR that the court may stop the investigation so as to avoid the harassment of the alleged accused. Even in such exercise of power, the court cannot embark upon an inquiry as to the genuineness or otherwise of the allegations made in the FIR or the complaint which have to be examined only after the evidence is collected.

47. The breach of conditions of the MoU or allegations of false promises in relation to the aforesaid MoU are undisputedly subject matter of the different FIRs lodged by VLS itself. Therefore, violation of those conditions for some reasons have been considered by VLS to be offensive. Therefore, the High Court rightly held that if breach of those conditions of the MoU itself has been considered to be of criminal nature by VLS, it cannot be permitted to turn around and allege that such breach of conditions would be of pure civil nature.

48. Thus, in the above facts and circumstances, we do not consider to go into detail as to the exact nature of disputes involved in the FIR and leave the same to

be adjudicated upon by the appropriate court where the chargesheets have been submitted.

49. The last and one of the most important points that has been raised is:

Point (v): Whether the present FIR amounts to a successive FIR based upon the same allegations as contained in an earlier FIR No.326/2004 and as such cannot be investigated independently?

50. Undoubtedly, SHL got lodged FIR No.326/2004 at Police Station, Connaught Place, Delhi, against VLS and its officers. The aforesaid FIR was registered pursuant to the order of the Magistrate dated 03.06.2004 passed on an application moved by SHL under Section 156(3) of the CrPC. The aforesaid application and the FIR primarily allege that VLS and its officials have breached the MoU by failing to fulfil its financial obligations of not launching a public issue at premium etc.

The allegations made in the application under Section 156(3) of the CrPC and the complaint/FIR No.326/2004, if compared with the present FIR, are similar but not virtually same. In short, the present FIR No.380/2005 is upon the same information and allegation as contained in the earlier FIR No.326/2004 but still different. Both the FIRs are by SHL through its authorized representative and both are against VLS and its officials which are mostly common but there is some variance in the allegations and the parties.

51. The earlier FIR No.326/2004 was registered at Police Station, Connaught Place, under Sections 406, 409, 420, 424 and 122-B IPC while the impugned FIR No.380/2005 was registered at Police Station, Defence Colony, again alleging the breach of MoU and it is ex-facie evident that SHL deliberately chose to lodge the second FIR 380/2005 at a different police station as a camouflage as the earlier proceedings were under an order of stay of the High Court. 52. Section 300 CrPC debars a second trial. This is based on the public policy that no one should be harassed twice for the same offence by putting him to trial again and again.

53. In Jatinder Singh & Ors. vs. Ranjit Kaur12, the issue was whether a first complaint having been dismissed for default, could a second complaint be maintained. This Court considered the matter and observed that there is no provision in the CrPC or any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in conviction, acquittal or even discharge. However, when a complaint is dismissed on merits, a second complaint on the same facts cannot be made except in a very exceptional circumstance.

54. It has been well settled that successive FIRs in respect of a same cognizable offence are not maintainable provided that on the basis of the earlier FIR,

investigations have been completed and the trial had either resulted in conviction or acquittal of the accused.

55. It may be noted that in the case at hand, in connection with the earlier FIR No.326/2004 on a petition filed under Section 482 of the CrPC by VLS, interim order of stay of investigation was passed which has been made absolute with no further progress in the matter. Therefore, pursuant to the FIR No.326/2004, there is no trial which may have resulted in conviction or acquittal of the accused person. Therefore, agreeing with the view that there can be no second FIR and no fresh investigation on receipt of the subsequent information but as on the basis of the earlier first information, there is no conviction and acquittal, it cannot be said that a second complaint/FIR is not maintainable.

56. Further, in State of Bombay vs. Rusy Mistry13, information of the commission of the same offence was given to the police at two different places, by different persons and at different times. The Court held that both the reports will be independent First Information Reports.

57. In the case at hand, as previously stated, FIR No.326/2004 was lodged at Police Station, Connaught Place, New Delhi, whereas the subsequent FIR No.380/2005 was lodged at Police Station, Defence Colony, New Delhi. Both the FIRs may be based on similar allegations but they are not virtually the same. The allegations are different and even the parties against whom the FIRs were filed are not the same. Therefore, such a subsequent FIR may be maintainable but we refrain ourselves from making any final comment on the above aspect as no such finding on this aspect has been returned by the court below.

58. Since in connection with FIR No.380/2005, investigations have been completed and the High Court has refused to quash the said FIR in exercise of its discretionary power, we do not deem it necessary to exercise our discretion to override that of the High Court and leave the matter to proceed further in accordance with law.

59. Thus, in the overall facts and circumstances of the case, we do not wish to interfere with the orders impugned and the petitions are dismissed with the observations as made above.

.....J. (Pankaj Mithal)

.....J. (S.V.N. Bhatti)

New Delhi;

July 25, 2025

1 In short 'CrPC'

2 In short 'IPC'

3 In short 'SHL'

4 In short 'VLS'

5 In short 'MoU'

6 In short 'SEBI'

7 (2008) 2 SCC 409

8 (1973) 2 SCC 836

9 1974 ICR 120 (NIRC)

10 1992 SCC (CRI) 426

11 1944 SCC OnLine PC 29

12 2001 (2) SCC 570

13 AIR 1960 SC 391

IN THE SUPREME COURT OF INDIA

Bansal Milk Chilling Centre
Vs.
Rana Milk Food Private Ltd. and Anr.

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 15699 of 2024]

HEADNOTE – An amendment to a complaint can be made at the post-cognizance stage, provided that no 'prejudice' is caused to the accused and the complainant's cross-examination is awaited.

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. Procedure, it is said, is only a handmaiden and not a mistress of justice. However, the said adage has been followed only in the breach in this case. A simple issue of an amendment to a complaint has held up a trial under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") for the last nearly two years.

BRIEF FACTS:

3. The appellant, on 08.04.2022, filed a complaint under Section 138 of the NI Act, against the respondents. The complaint averred that the respondents had purchased Desi Ghee (milk products) and that cheques issued by them numbering three and totaling to an amount of Rupees Fourteen Lakhs had been dishonored. Summons was issued to the respondents and at the stage when the complainant was yet to be cross-examined, an amendment application to amend the complaint was moved by the appellant.

The appellant contended that due to a typographical mistake it had been pleaded that the respondents had been purchasing Desi Ghee (milk products) while it should have been that the respondents were purchasing "milk". The respondents vehemently objected to the amendment. It was contended that no amendment was permissible after cognizance is taken and that the amendment sought, changed the nature of the complaint.

4. By order dated 02.09.2023, the Trial Court held that since the complainant was yet to be cross-examined, no prejudice would be caused to the accused/respondents. It was also held that the amendment was in the nature of a

typographical error, moved at an initial stage of the case. So holding the amendment was allowed.

5. The respondents challenged the order under Section 482 of Code of Criminal Procedure (for short 'the Cr.P.C.'). It was additionally contended that the amendment was not a typographical error since even in the legal notice that preceded the filing of the complaint, what was mentioned was "Desi Ghee (milk products)". It was further argued that the amendment is an attempt to avoid liability under the Goods and Services Tax Act, 2017 (for short the 'GST').

6. By virtue of the impugned order, the High Court has allowed the petition, holding that the amendment sought was not in the nature of a typographical error, but it had a wider impact upon the entire matter in dispute and, therefore, it changed the nature of the complaint. The High Court also found merit in the contention of the respondents that the amendment was sought, as no GST was leviable on milk.

CONTENTIONS:

7. We have heard Mr. Chritarth Palli, learned Counsel for the appellant and Mr. Aabhas Kshetarpal, learned Counsel for the respondents. We have also perused the records. Learned Counsels reiterated the stand of the respective parties in the courts below.

8. The issue, whether a criminal court has power to order amendment of a complaint filed under Section 200 of the Cr.P.C., is no longer res integra. In S.R. Sukumar v. S. Sunaad Raghuram1, this Court held as under:-

"19. What is discernible from U.P. Pollution Control Board case is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint."

9. The learned counsel for the respondents sought to distinguish the judgement in S.R. Sukumar's case (supra) by contending that in the said case amendment was sought and allowed at the pre-cognizance stage and as such the said case can have no application here. We are unable to countenance the said submission.

10. A careful reading of the judgment in S.R. Sukumar's case (supra) reveals that the said judgment followed the earlier judgment of this Court in U.P. Pollution Control Board vs. Modi Distillery and Others2. In Modi Distillery (supra), after the process was issued to the respondents therein, a revision was filed by few of the accused and a Section 482 petition was filed by few other accused.

Invoking the revisional jurisdiction, the High Court quashed the proceedings holding that vicarious liability could not be saddled on the Directors unless "Modi Industries Limited" was arrayed as accused. The Complainant in that case had arrayed "Modi Distillery", an industrial unit and averred that Modi Distillery was a Company. The High Court focusing on the technical flaw in the complaint quashed the proceedings on the premise that "Modi Industries Limited" was not made an accused. This Court, while allowing the appeal of the Complainant-U.P. Pollution Control Board, held as follows:-

"6. The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint.

All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery. Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Modi Industries Limited, the company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum.

We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in para 2 has to be construed in the light of the averments contained in paras 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman,

Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."

Further, it was held

"7. It would be a travesty of justice if the big business house of Modi Industries Limited is allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable for their alleged deliberate and wilful breach of the provisions contained in Sections 25(1) and 26 made punishable under Section 44 read with Section 47 of the Act."

(Emphasis supplied)

This Court allowed the appeal and set aside the order of the High Court and restored the order of the Chief Judicial Magistrate directing issue of process and directed that the trial be proceeded expeditiously. What is significant to notice is that Modi Distillery (supra) was a case where cognizance was taken at a stage when the accused approached the High Court and it was then that this Court observed that a formal application for amendment for substituting the name would have cured the defect.

11. Reverting back to S.R. Sukumar (supra), it does not follow from the judgment that post-cognizance, no amendment can be allowed. In fact, a reading of the penultimate paragraph of the judgment clearly brings out the fact that four distinct reasons were given:-

"20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application.

Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter.

Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused.

Thirdly, the amendment did not change the original nature of the complaint being one for defamation.

Fourthly, the publication of poem Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and

therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application.

Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution."

(Emphasis supplied)

Hence, it is fallacious to contend that in no circumstance can amendments to complaints be allowed after cognizance is taken.

12. Similarly, in Kunapareddy alias Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari and Another3, it was held that even in criminal cases governed by the Code, Court is not powerless and may allow amendments in appropriate cases. The Court in Kunapareddy (supra) followed the holding in S.R. Sukumar (supra).

13. In Munish Kumar Gupta vs. Mittal Trading Company,4 while disallowing an amendment seeking alteration in the date of the cheque from 22.07.2010 to 22.07.2012, this Court, in para 9, held as under:-

"9. In a matter of the present nature, where the date is a relevant aspect based on which the entire aspect relating to the issue of notice within the time frame as provided under the Negotiable Instruments Act, 1881, and also as to whether as on the date there was sufficient balance in the account of the issuer of the cheque would be the question, the amendment, as sought for, in the present circumstance, was not justified."

That judgment is entirely distinguishable as the amendment sought had a bearing on the time frame for issuance of notice of demand and on the aspect of existence of balance in the account. Further, as is clear from the facts, that amendment was sought after a long delay.

14. The term "complaint" is defined in Section 2(d) of the Code of Criminal Procedure, 1973 [Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023] which reads as follows:-

"2 (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

As would be seen ordinarily, a complaint could even be oral. However, dealing with a case under Section 138 of the NI Act, we must notice that Section 142 of the NI Act states that to take cognizance of any offence punishable under Section 138, a written complaint is mandatory. Unless expressly prescribed, if to set a criminal case in motion ordinarily an oral complaint would be sufficient, any question about amendment of a written complaint should be considered by giving the widest latitude. However, as was rightly pointed out in S.R. Sukumar (supra), it should be ensured that no prejudice should be caused to the accused.

15. It will be appropriate to observe that amendments/alterations are not alien to the Code of Criminal Procedure. Section 216 of the Cr.P.C. deals with the power of Court to alter any charge and the concept of prejudice to the accused. No doubt when a charge is altered, what is altered is the legal provision and its application to a certain set of facts. The facts per se may not be altered. However, the section does throw some light in considering the issue of amendments.

16. Section 216 and 217 of Cr.P.C [Section 239 and 240 of the Bharatiya Nagarik Suraksha Sanhita, 2023] read as follows:-

"216. Court may alter charge.-

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

(Emphasis supplied)

217. Recall of witnesses when charge altered.-

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed -

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material."

It will be noticed that when a charge is altered, if there is no prejudice to the accused, the trial can be proceeded with. Further, if it is likely to prejudice, the Court may either direct a new trial or adjourn the trial to such period. Section 217 of the Cr.P.C. grants liberty to the prosecutor and the accused to recall witnesses when charges are altered under the conditions prescribed therein. The test of 'prejudice to the accused' is the cardinal factor that needs to be borne in mind.

17. We have carefully perused the complaint and the application for amendment. The amendment was moved at a stage when after summons being issued to the respondents, the chief examination of the complainant had concluded and when cross-examination was awaited. The amendment made is also only with regard to the products supplied. According to the complainant, while what was supplied was "milk", by an inadvertent error "Desi Ghee (milk products)" was mentioned. The error which occurred in the legal notice was carried in the complaint also.

18. On the facts of the present case and considering the stage of the trial, we find that absolutely no prejudice would be caused to the accused/respondents. The actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the Trial Court to decide based on the evidence. It was a curable irregularity which the Trial Court rightly addressed by allowing the amendment. It could not be said that by allowing the amendment at a stage when the evidence of the complainant was incomplete, failure of justice would occasion.

19. The High Court completely mis-directed itself in delving into the aspects of leviability of GST which would be the concern of the appropriate authorities under the relevant statute. It could also not be said that the amendment altered the nature and character of the complaint.

20. For the reasons aforestated, the appeal is allowed. The judgment and order of the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 53932 of 2023 (O&M) is set aside and that of the Trial Court dated 02.09.2023 is restored.

The Trial Court shall proceed expeditiously and the parties will be at liberty to apply for recall of witnesses already examined.

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

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

New Delhi;

July 25, 2025

1 (2015) 9 SCC 609

2 (1987) 3 SCC 684

3 (2016) 11 SCC 774

4 2024 SCC OnLine 1732

IN THE SUPREME COURT OF INDIA

S. Mohammed Hakkim
Vs.
National Insurance Company Ltd. and Ors.

[Civil Appeal No(s)._____ of 2025
@ SLP (Civil) No(s). 28062-63 of 2023]

HEADNOTE – Sudden braking of a vehicle in a highway, where vehicles are expected to go fast, can amount to negligence. Awards 91 Lakhs compensation to youth who lost leg in accident.

JUDGMENT

Sudhanshu Dhulia, J.

1. Leave granted.

2. The appellant is before this Court challenging the impugned order dated 11.11.2022, whereby the Madras High Court reduced the compensation awarded to the appellant in a motor accident case from Rs. 73,29,653/-to Rs.58,53,447/-.

3. The brief facts of the case are as follows:

(a) On 07.01.2017, when the appellant was riding on a motorcycle along with his friend on the pillion, respondent no.2 suddenly applied the brakes of his car, which was ahead of the appellant's motorcycle, and the appellant dashed his motorcycle into the rear side of the car and fell on the right side of the road. The bus coming from behind drove over the appellant, which finally led to the accident resulting in the amputation of appellant's left leg during treatment. The car and the bus were insured by respondent no.3 and respondent no.1, respectively.

(b) The appellant filed a claim petition before the Motor Accident Claims Tribunal (hereinafter referred to as 'Tribunal') seeking compensation of Rs. 1,16,00,000/- in which Tribunal calculated a compensation of Rs.91,62,066/-. However, since it was held that there was 20% contributory negligence on the part of the appellant, Rs.73,29,653/- were made payable to the appellant by respondent no.1 (insurer of bus). The car insurer was exonerated from all liabilities.

(c) Aggrieved by the order of Tribunal, both the respondent no.1 (insurer of bus) and the appellant approached the High Court. Vide impugned order, the High

Court partly allowed the appeal filed by respondent no.1 by reducing the attendant's charges from Rs.18 lacs to Rs.5 lacs and by fixing liability of car driver, bus driver and the appellant as 40%, 30% and 30% respectively. The cross-objection filed by appellant was also partly allowed by granting him Rs. 5 lacs under the head of future medical expenses. Consequently, the High Court reduced the payable compensation from Rs. 73,29,653/- to Rs. 58,53,447/- along with interest. Now, the appellant is before us.

4. We have heard both sides and perused the material on record.

5. First on the question of contributory negligence of the appellant and negligence on the part of the drivers of the other two vehicles involved in the accident. The Tribunal, as well as the High Court, have affirmed that the accident occurred due to the sudden stoppage of the car. However, it was the view of the Tribunal that if the bus had not been involved in the accident, the appellant would have suffered normal injuries, and it was mainly the negligence of the bus driver that led to the amputation of the appellant's leg.

The Tribunal also relied on Rule 231 of the Road Regulation Rules 1989 and put contributory negligence of 20% on the appellant for not maintaining a sufficient distance from the car. The Tribunal had exonerated the car driver and determined the negligence of the appellant and the bus driver in the ratio of 20:80. In appeal, the High Court has rightly held that since the genesis of the accident was the sudden braking of the car, the car driver should also be made liable. The High Court held the car driver and bus driver liable for negligence to the extent of 40% and 30% respectively; while the appellant was made liable for 30% contributory negligence.

6. The car insurer has taken the stand that the appellant had hit the moving car from behind and thus, car driver is not liable. On the other hand, the car driver has admitted in his evidence that he had suddenly applied the brakes as his wife was pregnant and she had a vomiting sensation. In our view, the concurrent finding that the appellant was definitely negligent in not maintaining a sufficient distance from the vehicle moving ahead and driving the motorcycle without a valid license is correct.

But at the same time, it cannot be ignored that the root cause of the accident is the sudden brakes applied by the car driver. The explanation given by the car driver for suddenly stopping his car in the middle of a highway is not a reasonable explanation from any angle. On a highway, high speed of vehicles is expected and if a driver intends to stop his vehicle, he has a responsibility to give a warning or signal to other vehicles moving behind on the road.

In the present case, there is nothing on record to suggest that the car driver had taken any such precaution. Both Tribunal as well as the High Court have noted that the bus driver was also negligent. After considering all these aspects, we are of the view that the appellant is liable for contributory negligence but only to the extent of 20% whereas the car driver and bus driver are liable for negligence to the extent of 50% and 30% respectively.

7. Now coming to the quantum of compensation. Admittedly, the age of the appellant at the time of the accident was 20 years, and he was studying in the 3rd year of Engineering College, Coimbatore. It is also not disputed that the appellant had lost his left leg due to the accident and thus, suffers from a 100% functional disability. While determining the quantum of compensation, the Tribunal had taken Rs. 15,000/- as the appellant's monthly notional income and the same was affirmed by the High Court. However, the learned counsel of the appellant would contend that the appellant's notional income ought to have been taken as Rs.25,000/- per month.

8. In the present case, at the time of the accident, the appellant was a 3rd year engineering student who could have had a bright future. While dealing with a case of an accident in which an engineering student had lost one leg, this Court in Navjot Singh v. Harpreet Singh, 2020 SCC OnLine SC 1562 had noted that:

"12. Admittedly, the appellant was 21 years of age at the time of the accident and he was pursuing a Degree course in Food Technology from Sant Longowal Institute of Engineering and Technology. Though the Tribunal did not believe the claim made by the appellant that he was earning Rs. 10,000/- per month even as a student by taking tuitions, and though the High Court also did not go by the said claim, the High Court arrived at the notional income of the appellant at Rs. 5,000/- per month, on the ground that the minimum wages admissible to an unskilled worker was Rs. 5,000/- per month.

13. But we do not think that the notional income of a student undergoing a Degree course in Engineering from a premier institute should be taken to be equivalent to the minimum wages admissible to an unskilled worker. Students recruited through campus interviews are atleast offered a sum of Rs. 20,000/- per month. Even if we do not go on the said basis, the High Court could have fixed the notional income atleast at Rs. 10,000/- per month.

14. Therefore, in the facts and circumstances of the case, and by exercising our power under Article 142 of the Constitution of India, we take the notional monthly income of the appellant as Rs. 10,000/- per month."

9. In the above case, this Court was dealing with a case of an accident that occurred in the year 2013. Although considering the facts of that case, this Court

had taken the income of the claimant therein as Rs. 10,000/- per month, it was noted that students, like the appellant in the present case, would be at least earning the minimum of Rs. 20,000/- per month. Thus, in our opinion, it would be in the interest of justice if the notional income of the appellant were taken as Rs. 20,000/-. According to the guidelines in Sarla Verma v. DTC, (2009) 6 SCC 121 as upheld in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, the multiplier would be taken as 18, and future prospects would be 40%. Therefore, the loss of income would be as follows:

Monthly Notional Income	Rs. 20,000/-
Monthly Notional Income along with 40% future prospects	Rs.20,000 + 40% of Rs.20,000 = Rs. 28,000/-
Annual Income	Rs. 28,000 x 12 = Rs. 3,36,000/-
Multiplier	18
Total Loss of Income	Rs. 3,36,000 x 18 = Rs. 60, 48,000/-

10. The High Court has rightly granted Rs.5,00,000/- for the future medical expenses but erred in reducing the attendant charges from Rs. 18 lacs to Rs. 5 lacs. In the present case, by taking charges of an attendant as Rs.6,000/- per month for 25 years, the Tribunal calculated the attendant charges as Rs. 18 lacs. While reducing it to Rs.5 lacs, the High Court has not given any cogent reasons and merely noted that fixing Rs.18 lacs as attendant charges is exorbitant and unreasonable. We are unable to understand how the attendant charges of Rs.18 lacs fixed by the Tribunal are unreasonable. The appellant has lost his entire left leg, which was amputated from waist downwards, which means that he would require assistance throughout his life to perform the basic daily routine. Thus, we hold that the attendant charges as fixed by the Tribunal were justified.

11. There is one more aspect which has attracted our attention. Under the head of loss of marital prospects, Tribunal had granted Rs. 2.5 lacs to the appellant and the same has been affirmed by the High Court. However, in our view, it is not sufficient, and in the interest of justice, it shall be increased to Rs. 5 lacs. As far as the High Court's decision to grant Rs. 5 lacs for the future medical expenses is concerned, we do not think it requires any interference. For all other heads, we agree with the concurrent findings and thus, the determination of the compensation would be as follows:

S. No.	**Heading**	**Amount**
1.	Loss of Income	Rs. 60,48,000/-
2.	Attendant Charges	Rs. 18,00,000/-
3.	Pain & Sufferings	Rs. 2,00,000/-
4.	Loss of Marital Prospects	Rs. 5,00,000/-
5.	Discomfort	Rs. 1,00,000/-

6.	Extra Nourishment	Rs.50,000/-
7.	Medical Bills	Rs. 22,03,066/-
8.	Transportation	Rs. 20,000/-
9.	Damage to Clothing	Rs. 3000/-
10.	Future Medical Expenses	Rs. 5,00,000/-
	Total Compensation	Rs. 1,14,24,066/-

12. As stated above, the appellant is liable for the contributory negligence to the extent of 20% and thus, compensation payable to the appellant is Rs. 91,39,253/- (Rs.1,14,24,066 - 20% i.e. Rs.22,84,813) along with the interest at the rate of 7.5% per annum from the date of filing of the claim petition. Since both the offending vehicles (car as well as the bus) were insured at the time of the accident, the liability for the negligence of the car driver and bus driver shall be borne by them i.e., respondent no.3 to the extent of 50% and respondent no.1 to the extent of 30%, respectively. The amount of compensation shall be paid to the appellant within four weeks from the date of this order.

13. We dispose of these appeals in the above terms.

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

.....J. [Sudhanshu Dhulia] 1.

.....J. [Aravind Kumar]

New Delhi;

July 29, 2025.

1 Distance from vehicles in front: The Driver of a Motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.

IN THE SUPREME COURT OF INDIA

Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd.
Vs.
M.P. Road Development Corporation and Anr.

[Civil Appeal No. 9920 of 2025
arising out of SLP (C) No. 13415 of 2025]

HEADNOTE – The right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India. The state should take the responsibility for the development maintenance of the roads directly under its control.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. This appeal has been preferred against the final judgment and order dated 09.09.2024 passed by the High Court of Madhya Pradesh at Jabalpur1 in Writ Petition (Civil) No. 14569 of 2022 filed by Respondent No. 1 - Madhya Pradesh Road Development Corporation. By the impugned judgment, the High Court allowed the writ petition and quashed the orders dated 02.06.2022 and 07.06.2022 passed by the International Centre for Alternative Dispute Resolution2 - Respondent No.2 and the Arbitral Tribunal, respectively. For ease of reference, the orders impugned in the writ petition, are extracted below:

Order dated 02.06.2022 passed by the ICADR

"The ICADR has made thorough examination of all the points of the Claimant and Respondent including the aforesaid nine attachments with email dated 24.05.2022 and due deliberation and consideration of all the points raised by both the Claimant and Respondent particularly Arbitration Agreement, the judgement in Writ Petition no. 11783/2021 dt.03.09.2021 and Orders sheets of Madhyastham Adhikaran at Bhopal and it has come to the following conclusions:

1. ICADR is the proper forum for the arbitration of disputes arising out of execution of Concession Agreement dated 05.01.2012 between M/s. Umri Pooph Pratappur Tollway Private Limited and Madhya Pradesh Road Development Corporation Ltd. and the same can be ascertained from Arbitration Agreement incorporated in Article 44.3.1 and 44.3.2.

2. The Judgement in Writ Petition no. 11783/2021 dt.03.09.2021 gives clear finding that ICADR is the proper forum for Arbitration of dispute arising from the Concession agreement dated 05.01.2012.

3. In view of and from the orders sheets of Madhyastham Adhikaran at Bhopal, it is ascertained that the Madhyastham Adhikaran at Bhopal has not entered upon reference of the arbitration and therefore not in seisin of the aforementioned arbitrable disputes.

Therefore, in view of Rule 5(2) of the ICADR Arbitration Rules, 1996, inter alia, provides that where a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party, the appointment shall be made upon request of the party, by ICADR. However, in view of Reply of MPRDCL vide letter No. 2941/83/BOT/MPRDC Bhopal dated 13.05.2022 to Arbitration Notice dated 06.05.2022 of the Claimant whereby the Respondent has declined to nominate their Arbitrator, hence, ICADR need not wait for expiry of 30 days.

Since the Respondent has failed to appoint their arbitrator in terms of clause 44.3.1 of the Agreement, now, therefore, I, R.K. Rathore, Secretary General of the International Centre for Alternative Dispute Resolution (ICADR), in exercise of the powers vested in me under Rule 5(2) read with Rule 35(3) of ICADR Arbitration Rules, 1996, do hereby appoint the following arbitrator on the behalf of Respondent:

Shri Jagdish Prasad Shukla, IRSE (Retd.)
Former Principal Engineer/Northern Railway Chief Managing Director/ Rail Vikas Nigam Ltd. &
Member Administration/Central Administrative Tribunal
Add: 501, Ridgewood, Omaxe Forest Sector-92, Noida.
Cell No. 9958998686
E-mail: jpshukla46@gmail.com

The two appointed arbitrators will select the third Arbitrator, i.e. Presiding Arbitrator, as provided in clause 44.3.2 of the above mentioned Agreement."

Order dated 07.06.2022 passed by the Arbitral Tribunal

"Notice for preliminary hearing

1) The Concessionaire/ Claimant has appointed Shri Kamlesh Kumar as Arbitrator on their behalf. The ICADR on behalf of Madhya Pradesh Road Development Corporation Limited has nominated Shri J. P. Shukla as Arbitrator for MPRDC Ltd.

2) The above said nominee Arbitrators of the parties by mutual consent have appointed me the Presiding Arbitrator to adjudicate the matter in dispute relating to the above-mentioned subject vide email date 05.06.2022. I have accepted to act as Presiding Arbitrator in the above referred dispute on 05.06.2022 and the same was communicated to all concerned by email.

3) In pursuance there off, the parties to the dispute are hereby notified that Preliminary hearing of the Arbitral Tribunal will be held on 18.06.2022 (11.00 AM) through video conferencing Wherein timeline for submission of the Statement of Claims (SOC) and Statement of Defense (SOD) and the procedure for conducting the Arbitration will be discussed and decided. The claimant shall arrange to send meeting link to all concerned for the video conferencing well in advance.

4) The Parties to dispute may kindly note that I have received the proposal of my appointment as Presiding Arbitrator on 05.06.2022 and on same day i.e., on 05.06.2022 accepted to act as Presiding Arbitrator. Therefore, the period of 6 months for filing the statement of claims (SOC) and statement of defense (SOD) as specified in Sub Section 4 of Section 23 of Arbitration and Conciliation Act, 1996 (Amendment 2019) shall be reckoned from 05.06.2022 and such period end on 04.12.2022.

5) In the meantime, the Respondent is directed to file a certified copy of Agreement between the Respondent and Claimant to all the Tribunal Members with a copy to the Claimant.

6) My Disclosure under section 12(1 b) as schedule VI of the Arbitration and Conciliation Act 1996 (Amendment 2019) is enclosed for reference of parties to the dispute."

3. The brief facts necessary for adjudication of the present appeal are as follows:

3.1. The appellant and Respondent No.1 entered into a Concession Agreement dated 05.01.2012 for the development of the Umari - Pooph - Pratappur Road on a Build, Operate and Transfer (BOT - Toll + Annuity) basis. The total cost of the project was Rs. 73.68 crores for the augmentation of the existing road from T-Junction of SH-45 at Umari Village to 43.775 km on the Umri - Pooph - Pratappur section of Major District Road (MDR) in the State of Madhya Pradesh, as stipulated in Clause 48.1 of the Concession Agreement. The implementation period was fixed at 24 months from the appointed date.

3.2. In accordance with Article 9.1.1 and Schedule F of the Concession Agreement, the appellant furnished a performance security of Rs. 3.68 crores in the form of an irrevocable and unconditional bank guarantee, vide Bank Guarantee No. 00494121PG000028 dated 03.07.2012 issued by Allahabad Bank.

An Escrow Agreement was also executed on 20.06.2012 among the appellant, Respondent No.1 and Allahabad Bank.

3.3. M/s. S&P Infrastructure Developers Private Limited and M/s. BLA Infrastructure Private Limited, by Deeds of Guarantee dated 20.06.2012 and 15.05.2012 respectively, guaranteed the performance of the appellant under the Common Loan Agreement. The appellant alleged that Respondent No.1 arbitrarily fixed the appointed date as 20.06.2012. Thereafter, the appellant submitted the project completion schedule, work programme, and designs and drawings for review by the Divisional Manager, who had been temporarily appointed as the Independent Engineer. Upon acceptance, the appellant mobilized men, materials, and machinery at the site and commenced work.

3.4. Vide Letter No. VO/TL/2012/Gen/02 dated 27.06.2012, the appellant was informed that M/s. Vaidya Organisation had been appointed as the Independent Engineer with effect from 01.06.2012. The Independent Engineer did not approve the designs and drawings earlier submitted and directed the appellant not to proceed with construction until the already executed work was reviewed and approved. The appellant was further directed to submit revised designs and drawings. Despite objections, revised submissions were made by the appellant on 11.07.2012, which were eventually approved. Consequently, the appellant was 6 compelled to dismantle and re-execute substantial portions of the work, resulting in an escalation of the total project cost to Rs. 99.80 crores.

3.5. Subsequent delays and disruptions allegedly occurred due to breaches of contractual obligations by Respondent No. 1. Consequently, the appellant raised 19 claims before the Independent Engineer invoking Article 44.2 of the Concession Agreement for amicable resolution and compensation. These claims were also submitted to the Secretary, PWD. While some claims were accepted during conciliation proceedings, most were rejected, and no payments were released to the appellant.

3.6. With no resolution forthcoming, the appellant initiated proceedings before the Madhya Pradesh Arbitration Tribunal by filing Reference Case No. 61 of 2018. Notice in the said reference was issued on 13.08.2018.

3.7. Thereafter, the appellant invoked Clause 44.3.1 of the Concession Agreement and approached the ICADR. Respondent No. 1 raised objections under Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 19833. Nevertheless, the ICADR, by order dated 02.06.2022, proceeded to appoint arbitrators to adjudicate the disputes. The Arbitral Tribunal issued a notice for preliminary hearing, by order dated 07.06.2022.

3.8. Subsequently, on 24.06.2022, the appellant filed an application before the Madhya Pradesh Arbitration Tribunal, seeking withdrawal of Reference Case No.61 of 2018.

3.9. Aggrieved by the orders dated 02.06.2022 and 07.06.2022 passed by the ICADR and the Arbitral Tribunal, respectively, Respondent No.1 filed Writ Petition No.14569 of 2022 before the High Court. During the pendency of the writ petition, the Madhya Pradesh Arbitration Tribunal allowed the appellant's withdrawal application by order dated 08.02.2023.

3.10. Ultimately, by judgment dated 09.09.2024, the High Court allowed the writ petition and quashed the orders dated 02.06.2022 and 07.06.2022. Aggrieved thereby, the appellant has preferred the present appeal before this Court.

4. The learned Senior Counsel for the appellant submitted that the writ petition filed by Respondent No. 1 before the High Court was not maintainable as the appellant is a private company and does not function as an instrumentality of the State. Reliance was placed on the judgment of this Court in S.Shobha v. Muthoot Finance Ltd4, wherein it was held that a writ petition is maintainable only against a body that qualifies as 'State' under Article 12 of the Constitution. Therefore, the High Court erred in entertaining the writ petition and passing the impugned order against the appellant.

4.1. Reference was also made to the decisions of this Court in Jagmittar Sain Bhagat v. Director, Health Services, Haryana and others5 and Kanwar Singh Saini v. High Court of Delhi6, to submit that the issue of maintainability of a writ petition can be raised at any stage of the proceedings, and must be determined at the threshold.

4.2. The learned Senior Counsel submitted that the arbitration proceedings were initiated by the appellant under the Arbitration and Conciliation Act, 19967, strictly in accordance with Clause 44.3.1 of the Concession Agreement dated 05.01.2012, and not as an alternative or secondary remedy. Both parties, being fully aware of the existence of the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act, had mutually agreed to resolve disputes through arbitration governed by the 1996 Act and the ICADR Rules. Accordingly, the invocation of the 1996 Act was not barred by the 1983 Act.

4.3. It was further emphasized that if the parties had intended to refer disputes to the Tribunal under the 1983 Act, the agreement would have specifically provided for such reference. Whereas, Clause 44.3.1 of the Concession Agreement mandates arbitration under the aegis of ICADR, New Delhi. Therefore, the jurisdiction of the Madhya Pradesh Arbitration Tribunal cannot override this binding contractual mechanism.

4.4. The learned Senior Counsel placed reliance on paragraph 79 of the decision of the Madhya Pradesh High Court in Viva Highways Ltd v. Madhya Pradesh Road Development Corporation Ltd8, which held that the Madhya Pradesh Arbitration Tribunal under the 1983 Act has jurisdiction only over "ascertained" claims. It also acknowledged that "ascertained" claims have a specific connotation. In the present case, the appellant's claims are, at best, "ascertainable", and therefore, outside the jurisdiction of the Tribunal. Even assuming, without conceding, that the claims could be considered "ascertained", it was incumbent upon the High Court or Tribunal to undertake an inquiry to classify the nature of the claims. However, no such determination was carried out in the present case.

4.5. It was contended that the Doctrine of Election has no application to the present case. Firstly, the appellant invoked arbitration proceedings under the Concession Agreement and did not approach the Madhya Pradesh Arbitration Tribunal under the 1983 Act on its own volition. Secondly, arbitration was not resorted to as an alternative, but as a binding and mutually agreed remedy under the contract.

4.6. It was further submitted that the 1996 Act is a self-contained and exhaustive code, based on the UNCITRAL Model Law, enacted with the objective of promoting speed, efficiency, and uniformity in arbitral proceedings. Therefore, allowing statutory tribunals such as the one under the 1983 Act to override the framework of the 1996 Act would defeat the legislative intent and undermines India's aspiration to be country that can provide early dispute settlement mechanism for commercial disputes through promotion of arbitration.

4.7. It was also submitted that the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act functions more akin to a civil Court than an Arbitral Tribunal. Section 2(d) restricts its jurisdiction to "ascertained" claims. Section 7(5) permits summary dismissal, similar to Order 37 of the Civil Procedure Code, 19089. Section 19 limits the revisional jurisdiction of the High Court to narrow grounds under Section 115 of the CPC, thereby excluding recourse under Section 34 of the 1996 Act. Section 16 mandates delivery of an award within four months of notice. However, in the present case, even after three and a half years, no effective progress has been made, highlighting the Tribunal's inefficacy.

4.8. Additionally, it was submitted that although the appellant had initially invoked the jurisdiction of the Tribunal under the 1983 Act, it was compelled to withdraw the reference due to an inordinate delay of over four years, and because the claims were only "ascertainable" and not "ascertained". Therefore, the ratio in Madhya Pradesh Rural Road Development Corporation Ltd v. L.G. Chaudhary Engineers and Contracts10 is not applicable to the present case.

4.9. Finally, it was submitted that the appellant's claims, aggregating to Rs.280.1566 crores pertain to expenses incurred, damages under Clauses 4.2 and 10.3.4 of the Concession Agreement, and other project related costs. The quashing of the arbitration proceedings by the High Court without directing adjudication either under the 1996 Act or the 1983 Act, has left the appellant without any effective legal remedy.

4.10. In light of the above submissions and case laws, the learned Senior Counsel prayed that this appeal be allowed and the impugned order be set aside.

5. Per contra, the learned Solicitor General of India appearing for Respondent No.1 submitted that there is no dispute between the parties regarding the nature of the Concession Agreement dated 05.01.2012 - it constitutes a works contract. The Government of Madhya Pradesh enacted the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, which provides for the establishment of the Madhya Pradesh Arbitration Tribunal to adjudicate disputes arising out of 'works contracts', where the State Government or a State Public Undertaking is a party. Section 2(1)(d) of the 1983 Act defines a "dispute" as a claim for ascertained or ascertainable money valued at Rs. 50,000 or more relating to differences arising from the execution or non-execution of a works contract.

5.1. It was further submitted that Respondent No.1 is a wholly owned entity of the State of Madhya Pradesh, and that any Concession Agreement executed by it falls within the ambit of a 'works contract' under Section 2(1)(i) of the 1983 Act. Section 7(1) provides for mandatory reference of such disputes to the Madhya Pradesh Arbitration Tribunal, notwithstanding any arbitration clause in the agreement. Section 20 bars the jurisdiction of civil Courts in such matters, thereby establishing the Tribunal as the exclusive forum. Furthermore, Section 2(4) of the 1996 Act, preserves the operation of special statutory forums like the Madhya Pradesh Arbitration Tribunal, reinforcing this exclusivity.

5.2. Reliance was placed on the judgment of a three-judge bench of this Court in Madhya Pradesh Rural Road Development Authority v. L. G. Chaudhary Engineers and Contractors (supra), which upheld the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal for disputes arising out of works contracts. Similarly, in Viva Highways Ltd. (supra), a Full Bench of the Madhya Pradesh High Court confirmed the Tribunal's exclusive jurisdiction, and the 13 Special Leave Petition (Civil) No.17070/2017 filed against the same was dismissed by this Court on 18.04.2018.

5.3. The learned Solicitor General also referred to the decisions in State of Chhattisgarh v. M/s. KMC Construction11, ARSS Damoh - Hirapur Tolls (P) Ltd. v. M.P. Road Development Corporation12, and Madhya Pradesh Rural Road Development Authority v. Backbone Enterprises Limited13, where this Court

reiterated that disputes arising out of a works contract, must be adjudicated exclusively by the Madhya Pradesh Arbitration Tribunal.

5.4. Accordingly, the learned Solicitor General contended that since the Concession Agreement is a "works contract" and Respondent No. 1 is a Stateowned corporation, any dispute arising therefrom falls squarely within the Tribunal's exclusive jurisdiction. The appointment of a private arbitral tribunal under the aegis of ICADR is in direct contravention of the statutory framework, and the High Court rightly intervened to quash the arbitration proceedings under the 1996 Act.

5.5. It was further submitted that the appellant had raised inflated claims amounting to Rs.280.1566 crores before the Madhya Pradesh Arbitration Tribunal in Reference Case No. 61 of 2018, including claims for loss of profits and damages. These claims were ex facie time-barred under Section 7-B the 1983 Act, which requires claims to be filed within one year from the date of communication of the decision of the final authority. The appellant, having failed to comply with the limitation, sought to circumvent the statutory bar by initiating private arbitration under the 1996 Act, reflecting forum shopping and lack of bona fides.

5.6. The learned Solicitor General pointed out that Reference Case No. 61 of 2018 was admitted on 06.09.2021, and Respondent No.1 filed its written statement on 05.11.2021, raising limitation as a preliminary objection. Thereafter, the appellant invoked Clause 44.3.1 of the Concession Agreement and issued a notice under Section 21 of the 1996 Act. Simultaneously, the appellant filed an application to withdraw the reference before the Tribunal on 24.06.2022, which was allowed on 08.02.2023.

5.7. According to the learned Solicitor General, as per Rule 53(3)(b) of the Madhya Pradesh Madhyastham Adhikaran Regulations, 1985, a party that withdraws a reference without the permission contemplated under Rule 53(2) is barred from instituting a fresh reference on the same subject matter. Since the appellant withdrew its claim without such leave, it is now barred from re-agitating the same claims before any forum, including private arbitration. The conduct of the appellant, therefore, amounts to an impermissible attempt to sidestep statutory restrictions.

5.8. Reference was made to Deep Industries Ltd v. Oil and Natural Gas Corporation Ltd14, where this Court upheld the High Court's power to exercise writ jurisdiction and quash arbitration proceedings coram non judice.

5.9. It was argued that contractual terms cannot override statutory mandates. If a statute designates a specific forum for adjudication, parties cannot, by mutual

agreement, confer jurisdiction on an alternate forum. Clause 44.3.1 of the Concession Agreement, to the extent that it provides for private arbitration, is void ab initio in the context of a works contract governed by the 1983 Act. In support, reliance was placed on Booz Allen and Hamilton Inc v. SBI Home Finance Ltd15.

5.10. It was further submitted that the term 'ascertained money' under Section 2(1)(d) includes consequential reliefs. Moreover, the amendment to the 1983 Act post - Viva Highways, includes unascertained money claims within the definition of "dispute". Thus, the Tribunal has jurisdiction even over claims where quantification may occur during adjudication.

5.11. The learned Solicitor General also submitted that the appellant's claims totalling Rs. 280.1566 crores were clearly quantified and sought money relief alone. No declaratory or indeterminate relief was prayed for. The appellant's conduct in attempting to re-agitate these very claims before the ICADR Tribunal - despite having withdrawn the earlier reference under Rule 53(3)(b) - reveals its intent to circumvent the statutory bar. Accordingly, the Madhya Pradesh Arbitration Tribunal under the 1983 Act remained the appropriate and exclusive forum, and the High Court rightly quashed the arbitration proceedings initiated under the 1996 Act.

5.12. It was further submitted that by withdrawing the reference without seeking liberty under Rule 53(2), the appellant has irrevocably abandoned its claims. The consequence under Rule 53(3)(b) is substantive and bars re-litigation of the same subject matter. This bar applies irrespective of whether arbitration is under the 1983 Act or under the 1996 Act. Furthermore, even dehors the special limitation under the 1983 Act, the appellant's claims are now time-barred under the general law of limitation, as per Section 43 of the 1996 Act. The disputes arose between 2013 and 2015, and the invocation of arbitration in 2022 and thereafter in 2025 is clearly beyond the prescribed three-year limitation.

5.13. However, it was submitted that Respondent No.1 would have no objection, if the appellant were to file an application for recall of the withdrawal order and seek restoration of the Reference Petition before the Madhya Pradesh Arbitration Tribunal, which may be directed to be considered in accordance with law.

6. We have heard the learned Senior Counsel appearing for both sides and also perused the materials available on record.

7. The core issue in the present matter revolves around determining the appropriate forum for the adjudication of disputes arising out of the Concession Agreement dated 05.01.2012 entered into between the appellant and Respondent No.1.

8. At the outset, the learned Senior Counsel for the appellant submitted that the writ petition filed by Respondent No.1 was not maintainable against the appellant as it was directed against a private party. It is well settled that the remedy under Article 226 of the Constitution is not confined to individuals seeking enforcement of fundamental rights. Even juristic persons, including State Corporations, are entitled to invoke the writ jurisdiction for enforcement of legal rights.

However, when a State Corporation seeks relief against a private party, the maintainability of the writ petition must satisfy certain threshold requirements, namely, that the dispute involves a public law element rather than being confined to the realm of private contractual obligations, and that the private party is performing a public duty or is subject to a statutory obligation in relation to the State entity.

8.1. In the present case, Respondent No.1 is a State - owned entity and the project in question pertains to the development of Umri - Pooph - Pratappur Road under a Concession Agreement on a BOT (Toll + Annuity) basis. Although the dispute emanates from a works contract governed by the said agreement, the writ petition was not filed for enforcement of any contractual obligation.

Rather, it was filed to challenge the invocation of arbitration by the appellant under the Arbitration and Conciliation Act, 1996, despite the existence of a statutory remedy before the Madhya Pradesh Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983. The issue, therefore, pertained to the availability and exclusivity of a statutory dispute resolution mechanism, and not merely to the adjudication of a claim on merits arising out of a private contractual dispute.

8.2. In this context, reference was made to the decision in Federal Bank Ltd. v. Sagar Thomas16, wherein, this Court provided a classification of entities against whom a writ petition may be maintainable. The following paragraph is pertinent:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

8.3. This Court in Binny Ltd v. Sadasivan17, noted the distinction between public and private functions; and clarified the scope of writ jurisdiction under Article 226 in the context of private contractual disputes involving entities that may be

performing public functions. The relevant paragraphs are extracted below for ready reference:

"11. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, especially in view of the words used in Article 226 of the Constitution.

However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p.682,

"1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public authority or public action. The facts of each case decide the point."

Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article of the Constitution and the High Court under Article 226 of the

Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

8.4. Respondent No. 1 was incorporated on 14.07.2004 to develop, build, maintain, and operate the State Highways, District or other local body roads, expressways, and government buildings in Madhya Pradesh. Respondent No. 1 also, on contract, develops and maintains National Highways in or passing through Madhya Pradesh. The Madhya Pradesh Highways Act, 2004, repealing the 1936 Act, also reiterates the State's role in the development, construction, and maintenance of roads in the State.

Since the right to access any part of the country, with certain exceptions and restrictions under certain circumstances, is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, and the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India, it is the responsibility of the State to develop and maintain the roads directly under its control. The contract for laying of a State Highway/District Road, when assigned by the Corporation owned and run by the government, assumes the character of a public function - even if performed by a private party - and would satisfy the functionality test to sustain the writ petition.

Accordingly, in view of the statutory framework and the nature of relief sought, the writ petition involves a public law element and was thus maintainable before the High Court. The decisions relied upon by the appellant are factually distinguishable and pertain to materially different contexts. As such, they do not advance the appellant's case and have no application to the facts and legal issues involved in the present case.

9. Assailing the impugned judgment passed by the High Court, the learned Senior Counsel for the appellant submitted that the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act is competent to entertain disputes only where there is an ascertained claim exceeding Rs.50,000/-. In the present case, there is no such ascertained monetary claim raised, and hence, the appellant was not obliged to approach the said Tribunal. Further, it was submitted that Clause 44.3.1 of the Concession Agreement contains a valid arbitration clause, which entitles the appellant to invoke arbitration under the 1996 Act.

9.1. In contrast, the learned Senior Counsel for Respondent No.1 contended that the Concession Agreement relates to the construction and development of a State Highway/District Road and squarely falls within the ambit of a 'works contract' as defined under section 2(1)(i) of the 1983 Act. It was further submitted that the 1983 Act, being a special law, has an overriding effect and mandates that

disputes arising out of such works contracts must be adjudicated exclusively by the Madhya Pradesh Arbitration Tribunal.

10. It is not in dispute that the road in question is a State Highway/District Road and forms part of the assets of the State of Madhya Pradesh. Admittedly, the Concession Agreement qualifies as a "works contract". The State Legislature enacted the 1983 Act to establish a special statutory mechanism for adjudication of disputes arising out of works contracts involving the State Government or its instrumentalities, including public sector undertakings. The relevant provisions of the 1983 Act are extracted below, for better appreciation:

"Section 2 (1)(d) - "Dispute" means claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."

Section 2 (1)(i) - "works-contract" means an agreement in writing or a letter of intent or work order issued for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformer or such other works of the State Government or Public Undertakings or of the Corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or by Public Undertakings or Corporation or by any official of the State Government for and on behalf of such Corporation or Public Undertakings and includes an agreement for supply of goods or material and all other matters relating to the execution of any of the said works and also includes the services so hired for carrying out the aforesaid works and shall also include all concession agreement, so entered into by the State Government or public undertakings or Corporation, wherein a State support is involved or not.

18[The agreements in writing for the execution of the work relating to construction, repair or maintenance of electric lines, water supply and sewerage/drainage system shall also be "works contract"]"

"Section 3 - Constitution of Tribunal
The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract."

"Section 7 - Reference to Tribunal
(1) Either party to a works contract shall irrespective of the fact whether the

agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal"

7-A Reference Petition
(1) Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition

(2) ...

7-B Limitation
(1) The Tribunal shall not admit a reference petition unless -

(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and

(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority: Provided that if the final authority fails to decide the disputes within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court preceding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.

(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:

Provided that if a reference petition is filed by the State Government, such period shall be thirty years.

Section 20 - Bar of jurisdiction of Civil Court.-
(1) As from the date of the constitution of the Tribunal and notwithstanding anything contained in Arbitration Act, 1940 (No.10 of 1940) or any other law, for the time being in force, or in any agreement or usage to the contrary, no Civil

Court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.

10.1. It is thus evident that Section 2(1)(i) of the 1983 Act defines 'works contract' to expressly include concession agreements executed by the State or its instrumentalities, regardless of whether direct financial support from the State is involved. Section 7 clearly mandates that all disputes arising from such works contract shall be referred to the Madhya Pradesh Arbitration Tribunal, even if the agreement contains an arbitration clause to refer the dispute under any enactment. The Arbitration and Conciliation Act, 1996 repealed the Arbitration Act, 1940.

The 1940 Act was in force when the Madhya Pradesh Arbitration Tribunal Act, 1983 came into force. The reference contemplated under the 1983 Act implies that the claims covered by the Act shall be decided only by the Tribunal constituted under its provisions, when it comes to a works contract with the State Government, an instrumentality of the State, or a State Corporation. The Arbitration and Conciliation Act, 1996 came into force on 22nd August, 1996.

A reading of sub-sections (3), (4), and (5) of Section 2 of the 1996 Act also illustrates that reference to a special tribunal under a special enactment would survive, irrespective of the existence of a mechanism under the 1996 Act. Further, we do not see any repugnancy between the enactments. Section 20 of the Act, 1983 imposes a bar on the jurisdiction of civil Courts, thereby reinforcing the exclusive and overriding nature of the statutory mechanism established under the 1983 Act.

11. In Viva Highways Ltd (supra), a Full Bench of the Madhya Pradesh High Court categorically held that where an agreement qualifies as a "works contract" under Section 2(1)(i) of the 1983 Act, and the dispute falls within the scope of Section 2(1)(d), the reference to the Madhya Pradesh Arbitration Tribunal constituted under Section 3 of the 1983 Act is mandatory, notwithstanding the presence of any arbitration clause in the agreement. The relevant portion of the Full Bench decision is extracted below:

"82. On the basis of foregoing analysis, we may summarize our conclusions as under:

(i) If an agreement by whatever name called falls within the definition of "works contract" and difference between the parties is covered in the definition of 'dispute' as defined under the Adhiniyam of 1983, it has to be referred for adjudication before the Tribunal constituted under Section 3 of the Adhiniyam of 1983.

(ii) In view of statutory provision of Section 7 of the Adhiniyam of 1983, even in cases where the parties have incorporated a clause in such agreement regarding

resolution of dispute by some other forum or under the Act of 1996, the forum subject to (i) above, would be the Tribunal under the Adhiniyam of 1983. This conclusion, however, will presently not include the cases of terminated contract, which aspect is pending consideration before a Larger Bench of the Supreme Court. The decision of Larger Bench will draw the curtains on this aspect.

(iii) The judgment of Jabalpur Corridor (supra) reported in 2014 (2) MPLJ 276 and Ashoka Infraways Ltd. (supra) reported in 2016 (2) MPLJ 685 are overruled.

(iv) The substituted definition of "works contract" is clarificatory in nature, hence it will be retrospective in operation.

(v) The words "claim of ascertained money" have a definite connotation and therefore only such difference arising out of execution or non-execution of a 'works contract' which are related with claims of above nature will be covered under Section 2(1)(d) of the Adhiniyam of 1983".

11.1. The correctness of the aforesaid judgment was challenged before this Court in SLP (C) No. 17070 of 2017 and SLP (C) Nos.1635-1637 of 2018, both of which were dismissed. As a result, the legal position laid down in Viva Highways stands affirmed. It is also pertinent to note that the appellant herein was a party to those very proceedings before this Court and is thus fully aware of the binding nature of the ruling.

11.2. While the learned Senior Counsel for the appellant has attempted to distinguish the decision in Viva Highways on the ground that the appellant's claims are not "ascertained", such an argument is untenable. The list of claims filed by the appellant clearly discloses a quantified monetary claim of Rs.280.1566 crores, which was specifically pleaded in the reference petition. This squarely falls within the definition of "dispute" under Section 2(1)(d) of the 1983 Act, which includes both ascertained and ascertainable monetary claims. The list of claims is reproduced below for better understanding:

Claim No.	Description	Amount (in crores)
1.	Damages under clause 4.2 of Concession Agreement	0.736
2.	Damages under clause 10.3.4 of Concession Agreement	0.235
3.	Compensation for re-working of GSB/WMM and preparation of sub grade due to decision beyond contract and delayed appointment of I.E	8.63
4.	Additional work done as per instructions of Independent Engineer	13.43
5.	Revision of rates in cost of working due to delay in completion, due to changed time of execution	7.07

6.	Extra cost of utility duct, private land acquisition cost, cost of Non-destructive testing and cost of six extra Hume pipe culverts: i) Cost of construction of Utility Ducts ii) Acquisition of land for ROW by Concessionaire iii) Cost for Non-destructive testing iv) Construction of 6 additional Hume pipe Culverts	 0.27 0.05 0.06 0.28
7.	Extra cost of carriage due to collapse of the Major Bridge in Km. 9+600 of the Project stretch	0.65
8.	Loss of Two Annuities (Bonus)	13.94
9.	Loss of Toll Revenue due to delay in achieving COD and thereafter collapse of Bridge	8.83
10.	Loss of Two Annuities	13.94
11.	Idling charges of Manpower and Machinery	31.21
12.	Additional Bank Interest	13.22
13.	Loss of profit to EPC contractor due to delay in completion of work	10.67
14.	Amount recovered from 1st Annuity due to non-sanction of EOT beyond 20.05.2015 to 04.07.2015 (45 days)	0.1656
15.	Amount deducted under negative change of scope	1.43
16.	Bank Charges and interest (Market interest deposit interest) on margin money of performance security retained beyond contract	0.32
17.	Interest on delayed release of Annuities (1st 2nd and 3rd Annuity)	0.76
18.	Additional expenditure on completion of Punch List item	0.46
19.	Loan installment amount of bank which could not be paid till date due to delayed payments of Annuity by MPRDC	15.00
20.	Loss of further business	138.80
21.	Declaring award of grant of extension of time for 941 days against 335 days approved by MPRDC in light of letter No. UPP/MDR/MPRDC/2012/HQ-11, dated 30.04.2014 and UPP MDR MPRDC/2012 HQ-21 dated 20.06.2015	0
22.	Cost of Litigation	As per award
23.	Interest antelite, pendentelite and future	As awarded by the Tribunal
	TOTAL	**280.1566**

11.3. It is well settled that a claim which can be determined through evidence and quantification falls within the ambit of the term 'ascertained'. Furthermore, post Viva Highways, the Legislature amended section 2(1)(d) of the 1983 Act to

expressly include "unascertained" money claims within the definition of "dispute". This amendment was enacted precisely to override the restrictive interpretation of "ascertained" claims and to expand the Tribunal's jurisdiction to cover all monetary disputes - whether ascertained or not.

11.4. In this context, reference may be made to the decision in Gangotri Enterprises Ltd v. Madhya Pradesh Road Development Corporation19, where this Court observed that:

"3. We consider it appropriate to clarify that the expression "ascertained money" as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/ counter claims of the parties."

11.5. Further, in M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors (supra), a three-Judge Bench of this Court reaffirmed that in the context of a "works contract" in Madhya Pradesh, the 1983 Act has overriding effect over the 1996 Act. The relevant paragraphs are extracted below for ease of reference:

"3. The appellants raised objection that the matter being covered by a special State Act, namely, M.P. Madhyastham Adhikaran Adhiniyam, 1983 ("the M.P. Act", in short), the application under Section 11 of the Arbitration and Conciliation Act, 1996 could not be entertained. The High Court, however, overruled the said objection relying upon the judgment of this Court in VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261: (2012) 3 SCC (Civ) 468].

4. When the matter was considered by a Bench of this Court on 24-1-2012 (order in M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210]), this Court held that the judgment in VA Tech Escher Wyass Flovel Ltd. [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] was per incuriam insofar as it held that the M.P. Act stands impliedly repealed by the Central Act. While Hon'ble Ganguly, J., held that the State Act will cover a dispute even after termination of the "works contract", Hon'ble Gyan Sudha Mishra, J. took a different view as follows: (M.P. Rural Road Development case [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210], SCC p. 511, para 51)

"51. It is no doubt true that if the matter were before an arbitrator appointed under the Arbitration and Conciliation Act, 1996 for adjudication of any dispute

including the question regarding the justification and legality as to whether the cancellation of works contract was legal or illegal, then the said arbitrator in view of the ratio of the judgment of the Supreme Court in Maharshi Dayanand University v. Anand Coop. L/C Society Ltd. [Maharshi Dayanand University v. Anand Coop. L/C Society Ltd., (2007) 5 SCC 295], as also in view of the persuasive reasoning assigned in the judgment and order in Heyman v. Darwins Ltd. [Heyman v. Darwins Ltd., 1942 AC 356 : (1942) 1 All ER 337 (HL)] would have had the jurisdiction to adjudicate the dispute regarding the justification and legality of cancellation of works contract also.

But the same cannot be allowed to be raised under the M.P. Act of 1983 since the definition of "works contract" unambiguously lays down in explicit terms as to what is the nature and scope of "works contract" and further enumerates the specific nature of disputes arising out of the execution of works contract which would come within the definition of a "works contract". However, the same does not even vaguely include the issue or dispute arising out of cancellation and termination of contract due to which this question, in my considered opinion, would not fall within the jurisdiction of the M.P. State Arbitration Tribunal so as to be referred for adjudication arising out of its termination."

5. We find from the definition under Section 2(d) of the Arbitration and Conciliation Act, 1996 that even after a contract is terminated, the subject matter of dispute is covered by the said definition. The said provision has not been even referred to in the judgment rendered by Hon'ble Gyan Sudha Mishra, J.

6. In view of the above, we are of the opinion that the view expressed by Hon'ble Ganguly, J. is the correct interpretation and not the contra view of Hon'ble Gyan Sudha Mishra, J. Reference stands answered accordingly.

7. Taking up appeal on merits, we find that the High Court proceeded on the basis of the judgment of this Court in VA Tech Escher Wyass Flovel Ltd. [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] which has been held to be per incuriam. The M.P. Act cannot be held to be impliedly repealed.

8. We are, thus, in agreement with the proposed opinion of Hon'ble Ganguly, J. in para 42 of the reported judgment which reads as follows: (M.P. Rural Road Development case [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495: (2012) 2 SCC (Civ) 210], SCC p. 509, para 42)

"42. Therefore, appeal is allowed and the judgment of the High Court which is based on the reasoning of VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, Misc. Appeal No. 380 of 2003,

order dated 5-3-2003 (MP)] is set aside. This Court holds the decision in VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261: (2012) 3 SCC (Civ) 468] has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under the M.P. Act of 1983 and not under the Arbitration and Conciliation Act, 1996."

The appeal is accordingly disposed of."

11.5.1. In a recent decision in Gayathri Project Ltd v. M.P. Road Development Corporation Ltd20, this Court reiterated the exposition of law laid down in L.G. Chaudhary in clear terms, as follows:

"38 .....

i. Where the arbitration proceedings are still underway, but no statement of defence has been filed, there it would be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of MP Act, 1983. The parties will also be at liberty to approach the High Court by way of a petition under Article 227 of the Constitution for seeking a transfer of the arbitration proceedings to the M.P. State Arbitration Tribunal under the MP Act, 1983.

ii. Where the arbitration proceedings are still underway, but statement of defence has already been filed i.e., the relevant stage for raising an issue of jurisdiction is already crossed, there it would not be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of MP Act, 1983. Furthermore, in such scenarios since the arbitration proceedings have already commenced and made substantial progress, it would not be appropriate to transfer such proceedings to the M.P. State Arbitration Tribunal under the MP Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.

iii. As per L.G. Chaudhary (II) (supra) where the arbitration proceedings have concluded and an award has been passed, and if no objection to the jurisdiction in view of the applicability of MP Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.

iv. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the Act, 1996 and other relevant provisions thereunder.

v. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award must be executed in terms of the MP Act, 1983 and the relevant provisions thereunder.

vi. Where the objection based on applicability of the MP Act, 1983 had been raised in the written statement or statement of defence, but the parties never took steps towards challenging the jurisdiction of the arbitral tribunal under Section 16 of the Act, 1996 or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to L.G. Chaudhary (II) (supra) i.e., such challenge to the jurisdiction was decided prior to the date of pronouncement of L.G. Chaudhary (II) (supra), then even in such cases, as per the decision of this Court in Modern Builders (supra), the award should not be disturbed or set-aside only on the ground of lack of jurisdiction."

11.6. Likewise, in State of Chhattisgarh v. KMC Constructions Ltd (supra), this Court set aside the appointment of an arbitrator under the 1996 Act, holding that when a statutory mechanism under the 1983 Act exists, even a court order under the 1996 Act cannot prevail, and parties must be relegated to the jurisdiction of the Madhya Pradesh Arbitration Tribunal. The relevant paragraphs are extracted below for ready reference:

"In view of judgment of this Court in Madhya Pradesh Rural Road Development Authority and Anr. v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 and the order passed by this Court on 8th March, 2018 in the same matter, the M.P. Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, (M.P. Act) has the exclusive jurisdiction to deal with the dispute in question. Accordingly, the impugned direction under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be sustained and is set aside. The parties are relegated to M.P. Arbitration Tribunal which may decide the dispute as per provisions of M.P. Madhyastham Adhikaran Adhiniyam, 1983 (M.P. Act)"

11.7. In ARSS Damoh - Hirapur Tolls Pvt. Ltd v. M.P. Road Development Corporation (supra), this Court refused to allow private arbitration to continue where a works contract was involved, and directed the transfer of the pending arbitration proceedings to the Madhya Pradesh Arbitration Tribunal, thereby upholding the exclusive statutory forum.

11.8. Similarly, in Madhya Pradesh Rural Road Development Authority v. Backbone Enterprises Limited (supra), this Court once again reinforced the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal in matters arising from works contracts covered by the 1983 Act.

11.9. Given that the present Concession Agreement pertains to the construction of a State Highway situated entirely within the State of Madhya Pradesh and was awarded by Respondent No.1, a State-controlled entity, the agreement clearly qualifies as a "works contract" under section 2(1)(i) of the 1983 Act.

Consequently, the dispute arising therefrom falls within the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal.

11.10. In view of the above statutory framework and judicial pronouncements, the Arbitration and Conciliation Act, 1996 stands excluded by operation of law in such matters. The private arbitration proceedings initiated by the appellant are therefore, non est in law, and the proper forum for adjudication is the Madhya Pradesh Arbitration Tribunal established under the 1983 Act.

12. It is further not in dispute that the appellant had, in 2018 initiated Reference Case No.61 of 2018 before the Madhya Pradesh Arbitration Tribunal and had obtained issuance of notice. While the said reference was pending, the appellant simultaneously invoked arbitration under Clause 44.3.1 of the Concession Agreement and initiated private arbitration proceedings before the ICADR (Respondent No. 2) under the 1996 Act. This parallel invocation of remedies is impermissible in law and squarely hit by the doctrine of election and estoppel. A party cannot pursue two mutually inconsistent remedies under different legal regimes arising from the same cause of action.

12.1. Even otherwise, Clause 44.3.1 of the Concession Agreement to the extent it purports to permit private arbitration, is inoperative insofar as it seeks to override the statutory mandate of the 1983 Act. For proper appreciation, the relevant clauses relating to arbitration in the Concession Agreement are extracted below:

"44.3 Arbitration 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Bhopal and the language of arbitration proceedings shall be English.

44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

44.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and MPRDC agree and undertake to carry out such Award without delay.

44.3.4 The Concessionaire and MPRDC agree that an Award may be enforced against the Concessionaire and/or MPRDC, as the case may be, and their respective assets wherever situated.

44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 Adjudication by Regulatory Authority or Commission In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the MPRDC, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or high Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law."

12.2. It is trite law that parties cannot contract out of a statutory obligation enacted in furtherance of public interest. In Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd21, this Court held that arbitration is not permissible where the legislature has reserved adjudication of disputes to a special forum. The relevant observation is as follows:

"35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication.

Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes."

13. The appellant's submission that both parties intended to arbitrate under the 1996 Act carries no legal weight. The object and scheme of the 1983 Act is to channel all disputes arising from works contracts involving the State and its instrumentalities into a specialized statutory forum to ensure uniformity, efficiency, and public accountability.

This intent is also reflected in Clause 44.4 of the Concession Agreement, which acknowledges that in the event of constitution of a competent statutory forum, such forum would override the contractual arbitration clause. Although it was argued that the Madhya Pradesh Arbitration Tribunal was not expressly contemplated under Clause 44.4, the existence of the Tribunal under the prevailing law and its exclusive jurisdiction cannot be contractually overridden or ignored.

13.1. Accordingly, the attempt of the appellant to invoke Clause 44.3.1 of the Concession Agreement and re-agitate the issue of private arbitration - already settled in Viva Highways and affirmed by this Court - is barred by the doctrine of constructive res judicata and amounts to an abuse of the process of law. The appellant is estopped from challenging the binding nature of Viva Highways, having itself been a party to the earlier SLP proceedings, wherein the said judgment was upheld.

14. Additionally, the appellant's conduct in withdrawing the reference petition before the Madhya Pradesh Arbitration Tribunal, without seeking liberty to re-agitate the claims, and simultaneously initiating proceedings under the 1996 Act, constitutes forum shopping. This conduct, aimed at circumventing the statutory mechanism and reviving abandoned claims, is tainted with mala fides and deserves to be deprecated.

15. Further, the appellant's claims - which arise from events dating back to 2013-2015 - are also barred by limitation under Section 43 of the 1996 Act read with the Limitation Act, 1963. The belated invocation of arbitration in 2022, and its continuation in 2025, is thus clearly time-barred and legally unsustainable.

16. In view of the above, we find no infirmity in the reasoning or conclusion of the High Court in quashing the private arbitration proceedings and reaffirming the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal established under the 1983 Act to adjudicate disputes arising from works contract involving the State or its instrumentalities.

17. At this juncture, it is to be noted that the appellant had voluntarily withdrawn the Reference Petition No.61 of 2018 under Rule 53(3)(b) of the M.P Arbitration Tribunal Regulations without seeking liberty to re-file the same. Rule 53 of the

Madhya Pradesh Madhyastham Adhikaran Regulations, 1985, deals with the withdrawal and adjustment of references and reads as follows:

"53. Withdrawal and adjustment of references -

(1) At any time after the institution of a reference, the petitioner may as against all or any of the respondents abandon his reference or abandon a part of his claim.

(2) Where the Tribunal is satisfied -

(a) that a reference must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the petitioner to institute a fresh reference for the subject matter of such reference or part of a claim; it may, on such terms as it thinks fit, grant the petitioner permission to withdraw from such reference or such part of the claim with liberty to institute a fresh reference in respect of the subject matter of such reference or such part of the claim.

(3) Where the petitioner (a) abandons any reference or part of claim under sub-regulation (1); or

(b) withdraws from a reference or part of a claim without the permission referred to in sub-regulation (2); he shall be liable for such costs as the Tribunal may award and shall be precluded from instituting any fresh reference in respect of such subject matter or such part of the claim."

In terms of the statutory mandate under Rule 53(3)(b), once a reference is withdrawn without obtaining liberty to re-agitate the same, the appellant stands precluded from initiating a fresh reference on the same subject matter. This substantive bar also applies to any attempt to pursue the same claims before alternative fora.

17.1. Nonetheless, considering the nature of the dispute and in the interests of justice, and in view of the submission made by the learned Solicitor General appearing for Respondent No.1, we are of the opinion that the appellant can be permitted to seek revival of Reference Petition No.61 of 2018 before the Madhya Pradesh Arbitration Tribunal.

18. Accordingly, we direct the appellant to file an application to recall the withdrawal order dated 08.02.2023 and seek restoration of Reference Petition No.61 of 2018 within two weeks from the date of receipt of a copy of this judgement. Upon such filing, the Madhya Pradesh Arbitration Tribunal shall consider the application on its own merits and pass appropriate orders, within a further period of two weeks. If the Tribunal allows the restoration, the = Reference Petition shall be disposed of on merits, in accordance with law, after

affording reasonable opportunity of hearing to both parties, preferably within four months from the date of restoration.

19. This appeal stands disposed of in the above terms. There shall be no order as to costs.

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

.....J. [J.B. Pardiwala]

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

New Delhi;

July 30, 2025.

1 Hereinafter referred to as "the High Court"

2 For short, "ICADR"

3 For short, "the 1983 Act"

4 SPL(C) Nos.2625-2627 of 2025

5 (2013) 10 SCC 136

6 (2012) 4 SCC 307

7 For short, "the 1996 Act"

8 2017 SCC OnLine MP 1448

9 For short, "the CPC"

10 (2018) 10 SCC 826

11 (2018) 10 SCC 839

12 2018 SCC OnLine SC 3899

13 (2018) 15 SCC 660

14 (2020) 15 SCC 706

15 (2011) 5 SCC 532

16 (2003) 10 SCC 733

17 (2005) 6 SCC 657

18 Notification No.17/E/85/96/XXI-B(II)-21 Dt.4.11.1996 of Govt. of M.P. Law Deptt.

19 (2018) 16 SCC 296

20 2025 SCC OnLine SC 1136

21 (2011) 5 SCC 532

4. Study Material-G.K.

SANGAM AGE

The **Sangam Age** refers to the period in ancient South Indian history marked by the flourishing of Tamil literature, culture, and political institutions. It is highly significant for providing valuable insights into the socio-political, economic, and cultural life of ancient Tamil Nadu. This article aims to study in detail the various aspects of the Sangam Age, including its dynasties, administration, economy, society, and cultural contributions.

About Sangam Age

- The literal meaning of the term **'Sangam' is 'confluence'.**
- However, in South India's ancient history, the Sangam Age can be termed an assembly or an academy of learned people held under the patronage of South Indian kings, who were great lovers of literature and fine arts.
- The Sangam Age is an essential chapter in South Indian history.
- According to Tamil legends, there were three Sangams in ancient Tamil Nadu, popularly known as 'Muchchangam'.
- These Sangams flourished under the royal patronage of the Pandyas. The literary works of the Sangam Age help reconstruct history.

Councils/Sangam	Place of Confluence	Patrons	Participants	Literature
First Sangam	Madurai	Pandyas	Gods and Legendary sages	No literary work available of this Sangam
Second Sangam	Kapatapuram	Pandyas	Large number of poets	All the literary works had perished except Tolkappiyam
Third Sangam	Madurai	Pandyas	Large number of poets	Voluminous literary work (only a few survived)

Three Dynasties of Sangam Age

- During the Sangam Age, the Tamil country was ruled by three dynasties: the Cheras, the Cholas, and the Pandyas.
- The political history of the Sangam Age can be traced from literary references.

Early Cholas

- The Chola kingdom, which came to be called as Cholamandalam (Coromandel), extended from southern Andhra Pradesh to modern Tiruchirapalli or Trichy district of Tamil Nadu.
- It was northeast of the Pandya Kingdom, between the Pennar and Velar rivers.
- Their capital was first located in Uraiyur, which was famous for the cotton trade.
- Elara, a Chola King of the second century B.C., conquered Sri Lanka and ruled the island for around 50 years.

Early Cheras

- The Cheras, or the Keralas, ruled mostly over Kerala and parts of Tamil Nadu.
- Situated to the west and north of the Pandya kingdom, the region consisted of diverse ecological zones, including strips of land between hills and forests.
- While Vanji was the capital town, Tondi and Musiri were vital seaports.

Early Pandyas

- The Pandyas ruled over the south and southeast portions of the Indian peninsula, with their capital at Madurai.
- Megasthenes first mentioned them, saying that the Pandya rule was celebrated for pearls.
- The Pandya kingdom was wealthy and prosperous, enjoying healthy trade with the Roman Empire.

Sangam Polity

- The Sangam Polity was one of the earliest political formations of peninsular India.
- The period saw hereditary monarchy as the popular form of government.
- The King's sabha, or avai, was attended by a number of chiefs and officials.
- The King was assisted by many officials who were divided into five councils.
- They were ministers (amaichar), priests (anthanar), military commanders (senapathi), envoys (thuthar) and spies (orrar).
- Sabha and Manram were the assemblies that performed the judicial and other miscellaneous functions.

Sangam Administration

- The king was the centre and embodiment of administration. He was called Ko, Mannam, Vendan, Korravan or Iraivan.
- Though the hereditary monarch was the prevailing form of government, disputed successions and civil wars were not unknown.
- The court of the crowned monarch was called Avai. The idea of the 'conquering king' (Vijigishu) was accepted and acted on. The King's birthday (Perunal) was celebrated every year.

Provincial and Local Administration of Sangam Age

- The entire kingdom was called Mandalam. The Chola mandalam, Pandya mandalam and the Chera mandalam were the original major mandalam.
- Below the mandalam was a significant division, nadu (province). The ur was a town that was variously described as a big village (perar), a small village (sirur) or an old village (mudur).
- Pattinam was the name of a coastal town, and Puharwas was the harbour area.
- Nidus was generally administered by hereditary chiefs. The village was the fundamental administration unit, administered by local assemblies called man rams.

Sangam Revenue System

- Land revenue was the chief source of the state's income, while customs duty was also imposed on foreign trade.
- The Pattinappalai talks about the customs officials employed at Puhar's seaport.
- Booty captured in wars formed a major income for the royal treasury.
- Kural, a post-Sangam work by Thiruvalluvar, states that the King's treasury should be stocked through various sources of income, viz., land revenue, customs and annexation.

Sangam Economy

- The Maduraikkanji states that agriculture and trade were the main forces of economic development.
- Agriculture was the state's primary revenue source, and cattle were considered necessary by the Sangam people.
- Many literary works mention the importance of cattle, and cattle raids in the enemy country led to more significant battles.
- The importance is magnified by Sangam poems, which frequently discuss milk and milk products such as curd, butter, ghee, and buttermilk.
- One of the king's primary duties was to protect his kingdom's cattle.

Sangam Society

- Tolkappiyam refers to the five-fold division of lands – Kurinji (hilly tracks), Mullai (pastoral), Marudam (agricultural), Neithal (coastal) and Palai (desert).
- Different kinds of people inhabited these various classified lands and developed certain fixed customs and ways of life due to their interaction with their respective environments. Some of them are:

Type of Land	Chief Deity	Chief Occupation
Kurinji (hilly tracks)	Murugan	Hunting and honey collection
Mullai (pastoral)	Mayon (Vishnu)	Cattle-rearing and dealing with dairy products
Marudam (agricultural)	Indira	Agriculture
Neithal (coastal)	Varunan	Fishing and salt manufacturing
Palai (Desert)	Kotravai	Robbery

- Tolkappiyam also discusses four castes: the Arasar, Athanor, Vinegar, and Vellalar. The Arasar were the ruling class.
- While the Anthanars played a key role in the Sangam polity and religion, the Vanigars carried on trade and commerce, and the vellalars performed the role of agriculturists.
- Numerous tribes, such as Parathavar, Panar, Eyinar, Kadambar, Maravar, and Pulaiyar, existed in the Sangam era.
- There are references to the slaves known as adimai (one who lived at the feet of another). The prisoners of war were made slaves, and they were traded in slave markets.

Position of Women in Sangam Age

- As per Kalithogai, a Sangam poem, women moved around the town freely, played on the riverbeds and seashores, and even participated in temple festivals.
- Despite the freedom, women were considered subordinate to men, a general characteristic of contemporary times.
- Though some references to educated women are available in Sangam literature, education among women was not common.
- Women had no property rights but were treated with consideration. Marriage was considered sacred and not a legal contract.
- The life of widows was miserable as they had to perform sati, which was considered divine.
- There are references to wooing or even elopements, generally followed by conventional marriage.

Sangam Religious Beliefs

- The Sangam people did not believe in a single form of worship. They believed in animism and other forms of deity worship.
- There is evidence of tree, stone, water, animal worship, and worship of stars and planets.
- Religion in the Sangam Age was secular, and no severe clash occurred in the name of religion.
- Murugan was the primary deity of the Sangam period. The hunters of the hill tracts worshipped Murugan as the god of hillocks.
- The cowherds worshipped Tirumal so that he might bestow many milch cows on them.

Beginning of Brahmanism

- In the early centuries, Tamil Nadu started to be influenced by Brahmanism.
- However, the Brahmanic influence was confined to small pockets of the Tamil society.
- The rulers performed Vedic sacrifices, and the Brahmans carried out disputations and religious rituals.
- Though the chief god was Murugan, the worship of Vishnu was also mentioned.
- Also, the megalithic offerings to the dead continued in the Sangam era.

Sangam Literature

- The Sangam literature represents a vast collection of Tamil literature produced during the Sangam age in South India.
- Sangam Age was a college or assembly of Tamil poets who helped probably under chiefly or royal patronage.
- It sheds light on the Sangam age's social, economic, political, and religious life.
- The Sangam literature can be roughly divided into narrative and didactic.
- Melkannakku – these are the narrative texts.
- It consists of eighteen major works, eight anthologies, and ten idylls.
- Kilkanakku consists of didactic works or eighteen minor works.
- Also, the Sangam literature includes Ettuthogai, Pattuppattu, Pathinenkilkanakku, and the two epics – Silappadikaram and Manimekalai.
- The Ettuthogai, or Eight Anthologies, consists of eight works: Aingurunooru, Narrinai, Aganaooru, Purananooru, Kuruntogai, Kalittogai, Paripadal, and Padirruppattu.

Tamil Twin Epics in Sangam Age

- Silappadikaram, written by Elango Adigal, and Manimekalai, written by Sittalai Sattanar, provide valuable information on the Sangam polity and society.
- Both were composed around the 6th century AD.
- Silappadikaram is considered to be the brightest gem of Tamil literature.
- It is a love story in which a dignitary named Kovalan prefers a courtesan named Madhavi of Kaveripattanam to his noble wedded wife, Kannagi.
- Manimekali deals with the adventures of the daughter born of the union of Kovalan and Madhavi, though this epic is of more religious than literary interest.
- Besides Sangam literature, we have some critical Tamil literature as well:
- Tolkkappiyam, authored by Tolkappiyar, is the earliest work of Tamil literature.
- It is a work on Tamil grammar, but it also provides information on the political and socio-economic conditions of the Sangam period.
- Tirukkural is an important Tamil text that deals with philosophy and maxims.

Period of Sangam Literature

- The chronology of the Sangam literature is still debated among scholars.
- The basic premise of Sangam chronology is that Gajabhagu II of Sri Lanka and Cheran Senguttuvan of the Chera dynasty were contemporaries.
- Also, coins issued by Roman emperors in the first century A.D. were found in abundance in different places of Tamil Nadu.
- Therefore, based on literary, archaeological, and numismatic evidence, the most probable date of the Sangam literature is from the third century B.C. to the third century A.D.

Sangam Art and Architecture

- Poetry, music and dancing were popular among the people of the Sangam age.
- Liberal donations were given to poets by the kings, chieftains and nobles.
- The royal courts were crowded with singing bards called Panar and Viraliyar.
- The bards who composed poems eulogising the chiefs played a vital role in legitimising the chief's position in society and polity.
- Music and dance were highly developed, as the Sangam literature refers to a variety of Yazhs and drums.
- Kanigaiyar performed dancing. Koothu was the most popular form of entertainment for the people.

7 Philanthropists of Sangam Age

During the Sangam Age, several prominent philanthropists made significant contributions to society through their generosity and support for various causes. Some key figures include:

- **Mutharaiyar Kings** – Known for their patronage of arts and literature, the Mutharaiyar rulers funded numerous literary works and supported poets and scholars.
- **Chola Kings** – They contributed to infrastructure development, including temples and educational institutions, demonstrating their commitment to public welfare.
- **Pazhuvettaraiyar Family** – This influential family was known for their extensive donations to religious institutions and charitable causes.
- **Kongu Vellalar** – A prominent agriculturalist community that supported local development and infrastructure projects.
- **Pattinappalai** – The wealthy patrons of this era were known for their generous contributions to literary and artistic endeavours.
- **Kavuntaraiyar** – They provided substantial support to the local community and cultural institutions.
- **Nayak Kings** – Known for their role in fostering the growth of literature and art through their financial and moral support.

End of Sangam Age

- The Sangam Age slowly declined towards the end of the third century A.D. as the Kalabhras occupied the Tamil country for about two and a half centuries.
- Jainism and Buddhism became prominent during the Sangam Age.

Importance of Sangam Age

- The Sangam Age witnessed the conception of the state for the first time in South India.
- However, it was still in the process of crystallisation. Sangam polity was characterised by patriarchal and patrimonial systems in which the ruler had direct control over administrative staff and various offices.
- However, the class distinction appeared later and was not present during the Sangam age.
- Agriculture remained the backbone of the Sangam economy as the Sangam people gave great importance to the cultivation of food and fruits.
- Trading activities, especially trade relations with the Mediterranean world, enriched and influenced people's socio-economic and cultural lives.
- The beliefs and customs practised by the Sangam people suggest the complex nature of their religion.
- Both animism and idol worship were followed during the Sangam age.

- Many of the Sangam age traditions continued and survived in the later periods; some exist even today.

Conclusion

The Sangam Age played a crucial role in shaping the cultural and historical landscape of South India. The Sangam Age laid the foundation for the Tamil language and literature, influencing generations to come. The Sangam Age witnessed the crystallisation of political structures, the growth of trade with foreign lands, and a vibrant socio-cultural life. The rich traditions, customs, and beliefs from this age continue to impact Tamil society today, underlining the enduring legacy of the Sangam Age in India's historical and cultural evolution.

5. Study Material-Language

Synonyms and Antonyms

S.No.	Words	Synonyms	Antonyms
1.	Acumen	Awareness, brilliance	Stupidity, Ignorance
2.	Adhere	Comply, observe	Condemn, disjoin
3.	Abolish	Abrogate, annual	Setup Establish
4.	Abash	Disconcert, rattle	Uphold, Discompose
5.	Abound	Flourish, proliferate	Deficient, Destitute
6.	Abate	Moderate, decrease	Aggravate
7.	Abject	Despicable, servile	Commendable, Praiseworthy
8.	Abjure	Forsake, renounce	Approve, Sanction
9.	Abortive	Vain, unproductive	Productive
10.	Absolve	Pardon, forgive	Compel, Accuse
11.	Accord	Agreement, harmony	Discord
12.	Acrimony	Harshness, bitterness	Courtesy, Benevolence
13.	Adamant	Stubborn, inflexible	Flexible, Soft
14.	Adherent	Follower, disciple	Rival, Adversary
15.	Adjunct	Joined, Added	Separated, Subtracted
16.	Admonish	Counsel, reprove	Approve, Applaud
17.	Adversity	Misfortune, calamity	Prosperity, Fortune
18.	Alien	Foreigner, outsider	Native, Resident
19.	Allay	Pacify, soothe	Aggravate, Excite
20.	Alleviate	Abate, relieve	Aggravate, Enhance
21.	Allure	Entice, fascinate	Repulse Repel
22.	Ascend	Climb Escalate	Descend, Decline
23.	Amplify	Augment, deepen	Lessen, Contract
24.	Arraign	Incriminate, indict	Exculpate, Pardon
25.	Audacity	Boldness, Courage	Mildness, Cowardice
26.	Authentic	Accurate, credible	Fictitious, unreal
27.	Awkward	Rude, blundering	Adroit, clever
28.	Axiom	Adage, truism	Absurdity, Blunder
29.	Baffle	Astound, Faze	Facilitate, Clarify
30.	Bewitching	Alluring, charming	Repulsive, Repugnant
31.	Bleak	Grim, Austere	Bright, Pleasant
32.	Brittle	Breakable, crisp	Tough, Enduring
33.	Bustle	Commotion, Tumult	Slowness, Quiet
34.	Barbarous	Frustrate, perplex	Civilized
35.	Baroque	Florid, gilt	Plain, unadorned
36.	Barren	Desolate, Sterile	Damp, Fertile

37.	Barrier	Barricade, Obstacle	Link, Assistance
38.	Base	Vulgar, Coarse	Summit, Noble
39.	Batty	Insane, silly	Sane
40.	Bawdy	Erotic, Coarse	Decent, Moral
41.	Befogged	Becloud, Dim	Clear headed, Uncloud
42.	Benevolent	Benign, Generous	Malevolent, Miserly
43.	Benign	Favorable, friendly	Malignant, Cruel
44.	Bind	Predicament	Release
45.	Bleak	Austere, Blank	Bright, Cheerful
46.	Blunt	Dull, Insensitive	Keen, Sharp
47.	Boisterous	Clamorous, rowdy	Placid, Calm
48.	Bold	Adventurous	Timid
49.	Busy	Active, Engaged	Idle, Lazy
50.	Calculating	Canny, Devious	Artless, honest
51.	Calamity	adversity, misfortune	Fortune
52.	Callous	obdurate, unfeeling	Compassionate, Tender
53.	Calumny	defamation, aspersion	Commendation, Praise
54.	Capable	competent, able	Incompetent, Inept
55.	Captivate	Charm, fascinate	Disillusion offend
56.	Captivity	imprisonment, confinement	Freedom, Liberty
57.	Cease	terminate, desist	Begin, Originate
58.	Chaste	virtuous, pure	Sullied, Lustful
59.	Chastise	punish, admonish	Cheer, encourage
60.	Compassion	kindness, sympathy	Cruelty, Barbarity
61.	Comprise	include, contain	Reject, lack
62.	Concede	yield, permit	Deny, reject
63.	Concur	approve, agree	Differ, disagree
64.	Consent	agree, permit	Object Disagree
65.	Consequence	effect, outcome	Origin, Start
66.	Consolidate	solidify, strengthen	Separate, Weaken
67.	Conspicuous	prominent, obvious	Concealed, hidden
68.	Contempt	scorn, disregard	Regard, Praise
69.	Contradict	deny, oppose	Approve, Confirm
70.	Contrary	dissimilar, conflicting	Similar, Alike
71.	Calm	Harmonious, unruffled	Stormy, turbulent
72.	Callous	Insensitive, indurated	Kind, merciful
73.	Camouflage	Cloak, disguise	Reveal
74.	Candid	Blunt, bluff	Evasive
75.	Captivate	Beguile, bewitch	Repel
76.	Carnal	Earthly, fleshly	Spiritual

77.	Catholic	Generic, liberal	Narrow- minded
78.	Celebrated	Acclaimed, lionized	Unknown, Inglorious
79.	Cement	Plaster, mortar	Disintegrate
80.	Censure	Rebuke, reprimand	Praise, Acceptance
81.	Cheap	Competitive, Inexpensive	Dear, unreasonable
82.	Clandestine	Covert, fruitive	Open, Legal
83.	Classic	Simple, Typical	Romantic, Unusual
84.	Coarse	Bawdy, Boorish	Fine, Chaste
85.	Comic	Clown, Jester	Tragic, tragedian
86.	Compact	Bunched, thick	Loose, Diffuse
87.	Compress	Abbreviate, Shrink	Amplify, Expand
88.	Conceit	Egotism, Immodesty	Modesty
89.	Concord	Agreement, accord	Discord
90.	Condemn	Castigate, Chide	Approve, Praise
91.	Confident	Bold, Undaunted	Diffident, cowardly
92.	Consolidate	Centralize, Fortify	Weaken
93.	Courtesy	Generosity, Reverence	Disdain, Rudeness
94.	Creation	Formation, foundation	Destruction
95.	Cunning	Acute, Smart	Nave, Coarse
96.	Decay	Collapse, decompose	Flourish, Progress
97.	Deceit	deception, artifice	Veracity, Sincerity
98.	Decipher	interpret, reveal	Misinterpret, distort
99.	Defile	contaminate, pollute	Purify, sanctity
100.	Defray	spend, pay	Disclaim, Repudiate
101.	Deliberate	cautious, intentional	Rash, Sudden
102.	Demolish	Ruin, devastate	Repair, construct
103.	Deprive	despoil, divest	Restore, Renew
104.	Deride	mock, taunt	Inspire, Encourage
105.	Disdain	detest, despise	Approve, praise
106.	Dissuade	Remonstrate, Counsel	Insite, Persuade
107.	Denounce	Blame, boycott	Defend
108.	Dense	Opaque, piled	Sparse, brainy
109.	Derogatory	Sarcastic, critical	Laudatory, appreciative
110.	Despair	Depression, misery	Contentment, Hope
111.	Destructive	Catastrophic, pernicious	Creative, Constructive
112.	Docile	Pliable, pliant	Headstrong, obstinate
113.	Dwarf	Diminutive, Petite	Huge, Giant
114.	Eager	Keen, acquisitive	Indifferent, apathetic
115.	Eclipse	Diminution, Dimming	Shine, eclipse
116.	Eccentric	strange, abnormal	Natural, Conventional

117.	Ecstasy	delight, exultation	Despair, Calamity
118.	Efface	destroy, obliterate	Retain, Maintain
119.	Eloquence	expression, fluency	Halting, Stammering
120.	Encumbrance	hindrance, obstacle	Incentive, stimulant
121.	Endeavour	undertake, aspire	Cease, quit
122.	Enormous	colossal, mammoth	Diminutive, negligible
123.	Epitome	precise, example	Increment, expansion
124.	Equivocal	uncertain, hazy	Obvious, lucid
125.	Eradicate	destroy, exterminate	Secure, plant
126.	Fabricate	construct, produce	Destroy, Dismantle
127.	Fallacy	delusion, mistake	Veracity, Truth
128.	Falter	stumble, demur	Persist, Endure
129.	Fanatical	narrow-minded, biased	Liberal, Tolerant
130.	Feeble	weak, frail	Strong, Robust
131.	Ferocious	cruel, fierce	Gentle, Sympathetic
132.	Feud	strife, quarrel	Harmony, fraternity
133.	Fluctuate	deflect, vacillate	Stabilize, resolve
134.	Forsake	desert, renounce	Hold, maintain
135.	Fragile	weak, infirm	Enduring, Tough
136.	Frantic	violent, agitated	Subdued, gentle
137.	Frivolous	petty, worthless	Solemn, significant
138.	Frugality	economy, providence	Lavishness, extravagance
139.	Gather	Converge, huddle	Disperse, Dissemble
140.	Gloom	obscurity, darkness	Delight, mirth
141.	Glut	stuff, satiate	Starve, abstain
142.	Gorgeous	magnificent, dazzling	Dull, unpretentious
143.	Gracious	courteous, beneficent	Rude, Unforgiving
144.	Grisly	disgusting, atrocious	Pleasing, attractive
145.	Grudge	hatred, aversion	Benevolence, Affection
146.	Guile	cunning, deceit	Honesty, frankness
147.	Generosity	Altruism, bounty	Stinginess, greed
148.	Genuine	Absolute, Factual	Spurious
149.	Gloomy	Bleak, cloudy	Gay, Bright
150.	Glory	Dignity, renown	Shame, Disgrace
151.	Hamper	retard, prevent	Promote, facilitate
152.	Hapless	unfortunate, ill-fated	Fortunate, Lucky
153.	Harass	irritate, molest	Assist, comfort
154.	Haughty	arrogant, pompous	Humble, Submissive
155.	Hazard	Peril, danger	Conviction, security
156.	Heretic	non-conformist, secularist	Conformable, religious

157.	Hideous	frightful, shocking	Attractive, alluring
158.	Hamstrung	Cripple Debilitate	Strengthen, Encourage
159.	Harmony	Conformity, Amicability	Discord, discord
160.	Hasty	Abrupt, Impetuous	Leisurely, Cautious
161.	Honor	Adoration, Reverence	Denunciation, Shame
162.	Humble	Meek, Timid	Proud, Assertive
163.	Humility	Resignation, Fawning	Boldness, Pride
164.	Hypocrisy	Deception, Pharisaism	Sincerity, frankness
165.	Impenitent	Uncontrite, Obdurate	Repentant
166.	Impulsive	Flaky, Impetuous	Cautious, Deliberate
167.	Indifferent	Equitable, Haughty	Partial, Biased
168.	Indigent	Destitute, Impoverished	Rich, Affluent
169.	Infernal	Damned, Accursed	Heavenly,
170.	Insipid	Tedious, Prosaic	Pleasing, appetizing
171.	Interesting	Enchanting, Riveting	Dull, Uninteresting
172.	Immaculate	unsullied, spotless	Defiled, Tarnished
173.	Immense	huge, enormous	Puny, Insignificant
174.	Immerse	submerge, involve	Emerge, uncover
175.	Imminent	impending, brewing	Distant, Receding
176.	Immunity	prerogative, privilege	Blame, Censure
177.	Impair	diminish, deteriorate	Restore, Revive
178.	Impartial	just, unbiased	Prejudiced, Biased
179.	Impediment	hurdle, obstruction	Assistant, Concurrence
180.	Impious	irreligious, unholy	Pious, Devout
181.	Impute	attribute, ascribe	Exculpate, support
182.	Inclination	disposition, affection	Indifference, Disinclination
183.	Incompetent	inefficient, unskilled	Dexterous, Skilled
184.	Incongruous	inappropriate, absurd	Compatible, harmonious
185.	Inevitable	unavoidable, ascertained	Unlikely, Doubtful
186.	Infringe	violate, encroach	Comply, Concur
187.	Ingenuous	undisguised, naive	Wily, Craftly
188.	Insinuate	allude, hint	Conceal, Camouflage
189.	Insipid	tasteless, vapid	Delicious, luscious
190.	Insolvent	indigent, destitute	Wealthy, solvent
191.	Instill	inculcate, inject	Eradicate, extract
192.	Intricate	tangled, complicated	Regulated, Orderly
193.	Intrigue	scheme, conspiracy	Candor, Sincerity
194.	Intrinsic	genuine, fundamental	Extraneous, incidental
195.	Invective	accusation, censure	Approval, acclamation

196.	Invincible	unconquerable, impregnable	Effeminate, languid
197.	Irrepressible	irresistible, unconfined	Composed, hesitant
198.	Immaculate	Exquisite, Impeccable	Defiled, Tarnished
199.	Jaded	tired, exhausted	Renewed, recreated
200.	Jejune	dull, boring	Interesting, exciting
201.	Jovial	frolicsome, cheerful	Solemn, morose
202.	Jubilant	rejoicing, triumphant	Melancholy, depressing
203.	Judicious	thoughtful, prudent	Irrational, foolish
204.	Just	honest, impartial	Unequal, unfair
205.	Justify	defend, exculpate	Impute, arraign
206.	Juvenile	young, tender	Dotage, antiquated
207.	Keen	sharp, poignant	Vapid, insipid
208.	Kindred	relation, species	Unrelated, dissimilar
209.	Knave	dishonest, scoundrel	Paragon, innocent
210.	Knell	death knell, last blow	Reconstruction, rediscovery
211.	Knotty	complicated difficult	Simple, manageable
212.	Lavish	abundant, excessive	Scarce, deficient
213.	Lax	slack, careless	Firm, reliable
214.	Lenient	compassionate, merciful	Cruel, severe
215.	Liable	accountable, bound	Unaccountable, apt to
216.	Liberal	magnanimous, generous	Stingy, malicious
217.	Linger	loiter, prolong	Hasten, quicken
218.	Lucid	sound, rational	Obscure, hidden
219.	Lunacy	delusion, insanity	Normalcy, sanity
220.	Lure	attract, entice	Repel, dissuade
221.	Luscious	palatable, delicious	Unsavory, tart
222.	Luxuriant	profuse, abundant	Scanty, meagre
223.	Languid	Sluggish, apathetic	Energetic, spirited
224.	Malice	Vengefulness, grudge	Goodwill, Kindness
225.	Mandatory	Imperative, requisite	Optional
226.	Masculine	Gallant, strapping	Feminine, meek
227.	Merit	Stature, Asset	Demerit, dishonor
228.	Miraculous	marvelous, extraordinary	Ordinary, trivial
229.	Mitigate	alleviate, relieve	Augment enhance
230.	Modest	humble, courteous	Arrogant, pompous
231.	Molest	harass, tease	Console, soothe
232.	Mollify	appease, assuage	Irritate, infuriate

233.	Momentous	notable, eventful	Trivial, insignificant
234.	Monotonous	irksome, tedious	Varied, pleasant
235.	Morbid	Nasty, Macabre	Healthy, Cheerful
236.	Munificent	liberal, hospitable	Frugal, penurious
237.	Murky	dusky, dreary	Bright, shining
238.	Mutinous	recalcitrant, insurgent	Submissive, faithful
239.	Mutual	joint, identical	Separate, distinct
240.	Niggardly	miser, covetous	Generous, profuse
241.	Nimble	prompt, brisk	Sluggish, languid
242.	Nonchalant	indifferent, negligent	Attentive, considerate
243.	Novice	tyro, beginner	Veteran, ingenious
244.	Noxious	baneful, injurious	Healing, profitable
245.	Nullify	cancel, annual	Confirm, Uphold
246.	Notion	Conceit, Apprehension	Reality, Concrete
247.	Numerous	profuse, various	Scarce, deficient
248.	Obstruct	impede, prevent	Hasten, encourage
249.	Obliging	Complaisant, Willing	Mulish, Obstinate
250.	Obscure	Arcane, Vague	Prominent
251.	Obstinate	Stubborn, Adamant	Pliable, flexible
252.	Obtain	Access, Inherit	Forfeit
253.	Obvious	Evident, apparent	Obscure, ambiguous
254.	Odious	Malevolent, obnoxious	Engaging, fascinating
255.	Offensive	Abhorrent, obnoxious	Engaging, fascinating
256.	Occult	latent, ambiguous	Intelligible, transparent
257.	Offspring	descendant, sibling	Ancestor, forefather
258.	Ominous	Menacing, Foreboding	Auspicious
259.	Opaque	obscure, shady	Transparent, bright
260.	Optimist	Idealist	Pessimist
261.	Oracular	cryptic, vague	Lucid, distinct
262.	Ordain	Order, impose	Revoke abolish
263.	Ornamental	decorative, adorned	Unseemly, plain
264.	Outbreak	eruption, insurrection	Compliance, subjection
265.	Outrage	offence, maltreatment	Praise, favour
266.	Pacify	Appease, Chasten	Irritate, worsen
267.	Persuade	Cajole, Impress	Dissuade, halt
268.	Perturbed	Flustered, anxious	Calm
269.	Propagate	Inseminate, fecundate	Suppress, deplete
270.	Progress	Pace, Betterment	Retrogress, worsening
271.	Prompt	Precise, Punctual	Slow, Negligent
272.	Prudence	Vigilance, Discretion	Indiscretion

273.	Pamper	Flatter, indulge	Deny, disparage
274.	Paramount	foremost, eminent	Trivial, inferior
275.	Peerless	matchless, unrivalled	Mediocre, commonplace
276.	Peevish	perverse, sullen	Suave, amiable
277.	Pertness	flippancy, impudence	Modesty, diffidence
278.	Perverse	petulant, obstinate	Complacent, docile
279.	Placid	tranquil, calm	Turbulent, hostile
280.	Pompous	haughty, arrogant	Unpretentious, humble
281.	Precarious	doubtful, insecure	Assured
282.	Predicament	plight, dilemma	Resolution, confidence
283.	Quack	Impostor, deceiver	Upright, unfeigned
284.	Quaint	Queer, strange	Familiar, usual
285.	Quarantine	seclude, screen	Befriend, socialize
286.	Quell	subdue, reduce	Exacerbate, agitate
288.	Quibble	equivocate, prevaricate	Unfeign, plain
289.	Raid	Incursion, Foray	Retreat, release
290.	Rapidity	Quickness, Velocity	Inertia, languidity
291.	Reason	Acumen, Bounds	Folly, Speculation
292.	Rebellious	Restless, attacking	Submissive, Compliant
293.	Rectify	Amend, Remedy	Falsify, Worsen
294.	Reluctant	Cautious, Averse	anxious, Eager
295.	Restrain	Detain, Confine	Incite
296.	Ratify	consent, approve	Deny, dissent
297.	Ravage	Destroy, ruin	Reconstruct, renovate
298.	Redeem	Recover, liberate	Conserve lose
299.	Remnant	Residue, piece	Entire, whole
300.	Remonstrate	Censure, protest	Agree, loud
301.	Remorse	Regret, penitence	Ruthlessness, obduracy
302.	Rescind	Annul, abrogate	Delegate, permit
303.	Resentment	Displeasure, wrath	Content, Cheer
304.	Retract	Recant, withdraw	Confirm, assert
305.	Reverence	Respect, esteem	Disrespect, affront
306.	Rout	Vanquish, overthrow	Succumb, withdraw
307.	Rustic	Rural, uncivilized	Cultured, Refined
308.	Ruthless	Remorseless, inhumane	Compassionate, lenient
309.	Sacred	Cherish, Divine	Ungodly, Profane
310.	Savage	Wild, untamed	Polished, Civilized
311.	Startled	Frightened, Shocked	Waveringly
312.	Steep	Course, lofty	Flat, gradual
313.	Stranger	Immigrant, guest	Acquaintance, national

314.	Sublime	Magnificent, eminent	Ridiculous
315.	Succinct	Concise, Terse	Lengthy, polite
316.	Sympathy	Tenderness, harmony	Antipathy, Discord
317.	System	Scheme, Entity	Chaos, Disorder
318.	Sarcastic	Ironical, derisive	Courteous, gracious
319.	Saucy	Impudent, insolent	Modest, humble
320.	Shrewd	Cunning, craftly	Simple, imbecile
321.	Scanty	scarce, insufficient	Lavish, multitude
322.	Servile	Slavish, Docile	Aggressive, Dominant
323.	Shabby	miserable, impoverished	Prosperous, thriving
324.	Slander	defame, malign	Applaud, approve
325.	Sneer	mock, scorn	Flatter, praise
326.	Solicit	entreat, implore	Protest oppose
327.	Subterfuge	Deceit, Stratagem	Frankness, Openness
328.	Stain	blemish, tarnish	Honor, purify
329.	Spurious	Fake, Counterfeit	Genuine, Authentic
330.	Sporadic	intermittent, scattered	Incessant, frequent
331.	Spry	Nimble, Brisk	Lethargic, Sluggish
332.	Squalid	dirty, filthy	Tidy, Attractive
333.	Successful	Propitious, Felicitous	Destitute, Untoward
334.	Sterile	Barren, Impotent	Profitable, Potent
335.	Stupor	lethargy, unconsciousness	Sensibility, Consciousness
336.	Subsequent	consequent, following	Preceding, previous
337.	Substantial	Considerable, solid	Tenuous, fragile
338.	Subvert	Demolish, sabotage	Generate, organize
339.	Superficial	Partial, shallow	Profound, discerning
340.	Sycophant	Parasite, flatterer	Devoted, loyal
341.	Taboo	Prohibit, ban	Permit, consent
342.	Taciturn	Reserved, silent	Talkative, extrovert
343.	Tedious	Wearisome. Irksome	Exhilarating, lively
344.	Temperate	Cool, moderate	Boisterous, violent
345.	Tenement	Apartment, Digs	Breakeven, dislodge
346.	Tenacious	Stubborn, Dodge	Docile, non- resinous
347.	Throng	Assembly, crowd	Dispersion, sparsity
348.	Timid	Diffident, coward	Bold, intrepid
349.	Tranquil	Peaceful, composed	Violent, furious
350.	Transient	Temporal, transitory	Lasting, enduring
351.	Trenchant	Assertive, forceful	Feeble, ambiguous
352.	Treacherous	Dishonest, duplicitous	Forthright, reliable
353.	Trivial	Trifling, insignificant	Significant, veteran

354.	Tumultuous	Violent, riotous	Peaceful, harmonious
355.	Tyro	Beginner, riotous	Proficient, veteran
356.	Tame	Compliant, Subdued	Wild, untamed
357.	Terse	Incisive, Compact	Diffuse, Gentle
358.	Thick	Chunky, massive	Thin, attenuated
359.	Thrifty	Frugal, prudent	Extravagant
360.	Tranquil	Amicable, Calm	Agitated, Fierce
361.	Transparent	Diaphanous	Opaque
362.	Tremble	Vibrate	Steady
363.	Uncouth	Awkward, ungraceful	Elegant, Compensate
364.	Utterly	Completely, entirely	Deficiently, incomplete
365.	Umbrage	Chagrin, offense	Sympathy, goodwill
366.	Uncouth	Boorish, Clownish	Elegant, Compensate
367.	Urchin	Foundling, Orphan	Creep, Knave
368.	Urge	Incite, Implore	Abhorrence, Abomination
369.	Vain	Arrogant, egoistic	Modest
370.	Vagrant	Wander, roaming	Steady, settled
371.	Valor	Bravery, prowess	Fear, cowardice
372.	Vanity	Conceit, pretension	Modesty, Humility
373.	Venerable	Esteemed, honored	Unworthy, immature
374.	Venom	Poison, malevolence	Antidote, Benevolent
375.	Veteran	Ingenious, experienced	Novice, tyro
376.	Vicious	Corrupt, obnoxious	Noble, Virtuous
377.	Vigilant	Cautious, alert	Careless, negligent
378.	Vivacious	Spirited, Energetic	Dispirited, Unattractive
379	Vilify	Malign, Slur, Defame	Cherish, Commend
380.	Vouch	Confirm, consent	Repudiate, prohibit
381.	Virtue	Ethic, morality	Vice, dishonesty
382.	Vivid	Eloquent, lucid	Dull, Dim
383.	Waive	Relinquish, remove	Impose, Clamp
384.	Wan	Pale, faded	Bright, healthy
385.	Wane	Decline, Dwindle	Ameliorate, Rise
386.	Wary	cautious, circumspect	Heedless, negligent
387.	Wed	marry, combine	Divorce, Separate
388.	Wicked	vicious, immoral	Virtuous, Noble
389.	Wield	Exert, employ	Forgo, avoid
390.	Wile	Trickery, Artifice	Naivety, honor
391.	Winsome	Beautiful, Comely	Alluring, Rapturous
392.	Wilt	wither, perish	Revive, bloom
393.	Yell	shout, shriek	Whisper muted
394	Yield	surrender abdicate	Resist, protest

395.	Yearn	languish, crave	Content, satisfy
396.	Yoke	connect, harness	Liberate, Release
397.	Zeal	eagerness, fervor	Apathy, lethargy
398.	Zenith	summit, apex	Nadir, base
399.	Zest	delight, enthusiasm	Disgust, passive
400.	Zig -zag	oblique, wayward	Straight, unbent

6. Current Affairs

JULY 2025

1. CBSE to hold Class 10 board exams twice a year from 2026 session; first phase mandatory, second optional.
2. MNRE issues revised guidelines for Biomass Programme to promote clean energy adoption.
3. NATO agrees to increase defence spending target to 5% of GDP by 2035 at The Hague summit.
4. Power Ministry forms task force to develop 'India Energy Stack' for digital power infrastructure.
5. Meesho gets shareholder approval to raise Rs. 4,250 crore via IPO after shifting domicile to India.
6. Odisha wins women's title in first Hockey India Masters Cup; Tamil Nadu enters men's final.
7. ICC updates powerplay rules for shortened T20 matches effective from July 2025.
8. R. Praggnanandhaa wins UzChess Cup Masters 2025 and becomes top-ranked Indian chess player.
9. India and South Africa sign agreements on submarine cooperation during defence talks.
10. IPS officer Parag Jain appointed new RAW chief; played key role in Operation Sindoor.
11. India restricts import of jute and fabrics from Bangladesh to Nhava Sheva seaport only.
12. Reliance Defence signs Rs. 20,000 crore pact with US firm for military MRO services.
13. India's FY25 GST collection hits all-time high of Rs. 22.08 lakh crore, doubling in five years.
14. ITI to implement Rs. 1,901 crore BharatNet Phase-3 project in North Eastern Region.
15. WAVEX Start-up Challenge 2025 launched to build AI-based multilingual platform 'BhashaSetu'.
16. Lando Norris wins Austrian Grand Prix 2025; Verstappen retires mid-race.
17. Ayush Shetty wins US Open 2025; Tanvi Sharma ends runner-up in women's singles.
18. MiPhi becomes first Indian firm to design and manufacture enterprise-grade SSDs.
19. Alembic Pharma gets USFDA approval for generic cancer drug Doxorubicin Liposome.

20. In 2024, India added 683 animal species and 433 plant taxa to its biodiversity record.
21. Cabinet approves National Sports Policy 2025 to prepare for global sporting events
22. G7 nations back 'side-by-side' global tax model for U.S. and UK companies
23. QUAD nations launch joint maritime observer mission under Wilmington Declaration
24. Hero Motors files for Rs. 12 billion IPO to expand and reduce debt
25. Rs. 1 Lakh Cr RDI scheme approved to promote private innovation in key sectors
26. Cabinet approves Employment Linked Incentive (ELI) scheme to boost job creation
27. Railways launches 'RailOne' app as all-in-one digital platform for passengers
28. Kesavan Ramachandran appointed as Executive Director at RBI
29. Air Marshal S Sivakumar assumes charge as Air Officer-in-Charge Administration
30. Ladakh hosts first Astro Tourism Festival to boost science-based tourism
31. Quad Nations Launch Initiative to Secure Critical Mineral Supply Chains
32. Pakistan Assumes UNSC Presidency for July 2025 After Over a Decade
33. ESIC Launches SPREE 2025 to Widen Social Security Coverage
34. PNB Ends Minimum Balance Charges in All Savings Accounts from July 1, 2025
35. CCI Approves Viggo Investment's Stake Acquisition in Groww's Parent Company
36. India and UAE Expand Cooperation on Green Steel and Aluminium under CEPA
37. Divyanshi Bhowmick Wins Gold in U-15 Girls' Singles at Asian Youth TT Championship
38. Sudhanshu Mittal Re-elected President of Kho Kho Federation of India
39. PM Modi Conferred Ghana's Top Civilian Honour for Global Leadership
40. Noted Hypnotist BV Pattabhiram Passes Away at 75 in Hyderabad
41. The report outlines India's potential in global chemical value chains and suggests strategic reforms.
42. Sri Lanka becomes Starlink's third South Asian market after Bhutan and Bangladesh.
43. SBI flagged fund diversion in RCom's Rs. 48,216 crore loan, escalating legal risk for Anil Ambani.

44. MobiKwik's broking arm can now operate in trading and settlement of equity markets.
45. The third Bharat Mobility Global Expo will showcase innovations in mobility and auto sector.
46. Mashreq Bank of UAE received in-principle approval to open a banking unit in Gujarat's GIFT City.
47. Gill scored 254+ in a Test innings, surpassing Virat Kohli's previous high of 254*.
48. IndiGo's parent company has brought on ex-G20 Sherpa and former NITI Aayog CEO Amitabh Kant to its board, enhancing leadership expertise.
49. The gas giant is six times Jupiter's mass and lies 400 light years away from Earth.
50. A new Garcinia species discovered in Assam has been named Garcinia kusumae to honour Jatindra Sarma's mother.
51. PM Modi visits Argentina to deepen cooperation in defence, agriculture, mining, and energy.
52. Russia becomes first country to officially recognize Taliban regime in Afghanistan.
53. India unveils Aluminium and Copper Vision 2047 to increase metal production sixfold.
54. SEBI bans Jane Street for manipulating Bank Nifty and earning Rs. 4,843 crore unlawfully.
55. Gujarat becomes third Indian state with over 1 crore stock market investors.
56. Nvidia's valuation hits $3.92 trillion, poised to become the world's most valuable company.
57. India approves Rs. 1.05 lakh crore for indigenous missile and defence system procurement.
58. Sunil Jayawant Kadam takes charge as SEBI's new Executive Director.
59. Footballer Diogo Jota dies in car accident at 28 in Spain.
60. Indore launches India's first QR code-based digital house address system.
61. Suriname becomes first Amazon-region nation certified malaria-free by WHO.
62. India ranked 4th globally in income equality; extreme poverty drops to 2.3%.
63. Lando Norris wins first-ever Formula 1 race at British GP during Silverstone's 75th year.
64. 6-year-old Teghbir Singh becomes world's youngest to climb Europe's Mount Elbrus.
65. World Champion D. Gukesh wins Rapid title at 2025 Grand Chess Tour in Croatia.

66. Vaibhav Suryavanshi scores fastest Youth ODI century in 52 balls against England.
67. INS Tamal, stealth frigate under Project 1135.6, commissioned into Indian Navy in Russia.
68. Sub Lt Aastha Poonia becomes Indian Navy's first woman trained as a fighter pilot.
69. Ananth Technologies to launch India's first private satellite broadband service by 2028.
70. Himachal becomes first Indian state to adopt Aadhaar-based face authentication for ration.
71. Hnahthial in Mizoram tops NITI Aayog's North East SDG District Index 2023-24.
72. Bill Gates drops out of world's top 10 richest after 30% loss in net worth.
73. India aims for Rs. 25 lakh crore bioeconomy by 2030, says Union Minister Dr. Jitendra Singh.
74. JioBlackRock raises Rs. 17,800 crore in debut mutual fund launch across three schemes.
75. Harvinder Singh wins triple medal haul including individual gold at Asian Para-Archery.
76. Neeraj Chopra wins inaugural 'Neeraj Chopra Classic 2025' with 86.18m throw.
77. Sakshi Chaudhary bags gold in women's 54kg; India wins triple gold at World Boxing Cup.
78. Sanjog Gupta appointed new CEO of International Cricket Council (ICC).
79. Russia's ex-Transport Minister Roman Starovoit dies by suicide after dismissal by Putin.
80. Jack Dorsey launches 'Bitchat', a Bluetooth-based messaging app with no internet need.
81. Ministry of Information launches 'Kalaa Setu' AI Challenge to develop multilingual real-time content tools.
82. PM Modi receives grand 114-horse escort at Brazil's Alvorada Palace during BRICS visit.
83. India launches Rs. 1,000 crore VC fund to support space-tech startups and boost innovation.
84. Vietnam and China agree to enhance trade ties during BRICS Summit talks in Brazil.
85. Colombia and Uzbekistan join New Development Bank ahead of 17th BRICS Summit, expanding membership to 11.
86. ASMITA Weightlifting League for Girls launched by Sports Minister Mandaviya to boost grassroots women athletes.
87. Apple appoints Indian-origin Sabih Khan as new COO, succeeding Jeff Williams.

88. Hardeep Singh Brar appointed President & CEO of BMW Group India effective from September 2025.
89. Swiss authorities approve world's first malaria drug for infants — Coartem by Novartis.
90. World Kiswahili Language Day celebrated on July 7, highlighting African linguistic unity and cultural diversity.
91. Hyderabad Cricket Association chief Jagan Mohan Rao arrested in IPL 2025 ticket scam.
92. EU approves Bulgaria's adoption of Euro from January 1, 2026.
93. Nvidia becomes world's first company to cross $4 trillion market capitalization.
94. Magnus Carlsen wins Super United Rapid & Blitz Chess title in Zagreb.
95. Harry Brook becomes world No. 1 Test batter with 886 ICC rating points.
96. Rishabh Yadav and Jyothi Surekha set new world record in compound mixed team archery with 1431 points.
97. Fabio Fognini retires after 63 Grand Slam appearances.
98. India's first indigenous Diving Support Vessel 'Nistar' handed over to Navy.
99. PM Modi receives Brazil's highest civilian honour – Grand Collar of the Southern Cross.
100. Russia discovers 511 billion barrels of oil in Antarctica, sparking global treaty concerns.
101. Ministry of Mines launches 'Aspirational DMF Programme' to boost regional development.
102. Commemorative stamp released on Syama Prasad Mookerjee's 125th birth anniversary.
103. U.K. and France sign migration deal and announce joint peacekeeping plans for Ukraine.
104. Elon Musk launches new U.S. political party named 'America Party'.
105. U.S. to impose 35% tariff on Bangladeshi goods from August 1.
106. Mexico wins record 10th Gold Cup title after 2-1 victory over USA.
107. Priya Nair becomes first woman CEO and MD of HUL from August 1.
108. Federal Bank appoints V Venkateswaran as executive director from July 10.
109. PM Modi receives Namibia's highest civilian award during state visit.
110. International cricket umpire Bismillah Jan Shinwari dies at 41.
111. Centre releases Rs. 1,066.80 crore to flood and landslide-hit states under disaster fund.
112. NESTS and Tata Motors sign MoU to provide skill-based education and jobs to tribal youth.
113. Government launches TALASH program with UNICEF for tribal students' holistic development.

114. Kumar Mangalam Birla joins USISPF board and receives 2025 Global Leadership Award.
115. Sachin Tendulkar rings bell and unveils his portrait at Lord's during India-England Test.
116. Telangana wins national award for leadership in battery manufacturing sector.
117. Indian Railways signs MoU with DFCCIL to deploy AI-based train inspection system.
118. James Webb Telescope captures rare 'Cosmic Owl' formed by colliding ring galaxies.
119. World Population Day 2025 emphasizes youth empowerment amid global population surge.
120. Telangana approves 42% reservation for Backward Classes in local body elections.
121. Maratha Military Landscapes declared as India's 44th UNESCO World Heritage Site.
122. Harsh Vardhan Shringla, Ujjwal Nikam among four nominated to Rajya Sabha.
123. NPCI International expands UPI services in UAE through major fintech partnerships. NPCI
124. President Macron announces €6.5 billion increase in defence spending amid global threats.
125. Prajakta Koli becomes first Indian to feature in TIME100 Creators List.
126. Indian Railways to install CCTV cameras in all 74,000 coaches to enhance passenger safety.
127. DRDO and IAF successfully test Astra missile with indigenous RF seeker off Odisha coast.
128. India joins 18 countries in Australia-led Talisman Sabre 2025 military exercise.
129. Dr. Abhijat Sheth appointed as the new Chairperson of the National Medical Commission.
130. WHO recognizes India as first country to launch AI-based traditional knowledge digital library.
131. HAL and CeNS set up science outreach centre under CSR initiative in Karnataka.
132. AU Small Finance Bank partners with LIC to distribute insurance products across India.
133. Iga Swiatek wins historic maiden Wimbledon title without losing a single game.
134. A. Ra. Harikrishnan becomes India's 87th Chess Grandmaster.
135. Jannik Sinner becomes first Italian man to win Wimbledon with 2025 title.
136. Chelsea win first FIFA Club World Cup with a 3–0 victory over PSG.

137. New Governors appointed for Haryana and Goa; Kavinder Gupta becomes L-G of Ladakh.
138. R. Doraiswamy appointed as LIC's CEO and MD for a three-year term.
139. Padma Bhushan awardee and veteran actress B. Saroja Devi passes away at 87.
140. DRDO and AIIMS Bibinagar launch India's first indigenous carbon fibre foot prosthesis.
141. New NCERT Class 8 textbook underlines cruelty of Delhi Sultanate and Mughal rulers.
142. PM Professorships launched to promote research by retired and overseas Indian scientists.
143. Union Minister launches ADEETIE scheme to help MSMEs adopt energy-efficient technologies.
144. President sanctions Rs. 62.40 lakh for 832 EMRS students to support tribal academic excellence.
145. Gujarat becomes top producer and exporter of processed potatoes in 2024–25.
146. India achieves 50% electricity capacity from non-fossil sources, beating 2030 target by 5 years.
147. Hemant Rupani appointed CEO of Hindustan Coca-Cola Beverages from September 8.
148. Varsha Deshpande wins UN Population Award 2025 for championing women's rights.
149. World's oldest marathon runner Fauja Singh dies at 114 in a road accident.
150. World Youth Skills Day 2025 celebrates 10 years with focus on AI and digital empowerment.
151. Cabinet Approves Rs. Dhan-Dhaanya Krishi Yojana for 100 Districts.
152. British Rule Drained India's Wealth, Says New NCERT Class 8 Book.
153. Israeli Airstrike Hits Syrian Military HQ Gate in Damascus.
154. UPI-PayNow Link Between India and Singapore Now Includes 19 Banks.
155. SBI to Raise Rs. 20,000 Crore via Basel III-Compliant Bonds in FY 2025–26.
156. Andre Russell to Retire from International Cricket After T20I Series vs Australia.
157. Praggnanandhaa Defeats Magnus Carlsen at Freestyle Chess Grand Slam.
158. IAS Officer Sanjay Kaul Appointed CEO of GIFT City, Gujarat.
159. Deepika Wins Global Skill Award for Goal Against Netherlands.
160. U.S. Scientists Create Most Precise Atomic Clock Using Quantum Logic.

161. Raziyya Sultan and Nur Jehan have been excluded from the new Class 8 NCERT history textbook.
162. Ukraine appointed Yulia Svyrydenko as its new Prime Minister in a major government reshuffle.
163. Tesla opened its first Indian showroom at Mumbai's BKC; Model Y starts at Rs. 59.89 lakh.
164. Adani Group sold a 20% stake in AWL Agri Business to Wilmar International for Rs. 7,150 crore.
165. India bagged 2 gold and 2 silver medals at the 57th International Chemistry Olympiad in Dubai.
166. Akash Prime successfully hit two aerial targets during trials in high-altitude Ladakh.
167. Axis Bank appointed Neeraj Gambhir as Executive Director from August 4, 2025.
168. President Droupadi Murmu presented the Swachh Survekshan 2024–25 awards to India's cleanest cities.
169. Nelson Mandela International Day was observed worldwide on July 18 to honor his legacy.
170. Gujarat launched India's first tribal genome project to address genetic health risks.
171. NIEPID Signs MoU with Jai Vakeel for National Curriculum for CwID
172. PM Modi Launches Rs. 5,400 Cr Infrastructure Projects in Durgapur
173. India Welcomes U.S. Move to Designate TRF as Foreign Terror Group
174. Trump Signs GENIUS Act Regulating Stablecoins, Jokes on Name
175. U.S. Rejects WHO Pandemic Treaty Requiring Global Vaccine Sharing
176. India Needs $1.5 Trillion by 2030 to Tackle Climate Crisis: Deloitte
177. IndiQube Sets IPO Price Band to Raise Rs. 700 Cr, Promoters to Sell Rs. 50 Cr Shares
178. INS Sandhayak Docks in Malaysia on First Overseas Visit, Showcases Hydrographic Strength
179. Kerala Announces 2023 Kathakali & Traditional Arts Awards
180. Scientists Achieve Quantum Leap with Magic State Distillation
181. Anvesh Tiwari launches India's first fully AI-powered fintech platform 'Nxtbanking'.
182. NCLT approves merger of Adani Cementation with Ambuja Cements.
183. India sets record with four players in 2025 FIDE Women's World Cup quarterfinals.
184. Koneru Humpy becomes first Indian woman to reach FIDE Women's World Cup semifinals.
185. Kerala launches Cy-TB test to detect latent TB infections under NTEP.
186. M. Sreeshankar wins gold with 7.75m jump at World Athletics meet in Portugal.

187. Saudi ‘Sleeping Prince’ Al-Waleed dies at 36 after 19 years in coma.
188. Veteran ‘Don’ (1978) director Chandra Barot dies at 86 due to cardiac arrest in Mumbai.
189. ISRO chief announces India’s plan for space station by 2035, moon mission by 2040.
190. July 20 celebrated as UN’s International Moon Day to mark Apollo 11 landing.
191. Parliament clears ‘Bills of Lading, 2025’ to modernize shipping laws.
192. India to observe National Flag Day on July 22, honoring the Tiranga.
193. FTII and Maharashtra Government sign MoU to expand media skill development.
194. Kotak Mahindra Prime becomes India’s first preferred financer for Tesla EVs.
195. Jio Financial and Allianz partner to launch 50:50 reinsurance venture in India.
196. Deepak Bagla takes charge as the new Director of Atal Innovation Mission.
197. Sanjay Kaul takes charge as MD & CEO of GIFT City, India's premier financial hub.
198. India’s ‘Meri Panchayat’ app wins global WSIS Champion Award 2025.
199. NASA-ISRO joint satellite ‘NISAR’ to launch from Sriharikota on July 30.
200. Bihar leads with 12,817 new polling stations, capping 1,200 voters per booth.
201. India and Nepal Sign MoUs for 5 High-Impact Education & Health Projects
202. India-UK Free Trade Deal to Be Signed During PM Modi’s Visit
203. TRAI Convenes Regulators to Tackle Telecom Fraud and Cybercrime
204. Indian Users Can Now Use UPI for Global Payments via PayPal World
205. LIC Signs MoU with Rural Development Ministry for Bima Sakhi Yojana
206. NABARD Celebrates 44th Foundation Day in Chennai Highlighting Rural Reforms
207. Sandiip Bharadwaj Appointed as New MD & CEO of Paytm Money
208. Anup Saha Resigns as Bajaj Finance MD; Rajeev Jain Reappointed
209. Gita Gopinath to Exit IMF and Join Harvard as Inaugural Coffey Economics Professor
210. Veteran Communist Leader V.S. Achuthanandan Passes Away at 101
211. India ranks 77th in 2025 Henley Passport Index with access to 59 visa-free countries.
212. Angel One to invest Rs. 400 crore in digital-first life insurance JV with Singapore’s Livwell.

213. RBI approves Warburg Pincus affiliate to acquire 9.99% stake in IDFC First Bank.
214. Mumbai's CSMIA ranks among top 10 global airports in Travel + Leisure Awards 2025.
215. Indian cities need over $2.4 trillion by 2050 to tackle climate risks, says World Bank.
216. India resumes tourist visa services for Chinese nationals after 5 years post-Galwan standoff.
217. Android and Google Play contributed Rs. 4 lakh crore to India's economy in 2024, creating 35 lakh jobs.
218. Natco Pharma to acquire 36% stake in South Africa's Adcock Ingram for Rs. 2,000 crore.
219. Indian Coast Guard receives indigenous pollution control vessel 'Samudra Prachet'.
220. SBI named World's Best Consumer Bank for 2025 by Global Finance magazine.
221. National Committee on Herbal Safety Dossiers Convenes at AIIA, Goa.
222. Anil Ambani Accused of Bribing Yes Bank Officials for Rs. 3,000-Crore Loans.
223. India Post and NPCI International Collaborate for Cross-Border Remittances.
224. JSW Energy Signs 25-Year PPA with BESCOM for 100 MW Solar Project.
225. India and UK Ink Comprehensive Economic and Trade Agreement (CETA).
226. 17-Year-Old Unnati Hooda Defeats PV Sindhu at China Open 2025.
227. Venus Williams Becomes Second-Oldest Female Tennis Player to Win a WTA Match.
228. Ajay Seth Appointed as New IRDAI Chairman.
229. Nitin Gupta Takes Over as NFRA Chairperson.
230. Tamil Nadu to Secure 6,486 MW Thermal Power by FY 2029–30; Additional 7,000 MW Needed by FY 2034–35.
231. PM Narendra Modi surpasses Indira Gandhi to become India's second longest-serving Prime Minister.
232. Election Commission launches nationwide special revision of electoral rolls.
233. Kamal Haasan takes oath in Tamil as he enters Parliament as Rajya Sabha MP for the first time.
234. RITES and CMPDI sign MoU to collaborate on mining, energy, and infrastructure projects.
235. Sundar Pichai becomes a billionaire as Alphabet shares approach record highs.

236. Nvidia’s AI chips worth $1 billion were illegally smuggled into China despite U.S. export restrictions.
237. RCB bowler Yash Dayal faces second sexual assault charge involving a minor girl.
238. Wrestling legend Hulk Hogan passes away at 71 due to cardiac arrest.
239. IIT Guwahati scientists develop bamboo-based eco-friendly plastic for car interiors.
240. UN proclaims July 25 as International Day for Judicial Well-being.
241. Ministry Launches Upgraded Mission Vatsalya Portal Integrating Child Protection Services.
242. CERT Patches AIIMS Website Vulnerability That Exposed Confidential Organ Donor Data.
243. United States to Exit UNESCO by December 2026 Citing Policy Differences.
244. ADB Revises India’s FY26 Growth Projection to 6.5% Amid Global Headwinds
245. Tripura to Develop Infrastructure in 9 Industrial Zones with Rs. 975 Cr ADB Loan.
246. Anahat Singh Wins India a Historic Bronze at World Junior Squash Championship 2025.
247. Vaishali Nigam Sinha Appointed First Private Sector President of UN Global Compact India.
248. Renowned Heritage Architect and Conservation Activist Tara Murali Passes Away at 75.
249. Tamil Nadu Approves Rs. 1 Crore Hornbill Conservation Centre at Anamalai Tiger Reserve.
250. DRDO Successfully Tests UAV-Launched Precision Missile with Modular Warheads.
251. Shriram Life and ESAF Bank partner to expand rural insurance through 788 branches.
252. Tesla signs $16.5 billion deal with Samsung to produce AI chips at Texas plant.
253. Seema wins silver in 5000m, becomes first Indian woman medalist in event at World University Games.
254. Shubman Gill scores four centuries as debut Test captain, sets new world record.
255. DRDO successfully conducts two tests of Pralay missile validating its full range.
256. Türkiye unveils GAZAP, its most powerful non-nuclear 970-kg bomb at IDEF 2025.
257. India–Singapore 'Bold Kurukshetra 2025' military exercise begins in Jodhpur.
258. AHRR hosts SHAPE 2025, first Armed Forces conference on sustainable hospitals.

259. Divya Deshmukh wins 2025 Women's Chess World Cup, becomes India's first female winner and 88th Grandmaster.
260. Anuradha Thakur appointed as Director on RBI Central Board, replacing Ajay Seth.
261. PM Modi releases Rs. 1,000 coin marking 1,000 years of Rajendra Chola's naval campaign.
262. St. Aloysius student sets world record with 170-hour Bharatanatyam performance.
263. Kaziranga becomes India's third-highest tiger density reserve after Bandipur and Corbett.
264. LoIs issued to 4 foreign universities; Rs. 4,000 crore education projects announced at ABSS.
265. Death toll in Gaza crosses 60,000; over half are women and children.
266. RBI caps investment in AIF schemes to 10% per bank/NBFC.
267. Divyanshi wins U-19 WTT title; Priyanuj clinches gold in U-17 boys' final.
268. Goa Shipyard launches 6th indigenous Fast Patrol Vessel, ICGS ATAL.
269. Ex-Twitter CEO Jack Dorsey launches offline messaging app Bitchat.
270. July 30 marked as World Day Against Trafficking with focus on criminal exploitation.
271. US impose 25% tariffs on goods imported from India plus an unspecified penalty from 01 August 2025

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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