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V.S. DREAM COACHING

INDIRAPURAM GHAZIABAD

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

Year – 2025



Secret of success is to
know something
nobody else knows

NO. 8 OF 2025 NEWSLETTER

August 2025

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IN THE SERVICE OF JUDICIAL FRATERNITY

V.S. DREAM COACHING

1. Proposed law for removal of Ministers from office

Home Minister Amit Shah on 20 August 2025 introduced in Lok Sabha a significant constitutional amendment that seeks to remove a central or state Minister who is facing allegations of corruption or serious offences and has been detained for at least 30 days consecutively.

The Constitution (One Hundred And Thirtieth Amendment) Bill, 2025 and two related statutory amendments to reflect the proposed changes for Union Territories have been referred to a joint committee of Parliament for review.

What does the amendment propose?

The Bill proposes amendments to Articles 75, 164, and 239AA of the Constitution, which deal with the Union Council of Ministers, Council of Ministers in the states, and Ministers in Union Territories respectively.

These provisions will have a new clause: “A Minister, who for any period of thirty consecutive days during holding the office as such, is arrested and detained in custody, on allegation of committing an offence under any law for the time being in force, which is punishable with imprisonment for a term which may extend to five years or more, shall be removed from his office by the President on the advice of the Prime Minister to be tendered by the thirty-first day, after being taken in such custody.”

The removal can be reversed when the Minister is released from custody. Chief Ministers and the Prime Minister will be in the ambit of the proposed law.

According to the Statement of Objects and Reasons of the Bill, there is a need for a legal framework for the removal of a Minister arrested on serious criminal charges. Ministers facing such allegations “may thwart or hinder the canons of constitutional morality and principles of good governance”, which could “diminish the constitutional trust reposed by people”.

The constitutional amendment will require a majority of two-thirds of Members present and voting to be passed.

What is the current legal framework, and how does the Bill depart from it?

Under Section 8 of the Representation of the People Act, 1951, legislators are disqualified from contesting elections or continuing in office upon conviction for certain criminal offences, and being sentenced to imprisonment for at least two years.

The proposed amendment deals with the removal of a Minister after having spent a certain time in custody. Ministers do not have qualifications that are distinct from those of legislators (with whom the RPA deals), but they have different responsibilities.

In the RPA, the yardstick for disqualification is conviction by a court. The disqualification can be stayed if the conviction is stayed by a higher court on appeal.

India's constitutional scheme envisages the presumption of innocence for the accused, and puts the onus of proving the charges on the prosecution. Police file a chargesheet within 90 days of arrest, after which a court frames the charges. Trial begins after that, and can end in acquittal or conviction.

In the proposed Bill, the yardstick for removal is 30 consecutive days of being “arrested and detained in custody”. Since arrest and detention are only the preliminary step in a criminal investigation, such a yardstick raises serious questions of due process.

What has been the debate on when a legislator can be disqualified?

Given the serious concerns over the growing criminalisation of politics, a view has gained ground that a legislator must be disqualified even before the stage of conviction.

It has been argued that the long wait for conviction defeats the purpose of disqualification. Since September 2013, only 27 sitting MPs and MLAs have been disqualified after being convicted of offences.

However, constitutional principles of natural justice require a person to be given a fair opportunity to be heard before consequential action is taken against them. Also, disqualification impacts not only the rights of the legislator but also the will of the people who have elected the legislator.

In its 170th report in 1999, the Law Commission of India proposed that the framing of a charge for offences punishable by up to five years' imprisonment

should be made an additional ground for disqualification, which should be for five years or until acquittal, whichever was earlier.

This proposal was reiterated by the Election Commission of India in 2004, and by the Law Commission in its 244th report in 2014.

The Law Commission's 2014 report recommended that a legislator could be disqualified when charges were framed against them by a court, since this showed prima facie judicial satisfaction that there existed sufficient material against a person to put them to trial.

The report rejected suggestions that the filing of a chargesheet by police or of a court taking cognizance of an offence against a legislator were appropriate stages for disqualification.

Disqualifying a person before the “application of judicial mind” would be “against the principles of natural justice”, and “would mean that a person is penalised without proceedings being initiated against him”, the Commission said.

What has the Supreme Court said on the question of disqualification of a legislator?

A five-judge Bench of the Supreme Court discussed these recommendations in a 2018 judgment in a public interest litigation. The PIL by Public Interest Foundation had sought disqualification at the stage of framing of charges for serious offences.

The court stated that it could not legislate or add new grounds for disqualification beyond what Parliament had provided. It reiterated that the power to make laws on disqualification rested solely with Parliament.

The court did recommend, however, that Parliament should enact a “strong law” making it mandatory for political parties to revoke the membership of those against whom charges have been framed for “heinous and grievous offences”, and to not give them tickets to contest elections.

Earlier, in its judgment in **Manoj Narula Vs. Union of India (2014)**, the Supreme Court had said there is no bar against a person with criminal antecedents being appointed as Minister.

However, the court suggested that as the “repository of constitutional trust”, the Prime Minister should consider not choosing individuals with criminal antecedents, especially if charges have been framed for heinous or serious criminal offences or corruption.

More recently, the SC made some observations in two cases of Ministers facing money laundering charges — one, V Senthil Balaji of Tamil Nadu, and two, then Delhi Chief Minister Arvind Kejriwal.

BALAJI was arrested by the Enforcement Directorate in 2023 in the alleged cash-for-jobs scam and remained in custody for 14 months. He was dropped as a Minister after significant pressure from the Governor and the opposition.

In September 2024, the Supreme Court granted Balaji bail because the trial was likely to take several years. Within days of being released, Balaji was reinstated as a Cabinet Minister. The ED urged the SC to cancel his bail, arguing that from his position of authority, he might influence the case against him.

The SC observed that it had not taken into account his ministerial position, as he had resigned before his bail application was heard. Once he was reappointed after being released, the court said it was misled.

In April 2025, the court told Balaji to choose between “freedom or post” — he could either resign or risk the cancellation of his bail. Days later, Balaji stepped down, and the court allowed his bail to continue.

KEJRIWAL was granted bail in the alleged liquor policy money laundering case, but the SC barred him from signing official documents, entering government offices, and interacting with witnesses and accessing files connected with the case.

The court, however, made it clear that it had no jurisdiction to compel an elected leader to step down; whether he should resign was left to Kejriwal’s discretion.

In September 2024, the court granted him regular bail, noting that prolonged incarceration without progress in the trial would be unjust. It refrained from issuing directions on his continuance in the office. Kejriwal voluntarily resigned soon afterward.

2. India's unexpected GDP growth in Q1 FY26

India has grown at the fastest pace in at least a year, surprising the likes of economists and GDP pundits alike, but that growth isn't without merit. In fact, it's short-lived.

The super healthy GDP growth rate in the first quarter has gotten a temporary boost from front-loaded government spending—unlike last year due to 2024 Lok Sabha elections—along with front-loaded exports to the US before the 50% tariffs came in effect, Madhavi Arora, lead economist at Emkay Global, said in a note on 29 August 2025.

India's economy unexpectedly expanded 7.8% year-on-year in the April-June quarter, picking up from 7.4% in the previous three months, according to government data released on Friday. With that, India remains the fastest growing major economy in the world, as China's GDP growth rate came in at 5.2% and United States' at 3.3% in the three months to 30 June.

Economists polled by Reuters had forecast India's GDP growth rate to ease to 6.7% in Q1, and that the economy would continue to slow due to 50% US tariffs on exports. Instead, the fourth largest economy in the world has expanded at the fastest pace since January-March 2024, when it grew 8.4% year-on-year.

Against that backdrop, here's a look at the five key drivers behind the surge.

1. Government Capex

According to an ICRA report on 19 August, government spending is likely to have played a key role in supporting growth. In April-June, the Centre's gross capital expenditure surged 52% year-on-year to Rs. 2.8 lakh crore, compared with 33.4% growth in Q4 FY25 and 35% contraction in Q1 FY24, according to data from the Controller General of Accounts.

It's worth mentioning here that the government stopped spending in April-June 2024 due to the model code of conduct in place for the 18th Lok Sabha elections during that time.

Similarly, new project announcements nearly doubled to Rs. 5.8 lakh crore in Q1 FY26 and project completions surged to Rs. 2.3 lakh crore from Rs. 70,000 crore in the year-ago period.

This front-loading of public investments not only boosted the headline GDP figure but also filtered into gross value added growth—seen as a more accurate measure of underlying economic activity. The GVA grew 7.6% in Q1 FY26 versus 6.8% in Q1 FY25. It excludes indirect taxes and government subsidy payouts, which tend to be volatile.

2. Frontloading Exports

India's export activity received a timely boost, particularly with goods shipped in advance of the steep US tariffs that took effect on 27 August. According to Sakshi Gupta, principal economist at HDFC Bank Ltd., exports of goods and services surged by 5.9% in April due to “frontloaded demand from economies like the US”.

3. Buoyant Service Sector

The services sector—public administration as well as financial services—held up strongly, with services GVA projected to be among the highest in recent quarters—up to 8.3%, according to ICRA estimates.

According to data from the National Statistics Office on Friday, GVA of the financial services sector rose 9.5% in Q1 FY 26 as against 7.8% in Q4 FY25. The public administration segment grew 9.7% versus 8.7% in the previous quarter.

This surge in services helped offset the softness in industry and agriculture—while agriculture grew 3.7% in Q1 FY26 versus 5.4% in Q4 FY25, mining fell -3.1% (vs 2.5% in Q4 FY25), construction rose 7.6% (vs 10.8% in Q4 FY25), manufacturing expanded 7.7% (vs 4.8% in Q4 FY25), and electricity and public utilities increased 0.5% (vs 5.4% in Q4 FY25).

4. Strong Rural Demand

A favourable monsoon supported agriculture (up 3.7% in Q1 FY26 versus 5.4% in Q4 FY25) and, therefore, rural income and consumption. Combined with rural demand, agriculture along with construction and services picked up meaningfully.

5. Low Inflation

India's retail inflation is at an eight-year-low. That amplifies the positive impact on real GDP growth of the country due to pricing power.

The Growth Is Fleeting

To be sure, these effects are, at best, transient.

Many economists expect a slowdown in growth in the upcoming quarters as government spending wanes and external pressures take over. The upcoming GST reforms may cushion the blow, but only so much.

The 50% US tariffs are set to play a spoilsport in the July-September quarter, and thereafter, according to economists, with GDP growth likely to be hit by up to 1 percentage point. Urban consumption remains subdued, and private capex is showing signs of weakness despite higher public spending. A low inflation rate—though beneficial—also implies modest nominal GDP growth of around 8%.

“A bigger watch factor is the sub-9% nominal GDP growth, which has a second derivative impact on tax collections and corporate profit performance,” Radhika Rao, senior economist at Singapore’s DBS Bank, told Reuters. “Markets will switch focus to the catalysts for the rest of the year, which faces an interplay of tariff-related impact, passage of front-loading of exports, boost from GST rationalisation and government spending trend with an eye on revenues.”

Moreover, the likelihood of a repo rate cut by the Reserve Bank of India is now slim, what with an eight-year-low inflation print and five-quarter high growth data. “The higher-than-expected GDP growth print has doused any expectations that tariff-related turmoil could prompt monetary easing in the October 2025 policy review,” ICRA’s Chief Economist Aditi Nayar said.

Others believe this is as good as it can get.

“The first-quarter numbers have surprised us all,” Sachidanand Shukla, group chief economist at Larsen & Toubro Ltd., told Reuters. “However, the biggest takeaway is that one should not be carried away by the numbers. This is the ceiling when it comes to growth numbers and it will trend down through the rest of the year.”

Earlier this month, RBI had projected India’s real GDP growth rate at 6.5% for FY26, with Q1 at 6.5%, Q2 at 6.7%, Q3 at 6.6%, and Q4 at 6.3%. These numbers are likely to hold steady.

3. Important Supreme Court Cases

August 2025

S.N.	Subject	Case Reference
1.	Upon the committal by the Magistrate, the Court of Sessions is empowered to take cognizance of the whole of the incident constituting the offence. The Court of Sessions is thus invested with the complete jurisdiction to summon any individual accused of the crime.	Kallu Nat @ Mayank Kumar Nagar Vs. State of U.P. and Anr., decided on 05.08.2025
2.	An FIR of a confessional nature made by an accused person is inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct under Sec. 8 of the Indian Evidence Act, 1872.	Narayan Yadav Vs. State of Chhattisgarh, decided on 05.08.2025
3.	The plea regarding the decree being 'nullity' can be raised at the executing stage, and the Executing Court is bound to decide the same on merits. The serving of notice under Sec. 80 CPC being a mandatory requirement before institution of suit against the state-owned entity, the failure to provide the same rendered the decree being a 'nullity', being amenable to challenge before the Executing Court during executing proceedings under Section 47 CPC.	Odisha State Financial Corporation Vs. Vigyan Chemical Industries and Ors., decided on 05.08.2025
4.	Summarised the principles related to Section 92 CPC and explained the circumstances when a registered society can be construed as a 'constructive trust' so as to maintain a suit under Sec. 92 against it.	Operation Asha Vs. Shelly Batra and Ors., decided on 05.08.2025
5.	Under Sec. 389 Cr.P.C., to suspend sentence, the High Court should assess if convict has fair chance of acquittal	Jamnallal Vs. State of Rajasthan and Anr., decided on 06.08.2025

6.	Dismissed writ petition filed by Allahabad High Court Judge Justice Yashwant Varma challenging the in-house inquiry report, which indicted him in the case-at-home scandal. CJI has the authority to forward the report to the President and the Prime Minister recommending the removal of the Judge.	XXX Vs. Union of India and Ors., decided on 07.08.2025
7.	The insurer of the registered owner of a vehicle will be liable to compensate third-party losses arising out of the use of the vehicle, if the registration of the vehicle was not changed despite its transfer.	Brij Bihari Gupta Vs. Manmet and Ors., decided on 08.08.2025
8.	Appeal against the grant of bail can be entertained by a superior court if it is shown that the bail order was passed without taking into relevant factors such as gravity of offence, impact of crime, the order being illegal, perverse, possibility of influencing the witnesses, etc. However, the same grounds cannot be urged while applying for cancellation of bail, as for bail cancellation it needs to be looked upon supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief, such as the conduct of the accused subsequent to grant of bail cannot be urged in an appeal against the bail order, but in application seeking bail cancellation.	Ashok Dhankad Vs. State NCT of Delhi and Anr., decided on 13.08.2025
9.	Even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107 IPC, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of	Abhinav Mohan Delkar Vs. State of Maharashtra and Ors., decided on 18.08.2025

	taking one's life.	
10.	Section 195 Cr.P.C. bars a magistrate from taking cognizance of offences under Sections 172–188 IPC unless the concerned public servant files a complaint. The bar also extends to other offences that are so closely connected with those provisions that they cannot be split up.	Devendra Kumar Vs. The State (NCT of Delhi) and Anr., decided on 20.08.2025
11.	Before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) CPC, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration.	Iqbal Ahmed (Dead) By LRs. and Anr. Vs. Abdul Shukoor, decided on 22.08.2025

IN THE SUPREME COURT OF INDIA

Kallu Nat @ Mayank Kumar Nagar

Vs.

State of U.P. and Anr.,

[SLP (Criminal) No. 10010 of 2025]

HEADNOTE – Upon the committal by the Magistrate, the Court of Sessions is empowered to take cognizance of the whole of the incident constituting the offence. The Court of Sessions is thus invested with the complete jurisdiction to summon any individual accused of the crime.

Both under Sections 209 and 193 respectively of the Code of Criminal Procedure, 1973 commitment is of, the “case” and not of the “accused” as distinguished from Section 193(3) and Section 207A respectively of the old Code where commitment was of the “accused” and not the “case”. For committing a case there must be an offence and involvement of a person who committed the same. Even though the case is committed yet cognizance taken is of the offence and not the offender. Once the case in respect of the offence qua the accused, who are before the Court, is committed and cognizance is taken, the embargo under Section 193 regarding taking cognizance only by committal goes. Summoning additional persons will then be regarded as incidental to the cognizance already taken on committal and as, a part, of, the normal process that follows. A fresh committal of such person is not necessary.

Section 319(4)(b) Cr.P.C. enacts a deeming provision in that behalf dispensing with the formal committal order by providing that the person added will be deemed to have been an accused even when cognizance was taken first. Cognizance is of the offence and not the offender and it is the duty of the court to find out who the offenders are. Proceedings could be instituted and cognizance taken also against persons not known at that time. This is clear if the provisions of Section 190 of the Code are read along with the definition of complaint in Section 2(d) which include allegations against unknown person also. Making the unknown persons known is therefore within the powers of the court. When such persons become known by the evidence during inquiry or trial it is not only the right but also the duty of court to bring them on record and proceed against them in an attempt to bring them to justice. There cannot, therefore, be any dispute regarding the powers of court to bring the person under Section 319(1).

Once the Court takes cognizance of the offence (not of the offender), it becomes the Court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the Court's duty to summon them to

stand trial along with those already named, since summoning them would only be part of the process of taking cognizance.

JUDGMENT

J.B. Pardiwala, J.,

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

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 - I. Committal of Case by a Magistrate to the Court of Sessions.
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F. CONCLUSION

1. This petition arises from the order passed by the High Court of judicature at Allahabad dated 03.04.2025 in Criminal Revision No. 6732 of 2024 (for short, the "Impugned Order") by which the High Court rejected the revision application filed by the petitioner-herein and thereby affirmed the order passed by the Additional District and Sessions Judge-Fast Track Court (Crime against women) Kanpur Dehat below disposal proposal paper no. 92 of 2019 arising from the First Information Report bearing case crime no. 402 of 2018 lodged with the police station Shivali, District Kanpur Dehat for the offence punishable under Section(s) 302 and 376 of the Indian Penal Code, 1860 (for short, the "IPC").

A. FACTUAL MATRIX

2. The respondent No. 2 herein (original first informant) is the husband of the victim (deceased). The victim all of a sudden went missing on 21.11.2018. On 24.11.2018 the dead body of the victim was recovered somewhere from the bushes lying on the outskirts of the village. In such circumstances the first informant i.e. the husband lodged a First Information Report at the concerned police station. In the FIR the first informant named one Ajay as the suspect. The first informant alleged that Ajay had an extra-marital affair with his wife (victim) and was last seen with the victim and accordingly he alleged that Ajay might have been involved in the murder of his wife.

In the course of the investigation, the name of the petitioner-herein surfaced. Some of the witnesses in their police statements recorded under Section 161 of the CrPC stated that the petitioner herein had made an extra judicial confession about his involvement in the alleged crime. Later the investigation came to be transferred to the Crime Branch. The transfer of investigation took place sometime in 2019. The Crime Branch gave a clean chit to the petitioner-herein. On 21.02.2019 chargesheet came to be filed only against Ajay. The name of the present petitioner was dropped from the chargesheet.

3. On 11.03.2019 the case came to be committed under Section 209 of the Code of Criminal Procedure, 1973 (for short, the "CrPC") being exclusively triable by the Court of Session. Ajay Kumar (accused) against whom chargesheet was filed was brought before the trial court on 02.04.2019 for the purpose of framing of charge. However, on the same day i.e. 02.04.2019 the respondent No. 2 (husband of the victim) filed an application under Section 193 of the CrPC seeking to summon the petitioner-herein as an accused. It took almost five years for the trial court to decide the application preferred by the respondent No. 2 under Section 193 of the CrPC seeking to summon the petitioner-herein as an accused.

4. The trial court in exercise of powers under Section 193 of the CrPC ordered that the petitioner-herein shall be summoned as an accused in connection with the crime referred to above and be put to trial along with Ajay.

5. The order passed by the trial court reads thus:-

"Heard and properly examined the file. It is clear from the perusal of the file that in the present case, complainant Vijaylal has registered an FIR on 24.11.2018 at Police Station- Shivli, Kanpur Dehat, regarding the murder of his wife/deceased Shivwati between 21.11.2018 and 24.11.2018. The First Information Report was registered against accused Ajay Kumar under Section-302 IPC. On behalf of the complainant, Proforma Paper No. 5B has been presented and it has been stated that till the time of filing the report, the applicant/ complainant was not aware of the name of the proposed opponent.

But during the investigation, the name of the accused has come to light and sufficient evidence is also available in the case diary, on the basis of which a request has been made to summon the opponent Mayank Kumar Nagar alias Kallu Nat. The statement in the case diary number-2 states that his wife Shivwati had illicit relations with the cousin" of this witness. On '21,11.2018 at around 7 pm his wife went out on the pretext of defecation and has not returned home since then. On 21.11.2018 at around 8 pm Pushpa Devi, Deepu and Vinod of the village told that they saw his wife Shivwati going towards the forest with his cousin Ajay Kumar. On 24.11.2018, at around 5 pm, when they reached the wasteland while searching, they found the dead body of his wife lying in the bushes.

A noose of sal was tied around her neck. His wife was killed by his cousin Ajay Kumar by putting a noose of sal around her neck due to Illicit relations. In the statement of Renu, who is the sister-in-law of the victim/deceased Shivwati, it is mentioned in the case diary number-10 that her sister-in-law's conduct was not good, she had a love affair with her aunt's son Ajay and Kallu Nat, who had come with Ajay, also had a relationship with her sister-in-law Shivwati. On 21.11.2018, Kallu Nat had dropped her sister-in-law home on a motorcycle in the evening. The next day on 22.11.2018, he came home early in the morning on the pretext of buying a buffalo.

Whereas Kallu Nat is fully aware that there is no buffalo for sale in this house. His sister-in law stayed with him the whole day on 21/11/2018 from here to the hospital and from the hospital to here. The justification of coming on the morning of 22/11/2018 is doubtful. In the case diary slip number - 10 itself, the statement of witness Framed Kumar is recorded that his father Sundar was ill, who was admitted in Kiran Hospital, his sister-in-law Mrs. Shivwati came to see his father in Kiran Hospital Kanpur city on 21.11.2018, who was brought by a person on a motorcycle, when she asked, he said that he was her brother-in-law from the village.

At that time, this witness's brother-in-law and brother-in-law's son in-law were in the hospital, who knew that person. Neeraj's statement is mentioned in case diary paper number 10 that his brother-in-law Pramod's father Sundar was admitted in Kiran Hospital Kanpur Nagar. His younger sister Shivwati came on a motorcycle with Kallu Nat of Baghpur on 21/11/2018, whom he already knew, Kallu Nat used to visit his sister Shivwati's house earlier also, that's why he knew her.

On the same day at around 4:00 pm, Kallu Nat took his sister from the hospital to Ludhaura. Deepak's statement is mentioned in case diary paper number 10 that Shivwati was his wife's aunt, who was his paternal aunt-inlaw. On 21/11/2018, he went to Kiran Hospital Kalyanpur to see the father of his paternal atmt Framod, resident of Kapuipur. Where her aint-in-law Mrs. Shivwati came to the hospital sitting on Kallu Nat's motorcycle and in the evening Kallu went back to Varshas along the river. This witness has stated in his statements that he recognized Kallu Nat, resident of Bagpur, at Shivwati's house in Luchaura.

The investigating officer has recorded in paper number 11 that CDR of mobile number 7678819303 of deceased Smt. Shivwati has been received, on examination of which it was found that on 21/11/2018 a very long conversation took place from the above mentioned mobile number of the deceased to mobile number 6386602633 at different times from 15-19-18 to 22-55-47 and on 22/11/2018 in the night from 00-30-15 to 03-31-26 seven times at different times, details of which are recorded in the CD and it is also mentioned on examination of the CDR received from 1/11/2018 to 22/11/2018 that from mobile number 7678819303 of deceased Shivwati to mobile number 17 calls were made to 6386602633 from 21/11/2018 to 22/11/2018 in which the deceased had a long conversation and it was done at inopportune time. On checking the software, the mobile number 6386602633 holder is shown as Shri Mayank Kumar Nagar son of Jeetpal Nagar resident of 194 Bagpur, Maitha Kanpur Dehat.

In case diary paper number- 11, Surjan Singh's statement is recorded that a few days ago at around 4:00 pm, I was sitting on the high platform in front of Bagpur Inter College near Ramptakash Aatishbaaz of Ludhaura village. Kallu Nat of Bagpur came. He told Ramprakash that uncle I want to talk to you and came on the platform and told in front of this witness that on 21/11/2018, he had taken Shivwati on his motorcycle to Kiran Hospital Kalyanpur to see her relative and give him food. He told that Ajay and he had illicit relations with Shivwati and also told that both of them were friends. He told that he had made a plan to elope on the same day.

As per the plan, Ajay had taken Shivwati from her home to Raipur in the evening and when Kallu Nat did not reach Raipur as promised, they would talk to each other throughout the night. In the morning when Kallu Nat reached Raipur, Shivwati would get upset and want to go back home and she would insist on

elope. And when she did not agree after being explained, he would come to Ludhaura village on the night of 22/28-11-18 to get money and clothes to elope. He also told that he had raped Shivwati one by one in the cover near Ludhaura in the barren land and both of them would kill Shivwati by putting a noose around her neck with a shawl and he was also apologizing.

In the case diary's paper number 12A, the doctor who conducted the post mortem of the deceased, Mr. Puneet Kumar Pandey, has stated that it has been confirmed that the deceased was raped and strangled to death and it is also mentioned that the entire investigation revealed that the deceased Shivwati was in a love relationship with Ajay Kumar and Kallu Nat alias Mayank Kumar Nagar. Due to the love affair, the accused Ajay Kumar took Shivwati to Raipur on the instructions of Kallu Nat with the intention of elopement on the evening of 21/11/2018 and Kallu Nat failed in his plan and tried to convince her the next day and made a plan with Ajay to remove the deceased from the way on her insistence and under this plan, Shivwati was lured and taken to the barren land in village Ludhaura and both of them raped her one by one in the barren land and as per the plan, both of them together killed the deceased by strangulating her by putting a noose around her neck with a sal.

On the basis of the above, the name of Mayank Kumar Nagar alias Kallu Nat came to light and Section 376 IPC was added. It is mentioned in the case diary paper number-13 that I, the incharge inspector, along with my accompanying staff, vehicle' and driver left from police station to village Bagpur and raided the possible locations of the accused Mayank Kumar Nagar alias Kallu Nat who has come into light recently, but he was not found. He is absconding as usual. According to the case diary paper number-17, Deep Kumar appeared before the Additional Director General of Police, Kanpur Zone- Kanpur on 13.01.2019 and gave a written application and stated that his younger brother Kallu has no involvement in the murder of Shivwati and the Investigating officer is demanding one lakh rupees through his broker.

On the basis of which application, the investigation of the case has been transferred from Chandrashekhar Dubey, Incharge Inspector, Shivli, Kanpur Dehat to Inspector Shri Naveen Kumar, Crime Branch, Kanpur Dehat. It is clear from all the above evidence/discussion that according to complainant Vijaylal, his wife went to the toilet on 21.11.2018 at around 7 pm. whose dead body was found lying in the bushes on 24.11.2018 at around 5 pm, with a noose of sal around her neck. According to the complainant, Ajay Kumar killed the deceased. It is worth mentioning that the complainant is not an eyewitness to the incident.

According to the other witness of the case, Renu, the deceased also had illicit relations with Kallu Nat, who had gone to Kanpur to see her relative on 21.11.2018 with Kallu Nat and on 22.11.2018 also Kallu Nat came home.

According to another witness Pramod Kumar, the deceased had come to Kiran Hospital to see her relatives on 21.11.2018 sitting on a person's motorcycle. On being asked, the deceased had said that the person was her brother-in-law from the village, whom the witness' brother-in-law and son-in-law knew. According to witness Neeraj, his younger sister/deceased Shivwati had come to the hospital on 21.11.2018 sitting on Kallu Nat's motorcycle and on the same day at around 4 pm. Kallu Nat had taken his sister from the hospital to Ludhaura.

According to witness Deepak, on 21.11.2018, the deceased had come to Kiran Hospital to see her relatives sitting on a motorcycle with Kallu Nat and had returned with Kallu Nat. According to witness Surjan, Kallu Nat had told Ramprakash in front of this witness that Kallu Nat and Ajay Kumar had illicit relations with the deceased Shivwati and had raped Shivwati In turns in the bushes near Ludhaura in the barren land and had killed her by putting a noose around her neck with a shawl. The doctor who conducted the post-mortem of the deceased. Dr. Puneet Kumar Pandey, has stated in the summary that the deceased was raped and strangled to death.

The case diary of the case shows that the deceased had a long conversation 17 times from her mobile to another number from 21.11.2018 to 22.11.2018, which other number 6386602633 belongs to Mayank Kumar Nagar son of Jeetpal and the deceased had called the above number several times in the past as well. The case diary also shows that during investigation, it was found that the deceased Shivwati had illicit relations with Ajay Kumar and Kallu Nat alias Mayank Kumar and with the intention of eliminating the deceased, Ajay Kumar and Kallu Nat alias Mayank Kumar, as per the plan, took the deceased Shivwati to the barren village Ludhaura and raped her one by one and killed her by putting a noose around her neck.

On the basis of the application of Deep Kumar, brother of the opponent Kallu Nat alias Mayank Kumar Nagar, the investigation was given to another investigator and a chargesheet has been sent to the court against only accused Ajay Kumar under Section 302, 376 IPC. All the above evidence, facts, circumstances and investigation show that the opponent Kallu Nat alias Mayank Kumar Nagar had illegal relations with the deceased/victim Shivwati. Who is also a friend of the accused Ajay Kumar in the said opponent case. With the aim of removing the deceased from their path, accused Ajay Kumar and opponent Kallu Nat alias Mayank Kumar-Nagar, as per-the-plan, called-the victim deceased-Shivwati to the wasteland in Ludhaura village and forcibly raped the victim Shivwati one by one (gang rape) and by tightening the noose of shawl around the neck of the victim Shivwati, killed the victim deceased Shivwati.

Therefore, on the basis of the above facts and circumstances and evidence available on the file, it is justified to summon the opposite accused Kallu Nat

alias Mayank Kumar Nagar for trial under Section 376, 302 IPC. Order The application presented by complainant case / applicant Vijay Lai under paper number - SB under Section 193 CrPC dated 26.04.2019 is allowed. Accused Kallu Nat alias Mayank Kumar Nagar son of Jeetpal Nagar, resident of 194 Baghpur (Maitha), Police Station- Shivli- District - Kanpur Dehat is taken cognizance under Section 376, 302 IPG. Accordingly, summons should be issued to accused Kallu Nat alias Mayank Kumar Nagar. The case be presented on 07/06/2024 for further action / charge on accused Kallu Nat alias Mayank Kumar Nagar."

6. Thus, it appears from the aforesaid that the application filed by the complainant under Section 193 of the CrPC to summon the petitioner-herein as an accused came to be allowed. Having regard to the materials on record the trial court reached the conclusion that there was prima facie material indicating involvement of the petitioner-herein in the alleged crime and he should be asked to face the trial along with the co-accused against whom chargesheet was filed by the Investigating Agency for the offence of rape and murder.

B. IMPUGNED ORDER

7. The order referred to above came to be challenged before the High Court by way of criminal revision application. The High Court rejected the criminal revision application holding as under:-

"5. At the very outset, the learned A.G.A. for State-opposite party- 1 has raised a preliminary objection regarding maintainability of present Criminal revision. Learned A-G.A. submits that since applicant has already approached this Court by means of aforementioned application under Section 482 Cr.P.C., therefore, present criminal revision for the same relief is not maintainable. According to the learned A.G.A., no liberty was granted by this Court to the applicant to file a criminal revision nor the aforementioned application was dismissed on the ground of alternative remedy.

He therefore submits that in view of law laid down by Apex Court in the case of Sarguja Transport Service Vs. State Transport Appellate tribunal, M.P. Gwalior and others (1987) 1 SCC 5, the present criminal revision shall not be maintainable. Learned A.G.A. has then referred to the judgement of Supreme Court in Prabhu Chawla Vs. State of Rajasthan and another, (2016) 16 SCC 30 wherein the Apex Court has held that an application under Section 482 Cr.P.C. is not liable to be dismissed on the ground of alternative remedy, of filing a revision.

6. On the edifice of aforesaid submissions, the learned A.G.A. submits that the true import of the order dated 07.08.2024 is that the revisionist has been granted

liberty to approach the competent court and not to file criminal revision before this Court. As such, present criminal revision is not maintainable and therefore liable to be dismissed.

7. Learned A.G.A. has then submitted that the Court of Sessions in exercise of jurisdiction under Section 193 Cr.P.C. has summoned the present applicant/revisionist. Referring to the five Judges Bench Judgement of Supreme Court in Dharmpal and others Vs. State of Haryana and another, (2014) 3 SCC 306, the learned A.G.A. submits that the order impugned in present criminal revision cannot be said to be illegal for want of jurisdiction. As such, the order impugned cannot be challenged on the ground of jurisdictional error. On the cumulative strength of above submission, the learned A.G.A. submits that present criminal revision is not maintainable and therefore liable to be dismissed.

8. When confronted with above, the learned counsel for revisionist could not overcome the same.

9. Having heard the learned counsel for revisionist, the learned AG.A. for State-opposite party-1 and upon perusal of record that court finds that the preliminary objection raised by the learned A.G.A in opposition to this criminal revision is clearly borne out from the record and furthermore, the same could not be dislodged by the learned counsel for revisionist with reference to the record at this stage. As such, no good ground now exists to entertain the present criminal revision.

10. In view of above, this criminal revision fails and is liable to be dismissed.

11. It is accordingly dismissed."

8. Thus, the High Court rejected the revision application filed by the petitioner herein and thereby affirmed the order passed by the trial court summoning the petitioner as an accused to face the trial along with the accused named in the charge sheet. The High Court rejected the revision application relying on the Constitution Bench decision of this Court in Dharam Pal & Ors. vs. State of Haryana & Anr. reported in (2014) 3 SCC 306.

9. In such circumstances referred to above the petitioner is here before this Court with the present petition.

C. SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Mr. Vikas Upadhyay, the learned counsel appearing for the petitioner vehemently submitted that the trial court as well as the High Court committed a serious error in summoning the petitioner as an accused to face the trial along with the charge sheeted accused, namely, Ajay Kumar. He would submit that the

petitioner could have been summoned as an accused to face the trial only after the trial court would have started recording oral evidence of the witnesses. In other words, according to the learned counsel it is only if the involvement of the petitioner would have surfaced from the oral evidence of any of the witnesses, then the trial court would have been justified to summon the petitioner to face the trial in exercise of the powers under Section 319 of the CrPC.

11. The learned counsel vehemently submitted that there was no scope for the trial court to summon the petitioner in exercise of the powers under Section 193 of the CrPC as the Magistrate while committing the case to the Court of Session had already taken cognizance of the offence and in such circumstances the trial court by invoking Section 193 of the CrPC could not have taken cognizance for the second time. He would submit that the power under Section 193 CrPC is a stage specific power and in the exact words of the learned counsel; once that stage has crossed it gets exhausted unlike the power under Section 319 of the CrPC which could be exercised multiple times during a particular period when the trial is on and is not bound by any specific stage of trial.

12. Relying on the decision of this Court in Balveer Singh & Anr. vs. State of Rajasthan reported in (2016) 6 SCC 680 he would submit that there is nothing like second cognizance. According to him if a Magistrate has taken cognizance in a case before committing the case, then despite there being power under Section 193 of the CrPC the Sessions court cannot again take cognizance. The learned counsel relying on the Constitution Bench decision in the case of Dharam Pal (supra) would submit that cognizance of offence can be taken only once i.e. either by the Magistrate or by the Sessions court. According to the learned counsel there is nothing like 'part-cognizance'.

13. In other words, the argument of the learned counsel appearing for the petitioner is that the Constitution Bench decision of this Court in Dharam Pal (supra) says in so many words that cognizance of a sessions triable offence cannot be taken by a Magistrate but the same has to be taken by a Sessions Judge after committal. According to the learned counsel, cognizance of a police report/chargesheet filed by the police is always taken by the Magistrate irrespective of whether the offences alleged therein are triable by a Court of Sessions or not.

He would submit that the ratio of Dharam Pal (supra) should be understood as conveying that Section 193 does not permit the Sessions Judge to take cognizance of the same offences of which cognizance stood taken by the Magistrate under section 190 of the Code which the Magistrate takes in order to reach the stage of committal under Section 209 of the Code. And if once cognizance is taken by the Magistrate, the same cannot be done by the Sessions

Judge. According to the learned counsel Dharam Pal (supra) says that cognizance of sessions trial offences can only be taken by the Sessions Judge.

14. In such circumstances referred to above, the learned counsel prayed that there being merit in his petition, the same may be considered accordingly.

D. ISSUE FOR DETERMINATION

15. The seminal issue that falls for our consideration is whether the Court of Session, without itself recording evidence, can summon a person to stand trial in exercise of its powers under Section 193 of the Code of Criminal Procedure (for short, the CrPC) as an accused (along with others committed to it by a Magistrate) on the basis of materials in the form of statements and other documents as contained in the final report of the investigating officer under Section 173 of the Code of Criminal Procedure, 1973 independently of the provisions of Section 319 of the said Code?

E. ANALYSIS

i. What is the import and purport of 'Cognizance' under the scheme of the Code of Criminal Procedure, 1973?

a. Meaning of the expression 'Cognizance' and 'Taking Cognizance' under Chapter XIV of the Code.

16. Mr. Vikas Upadhyay, the learned counsel appearing for the petitioner herein has vehemently canvassed that cognizance of an offence, in law, can be taken only once. He submitted that in cases involving offences triable exclusively by the Court of Sessions, cognizance of such offence may be taken either by a Magistrate prior to the committal of the case, or, in the absence of such cognizance at the instance of the Magistrate, by the Court of Session alone, to which the case is committed.

However, he would submit that, once cognizance of the offence has been taken by either the Magistrate or the Court of Sessions, as the case may be, a second cognizance by the other is impermissible in law. He urged that there cannot be a second cognizance nor can there be any part cognizance or bifurcation of such cognizance by a Magistrate and a Court of Sessions. In support of his contention, reliance was placed on the decisions of Dharam Pal (supra) and Balveer Singh (supra).

17. In Dharam Pal (supra) this Court held that "cognizance of an offence can only be taken once. In the event, the Magistrate takes cognizance of the offence and then commits the case to the Court of Sessions, the question of taking fresh cognizance of the offence, and thereafter, proceed to issue summons, is not in

accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session." and that there can be no "question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge."

Similarly, in Balveer Singh (supra) it was reiterated that "cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session".

18. Before we advert to the submission canvassed by the petitioner herein, and try to understand what has been conveyed in so many words by this Court in the aforesaid decisions of Dharam Pal (supra) and Balveer Singh (supra), it would be apposite to first understand what is meant by 'cognizance' under the Code and the legal import and significance of the term "taking cognizance".

19. The term "cognizance" has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word 'cognoscere', and the French Word "conoissance" which means "to know", "to become acquainted with", or "to recognize". The Black's Law Dictionary defines the term "cognizance" as "Judicial notice, knowledge or acknowledgement" or "the judicial hearing of a cause".

20. In criminal law, the term "cognizance" has no esoteric or mystic significance, and the same is reflected by the omission of any formulaic definition of the term under the Code. However, over time, the term "cognizance" has come to acquire a special and distinct connotation, through a catena of decisions and authoritative exegesis rendered by this Court. The expression "cognizance" means to 'become aware of' or 'to take notice of judicially'. The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence. [See: Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492].

21. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that i) an offence has indeed occurred and ii) the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for

initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.

22. Having understood the legal import of the term "cognizance", we may now profitably turn towards understanding how cognizance may be taken. Chapter XIV of the Code deals with "Conditions requisite for initiation of proceedings", and Section(s) 190 to 199 contained thereunder, delineates the methods and the limitations subject to which cognizance of offence may be taken by the various criminal court empowered thereunder.

23. Remarkably, none of the provisions in the aforesaid Chapter prescribe how 'cognizance' is to be taken, and rather only describe the conditions and limitations for the initiation of proceedings under the Code. This is because, taking cognizance, as already stated, is an act of court, and the prosecuting agency or complainant have no control over the same. It is predicated upon application of judicial mind and is not dictated by the complaint or police report, which cannot be construed by any formulaic approach. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a judicial authority applies its mind to the suspected commission of an offence. [See: R.R. Chari v. State of U.P., AIR 1951 SC 207; Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62]

24. The process of "taking cognizance" is one of variable and indeterminate import; it neither carries a uniform or fixed procedural contour nor has it been used in the same sense throughout the scheme of the Code. This is because "taking of cognizance" signifies the setting into motion, the criminal justice machinery, which may be done, under the Code, in different ways, which is why it derives its understanding from the various procedures by which proceedings are initiated under the Code, and as such its import differs, depending upon the context of the procedure in which it has been used.

Hence, there exists no rigid taxonomy or formulaic framework for "taking cognizance", and the act of "taking cognizance" has to be understood from the procedure itself, more particularly, at which stage, it could be said that there has been an application of judicial mind for the purpose of initiating proceedings under the Code or in simple words, cognizance has been taken. [See: Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654]

b. Cognizance of offences by Magistrates and the Three Distinct Points of Origin of the Criminal Machinery under the Code.

25. Section 190 of the Code empowers a Magistrate to take cognizance of any offence in three distinct manners. As per the said provision, a Magistrate may take cognizance upon (a) receiving a complaint of facts which constitute such

offence; (b) a police report of such facts; or (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. The said provision reads as under:-

"190. Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

26. A bare perusal of the aforesaid, indicates that there are three distinct ways in which the criminal machinery may be set into motion i.e., cognizance of an offence may be taken by the Magistrate. It may take place on the basis of a complaint moved before a Magistrate by any complainant complaining of any offence, or by the police itself on the basis of a police report in terms of Section(s) 2(r) and 173(2) of the Code, or on the basis of the Magistrate's own knowledge about any offence. I. On the basis of a Complaint.

27. As per Section 190 sub-section (1)(a) the first manner in which a Magistrate may take cognizance of an offence is on the basis of a complaint received by him. Section 2(d) of the Code defines "complaint" to mean any allegation, whether made orally or in writing, by any persons against some other person or persons, whether known or unknown, who is alleged to have committed an offence, that has been made to a Magistrate, with a view that he initiates any action under the Code. Section 2(d) of the Code reads as under:-

"2. Definitions.-

(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."

28. This Court in Mohd. Yousuf v. Afaq Jahan, reported in (2006) 1 SCC 627, explained thus:-

"15. A faint plea was made by learned counsel for Respondent 1 that the petition filed by the appellant was not a complaint in the strict sense of the term. The plea is clearly untenable. The nomenclature of a petition is inconsequential.

16. There is no particular format of a complaint. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, as in the instant case, is a complaint."

(Emphasis supplied)

29. For the purpose of enabling the Magistrate to take cognizance of an offence on the basis of a complaint as defined above, in terms of Section 190 subsection 1(a), such complaint must contain facts constituting the offence. Once such a complaint is received by a Magistrate, he will apply his mind to the complaint and the facts disclosed therein, and ordinarily proceed further under Chapter XV of the Code, which relates to "Complaints to Magistrates". Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process.

30. Although, at this stage, the Magistrate is not obliged to proceed further in terms of Section(s) 200 to 203 in Chapter XV of the Code, and he may instead, order the police to investigate or inquire into the offence alleged in the complaint in terms of Section 156 sub-section (3) of the Code.

31. Section 200 of the Code empowers the Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present, if any. The section further requires the such examination to be reduced to writing with the signatures of the complainant, witnesses and the Magistrate. The object of examination under Section 200 is to ascertain whether there is a prima facie case against the accused in the complaint, and to prevent the issue of process on a complaint which is false or vexatious. In S.R. Sukumar v. S. Sunaad Raghuram, reported in (2015) 9 SCC 609, this Court summarized the object of Section 200 of the Code:-

"8. Section 200 CrPC provides for the procedure for the Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 CrPC "A Magistrate taking cognizance of an offence on complaint

shall examine upon oath the complainant and the witnesses present, if any." clearly suggests that for taking cognizance of an offence on complaint, the court shall examine the complainant upon oath.

The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the complaint and indicates that the Magistrate takes judicial notice of an offence.

11. Section 200 CrPC contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 CrPC or dismiss the complaint under Section 203 CrPC. Upon consideration of the statement of the complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 CrPC. Section 202 CrPC contemplates "postponement of issue of process".

It provides that the Magistrate on receipt of a complaint of an offence, of which he is authorised to take cognizance may, if he thinks fit, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding.

If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 CrPC. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by the complainant by filing the complaint or by the police report about the commission of an offence.

12. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not.

Under Section 200 CrPC, when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was

merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon the facts and circumstances of the particular case."

(Emphasis supplied)

32. In *Mona Panwar v. High Court of Judicature of Allahabad*, reported in (2011) 3 SCC 496, this Court noted that two options would be open to a Magistrate, when presented with a complaint: one, to pass an order as per Section 156(3) of the Code, or two, to direct examination as per Section 200. Prior to taking cognizance under Section 190, the Magistrate may order police investigation under Section 156(3). That is to say, the requirements of Section 200 do not put a bar on the powers of the Magistrate under Section 156(3) of the Code. We have produced the relevant paragraphs of *Mona Panwar* (supra) below:

"18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and the second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1).

Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge-sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a

reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code."

33. It is also true that where the Magistrate exercises his jurisdiction under Section 200, he is required to apply his mind. Exercise of such jurisdiction cannot be in a routine manner. A careful scrutiny of evidence placed on record must be made in order to arrive at the conclusion if any offence is prima facie committed by the accused. Such strict requirements to exercise the jurisdiction under Section 200 are founded as cornerstones of criminal jurisprudence that a criminal proceedings must not be initiated lightly and there must be sufficient grounds to believe that an offence has taken place before the initiation of such proceedings. In *Maksud Saiyed v. State of Gujarat*, reported in (2008) 5 SCC 668, this Court explained the following in context of the jurisdiction under Sections 156(3) and Section 200 of the Code:

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence.

The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

15. This Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] held as under: (SCC p. 760, para 28)

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and

would that be sufficient for the complainant to succeed in bringing charge home to the accused.

It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." The learned Magistrate, in our opinion, shall have kept the said principle in mind."

34. In R.R. Chari (supra), this Court had held that "when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XV of the Code of Criminal Procedure, he must be held to have taken cognizance of the offence." On the other hand, in Tula Ram v. Kishore Singh reported in (1977) 4 SCC 459, it was held that when the Magistrate applies his mind not for the purpose of proceeding as abovementioned in R.R. Chari (supra), but for taking action of some other kind, for instance ordering investigation or issuing a search warrant he cannot be said to have taken cognizance of the offence.

35. For the purpose of taking cognizance of an offence on the basis of a complaint received under Section 190 sub-section (1)(a), a Magistrate is required to examine upon oath, the complainant and any witnesses, and reduce in writing the substance of their examination. This inquiry which is conducted by the Magistrate pursuant to Section 200 of the Code, cannot always mean, that cognizance of the offence alleged in the complaint has been taken by it, as the Magistrate is still empowered to take recourse to the other provision of Section(s) 201 to 203, whereby he may simply bring the inquiry before it to an end, without an intention of proceeding further in terms of the Code.

36. In the same breath, Section 202 of the Code empowers a Magistrate, who has received a complaint of an offence, to postpone the issue of process against the accused in terms of Section 204, and either (i) inquire into the case himself or direct an investigation by the police or any other person, in the case, for the purpose of deciding whether or not there is sufficient ground for proceeding. The said provision reads as under:-

202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of

process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

37. The provision empowers the Magistrate to find reasons to doubt the truthfulness of the complaint and defer issuing process against the accused. In such a case, the Magistrate may either direct an investigation by the police, or conduct an inquiry to determine whether there is sufficient basis to proceed with the complaint. It is pertinent to underscore that the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156(3), as it is only for assisting the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This Court in *Kewal Krishan v. Suraj Bhan*, reported in 1981 SCC (Cri) 438, lucidly explained that;

"10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused.

At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] that even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged.

The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session."

38. This Court in Rameshbhai Pandurao Hedau v. State of Gujarat, reported in (2010) 4 SCC 185, held that a direction for investigation under Section 156(3) is to ascertain whether the Magistrate shall take cognizance. Whereas, an investigation under Section 202 is for ascertaining whether there are sufficient grounds for the Magistrate to proceed further. The relevant observations read thus;

"22. It is now well settled that in ordering an investigation under Section 156(3) of the Code, the Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer, under Section 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

23. Reference was also made to the decision of this Court in Mohd. Yousuf v. Afaq Jahan [(2006) 1 SCC 627 : (2006) 1 SCC (Cri) 460] where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

25. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) CrPC and under Section 202 CrPC. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) CrPC to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the postcognizance stage."

39. In *Ramdev Food Products Pvt. Ltd. v. State of Gujarat*, reported in (2015) 6 SCC 439, three-Judge Bench of this Court underscored the difference in meaning of the term "investigation" under Section 156(3) as compared to Section 202 of the Code. The relevant observations read thus:

"21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

37. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507] , referring to earlier judgments on the scope of Section 202, it was observed : (SCC p. 740, para 3)

3. "In *Chandra Deo Singh v. Prokash Chandra Bose* [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] this Court had after fully considering the matter observed as follows : (AIR p. 1433, para 8)

'8. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned

Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial.

No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.' Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar* [AIR 1960 SC 1113 : 1960 Cri LJ 1499] observed as follows : (AIR p. 1116, para 9)

'9. Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process.

The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

Same view has been taken in *Mohinder Singh v. Gulwant Singh* [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] , *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel* [(2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] , *Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd.* [(2009) 2 SCC 363 : (2009) 1 SCC (Cri) 801] and *Chandra Deo Singh v. Prokash Chandra Bose* [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] ."

40. Undoubtedly, the inquiry under Section 202 of the Code is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against under Section 204, or whether the complaint should be dismissed by resorting to Section 203. As a natural corollary, at the stage of issuing process the Magistrate is only concerned with the allegations in the complaint and the statements of the complainant and the

witnesses. The Magistrate is required only to be prima facie satisfied that sufficient grounds exist to proceed against the accused.

41. Therefore, the scope of inquiry under Section 202 is limited to the ascertainment of the truth or falsehood of the allegation made in the complaint - (i) on the materials placed by the complainant before the court; and (ii) for limited purpose of finding out whether a prima facie case for issue of process has been made out. There is no gainsaying that discretion vested in the Magistrate has to be judicially exercised.

42. The proviso to sub-section (2) stipulates that if it appears to the Magistrate that the offence complained of is triable by the Court of Sessions, he must call upon the complainant to produce all his witnesses and examine them on oath. The intent behind the provision lies in the fact that in a police case, investigation reveals the nature of the crime and its truthfulness as opposed to a case born out of a complaint. Hence, to protect the prospective accused from harassment from false complaints, the duty of the Magistrate to examine the complainant and his witnesses becomes onerous. We must remind that it is imperative on the part of the Magistrate to examine the complainant and his witnesses in a complaint case triable exclusively by Court of Sessions.

43. Although, in practice, there may at times be an overlap or convergence in the procedures envisaged under these three routes, such as where on the basis of a complaint, police investigation is ordered under Section 156 sub-section (3), or where upon receiving a police report under Section 173 sub-section (2), a protest petition filed in lieu thereof is treated as a complaint in terms of Section 200 of the Code, yet the procedural trajectory in which a Magistrate is expected to adopt for the purpose of proceeding in respect of an offence, still retains a certain degree of distinctiveness, based on how the criminal machinery came into motion.

ii. Who takes Cognizance of Offence exclusively triable by Court of Sessions under the Code?

44. To answer the question, whether the summoning of the petitioner herein by the Court of Session amounts to 'second cognizance', we have to try and understand the decision of this Court in Dharam Pal (supra), more particularly, its observations that when it comes to offences exclusively triable by the Court of Session, "if cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session".

In other words, the question that falls for our consideration is that, for offences triable exclusively by the Court of Session, whether cognizance is taken by the Magistrate or by the Court of Session, or either of them as the case may be? To

answer the aforesaid, we may, put aside Section 193 of the Code for the time being and first try to understand what role is expected to be played by the Magistrate as-well as the Court of Session under the Code for offences exclusively triable by the Court of Session.

a. Role of the Magistrate where the Offence is exclusively triable by a Court of Session.

45. In the foregoing paragraphs of this judgment, we have already delineated the manner in which a Magistrate, ordinarily takes cognizance of an offence. To sum it up, where a complaint is received disclosing facts which constitute an offence, cognizance is taken after the Magistrate has applied his mind to the complaint and has proceeded under Section 200 and the subsequent provisions of Chapter XV, whereupon such complaint is neither returned in terms of Section 201 nor dismissed under Section 203, and instead there is issuance of process by the Magistrate in terms of Section 204 and other provisions of Chapter XVI, at which stage it is understood without a shred of doubt, that cognizance of such offence has been taken and proceedings under the Code stand initiated.

On the other hand, where a police report is received, proceedings are said to be initiated i.e., cognizance is affirmatively said to be taken after the Magistrate has applied its mind to the contents of the police report, and thereafter he has either issued process to the accused under Section 204 of the Code, on the basis of such report, or where the accused is present before it, either on his own or on being produced by the police, the Magistrate has complied with the requirement envisaged under Section 207 of the Code. In short, while a Magistrate who proceeds under Chapter XV of the Code, may or not be said to have taken cognizance, however, whenever, a Magistrate has proceeded under the provisions of Chapter XVI which deals with "Commencement of Proceedings", cognizance of offence, without an iota of doubt is understood to have been taken.

I. Chapter XVI - Section(s) 207, 208 and 209 of the Code and Committal of Case by a Magistrate to the Court of Sessions.

46. We may now turn to see, how the Magistrate is required under the Code to proceed where the offence is exclusively triable by the Court of Sessions. Where a case is instituted before a Magistrate, in terms of Section 190 of the Code, i.e., either upon a complaint, or a police report, or on the basis of the Magistrate's own knowledge, and it appears to the Magistrate, that the case pertains to an offence triable exclusively by the Court of Session, then the Magistrate has to commit the said case to the Court of Session. Section 209 of the Code reads as under:-

"209. Commitment of case to Court of Session when offence is triable exclusively by it.-

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

47. A plain and careful reading of the aforesaid provision reveals that, where a case is instituted on a police report or otherwise, that is to say, on the basis of a complaint received or on the basis of information by a Magistrate's own knowledge, and such case involves an offence which is triable exclusively by the Court of Sessions, the Magistrate is placed under a statutory obligation to commit such case to the Court of Sessions in the manner laid down in clauses (a) to (d) of the said provision. Section 209 of the Code, enjoins a duty upon the Magistrate to comply with four procedural requirements enumerated in clauses (a) to (d), thereto, i.e., the commitment of the case by the Magistrate to the Court of Session, has to take place, strictly in accordance with the four procedural steps provided in the provision, being as under:-

(i) As per clause (a), the Magistrate is required to commit such case to the Court of Session, and further remand the accused to custody, subject to the provisions of bail, until such committal is complete. However, such commitment has to be done after the Magistrate as complied with the provisions of Section 207 or 208 of the Code, as the case may be;

(ii) In terms of clause (b), the Magistrate must also remand the accused to custody for the duration of trial, subject to the provisions relating to bail under the Code;

(iii) Clause (c) enjoins a further duty upon the Magistrate, to forward to the Court of Session, more particularly the Court to which the case is committed, the entire record of the case, along with any documents and articles thereof, that are to be produced or relied upon as evidence;

(iv) Under clause (d), the Magistrate is further required to notify the Public Prosecutor regarding the commitment of the case to the Court of Session.

48. Chapter XVI of the Code which deals with "Commencement of Proceedings before Magistrates" encompasses the aforementioned provision of Section 209 as-well as Section(s) 207 and 208. Both these provisions pertain to the obligation of furnishing to the accused, copies of documents in respect of any case where proceedings have been instituted under the Code, with the former dealing with proceedings instituted upon a police report and the latter pertaining to proceedings instituted otherwise, such as on a complaint or on the basis of information by a Magistrate's own knowledge.

49. Section 207 of the Code stipulates that in every case where proceedings have been instituted on the basis of a police report, the Magistrate, shall supply to the accused, without delay and free of cost, inter-alia, a copy of the police report as contemplated under Section 173, a copy of the first information report, recorded under Section 154, if any, the copies of all statements made under Section 161 sub-section (3) by persons, whom the prosecution intends to examine as witness, subject to the first proviso, the copies of any confession or statement recorded under Section 164, as-well as a copy of any other document or relevant extract thereof that was forwarded to the Magistrate by the police. Section 207 of the Code reads as under:-

207. Supply to the accused of copy of police report and other documents.-

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer

for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

50. In the same breadth, Section 208 of the Code, stipulates that in every case where proceedings have been instituted otherwise than on a police report, which when understood in the context of Section 190, means on the basis of a complaint received by a Magistrate or on the basis of information by a Magistrate's own knowledge, and the offence is triable exclusively by the Court of Session, the Magistrate, shall supply to the accused, without delay and free of cost, inter-alia, a copy of the statements recorded under Section(s) 200 or 202, of all persons examined by the magistrate, the copies of any statement or confession recorded under Section(s) 161 or 164, as-well as a copy of any other document produced before the Magistrate, on which the prosecution proposes to rely. Section 208 of the Code reads as under:-

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.-

Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

51. The stage at which the provisions of Section(s) 207 and 208 of the Code, respectively spring into action, de hors Section 209, can be gleaned from the heading of Chapter XVI wherein these provisions are contained; "Commencement of Proceedings before Magistrates". The said Chapter, deals

with the stage, where the accused person is before the Magistrate, either by way of issue of process under Section 204 of the Code, or if such person appears on his own, or is brought before the Magistrate by the police, which as already discussed in the foregoing paragraphs, signifies that the Magistrate has taken cognizance of the offence, and has now proceeded further under the Code, by initiating proceedings against persons accused of committing such offences.

That apart, the documents, copies of which, have to be supplied to the accused, under each of these provisions, are all documents that have become part of the record before the Magistrate, by virtue of him, having already proceeded under the provisions of Section 200 and subsequent sections of Chapter XV in case of complaint case, which again reinforces that at this stage the Magistrate has taken cognizance.

52. It could be argued, that in a case instituted upon a police report, the Magistrate not having proceeded in terms of Chapter XV, as he is not required to in such cases, may not necessarily have taken cognizance of the offence. There may be situations where although police report may have been submitted to a Magistrate under Section 173, but the stage of taking cognizance of an offence on the basis of such report in terms of Section 190 of the Code, may not have reached by the Magistrate. It is particularly in this context, that our discussion in the foregoing paragraphs assumes importance.

We have already discussed, how the act of taking cognizance of an offence does not involve any formal action of any kind, and cannot be construed by any rigid formula. Whether cognizance of an offence has been taken, or not taken or yet to be taken, depends in the peculiar context of the case and the stage of proceedings therein, and lodestar for answering the same has to be discerned from the procedure adopted by the Magistrate. Nevertheless, when a Magistrate, upon receiving a police report, proceeds further, by complying with the procedural requirements laid down in Section 207 of the Code, he is deemed to have taken cognizance of the offence.

For there can be no need or question of supplying the documents envisaged under Section 207 to the accused, if cognizance of the offence is not taken, and more importantly, there can be no situation where the accused is compelled to appear before the Magistrate, or made a part of the proceedings in connection with any case instituted, if cognizance of the offence, involved therein is not yet taken. This is because prior to taking cognizance of an offence, the person alleged to be the accused, has no locus in the proceedings.

53. It also flows from the cardinal principal of criminal jurisprudence, that unless the court is satisfied, upon application of its mind about the occurrence of an offence, in other words, unless cognizance of an offence is taken, a person even

though alleged or suspected to be involved in the commission of such offence, cannot be called upon or compelled to partake in the criminal proceedings, on a mere suspicion, lest it violate the right of dignity of such person as-well as the right of such person against self-incrimination enshrined in Article(s) 20 and 21 of the Constitution and undermine the sanctity of criminal proceedings, the bedrock of which is fairness.

The imperative requirement of first taking cognizance of an offence, before any person is arrayed in the proceedings as an accused, is not a mere procedural formality, it is there to ensure that no person is subjected to the rigours of criminal proceedings on a conjectural suspicions and unverified allegations. To do so, would gravely prejudice and stigmatize the dignity and reputation of such person, or put simply, the right to life of such persons, and more importantly, to ensure that a person suspected of committing an offence, is not compelled to give any information or evidence, in other words, incriminate himself, for the very purpose of then establishing and making out an offence against him or in simple words taking cognizance of an offence against such person.

54. The expression "the accused appears or is brought before the Magistrate" used in Section 209 of the Code, which, at the cost of repetition, deals with committal of cases to the Court of Session when offence is triable exclusively by it, have to be understood in the context of the aforesaid paragraphs. Section 209 of the Code, leaves no room for ambiguity. The words used in it are clear as a noon day. There can be no committal of a case by a Magistrate to the Court of Session, unless the accused is before it. It is not difficult to comprehend why; Section 209 insists upon the requirement for the person accused to be before the Magistrate before the committal of the case takes place.

The reason is quite simple. There can be no compliance of the requirements envisaged under Section(s) 207 or 208 of the Code, as the case may be, if a person is not yet arrayed as an accused to the case instituted before the Magistrate. As both these provisions mandate the requirement to furnish the copies of the documents enumerated therein, to the accused, thereby indicating that when the Magistrate proceeds under the provisions of Section(s) 207 or 208 and then 209 of Chapter of XVI of the Code, cognizance of the offence is already taken, and further that the Magistrate has also applied its mind to find out who the offenders really are. [See: Raghubans Dubey v. State of Bihar, 1967 Cri LJ 1081 (SC)].

55. This is further reinforced from clause(s) (b) and (d) of Section 209 of the Code, which talk about the duty of the Magistrate to remand the accused to custody and to notify the Public Prosecutor about the committal of the case to the Court of Session. Section 209(b) stipulates that for the purpose of committal of the case to the Court of Session, the Magistrate, has to remand the accused to

custody, subject to the provisions of bail, "during, and until the conclusion of, the trial".

This itself indicates that, when the accused is being remanded by the Magistrate, it is being done, for the purpose of undergoing trial, which presupposes that, the Magistrate is satisfied that there is enough material for the purpose of sending such accused to trial. On the other hand, the duty to, notify the Public Prosecutor under Section 209(d), as regards the committal of the case, is for the purpose of facilitating the opening of the case by the prosecution before the Court of Session in terms of Section 226 contained in Chapter XVIII, which specifically deals with "Trial before a Court of Session".

56. It is worthwhile to note that Section 190 of the Code, which as already stated deals with Cognizance of offences by Magistrates, specifically employs the words "any offence". Thus, subject to conditions laid down in Chapter XIV, a Magistrate by virtue of Section 190 of the Code has been specifically and consciously empowered to take cognizance of "Any Offence".

The use of the expression "Any Offence" is particularly significant, because even-though the Code, in Chapter(s) XV and XVI has qualified the meaning of the term "offences" with the expression "triable exclusively by the Court of Session", wherever necessary, no such expression has been juxtaposed with the term "offences" insofar as Chapter XIV is concerned. This reinforces that the language couched in Section 190 of the Code, more particularly the words "any offence" is of wide import and that a Magistrate is empowered to take cognizance of an offence even if the same is triable exclusively by the Court of Session.

b. Role of the Court of Session after the case is committed to it by the Magistrate under Section 209 of the Code.

57. For a better exposition on the issue of who takes cognizance of offence under which is exclusively triable by a Court of Session, under the Code, it would be apposite to under the procedure that is to be followed after a case where an offence is exclusively triable by a Court of Session, is committed by a Magistrate to the Court of Session. In this regard, the provisions of Section(s) 226, 227 and 228 of the Code are of significance.

58. Once a case has been committed by the Magistrate to a Court of Session in terms of Section 209, the procedure that follows suit, is provided in Section(s) 225 to 237 in Chapter XVIII of the Code. The heading of Chapter XVIII is also very clear. It reads, "Trial before a Court of Session". Thus, once a case has been committed, the procedure that now has to be adopted by the Court of Sessions is in lieu of commencement of trial.

59. Although, one must be mindful that, mere committal of the case, does not mean that trial has now commenced. Trial in respect of any case instituted under the Code, commences only after the charges have been framed. All stages prior to the framing of charges, are a pre-trial stage, which may also happen to be a stage of inquiry. All that we are trying to emphasize, on the basis of the heading of Chapter XVIII of the Code is that, the procedure that the Court of Session is expected to adopt is towards commencement of trial, and not for the purpose of taking cognizance of an offence, which as discussed in the foregoing paragraphs of this judgment, already stands taken by the Magistrate, who committed the case to the Court of Session. This may be better understood by taking a closer look at few provisions of Chapter XVIII, and by discerning what the Court of Session is empowered to do, post the committal of the case to it.

60. Section 225 of the Code, although merely explanatory in nature as to how trials are to be conducted before a Court of Session, yet is of some degree of aid, inasmuch as it further indicates that the procedure laid down in Chapter XVIII is for the purpose of facilitating the trial. The provision simpliciter states that in every trial before a Court of Session, the prosecution shall be done by a Public Prosecutor. The said provision reads as under: -

"225. Trial to be conducted by Public Prosecutor.- In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor."

61. Section 226 of the Code, is the immediate next procedural step after the case has been committed by a Magistrate to the Court of Session in terms of Section 209. The said provision stipulates that, when the accused appears or is brought before the Court of Session "in pursuance of a commitment of the case under Section 209" the prosecutor shall first open his case. In doing so, the prosecutor is required to describe the charges brought against the accused and further stating the evidence, he proposes to prove for establishing the guilt of such accused. Section 226 of the Code reads as under:-

"226. Opening case for prosecution.- When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused."

62. A bare perusal of the aforesaid provision, makes it clear that, the first procedural step that is ordinarily contemplated to be undertaken by a Court of Session, under the Code, after the committal of the case by the Magistrate under Section 209, is to be apprise itself as-well as the accused about the charges that are brought against such accused. Section 226 does not contemplate, any procedural step of first satisfying the Court of Session about the occurrence of an

offence, such that the Court of Session, in turn, take cognizance of the offence. The procedure contemplated in the said provision, presupposes the cognizance of the offence. This is because, as already discussed by us, in the foregoing parts of the judgment, the Magistrate before committal of the case, is already expected as well as deemed to have taken cognizance of the offence, sought to be brought to trial before the Court of Session.

63. Section 227 of the Code deals with discharge. Where the Court of Session, upon consideration of the record of the case and documents tendered with it, and after hearing the accused and the prosecution in regards to such material on record, considers that there is no sufficient ground for proceeding against the accused, then the Court of Sessions, shall discharge the accused, by recording reasons for the same. The said provision reads as under:-

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

64. At this stage, we may address ourselves on one another aspect, with a view to obviate any confusion. It may be argued, that the cognizance of an offence can only be taken by that court who is also empowered to discharge the accused qua such offence. Since, in a case where the offence is exclusively triable by the Court of Session, as is manifest from a reading of Section(s) 209, 226 and 227 of the Code, only a Court of Sessions is empowered to discharge an accused, it must be the one who must take cognizance of the offence, and not the Magistrate, whose role is only confined to committing the case to the Court of Session. Although, such an argument may be seemingly lucrative and appealing, the same is a misunderstanding of the basics of what is meant by "taking cognizance".

65. One another fundamental aspect pertinent to bear in mind is that, cognizance of an offence is taken when the judicial authority who has applied its mind, comes to the finding that it is necessary to initiate proceedings. The act of "taking cognizance" as already discussed, signifies judicial application of mind on the allegations purported to be levelled. Equally important to remember is that cognizance is of an offence and not the offender. Where, however, there is no offence, there can be no cognizance, as there can be no proceedings initiated. In the course of uncovering, whether there is any offence, whose cognizance is to be taken, the court or the Magistrate, as the case may be, comes to the finding that there is no offence, all proceedings initiated leading upto such conclusion are dropped.

In other words, any proceedings that may have been initiated under the Code, for determining, if there an offence has taken place or not, come to an end and are dropped once it is found that no offence had occurred. This is quite distinct from 'discharge', for the reason that discharge does not necessarily, always lead to dropping of proceeding. Discharge is always qua the accused person, as opposed to cognizance which is always qua the offence itself. Discharge of an accused does not tantamount to the negation or eradication of the necessity to initiate proceedings in the first place. Discharge only signifies that; there isn't sufficient ground to charge the person accused of commission of a particular offence.

It has no bearing on the offence itself whose cognizance was taken, as the occurrence of such offence and the correlating necessity for initiation of proceedings still remains. Discharge of an accused does not mean that no offence had occurred in the first place. Take for instance, the Magistrate had taken cognizance of an offence, pursuant to which two persons 'A' and 'B' came to be arrayed as accused. Later, the Court of Sessions, finds that there isn't sufficient material to proceed against 'B'.

This does not mean that there is no necessity for initiation of proceedings in respect of the said offence, as the same may still continue in respect of 'A'. Even if 'A' also comes to be discharge, it does not stand that no offence had taken place, and it would be the bounden duty of the Court to find out the actual offenders. Cognizance is always qua an offence and always correlates to initiation of proceedings, whereas, discharge is only qua an accused and concerned with if there is sufficient ground to proceed against such accused.

66. If at all, there was a correlation between the power to "discharge" and the act of "taking cognizance", such that only that court empowered to discharge an accused for an offence, could be said to be empowered to also take cognizance of such offence in the first place, then there would have been no need for the Code to contain the provisions pertaining to discharge by a Court of Session and by a Magistrate, in separate distinct Chapters, more particularly Chapter XVIII; Section 227 and Chapter XIX; Section(s) 239 and 245, respectively, which specifically deal with trials before the Court of Session and Magistrates, respectively.

The Code would have simpliciter empowered the Court of Session and the Magistrate to discharge an accused under Chapter XIV, which deals with cognizance of offences by Magistrates and Courts of Session. This reinforces that, the power to discharge an accused, is nothing more than a safeguard against any mechanical or capricious framing of charges; a pre requisite for commencement of trials, and thus, correlates only to trials, and has nothing to with the act of "taking cognizance" under the Code.

67. Section 228 of the Code is particularly of significance for an insight into the role that a Court of Sessions plays after a case is committed to it by the Magistrate. Section 228 which deals with framing of charges, stipulates that, where after such consideration and hearing as contemplated under Section(s) 226 and 227 of the Code, the Court of Session is of the opinion that there is ground for presuming that the accused has committed an offence, then only two options are available to it: first, where it finds that the offence is not exclusively triable by the Court of Session, then, it may either frame a charge against such accused and thereafter, transfer the case back to the Magistrate mentioned therein, or simply transfer the case back without framing any charge; or second, where it finds that the offence is indeed exclusively triable by the Court of Session, then it shall proceed to frame a charge against such accused. The said provision reads as under: -

"228. Framing of charge.-

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

68. It is manifest from a careful reading of the aforesaid provision, that a Court of Session, after a case has been committed, is only required to see, if the offence in the case, is one exclusively triable by it or not. Where, the offence is not exclusively triable by it, the Court of Session will mandatorily transfer the case to the Magistrate as specified in Section 228 sub-section (1) clause (a). Where, however the offence is exclusively triable by it, the Court of Session will mandatorily proceed to frame charges. The only discretion that has been conferred upon the Court of Session, is in the former, where it can decide

whether to frame the charge himself or not, before mandatorily transferring the case back to the Magistrate as specified therein.

69. There is no discretion conferred upon the Court of Session, to whom a case has been committed to go into the question, whether any offence has taken place, cognizance of which may be taken. Once the Court of Session is in seisin of the case in terms of Section 209 of the Code, it cannot go into the question whether, the case is fit one for it to take cognizance or to drop the proceedings, for it is assumed that the case has been committed to it by the Magistrate after application of his mind.

Section 228, more particularly the words "there is ground for presuming that the accused has committed an offence" presupposes the cognizance of offence, or put simply, it means that the Court of Session is already alive to the fact that there has been an offence, which is why it is only required to form an opinion that there is ground for presuming that the accused has committed such offence and thereafter, must decide whether, the offence is one exclusively triable by it or not. Even under Section 228(1)(a), the Court of Session is only empowered to transfer the case back to the Magistrate, with the discretion of framing the charge first, if the offence is not exclusively triable by it.

It cannot go into the question, whether there is any offence or not, worth initiating proceedings under the Code. This is further fortified from the expression "and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report" in Section 228(1)(a) which indicates that where such case is transferred back to the Magistrate, the Magistrate is mandated to thereafter proceed to try such offence i.e., to commence trial in respect of the same. The Court of Session is not empowered to send back the case to the Magistrate for relooking into whether cognizance should be taken or not.

70. A combined reading of Section(s) 226, 227 and 228, clearly outline, that after the case is committed to the Court of Session, its role is only limited for the purpose of deciding whether the case is a fit one for commencing trial against the accused, and whether such offence should be tried by it or by the Magistrate. After a case is committed to the Court of Session, the first immediate procedural step envisaged by the Code, is under Section 226, whereby the Court apprises itself and through it the accused about the charges. Thereafter, the next course of action available to the Court of Session, is only in terms of Section(s) 227 and 228 of the Code.

The expressions "considers that there is not sufficient ground for proceeding against the accused" and "is of opinion that there is ground for presuming that the accused has committed an offence" used in Section(s) 227 and 228, respectively,

to our minds, appear to empower the Court of Session to only decide whether on the basis of the material on record and the submissions of the accused and the prosecution, there is enough material to either commence a trial or discharge the accused.

The framework of the provisions of Section(s) 226, 227 and 228 of the Code, to our minds, do not appear to envisage any power of the Court of Session, to decide whether cognizance of the offence should be taken or not, or the question whether the Magistrate should have taken cognizance or not. For offences which are exclusively triable by the Court of Session, the role that the Court of Session is expected to play in terms of Section(s) 226 to 228, after the case has been committed to it, is not only altogether different from the one that a Magistrate is required to play but also one concerned only with the stage "post-cognizance of offence" in respect of the case committed to it.

71. We say so, because, unlike Section 190 of the Code, which empowers the Magistrate with the discretion to decide whether cognizance of an offence should be taken or not, by application of his mind, there is no provision of the same similitude as Section 190, which empowers the Court of Session to do so, in respect of cases committed to it by the Magistrate.

At the same time, there is also no provision, which empowers the Court of Session, to decide whether the committal of the case was correct or not, to such nature and extent, that the Court of Session be said to be empowered to sit in appeal over the committal proceedings and decide or rather re-decide if the cognizance of the offence should be taken or should have been taken in the first place or not. The only limited power that the Court of Session has been armed with over the order of committal passed by the Magistrate, is to ascertain and re-decide if the offence is one exclusively triable by it or not.

Unlike a Magistrate, who is empowered in terms of Section 190 of the Code, to drop proceedings where after application of his mind, he comes to the finding that there is no offence for taking cognizance to initiate proceedings in respect of, the Court of Session is not empowered to drop the proceedings in the case committed to it, it is only empowered to either proceed to frame charges against the accused or to discharge the accused or if such offence is not exclusively triable by it, transfer the case back to the Magistrate, again for the purpose of commencement of trial by such Magistrate. This when seen in light of the expression "Any Offence" used in Section 190 of the Code, clearly indicates that it is the Magistrate who is not only empowered but also indeed does take cognizance of an offence even if the same is triable exclusively by the Court of Session.

c. Object and Purpose underlying Section 193 of the Code.

72. The proposition of law, that where a case is committed by the Magistrate in view of the offence being exclusively triable by the Court of Session, it is only the Magistrate who takes cognizance of the offence and not the Court of Session has to be understood in the context of Section 193 of the Code.

73. The marginal note appended to Section 193 of the Code, reads as "Cognizance of offences by Courts of Session". It stipulates that no Court of Session shall be empowered to take cognizance of any offence as a Court of Original Jurisdiction, unless the case has been committed to it by the Magistrate, or where it has been expressly empowered to do so, either under the Code or any other law. Section 193 reads as under:-

"193. Cognizance of offences by Courts of Session.- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

74. A reading of the aforesaid provision, makes it manifest, that there is a clear embargo cast upon the Court of Session from taking cognizance of any offence, as a Court of original jurisdiction i.e., no cognizance of an offence can be taken by a Court of Session in its original capacity, as a point of initiation of any proceedings under the Code. The expression "as a Court of original jurisdiction" warrants a careful interpretation.

The said expression cannot be construed to mean that merely because the Court of Session is precluded from taking cognizance of an offence as forum of inception of proceedings under the Code i.e., as an original forum, that it must by necessary implication, be presumed to be empowered to take cognizance of an offence as a forum of superior jurisdiction or as an intermediate procedural forum at a subsequent stage in the proceedings already initiated. To say so, would go against the well-established rule, that cognizance of an offence can only be taken once, as held in Dharam Pal (supra) and Balveer Singh (supra).

The negative language employed in Section 193 of the Code, more particularly, "no Court of Session shall take cognizance of any offence" which has been used in conjunction with "unless the case has been committed to it" is not suggestive of the fact that, where a case has been committed to the Court of Session, it has to then mandatorily take cognizance of the offence. To say would, resulting in turning the very tenets of the act of "taking cognizance" over its head. It would lead to an absurd interpretation, where, although the Magistrate, by way of

Section 190 of the Code has the discretion to take cognizance of an offence, no such discretion exists insofar as the Court of Session is concerned.

75. In *Pradeep S. Wodeyar v. State of Karnataka*, reported in (2021) 19 SCC 62, this Court has elaborately noted upon the scope of Section 193 as thus:

"23. Section 193 stipulates that unless the case has been committed by a Magistrate to the Sessions Court under the Code, no Court of Session shall take cognizance of any offence. But there are two exceptions to this formulation, namely, where: (i) the CrPC has made an express provision to the contrary; and (ii) an express provision to the contrary is contained in "any other law for the time being in force". The bar in Section 193 is to the Sessions Court taking cognizance of an offence, as a court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code.

38. Section 193CrPC states that the Sessions Court shall not take cognizance of an offence as a court of original jurisdiction unless the Magistrate commits the case to it. The only exception is if it is expressly provided otherwise by the Code or the statute. Neither the Code nor the MMDR Act provide that the Special Court could directly take cognizance of the offences. Therefore, the Sessions Court did not have the authority to take cognizance. Section 209CrPC provides the Magistrate the power to commit the case.

In *Dharam Pal v. State of Haryana* [*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , a Constitution Bench, while discussing whether the committing court was required under Section 209 to take cognizance of the offence before committing the case to the Court of Session, held that the Magistrate could either commit the case before or after taking cognizance. In this case, the Special Court has directly taken cognizance. It now needs to be determined if this irregularity in the cognizance order vitiates the entire proceedings for the order to be quashed and set aside.

50. It is a well-settled principle of law that cognizance as envisaged in Section 190CrPC is of the offence and not of the offender. The expression "cognizance of any offence" is consistently used in the provisions of Sections 190, 191, 192 and 193. [As a matter of fact, the expression "cognizance of any offence" is also used in Sections 195, 196, 197, 198, 198-A, 198- B and 199. Chapter XV CrPC which governs complaints of Magistrates also emphasises the principle that cognizance is of an offence. The same principle, as we have seen earlier, is emphasised in Chapter XVI in which Section 204(1) adverts to a Magistrate "taking cognizance of an offence".]

56. It is evident from the discussion in *Kishun Singh* [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] and *Dharam Pal* [*Dharam Pal v.*

State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] that in view of the provisions of Section 193CrPC, cognizance is taken of the offence and not the offender. Thus, the Magistrate or the Special Judge does not have the power to take cognizance of the accused. The purpose of taking cognizance of the offence instead of the accused is because the crime is committed against the society at large.

Therefore, the grievance of the State is against the commission of the offence and not the offender. The offender as an actor is targeted in the criminal procedure to provide punishments so as to prevent or reduce the crime through different methods such as reformation, retribution and deterrence. Cognizance is thus taken against the offence and not the accused since the legislative intent is to prevent crime. The accused is a means to reach the end of preventing and addressing the commission of crime."

(Emphasis supplied)

76. Likewise in *Nahar Singh v. State of U.P.*, reported in (2022) 5 SCC 295, this Court made the following observations on *Kishun Singh* (supra) to comment on the nature of cognizance under Section 197 of the Code:

"23. In *Kishun Singh* case [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , the scope of jurisdiction of the Court of Session under Section 193 of the Code was explained, relying on an authority dealing with similar provision under the 1898 Code (*P.C. Gulati v. Lajya Ram* [*P.C. Gulati v. Lajya Ram*, AIR 1966 SC 595 : 1966 Cri LJ 465 : (1966) 1 SCR 560]). The phrase used to explain the implication of taking cognizance by a Court of Session in the judgment of *Kishun Singh* [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] was "cognizance in the limited sense".

24. In para 8 of the Report (in *Kishun Singh* case [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]), it has been held observed : (SCC pp. 24-25)

"8. Section 193 of the old Code placed an embargo on the Court of Session from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it by a Magistrate or there was express provision in the Code or any other law to the contrary. In the context of the said provision this Court in *P.C. Gulati v. Lajya Ram* [*P.C. Gulati v. Lajya Ram*, AIR 1966 SC 595 : 1966 Cri LJ 465 : (1966) 1 SCR 560] , SCR p. 568, AIR p. 599, Cri LJ p. 469 observed as under : (AIR p. 599, para 21)

'21. When a case is committed to the Court of Session, the Court of Session has first to determine whether the commitment of the case is proper. If it be of opinion that the commitment is bad on a point of law, it has to refer the case to

the High Court which is competent to quash the proceeding under Section 215 of the Code. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a court of original jurisdiction and it is such a cognizance which is referred to in Section 193 of the Code.' ""

(Emphasis supplied)

77. It is well noted in a legion of authorities that the commitment which is talked of under Section 193 of the Code is a commitment of the "case" and not that of the "offender". The purpose of Section 193 is to allow Court of Sessions the limited window to deemed to have taken cognizance on its own motion.

78. The question of law formulated by us calls for our examination in the light of the earlier Section 193 of the old Code and the change brought therein by the Code of 1973. It is, therefore, necessary to juxtapose the two provisions:

Old Code	New Code
"Section 193(1): Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.	Section 193: Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

79. From the above, the meaningful and significant change brought about in the Code of 1973 seems manifest. In the earlier provision, the requirement was that the accused must have been committed to the Court of Session by a Magistrate. The legislature made a change by deleting the word 'accused' and provided instead that the 'case' should have been committed to the Court of Session.

80. The Court of Session takes cognizance of the case or the offence as a whole and, therefore, is entitled to summon anyone who, on the material before it, appears to be guilty of such offence to stand trial before it. To highlight, what is committed to the Court of Session by the Magistrate is the case or the offence for trial and not the individual offender therefor. To hold otherwise would be again relapsing into the fallacy that cognizance is taken against individual accused persons and not of the offence as such. This was the evil which the amendment sought to remedy in express terms.

81. In the aforesaid context, we must look into the following observations made in *Joginder Singh vs. State of Punjab* reported in 1979 Cri LJ 333 (Para 6):-

"It will be noticed that both under Section 193 and Section 209 the commitment is of 'the case' and not of 'the accused' whereas under the equivalent provision of the old Code, viz., Section 193(1) and Section 207- A it was 'the accused' who was committed and not 'the case'. It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once "the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to such cognizance and a part of the normal process that follows it;"

(Emphasis supplied)

82. Therefore, what the law under section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are *prima facie* guilty of the crime as well.

83. In *Kishun Singh vs. State of Bihar* reported in (1993) 2 SCC 16, the question before the Court was whether the Court of Sessions to which a case has been committed to for trial by the Magistrate, can without recording evidence, summon a person not named in the police report by exercise of its power under Section 319 CrPC. The two judge Bench held that when a case is committed to the Court of Sessions by the Magistrate under Section 209 on the ground that it is exclusively triable by it, the Sessions Court would have the power to take cognizance of the offence.

It was thus held that since cognizance is taken of the offence and not the accused, if any material suggests the complicity of other persons in the offence, the Court of Sessions can summon such other persons. The court, by drawing a comparison between Section 193 of the Code of 1973 and the Code of 1898, and on a reading of Section 209 CrPC held that both the committal and cognizance is of the offence and not the accused/offender. The Court summarized the position in law in the following observations:-

"7. Section 190 of the Code sets out the different ways in which a Magistrate can take cognizance of an offence, that is to say, take notice of an allegation disclosing commission of a crime with a view to setting the law in motion to bring the offender to book. Under this provision cognizance can be taken in three ways enumerated in clauses (a), (b) and (c) of the offence alleged to have been committed. The object is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police.

Even though the expression take cognizance is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender.

It may Immediately be noticed that under the old provision a Court of Session could not take cognizance of an offence as a court of original jurisdiction unless the accused was committed to it whereas under the recast section as it presently stands the expression the accused has been replaced by the words the case. As has been pointed out earlier, under Section 190 cognizance has to be taken for the offence and not the offender; so also under Section 193 the emphasis now is to the committal of the case and no more on the offender.

So also Section 209 speaks of committing the case to the Court of Session. On a conjoint reading of these provisions it becomes clear that while under the old Code in view of the language of Section 193 unless an accused was committed to the Court of Session the said court could not take cognizance of an offence as a court of original jurisdiction; now under Section 193 as it presently stands once the case is committed the restriction disappears."

"16. Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

(Emphasis supplied)

84. In other words, upon the committal by the Magistrate, the Court of Sessions is empowered to take cognizance of the whole of the incident constituting the offence. The Court of Sessions is thus invested with the complete jurisdiction to summon any individual accused of the crime. The above principles were reiterated in a two judge Bench decision in *State of W.B. vs. Mohd. Khalid* reported in (1995) 1 SCC 684. Justice S Mohan speaking for the Court observed:

"43. Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

(Emphasis supplied)

d. How the decision of this Court in *Dharam Pal* (supra) should be understood.

85. In *Dharam Pal* (supra) a Constitution Bench was called upon to answer the following questions:

"7.1 Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

7.2 If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

7.3 Having decided to issue summons against the appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

7.4 Can the Sessions Judge issue summons under Section 193 CrPC as a court of original jurisdiction?

7.5 Upon the case being committed to the Court of Session, could the Sessions Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

7.6 Was *Ranjit Singh v. State of Punjab*, which set aside the decision in *Kishun Singh v. State of Bihar*, rightly decided or not?"

(Emphasis supplied)

86. Answering the reference, the Constitution Bench held that:-

(i) The Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons de hors the police report. The Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) of the Code. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused.

(ii) Thereafter, if on being prima facie satisfied that a case had been made out to proceed against the persons named in Column 2 of the report, he may proceed to try the said persons or if he is satisfied that a case had been made out which was triable by the Court of Session, he must commit the case to the Court of Session to proceed further in the matter. Further, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same is found to be triable by the Sessions Court.

(iii) The Sessions Judge is entitled to issue summons under Section 193 of the Code upon the case being committed to him by the Magistrate. Section 193 speaks of cognizance of offences by the Court of Session. The key words in the section are that 'no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code'. The provision of Section 193 entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. The submission that the cognizance indicated in Section 193 deals not with cognizance of an offence but of the commitment order passed by the Magistrate, was specifically rejected in view of the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

(iv) Cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge.

87. In the process of coming to the aforesaid conclusions, this Court accepted the view expressed in *Kishun Singh (supra)* that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offence which would include the summoning of the person not named as offender but whose complicity in the case would be evident from the materials available on record. It specifically held that upon committal under Section 209 of the Code, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein. (See: *Balveer Singh (supra)*)

88. At the same time, the Court also held that it would not be correct to hold that on receipt of a police report and seeing that the case is triable by a Court of Session, the Magistrate has no other function but to commit the case trial to the Court of Session and the Sessions Judge has to wait till the stage under Section 319 of the Code is reached before proceeding against the persons against whom a prima facie case is made out from the material contained in the case papers sent by the Magistrate while committing the case to the Court of Session. This is reflected in the following passage:

"33. As far as the first question is concerned, we are unable to accept the submissions made by Mr. Chahar and Mr Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate has no other function, but to commit the case for trial to the Court of Session, which could only resort to Section 319 of the Code to array any other person as accused in the trial. In other words, according to Mr Dave, there could be no intermediary stage between taking of cognizance under Section 190(1)(b) and Section 204 of the Code issuing summons to the accused.

The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Sessions Judge, till the Section 319 stage

was reached in the trial. Furthermore, in the event the Sessions Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same."

(Emphasis supplied)

89. In *Dharam Pal* (supra), a Constitution Bench was deciding on whether the Court of Sessions has the power under Section 193 CrPC to take cognizance of the offence and then summon other persons not mentioned as accused in the police report. The issue was referred to a five-judge Bench in view of the conflicting decisions in *Kishun Singh* (supra) and *Ranjit Singh v. State of Punjab* reported in (1998) 7 SCC 149. As discussed above, while in *Kishun Singh* (supra), it was held that the Sessions Court has such a power under Section 193 CrPC, it was held in *Ranjit Singh* (supra) that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 CrPC, the Court could not arraign any other person as the accused.

The Constitution Bench affirmed the view in *Kishun Singh* (supra) on the ground that the Magistrate before whom the final report is submitted has ample powers to disagree with the report filed by the police under Section 173(2) and to proceed against the accused persons de hors the police report. However, if the interpretation in *Ranjit Singh* (supra) were to be followed, it would lead to an anomaly where the Sessions Court would not have this power till the Section 319 stage is reached, which the Magistrate would otherwise have. In that context, the Constitution Bench observed:

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

(Emphasis supplied)

90. In view of the aforesaid discussion, the position of law is clear that the Court of Session has power under Section 193 CrPC to summon a person as accused to stand trial, even if he has not been charge-sheeted by the police and whose complexity in the crime appears in the evidence available on record. To hold in

such a situation, that if the investigating agency blatantly exonerates an accused person and the Magistrate does not consequently commit him, the Court of Session itself would be rendered powerless to put such an offender in the dock at the very opening stage of the trial, would to our mind only hamper the cause of justice rather than advance it.

It is to be borne in mind that herein we are construing procedural provisions and it is well-settled that procedure is the hand-maid of justice and is not to be employed as a roadblock thereto. Therefore on the larger canon of construction there appears to be no logic for narrowly construing the statute so as to denude the Court of Session of the power to summon a person to stand his trial at the outset even when wholly convinced of a prima facie case against him on the basis of materials in the final report which is admittedly adequate for framing a charge against the committed accused under section 228 or discharging him under section 227 of the Code.

91. Our judgment would remain incomplete without referring to one very erudite judgment of this Court rendered in *Raghubans Dubey vs. State of Bihar* reported in (1967 Cri LJ 1081) (SC). Therein a first information report had been lodged against as many as 15 persons including petitioner Raghubans Dubey. On investigation, the police submitted final form under Section 173 in which Raghubans Dubey was not sent up by the police for trial whilst the remaining accused were. The Sub-divisional Magistrate took cognizance against the fourteen accused persons and expressly discharged Raghubans Dubey and thereafter transferred the case to a Magistrate for commitment.

In the course of the trial, the transferee Magistrate noticed that Raghubans Dubey had been named in the first information report and was also named by 5 more witnesses in their statements under Section 161. He, therefore, summoned Raghubans Dubey as an accused to stand his trial along with others. This was challenged on behalf of the petitioner Raghubans Dubey before the High Court. But the Division Bench of the High Court while upholding the action of the Magistrate in summoning the additional accused person rejected the revision petition. Upholding the High Court's view in an even stronger and more categorical terms, Sikri, J., speaking for the Bench, observed (Para 9 of 1967 Cri LJ 1081):

"In our opinion once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

(Emphasis supplied)

92. From the above, it inflexibly follows that once a court of competent jurisdiction, be it a Magistrate or the Court of Session, takes cognizance of the offence, it is not only within the court's powers to summon any one who, on the adequate materials, appears to it to be prima facie guilty of the said offence but indeed it is its duty to do so. Raghubans Dubey's case (*supra*) arose under the old Code of 1898, but it is manifest that the situation is identical under the Code of 1973 too, and the same view has then been expressly reiterated in *Hareram Satpathy vs. Tikaram Agarwala*, reported in (1978) 4 SCC 58 : AIR 1978 SC 1568 : (1978 Cri LJ 1687) in the context of commitment on a murder charge to the Court of Session by a Magistrate of a person not sent up as an accused by the investigating agency.

93. The larger and universal principle underlying the aforesaid rationale has been enunciated in powerful language by Desai, J., speaking for the Constitution Bench in *A.R. Antulay v. Ramdas Srinivas Nayak*, reported in (1984) 2 SCC 500 in the following terms:

"Punishment of the offender in the interest of the society being one of the objects behind penal statutes, enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."

(Emphasis supplied)

94. We shall now proceed to specifically deal with the contention canvassed by the learned counsel appearing for the petitioner that cognizance of an offence can only be taken once and, if the Magistrate has taken cognizance of an offence and committed it to the Court of Session, then there is no question of taking fresh cognizance of the offence by the Court of Session upon the case being committed to it. There is a basic fallacy in this contention of the learned counsel. With all humility at our command we say that there is a misconception on the part of the learned counsel so far as the position of law on the subject is concerned. It appears that the learned counsel thought to develop such argument relying on some observations made by this Court in *Dharam Pal* (*supra*). The observations are:-

"27. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, the Magistrate takes cognizance of the offence and then commits the case to the Court of Sessions, the question of taking fresh

cognizance of the offence, and thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session.

The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provision of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge."

(Emphasis supplied)

95. The aforesaid observations made by the Constitution Bench of this Court in *Dharam Pal* (supra) should be understood to mean that when the investigating officer files charge sheet for the offence exclusively triable by the Court of Session, then the Magistrate has to look into the charge sheet and prima facie ascertain from the materials on record whether the case is one exclusively triable by the Court of Session. Once the Magistrate is prima facie convinced that the case is exclusively triable by the Court of Session, the next step in the process is to commit the case to the Court of Session under Section 209 of the CrPC.

At this stage, the Magistrate takes cognizance of the offence and not the offender. Once the case is committed to the Court of Session and the Court of Session finds from the materials on record that a particular individual, though not charge sheeted, is also prima facie involved in the alleged crime, then the Court of Session has the power to take cognizance of the offence for the purpose of summoning that person not named as offender to face the trial. One should try to understand the purport of Section 193 CrPC. What does Section 193 CrPC provide for? Section 193 CrPC removes the legal embargo for the Court of Session to take cognizance of any offence once the case is committed to it because upon the committal, the Court of Session assumes the character of the Court of original jurisdiction.

96. Let us try to understand the issue that was involved in *Dharam Pal* (supra). The primary issue in *Dharam Pal* (supra) was one regarding the power of the Sessions Court to issue summons against the person who is not named in the police report after commitment of case to it by the Magistrate under Section 209 of the Code. The other question that was considered in *Dharam Pal* (supra) was whether under Section 209 of the Code, the Magistrate was obliged to take

cognizance of the offence before committing the case to the Court of Sessions. This moot question was answered by the Constitution Bench as under:

"39. This takes us to the next question as to whether under section 209 the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter proceed to issue summon is not in accordance with law. If cognizance is to be taken of the offence it could be taken either by the Magistrate or by the Court of Session.

The language of section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with assumption of such jurisdiction. The provisions of section 209 will, therefore have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge."

97. A bare reading of the observations contained in para 39 of Dharam Pal (supra) referred to above, gives an impression that what the Court wanted to convey was that at the time of committal, the Magistrate does not take cognizance of the offence and plays a very limited and passive role in committing the case to the Court of Sessions. With all humility at our command and with due deference if this is what was in the mind of the learned Judges then we are afraid that is not the correct position of law. The Magistrate does take cognizance of the offence but only for the limited purpose of committing the case to the Court of Sessions, having regard to the nature of the offences.

98. At this stage, we may give one simple illustration as to in what circumstances, it could be said in law that cognizance of offence can only be taken once. In other words, if cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Sessions.

99. Take a case where a private complaint is lodged in the Court of Magistrate for an offence which is exclusively triable by the Court of Sessions and the Magistrate takes cognizance upon the said complaint and issues process under Section 204 of the Code and thereafter commits the case to the Court of Sessions, then in such circumstances, it could be said that there is no question for the Court of Sessions once again to take cognizance of the offence.

100. Once again at the cost of repetition, we state that the Court of Session takes cognizance of the case or the offence as a whole and, therefore, is entitled to summon anyone who on the materials before it appears to be involved in such offence to stand for trial before it. It is very important and necessary to understand that what is committed to the Court of Session by the Magistrate is the "case" or the "offence" for trial and not the "individual offender" thereof.

101. In view of what we have explained as aforesaid, we have no hesitation in saying that there is no merit, worth the name, in the contention of the learned counsel appearing for the petitioner. It is absolutely incorrect on the part of the learned counsel to assert that the petitioner could have been summoned as an accused only during the course of trial under the provisions of Section 319 CrPC. Section 319 CrPC stands absolutely on a different footing.

102. The matter may equally be examined from one another angle. For a moment one may leave the procedural provisions altogether apart. On larger principle, one can see no adequate reason to fetter and shackle the power of a superior court like that of the Court of Session from summoning a person as an additional accused to stand trial when, on the materials before it, it is satisfied that there exists a conclusive or, in any case, a prima facie case against him. It is for this reason that in Raghubans Dubey's case (supra), this Court labelled this power as being virtually coupled with the duty of summoning such an additional accused and such a power is part and parcel of the proceeding initiated by taking cognizance of the offence.

The glaring instances necessitating the exercise of such power or duty would be when the investigating agency in its report under Section 173 without any reason or basis whatsoever exonerates a person specifically named in the first information report and fully implicated in the crime. Indeed, such an example is provided pertinently in the present case itself. Herein the Court of Session has come to the categorical conclusion that the petitioner though not named at the earliest in the FIR, yet the investigation revealed his involvement along with the charge sheeted accused.

F. CONCLUSION

103. We summarize our final conclusion as under:-

(i) Both under Sections 209 and 193 respectively of the Code 1973 commitment is of, the "case" and not of the "accused" as distinguished from Section 193(3) and Section 207A respectively of the old Code where commitment was of the "accused" and not the "case". For committing a case there must be an offence and involvement of a person who committed the same. Even though the case is committed yet cognizance taken is of the offence and not the offender.

Once the case in respect of the offence qua the accused, who are before the Court, is committed and cognizance is taken, the embargo under Section 193 regarding taking cognizance only by committal goes. Summoning additional persons will then be regarded as incidental to the cognizance already taken on committal and as, a part, of, the normal process that follows. A fresh committal of such person is not necessary.

(ii) Section 319(4)(b) enacts a deeming provision in that behalf dispensing with the formal committal order by providing that the person added will be deemed to have been an accused even when cognizance was taken first. Cognizance is of the offence and not the offender and it is the duty of the court to find out who the offenders are.

Proceedings could be instituted and cognizance taken also against persons not known at that time. This is clear if the provisions of Section 190 of the Code are read along with the definition of complaint in Section 2(d) which include allegations against unknown person also. Making the unknown persons known is therefore within the powers of the court. When such persons become known by the evidence during inquiry or trial it is not only the right but also the duty of court to bring them on record and proceed against them in an attempt to bring them to justice. There cannot, therefore, be any dispute regarding the powers of court to bring the person under Section 319(1).

(iii) Once the Court takes cognizance of the offence (not of the offender), it becomes the Court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the Court's duty to summon them to stand trial along with those already named, since summoning them would only be part of the process of taking cognizance.

104. For all the foregoing reasons we are of the view that no error not to speak of any error of law can be said to have been committed by the High Court in passing the impugned order.

105. In the result, this petition fails and is hereby dismissed.

106. The trial court shall now proceed to frame charge if not yet framed and start recording with the oral evidence of the witnesses. The trial shall be completed within a period of six months from the date of the receipt of the writ of this order.

107. The Registry shall circulate one copy each of this judgment to all the High Courts.

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

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

New Delhi;

August 05, 2025.

IN THE SUPREME COURT OF INDIA

Narayan Yadav
Vs.
State of Chhattisgarh

**[Criminal Appeal No. 3343 of 2025
arising out SLP (Crl.) No. 10595 of 2025]**

HEADNOTE – An FIR of a confessional nature made by an accused person is inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct under Section 8 of the Indian Evidence Act, 1872. Additionally, any information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Indian Evidence Act, 1872. However, a non-confessional FIR is admissible against the accused as an admission under Section 21 of the Indian Evidence Act, 1872 and is relevant.

JUDGMENT

J.B. Pardiwala, J.,

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

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A. FACTUAL MATRIX

B. ANALYSIS

a. Confessional FIR is not Admissible in Evidence

b. Evidence of an Expert Witness is only Advisory in Nature

c. Implication of Section(s) 27 and 8 of the Act of 1872

d. Incorrect application of Exception 4 to Section 300 of the IPC

C. CONCLUSION

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Chhattisgarh in Criminal Appeal No. 1538 of 2021 dated 16.01.2025 (hereinafter referred to as "Impugned Judgment") by which the appeal preferred by the appellant herein against the judgment and order of conviction passed by the Trial Court came to be partly allowed by altering the conviction of the appellant herein from Section 302 of the Indian Penal Code, 1860 (for short, "the IPC") to Section 304 Part I of the IPC.

A. FACTUAL MATRIX

3. The appellant (original accused) himself lodged a First Information Report (FIR) dated 27.09.2019 with Korba Kotwali Police Station, District Korba, which came to be registered for the offence punishable under Section 302 of the IPC. The FIR reads thus:

"On 27.09.2019 I came to the P.S. Kotwali on the orders of Chowki Incharge for getting the Nalsi number in Crime No. 0/19 for the offence under Sections 302 and 380 IPC respectively. Nalsi number detailed that I am residing in the house of my relative Rajnath Yadav situated near the Pump House, Korba. I earn my livelihood as a milk supplier. I started work with Ram Babu Sharma, Thekedar past 15-20 days. Ram Babu Sharma used to call me for having drink at his house. Ram Baby invited me at his place on 24.09.2019. I went to his house at about 9.30 PM situated at Parshuram Nagar.

We both sat and drank. Meanwhile I showed my girlfriend's pic from my mobile. Then he said that get your girlfriend at my place and leave her with me for one night. Hearing this quarrel started between us and we started to fight. Then I picked up a knife kept in his house for cutting vegetables and inflicted blows on his neck and stomach in anger and killed him by hitting a log of wood on his head, legs and private part. Thereafter I dragged his dead body near the bedside and covered it with a cloth that I took out from an almirah.

Then I ransacked his room and took away his purse containing Rs. 7000 and keys of the Bolero car. I locked the room from outside and got the Bolero outside and locked the main door and ran towards Bilaspur in Bolero. I met with an accident at Raipur Road, ahead of Bilaspur. When I regained consciousness in morning I found myself in Saragaon Hospital where my mother and Yuvraj Yadu both were present. Today morning I came to Korba after getting discharged from the hospital. I informed about the incident to my mausa Rajnath Yadav, Rahul Chaudhari and Anuj Yadav and also informed the CSEB Chowki. Then I went to Ram Babu's house with police people and pointed out the dead body. My vehicle is at the place of accident. I am filing the report. Investigation to be done."

4. Upon registration of the FIR, lodged by the appellant himself, at the concerned Police Station referred to above, the investigation commenced. It appears that the investigating officer, after arresting the appellant, took him to the house of the deceased. After breaking open the house, the dead body of the deceased was found lying in a pool of blood inside his residence. A panchnama of the scene of offence was prepared in the presence of panch witnesses.

The knife allegedly used by the appellant to inflict injuries on the deceased was recovered from the place of occurrence, i.e., the deceased's house. The clothes

and other articles were also collected in presence of the panch witnesses by preparing a panchnama, and were sent to the Forensic Science Laboratory for chemical analysis. The clothes of the appellant were discovered at his instance from the residence of his uncle, Rajnath Yadav, by drawing a panchnama.

5. The inquest panchnama of the dead body of the deceased was drawn in the presence of the panch witnesses. The body of the deceased was then sent for post-mortem examination. The post-mortem report Exhibit-PW 34 recorded the following injuries found on the body of the deceased:

"1. An incised wound was present on the right Side of his forehead measuring 6 X 2 cm, deep to the bone, in a vertical position.

2. An incised wound was present on the left side of his forehead, the size of which was 3 X 1 cm, deep to the bone, in a vertical position.

3. An incised wound was present on the skin of the right parietal bone of the head, which was 4 X 2 cm, deep to the bone, in a vertical position.

4. An incised lesion was present on the skin of the left parietal bone, which was 5 X 2 cm in size, deep to the bone, in a vertical position, which was on the middle part of parietal bone.

5. An incised wound was present on the anterior part of the abdomen at the iliac fossa part which was 4 X 2 X 2 cm in size.

6. An incised wound was present on the upper right side of the chest, below the clavicle bone, the size of which was 4 X 2 deep to the upper part of the lung."

6. The cause of death, as stated in the post-mortem report and duly proved by Dr. R.K. Divya (PW-10), was shock resulting from excessive bleeding from the right side of the chest and injury to the upper lobe of the right lung.

7. Upon completion of the investigation, chargesheet came to be filed by the investigating officer, and the filing of chargesheet for the offence enumerated above culminated in the Sessions Case No. 9 of 2020.

8. The Sessions Judge, Korba, proceeded to frame charge against the appellant for the offences mentioned above. The appellant pleaded not guilty to the charge and claimed to be tried. In the course of trial, the prosecution examined the following witnesses:

i. PW-1, Rahul Kumar Chaudhari, panch witness (turned hostile);

ii. PW-2 Kamlesh Kumar, son of the deceased;

- iii. PW-3 Ravishanker Sriniwas, panch witness;
- iv. PW-4 Rampradeep Sharma, panch witness;
- v. PW-5 Ramniwas Sharma, panch witness;
- vi. PW-6 Jalashwar Sakar, panch witness;
- vii. PW-7 B.R. Chaudhary, Police witness
- viii. PW-8 Sudama Prasad, Police witness
- ix. PW-9 Ashok Pandey, Police witness
- x. PW-10 Dr. R.K. Divya, Medical Officer who performed postmortem
- xi. PW-11 Hemant Patle, Police witness

9. The prosecution also adduced a few documentary evidence.

10. Upon completion of the recording of the oral evidence, further statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the appellant claimed that he had been falsely implicated in the alleged crime and asserted his complete innocence.

11. The Trial Court, upon overall appreciation of both oral as well as the documentary evidence on record, reached the conclusion that the prosecution had proved its case beyond reasonable doubt, and accordingly, it held the appellant guilty of the offence of murder and sentenced him to undergo life imprisonment.

12. The appellant being aggrieved by the judgment and order of conviction passed by the Trial Court, preferred an appeal before the High Court. The High Court partly allowed the appeal and altered the conviction of the appellant from Section 302 of the IPC to Section 304 Part I of the IPC, giving benefit of Exception 4 to Section 300 of the IPC.

13. In such circumstances referred to above the appellant is before this Court with the present appeal.

B. ANALYSIS

14. 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.

15. The entire judgment of the High Court could be termed as erroneous on several grounds, there are errors apparent on the face of the Impugned Judgment. The first misstep was that the High Court examined the medical evidence on record in detail and then proceeded to directly corroborate it with the contents of the FIR lodged by the appellant himself. In doing so, the High Court fully convinced itself that the appellant's statements in the form of a confession, as contained in the FIR, were entirely corroborated by the medical evidence. Consequently, the Court concluded that the appellant had committed the alleged crime. In arriving at such a conclusion, the High Court overlooked some fundamental principles of criminal jurisprudence.

a. Confessional FIR is not Admissible in Evidence

16. The FIR was exhibited in evidence (Exhibit P-14) through the oral evidence of the investigating officer PW-9, Ashok Pandey. PW-9 proved his signature on the FIR and also identified the signature of the first informant i.e., the appellant-herein. However, the other contents of the FIR could not have been proved through the testimony of the investigating officer. A plain reading of the FIR indicates that it contains a confession by its maker i.e., the appellant-herein, regarding the commission of the alleged offence.

17. A statement in an FIR can normally be used only to contradict its maker as provided in Section 145 of the Indian Evidence Act, 1872 (for short, "the Act of 1872"), or to corroborate his evidence as envisaged in Section 157 of the Act of 1872. In a criminal trial, however, neither of these is possible as long as the maker of the statement is an accused in the case, unless he offers himself to be examined as a witness [See: Nisar Ali v. State of U.P., 1957 SCC OnLine SC 42]. J.L. Kapur, J. speaking for the three-Judge Bench in that decision has observed:

"A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

(Emphasis supplied)

18. The High Court failed to take into consideration two landmark decisions of this Court - one in Faddi v. State of M.P., 1964 SCC OnLine SC 123, and the other in Aghnoo Nagesia v. State of Bihar, 1965 SCC OnLine SC 109. 19. In Faddi (supra), this Court stated that:

"If the FIR given by the accused contains any admission as defined in Section 17 of the Evidence Act there is no bar in using such an admission against the maker thereof as permitted under Section 21 of the Act, provided such admission is not

inculpatory in character. In the judgment their Lordships distinguished Nisar Ali case [AIR 1957 SC 366] in the following lines:

"But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course, a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused."

(Emphasis supplied)

20. In Aghnoo Nagesia (supra), this Court sounded a note of caution that when the statement in the FIR given by an accused contains incriminating materials and it is difficult to sift the exculpatory portion therefrom, the whole of it must be excluded from evidence.

21. In Faddi (supra), the issue before this Court was whether the FIR lodged by the accused himself therein was admissible in evidence. In the facts of the said case, this Court held that the objection to the admissibility of the FIR lodged by the appellant was not sound, as the FIR only contained a few admissions, and those admissions did not amount to a confession so as to render the entire FIR inadmissible in evidence. We quote the relevant observations made by this Court in Faddi (supra) as under:

"14. It is contended for the appellant that the first information report was inadmissible in evidence and should not have been therefore taken on the record. In support, reliance is placed on the case reported as Nisar Ali v. State of U.P [AIR 1957 SC 366]. We have considered this contention and do not see any force in it.

15. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements' of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Act.

Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made

by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

16. The Privy Council, in very similar circumstances, held long ago in *Dal Singh v. King Emperor* [LR 44 IA 137] such first information reports to be admissible in evidence. It was said in that case at p. 142:

"It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpur. As such the statement is proper evidence against him. It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."

Learned counsel for the appellant submits that the facts of that case were distinguishable in some respects from the facts of this case. Such a distinction, if any, has no bearing on the question of the admissibility of the report. The report was held admissible because it was not a confession and it was helpful in determining the matter before the Court.

17. In *Nisar Ali case* [AIR 1957 SC 366] Kapur, J. who spoke for the Court said, after narrating the facts:

"An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression 'it cannot be used as evidence against the maker at the trial if he himself becomes an accused'

supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a coaccused.

Further, the last sentence of the abovequoted observation is significant and indicates what the Court meant was that the first information report lodged by Quadratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean -as it had not to determine in that case - that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this observation has been understood in this way by the Rajasthan High Court in *State v. Balchand* [AIR 1960 Raj 101] and in *State of Rajasthan v. Shiv Singh* [AIR 1962 Raj 3] and by the Allahabad High Court in *Allahdia v. State* [1959 All LJ 340].

18. We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it."

(Emphasis supplied)

22. We now proceed to look into the decision of this Court in *Aghnoo Nagesia* (supra). The following observations of this Court at paragraphs 9 to 18 are relevant and are quoted below:-

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides:

"No confession made to a police officer shall be proved as against a person accused of an offence". The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the

accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate.

The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is proved 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.

Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s. (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section.

Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy and the fullest effect should be given to them.

10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S. 157 of the Evidence Act or to contradict him under S. 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the

information is admissible against him as evidence of his conduct under S. 8 of the Evidence Act.

If the information is a non-confessional statement, it is admissible against the accused as an admission under S. 21 of the Evidence Act and is relevant, see *Faddi v. State of Madhya Pradesh*, Cri. Appeal No. 210 of 1963, dated 24-1-1964: (AIR 1964 SC 1850), explaining *Nisar Ali v. State of U. P.*, (S) AIR 1957 SC 366 and *Dal Singh v. King Emperor*, 44 Ind App 137: (AIR 1917 PC 25). But a confessional first information report to a police Officer cannot be used against the accused in view of S. 25 of the Evidence Act.

11. The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in *Pakala Narayanaswami v. Emperor*, 66 Ind App 66 at p. 81: (AIR 1939 PC 47 at p. 52). Lord Atkin observed:

"no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

These observations received the approval of this Court in *Palvinder Kaur v. State of Punjab* (1), 1953 SCR 94 at p. 104; (AIR 1952 SC 354 at p. 357). In *State of U. P. v. Deoman Upadhyaya*, (1961) 1 SCR 14 at p. 21: (AIR 1960 SC 1125 at pp. 1128-1129). Shah, J., referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains selfexculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See *Hanumant Govind v. State of M. P.* 1952 SCR 1091 at p. 1111: (AIR 1952 SC 343 at p. 350) and 1953 SCR 94 : (AIR 1952 SC 354). The accused is entitled to insist that the entire admission including the exculpatory

part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory; and the prosecution intends to use the whole of the statement against the accused.

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement.

Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as S.24, S. 25 and S. 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section under as S. 27 of the Evidence Act. Little substance and content would be left in Ss. 24, 25 and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

15. Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under S. 301-A of the Indian Penal Code and a statement made by him to a police officer that "I was drunk: I was driving a car at a speed of 80 miles per hour. I could see A on the road at a distance of 80 yards; I did not blow the horn: I made no attempt to stop the car; the car knocked down A". No single sentence in this statement amounts to a confession; but the statement read as a whole amounts to a confession of an offence under S. 304- A of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a nonconfessional statement.

Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him". In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the Indian Penal Code. Unless he brings his case within one of the recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and

knowledge of the accused, and negatives the right of private defence, accident and other possible defences. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or promise as contemplated by S. 24 of the Evidence Act, the whole of the confession is excluded by S. 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by S. 24. To hold that the proof of the admission of other incriminating facts is not barred by S. 24 is to rob the section of its practical utility and content.

It may be suggested that the bar of S. 24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of S. 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, Ss. 25 and 26 bar not only proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression "confession" in Ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Ss. 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied.

Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus fall within the purview of Ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, S. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the

confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S. 27."

(Emphasis supplied)

23. The legal position, therefore, is this - a statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is, as an admission under Section 21 of the Act of 1872, against its maker alone, and only if the admission does not amount to a confession.

24. To put the aforesaid in simpler terms, an FIR of a confessional nature made by an accused person is inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct under Section 8 of the Act of 1872. Additionally, any information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Act of 1872. However, a non-confessional FIR is admissible against the accused as an admission under Section 21 of the Act of 1872 and is relevant.

25. Thus, the first error that the High Court committed was to read the contents of the FIR lodged by the appellant into evidence. As observed earlier, the FIR lodged by the appellant amounts to a confession, and any confession made by an accused before the police is hit by Section 25 of the Act of 1872. There was no question at all for the High Court to seek corroboration of the medical evidence on record with the confessional part of the FIR lodged by the appellant.

26. Once we say that the contents of the FIR are hit by Section 25 of the Act of 1872, being a confession before a police officer, the only remaining evidence on record is the medical evidence and the oral evidence of the panch witnesses.

b. Evidence of an Expert Witness is only Advisory in Nature

27. At this stage, we may look into some curious findings recorded by the High Court in its Impugned Judgement. We quote the relevant paragraphs as under:

"16. Now, the next question for consideration would be whether the accused/appellant herein is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimony of Dr. R.K. Divya (PW-10), who conducted post-mortem had opined that the cause of death is shock due to right side of haemothorax due to laceration of apex lobe

of right lung secondary to incised wound over upper part of right side of front of chest.

The Doctor ultimately opined through his report the nature of death to be homicidal. Thus, on the basis of testimony of Dr R.K. Divya (PW-10), it is clear that it is the appellant herein who on the fateful date and time has caused grievous injuries to the deceased, due to which he died. As such, the learned trial Court has rightly held that it is the appellant/accused who has caused injuries over the body of the deceased and caused his death. Accordingly, we hereby affirm the said finding.

26. Conviction of the appellant is based on the evidence of Dr. R.K. Divya (PW-10), who has conducted postmortem on the body of deceased, vide Ex.P/34 and he found following injuries on the dead body of the deceased.

27. According to Dr. R.K. Divya (PW-10). the cause of death of deceased is shock due to right side of haemothorax due to laceration of apex lobe of right lung secondary to incised wound over upper part of right side of front of chest and nature of death was homicidal. It has been also opined by the concerned Doctor that the injury caused to the deceased has been by the sharp edged weapon and the same may be caused by knife.

28. Reverting to the facts of the present case, in light of principles of law laid down by their Lordships of the Supreme Court in the above stated judgments, it is quite vivid that the appellant himself has lodged a First Information Report alleging that, on the date of incident, some quarrel took place between the appellant and the deceased on the ground of showing the photograph of his girlfriend to the deceased and the deceased stated to bring his girlfriend and left her with him for one night, then out of anger and on sudden quarrel, the appellant assaulted the deceased with a knife on his chest, by which, he received grievous injury and died on the same day of the incident on account of excessive bleeding due to injury on his chest.

It further appears from the fact on record that appellant after committing the crime in question, has lodged the report and upon his memorandum some incriminating articles have been recovered from his instance and upon further investigation, second memorandum has been recorded, by which, his clothes were recorded. It is apparent that though there was no premeditation on the part of the appellant to cause death of deceased, but he had given false version."

28. The High Court should have been mindful of the fact that a doctor is not a witness of fact. A doctor is examined by the prosecution as a medical expert for the purpose of proving the contents of the post-mortem report and the medical certificates on record, if any. An expert witness is examined by the prosecution

because of his specialized knowledge on certain subjects, which the judge may not be fully equipped to assess. The evidence of such an expert is of an advisory character. The credibility of the expert witness depends on the reasons provided in support of his conclusions, as well as the data and material forming the basis of those conclusions. An accused cannot be held guilty of the offence of murder solely on the basis of medical evidence on record. So far as the panch witnesses are concerned their depositions do not inspire any confidence.

29. Most of the panch witnesses turned hostile. If at all, the public prosecutor wanted to prove the contents of the panchnamas after the panch witnesses turned hostile, he could have done so through the evidence of the investigating officer. However, the investigating officer also failed to prove the contents of the panchnamas in accordance with law. Thus, there is nothing on record by way of evidence relating to any discovery of fact is concerned. In other words, no discovery of fact at the instance of the appellant, relevant and admissible under Section 27 of the Act of 1872, has been established.

c. Implication of Section(s) 27 and 8 of the Act of 1872

30. The learned counsel appearing for the State, strenuously urged before us to take into consideration the conduct of the appellant which, according to him, is relevant under Section 8 of the Act of 1872. He led stress on the following circumstances:

- i. The appellant himself went to police station and lodged the FIR;
- ii. While, at the scene of offence panchnama was being drawn, appellant pointed out that the body of the deceased was lying in between the two walls inside the house of the deceased;
- iii. The appellant led the Investigating Officer and the panchnama witnesses to the house of his uncle, Rajnath Yadav, and pointed out the place where he had kept his clothes worn at the time of the incident.
- iv. A bloodstain was also found on the shirt of the appellant, however, the learned counsel fairly conceded that there is nothing to indicate that the bloodstain matched with the blood group of the deceased.

31. The first and most fundamental flaw in the testimony of all the aforementioned prosecution witnesses is that none of them have specifically deposed to the exact statement allegedly made by the appellant, which purportedly led to the discovery of a fact relevant under Section 27 of the Act of 1872.

32. Section 27 of the Act of 1872 reads thus:

"27. How much of information received from accused may be proved.-

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

33. The conditions necessary for the applicability of Section 27 of the Act of 1872 are:

- i. That consequent to the information given by the accused, it led to the discovery of some fact;
- ii. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact for the first time was derived from the information given by the accused;
- iii. The discovery of a fact which is the direct outcome of such information;
- iv. Only such portion of the information as connected with the said discovery is admissible;
- v. The discovery of the fact must relate to the commission of some offence.

34. In the aforesaid context, we may refer to and rely upon the decision of this Court in *Murli v. State of Rajasthan*, reported in (2009) 9 SCC 417, which held that the contents of the panchnama are not the substantive piece of evidence. It reads thus;

"34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box"

(Emphasis supplied)

35. In the aforesaid context, our attention was drawn to a decision of this Court in the case of *A. N. Venkatesh & Anr. v. State of Karnataka*, reported in (2005) 7 SCC 714, which states thus:

"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such

conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (UT of Delhi)* [*Prakash Chand v. State (UT of Delhi)*, (1979) 3 SCC 90 : 1979 SCC (Cri) 656] . Even if we hold that the disclosure statement made by the appellant-accused (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

(Emphasis supplied)

36. In this context, we deem it necessary to sound a note of caution. While the conduct of an accused may be a relevant fact under Section 8 of the Act of 1872, it cannot, by itself, serve as the sole basis for conviction, especially in a grave charge such as murder. Like any other piece of evidence, the conduct of the accused is merely one of the circumstances the court may consider, in conjunction with other direct or circumstantial evidence on record. To put it succinctly, although relevant, the accused's conduct alone cannot justify a conviction in the absence of cogent and credible supporting evidence.

d. Incorrect application of Exception 4 to Section 300 of the IPC

37. We could have concluded the judgment at this stage by allowing the appeal and thereby acquitting the appellant of all the charges against him. However, we consider it necessary to make certain observations regarding Exception 4 to Section 300 of the IPC. We wish to explain why the High Court could not have invoked Exception 4 to Section 300 of the IPC and altered the conviction from Section 302 to 304 Part I of the IPC.

Had there been any other oral or documentary evidence on record connecting the appellant herein with the alleged crime, we would have dismissed his appeal. Even while dismissing his appeal and holding him guilty of the offence of murder, we would not have been in a position to interfere with the erroneous application of Exception 4, as there is no appeal at the instance of the State challenging the acquittal under Section 302 of the IPC. Nevertheless, it is necessary to explain why the High Court committed an error in bringing the case within Exception 4 of Section 300 of the IPC.

38. Section 299 of the IPC explains culpable homicide as, causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death, or the likelihood of causing death. While, the third category confines itself to the knowledge that the act complained of is likely to cause death. On the facts of this case, the offence of culpable homicide is clearly made out.

39. Section 300 of the IPC explains murder and it provides that culpable homicide is murder if, the act by which the death is caused is done with the intention of causing death, or the act complained of is so imminently dangerous that it must in all probability cause death, or "such bodily injury as is likely to cause death". There are some exceptions when culpable homicide is not murder and we are concerned with Exception 4 which reads:

"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault."

40. Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the words used in the provision itself. It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel. The Exception deals with a case of provocation not covered by Exception 1, although it would have been more appropriately placed after that exception. It is founded upon the same principle, as both involve the absence of premeditation.

However, while Exception 1 involves total deprivation of self-control, Exception 4 refers to that heat of passion which clouds a person's sober reason and urges them to commit acts they would not otherwise commit. There is provocation in Exception 4, as there is in Exception 1, but the injury caused is not the direct consequence of that provocation. In fact, Exception 4 addresses cases where, notwithstanding that a blow may have been struck or provocation given at the outset of the dispute, regardless of how the quarrel originated, yet the subsequent conduct of both parties' places them on an equal footing with respect to guilt.

41. A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side. If it were, Exception 1 would be the more appropriate provision. There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame.

One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. The protection of Exception 4 may be invoked if death is caused: (a) without

premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.

42. To bring a case within Exception 4, all the ingredients mentioned therein must be satisfied. It is important to note that the term "fight" occurring in Exception 4 to Section 300 of the IPC is not defined in the IPC. A fight necessarily involves two parties - it takes two to make a fight. The heat of passion requires that there must be no time for the passions to cool, and in such case, the parties may have worked themselves into a fury due to a prior verbal altercation.

A fight is a combat between two and more persons, whether with or without weapons. It is not possible to enunciate any general rule as to what constitutes a "sudden quarrel". This is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not enough to show that there was a sudden quarrel and no premeditation. It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

43. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", it will be convenient to approach the problem in three stages. The question to be considered at the first stage is, whether the accused committed an act which caused the death of another person. Proof of a causal connection between the act of the accused and the resulting death leads to the second stage, for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299 of the IPC. If the answer to this question is, *prima facie*, found in the affirmative, the next stage involves considering the application of Section 300 of the IPC.

At this stage, the court must determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this is in the negative, the offence would be "culpable homicide not amounting to murder", punishable under either the first or the second part of Section 304, depending respectively on whether the second or the third clause of Section 299 is applicable. However, if the answer is in the positive, but the case falls within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the Part I of Section 304 of the IPC.

44. In *State of Andhra Pradesh v. Rayavarapu Punnayya & Anr.*, reported in (1976) 4 SCC 382, this Court, while drawing a distinction between Section 302 and Section 304, held as under:-

"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree".

This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

(Emphasis supplied)

45. In *Budhi Singh v. State of Himachal Pradesh*, reported in (2012) 13 SCC 663, this Court has held as under:-

"18. The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose selfcontrol but only temporarily and that too, in proximity to the time of provocation.

The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury. Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of selfcontrol and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the

intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder."

(Emphasis supplied)

46. In the case of Kikar Singh v. State of Rajasthan, reported in (1993) 4 SCC 238, this Court held as under:-

"8. The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke.

The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other.

If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder.

9. The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of

retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4."

(Emphasis supplied)

47. This Court, in the case of Surain Singh v. State of Punjab, reported in (2017) 5 SCC 796 has observed that:

"The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in IPC. A fight is a combat between two and more persons whether with or without weapons.

It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

(Emphasis supplied)

48. Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death, then the punishment may extend up to imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death, then the punishment may extend to imprisonment for 10 years.

49. The High Court considered only the first part of Exception 4 to Section 300 of the IPC. This part refers to the absence of premeditation in a sudden fight arising from a sudden quarrel in a heat of passion. However, it does not end there. The exception further requires that the offender must not have taken undue advantage or acted in a cruel or unusual manner. Having regard to the manner in which the assault was carried out, could it not be said that the offender i.e., the appellant-herein took undue advantage and also could be said to have acted in a cruel or unusual manner. The deceased was unarmed, it was not mutual fight between two individuals that would bring the case within the ambit of Exception

4. The deceased was absolutely harmless when the appellant inflicted injuries all over his body indiscriminately.

50. Therefore, if at all the High Court intended to extend the benefit of any of the Exceptions to Section 300 of the IPC, it ought to have considered Exception 1 of Section 300 of the IPC. However, it is not necessary for us to delve into Exception 1 i.e., grave and sudden provocation since, we have already reached the conclusion that the case in hand is, one of no legal evidence and therefore, the appellant deserves to be acquitted. We refer to Exception 1 merely to illustrate that, if at all, it was this exception that could have been examined.

It is alleged that while the appellant and the deceased were consuming alcohol at the deceased's residence, the appellant showed the deceased a photograph of his girlfriend. The deceased allegedly made an obscene remark, "get your girlfriend to my place and leave her with me for one night." Such a statement might have provoked the appellant, who then picked up a vegetable-cutting knife lying in one corner of the house and inflicted injuries upon the deceased. This aspect could have been considered in that context.

C. CONCLUSION

51. In the overall view of the matter, we are convinced that the Impugned Judgement passed by the High Court of Chhattisgarh in Criminal Appeal No. 1538 of 2021 dated 16.01.2025 is not sustainable in law.

52. In the result, this appeal succeeds and is hereby allowed.

53. The appellant is acquitted of all the charges, and he be set free forthwith if not required in any other case. The bail bonds stand discharged, if any.

54. The Registry shall circulate one copy each of this judgment to all the High Courts.

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

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

New Delhi:

August 05, 2025.

IN THE SUPREME COURT OF INDIA

Odisha State Financial Corporation
Vs.
Vigyan Chemical Industries and Ors.

**[Civil Appeal No. 10047 of 2025
arising out of SLP (C) No. 1842 of 2023]**

HEADNOTE – The plea regarding the decree being 'nullity' can be raised at the executing stage, and the Executing Court is bound to decide the same on merits.

The serving of notice under Sec. 80 CPC being a mandatory requirement before institution of suit against the state-owned entity, the failure to provide the same rendered the decree being a 'nullity', being amenable to challenge before the Executing Court during executing proceedings under Section 47 CPC.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. The present appeal has been filed by the Odisha State Financial Corporation, a government corporation in the State of Odisha, against the final judgment and order dated 22.11.2022 passed by the High Court of Uttarakhand at Nainital¹ in Writ Petition (M/S) No. 2314 of 2022, whereby the High Court dismissed the writ petition filed by the appellant under Article 227 of the Constitution of India, challenging the civil proceedings and the orders passed by the Courts below regarding the computation of interest on the decretal amount and the consequential execution proceedings.

BRIEF FACTS

3. The appellant, which is a State Financial Corporation, along with Industrial Promotion & Investment Corporation of Odisha² jointly financed an industrial unit, namely, M/s. Manorama Chemicals Works Ltd., (Respondent No. 2 herein) on 22.11.1984 for setting up a bleaching powder unit at Ganjam, Odisha. M/s. Vigyan Chemical Industries Limited Dehradun (Respondent No.1 herein) supplied raw materials worth Rs. 66,454.65 to Respondent No. 2 on 29.07.1985. Since Respondent No. 2 defaulted in repaying the financial assistance received from the appellant and IPICOL, possession of the industry of Respondent No.2 was taken over by the appellant on 18.08.1987 under Section 29 of the State Financial Corporation Act, 1951³.

3.1. Thereafter, Respondent No. 1 filed Recovery Suit No.103 of 1988 against Respondent Nos. 2, 3, and 4 in the Court of Second Additional Civil Judge (Senior Division), Dehradun⁴, claiming Rs. 90,400/- with interest as the outstanding amount. Respondent No. 1/Plaintiff also claimed pendente lite and future interest at the rate of 24% per annum till realization of the amount. The appellant was sought to be impleaded in the suit on 11.02.1993, which was allowed by the trial Court on 06.12.1994, and the appellant was added as Defendant No. 4. The appellant objected to its impleadment by filing a Miscellaneous Appeal and thereafter, a Writ Petition, both of which ended in dismissal. The trial Court was directed to adjudicate the suit expeditiously, within one year, with the appellant as a party.

3.2. Respondent No. 1 / plaintiff also sought leave to amend and add certain paragraphs, contending that under Section 29(5) of the S.F.C. Act, 1951, the appellant / Defendant No. 4 is liable for the claimed amount, as it had taken possession of Respondent No. 2, and the said industrial concern was now to be sued through Defendant No. 4. The amendment application was allowed, and the appellant / Defendant No. 4 filed a written statement, stating that due to default in repayment of the loan, it had taken possession of industry of Respondent No.2 on 18.08.1987 under Section 29 of the S.F.C. Act, 1951 for the purpose of realization of its dues and thereafter sold the unit to one Shri T.R.K. Rao.

3.3. During the pendency of the suit, the appellant opened a bank guarantee on 27.11.1998 for a sum of Rs.6,36,243/- with Union Bank of India, Cuttack, undertaking to pay the said amount to the trial Court, on demand. Similarly, another bank guarantee was opened on 16.10.1999 for a sum of Rs.3,50,000/- with Union Bank of India, Cuttack to be deposited with the trial Court on demand with respect to Suit No.103/1988. The trial Court was accordingly informed by the Union Bank of India regarding the issuance of the bank guarantee for Rs.3,50,000/- to the credit of the suit. The appellant also instructed its lawyer vide letter dated 22.10.1999, to submit the said bank guarantee to the trial Court.

3.4. The suit filed by Respondent No. 1/Plaintiff was partly decreed on 20.08.2001 for an amount of Rs. 84,170/- with pendente lite and future interest to be calculated at 24% per annum from 01.03.1988 to 23.09.1992 and at 2% compounded monthly from 23.09.1992 till payment. Challenging the same, the appellant preferred Civil Appeal No. 182 of 2001. Respondent No.1 filed cross objection challenging the partial dismissal of the suit.

Meanwhile, Respondent No. 1 also filed an application under the Limitation Act, 1963, on 11.04.2005 to treat the suit against the appellant as having been filed from 29.02.1988. By order dated 05.11.2005, the appellant was added as a defendant in the suit from 29.02.1988, and by order dated 22.03.2006, the trial Court held that the suit had been filed within limitation against the appellant.

Thereafter, the appeal filed by the appellant was dismissed, and the cross-objection filed by Respondent No.1 was allowed, and consequently, the suit was decreed in its entirety, by the Additional District Judge, Fast Track Court No.VI, Dehradun5, by judgment dated 08.08.2006.

3.5. Aggrieved by the judgment dated 08.08.2006 in First Appeal No.182 of 2001, concurring with the trial Court's order dated 22.03.2006 with the decision that the suit was filed within limitation against the appellant, and the decree dated 20.08.2001 in Suit No.103/88, the appellant preferred Second Appeal No.78 of 2006 before the High Court. By order dated 30.11.2006, the High Court stayed the judgment and decree, subject to the condition that the appellant deposit the decretal amount within 45 days. As stated earlier, two bank guarantees for Rs.6,36,243/- and Rs.3,50,000/- had been opened by the appellant on 27.11.1998 and 16.10.1999 respectively and were offered as deposit.

3.6. Thereafter, by judgment, dated 07.05.2007 in Second Appeal No.78 of 2006, the High Court dismissed the appeal, holding that the suit was not barred by limitation. Aggrieved, the appellant preferred SLP (Civil) CC No.10278/2007 (later Civil Appeal No.2073/2010) before this Court. By order dated 10.03.2014, this Court noted that the required bank guarantees, which exceeded the decretal amount, had already been furnished and accordingly, no further deposit was deemed necessary. Ultimately, by judgment dated 23.11.2017, this Court dismissed Civil Appeal No.2073/2010, thereby upholding the High Court's judgment on limitation.

3.7. On 01.08.2018, Respondent No. 1 filed Execution Case No.107 of 2018 in the Court of the Civil Judge (Senior Division) Dehradun6 for recovery of the decretal amount, stated to be Rs.8,88,33,416.30 from the appellant's bank accounts and assets. Vide order dated 12.03.2020, the Execution Court directed Union Bank of India, Cuttack, to remit the principal amount along with interest accrued on TDR No.303/284391 and TDR No.303/284615 for payment to the decree holder.

3.8. Pursuant to the order dated 12.03.2020 passed by the Execution Court, Union Bank of India released the proceeds of the two TDRs opened by the appellant in 1998 and 1999 - Rs. 40,16,606/- and Rs. 18,00,299/-, respectively - totaling Rs. 58,16,905/- to the Execution Court towards satisfaction of the decree amount of Rs.90,400/- with accrued interest. Thereafter, by orders dated 01.09.2021, the Execution Court attached the appellant's fixed and flexi deposits in Union Bank of India, Axis Bank Limited and Odisha State Cooperative Bank in Cuttack, amounting to approximately Rs. 22 Crores. Aggrieved by the said orders of attachment dated 01.09.2021, the appellant filed Writ Petition (Civil) No.28301/2021 before the High Court of Orissa, which by order dated

16.09.2021, disposed of the writ petition with liberty to the appellant to approach the appropriate forum.

3.9. Subsequently, on 07.10.2021, the Execution Court passed two orders directing the appellant's banks, Axis Bank Ltd., and Odisha State Cooperative Bank at Cuttack to remit the total value of the attached fixed deposits, along with interest, to the Court of the Additional Civil Judge VI (Senior Division) Dehradun. Aggrieved, the appellant filed Writ Petition (C) No.1226/2021 before this Court, wherein vide order dated 18.11.2021, it was observed that the appellant is at liberty to pursue any other remedy available under law.

3.10. Thereafter, the appellant filed Misc. Petition No. 156/21 under Section 47 of the Code of Civil Procedure, 1908, seeking a stay of execution proceedings of Execution Case No.107/2018. The said petition was dismissed on 18.04.2022. Aggrieved, the appellant preferred Civil Revision No.40/2022 before the District Judge, Dehradun, along with an application for stay of further proceedings in Execution Case No.107/2018. During its pendency, the Execution Court, by order dated 05.08.2022, directed the Odisha State Cooperative Bank to deposit the decretal amount by 30.08.2022, failing which, coercive steps would be taken against the appellant.

3.11. Aggrieved by the order dated 05.08.2022 passed in Execution Case No.107/2018, the appellant preferred Writ Petition (C) No.2069/2022 before the High Court. By order dated 30.08.2022, the High Court disposed of the writ petition with a direction to the Revisional Court to consider the stay application on 02.09.2022. However, on 02.09.2022, the Revisional Court dismissed Civil Revision No.40/2022.

3.12. Consequently, the appellant approached the High Court by filing Writ Petition No.2314/22 (M/S) for setting aside the order dated 02.09.2022 passed by the Revisional Court in Civil Revision No.40/2022 and the order dated 18.04.2022 passed by the Execution Court in Execution Case No.107/2018. However, by the impugned judgment dated 22.11.2022, the High Court dismissed the writ petition. Aggrieved thereby, the appellant has approached this Court by way of the present appeal.

CONTENTIONS OF THE PARTIES

4. Mr. Ravi Prakash Mehrotra, learned Senior Counsel for the appellant Corporation submitted that the High Court, in the facts and circumstances of the present case, was not justified in declining to exercise its supervisory jurisdiction under Article 227 of the Constitution of India, even in the face of a manifest miscarriage of justice and irretrievable harm caused to the appellant, on account of the proceedings and orders passed by the Courts below in relation to the decree

and the consequent execution case, which constitute a flagrant violation of the fundamental principles of law and have resulted in grave injustice to the appellant.

4.1. Learned Senior Counsel further submitted that the Courts below erred in computation of interest on the decretal amount, particularly, in light of the fact that the appellant is facing coercive measures at the instance of Respondent No.1, arising out of the execution of a money decree of Rs.90,400/- passed on 20.08.2001, in respect of which the appellant had opened bank guarantees prior to the decree, and the proceeds amounting to Rs.58,16,905/- were released to Respondent No. 1 on 05.10.2020. However, based on an erroneous computation of interest at 24% per annum, compounded monthly, the amount sought is a staggering Rs. 8.89 Crores. The appellant, a government corporation, is thus facing unwarranted attachment proceedings, which gravely and adversely affect public interest.

4.2. Learned Senior Counsel also contended that the High Court was not justified in dismissing the writ petition on the ground that the appellant had not furnished the bank guarantee to secure the decretal amount. In reality, the proceeds of the bank guarantees were released to the decree holder / Respondent No.1 - not out of his own volition, but under Court's direction. Thus, it cannot be held that the bank guarantee was not a deposit under Order XXIV Rule 1 CPC. The High Court erred in holding that such a deposit must be voluntary and not under compulsion. Despite furnishing bank guarantee in excess of the decretal amount, the High Court adopted an unduly narrow view of Section 47 CPC, while exercising jurisdiction under Article 227 of the Constitution.

4.3. Learned Senior Counsel further submitted that the execution application filed by Respondent No. 1 was not maintainable before the civil Court in view of Section 15(2) of the Commercial Courts Act, 2015. Although this point may not have been specifically pleaded before the lower courts, it was raised before the High Court and hence, the same ought to have been considered by the High Court.

4.4. Learned Senior Counsel emphasized that the High Court failed to appreciate that the computation of interest on the decretal amount was not only erroneous but also exorbitant. Interest at the rate of 24% was impermissible under Section 34 CPC. Furthermore, the appellant / Defendant No. 4 did not place any orders for purchase; in fact, it had clearly pleaded in its written statement that it had no connection with the underlying transaction and hence, no liability can be fastened on them. It was also contended that a specific plea regarding the excessive interest was also taken.

The High Court ought to have considered in the petition under Article 227 that the appellant Corporation is now facing unprecedented and unjustified attachment proceedings and is saddled with a liability of Rs. 8.89 Crores - arising from a decree of merely Rs.90,400/- based on a suit instituted in 1988. The bank guarantees furnished in 1998 and 1999 (prior to the decree), amounting to Rs.58,16,905/- were encashed and improperly released to the decree holder. Hence, further recovery, attachment, and coercive steps against the appellant are unwarranted. Moreover, the continued accrual of interest is wholly unjustified. In these circumstances, intervention by this Court is warranted in the interest of justice to bring finality to a matter that is prejudicial to the appellant and against public interest.

4.5. Learned Senior Counsel placed reliance on the judgment of this Court in *Shaki Tubes Ltd v. State of Bihar*⁸, to contend that if the purchase / supply order predates the enactment of the interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, then interest is governed by Section 34 CPC and not the Delayed Payments Act, which operates prospectively. In the present case, the supply order - i.e., the sale of raw materials to Respondent No.2 by Respondent No. 1 - was made in 1985 long before the Act came into force i.e., on 23.09.1992. Therefore, the trial Court's decree dated 20.08.2001 awarding compound interest at 2% per month from 23.09.1992 onward under the Delayed Payments Act, was erroneous.

4.6. Learned Senior Counsel further pointed out that the amount being claimed from the appellant is grossly exaggerated and irregularly calculated. As a result, the appellant Corporation is now facing attachment of all its bank accounts and assets, plunging it into administrative disarray and financial chaos, including difficulty in disbursing salaries. It is neither fair, just, nor legally sustainable to subject a public sector corporation to such coercive measures. Therefore, the Execution Court's insistence on recovering nearly Rs. 9 crores is neither warranted nor justified.

4.7. Learned Senior Counsel further submitted that the appellant corporation had continuously contested the decree before the appellate forums from 2001 to 2017. In contrast, Respondent No. 1, the decree holder, neither invoked the bank guarantee nor initiated execution proceedings for nearly 17 years, after the decree was passed. According to the learned Senior Counsel, the decree holder received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- out of attachment and encashment of two bank guarantees and one fixed deposit of the appellant corporation.

4.8. Furthermore, reliance was placed on the decision of this Court in *Fertilizer Corporation of India Ltd and others v. M/s. Coromandel Sacks Pvt. Ltd*⁹, wherein this Court applied the principle of harmonious construction to balance competing

interests and safeguard the rights of judgment debtors. In that case, the Court emphasized the benefit available to the judgment debtor under Order XXIV CPC, particularly, when the bank guarantee was furnished before the decree was passed.

This principle contrasts with the interest calculation under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 which resulted in the mounting of compound interest from 23.09.1992 onwards. The learned Senior Counsel further contended that though a plea regarding maintainability was raised, no finding was given and hence, the decree is a nullity.

4.9. Accordingly, learned Senior Counsel prayed for setting aside the judgment of the High Court and for allowing the present appeal.

5. Per contra, Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Respondent No. 1, while denying the claim of the appellant Corporation and reiterating the stand taken in the counter affidavit filed by them, inter alia, contended as under:

a) The present Petition for Special Leave to Appeal, invoking the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India, is liable to be dismissed at the threshold itself on ground of suppression of material information.

b) The High Court has declined to grant any relief to the appellant by dismissing Writ Petition (M/S) No.2314 of 2022. The appellant - Odisha State Financial Corporation has not approached this Court with clean hands, having knowingly and repeatedly made false and misleading statements and even filed a false affidavit in earlier proceedings before this Court.

c) The present Special Leave Petition raises no question of law, much less any substantial question of law, warranting consideration by this Court. The so-called substantial questions of law framed by the appellant - Odisha State Financial Corporation cannot be entertained by this Court.

d) Initially, the Original Suit was filed in the year 1988 and was decreed in 2001. However, the Execution Application could be filed only in 2018, due to the repeated challenges raised by the appellant before various forums including the trial Court, Appellate Courts at Dehradun, and the High Courts of Allahabad and Uttarakhand, culminating in Civil Appeal No. 2073 of 2010 before this Court, which was finally dismissed by Judgment dated 23.11.2017. In effect, 35 years have passed since the filing of the original suit and 22 years since the date of decree. It is deeply unfortunate that despite more than three decades having

elapsed, the decree holder has not been able to enjoy the fruits of a decree passed in 2001.

e) The allegation of the appellant Corporation that it had furnished a bank guarantee of Rs.3,50,000/- in 1999, (prior to decree) and that the proceeds thereof along with another bank guarantee for Rs.6,36,243/-, were released to Respondent No.1 on 05.10.2020, and further, that the interest has been erroneously calculated at 24% per annum compounded monthly, is wholly incorrect, false, unsubstantiated, and specifically denied.

f) The bank guarantee furnished by the appellant Corporation was not voluntary, but given under compulsion and only pursuant to repeated directions of the Court. Moreover, the said bank guarantee had already expired in the year 2000. The amount was not paid to the Respondent on 05.10.2020, but only on 23.02.2021 - twenty years after the decree and twenty-two years after furnishing the bank guarantee. In fact, the first actual payment came through attachment proceedings pursuant to the orders of the Execution Court in 2020.

The amount was deposited by the bank directly into the Court through a demand draft, which was then transferred to the Respondent. But the appellant had made all efforts to avoid payment. Furthermore, the rate of interest at 24% per annum compounded monthly was awarded by the trial Court in its judgment dated 20.08.2001 and was rightly upheld by the Appellate Court in its judgment dated 08.08.2006. However, the appellant has failed to submit any calculation or interest sheet to establish its claim that the computation is erroneous and has merely raised vague, baseless, and misleading allegations before this Court.

g) The High Court of Uttarakhand granted ample opportunity to the appellant Corporation to establish its case and after due deliberation and application of law, passed the well-reasoned judgment on 22.11.2022, which is self-explanatory, and the High Court rightly dismissed the writ petition.

h) Order XX1 Rule 1 CPC mandates that payment or deposit made by the judgment debtor in satisfaction of the decree must be voluntary. The bank guarantee deposited by the appellant, as security under an attachment order passed under Order XXXVIII Rule 5 CPC, was conditional and would have been available to the decree holder only if the suit was decreed. Such a deposit cannot be construed as one under Order XXIV Rule 1 CPC. The High Court, after properly applying its mind and considering the facts and law applicable to the case, rightly rejected the appellant's plea on this issue.

i) The appellant has attempted to mislead this Court by selectively stating that it had filed I. A. No.141994/2021 in M. A. No. 1832/ 2021 in Civil Appeal

No.2073/2010, but the same was dismissed as withdrawn with costs, upon the appellant's request.

j) As far as the order dated 10.03.2014 passed in Civil Appeal No. 2073/2010 is concerned, it was merely an interim order passed by this Court in Civil Appeal No.2073/2010 and is deceptively being misused and misrepresented by the appellant, without even stating that the said order clearly stood overruled by the subsequent judgment passed in the said civil appeal, which has been deviously concealed by the appellant. The order dated 10.03.2014 was passed by this Court in I.A. No.6 in Civil Appeal No.2073 of 2010 which was filed by Respondent No. 1 requesting this Court to direct the appellant to deposit the decretal amount.

k) The appellant's objections under Section 47 CPC and the accompanying stay application were rightly dismissed by the Executing Court at Dehradun through a reasoned order dated 18.04.2022 in Execution Case No. 107/2018. Subsequent legal remedies were also dismissed - by the High Court on 30.08.2022 in WP (Civil) No. 2069/2022, by the Revisional Court on 02.09.2022 in Civil Revision No.40/2022 and finally by the High Court of Uttarakhand on 22.11.2022 in WP (M/S) 2314/2022 - the Judgment now impugned in this Special Leave Petition. All these judicial forums have rightly rejected the appellant's objections, and hence, no interference is warranted by this Court.

5.1. Thus, the learned Senior Counsel submitted that the decree dated 20.08.2001 passed in the suit has attained finality in 2017, and Respondent No.1 is entitled to the interest awarded in terms of the Interest on Delayed Payments to Small scale and Ancillary Industrial Undertakings Act, 1993, which comes to Rs.35,94,02,420.75 as on 10.02.2025. However, the appellant has acted without bona fides and has attempted to obstruct execution of the decree by initiating and pursuing frivolous proceedings. Therefore, this appeal deserves to be dismissed.

6. Mr. Shubhranshu Padhi, learned Counsel for Respondent No. 3 - IPICOL, while adopting and supporting the arguments advanced by the learned Senior Counsel for the appellant, inter alia, contended as under:

6.1. Both the appellant (OSFC) and Respondent No. 3 (IPICOL) are Public Sector Undertakings that extended financial assistance to the original borrower, Respondent No. 2 and hence the suit itself is not maintainable.

6.2. Respondent No. 1 filed Civil Suit No.103/88 before the trial Court, alleging that it had supplied raw materials (Hydrated Lime worth Rs.66,454/-) to Respondent No. 2. At that time, Respondent No. 1 sought to proceed against the appellant and Respondent No. 3, instead of pursuing the Directors/Promoters of the original borrower, to whom the supplies were actually made. There exists no privity of contract or any commercial dealings between Respondent No. 1 and

either the appellant or Respondent No. 3. The appellant and Respondent No.3 being State Financial Corporations, cannot be burdened with such unjust and excessive liability, as it would result in gross injustice and impose a significant financial strain on the public Exchequer.

6.3. Respondent No. 1 filed Execution Case No. 107/2018 before the Civil Judge (Senior Division), Dehradun, 17 years after the decree was passed. Despite the passage of time, Respondent No. 1 is now claiming exorbitant interest, inflating the original decretal amount of Rs.90,400/- to an unreasonable sum of Rs.35,94,02,420.75 as on 10.02.2025, as per the calculation chart provided by Respondent No.1. As elucidated by the appellant, although the original claimed debt was Rs.90,400/-, Respondent No. 1 has already received the following payments: Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/-. Furthermore, Respondent No. 3 (IPICOL) had not even taken over Respondent No. 2 under Section 29 of the S.F.C Act, 1951, yet it is being wrongfully saddled with excessive liabilities claimed by Respondent No.1.

6.4. Therefore, this is a fit case for this Court to pass appropriate orders to deliver substantial justice to the concerned parties. The impugned judgment deserves to be set aside, and the present appeal filed by the appellant ought to be allowed. Consequently, both the appellant (OSFC) and Respondent No. 3 (IPICOL) ought to be fully discharged from liability as claimed by Respondent No. 1.

DISCUSSION & FINDINGS

7. We have heard the learned Senior Counsel appearing for the parties and perused the materials available on record.

8. It is not in dispute that the appellant is a State Financial Corporation having its office at Cuttack, Odisha, and had extended financial assistance to Respondent No. 2, for the purpose of setting up a bleaching powder unit. Respondent No.1 had, in the course of business, supplied raw materials worth Rs.66,454.65 to the said unit. Due to persistent default in repayment of the loan by Respondent No.2, the appellant in exercise of its statutory powers under section 29 of the S.F.C. Act, 1951, took over possession of the industrial unit of Respondent No. 2 in the year 1987 for realization of its dues. Subsequently, on 29.02.1988, Respondent No. 1 filed Civil Suit No. 103/1988 before the trial Court seeking recovery of Rs.90,400/- with interest from the said unit. Initially, the appellant was not made a party to the suit, nor was any relief claimed against it.

8.1. Thereafter, the appellant was impleaded as a defendant in the said suit on 06.02.1994 by Respondent No. 1, nearly, six years after the date of institution of the suit. Despite the objections raised by the appellant regarding its impleadment,

liability and maintainability, the suit was decreed against the 20 appellant on 20.08.2001 for an amount of Rs. 90,400/- with simple interest at 24% per annum from 01.03.1988 to 23.09.1992, and 2% monthly compound interest from 23.09.1992 until payment, in light of the enforcement of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. The appellant challenged the said decree by filing Civil Appeal No. 182/2001 both on merits and on the ground of limitation regarding its impleadment, however, the said appeal was dismissed by the First Appellate Court, on 08.08.2006.

8.2. Challenging the dismissal of the appeal, the appellant filed Second Appeal No.78/2006 before the High Court. The original decree dated 20.08.2001 and the judgment dated 08.08.2006 in the First Appeal were stayed by the High Court on 30.11.2006, and the stay remained in force until the dismissal of the Second Appeal on 07.05.2007. Thereafter, the appellant preferred Civil Appeal No. 2073/2010 before this Court, which came to be dismissed by judgment dated 23.11.2017, with the decision limited to the question of limitation.

8.3. After a period of 17 years from the date of the decree, Respondent No.1 / Decree Holder filed Execution Case No. 107/18 claiming an amount of Rs.8,88,33,416.30, before the Civil Judge, Dehradun (Uttarakhand). The appellant filed objections under Section 47 CPC, which were dismissed on 18.04.2022. The Civil Revision filed by the appellant before the Additional District Judge, was dismissed on 02.09.2022 and Writ Petition No. 2314/22 preferred by the appellant was also dismissed by the impugned judgment dated 22.11.2022. Aggrieved thereby, the appellant has filed the instant appeal.

9. On 01.02.2023, when the matter was taken up for consideration, the counsel appearing for the respondents stated that no further steps shall be taken in the execution proceedings till the disposal of this appeal, which was recorded by this Court in its proceedings.

10. It is the case of the appellant that it had opened a bank guarantee on 16.10.1999 with Union Bank of India, Cuttack, as directed by the court, for Rs.3.5 lakhs payable to the trial Court, on demand. This was within the knowledge of Respondent No.1. The said bank guarantee was extended from time to time, and was eventually attached and encashed on 16.12.2020 along with another bank guarantee furnished by the appellant for Rs.6,36,243/-, thereby totaling Rs.58,16,905/- received by Respondent No. 1.

According to the appellant, the opening of the said bank guarantee on 16.10.1999 - prior to the passing of the decree - was intended to cover the decretal amount and is squarely covered by the provisions of Order XXIV Rules 1 - 3 CPC, which aim to ensure that interest stops accruing once a deposit has been made. Therefore, the appellant contends that due to the opening and subsequent

encashment of the bank guarantee, the claim for accrual of interest itself is bad in law.

11. The appellant further contends that the decree holder, Respondent No. 1 did not make any attempt to encash the said bank guarantee immediately after the suit was decreed, or initiate execution proceedings for over 17 years, thereby allowing the interest to accumulate unduly. On the other hand, the appellant had pursued remedies in good faith under the belief that interest would freeze once a deposit was made under Order XXIV Rule 3 CPC. The respondent's delay in executing the decree unjustly enabled them to claim exorbitant interest, thereby facilitating unjust enrichment.

Such delay should not impose an undue interest burden on the appellant. Notably, Respondent No.1 has already received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- through bank guarantees and fixed deposits furnished by the appellant. As such, it is unjust, unfair, and legally untenable to subject the appellant Corporation to coercive measures, which are inappropriate and gravely prejudicial to the public interest.

12. Undoubtedly, Respondent No. 1 instituted a money suit for recovery of dues from Respondent No. 2 on account of default in payment for the supply of goods. Initially, the appellant was not a party to the suit. Subsequently, Respondent No. 1 impleaded the appellant, a State Financial Corporation, which took action under Section 29 of the S.F.C Act, 1951 against Respondent No. 2. The suit was decreed on 20.08.2001. Thereafter, Respondent No. 1 filed an application under Section 21 of the Limitation Act, 1963 before the trial Court, pending appeal.

The trial Court allowed the application holding that the suit against the appellant was deemed to be initiated from the original date of filing the suit. By a subsequent order, it was held by the trial Court that the suit was not barred by limitation as against the appellant. The finding of the appellate court and the High Court on limitation alone, was upheld by this Court on 23.11.2017 in Civil Appeal No.2073/2010. It is pertinent to mention here that this Court confined its decision only to the issue of limitation and remained silent on all other material questions raised.

Doctrine of 'Sub silentio'

13. It is a settled principle that a judgment is an authority only for what it decides. When a judgment fails to address other issues raised, it is said to be 'sub silentio', and cannot be held as a binding precedent on those undecided issues. From the records, it is very clear that in the earlier judgment of this Court challenging the original decree, only the issue of limitation was adjudicated. Critical issues such as (i) the jurisdiction of the trial Court to entertain the suit against the appellant in

the absence of a notice under Section 80 CPC, (ii) the maintainability of the suit, (iii) the power of the Court to modify the decree by entertaining an application under Section 21 of the Limitation Act, 1963, and (iv) the applicability of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, were not adjudicated.

This is where the concept of 'sub silentio' assumes significance. It refers to a situation, where a rule or principle on a particular point of law is applied or passed upon by a court silently, without any consideration of the applicable law or without argument, and the judgment is rendered on another question of law or fact. According to the Black's Law Dictionary, "the precedents that pass sub silentio are of little or no authority". Literally, it means 'in silence' and is used to refer to something that is not expressly stated.

Therefore, it can safely be concluded that the judgment of this Court in Civil Appeal No.2073/2010 is silent on the issues now under consideration. When the judgment of a Court is silent on questions of law either raised earlier but not decided, or raised in the subsequent proceedings, it is settled law that constitutional courts are empowered to decide such questions of law independently and the earlier judgment cannot be cited as a binding precedent or conclusive. It will be useful to refer to the following judgments of this Court on this aspect.

13.1. In *Municipal Corpn. of Delhi v. Gurnam Kaur*¹⁰, while considering the exercise of power by the Commissioner of the Delhi Corporation to remove encroachments, this Court referred to an earlier decision relied upon by the High Court (in the matter of pavement dwellers) and observed that the earlier decision did not consciously deal with the legal issue of right to encroach upon public streets. Therefore, it lacked precedential value as that point was decided sub silentio. The following paragraphs are relevant in this regard:

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das's* case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority.

Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having

the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. In *Gerard v. Worth of Paris Ltd. (k)*. [(1936) 2 All ER 905 (CA)], the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* [(1941) 1 KB 675], the court held itself not bound by its previous decision.

Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment.

This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

13.2. In *the State of U.P. v. Synthetics and Chemicals Ltd.*¹¹ the challenge was to the amendment made to sub-section (1) of Section 3 of the United Provinces

Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939 by the Uttar Pradesh Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976, for the purpose of levying purchase tax on industrial alcohol. Relying upon the decision of a Constitution Bench of this Court in *Synthetics and Chemicals Ltd and others v. State of U.P. and others*¹², the respondents / opposite parties contended that the State Legislature was incompetent to levy tax on industrial alcohol, because of the operation of the Ethyl Alcohol (Price Control) Orders made by the Central Government under Section 18G of the Industries (Development and Regulation) Act, 1951.

The appellant / State, however, contended that the power of the State to levy taxes on the sale or purchase of goods was not the subject of consideration in the decision relied upon by the respondents. The High Court allowed the writ petition and declared the U.P. Act 8 of 1976 to be null and void. This Court was of the view that the decision in *Synthetics* is not an authority for the proposition canvassed by the assessee, and that the Court had not - and could not have - intended to hold that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods.

The reference to sales tax in paragraph 86 of that judgment was found to be merely accidental or per incuriam, and therefore, had no bearing on the validity of the impugned levy. This Court further noted that the abrupt observation in *Synthetics* was without a preceding discussion and was inconsistent with the reasoning adopted in earlier decisions, from which no dissent had been expressed on that point. Accordingly, this Court applied the concept of 'sub silentio' and declined to uphold the order of the High Court. The relevant paragraph is extracted below for ready reference:

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153).

In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur* [(1989) 1 SCC 101]. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The

courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

13.3. In *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma*¹³, this Court was dealing with whether an earlier decision could be treated as a binding precedent, and in that context, it examined the doctrine of sub silentio, which refers to a situation where a point of law passes unnoticed or is not consciously decided in a judgment. The following paragraph is relevant:

"57. Even assuming, although there appears no doubt, that the finding recorded by the High Court in its earlier judgment on the authenticity of the canon survived, there is yet another reason to disregard it. If the excommunication of Dionysius was invalid for violation of principles of natural justice, as was found by the Bench reviewing the order, then the findings on earlier issues were rendered unnecessary and it is fairly settled that the finding on an issue in the earlier suit to operate as res judicata should not have been only directly and substantially in issue but it should have been necessary to be decided as well.

For instance, when a decision is taken in appeal the rule is that it is the appellate decision and not the decision of the trial court that operates as res judicata. Consequently where a suit is decided both on merits and on technical grounds by the trial court, and the appellate court maintains it on technical ground of limitation or suit being not properly constituted then the decision rendered on merits by the trial court ceases to have finality. In *Abdullah Ashgar Ali Khan v. Ganesh Dass* [AIR 1917 PC 201: 45 Cal 442 : 19 Bom LR 972] the Court while considering the expression, "heard and finally decided" in Section 10 of the British Baluchistan Regulation IX of 1896 held that where the suit was dismissed by two courts on merits but the decree was maintained in second appeal because the suit was not properly constituted then the finality on merits stood destroyed.

In *Sheosagar Singh v. Sitaram Singh* [ILR (1897) 24 Cal 616 : 24 IA 50 : 1 CWN 297] where parentage of defendant was decided in his favour by the trial court but the High Court maintained the order as the suit was defective the claim of the defendant in the latter suit that the finding on parentage operated as *res judicata* was repelled and it was held that the question of parentage had not been heard and finally decided in the suit of 1885. The appeal in that suit had put an end to any finality in the decision of the first court, and had not led to a decision on the merits.

58. The rationale of these decisions is founded on the principle that if the suit was disposed of in appeal not on merits but for want of jurisdiction or for being barred by time or for being defectively constituted then the finality of the findings recorded by the trial court on merits stands destroyed as the suit having been found to be bad for technical reasons it becomes operative from the date the decision was given by the trial court thus rendering any adjudication on merits impliedly unnecessary.

On the same rationale, once the Royal Court of Appeal allowed the review petition and dismissed the appeal as the excommunication of Dionysius was contrary to principles of natural justice and he had not become heretic then the finding on authenticity of the canon etc. rendered in the original order was rendered unnecessary. Therefore, the finding recorded on the authenticity of the canon and power of the Patriarch etc. recorded in the earlier order could not operate as *res judicata* in subsequent proceedings."

13.4. In *Arnit Das v. State of Bihar*¹⁴, while dealing with the determination of the age of an accused under the Juvenile Justice Act, 1986, for the purpose of trial, this Court clarified that the earlier ruling in *Arnit Das* (1) was rendered *sub silentio*, as the relevant provision of law had not been brought to the court's attention. Accordingly, the Court overruled the said decision and held that the relevant date for determining whether an accused is a juvenile is the date of the offence, not the date of production. The following paragraphs are pertinent in this regard:

"19. Generally speaking these cases are authorities for the propositions that:

(i) the technicality of the accused having not claimed the benefit of the provisions of the Juvenile Justice Act at the earliest opportunity or before any of the courts below should not, keeping in view the intendment of the legislation, come in the way of the benefit being extended to the accused-appellant even if the plea was raised for the first time before this Court;

(ii) a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a

juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases; and

(iii) the provisions of the Act are mandatory and while implementing the provisions of the Act, those charged with responsibilities of implementation should show sensitivity and concern for a juvenile. However, in none of the cases the specific issue - by reference to which date (the date of the offence or the date of production of the person before the competent authority), the court shall determine whether the person was a juvenile or not, was neither raised nor decided.

20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics & Chemicals Ltd. [(1991) 4 SCC 139, para 41] SCC, para 41.)"

13.5. In the State of W.B. v. Kesoram Industries Ltd.¹⁵, this Court made an important and elaborate observation on the doctrine of sub silentio while discussing the binding nature of precedents under Article 141 of the Constitution. The central issue was whether the cess levied by the State of West Bengal on coal-bearing land was in the nature of a tax on land (Entry 49 of List II - State List) or a tax on mineral rights (Entry 50 of List II or Entry 54 of List I - Union List). While addressing this, the Court reinforced that courts should exercise caution in blindly following precedents, and that only reasoned decisions involving conscious deliberation on the issues raised can be treated as law declared by this Court. The relevant paragraphs are extracted below:

"485. In Goodricke Group [1995 Supp (1) SCC 707] it has, thus, wrongly been recorded that generally speaking no tea estate markets green tea leaves. The writ petitioners have stated that there are about fifty bought-leaf factories in West Bengal. Bought-leaf factories function within a statutory scheme viz. the Tea (Marketing) Control Order, 2003.

486. Furthermore, once it is found that the definition of "tea" both in the Tea Act, 1953 and the impugned Acts is the same, the Court cannot keep the effect of Sections 25 and 30 of the Tea Act, 1953 out of its consideration for the purpose of ascertaining the true scope and purport thereof.

487. It is relevant to note that in Goodricke Group [1995 Supp (1) SCC 707] no opinion was expressed on Section 25 of the Act or the notification dated 30-10-1986 issued thereunder. Once it is conceded that green tea leaves would come

within the purview of the definition of "tea", it is inconceivable as to how impost of excise duty on tea in terms of sub-section (2) of Section 25 of the Tea Act will have no bearing on the subject. By reason of sub-section (2) of Section 25, additional excise duty is levied. Excise duty in terms of the Central Excise Act, it is trite, can not only be levied on finished products but also the products at intermediary stages.

488. Unfortunately, in Goodricke case [1995 Supp (1) SCC 707] the learned Judges did not consider the matter from this angle. 489. Goodricke [1995 Supp (1) SCC 707] also runs counter to India Cement [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] as also Kannadasan [(1996) 5 SCC 670]. Effect of the expression "immovable property" in the Cess Act, 1880 was also not brought to its notice and had the same been done, there would not have been a conclusion that tea estate would be treated as a unit as therefrom the standing crops and structures were required to be excluded. Goodricke Group case [1995 Supp (1) SCC 707] does not, therefore, lay down a good law and should be overruled.

Summary of our findings

(viii) Tax on lands and buildings in terms of Entry 49 of List II of the Seventh Schedule of the Constitution of India can be levied on land as a unit and not otherwise.

(ix) As green tea leaves are marketable, the decision in Goodricke Group [1995 Supp (1) SCC 707] having mainly been rendered on the premise that green tea leaves are not marketable must be held to have passed sub silentio and, thus, does not lay down correct legal position.

(x) In view of the definitions of "land" and "immovable property" contained in the Bengal Cess Act, 1880, as no road cess or public works cess can be imposed on standing crops or any kind of structures, houses, shops or other buildings which would include factories and workshops for processing tea, no levy by way of cess can be imposed by reason of the impugned Acts either on the mining leasehold or the tea estate containing standing crops as also houses and buildings."

13.6. In Zee Telefilms Ltd. v. Union of India¹⁶, the question for consideration was whether the Board of Control for Cricket in India (BCCI) is a "State" within the meaning of Article 12 of the Constitution, and therefore amenable to writ jurisdiction under Article 32. Ruling that a prior judgment cannot be treated as binding on a point of law that was not consciously examined or discussed, the Constitutional Bench of this Court clarified that BCCI cannot be held to be a "State" for the purpose of Article 12. The following paragraph is pertinent in this connection:

"256. It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question. In *A-One Granites v. State of U.P.* [(2001) 3 SCC 537] it is stated as follows: (SCC p. 543, para 11)

"11. This question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* [(1941) 1 KB 675 : (1941) 2 All ER 11 (CA)] and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents *sub silentio* and without arguments are of no moment."

13.7. In *Delhi Airtech Services (P) Ltd v. State of U.P.*¹⁷, this Court directly addressed the doctrine of *sub silentio* while clarifying the limits of binding precedent, to the effect that when a point does not fall for decision of a court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form part of the ratio, but is treated as a decision passed *sub silentio*. It may also be noted that a point in respect of which no argument was advanced, no citation or authority was cited, and no discussion or adjudication is made, is not binding and would not be followed. The relevant paragraphs read as under:

"42. It has been held in the decision of this Court in *MCD v. Gurnam Kaur* [(1989) 1 SCC 101 : AIR 1989 SC 38] that when a point does not fall for decision of a court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ratio of the case but the same is treated as a decision passed *sub silentio*.

43. The concept of "*sub silentio*" has been explained by Salmond on Jurisprudence, 12th Edn. as follows: (*Gurnam Kaur case* [(1989) 1 SCC 101 : AIR 1989 SC 38], SCC pp. 110-11, para 11)

"11. 'A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass *sub silentio*.'" (AIR p. 43, para 11)

44. The aforesaid passage has been quoted with approval by the three-Judge Bench in Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38]. This Court in Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38], in order to illustrate the aforesaid proposition further relied on the decision of the English Court in Gerard v. Worth of Paris Ltd. [(1936) 2 All ER 905 (CA)] In Gerard [(1936) 2 All ER 905 (CA)], the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed.

Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expressions carry no weight."

13.8. In a recent decision in NBCC (India) Ltd v. The State of West Bengal and Ors¹⁸, this Court addressed the issue of sub silentio in its discussion on how and when its own earlier judgments serve as binding precedent. The following paragraphs are relevant in this regard:

"27. A decision where the issue was neither raised nor preceded by any consideration, in State of U.P. v. Synthetics and Chemicals Ltd. MANU/SC/0616/1991 : 1991:INSC:159 : (1991) 4 SCC 139 this Court held, "the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the Rule and without any citation of the authority". Further, approving the decision of this Court in Municipal Corporation of Delhi v. Gurnam Kaur MANU/SC/0323/1988 : 1988:INSC:267 : (1989) 1 SCC 101 which held that "precedents subsilentio and without argument are of no moment" this Court held that, "a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141".

The same approach was adopted in Arnit Das v. State of Bihar MANU/SC/0376/2000 : (2000) 5 SCC 488 where it was held that "a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the Rule of sub- silentio, in the technical sense when a particular point of law was not consciously determined".

28. In this context, it is also important to note that, as an institution, our Supreme Court performs the twin functions of decision-making and precedentmaking. A substantial portion of our jurisdiction under Article 136 is reflective of regular appellate disposition of decision making. Every judgment or order made by this Court in disposing of these appeals is not intended to be a binding precedent under Article 141. Though the arrival of a dispute for this Court's consideration, either for decision-making or precedent-making is at the same tarmac, every judgment or order which departs from this Court lands at the doorstep of the High Courts and the subordinate courts as a binding precedent.

We are aware of the difficulties that High Courts and the subordinate courts face in determining whether the judgment is in the process of decision-making or precedent-making, particularly when we have also declared that even an obiter of this Court must be treated as a binding precedent for the High Courts and the courts below. In the process of decision making, this Court takes care to indicate the instances where the decision of the Supreme Court is not to be treated as precedent. It is therefore necessary to be cautious in our dispensation and state whether a particular decision is to resolve the dispute between the parties and provide finality or whether the judgment is intended to and in fact declares the law under Article 141."

14. Thus, it is settled legal position, applying the doctrine of sub silentio, that a decision is not an authority on a point that has not been argued or decided. In the instant case, the trial Court had not framed any issues regarding the maintainability of the suit filed by Respondent No. 1 against the appellant, for the alleged default committed by Respondent No. 2, despite a plea in the written statement. Without any issue having been framed on maintainability, the matter reached up to this Court, and the decision was rendered solely on the issue of limitation. Therefore, the issues that remained undecided, but go to the root of jurisdiction and maintainability, can still be raised at the stage of execution under Section 47 CPC.

Scope of Section 47 CPC

15. Before analysing the facts, it must be acknowledged that the present appeal arises out of a challenge to the order of the High Court under Article 227, whereby the High Court refused to set aside the dismissal of the application filed under Section 47 CPC. The scope of interference at the stage of execution is limited to certain exceptions. As per Section 47, the Executing Court is empowered to examine the questions relating to execution, discharge, or satisfaction of the decree. It cannot go beyond the decree; but at the same time, when a plea is raised that the decree is a nullity and hence, unenforceable, the executing court is bound to examine and decide such an application on its merits.

16. It is a settled position of law that a court executing a decree cannot go behind the decree passed between the parties or their representatives, unless the decree is a nullity. The court must execute the decree according to its tenor, and cannot entertain objections on the ground that the decree is erroneous in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree, even if erroneous, remains binding on the parties.

A decree may, however, be challenged in execution proceedings, if it is a nullity - for instance, if it is passed without bringing on record the legal representative of a person who was dead at the time the decree was passed, or where the cause of action was not maintainable, or if it was passed against a ruling prince without a certificate. An objection in that behalf may be raised in the execution proceedings. Similarly, when the decree is made by a court that has no inherent jurisdiction to pass it, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record.

17. While dealing with the scope of interference of the Executing Court in modifying a decree or award, this Court in *Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan*¹⁹, held as follows:

"23. Though this view has echoed time out of number in similar pronouncements of this Court, in *Dhurandhar Prasad Singh v. Jai Prakash University* [*Dhurandhar Prasad Singh v. Jai Prakash University*, (2001) 6 SCC 534 : AIR 2001 SC 2552], while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing."

18. The validity of a decree can be challenged in execution proceedings on the ground that the Court which passed the decree, was lacking in inherent jurisdiction in the sense that it could not have seized of the case because the subject-matter was wholly foreign to its jurisdiction, or that the defendant was dead at the time the suit was instituted or the decree was passed, or on some such other ground which would have the effect of rendering the court entirely lacking in jurisdiction over the subject-matter of the suit or over the parties to it. [Vide: *Hira Lal Patni v. Kali Nath*²⁰]

19. From the above pronouncements of this Court, it is amply clear that at the stage of execution proceedings, objections regarding the maintainability of the

suit as well as the jurisdiction of the trial Court can be raised for consideration, and the executing court is well within its powers to deal with such objections in accordance with law, if such objections, from the face of the records, do not require adjudication by trial. However, in the case on hand, the objections raised by the appellant regarding the maintainability and the execution proceedings have been rejected by the Executing Court at the threshold, without going into the contentions.

This court in a recent judgment in *Celir LLP v. Mr. Sumati Prasad Bafna and others*²¹, while dealing with a contempt petition and underscoring the importance of bringing finality to concluded litigations, applying the Henderson's rule, refused to accept the contentions against the original order, holding that a defence, which ought to have been raised, if not raised, is deemed to have been raised and overruled. The said judgment arises in a contempt matter, where the law that a court hearing the contempt case can neither expand the scope of original order nor modify it is well settled [See: *Midnapore Peoples Co-operative Bank Ltd and others v. Chunilal Nanda and others*²²].

However, the case on hand is completely different, and the scope of interference by the execution court is to be understood in the light of the power conferred upon it by Section 47 and the settled position that the executing court can refuse to execute the decree if it is a nullity. In addition to the settled position that a decree obtained by fraud or against the wrong person is a nullity, there are other circumstances which can render a decree to be a nullity.

Jurisdiction

20. A decree passed without jurisdiction is null and void. A court is said to lack jurisdiction if it has no territorial jurisdiction, or if it has no pecuniary jurisdiction, or if its jurisdiction over the subject matter is circumscribed by any law. Such laws may be either substantive or procedural and may, by express provision or necessary implication, take away the jurisdiction of a court to deal with a matter, leaving no room for any judicial discretion.

These provisions may either impose a total bar on the court from dealing with certain subject matters or impose any pre-conditions, non-compliance with which may prevent the court from entertaining the suit, even if it otherwise has jurisdiction over the subject matter. A plea questioning the jurisdiction of the court can be raised at any stage, including before the High Court or this Court, particularly when it involves a pure question of law.

21. A "Judgment", as defined under Section 2(9) CPC, to be valid, must satisfy the requirements under Order XX Rule 4 (2) CPC. It should not only trace, record, consider and decide all the points of disputes but should also reflect the

same. The decision must be based on reasons reflected in the judgment. Once the issue of maintainability is raised, or if the facts as pleaded by themselves create a cloud over the jurisdiction of the court or the maintainability of the proceedings, the same will have to be addressed, failing which the judgment will be unsustainable and a nullity. It will be useful to refer to the following judgments that discuss the effect of a "Judgment" rendered without jurisdiction. In *Harshad Chiman Lal Modi v. DLF Universal and Ors.*²³, this Court addressed the question of territorial jurisdiction in the context of a suit for specific performance of a real estate agreement and observed as under:

"27. Ms. Malhotra, then contended that Section 21 of the Code, requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and written statement was filed by the defendants in 1989 wherein jurisdiction of the court was 'admitted'. On the basis of the pleadings of the parties, issues were framed by the court in February, 1997.

In view of the admission of jurisdiction of court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of written statement was filed raising a plea as to absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to *Hira Lal v. Kali Nath* MANU/SC/0041/1961: [1962]2 SCR 747 and *Bahrein Petroleum Co. v. Pappu* MANU/SC/0012/1965 : (1966) II LLJ 144 SC.

28. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues.

The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

29. In *Halsbury's Laws of England*, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

"317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent." 30. In *Bahrein Petroleum Co.*, this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is nonest and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a *coram non judice*.

31. In *Kiran Singh v. Chaman Paswan* MANU/SC/0116/1954 : [1955] 1 SCR 117, this Court declared; "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

21.1. In *Jagmittar Sain Bhagat v. Dir. Health Services, Haryana and Others*²⁴, this Court dealt with the issue of jurisdiction in the context of a government servant seeking retiral benefits under the Consumer Protection Act, 1986 and held that a decree passed without statutory jurisdiction is null and void, and this defect can be challenged at any stage including execution. The relevant paragraphs are extracted below:

"7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings.

The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction.

Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen MANU/SC/0067/1951 : AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan and Ors. MANU/SC/0367/1977 : AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios and Anr. MANU/SC/0477/1981 : AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors. MANU/SC/0278/1999 : AIR 1999 SC 2213).

8. In *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs.* MANU/SC/0593/1989 : (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in *Premier Automobiles Ltd. v. K.S. Wadke and Ors.* MANU/SC/0369/1975 : (1976) 1 SCC 496; *Kiran Singh v. Chaman Paswan* MANU/SC/0116/1954 : AIR 1954 SC 340; and *Chandrika Misir and Anr. v. Bhaiyalal* MANU/SC/0328/1973 : AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner."

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing; "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent.

But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: *Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore* MANU/PR/0093/1919 : AIR 1919 PC 150; *State of Gujarat v. Rajesh Kumar Chimanlal Barot and Anr.* MANU/SC/0672/1996 : AIR 1996 SC 2664; *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. and Anr.* MANU/SC/0710/2005 : AIR 2005 SC 4446; and *Carona Ltd. v. Parvathy Swaminathan and Sons* MANU/SC/3938/2007 : AIR 2008 SC 187)."

21.2. In *Shri Saurav Jain and another v. M/s. A.B.P Design & another*²⁵, this Court discussed the issue of territorial jurisdiction in respect of a property dispute involving cancellation of a sale deed and possession and held as under:

"29. With regard to new grounds being raised before this Court in a special leave petition Under Article 136, we note that Under Order 21 Rule 3(c) of the Supreme Court Rules 2013, SLPs are to be confined to the pleadings before the court whose order is challenged. However, with the leave of the Court, additional grounds can be urged at the time of the hearing.

30. This Court in *Bharat Kala Bhandar (P) Ltd. v. Municipal Committee* MANU/SC/0267/1965 : AIR 1966 SC 249 dealt with a civil appeal where a contention had not been raised in the suit or in the grounds of appeal before the High Court, and was advanced before this Court for the first time. Although the Court noted that the scope of the appeal cannot be broadened at the instance of the parties, if a plea raises a question of considerable importance, it can be entertained by this Court. In a similar vein, this Court in *Vasant Kumar Radhakisan Vora v. Board of Trustees of the Port of Bombay* MANU/SC/0005/1991 : (1991) 1 SCC 761, noted that pure questions of law which go to the root of the jurisdiction in a case can be raised for the first time in an appeal under Article 136 of the Constitution.

31. In *Chandrika Misir v. Bhaiya Lal* MANU/SC/0328/1973 : (1973) 2 SCC 474, this Court was hearing a special leave petition concerning the possession of parties over the suit property which was the subject of the U.P. Zamindari Abolition and Land Reforms Act (Act 1 of 1951). While adjudicating on whether the suit was barred by limitation, Justice DG Palekar, speaking for a two Judge bench, observed that the civil court did not have jurisdiction to entertain the suit at all. Although the plea of bar on jurisdiction had not been raised in the courts below, the Court held that:

"6. It is from this order that the present appeal has been filed by special leave. It is to be noticed that the suit had been filed in a civil court for possession and the Limitation Act will be the Act which will govern such a suit. It is not the case that U.P. Act 1 of 1951 authorises the filing of the suit in a civil court and prescribes a period of limitation for granting the relief of possession superseding the one prescribed by the Limitation Act. It was, therefore, perfectly arguable that if the suit is one properly entertainable by the civil court the period of limitation must be governed by the provisions of the Limitation Act and no other. In that case there would have been no alternative but to pass a decree for possession in favour of the Plaintiffs.

But the unfortunate part of the whole case is that the civil court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard

to the jurisdiction had not been raised by the Defendant in the trial court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogeshwar Prasad, even in execution proceedings on the ground that the decree was a nullity. If one reads Sections 209 and 331 of the U.P. Act 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the Rules made under the Act and the jurisdiction of the ordinary civil court is absolutely barred."

22. In *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* 26 as well, a three Judge Bench of this Court entertained an objection as to maintainability of the suit under Section 9 of the Code of Civil Procedure, despite the plea not having been raised before the courts below. The Court observed that the plea of a bar or lack of jurisdiction can be entertained at any stage, since an order or decree passed without jurisdiction is non est in law.

23. The position of law has been consistently applied even in criminal proceedings under Article 136 of the Constitution. In *Masalti v. State of Uttar Pradesh*²⁷, the confirmation of the death sentence of a number of accused persons by the High Court was under challenge before this Court. Chief Justice Gajendragadkar, speaking for a four judge Bench of this Court, observed that:

"11. We are not prepared to accept Mr. Sawhney's argument that even if this point was not raised by the Appellants before the High Court, they are entitled to ask us to consider that point having regard to the fact that 10 persons have been ordered to be hanged. It may be conceded that if a point of fact which plainly arises on the record, or a point of law which is relevant and material and can be argued without any further evidence being taken, was urged before the trial court and after it was rejected by it was not repeated before the High Court, it may, in a proper case, be permissible to the Appellants to ask this Court to consider that point in an appeal Under Article 136 of the Constitution; after all in criminal proceedings of this character where sentences of death are imposed on the Appellants, it may not be appropriate to refuse to consider relevant and material pleas of fact and law only on the ground that they were not urged before the High Court. If it is shown that the pleas were actually urged before the High Court and had not been considered by it, then, of course, the party is entitled as a matter of right to obtain a decision on those pleas from this Court. But even otherwise no hard and fast Rule can be laid down prohibiting such pleas being raised in appeals under Article 136."

24. Based on this settled legal position, we find it just to allow the appellant to raise the ground of jurisdiction before us. Consideration of the question would not require any additional evidence, since it involves a pure question of law and

strikes at the heart of the matter. We shall now turn to the merits of this argument.

Section 80 CPC

25. As seen from the above judgments, a defect in jurisdiction vitiates the decree and renders it unenforceable. The Civil Procedure Code, though considered to be procedural law, encompasses within it, certain provisions that take away or circumscribe the right to sue, which are deemed to be substantive. One such provision is Section 80 CPC which reads as follows:

"Section 80 - Notice. (1)[Save as otherwise provided in sub-section (2), no suits [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of]

(a) in the case of a suit against the Central Government, [except where it relates to a railway] a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]

(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice (a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and (b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

25.1. A plain reading of the above provision makes it explicit that no suit can be instituted against the State, an instrumentality of the State, or a public officer acting in his official capacity, without issuance of a notice under Section 80 CPC. It is not to be forgotten that when a notice is to be given, it must also be given on the appropriate party. The object of this section is to ensure that public funds and judicial time are not wasted on unwarranted litigation. The requirement of notice provides the Government an opportunity to examine the claim, reconsider its position, and potentially resolve the dispute out of Court, thereby avoiding unnecessary proceedings.

There is an express bar on a civil court from entertaining a suit against the government or its instrumentalities, without compliance with the said provision. Section 80 (2) further provides that notice under Section 80(1) may be dispensed with, but only with the leave of the court. This Court has consistently held that the requirement of notice under Section 80 is mandatory and must be strictly complied with. Failure to do so renders the suit liable to be dismissed at the threshold. The absence of such notice is treated as a formal defect, and the Court is duty bound to reject the plaint under Order VII Rule 11(d) CPC, if it discloses non-compliance with Section 80 CPC.

26. In cases such as the one under consideration, the State, which was not originally a party, could be impleaded and the plaint could be amended by inclusion of pleadings, cause of action and relief against the State. In such cases also, the plaintiff, immediately upon becoming aware of the necessity to implead the State, is duty bound to either issue a notice as contemplated under Section 80(1) CPC or obtain leave under Section 80(2) CPC before an application for impleadment is taken out. Failure to do so will bar the civil court from exercising jurisdiction against the State, and the court will have no option but to dismiss the suit.

This is so because when a state government or its instrumentality is impleaded in a pending suit, a new or fresh cause of action is introduced. Similarly, if the amendment sought by the plaintiff introduces a new cause of action within the period of limitation and with the court's leave, a fresh notice under Section 80(1) CPC must still be issued. This Court in *Gangappa Gurupadappa Gugwad Gulbarga v. Rachawwa and Ors.*²⁸ held in the following terms that it is the duty of the court to reject the plaint if a notice under Section 80 is not issued:

"No doubt it would be open to a court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice under Section 80 of the CPC claiming relief was served in terms of the said section, it would be the duty of the court to reject the plaint recording an order to that effect with reason for the order. In such a case the court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

27. In *Bihari Chaudhari v. State of Bihar*²⁹, this Court, considering the object of Section 80 CPC and various other judgments, held as under:

"3. We are concerned in this case with Section 80 C.P.C. as it stood prior to its amendment, by Act 104 of 1976 (Even under the amended provision, the position remains unaltered insofar as a suit of this nature is concerned). We shall extract the Section as it stood at the material time:

"80. No suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(c) in the case of a suit against the Government of the State of Jammu and Kashmir, the Secretary to that Government or any other officer authorised by that Government in this behalf;

(d) in the case of a suit against any other Government, a Secretary to that Government or the Collector of the district; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name,

description and place of residence of the plaintiff and relief which he claims; and plaintiff shall contain a statement that such notice has been so delivered or left."

4. The effect of the Section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of Sub-section (1) of the Section.

When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay.

The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted.

There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months time to Government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

5. When the language used in the Statute is clear and unambiguous, it is the plain duty of the Court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the legislature.

6. The Judicial Committee of the Privy Council had occasion to consider the scope and effect of Section 80 C.P.C. in an almost similar situation in *Bhagchand Dagadusa and Ors. v. Secretary of State for India in Council and Ors.* 54 I.A. 338 In that case, though a notice had been issued by the plaintiffs under Section 80

C.P.C. on 26th June 1922, the suit was instituted before the expiry of the period of two months from the said date.

It was contended before the Privy Council, relying on some early decisions of High Court of Bombay, that because one of the reliefs claimed in the suit was the grant of a perpetual injunction and the claim for the said relief would have become infructuous if the plaintiffs were to wait for the statutory period of two months prescribed in Section 80 C.P.C. before they filed the suit, the rigour of the Section should be relaxed by implication of a suitable exception or a qualification in respect of a suit for emergent relief, such as one for injunction.

That contention did not find favour with the Privy Council and it was held that Section 80 is express, explicit and mandatory and it admits no implications or exceptions. The Judicial Committee observed: To argue as appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court.

7. This decision was subsequently followed by the Judicial Committee in *Vellayan v. Madras Province*. 74 I.A. 223 The dictum laid down by the Judicial Committee in *Bhagchand Dogadusa v. Secretary of State for India*. 54 I.A. 333 was cited with approval and followed by a Bench of five Judges of this Court in *Sawai Singhai Nirmal Chand v. Union of India*. [1966] (1) SCR 956

8. It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 C.P.C. is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the Section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable."

28. This Court in *Bishandayal and Sons v. State of Orissa* and Ors³⁰ again reiterated the settled position and has held as under:

"16. There can be no dispute to the proposition that a notice under Section 80 can be waived. But the question is whether merely because in the amended written statement such a plea is not taken it amounts to waiver. This contention was argued before the Appellate Court. Even otherwise we find that in the suit itself Issue No. 4 had been raised as to whether or not there was a valid and appropriate notice under Section 80. Such a point having been taken in the original written statement and an issue having been raised, it was not necessary that in the amended written statement such a plea be again taken. On behalf of the Respondents, reliance has been placed on the case of *Gangappa Gurupadappa Gugwad v. Rachawwa and Ors*.

Reported in MANU/SC/0351/1970: [1971] 2 SCR 691, wherein it has been held that where the plaintiffs cause of action is against a Government and the plaint does not show that notice under Section 80 was served, it would be duty of the Court to reject the plaint. In this case the original notice was only in respect of a claim under the plaint as it originally stood. That claim was on the basis that there was a concluded contract and that the Appellants had already acquired rights in the mill and the lands. As has been fairly conceded those reliefs were not maintainable and were given up before the Appellate Court.

The amended plaint was on an entirely new cause of action. It was based on facts and events which took place after the filing of the original plant(sic). It was a fresh case. Now the claim was for specific performance of the agreement alleged to have been entered into on 29th December, 1978. Admittedly no notice under Section 80 CPC was given for this case. As there was an Issue pertaining to Notice under Section 80, the trial court should have dealt with this aspect.

The trial court failed to do so. It was then pressed before the Appellate Court. In our view the finding in the impugned Judgment that the suit based on this claim was not maintainable is correct and requires no interference. If a new cause of action is being introduced a fresh notice under Section 80 CPC would be required to be given. The same not having been given, the suit on this cause of action was not maintainable."

29. In the present case, the appellant/4th defendant has not pleaded directly that no notice under Section 80 was issued, but the plea of maintainability of the suit was raised. It is not in dispute that the appellant/4th defendant is an instrumentality of the Odisha State, created in pursuance of a requirement under the specific enactment of the parliament, State Financial Corporations Act, 1951, requiring every State to facilitate and encourage industrial development by creating institutions to fund the Micro, Small, and Medium Scale Enterprises.

A reading of the provisions clearly indicate that not only is the appellant/4th defendant, a mandatory creation under a statute but also is substantially controlled by the State to perform a public duty of great importance, the object of which is to promote regional, social and economical empowerment, which in turn is expected to contribute at national level. Therefore, we are of the opinion that the appellant/4th defendant satisfies the following tests laid down by the Constitutional Bench of this Court in *Ajay Hasia and Others v. Khalid Mujib Sehravardi and others*³¹ to be classified as a "State" as defined under Article 12 of the Constitution of India. The relevant paragraphs are extracted below for ready reference:

"8. We may point out that this very question as to when a corporation can be regarded as an 'authority' within the meaning of Article 12 arose for consideration

before this Court in *R.D. Shetty v. The International Airport Authority of India and Ors.* [1979] 1 S.C.R.1042. There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J) this Court pointed out:

"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this."

It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities.

If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through instrumentality or agency of corporations should equally be subject to the same limitations. The Court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed:

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters.

So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share

capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so what should be the nature of such control? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial?

Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions.

What then are tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not"

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital:

"if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to' use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government. It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action - Vide Sukhdev v. Bhagatram MANU/SC/0667/1975 : (1975) ILLJ 399 SC. So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State."

There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: "The Constitutional Law of the Security State" (Stanford Law Review 620 at 664).

"It may be noted that besides the so-called traditional functions, the modern state operates as multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram (supra) where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

The court however proceeded to point out with reference to the last functional test:

"the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions.

Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J. Sukhdev v. Bhagatram (supra) at p. 652]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."

These observations of the court in the International Airport Authority's case (supra) have our full approval.

9. The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

(5) If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government. If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

30. Therefore, with the above conclusion that the appellant/4th defendant is a "State" within the meaning of Article 12 of the Constitution, the mandatory requirement of notice under Section 80 has come into operation. A plain reading of Section 80 along with the settled position of law clearly enunciates that it is a duty of the trial court to deal with that aspect of satisfaction of the notice under Section 80. Such preconditions to be satisfied before initiation of a suit are recognized as mandatory in civil disputes where a statute prescribes the same. A

reference may be made to Section 18 of the MSME Act, which provides for conciliation, or to Section 12-A of the Commercial Courts Act, 2015, which mandates pre-institution mediation - failure of which would render the suit unsustainable and liable to be rejected.

The trial Court, in the present case, failed to do so, thereby rendering the decree a nullity. For a moment, we pause to state that the plaintiff, in our view, cannot by any stretch be considered to be ignorant or illiterate, as it is a registered partnership firm and the pleadings or the documents marked also cannot be come to their aid to condone the lapse as there is nothing on record to show that any notice was issued to the appellant/4th defendant, which has gone into the root of the jurisdiction of the trial court to entertain the suit against the appellant/4th defendant.

Applicability of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993

31. The trial Court is bound to decide all the issues framed. While doing so, it goes without saying that all the applicable legal provisions must be duly analysed. It is to be noted that Issue No.8 as framed by the trial court was: "whether the plaintiff is a small-scale unit, if yes, then its effect?". This issue was taken up for consideration along with Issue No.5, which reads: "whether the plaintiff is entitled to receive interest, if yes, then at what rate?".

However, while deciding these issues, the trial Court failed to render any categorical finding on whether the plaintiff was, in fact, a small-scale industry, and if so, whether the provisions of the now-repealed Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993³² (which came into force only after the suit was filed) would at all be applicable - more particularly against the appellant/4th defendant. Therefore, it has become imperative for this Court to examine the applicability of the Act, 1993.

32. The Act, 1993 came into force with effect from 23.09.1992 and remained in effect until it was repealed by the Micro, Small and Medium Enterprises Development Act, 2006. The Act, 1993 is a special legislation. In order to determine whether the Act, 1993 applies to the present case, it is necessary to examine certain provisions of the Act, in light of the factual matrix on record. Section 2 of the Act defines various terms used therein, the relevant definitions of which, are extracted below, for the purpose of the present adjudication:

2(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

2 (c) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

2 (f) "supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or [Union territory and includes- [Substituted by Act 23 of 1998, Section 2, for " Union territory" (w.e.f. 10.8.1998).]

32.1. Sections 3 to 6 of the Act, 1993 deal with the key aspects of supply, liability for delayed payment, interest (including compound interest), and recovery mechanisms. These provisions form the substantive core of the Act and read as under:

Section 3. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.

Section 4. Date from which and rate at which interest is payable.- Where any buyer fails to make payment of the amount to the supplier, as required Under Section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and half time of prime Lending Rate charged by the State Bank of India.

Explanation.- For the purposes of this section," Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

Section 5. Liability of buyer to pay compound interest.- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interests) at the rate mentioned in Section 4 on the amount due to the supplier.

Section 6. Recovery of amount due.-

(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

(2) Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that Subsection and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act."

32.2. A reading of the above provisions would indicate that under Section 3, there is a statutory liability on the buyer to make payment for the supplies received by him. The statutory liability comes into operation when any supplier supplies any goods to any buyer; the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing, or, where there is no agreement in this behalf, before the appointed day. The term 'Appointed day' as defined in Section 2(b) means the day following immediately after the expiry of thirty days from the day of acceptance or the day of deemed acceptance of any goods or services by a buyer from a supplier.

Thus, statutory liability to make payment falls on the buyer from the 31st day after the supply, if no specific agreement exists between the parties. It is relevant to note here that the liability to make payment accrues "where any supplier supplies any goods or renders any services to any buyer," and the incident of liability is either the supply of goods, rendering any service, or both. The Act, 1993, without any shadow of doubt, is clearly prospective in nature and governs the incidents of supply and rendering service which happens after its enforcement, i.e., 23.09.1992. Further, it is the buyer who is liable to make the payment after the supply of goods or rendering any service.

Thus, by virtue of Section 3, both the incidents - i.e., the supply of goods or services on the one hand, and the payment or default on the other - must occur after the Act has come into force. Only in cases where the supply or service is rendered after the enforcement of the Act, the liability of payment shall accrue and the Act can be pressed into service by a supplier. The provisions also clearly indicate that the liability is only on the buyer, and any amounts including interest under Section 4 or compounded interest under Section 5 can be demanded only from the buyer, if the incidents referred to in Section 3 occur after the Act has come into force and not for any supply or service rendered prior to 23.09.1992.

33. In *Shanti Conductors (P) Ltd v. Assam State Electricity Board and others*³³, a three-Judge Bench of this Court had an occasion to consider the scope of the repealed Act, 1993, its applicability with regard to the date of contract, date of supply, liability to make payments and the conflicting judgments of the Division Bench of this Court, and ultimately, held as under:

"27. From the submissions of the learned Counsel for the parties and pleadings on record we need to answer the following questions in these appeals:

(1) Whether Act, 1993 is not applicable when the contract for supply was entered between the parties prior to enforcement of the Act i.e. 23.09.1992?

(2) Whether in the event it is found that Act is applicable also with regard to contract entered prior to Act, 1993 in pursuance of which contract, supplies were made after the enforcement of Act, 1993, the Act, 1993 can be said to have retrospective operation?

(3) Whether money suit by M/s. Shanti Conductors was barred by limitation?

(4) Whether judgment of this Court in Purbanchal Cables dated 31.08.2016 by which appeal of M/s. Shanti Conductors was also dismissed is binding between the parties i.e. M/s. Shanti Conductors and Assam Electricity Board and the Appellant cannot be allowed to question the said judgment in these appeals?

(5) Whether the suit filed by the Appellants for recovery of only interest when admittedly entire principal amount was paid prior to filing of the suit can be said to be maintainable?

(6) Whether appeal filed by M/s. Trusses and Towers Pvt. Ltd. challenging the review judgment dated 19.03.2003 cannot be entertained since no liberty was granted by this Court in SLP(C) No. 12217 of 2001 when the SLP filed against the main judgment of the High court dated 05.04.2001 was dismissed as withdrawn?

(7) Whether the High court while considering the Review petition No. 75 of 2001 M/s. Trusses & Towers Pvt. Ltd. even after expressing that Act, 1993 is not applicable could have allowed 9% interest to the Plaintiff?"

37. The liability to make payment under Section 3 and the liability to pay interest under Section 4 is not dependent on date of agreement between the parties to make supply. When the question of supply and payment are incidents contemplated under the Act which have to take place after the enforcement of the Act the day of agreement between the parties has no relevance insofar as statutory liability under the Act is concerned.

38. There are several two-Judge Benches judgments of this Court where provisions of Act, 1993 especially Sections 3 and 4 have been interpreted. We now refer to judgments of this Court which have considered the above provisions. The first judgment which has been noticed is Assam Small Scale Industries Development Corporation Ltd. and Ors. v. J.D. Pharmaceuticals and another (2005) 13 SCC 19. This Court in the said judgment laid down that Act,

1993 will not apply to transactions which took place prior to enforcement of the Act. Following was laid down in paragraphs 37 and 38:

"37. We have held hereinbefore that Clause 8 of the terms and conditions relate to the payments of balance 10%. It is not in dispute that the Plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply.

The 1993 Act came into effect with effect from 23.9.1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, sl. Nos. 1 to 26 (referred to in penultimate para of the Trial Court Judgment), that is supply orders between 5.6.1991 to 28.7.1992, were prior to the date of 1993 Act coming into force. Only the transactions at sl. No. 27 to 71 (that is supply orders between 22.10.1992 to 19.6.1993). will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June, 1991 and 23.9.1992. The Trial Court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% upto June, 1991 and 23.5% thereafter."

39. The word 'transaction' used in the above judgment has to include the supply, in the event word 'transaction' is understood as supply there cannot be any quarrel with the proposition that Act will not apply with regard to supply made prior to the Act.

40. The next judgment of this Court is Shakti Tubes Ltd. v. State of Bihar and Others, (2009) 7 SCC 673. In the said case, Shakti Tubes had filed a suit for payment of interest. In the above case, supply orders were placed by the State of Bihar on 16.07.1992, reliance on Act, 1993 was placed by the appellant. It was also noticed in the said case that earlier supply order dated 16.07.1992 was materially altered and substituted by a fresh supply order issued on 18.03.1993. Referring to the judgment of this Court in Assam Small Scale Industries case, two-Judge Bench held that ratio of the aforesaid decision is clearly applicable. In paragraphs 17, 18 and 19 following was laid down:

"17. In the light of the said facts in Assam Small Scale Industries case, it was recorded in paragraph 37 of the judgment that while the Act came into effect from 23rd September, 1992, the supply orders were placed only in respect of Serial Nos. 1 to 26 immediately and before coming into effect of the Act and rest of the supply orders namely, supply orders at Serial Nos. 27 to 71 were placed

between 22.10.1992 to 19.06.1993 which were subsequent to the date when the Act came into force. In that context, it was clearly recorded in the judgment that the Act will have no application to the transactions that took place prior to the commencement of the Act.

In the next sentence the Court made it clear as to what is referred to and understood by the expression "transaction" when it clearly stated that out of 71 transactions, Serial Nos. 1 to 26, i.e. supply orders between 05.06.1991 to 28.07.1992 being prior to 23rd September, 1992 when the Act came into force, higher interest as envisaged Under Sections 4 and 5 of the Act cannot be paid and demanded in respect of the said supply orders/transactions. It was also made clear that the transactions at Serial Nos. 27 to 71 only i.e. supply orders between 22.10.1992 to 19.06.1993, would attract the provisions of the Act. therefore, those supply orders which were issued by the Corporation between 22.10.1992 to 19.06.1993 were held to be the transactions which would be entitled to get the benefit of the provisions of the Act.

18. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and, therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

19. Now coming to the facts of the present case we find that there is no dispute with regard to the fact that the supply order was placed with the Respondents on 16.07.1992 for supply of the pipes which date is admittedly prior to the date on which this Act came into effect."

41. The Bench further referring to earlier judgment of this Court in Assam Small Scale Industries observed that the use of the expression 'transaction' was only for supply order. In paragraph 21, following was laid down:

"21. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the Respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in paragraph 37 of the judgment which we had already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in paragraph 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the

transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made therefore, the submission made by the learned senior Counsel appearing for the Appellant-Plaintiff fails."

42. The Court further held that there was neither any alteration of the contract nor novation of the contract in paragraph 31, which is to the following effect:

"31. Even otherwise, we are of the considered view that there was neither any alteration of the contract nor any novation of the contract in the present case. The correspondence between the parties clearly disclosed that after the Respondents issued the supply order, the Appellant-Plaintiff did not supply the pipes in terms of the supply order and it urged mainly for the increase in the price of the goods. Subsequently, they relied upon the price escalation Clause and asked for increase in the price of pipes."

43. Next judgment we notice is *Modern Industries v. Steel Authority of India Limited*, (2010) 5 SCC 44. Noticing the purpose and object of the Act, 1993, following was observed in paragraph 23:

"23. The wholesome purpose and object behind 1993 Act as amended in 1998 is to ensure that buyer promptly pays the amount due towards the goods supplied or the services rendered by the supplier. It also provides for payment of interest statutorily on the outstanding money in case of default. Section 3, accordingly, fastens liability upon the buyer to make payment for goods supplied or services rendered to the buyer on or before the date agreed upon in writing or before the appointed day and when there is no date agreed upon in writing, the appointed day shall not exceed 120 days from the day of acceptance."

44. The Court had also considered one of the submissions that the suit for recovery of mere interest under Act, 1993 is not maintainable. The Bench answered the issue by holding that the suit even for interest is also maintainable. Following was laid down in paragraphs 45 - 46:

"45. It is true that word 'together' ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding Under Sub-section (1) or by making reference to IFC Under Sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of Gauhati High Court in *Assam State Electricity Board* (2002) 2 GLR 550 that word 'together' in Section 6(1) would mean 'alongwith' or 'as well as'. Seen thus, the action Under Section 6(2) could be maintained for

recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, under Section 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due Under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability.

IFC has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by learned senior Counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of 1993 Act. Preamble to 1993 Act, upon which strong reliance has been placed by learned senior Counsel, does not persuade us to hold otherwise. It is so because Preamble may not exactly correspond with the enactment; the enactment may go beyond Preamble."

45. In the above case also the contract was entered on 15.01.1993 but the contract was subsequently altered. Last alteration being on 29.04.1995 hence the Bench repelled the submission that Act, 1993 was not applicable.

46. Now we come to the judgment of this Court in Purbanchal Cables and Conductors Private Limited (supra), which is a judgment on which reliance has been placed by the High Court while allowing the appeal of the Board. Learned Counsel for the Board has also placed heavy reliance on the said judgment. 47. In the above case, Board placed order dated 31.03.1992 for delivery of goods on 16.09.1992. Further, supplies were made between 25.9.1992 and 30.03.1993. Entire supply was completed on 12.10.1993 entire payment was received by October, 1993. The supplier instituted money suit for payment of interest on delayed payment under Act, 1993. The issues to be answered have been noted in paragraph 10 of the judgment which is to the following effect:

"10. The issues that are required to be answered by us in these appeals are whether a suit for interest along is maintainable under the provisions of the Act, and whether the Act would be applicable to contracts that have been concluded prior to the commencement of the Act. In other words, we are required to examine whether the Act would apply to those contracts which were entered into prior to the commencement of the Act but supplies were effected after the Act came into force."

48. On the question of maintainability of the suit for interest, the Bench held that the supplier may file suit only for a higher rate of interest on delayed payment made by the buyer from the commencement of the Act. The Bench held that Act, 1993, being a substantive law it shall operate prospectively. In paragraph 51, following has been laid down:

"51. There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure."

49. The Court further held that Act, 1993 shall be applicable only for sale agreements after the date of the commencement of the Act and not any time prior. Following was laid down in paragraph 52:

"52. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior."

50. The Bench also expressly rejected the submission of the learned Counsel appearing for the supplier that the earlier judgments of this Court in Assam Small Scale Industries and Shakti Tubes need consideration. On question of limitation of the suit, no final opinion was expressed. The appeals were ultimately dismissed by the Bench.

Issue No. 1

51. The judgment of this Court in Purbanchal Cables and Conductors Pvt. Ltd., relying on Assam Small Scale Industries and Shakti Tubes had laid down that Act, 1993 cannot be made applicable with regard to sale agreements which were entered into prior to the enforcement of the Act and Act can be invoked only for the sale agreements which were entered after the enforcement of the Act. Although attempt was made in Purbanchal Cables to get judgment in Assam Small Scale Industries and Shakti Tubes reconsidered, but Coordinate Bench in Purbanchal Cables has refused to permit any such reconsideration. The matter now having been referred to this three-Judge Bench, we have to consider and answer as to whether the above interpretation of Act, 1993 as given is in consonance with the statutory scheme.

52. We have noticed above that the incidence of applicability of the liability under the Act is supply of goods or rendering of service. In event the supply of goods and rendering of services is subsequent to Act, can liability to pay interest on delayed payment be denied on the ground that agreement in pursuance of

which supplies were made were entered prior to enforcement of the Act? Entering into an agreement being not expressly or impliedly referred to in the statutory scheme as an incident for fastening of the liability, making the date of agreement as date for imposition of liability does not conform to the statutory scheme. This can be illustrated by taking an example.

There are two small scale industries who received orders for supply of materials. 'A' received such orders prior to the enforcement of the Act and 'B' received the order after the enforcement of the Act. Both supplied the goods subsequent to enforcement of the Act and became entitled to receive payment after the supply, on or before the day agreed upon between the supplier and buyer or before the appointed day. Payments were not made both to A and B as required by Section 3. Can the buyer who has received supplies from supplier A escape from his statutory liability to make payment of interest Under Section 3 read with Section 4?

The answer has to be No. Two suppliers who supply goods after the enforcement of the Act, become entitled to receive payment after the enforcement of the Act one supplier cannot be denied the benefit of the statutory protection on the pretext that agreement in his case was entered prior to enforcement of the Act. When the date of agreement is not referred as material or incidence for fastening the liability, by no judicial interpretation the said date can be treated as a date for fastening of the liability. The Act, 1993 being beneficial legislation enacted to protect small scale industries and statutorily ensure by mandatory provision for payment of interest on the outstanding money, accepting the interpretation as put by learned Counsel for the Board that the day of agreement has to be subsequent to the enforcement of the Act, the entire beneficial protection of the Act shall be defeated.

The existence of statutory liability depends on the statutory factors as enumerated in Section 3 and Section 4 of the Act, 1993. Factor for liability to make payment Under Section 3 being the supplier supplies any goods or renders services to the buyer, the liability of buyer cannot be denied on the ground that agreement entered between the parties for supply was prior to Act, 1993. To hold that liability of buyer for payment shall arise only when agreement for supply was entered subsequent to enforcement of the Act, it shall be adding words to Section 3 which is not permissible under principles of statutory construction.

We, thus, are of the view that judgments in Purbanchal Cables and Conductors (supra), Assam Small Scale Industries and Shakti Tubes which held that Act, 1993 shall be applicable only when the agreement to sale/contract was entered prior/subsequent to the enforcement of the Act, does not lay down the correct law. We accept the submission of learned Counsel for the Appellants that even if agreement of sale is entered prior to enforcement of the Act, liability to make

payment Under Section 3 and liability to make payment of interest Under Section 4 shall arise if supplies are made subsequent to the enforcement of the Act.

Issue No. 2

53. In all the judgments of this Court referred above, it has been held that Act, 1993 is not retrospective. It is not even contended before us by any of the parties that the Act, 1993 is retrospective in operation. Judgments of this Court as noticed above rightly hold that Act, 1993 is not retrospective.

54. The opinion of Justice Gowda dated 31.08.2016 although holds that Act is not retrospective but he holds the Act retroactive. The word retroactive has been defined in Black's Law Dictionary in the following words: Retroactive. adj. (17C) (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. Cf. Prospective (1). - retroact, vb.

55. Two-Judge Bench of this Court in State Bank's Staff Union (Madras Circle) v. Union of India and Ors., MANU/SC/0564/2005 : (2005) 7 SCC 584, had occasion to examine the concept of retroactive and retrospective. In paragraphs 20 and 21 of the judgment following has been laid down:

"20. Judicial Dictionary (13th Edn.) K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used, with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transaction or considerations already past.

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol. 4) Retroactive-Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999) 'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new Rule of law to an act or transaction which was completed before the Rule was promulgated.

The second concept, which will be referred to as 'quasiretroactivity', occurs when a new Rule of law is applied to an act or transaction in the process of completion. The foundation of these concepts is the distinction between completed and pending transactions." (T.C. Hartley, The Foundations of European Community Law 129 (1981). Retrospective-Looking back; contemplating what is past. Having operation from a past time. 'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one.

In general however the Courts regards as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol. 44 Halsbury's Laws of England, Fourth Edition, page 570 para 921)"

56. Further in Jay Mahakali Rolling Mills v. Union of India and Ors. MANU/SC/3133/2007 : 2007 (12) SCC 198, explaining the retroactive and retrospective following has been laid down:

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

57. Retroactivity in the context of the statute consists application of new Rule of law to an Act or transaction which has been completed before the Rule was promulgated.

58. In the present case the liability of buyer to make payment and day from which payment and interest become payable Under Section 3 and 4 does not relate on any event which took place prior to Act, 1993, it is not even necessary for us to say that Act, 1993 is retroactive in operation. The Act, 1993 is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31.08.2016 of one of the Hon'ble Judges holding that the Act, 1993 as retroactive."

33.1. The ratio laid down by this Court in Shanti Conductors case (supra) can be summarised as under:

A. The date of contract is irrelevant and what is relevant is the incident of supply or rendering of services as contemplated under Section 3 after the Act, 1993 has come into force, and only if the incidents occur after 23.09.1992, the provisions can be applied thereby overruling the ratio laid down by this Court in Purbanchal Cables & Conductors, Assam Small Scale Industries and Shakti Tubes Ltd., that the Act, 1993 shall be applicable only when the agreement to sale/contract was entered into subsequent to the enforcement of the Act.

B. That the Act, 1993 is prospective - it is neither retrospective nor retroactive - and hence, the provisions of the Act cannot be invoked or relied upon for supplies effected prior to its enforcement.

C. The payment of interest under Section 4, or compounded interest under Section 5, is mandatory and applies de hors the terms of the agreement between the parties, and upon failure of the buyer to make payment within the time stipulated, statutory interest is automatic.

D. The liability to pay under the Act is only on the buyer and cannot be fastened on any other person for a transaction covered under the Act,

E. The liability to pay interest or compound interest arises only if the supply or service occurs after the enforcement date of the Act, 1993.

34. Juxtaposing the above ratio with the facts of the present case, we are of the considered view that the trial Court committed a serious error in applying the provisions of the repealed Act, 1993, to the present case, where the supply was effected in 1985, and more particularly, a grave error in fastening liability for interest and compound interest on the appellant, which was not even a buyer in the transaction. Accordingly, the judgment of the trial Court, to the extent of applying the repealed Act, 1993 and imposing liability on the appellant, is patently without authority and is a nullity on that count. The High Court, in exercise of its supervisory jurisdiction, also failed to examine and address these vital aspects.

35. As pointed out earlier, the trial Court failed to return any finding on the applicability of the repealed Act, 1993, despite the fact that an issue on the payment of interest had been framed. Under Order XX Rule 5 CPC, it is incumbent upon the trial Court to pronounce its judgment on all issues framed. In the present case, the trial Court failed to discharge this obligation and, instead, directly proceeded to apply the provisions of an enactment that was not in force, either at the time of the transaction or at the time of institution of the suit. The failure to discuss and give any finding on the issue has rendered the judgment to be a nullity. This constitutes a fundamental legal error, which, in our view, has vitiated the decree and renders it unenforceable against the appellant.

Maintainability of Suit

36. The appellant is a State-owned Corporation incorporated and registered under the S.F.C. Act, 1951. On 22.11.1984, the appellant had jointly financed, along with Respondent No.3 - IPICOL, to Respondent No. 2, for the establishment of a bleaching powder unit at Ganjam, Orisha. A pari passu agreement was executed among the appellant, Respondent No. 2 and Respondent No. 3. On 29.07.1985, Respondent No. 1 allegedly supplied raw materials worth Rs.66,454.65 to Respondent No. 2. Owing to the nonrepayment of dues arising out of the financial assistance provided by the appellant and Respondent No.3, the appellant took over possession of industrial unit of Respondent No. 2, on 18.08.1987 under Section 29 of the S.F.C. Act, 1951, without encumbrances, as specifically permitted under the Act. Upon a thorough analysis of the records, we find that once the appellant took over the affairs of Respondent No. 2 to realise its dues, all debts and liabilities of Respondent No. 2 automatically fell on the appellant to satisfy those claims only out of the balance sale proceeds, if any, after satisfying its dues as contemplated under Section 29. However, it is claimed that the appellant sold the property in the open market for recovery of the loan amount and thereafter, paid the remaining balance to Respondent No.3 - IPICOL pursuant to a contract between them. On 29.02.1988, Respondent No.1, alleging that it had supplied hydrated lime to Respondent No. 2 in 1985, filed a recovery suit in Civil Suit No.103 of 1988 before the Court of Civil Judge (Sr. Division), Dehradun. Initially, the appellant was not a party to the suit. On 11.02.1993, Respondent No.1 made an application to implead the appellant as Defendant No.4 and the trial Court erroneously allowed the same on 06.12.1994. The appellant filed a written statement denying liability on multiple grounds, including: (i) Under Section 29, no liability of Respondent No. 2 to third parties could be imposed on the appellant, (ii) There was no privity of contract between the appellant and Respondent No. 1 as the appellant was not a party to the underlying transaction, (iii) the suit against the appellant, was barred by limitation, (iv) the suit was not maintainable, and (v) the trial Court lacked territorial jurisdiction to entertain the suit. Without properly considering the same, the trial Court decreed the suit in favour of Respondent No. 1.

37. Upon a perusal of the pleadings and the judgment, this Court finds that the trial Court failed to frame any issues with respect to maintainability, jurisdiction and limitation, nor did it render any finding on the maintainability of the suit against the appellant herein, there being a specific plea to that effect. In a recent judgment in R. Nagaraj (dead) through legal heirs and another v. Rajamani and others³⁴, this Court held that although it is not necessary to frame a separate issue on each point, a finding on a disputed question, while deciding a connected issue is sufficient. However, in the present case, the trial Court, though framed Issue No. 9 concerning the liability of the appellant / 4th defendant, failed to

return any finding on the foundational question of maintainability of the suit, which goes to the root of jurisdiction.

38. It is further evident that initially, the original suit No.103/88 was partly decreed for Rs.84,170/- along with pending and future interest at 24% per annum from 01.03.1988 to 23.09.1992, and thereafter at 2% compounded monthly from 23.09.1992 until realization. The finding of the trial Court on Issue No.9 is of critical importance and, in fact, gave rise to multiple rounds of litigation. The trial Court however, without analysing the scope and applicability of the S.F.C. Act, 1951, the requirement of mandatory notice under Section 80 CPC, the relevance of the repealed Act, 1993, and the specifically contested issue of maintainability, proceeded to render findings only on the limited issues. The judgment was passed without considering or rendering any finding on the core legal issues in the case, thereby vitiating the trial Court's judgment on fundamental jurisdictional grounds.

Privity of Contract

39. Admittedly, there was no contract between the appellant and Respondent No. 1. The appellant has been impleaded solely on the ground that it took possession of the defaulting industrial concern and exercised its rights under the S.F.C. Act, 1951 to realize its dues. In the absence of any privity of contract, the liability of the appellant is limited strictly to the extent contemplated under Section 29 of the S.F.C. Act, 1951. The appellant therefore, cannot be saddled with the entire liability arising from a transaction to which it was not a party. It is necessary to understand the object behind Section 29.

40. The object of Section 29 of the State Financial Corporation Act, 1951, is to empower State Financial Corporations to enforce their rights, without recourse to a suit, against the securities alone, for the recovery of their dues. In other words, the appellant is a class of secured creditor conferred with special rights under Section 29 to realise its dues by enforcing the security without approaching the Court. The liability of such a creditor is limited only to the extent of the money available in its hands after adjustment of its dues. It is not in dispute that the appellant held such money merely as a "trustee" akin to a legal representative in possession of the estate's proceeds.

It is pertinent to note that a financial corporation, or for that matter, the appellant took possession of the defaulting industrial concern only for the limited purpose of realizing its dues and cannot be treated as an owner in the broader legal sense. Once the assets are sold by auction, the financial corporation is entitled to adjust the sale proceeds toward its expenses, the principal, and interest due. Any balance remaining must be distributed among the other creditors. Section 50 CPC deals with the liability of a legal representative upon the death of a judgment debtor, and under Section 50(2), such liability is limited only to the estate of the

deceased in the representative's hands and cannot be stretched to the personal properties standing in the name of the legal representatives.

It is well settled that if the legal heirs of a deceased judgment debtor do not receive any estate, they cannot even be termed "legal representatives" within the meaning of the law, since that status arises solely from the receipt of the deceased's estate. Similar provisions limiting the liability of legal heirs or representatives only to the extent of the value of the properties received by them after the death of the deceased, are also found in statutes dealing with direct and indirect taxes. Similarly, the liability of a financial corporation is limited only to the extent of the money received from the management or sale of assets of the defaulting concern and lying in its hand after settlement of its dues and creditors' claims. No claim can be extended to the personal assets or properties of such a corporation.

It is needless to state that once the defaulting concern is sold or rehabilitated, the financial corporation's control over it ceases. Hence, the liability of the appellant is restricted to the defaulting concern's funds in its hands, and under no stretch of law, can be extended to its personal or corporate properties. In such a situation, we fail to comprehend how the entire liability has been fastened upon the appellant and how its properties and bank accounts have been attached. This is clearly beyond the jurisdiction of the trial Court or, for that matter, even the Executing Court, which cannot proceed against the personal assets of the appellant in such circumstances.

41. As already stated, the suit was decreed on 20.08.2001. During the pendency of the appeal, it came to light that the trial Court had neither framed any issue on limitation nor adjudicated upon it. The appellate Court accordingly remanded the matter to the trial Court to frame and adjudicate upon the said issue. It was only after the appellant raised this plea, Respondent No. 1/ plaintiff filed an application under Section 21 of the Limitation Act, 1963. On 05.11.2005, the trial Court erroneously held that the impleadment of the appellant would relate back to the date of institution of the suit i.e., 29.02.1988, despite the fact that the decree had already been passed.

Thereafter, the trial Court passed an order on 22.03.2006 negating the plea of limitation. It is evident that the application under Section 21 was filed only post-decree in an attempt to evade judicial scrutiny of the limitation issue in the appeal proceedings, even though the suit was already barred by limitation against the appellant. We are unable to understand as to how the trial Court can usurp the jurisdiction, when the original order of impleadment without any finding with regard to application of the proviso to Section 21 was affirmed upto the High Court.

Unfortunately, the trial Court failed to appreciate and consider this crucial aspect. It is a trite law that once a final decree has been passed, the trial Court becomes functus officio, except for limited purposes under Section 114 read with Order XLVII (review), Section 144 (restitution), or Section 152 (amendment for clerical or arithmetical errors) of the CPC, which cannot be applied to the facts of the present case. The trial Court, therefore, has no jurisdiction to reopen a case or alter a part of the order so as to affect the rights and liabilities of the parties once the suit has been disposed of.

41.1. Under Section 21 of the Limitation Act, 1963, the impleadment of a party in a pending suit takes effect only from the date on which such an application is allowed. However, the proviso enables the court to direct that such impleadment shall relate back to an earlier date, provided that the omission was due to a mistake made in good faith. A mistake in good faith would be applicable if the person claiming shelter under such plea is able to prove that he has exercised all possible diligence and believed an existing fact or law to be true or applicable, which is probable but not correct.

Essentially, such a mistake in good faith can only denote an error in judgment, but cannot include a plea that he was not aware of the law, as per the maxim "*Ignorantia facti doth excusat; Ignorantia juris non excusat*" which means, ignorance of fact is an excuse, but ignorance of law is not excused. For a person to claim that the mistake in good faith in law is applicable to his case, it not only presupposes that he was aware of the law, but has to prove that he after due diligence exercisable by a man of reasonable knowledge believed that he was not entitled to sue or any relief, which later turned out to be incorrect. As stated earlier, the trial Court upon a decree being passed, had become functus officio.

Section 21 is applicable only in pending proceedings and the provision is to be pressed into service when the application for impleading is decided and not later. The trial Court, while passing an order for impleadment has to consider the proviso to Section 21, the facts pleaded, and the evidence both documentary or oral, and then decide, whether the legal requirement is satisfied to hold that the suit is deemed to have been instituted against the impleaded party with effect from an earlier date. It is also open to the Court to consider the facts and upon satisfaction, to apply the proviso.

However, such an exercise must be done while deciding the application and a further order is to be passed to that effect immediately and not after the suit is decreed. In the present case, the records reveal that the application under section 21 was filed only in 2005 - after the decree had already been passed. Such an application was not maintainable, and the Court had no jurisdiction to entertain it post-decree. Although the appeal filed by the appellant was dismissed by order dated 23.11.2017 in Civil Appeal No. 2073/2010, this Court in that round, did not

go into the question of the maintainability or the proper stage for invoking Section 21 of the Limitation Act, 1963.

42. Yet another contention raised by the learned Senior Counsel for the appellant is that the decree cannot be enforced against the appellant, as amounts far in excess of the decretal sum have already been realized from it. Presently, the appellant - a Public Sector Undertaking under the State of Odisha - is facing execution proceedings and has been saddled with a liability of Rs. 8.89 Crores, arising from a decree for Rs. 90,400/- with interest, in a suit instituted in 1988 by Respondent No.1 to recover sums allegedly due from a transaction in which the appellant was never a party.

At this juncture, it is pertinent to note that during the pendency of the suit proceedings, the appellant had furnished two bank guarantees - one for Rs.6.36 lakhs in 1998 and another for Rs.3.50 lakhs in 1999 - both drawn on Union Bank of India, Cuttack, and both provided even prior to the decree dated 20.08.2001. This Court, in its order dated 10.03.2014 in Civil Appeal No. 2073 of 2010, specifically recorded that the appellant had already deposited an amount in excess of the decretal liability through the said bank guarantees, which had been periodically renewed and accordingly, there was no need to direct any further deposit. Thereafter, pursuant to the orders of the Executing Court, the proceeds of the bank guarantees - totaling Rs.58,16,905/- (i.e., Rs.40,16,606/- + Rs.18,00,299/-) - were also improperly released to Respondent No.1 during the course of execution.

43. In the instant case, the supply order in question - namely, the raw materials purchased by Respondent No. 2 from Respondent No. 1/Decree Holder, amounting to Rs.66,454.65, for which the suit was filed in 1988 - was made in the year 1985, well before the coming into force of the Act, 1993, i.e., with effect from 23.09.1992. The suit was decreed only on 20.8.2001. Accordingly, the trial Court ought not to have awarded 2% monthly compound interest from 23.09.1992 onwards on the decretal amount, as the transaction predates the applicability of the said Act. We have already held that the provisions of the repealed Act, 1993 are inapplicable to the facts of the present case against any of the defendants, as the supply in question occurred prior to 23.09.1992.

Therefore, not only the maintainability of the suit against the appellant, the imposition and recovery of compound interest is also without any legal authority. The appellant specifically raised an objection regarding the award of interest in its application under Section 47 CPC. However, the trial Court summarily rejected the said application on the ground that the appeals against the original decree were already dismissed, and the High Court also erroneously dismissed the writ petition, holding that the plea regarding interest had been raised for the first time before it.

43.1. Insofar as the rate of interest awarded by the trial Court is concerned, it is clearly excessive and exorbitant, and as held by us, contrary to law. Hence, the order of the Executing Court attaching the fixed deposits and flexi accounts of the appellant with Axis Bank, Union Bank of India and Odisha State Cooperative Bank, is without jurisdiction and legal authority. Furthermore, the bank guarantees furnished by the appellant were also encashed and paid to the decree holder, resulting in huge loss to the appellant, on the basis of an improper claim agitated before the courts below. It is also relevant to note here that there was no privity of contract between the parties regarding the rate of interest payable.

Once it is held that compound interest cannot be levied under the repealed Act, 1993, the natural sequitur is that the calculation of interest and the consequential recovery are improper. The record discloses that Respondent No.1/ Decree Holder has received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- through the attachment and encashment of bank guarantees and fixed deposit of the appellant. It is further evident that the bank guarantees were not furnished voluntarily but only in compliance with the orders of the trial Court. All these factors have not been taken into consideration by the courts below at any point of time.

44. We have already held that the mandatory requirement under Section 80 CPC, was not complied with by Respondent No. 1 before instituting the suit against the appellant, seeking recovery of money for the default alleged to have been committed by Respondent No. 2. On that ground alone, the suit filed against the appellant was not maintainable, and there is a clear bar on the jurisdiction of the trial Court. Though the suit was filed in the year 1988 and execution proceedings were initiated at a later point in time, nearly four decades have been spent litigating the dispute before the Courts.

Even though Respondent No. 1/ Decree Holder was successful in every round of litigation up to this Court, the initiation of the suit against the appellant is illegal and a nullity, and hence, cannot be enforced. As observed earlier, the trial Court and the High Court failed to address the core issues that go to the root of its jurisdiction. A State Corporation was made to face one litigation after another for the financial assistance extended by it to a private company, which subsequently defaulted. Although the said company was taken over for the limited purpose of realization of its dues and even after it has lost its control, the losses to the appellant have continued, ultimately leading to the filing of the present appeal before us.

CONCLUSION

45. For the sake of clarity and academic interest, we have elaborately analysed the issues involved in all their facets. However, we are of the considered opinion

that the suit itself was not maintainable against the appellant and the provisions of the repealed Act, 1993 were inapplicable to the present case. Consequently, the execution proceedings to realize the principal with exorbitant interest calculated under the repealed Act, 1993 are unsustainable, and the decree cannot be enforced against the appellant.

The trial Court, having already passed the decree, could not have entertained an application under Section 21 of the Limitation Act, 1963, and the post-decree application filed by Respondent No.1 was, therefore, not maintainable. Nearly four decades have elapsed in protracted litigation, and we are inclined to bring the matter to a quietus. Article 142 of the Constitution empowers this Court to pass any order necessary for doing complete justice in any cause or matter pending before it. Accordingly, we hold that the appellant (OSFC) is not liable to pay any amount to Respondent No. 1 for the alleged default committed by Respondent No. 2, under the decree. In view of the same, the impugned judgment and orders passed by the Courts below are hereby set aside.

46. It is not in dispute that Respondent No.1 has already received a total sum of Rs.2,92,57,559/-, comprising Rs.58,16,905/- from the encashment of bank guarantees and Rs.2,34,40,654/- from the attachment of fixed deposits furnished by the appellant. Having held that the suit instituted against the appellant was not maintainable and that the resultant decree is unenforceable in law, we are of the considered view that the appellant is entitled to a refund of the entire amount of Rs.2,92,57,559/-, received by Respondent No. 1.

However, taking into account the peculiar facts and circumstances of the case, the said amount shall be refunded without any interest. Accordingly, Respondent No. 1 is directed to refund the sum of Rs.2,92,57,559/- to the appellant, without interest, within a period of three months from the date of this judgment. In the event of failure to refund the aforesaid amount within the stipulated period, the appellant shall be at liberty to initiate appropriate proceedings against Respondent No. 1 for recovery of the same along with simple interest at the rate of 6% per annum in accordance with law, after the expiry of the said three-month period.

47. Before parting, we deem it necessary to record our strong disapproval of the manner in which the present litigation has been conducted by the appellant Corporation and its counsel before the lower courts. Public Institutions - particularly those entrusted with the stewardship of public funds - are expected to conduct themselves in legal proceedings with the highest standards of diligence, responsibility, and accountability. The failure to raise appropriate legal objections at the appropriate stages, coupled with the absence of timely and effective representation, has not only burdened the judicial system but has also exposed the corporation to unwarranted and protracted liability.

The present case is a stark example of how a State-owned corporation has been unjustly and unsustainably saddled with financial liability. The Courts below - without a proper appreciation of the factual matrix or applicable legal principles - have passed orders culminating in execution proceedings that contravene foundational tenets of law and disregard essential procedural safeguards. Such outcomes not only lead to manifest injustice but also set a deleterious precedent. It is well settled that procedural compliance is not a mere formality; it is a substantive safeguard designed to protect the interests of State instrumentalities and ultimately, the public exchequer.

In the present case, several crores of rupees belonging to a State Financial Corporation are at stake. Courts are dutybound to ensure that public resources are not unjustly depleted due to judicial oversight or misapplication of law. This responsibility extends equally to Government counsel and officials involved in litigation. It is incumbent upon them to ensure that all material facts are disclosed, all legal defences are properly pleaded, and all relevant documents are placed on record. Government counsel, as officers of the Court, bear a dual responsibility: to protect the interest of the State, and to assist the Court in achieving outcomes that are just, lawful and equitable.

It is also imperative for the State to establish and maintain robust internal mechanisms for regular monitoring and effective follow-up of pending litigation, ensuring it is pursued to its logical conclusion. As has been repeatedly emphasized, while the State and its instrumentalities enjoy all rights available to any litigant, they must exercise these rights in a manner consistent with public interest and the ends of justice. Accordingly, in order to uphold the rule of law and safeguard the primacy of fairness and justice, this Court is compelled to intervene, even at the stage of execution, to scrutinize the decree and rectify the legal infirmities that undermine its very foundation.

48. In the upshot, the Civil Appeal is allowed with the above directions. The parties shall bear their own costs.

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

.....J. [J. B. Pardiwala]

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

New Delhi;

August 05, 2025

1 Hereinafter referred to as "the High Court"

2 For short, "IPICOL"

3 For short, "S.F.C. Act, 1951"

4 For short, "the trial Court"

5 For short, "the First Appellate Court"

6 For short, "the Execution Court"

7 For short, "CPC"

8 (2009) 7 SCC 673

9 (2024) 5 SCR 321, (rendered on 26.04.2024)

10 (1989) 1 SCC 101

11 (1991) 4 SCC 139 : (1992) 87 STC 289 : 1991 SCC OnLine SC 17

12 (1990) 1 SCC 109

13 1995 Supp (4) SCC 286

14 (2000) 5 SCC 488 : 2000 SCC (Cri) 962 : 2000 SCC OnLine SC 936

15 (2004) 10 SCC 201: (2004) 266 ITR 721: 2004 SCC OnLine SC 70 (5-Judge Bench)

16 (2005) 4 SCC 649 : 2005 SCC OnLine SC 213

17 (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673: 2011 SCC OnLine SC 1115

18 MANU/SC/0061/2025 : 2025 3 SCC 440

19 (2017) 5 SCC 371 : (2017) 3 SCC (Civ) 152 : 2017 SCC OnLine SC 265 at page 379

20 1961 SCC OnLine SC 42 : (1962) 2 SCR 147 : AIR 1962 SC 199 : (1961) 2 SCJ 592

21 2024 LiveLaw (SC) 991

22 (2006) 5 SCC 399

23 (2005) 7 SCC 791: MANU/SC/0710/2005

- 24 MANU/SC/0703/2013: 2013 10 SCC 136
- 25 MANU/SC/0509/2021 : 2022 18 SCC 633
- 26 MANU/SC/0407/1995 : 1995 Supp (4) SCC 286
- 27 MANU/SC/0074/1964 : AIR 1965 SC 202
- 28 AIR 1971 SC 442: MANU/SC/0351/1970
- 29 AIR 1984 SC 1043 : 1984 (2) SCC 627
- 30 AIR 2001 SC 544/MANU/SC/0773/2000
- 31 (1981) 1 SCC 722: MANU/SC/0498/1980
- 32 For short, "the Act, 1993"
- 33 MANU/SC/0068/2019: (2019) 19 SCC 529
- 34 2025 Livelaw SC 416

IN THE SUPREME COURT OF INDIA

**Operation Asha
Vs.
Shelly Batra and Ors.**

**[Civil Appeal No. 10048 of 2025
arising out of S.L.P (Civil) No. 29830 of 2024]**

HEADNOTE – Summarised the principles related to Section 92 CPC and explained the circumstances when a registered society can be construed as a 'constructive trust' so as to maintain a suit under Sec. 92 against it.

Summarised, the conclusions as follows :

- i. A suit under Section 92 of the CPC is a representative suit of a special nature since the action is instituted on behalf of the public beneficiaries and in public interest. Obtaining a 'grant of leave' from the court before the suit can be proceeded with, acts as a procedural and legislative safeguard in order to prevent public trusts from being subjected to undue harassment through frivolous suits being filed against them and also to obviate a situation that would cause a further wastage of resources which can otherwise be put towards public charitable or religious aims. However, at the stage of grant of leave, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties.
- ii. Several decisions of this Court have outlined certain conditions or essential pre-requisites that need to be fulfilled for a suit to be maintainable under this provision. This Court in **Ashok Kumar Gupta & Anr vs. Sitalaxmi Sahuwala Medical Trust & Ors (2020) 4 SCC 321** delineated them as follows – (a) the trust in question must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and (c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. In order to successfully establish that a suit is not maintainable under Section 92, it would be sufficient to prove that any one of the conditions enumerated above has not been met, however, in order to assert its maintainability, all the aforesaid conditions need to be satisfied.
- iii. A trust can be said to have been created for a 'public purpose' when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.
- iv. A crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'.

v. When no formal recognition has been given to the institution, the creation of a public trust can be inferred from the relevant circumstances surrounding the coming into existence of and functioning of the institution/entity in question. Although it is not possible to provide an exhaustive list of the same, yet they may include –

(a) the method of devolution of the property to the institution or its acquisition and the circumstances along with the intention behind the grant of property i.e. whether it was for the benefit of the organization/public beneficiaries or for the personal benefit of any particular individual/family;

(b) whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee;

(c) whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property in another individual (trustee) for the said object;

(d) whether the public user or an unascertained class of individuals could exercise any 'right' over the organization and its properties;

(e) the manner of use of the profits accrued, more particularly, whether it is applied/re-applied towards the benefit of the organization and its objectives, etc.

vi. If the aforementioned circumstances exist and the entity has been, much later in time, registered as a society under the Societies Registration Act, 1860, it would still be treated as a 'public trust' as per the dictum of the Full Bench of the Kerala High Court in **Kesava Panicker v. Damodara Panicker and others 1974 SCC OnLine Ker 58** wherein it was observed that the mere factum of registration of a society under the Societies Registration Act, 1860, after it attained the characteristics of a public trust, could not change the character of the properties which had already been constituted as trust properties.

viii. However, if the institution has been registered, from its inception, as a society under the Societies Registration Act, 1860, it is true that whenever a society acquires property, it cannot be said that it declares itself a trustee in respect of said property. In other words, the effect of registration under the Societies Registration Act, 1860 would not be to automatically invest the properties of the society with the character of trust property. This has been consistently laid down by the decisions of several High Courts.

viii. Having said so, one must examine what effect the mechanism of vesting provided under Section 5 of the Societies Registration Act, 1860 has on the society. It reads that – “The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society[...]”. What follows is that the property belonging to the society can either be vested in 'trustees' or in the governing body of the society. This vesting has been envisaged because a society registered under the aforesaid Act is not a juristic person or a body corporate capable of holding property by itself.

ix. The phrase, “if not vested in trustees” must be read to mean that a trust can be created, either expressly or impliedly, before or after the registration of a society, for the purpose of holding its properties. A public trust would be created prior to the registration of a society if the broad circumstances enumerated under point (v) are met. In such a case, all the properties of the society which had been imbued with the character of 'trust property' would be subject to Section 92. However, if it is argued that a trust has instead separately been created for holding the property of the society after its registration as a society, the same must be clearly and sufficiently proven. Here, the separate trust which has been created and the properties which has been vested in said trust would be subject to scrutiny under Section 92. In both these scenarios, an 'express trust' would be created and in a suit under Section 92 CPC, the first criteria i.e., the existence of an express or constructive trust, would be met.

x. In the absence of such a separate vesting in trustees as aforesaid, the property belonging to the society would be automatically vested, through a deeming fiction, in the governing body of the society. Such a governing body is duty bound to ensure that the property is put towards and utilised for the purposes/aims of the society as laid out in its Memorandum of Association or any Rules and Regulations governing the said matter. In the event of the society's dissolution, the members would not derive any right to distribute the assets belonging to the society between themselves. Both during the subsistence and dissolution of the society, the members or the governing body cannot be said to possess any beneficial or individual interest over the property vested in them. They would also safeguard the society's property for the future members of the society or the future governing body such that perpetuity is assigned to both the society and its property, unless expressly dissolved. All these factors evidence that the governing body must also act within the contours of a strict fiduciary relationship.

xi. Legislative creativity was employed to ensure that the incapability of the society to hold the property by itself does not have any practical effect on its ability to use and administer those properties while also ensuring that the property of the society may not be squandered or the object and purpose for which the society was formed may not be defeated by persons having control of the properties. Therefore, Section 5 can be seen as providing two options, or mechanisms through which a society can hold the property belonging to itself – One, in trustee(s) or, two, in the governing body of the society. Both these mechanisms/options belong to the same genus (fiduciaries), albeit they don't fall in the same species (the former is a trustee *stricto sensu* and the latter is not).

xii. Therefore, while the society cannot be considered as an 'express trust', what must also be noted, at this crucial juncture, is that, for an entity to be brought within the rigours of Section 92, the plaintiff has the option of also contending that a 'constructive trust' exists in the circumstances and a breach of such a constructive trust has occurred or that the directions of the Court are necessary for the administration of such a constructive trust.

xiii. A constructive trust, arises by operation of law, without regard to or irrespective of the intention of the parties to create a trust. It is imposed predominantly because the person(s) holding the title to the property would profit by a wrong or would be unjustly enriched if they were permitted to keep the property. The American and English models of 'constructive trust' although similar in nomenclature, bears a doctrinal difference, the former is remedial while the latter is institutional. In other words, in implying the existence of a constructive trust, the English Courts recognise or give legal efficacy to a fiduciary/confidential relationship or 'institution' that already exists. It would arise, by operation of law, but when one person is under an existent obligation to hold a certain property for another. This constructive trust would come into existence from the date of the circumstances which give rise to it and the function of the court would only be to declare that such a trust has arisen in the past.

xiv. What must, however, be noted is that, for this equitable doctrine to be applied, the fiduciary must receive property or money which he cannot conscientiously retain. It is only thereafter that a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received. To put it simply, the factum that the fiduciary 'withheld' the property from its rightful beneficiaries must be established. That such a fiduciary sought to misapply the property in contravention to the covenants that bound him, or sought to gain an advantage for himself, must be proved for a constructive trust to come into existence by the operation of law. That he further divested the said siphoned property/funds, would have to be proved in order to assert that the 'constructive trust' has additionally been breached. Even in the absence of such a further divestment, the directions of the court may still be necessary for the administration of the constructive trust.

xv. The phrase "persons having an interest in the trust" must neither be construed too narrowly nor too widely. It must not be narrow for the reason that the word used is "interest" instead of "direct interest". However, it must also be remembered that while no direct interest is required, the interest must denote a present and substantial interest and not a sentimental, remote, fictitious or purely illusory interest.

xvi. The reliefs claimed by the plaintiffs, must fall within those reliefs outlined under Section 92(1). As regards the question when a relief can be considered to fall under the residual clause (h) providing for "further or other relief" under Section 92(1), this Court in Charan Singh (supra) elaborated that if the relief prayed for is not a "further relief" but an "other relief" which is not in any way consequential to or in addition of the certain other reliefs already mentioned under clauses (a) to (g) and prayed for, then the "other relief" must be akin to or of the same nature as any of the reliefs enumerated under clauses (a) to (g).

xvii. Furthermore, the special nature of the suit under Section 92 requires it to be filed fundamentally on behalf of the public for the vindication of public rights. Therefore, courts must go beyond the reliefs and also give due regard to the object and purpose for which the suit is brought. The true nature of the suit must

be determined on a comprehensive understanding of the facts of the matter and a hard-and-fast rule cannot be made for the same. The fact that certain private rights are being agitated must not be reason enough to ignore the other allegations made in the suit and dismiss it outrightly, provided the suit is instituted in a representative capacity. The reliefs in the present plaint, insofar as they agitate private rights, cannot be granted under a suit of this nature.

JUDGMENT

J.B. Pardiwala, J.

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

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- A. FACTUAL MATRIX
- B. THE IMPUGNED JUDGMENT
- C. SUBMISSIONS OF THE PARTIES
- i. Submissions on behalf of the Appellant
 - ii. Submissions on behalf of the respondent no. 1
 - iii. Submissions on behalf of the respondent nos. 3 and 4
- D. ISSUES FOR DETERMINATION
- E. ANALYSIS
- i. The Object and purpose behind Section 92 of the CPC.
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 - A. The trust being created for a public purpose of a charitable or religious nature....
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charitable nature

- B. A breach of trust or the directions of the court being necessary for the administration of the trust
- C. The institution of the suit must be made by two or more persons "having an interest in the trust"
The reliefs falling within the scope of those enumerated under
- D. Section 92(1) of the CPC along with the object, purpose and capacity in which the suit is brought.

F. CONCLUSION

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Delhi dated 21.08.2024 in FAO(OS) No. 114 of 2024 (hereinafter, the "impugned decision"), by which the High Court dismissed the appeal filed by the appellant herein against the judgment and order dated 03.05.2024 passed by a learned Single Judge of the High Court in CS(OS) No. 153 of 2020 allowing the application under Section 92 of the Code of Civil Procedure, 1908 (hereinafter, the "CPC") filed by the respondent nos. 1 and 2 respectively, seeking leave to institute the subject suit.

A. FACTUAL MATRIX

3. Operation ASHA (hereinafter, the "appellant Society/original defendant no. 1") is a not-for-profit society founded in the year 2005 and registered under the Societies Registration Act, 1860 with its registered office in New Delhi. The appellant Society is engaged in providing health services through a plethora of activities primarily to the underprivileged sections of the society across India with special emphasis on the treatment, education and prevention of tuberculosis and other diseases. The same can be inferred from the Memorandum of Association (hereinafter, the "MoA") of the appellant Society. The aims and objectives of the appellant Society are as follows:

"4. AIMS AND OBJECTS

MAIN OBJECTIVES OF THE SOCIETY ARE GIVEN BELOW.

4.1.1 To develop, establish, maintain and provide health and all other related services, and to help, aid, assist, arrange, co-ordinate, organize maintain and carry on activities connected with one of health quality of life, nursing facilities, socio-economic aspects, general welfare and problems of the society with special

emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.

4.1.2 To develop, establish, make and provide microcredit microfinance and all other related services, and to help, aid, assist, arrange, contribute, co-ordinate, organize maintain and carry on activities connected with concerns of microcredit and micro finance. Socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.

4.1.3 To establish hospitals, medical schools and colleges, nursing schools and colleges, dispensaries, laboratories research institutions and other educational institutions as per Govt. rule.

4.1.4 To purchase or otherwise deal in medicines and equipment required for maintenance of health, hygiene and microcredit/ microfinance.

4.1.5 To aid, promote establish, maintain, run and encourage alternative systems of medicine and establish training and research centers for this purpose as Govt, rule.

4.1.6 To aid, promote, establish, maintain, run and encourage microcredit/microfinance as per Govt. rule.

4.1.7 To open centers and institutes for diagnostic, curative, therapeutic and research of medical sciences as per Govt. rule,

4.1.8 To provide free medicines to the poor."

4. The MoA of the appellant Society also stipulates that all the incomes and earnings of the society, whether movable or immovable, shall solely be utilised to further the aims and objectives of the appellant Society. Furthermore, it is also stated that the members of the appellant society would not be entitled to any profits by virtue of their membership. The relevant portion of the MoA is extracted hereinbelow:

"All the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the memorandum of association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members, no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the executive committee to whom the management and affairs of the society are

entrusted as required under section 2 of the societies registration act, 1860 (punjab amendment act of 1957) as extended and applicable to the national capital territory & all state of india."

(Emphasis supplied)

5. A few other relevant clauses from the Articles of Association (hereinafter, the "AoA") of the appellant Society are reproduced hereinbelow:

"6. DUTIES & OBLIGATIONS OF MEMBERS
All and every member

6.1 Shall attend the Board of meetings regularly;

6.2 Shall give necessary information to the Society, pertaining to matters necessary to be known by the Society;

6.3 Shall not indulge in activities, which may prove prejudicial to the Aims and Objects of the Society and/or to the Rules and Regulations of the Society;

6.4 Shall maintain sanctity of the secrets and confidentiality of police matters of the Society and its members;

11.2 POWERS & DUTIES OF THE EXECUTIVE COMMITTEE

11.2.1 All the properties, movable, immovable, and other kind of assets shall stand vested in the Committee.

11.2.2 The business and the affairs of the Society shall be managed and administered by the Committee.

11.2.3 Without prejudice to the generality of the foregoing provisions, the Committee shall have the following powers.

11.2.3.1 To acquire by gift, purchase, exchange, lease or in any other manner land, building, or other immovable, property together with all rights pertaining thereto.

11.2.3.2 To manage the properties of the Society.

11.2.3.3 To accept the management of any trust, fund, or endowment or any other in which the Society is interested.

11.2.3.4 To raise funds for the Society by way of gifts, donations, grants-in-aid or otherwise within India or outside, as provided in the bye-laws.

11.2.3.5 To raise loans, stand guarantee for loans and do all acts necessary to raising the loans to further the objects of the Society.

11.2.3.6 To receive monies, securities, instruments, investments, or any other assets for and on behalf of the Society.

11.2.3.7 To enter into agreements contracts for and on behalf of the Society.

11.2.3.8 To manage, serve, transfer or otherwise dispose-off any property, movable or immovable of the Society.

11.2.3.9 To prescribe the powers, duties and functions of the office-bearers.

11.2.3.10 To exercise control over the President and the General secretary of the Society including the powers of dismissal.

11.2.3.11 To appoint the Secretary of the Society.

11.2.3.12 To elect new members to the Committee when casual vacancies occur.

11.2.3.13 To appoint the Secretary of the society.

13. SOURCES OF INCOME & UTILIAZATION OF FUNDS

Funds will be raised by way of grants-in-aid, donations, gifts, subscriptions fees, and income from investments, loans and other means available to the Society under the Act. Funds will be used to carry out the Aims and Objectives of the Society."

6. Dr. Shelly Batra (hereinafter, the "respondent no. 1/original plaintiff no. 1") is a medical health professional and co-founder of the appellant Society. Vide communication dated 19.06.2020, Mr. Sandeep Ahuja (hereinafter, the "respondent no. 3/original defendant no. 2") who is also the co-founder and CEO of the appellant Society terminated the services/employment of the respondent no. 1.

The communication alleged that the termination of the respondent no. 1 was on account of various "omissions including misrepresentation" of her daughter's previous employment, fabrication of documents, misappropriation of the assets and funds of the NGO as well as gross misbehaviour with the staff and the employees. Subsequently, on 23.06.2020, the Board of the appellant Society is said to have passed a resolution terminating the respondent no. 1 from the post/office of President of the appellant Society. Soon thereafter, on 27.06.2020, the Board of the appellant Society is also said to have removed the respondent no. 1 from her capacity as a member of their Board.

7. Mrs. Usha Gupta, (hereinafter, the "Respondent No. 2/original plaintiff no. 2"), who is the mother of the respondent no. 1, is one of the current members of the Board of the appellant Society. Immediately after the removal of the respondent no. 1 as a Board member, both the respondent no. 1 and respondent no. 2 (collectively also referred to as the "original plaintiffs") instituted an Original Suit bearing CS (OS) No. 153 of 2020 on 28.06.2020 under Section 92 of the CPC before a learned Single Judge of the High Court for declaration, permanent & prohibitory injunction and, rendition of accounts. They alleged misconduct and breach of several of the society's by-laws by the respondent no.3 and one Ms. Suniti Ahuja (hereinafter, the "respondent no. 4/original defendant no. 3"). The original defendant nos. 4 to 8 respectively are current Board members and the original defendant no. 9 is a former Board member of the appellant Society.

8. To further elaborate in detail, the respondent nos. 1 and 2 respectively (original plaintiffs) alleged the following in the suit instituted by them:

i. That the respondent nos. 3 and 4 respectively, were indulging in gross financial impropriety, misconduct and siphoning off funds/donations which were received by the appellant Society into various shell companies/entities controlled by them and their friends/relatives. Such funds were utilised and misappropriated for personal gains. Furthermore, that the funds received by the society have been utilised for activities outside India, which is impermissible, since the requisite permission was not taken from the appropriate governmental authorities and yet, tax benefits were illegally availed for the same.

ii. That there has been a severe mismanagement in the administration of the appellant Society by the respondent nos. 3 and 4 respectively. They have avoided making accounting provisions for statutory disbursements in the form of provident fund or gratuity to their employees and are also engaging in cross-payment of salaries to employees through their sister concerns with a view to avoid the grant of statutorily mandated employee benefits.

iii. That the respondent no. 3 has misrepresented information and thereby misled the donors of the appellant Society with an intent to defraud them by claiming that the appellant society had provided COVID-19 related services to more than 12,600 families and 10,000 migrants, however, the same remains entirely uncorroborated and unsubstantiated.

iv. That the respondent nos. 3 and 4 respectively, used force and coerced several employees in order to illegally take away the property of the appellant Society. This includes pressurizing the original defendant no. 8 to hand over the ATM card, passbook etc. of the account in which his salary is remitted and utilising those funds for personal needs. Furthermore, it was alleged that they have also demanded compulsory kickbacks from the employees engaged by the appellant

Society by threatening, coercing and blackmailing them with immediate termination of employment, with a view to siphon employee payments.

v. That respondent no. 3 has also regularly misbehaved by issuing threats of personal injury and also indulged in discriminatory behaviour against the employees of the appellant society on the basis of race, caste, religion and sex.

vi. That, around February 2020, the respondent no. 1 approached the respondent nos. 3 and 4 respectively to resolve the aforesaid issues, amongst others. In retaliation, she was harassed and threatened to exit from her position at the appellant Society.

9. The reliefs prayed for in the aforesaid suit are reproduced hereinbelow:
"PRAYER 35. In light of the above facts and circumstances of the case, Plaintiffs most humbly pray that this Hon'ble Court may grant the following reliefs in its favour:

(a) Pass a decree of declaration holding that all the decisions taken by the Board of Defendant No.1 and/or any Board member or employee or personnel w.e.f. 01-06-2020 onwards are illegal, wrong and void, in the present facts and circumstances, and therefore, set-aside; and/or

(b) Pass a decree of declaration holding that the termination of Dr.Shelly Batra (Plaintiff No. 1) from the post/office of President vide Board Resolution dated 23-06-2020 and ouster from the Board of Defendant No. I vide Board Resolution dated 27-06-2020 is illegal, wrong and void in the present facts and circumstances, and restoring her office/post in the affairs of Defendant No. 1; and/or

(c) Pass a decree for permanent & prohibitory injunction against the Defendant Nos.2 and 3 by removing them from the Board of Defendant No.1 on account of the illegalities & breach of the bye-laws of Defendant No.1, and restraining them from being involved in the activities/affairs of the Board of Defendant No.1 either as member or employee or contractor or advisor or anyway whatsoever;

(d) Pass a decree for rendition of accounts of profits/monies siphoned, misappropriated, illegally earned by Defendant Nos.2-3 for their personal use/benefit from the accounts/funds of Defendant No.1, and further a decree for recovery of the amount be found to be due, siphoned, misappropriated, etc. by the Defendant Nos. 2-3 along with interest @18% in favour of Defendant No. 1; and/or I Pass a decree or order regarding settling the scheme of the Defendant No. 1 by amending its bye-laws in such manner that no one family gets complete control of the affairs of Defendant No. 1:

(f) Costs:

(g) Any other relief (s) which this Hon'ble Court deems, fit, just and proper may also be awarded in favour of the Plaintiffs, in the interest of justice."

10. In pursuance of the aforesaid, the respondent nos. 1 and 2 respectively, filed an application being I.A. No. 5009 of 2020 in CS (OS) No. 153 of 2020 seeking leave to institute the civil suit against the appellant Society along with the respondent nos. 3 to 10 (collectively referred to as the "original defendants") before the learned Single Judge of the High Court. In the said application, it was stated that the appellant Society is a public charitable institution - an NGO engaged in the healthcare industry.

The main objectives of the society as evidenced by its by-laws is public welfare and therefore, it would fall under the ambit of "public charities" mentioned under Section 92 of the CPC. The respondent nos. 1 and 2 respectively (original plaintiffs) have been involved in the functioning of the appellant Society since its inception and have a justified and bona fide interest in the society, Therefore, they are "interested persons" as required by Section 92. Furthermore, since numerous breaches have occurred in the conduct of business/affairs of the appellant Society, the direction of the court would be of utmost necessity for its administration.

11. After taking seisin of the matter, vide order dated 05.08.2020, the learned Single Judge of the High Court appointed Justice (retd.) R.V. Easwar as the Chairperson of the Board of the appellant Society with the consent of both the parties. Directions were issued to the Chairperson to submit a report and conduct a financial audit in order to ascertain, amongst others, whether there has been a defalcation or siphoning off of funds that the donors have contributed towards the appellant Society and to make suggestions as to how the working of the society can be improved. The Chairperson submitted three reports dated 26.08.2020, 03.10.2020 and 09.12.2020 respectively. On, 13.08.2021, an Interim Forensic Audit Report and on 20.09.2021, a Final Forensic Audit Report respectively, are also said to have been submitted by the auditors appointed for the said purpose.

12. The learned Single Judge of the High Court vide the judgment and order dated 03.05.2024 granted leave to the respondent nos. 1 and 2 (original plaintiffs) for the purpose of instituting a suit under Section 92 of the CPC. While holding that all the elements and ingredients under Section 92 of the CPC stood fulfilled and granting leave, the learned Single Judge observed as follows:

i. First, whether it be the Interim Forensic Audit Report dated 13.08.2021 or the various reports submitted under the Chairmanship of Justice (retd.) R.V. Easwar, there was no gainsaying that actions are required to be taken to remedy the state of affairs of the appellant Society, particularly in relation to its financial affairs and administrations, for which the directions of the court may be necessary.

ii. Secondly, heavy reliance was placed on the decision of this Court in *Ashok Kumar Gupta & Anr vs. Sitalaxmi Sahuwala Medical Trust & Ors.* reported in (2020) 4 SCC 321 to grant leave under Section 92 of the CPC since the enunciation of law in the said decision is also said to have been made in a strikingly similar factual background. It was reiterated that it is the dominant purpose of the suit, as discernible strictly from the allegations made in the plaint that is required to be assessed by the court while considering whether leave must be granted to institute the suit or not.

iii. Thirdly, that the respondent no. 1 (original plaintiff no. 1) being one of the co-founders of the appellant Society and a long-time President of its Board, along with the respondent no. 2 (original plaintiff no. 2) who has been associated with the appellant Society for an extended period of time while also continuing to be a member of its Board, would constitute 'persons having an interest in the trust'.

iv. Fourthly, while referring to Article 13 of the AoA as per which the society is entitled to raise funds by way of gifts, donations, grants-in-aid or otherwise strictly for the purpose of carrying out the aims and objectives of the society, it was opined that the formal 'entrustment' of property or funds by a third-party to the appellant Society would not be a necessary ingredient to hold that the society is a 'constructive trust'. If that formality were a sine-qua-non, the very distinction between a 'trust' and a 'constructive trust' would stand obliterated.

Since any grant-in-aid, donation or gift made by a third-party to the society would, by its very nature, be intended to be used for the benefit of those in need of medical care in furtherance of the objects of the society, it was held that this in-itself would be sufficient to infer that all such grants-in-aid, donations gifts etc., made to the society would become property 'entrusted' to it, by reason of which the society would acquire the character of a 'constructive trust'.

v. Fifthly, after perusing the aims and objects of the appellant Society as detailed in the MoA it was declared that the appellant Society is evidently engaged in a 'public purpose of charitable nature' since they principally provide health care services to the underprivileged sections of the society, specifically with respect to the treatment, education and prevention of tuberculosis. vi. Lastly, that the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated under Section 92 of the CPC, more particularly sub-sections (1)(d) and (1)(h) thereof.

13. The relevant observations made by the learned Single Judge are reproduced hereinbelow:

"20. Therefore, we must not lose sight of the fact, that for purposes of deciding whether leave should be granted under section 92 CPC, it is only the allegations

in the plaint that should be looked into in the first instance; it being available to the court to even dismiss the suit if after evidence is led it is found that the breach of the trust alleged was not made-out.

21. To reiterate it is the dominant purpose of the suit, as discernible only from the allegations in the plaint, that is required to be assessed by the court at the stage of considering whether leave should be granted under section 92 CPC to institute a suit."

22. In the present case, the following assertions are found in the plaint:

22.1. Plaintiff No.1 is one of the co-founders of defendant No. 1 society and has been a long time President of its Board, Plaintiff No.2. has been associated with defendant No.1 society for a long time and continues to be a member of the Board of the society, even if she is plaintiff No.1's mother. In fact these assertions appear to reflect the admitted position.

22.2. Plaintiff No.1 has played a pivotal role in the functioning of the society ever since it was established.

"22.4. Furthermore, a perusal of the Articles of Association ('AOA') of defendant No.1 society inter-alia shows that the management of the society is entrusted to an Executive Committee, which is entitled to raise funds for the society by way of gifts, donations, grants-in-aid or otherwise, which funds are to be used to carry-out the aims and objectives of the society. Attention in this behalf may be drawn to Article 13 of the AoA of the society, which reads as follows. In the opinion of this court, the formal 'entrustment' of property or funds by a third-party to defendant No.1 society is not a necessary ingredient to hold that the society is a constructive trust'.

If that formality were a sine-qua-non, the very distinction between a 'trust' and a 'constructive trust' would get obliterated. This court is of the view, that any grant-in-aid, donation or gift made by a third-party to the society is, by its very nature, meant and intended to be used for the benefit of those in need of medical care in furtherance of the objects and purpose of the society. This, in itself, is sufficient to infer that all such grants-in-aid, donations, gifts etc. made to the society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'."

22.5. Also, defendant No.1 is evidently engaged in a public purpose of charitable nature, since it provides medical-aid and relief to patients of tuberculosis who otherwise cannot afford treatment, thereby fulfilling the other criterion of section 92 CPC.

22.6. In this manner, defendant No.1 society fulfils all conditions necessary to invoke section 92 CPC, as enunciated by the Supreme Court in Ashok Kumar Gupta (supra) and the elements required to qualify as a 'constructive trust' as laid down by a Co-ordinate Bench of this court in The Young Mens Christian Association of Ernakulam (supra) cited above.

23. In addition, the IFAR as well as the multiple audit reports submitted in relation to the administration and financial affairs of the society, including under the chairmanship of Justice Easwar, clearly disclose that the manner in which the affairs of the society are being run, requires closer consideration and scrutiny.

24. Furthermore, the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated in section 92 CPC, especially section 92(d) and (h) thereof;

25. In the above view of the matter, this court is persuaded to hold that all elements and ingredients of section 92 CPC are satisfied; and that therefore, the plaintiffs are entitled to grant of leave to institute the present suit under section 92, CPC.

26. To obviate any ambiguity, it may be clarified that the grant of leave to the plaintiffs to institute the suit would not prevent the court from dismissing the suit subsequently, if the allegations contained in the plaint are found not to be substantiated.

27. The application is accordingly allowed."

(Emphasis supplied)

B. THE IMPUGNED JUDGMENT

14. Aggrieved by the aforesaid judgment and order of the learned Single Judge dated 03.05.2024, the appellant Society preferred an appeal being FAO (OS) No. 114 of 2024 before the Division Bench of the High Court. The Division Bench while dismissing the appeal, observed as follows:

i. First, reliance was, again, placed on the decision of this Court in Ashok Kumar Gupta (supra) in order to delineate the conditions that are required to be satisfied under Section 92 of the CPC.

ii. Secondly, the Division Bench echoed the observations made by the Single Judge in as much as observing that the appellant Society is admittedly of a charitable nature as evident from its MoA.

iii. Thirdly, reliance was placed on the relevant provisions of the MoA which stipulated that all the incomes, earnings, movable or immovable properties of the society shall be solely applied towards furthering the objectives of the society and no profits shall be paid, either directly or indirectly, to the members of the Board or any person claiming through or under them. Furthermore, while referring to Article 11.2.1 of the AoA which specifically stated that all the properties, movable, immovable and other kinds of assets shall stand vested in the Executive Committee of the appellant Society, the Division Bench expressed its agreement with the views of the Single Judge that all donations, gifts etc. made to the appellant Society are property 'entrusted' to it, due to which the society would acquire the character of a 'constructive trust'.

iv. Fourthly, referring to the decision of this Court in *Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass* reported in 2000 (4) SCC 146, it opined that the donations, gifts, etc., being received by the appellant Society and being vested in the Committee from various institutions would constitute an 'endowment' for public purpose.

v. Lastly, although the Bench acknowledged the contention of the counsel for the appellant Society that prayer (b) of the plaint agitates a personal/private grievance, yet it took the view that the reliefs sought in prayers (d) and (e) of the plaint fall within those reliefs contemplated under sub-section (1) of Section 92 of the CPC. The relevant observations of the Division Bench are reproduced hereinbelow:

"12. Admittedly, the Appellant-society is of a charitable nature as it has been formed primarily for serving the under-privileged sections of the society, in particular, patients suffering from tuberculosis.

13. The Memorandum of Association further stipulates that all the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the Memorandum of Association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus or profits in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members. The Memorandum of Association also states that no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the Executive Committee to whom the management and affairs of the society are entrusted, as required under Section 2 of the Societies Registration Act, 1860 (Punjab Amendment Act of 1957).

14. Article 11.2.1 of the Articles of Association specifically stipulates that all the properties, movable, immovable and other kinds of assets shall stand vested in the Committee.

15. Keeping in view the aforesaid as well as the fact that the Appellant has been set-up with the primary objective of providing medical relief to patients, who otherwise cannot afford such treatment, this Court is in agreement with the view of the learned Single Judge that all the donations, gifts etc. made to the Appellant-society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'.

16. In the above context, it would also be necessary to refer to the judgment of Supreme Court in *Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass* 2000 (4) SCC 146, wherein it has been held that an "endowment" is, when the donor parts with his property for it to be used for a public purpose and its entrustment is to a person or group of persons for carrying out the objective of such entrustment. It was held that once an endowment is made, it is final and irrevocable and it is onerous duty of the persons entrusted with such endowment to carry out the objectives of this entrustment.

It was further held once an endowment, it never reverts even to the donor. The Supreme Court has also considered that endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common parlance as a fund yielding income for support of an institution. Having regard to the aforesaid, it is clear that donations, gifts etc. which were being received by the Appellant, and being vested in the committee, from various institutions would be endowment for public purpose."

17. Though the learned senior counsel for the Appellant is correct in contending that prayer (b) of the plaint agitates a personal/private grievance yet this Court is of the view that the reliefs sought in prayers (d) and (e) of the plaint fall within the reliefs mentioned in sub section (1) of Section 92 CPC.

18. Consequently, this Court is of the view that the impugned order calls for no interference. Accordingly, the present appeal along with the application is dismissed."

(Emphasis supplied)

C. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellant

15. Mr. Dama Seshadri Naidu, the learned Senior Counsel appearing for the appellant Society submitted that the appellant Society is a 'registered society' under the Societies Registration Act, 1960 and is not a 'Trust' for the purposes of Section 92 of the CPC. It was argued that it is a settled law that the governing body members of the society shall only become 'trustees' if a trust is created for the purpose of managing the assets of the society. The same not being the case in the present scenario, the suit cannot be held to be maintainable. To fortify his argument that a suit under Section 92 would not be maintainable against a 'registered society', the counsel placed reliance on the decision of the Delhi High Court in *S.R. Bahugana v. All India Women's Conference and Ors.* reported in (2009) ILR 7 Delhi 614 and that of the Kerala High Court in *Abhaya vs. JA Raheem* reported in 2005 SCC OnLine Ker 234.

16. The counsel submitted that as per the AoA of the appellant Society, the property of the society is not held in a 'trust', which is the fundamental requirement for the appellant Society to be termed as a 'constructive trust'. Specific reference was made to Clauses 11.2.1 and 11.2.3.8 of the AoA respectively to contend that the property of the society stands vested in the 'Committee' or Governing Body of the Society, as per the mandate of Section 5 of the Societies Registration Act, 1860. On this aspect, reliance was placed on the decision of the Madras High Court in *K. Rajamanickam v. Periyar Self Respect Propaganda Institution, Thiruchirapalli* reported in 2006 SCC OnLine Mad 379.

17. Taking recourse to the decision of this Court in *Swami Paramatmanand Saraswati v. Ramji Tripathi* reported in 1974 2 SCC 695, it was submitted that, while deciding an application under Section 92 of the CPC, the court must only look at the averments made in the plaint. The plaint, in the present case, is conspicuously silent on how the appellant Society falls within the definition of the term 'constructive trust'. Therefore, it was submitted that the underlying suit is clearly beyond the ambit of Section 92.

18. To further substantiate his submissions as regards the appellant Society not being a 'constructive trust', the counsel stated that "a constructive trust is another species of trust where a trust is automatically imposed by equity on an owner of property but in special circumstances where it is unconscionable for the owner of property to hold the property purely for his own benefit".

To illustrate, where a trustee of a leasehold property at the termination of the lease renews the lease purportedly in his own personal favour or where a trustee has wrongfully gratuitously transferred trust property to an innocent donee who upon subsequently discovering the trust attempts to retain the property for himself. It was submitted that Mukherjee on the Indian Trust Act, 1881 (2021) also elaborated on the Doctrine of Constructive Trust by arguing that a 'constructive trust' arises not by the act of parties but by operation of law. When a

trustee gains some personal advantage by utilising his trusteeship, he becomes a constructive trustee in respect of the advantages gained.

19. The counsel submitted that the Halsbury Laws of India on the nature of a constructive trust remarks that a constructive trust attaches by law to a specific property which is neither expressly subject to any trust nor subject to a resulting trust but, which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property. In the present case, he argued that the factual situation is entirely different and the property of the appellant Society is vested in the governing body of the Society.

20. It was also submitted that the prayers made in the present suit demonstrate that the same has been filed solely for the purpose of vindication of personal rights of the respondent no. 1. More specifically, the prayers seek to declare the board decisions taken by the appellant Society from 01.06.2020 as null and void, since her employment/services were terminated during this time. The respondent no. 1 also seeks a declaration that her termination was bad in law along with a direction that the respondent no. 3 be removed from the appellant Society. These reliefs are clearly beyond the scope of Section 92 and smack of personal vendetta and enmity. No relief has been sought for the benefit of the society or to improve its functioning.

21. It was submitted that the provisions under Section 92 of the CPC can be invoked only when two conditions are satisfied i.e. (a) it should be with regard to a public trust to obtain a decree for the purposes mentioned in the said provision, and (b) the suit should be on behalf of the Advocate General or two or more persons having an interest in the trust. He submitted that both the aforesaid conditions have not been fulfilled in the present case since the appellant Society is not a public trust and there is no pleading in the plaint showing that the respondent no. 2 (original plaintiff no. 2) is a party having an "interest" in the society. Moreover, the respondent no. 2 has not even signed the plaint in the instant suit.

22. In light of the aforesaid, it was submitted that the impugned decision is upheld, it would obliterate the distinction carved out by law between a 'trust' and a 'society' for which two different legislations have been enacted. Therefore, it was prayed that the impugned decision be set aside and the underlying suit, pending before the High Court, be dismissed.

ii. Submissions on behalf of the respondent no. 1

23. On the other hand, Mr. Jai Anant Dehadrai, the learned counsel appearing for the respondent no. 1 submitted that the ingredients required to be satisfied before

invoking Section 92 of the CPC was clearly laid down in Ashok Kumar Gupta (supra) as follows:

- (a) There should be a breach of express or constructive trust;
- (b) The trust must have been created for a public purpose, either of a charitable or religious nature;
- (c) The suit must seek for reliefs as enumerated under Section 92(1) of the CPC.

24. The counsel submitted that the appellant society was formed with the specific aim to serve the underprivileged members of the society who are suffering from tuberculosis and who cannot afford its treatment. The same is evident from the MoA of the appellant Society. The donors, who are based in India as well as abroad, primarily the United States, were providing funds in order to further this very objective. Therefore, the appellant Society, being engaged in the social welfare of the general public, possesses the characteristics of an organisation with a 'charitable nature'.

25. In order to canvass the argument that a society registered under the Societies Registration Act, 1860 can be construed as a 'constructive trust', the counsel placed reliance on the decision of the Delhi High Court in The Young Mens Christian Association of Ernakulam and Ors. v. National Council YMCAS of India reported in 2018 SCC OnLine Del 9909 wherein it was opined that a society registered under the Societies Registration Act, 1860 can be construed as a constructive trust if it satisfies the elements mentioned in Section 3 of the Indian Trusts Act, 1882.

26. It was submitted that the appellant Society is being entrusted with the funds from the donors for public service. Upon a perusal of the Memorandum of Association, it is evident that all the earnings and income generated, or funds received by the society shall only be utilised for the betterment of the general public and to provide free health services, and no profits shall be transferred directly or indirectly to the members of the society. Additionally, Clause 11.2.1 of the AoA specifically provides that "All the properties, movable, immovable and other kind of assets shall stand vested in the Committee". Therefore, all the donor funds, gifts etc. are entrusted to the appellant Society to be utilised for the public purpose as enumerated in the aims and objectives contained in its MoA. For all these reasons, the society acquires the character of a 'constructive trust'.

27. It was submitted that the reliefs sought in the plaint are in complete consonance with Section 92(1) of the CPC and the impugned decision has specifically held that the reliefs sought by the respondent nos. 1 and 2 respectively in their plaint, in particular, prayers (d) and (e) fall within the reliefs

mentioned under Section 92(1). Hence, the plaint satisfies yet another ingredient required under Section 92 of the CPC.

28. In light of the aforesaid, it was submitted that the appellant Society though registered under the Societies Registration Act, 1860 yet must be construed as falling within the expression of a 'constructive trust' under Section 92 of the CPC as it holds property for charitable work. Therefore, the impugned decision granting leave to institute the suit, suffers from no infirmity and may not be interfered with.

iii. Submissions on behalf of the respondent nos. 3 and 4

29. The learned Counsel appearing on behalf of the respondent nos. 3 and 4 respectively, submitted that the application seeking leave to institute the present suit has been filed in complete disregard of the mandatory conditions stipulated under Section 92 of the CPC. Section 92 requires a suit of this nature to be filed by at least two interested parties. While the respondent no. 2 (original plaintiff no. 2) has been included as one of the plaintiffs, it is pertinent to note that the plaint has not been signed by the respondent no. 2. Additionally, there is neither any verification on behalf of the respondent no. 2 nor an affidavit in support of the plaint, as required under Section 26(2) of the CPC. These substantial procedural breaches render the plaint non-est in the eyes of law, and consequently, make it liable to be rejected at the very threshold. It was further submitted that there is a strong likelihood that the signatures of the respondent no. 2 was fraudulently affixed in the suit documents.

30. The counsel vehemently submitted that the suit under Section 92 of the CPC is legally untenable as it falls to fulfil the requisite conditions as regards maintainability and also for the reason that it is completely based on false allegations and has been filed to wreck a personal vendetta against the respondent nos. 3 and 4 respectively. Therefore, it was prayed that the present appeal be allowed and the impugned decision be set aside.

D. ISSUES FOR DETERMINATION

31. Having heard the learned counsel appearing on behalf of the parties and having gone through the materials on record, the only question that falls for our consideration is whether in the facts and circumstances of the present case, the appellant Society registered under the Societies Registration Act, 1860 can be said to have fulfilled all the requirements stipulated under Section 92 of the CPC for the purpose of instituting a suit under the said provision?

E. ANALYSIS

i. The Object and purpose behind Section 92 of the CPC.

32. Section 92 of the CPC reads as follows:

"92. Public charities-

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee; I vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries; I declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or I where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or I where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]"

(Emphasis supplied)

33. A suit under this provision can be termed as a 'representative suit of a special nature' since the object behind the enactment of this provision is the protection of public rights in the public trust. Therefore, the parties filing a suit by invoking this section are considered to be representatives of the public.

34. A three-judge bench of this Court in *Ahman Adam Sait and Others v. M.E. Makhri and Others* reported in 1963 SCC OnLine SC 71 had elaborated on how a suit under Section 92 of the CPC is a 'representative suit' while deciding whether the second suit would be barred by constructive res judicata. It was stated that when a suit is brought under Section 92, by two or more persons interested in the trust, they could be said to have taken upon themselves the responsibility of representing all the beneficiaries in the trust and though, all the said beneficiaries

may not be expressly impleaded in the suit, the action is essentially instituted on their behalf and the relief claimed is representative in character.

While stating so, however, it was clarified that the plaintiffs bringing the second suit must have the 'same interest' as that of the plaintiffs or defendants of the earlier representative suit, for the principle of res judicata to apply. In other words, it must be examined if the interest of the plaintiffs in the second suit was represented in the earlier representative suit. The relevant observations are thus:

"16. In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree passed in a suit under Section 92 binds all parties. The basis of this view is that a suit under Section 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under Section 92, it is brought by two or more persons interested in the trust who have taken upon themselves the responsibility of representing all the beneficiaries of the Trust.

In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of Explanation VI to Section 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

It is clear that Section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under Section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit."

(Emphasis supplied)

35. Similarly, in *Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh* reported in (2003) 11 SCC 377, this Court had opined that a suit under Section 92 is of a special nature and for the protection of public rights in public

trust and charities. It is for the vindication of public rights since the suit is instituted fundamentally on behalf of the entire body of persons who are interested in the trust. It cannot be said that only those persons whose names are in the suit-title would be considered to be the parties to the suit. The named plaintiffs are only the representatives of the public at large who are interested in the suit and therefore, in the eyes of law, all such interested persons would be considered to be parties to the suit. The relevant observations are reproduced hereinbelow:

"19. As observed by this Court in *R. Venugopala Naidu v. Venkatarayulu Naidu Charities* [1989 Supp (2) SCC 356 : AIR 1990 SC 444] a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of the public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are in the suit-title are the only parties to the suit? The answer would be in the negative.

The named plaintiffs being the representatives of the public at large which is interested in the trust, all such interested persons would be considered in the eyes of the law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 CPC."

(Emphasis supplied)

36. In *Vidyodaya Trust v. Mohan Prasad* reported in (2008) 4 SCC 115, this Court had emphasised that it is not every suit which relates to a public trust of religious or charitable nature and which contains reliefs which fall within some of the clauses under sub-section (1) of Section 92 that can be brought under the ambit of Section 92 of the CPC. Those suits must also essentially be initiated by individuals as representatives of the public for the vindication of public rights. While opining so, this Court also elaborated on the object behind requiring a 'grant of leave' from the appropriate court before the suit can be proceeded with.

The same was said to have been mandated as a pre-requisite or a procedural safeguard in order to prevent the public trusts from being subjected to undue harassment through frivolous suits being filed against them. If the persons responsible for the management of the trusts are subjected to multiplicity of legal

proceedings, then it would be the ultimate beneficiaries of the trust who would lose out since the trust would have to dedicate time to defend the suit and the funds which are to be utilised to further the objectives of the public trust would also have to be re-routed and wasted on litigation. In the opinion of the Court, this ordeal might also dissuade persons of high moral character and honest intentions from becoming trustees of public trusts. The pertinent observations are reproduced hereinbelow:

18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was "consent in writing of the Advocate General". This expression has been substituted by the words "leave of the Court". Sub-section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them.

Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is need for scrutiny.

25. In *Sugra Bibi v. Hazi Kummu Mia* [AIR 1943 Mad 466] it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-section (1) of Section 92 would not by itself attract the operation of the section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication of the individual or personal rights of the plaintiffs.

26. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts."

(Emphasis supplied)

37. In *Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan*, reported in (2017) 4 SCC 771, while holding that a trust can be created by virtue of a conditional gift, this Court had also elaborated on the purpose behind requiring

grant of leave from the court under Section 92 before a suit can be instituted. It was opined that such a condition has been legislatively prescribed in order to prevent a public trust from being harassed or to obviate the institution of reckless or frivolous suits against its trustees. The relevant observations are as thus:

"11. The present Section 92 CPC corresponds to Section 539 of the old Code of 1883 and has been borrowed in part from 52 Geo. 3, c. 101, called Romilly's Act of the United Kingdom. A bare perusal of the said section would show that a suit can be instituted in respect of a public trust by the Advocate General or two or more persons having an interest in the trust after obtaining leave of the Court in the Principal Civil Court of Original Jurisdiction. An analysis of these provisions would show that it was considered desirable to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees and hence a provision was made for leave of the court having to be obtained before the suit is instituted.

(Emphasis supplied)

38. Thus, the grant of leave under Section 92 of CPC serves as a procedural safeguard, ensuring that public charitable trusts are protected from mala fide suits that may have the consequence of impeding their operations. At this stage, however, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties; what is established is merely the maintainability of the suit which is sought to be initiated by the plaintiffs.

ii. Conditions to be fulfilled for the applicability of Section 92 of the CPC

39. Section 92 of the CPC has been created for a specific purpose and to address a specific kind of grievance which has the impact of affecting public rights as enumerated above. Therefore, not all suits can be blindly brought within the fold of this provision. In the facts and circumstances of each case, the court granting leave must examine whether the suit qualifies certain conditions which align with the intent behind the creation of this provision. Courts must tread with caution so as to weed out those suits which are camouflaged as falling within its ambit just with a view to take an undue benefit of provision and for causing harassment to the public trust or for the vindication of personal rights.

40. This Court in Ashok Kumar Gupta (supra) had laid down three conditions which are a sine qua non in order to invoke Section 92 of the CPC and maintain an action under the said provision. Upon placing reliance on various decisions of this Court, the conditions were delineated as follows -

(a) the trust in question must be created for public purposes of a charitable or religious nature;

(b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and

(c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. The relevant observations are reproduced as thus:

"10. While considering the scope of Section 92(1), as it existed then, a Constitution Bench of this Court observed in *Madappa v. M.N. Mahanthadevaru* [*Madappa v. M.N. Mahanthadevaru*, (1966) 2 SCR 151 : AIR 1966 SC 878] , as under : (AIR p. 881, para 10)

"10. Section 92(1) provides for two classes of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust. The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92, he would satisfy himself that there is a *prima facie* case either of breach of trust or of the necessity for obtaining directions of the Court.

The reliefs to be sought in a suit under Section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust property to be let, sold, mortgaged or exchanged or settlement of a scheme. The nature of these reliefs will show that a suit under Section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement."

11. The statement of law so laid down was reiterated:

11.1. In *Bishwanath v. Radha Ballabhji* [*Bishwanath v. Radha Ballabhji*, (1967) 2 SCR 618 : AIR 1967 SC 1044] : (AIR p. 1046, para 7)

"7. It is settled law that to invoke Section 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed

is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section."

11.2. In *Sugra Bibi v. Hazi Kummu Mia* [*Sugra Bibi v. Hazi Kummu Mia*, (1969) 3 SCR 83 : AIR 1969 SC 884] : (AIR p. 885, para 5)

"5. It is evident that this section has no application unless three conditions are fulfilled : (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned in the section."

12. Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under the said section, namely, that:

(i) the Trust in question is created for public purposes of a charitable or religious nature;

(ii) there is a breach of trust or a direction of court is necessary in the administration of such a Trust; and

(iii) the relief claimed is one or other of the reliefs as enumerated in the said section. Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92."

(Emphasis supplied)

41. As a natural corollary, it follows that in order to successfully establish that a suit is beyond the scope of Section 92 of the CPC, it would be sufficient to prove that any one of the conditions enumerated above has not been met. However, on the other hand, for a suit to be maintainable under this provision, the plaintiffs must be able to satisfy the court that all the conditions, or in other words, the necessary ingredients, under this section, have been fulfilled.

A. The trust being created for a public purpose of a charitable or religious nature.

42. A trust can be said to have been created for a 'public purpose' when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.

43. What constitutes "charitable purpose" has been defined under Section 2 of the Charitable Endowments Act, 1890 as follows:

"2. Definition.- In this Act "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."

(Emphasis supplied)

Therefore, the term includes relief to the poor, education, medical relief and the advancement of any other object of 'general public utility', while excluding activities whose purpose relates exclusively to religious teaching or worship.

44. There remains no doubt that the appellant Society in the instant case, working towards bringing equity in public health, with particular focus on providing for the education, treatment and prevention of tuberculosis, has been created for a 'public purpose of charitable nature'. This is clearly evident from its objectives outlined in the MoA and the beneficiaries that it seeks to serve, amongst others. The same is an admitted position and we need not delve into the nitty-gritties of whether the appellant society qualifies this aspect of the aforesaid condition. What remains contested, however, is that the appellant society which has been registered under the Societies Registration Act, 1860 cannot be construed to be a 'trust' or a 'constructive trust' in order to subject it to the jurisdiction under Section 92 of the CPC.

I. Whether a Society can be construed to be a 'trust or a 'constructive trust'?

45. A suit under Section 92 of the CPC being one of special nature, presupposes the existence of a public trust of a religious or charitable character. The existence of a public trust is essential, whether express or constructive. Therefore, a crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'. Having said so, however, an express declaration clearly signifying that an entity is a trust or that the properties are trust properties would not be a sine qua non in order to render a suit under Section 92 maintainable.

a. Circumstances under which the creation of a trust has been inferred

46. When no formal recognition has been given to the institution, the creation of a trust can be inferred from the relevant circumstances surrounding the coming into existence of and functioning of the institution/entity in question. The Privy Council in Babu Bhagwan Din and Ors. v. Gir Har Saroop and Ors. reported in 1939 SCC OnLine PC 47 was concerned with the question whether a public trust of a religious character existed in the facts and circumstances of the case. The

decision also established when a private temple may become dedicated to the public by subsequent dealings.

While negating the contention that the private temple constituted a public trust, emphasis was particularly laid on two aspects i.e., - First, the land in question granted by the then Nawab of Oudh in 1781 was not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. Instead, it was a grant to a private individual and to his heirs in perpetuity. Therefore, the historical setting and the circumstances of the grant was given importance to.

Secondly, While acknowledging that a private temple may become dedicated to the public and morph into a public trust of a religious nature over the course of years, it was held that such dedication has to be proved and the mere fact that the public were never turned away and that offerings from them were accepted would not by itself be sufficient proof of dedication, especially in the absence of an inference that the public user exercised any 'right' pertaining to the temple or had acquired any interest. Another pertinent factual aspect was also that the various forms of profit, whether by offerings or rents received by letting out portions of the lands in their own names, were divided amongst the family. The relevant observations are thus:

"Their Lordships agree with the Chief Court in holding that the grant of 1781 is not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. The grant is to Daryao Gir and his heirs in perpetuity. The general effect of the evidence is that the family have treated the temple as family property, dividing the various forms of profit whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting samadhs to the honour of its dead.

In these circumstances it is not enough, in their Lordships' opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol: they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family.

Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be, turned away; and as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. The Chief Court have, in the opinion of the Board correctly estimated the particular facts of the case, before them and have rightly negatived the contentions that the temple is a public temple and that the property in suit is impressed with a trust of a public religious character."

(Emphasis supplied)

47. On the other hand, the Privy Council in *Gurunatharudhaswami Guru Shidharudhaswami v. Bhimappa Gangadhrawappa Divate* reported in 1948 SCC OnLine PC 43, the issue related to whether the Court under Section 92 could direct the removal of the head of the mutt while settling a scheme for the administration of public trust properties despite the fact that the previous swami desired the said person to succeed as the head of the mutt. The suit under Section 92, apart from the aforesaid relief, was also concerned with whether the institution in question could be called a 'public trust' of a religious or charitable nature. In deciding the aforesaid, particular reference was made to the circumstances in which the various properties used in connection with the institution was acquired.

Predominantly, all the offerings made and gifts given by the public to the Swami was for the purposes of the 'Math' and additional properties were purchased out of the offerings initially given, except one property which was concluded as having been received as a gift by the Swami's for his own personal benefit since there was no evidence to show that the said solitary land was ever used for the benefit of the 'Math'. Therefore, all the suit properties with the exception of one, were regarded as accretions to the original foundation/institution, and subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the CPC. The relevant observations are reproduced hereinbelow:

"The learned trial Judge discussed in detail and with much care the documentary and oral evidence, particularly in relation to the circumstances in which the various properties used in connection with the Math had been acquired. In appeal the High Court again discussed the evidence in considerable detail, and both Courts reached the conclusions that the institution, whether it be called a Math or a Temple, was founded by the public for a public, charitable and religious purpose, viz., the worship of the Swami during his lifetime and of his Samadhi (tomb) after his death, and for the purpose of the various festivals which had been started in connection with the institution, and that the offerings made to the

Swami, the properties purchased out of those offerings and those acquired by gifts after 1912 (when the Swami assumed control of the Math), must all be regarded as accretions to the original foundation, and that all the properties in suit form part of a trust created for purposes of a charitable or religious nature.

Counsellor the appellant has referred their Lordships to all the relevant evidence and no useful purpose would be served by a further discussion of it in detail. Their Lordships can state shortly and in general terms their reasons for agreeing with the conclusions of the Courts in India. The only question in this appeal is whether the suit properties used for the purposes of the Math belonged to the Swami at the time of his death, or appertained to the Math and were subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the Code of Civil Procedure. Except in regard to one small property, which will be presently mentioned, their Lordships have no doubt that the Courts in India were right in answering this question against the appellant.

The evidence establishes beyond doubt, in their Lordships' view, that the properties in suit were either originally given, or were dedicated by the Swami, to the purposes of the Math which was a charitable or religious institution. It has been argued by Counsel for the appellant that even if this be so the trust was not for public, but for private, purposes. But this is clearly not so. It is common ground that anybody was at liberty to go at any time to the Math to worship the Swami and take food there. The trust was plainly one for public purposes.

The only property in suit which in their Lordships' view the respondents have failed to show belonged to the Math is that comprised in Exhibit D.127 by which a piece of land expressed to be of the value of Rs. 400 situate in Mouji Harti in Taluka Gadag was conveyed to the Swami, the motive expressed being the spiritual good of the donor. There is nothing in the conveyance to suggest that the land was given to the Swami for the purpose of the Math. There is no evidence that this land, which is situate, their Lordships are told, some 40 miles from Hubli was ever used, or that its rents or profits were applied, for the benefit of the Math.

The fact that the Swami received many gifts of property for charitable purposes does not disqualify him from receiving gifts for his own personal benefit, and their Lordships think that this small piece of land must be excluded from the decree in the present suit. By the decree which the learned trial Judge passed it was declared that the properties in suit were properties belonging to a public trust of a religious and charitable character: and that it was necessary to settle a scheme for the administration of the trust."

(Emphasis supplied)

48. This Court in *Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das* reported in (1971) 1 SCC 574 had to determine whether the entity in question constituted a religious trust so that it may be brought within the purview of a 'public trust' under Section 2(1) of the Bihar Hindu Religious Trusts Act, 1951. The Trial Court had also placed a lot of importance on ascertaining how the properties were originally acquired and since, the respondent did not produce the Sanads under which the founding Mahant had acquired the said properties and therefore, the nature of the gifts and the manner in which they were made could not be determined, an adverse inference was drawn against the respondent. However, this conclusion was held to be misplaced since the onus of proof to show that the properties were being held for public purposes of a religious or charitable character was said to rest on the appellant Board who alleged that it was so. In holding thus, this Court also observed as follows:

i. First, that it is true that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, and that individual or that class of individuals might, after obtaining the grant, create a charitable trust.

ii. Secondly, that a property can be granted solely for the 'grantee's' personal benefit too, without there being any intention on part of the grantor to fetter the grantee with any obligation in dealing with the property granted. Courts have arrived at a conclusion whether the grant was for the benefit of the public, or an unascertained section of the public, or for the benefit of the grantee himself, or for class of ascertained individuals, either by keeping the manner and conditions of the grant itself at the forefront or, from the other circumstances of the case. Further, an inference can also be drawn from the usage and custom of the institution or from the mode in which its properties have been dealt with along with other established circumstances.

iii. Lastly, that if a property is described as 'appertaining to an organisation/institution' then for those properties to be considered as properties of a public trust, the said organisation/institution must by itself first be a public trust for religious or charitable purposes. 49. The relevant observations in *Bihar State Board* (supra) are thus:

"8. It is true that the respondent Mahant did not produce the original Sanads whereunder certain lands had been gifted to the founding Mahant by the various zamindars. They were not produced because, as the respondent deposed, they could not be traced, but, as stated earlier, it was not impossible for the Board also, if it wanted to rely on them, to produce the record, such as that of Darbhanga Estate, and show therefrom the nature and the terms of those gifts. The trial court, however, was not entitled, as we shall presently show, from the

mere failure of the Mahant to produce the original Sanads to draw an adverse inference which it did against him.

10. Properties of the temple being thus admittedly in the possession of the Mahants ever since the time of Gaibi Ramdasji, the onus of proof that the respondent Mahant held them on trust for public purposes of a religious or charitable character was clearly on the appellant Board who alleged that it was so. The trial Judge was, therefore, clearly in error in holding that the respondent Mahant ought to have produced the Sanads and that on his failure to do so an adverse inference could be drawn, namely, that had they been produced they would have shown that the grants to Gaibi Ramdasji were for public purposes of a religious or charitable character. (See *Parmanand v. Nihal Chand.*) [1938 ILR 65 IA 252]

11. The Sanads not having been available, the appellant Board tried to establish through the oral evidence of six witnesses (DWs 1 to 6), that the temple was founded and the properties in question were acquired for the benefit of the public or a section thereof.

16. True it is that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust.

18. The existence of a private Mutt, where the property was given to the head of the Mutt for his personal benefit only, has in the past been recognised. (See *Matam Nadipudi v. Board of Commissioners for Hindu Religious Endowments, Madras* [AIR 1938 Mad 810] and *Missir v. Das* [(1949) ILR 28 Pat 890].) In such cases there is no intention on the part of the grantor to fetter the grantee with any obligation in dealing with the property granted. In each case the Court has to come to its conclusion either from the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section of it i.e. an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its/properties have been dealt with as also other established circumstances.

21. Lastly, reference was made to some of the deeds of gifts made by the reigning Mahants in favour of their nominees as successors where the properties were described as appertaining to the Asthal. Assuming that the scribes of these documents used the expression "appertaining to the Asthal" in the sense in which such expression is sometimes used in the deeds of conveyance, the expression means things which are appurtenant to and forming part of the principal property

which is the subject-matter of the instrument. [See Stroud's Judicial Dictionary, (3rd Edn.), Vol. I, 177.]

The expression "appertaining to the Asthal" in these deeds, therefore, would at best mean that the properties formed part of the Asthal and are not the properties of the Mahant as distinct from those of the Asthal. (See *Sri Thakurji Ramji v. Mathura Prasad* [AIR 1941 Pat 354 at 358].) But unless the Asthal itself is a public trust for religious or charitable purposes, the properties appertaining thereto would not be properties of a public trust for religious or charitable purposes. The use of the expression "appertaining to the Asthal", therefore, cannot lead to the conclusion that the properties in question were stamped with a trust for public purposes."

(Emphasis supplied)

50. In another decision of this Court in *Kuldip Chand and Another v. Advocate-General to Government of H.P. and Others* reported in (2003) 5 SCC 46, it was held that the history of the institution, conduct of the parties and the user of the properties are all factors to be examined to arrive to a determination as regards a public trust. The issue related to whether by the mere use of the premises as a Dharamsala for about 125 years an inference could be drawn that the same belongs to a public trust. Answering in the negative and holding that the Dharamsala was a private property and not a public trust, this Court observed that a dedication for public purposes and for the benefit of the general public would involve the complete cessation of ownership on the part of the founder and vesting of the property for the religious object.

However, in circumstances where this dedication is not made via a formal or express endowment, its character may have to be determined on the basis of the history of the institution along with the conduct of the founder and his heirs. A dedication would involve the complete relinquishment of individual right of ownership. The owner must intend to divest himself of his ownership in the dedicated property. The relevant observations are reproduced hereinbelow:

"37. From the materials brought on record by the parties, as noticed hereinbefore, the following facts emerge:

- (1) That the shops were let out to other people.
- (2) People could come and stay in the Dharamsala but for stay of more than three days, only upon seeking permission therefor.
- (3) Rent received from the shops was being used by the owners for their own purpose.

(4) The Dharamsala was being managed/maintained from the personal funds of the owner.

(5) The management and control of the Dharamsala was all along with the owners.

(6) A school was opened in the Dharamsala.

(7) A chowkidar was appointed by Ranzor Singh to look after the Dharamsala and his salary used to be paid by the owner from his own pocket.

(8) The Dharamsala could be used for marriage purpose but only with the permission of the owners.

(9) The first-floor rooms could be used only by the officers or by others with the permission of the owner.

(10) The Dharamsala was ordinarily being used by the pilgrims only during fair.

(11) The public never contributed anything for maintenance of the Dharamsala.

(12) No member of the public had any say as regards management of the Dharamsala and had no legal right to use the same.

(13) No member of public the ever participated in the management of the Dharamsala.

(14) No manager had ever been appointed to look after and manage the property.

(15) The Dharamsala was not registered under the Sarais Act.

(16) There is no evidence to show that the owners acted as shebaites or trustees.

38. A dedication for public purposes and for the benefit of the general public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. In absence of a formal and express endowment, the character of the dedication may have to be determined on the basis of the history of the institution and the conduct of the founder and his heirs. Such dedication may either be complete or partial. A right of easement in favour of a community or a part of the community would not constitute such dedication where the owner retained the property for himself.

It may be that right of the owner of the property is qualified by public right of user but such right in the instant case, as noticed hereinbefore, is not wholly unrestricted. Apart from the fact that the public in general and/or any particular community did not have any right of participation in the management of the

property nor for the maintenance thereof any contribution was made is a matter of much significance. A dedication, it may bear repetition to state, would mean complete relinquishment of his right of ownership and proprietary. A benevolent act on the part of a ruler of the State for the benefit of the general public may or may not amount to dedication for charitable purpose.

39. When the complete control is retained by the owner - be it appointment of a chowkidar, appropriation of rents, maintenance thereof from his personal funds - dedication cannot be said to be complete. There is no evidence except oral statements of some witnesses to the effect that Raj Kumar Bir Singh became its first trustee. Evidence adduced in this behalf is presumptive in nature. How such trust was administered by Raj Kumar Bir Singh and upon his death by his successors-in-interest has not been disclosed. It appears that the family of the donor retained the control over the property and, therefore, a complete dedication cannot be inferred far less presumed. Furthermore, a trust which has been created may be a private trust or a public trust. The provisions of Section 92 of the Code of Civil Procedure would be attracted only when a public trust comes into being and not otherwise.

42. When a dedication to a charity is sought to be established in absence of an instrument or grant, the law requires that such dedication be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. It must be proved that the donor intended to divest himself of his ownership in the dedicated property. The meaning of charitable purpose may depend upon the statute defining the same."

(Emphasis supplied)

51. In *Kuldip Chand (supra)*, of the several factual circumstances that led this Court to reach the conclusion that the Dharamsala was not a public trust in addition to the owner's intention to not relinquish ownership of the property, some are especially pertinent -

(a) in the premises of the Dharamsala, some portion was let out as shops to other people, unconnected with the religious or charitable purpose;

(b) the income/rent received from those shops were not used to further the purpose of the alleged trust but was being used by the owners for their own purpose;

(c) the maintenance of the Dharamsala was also being done from the personal funds of the owner and no contribution was made by the public for the maintenance of the Dharamsala. All these facts were taken into account in arriving at the decision that the Dharamsala was not a public trust.

52. On a conspectus of the aforesaid decisions, it could be said that the method of devolution of the property to the institution or its acquisition, the intention behind the grant of property i.e. whether it was for the benefit of the organization or for the personal benefit of any particular individual/family - in other words, the historical setting and the circumstances of the grant has been given considerable significance while concluding whether a trust of a public charitable or religious nature exists.

Even if the grant was initially of a private nature, any subsequent dealings could transform the organization into a public trust, however, such a 'dedication' to the public must be sufficiently proved. That the public user or an unascertained class of individuals could exercise any 'right' over the organization and its properties, could also be a significant factor in concluding that a public trust has come into existence. The manner of use of the profits accrued, more particularly, whether it was applied towards the benefit of the organization or its objectives, could also lead to an inference as regards the nature of the organization or the creation of a public trust.

53. Bihar State Board (supra) has reiterated that a charitable trust may either be created by a grant for an express purpose or a grant having been made in favour of an individual(s), who might thereafter create a charitable trust. Due attention must also be paid to whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee.

Therefore, the trifecta i.e., the intention, manner and conditions of the grant might have to be scrutinized to see whether the grant was for the benefit of the public or an unascertained section of the public. The intention to create a trust must be indicated, either by words or acts with reasonable certainty. Other established circumstances, including the method of use of the property and customs of the institution or the mode and manner in which they have dealt with the properties in the past, could also prove to be relevant.

54. Kuldeep Chand (supra) had also placed emphasis on the history of the institution/organization, the conduct of the parties and the beneficiaries of the properties as relevant factors. Whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property for the said object, was also considered a key factor in determining if the dedication was for public purposes.

Furthermore, how the properties are managed, more specifically, for whose benefit they are being managed; whether the profits are being re-routed to the public and for their benefit; whether any personal funds of any founder/proprietor

are being applied for the running of the organization or is it maintained through funds sourced from the public, are also aspects that one might need to paid due attention to. Therefore, the overarching and fundamental purpose of the organization, the mode in which properties are acquired and its beneficiaries could color it with the characteristics of a trust.

55. However, it must be noted that the aforementioned characteristics bear high significance, when, as mentioned previously, there has been no formal recognition of the entity in question and it has not been given a legal identity otherwise. Now, the next question would be, how an entity which satisfies the aforementioned criteria but has been, much later in time, registered as a society under the Societies Registration Act, 1860, would be treated in the eyes of law. The answer to this lies in the decision given by the Full Bench of the Kerala High Court in *Kesava Panicker v. Damodara Panicker and others* reported in 1974 SCC OnLine Ker 58.

56. In *Kesava Panicker* (supra), the Full Bench had to decide, on the face of it, a strikingly similar question i.e., whether a society registered under the Societies Registration Act, 1860 could be considered to be a trust or a constructive trust for the purposes of Section 92 of the CPC. However, the facts revealed that a public trust was formed much before the society was registered. It is in such circumstances that the Court arrived at the conclusion that the subject school, its properties and monies formed a public trust of a charitable nature and that the suit under Section 92 was maintainable. The High Court elaborated as follows:

i. First, several factors led to the conclusion that the trust had been created, - that the entire community in the area took an active interest and contributed funds for the purpose of creating a 'trust fund' in order that the school may be established; A committee was formed for collecting funds either as donations or as share capital; that long before the registration of the society, funds were collected from the public towards share money; and there were other forms of contributions as well. This according to the Full Bench reflected that there existed a clear intention to form a trust and also that a trust fund was created. These funds were utilized for the construction of the school building and for other ancillary purposes including establishing and maintaining the other functions of the school.

ii. Secondly, referring to *Tudor on Charities*, Sixth Edition, pg 128, it was opined that a trust may be created by any language sufficient to show the intention, and no technical words are necessary. Further, it was stated that the use of words such as 'intent' or 'purpose' or a direction that a fund shall be applied by, or be at the disposal of a person for certain intended charitable purposes, may very well be as effective as the use of the word 'trust'.

iii. Lastly, the mere factum of registration of a society under the Societies Registration Act, 1860 could not change the character of the properties which had already been constituted as trust properties and impressed with the trust, especially when a trust has clearly been created by the public for a public charitable purpose i.e., the establishing, maintaining and running of a school. Any addition to the said properties would also possess the characteristics of a trust property.

57. The relevant observations of the Full Bench are reproduced hereinbelow:

"5. When once it has been found that the school building and the furniture etc. as well as the funds of the school did not belong to the appellant as is contended by him he was certainly liable to account for the property of the school including the monies and the direction to account cannot also be interfered with. Considering the nature of the contentions raised by the appellant the direction to remove him from management must also stand. It is further essential that a scheme must be framed for the management of the school and the decree permitting that being done cannot also be altered.

6. All this we have said on the basis that the school and its properties and its monies formed a public trust of a charitable nature and that a suit such as the one envisaged by Section 92 of the CPC and which was the type of suit that was instituted - it is not even suggested that this is not so would be permissible and that the suit in question was maintainable and that the plaintiffs were entitled to sue. Regarding those questions the appellant's Counsel vehemently argued that there has been no trust at all justifying such an action.

For a suit under Section 92 there must be a public trust of the religious or charitable character. *Herendra Nath Bhattacharya v. Kaliram Das*, (1972) 1 SCC 115 : AIR 1972 SC 246. The allegation in the plaint is that there is such a charitable trust and that the appellant acting as a trustee de son tort has misused the funds of the trust and have mismanaged the properties. If the existence of a trust as alleged is established the suit will have to be decreed. We shall presently consider whether there is such a trust as alleged. Before going to that question we shall refer to the other decisions as well relied on by counsel for the appellant.

7. Counsel very strongly relied on the decision in *G. Chikka Venkatappa v. D. Hanumanthappa*, (1970) 1 Mys LJ 296. The decision is authority for the proposition that the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose cannot be regarded as amounting to creation of a trust for the application of Section 92 of the CPC. The effect of the Societies Registration Act is not to invest properties of the society with the character of trust property.

Even if the purpose for which the society was formed was charitable purpose the property acquired for this purpose will belong to the society and there is no trust and no trust can be predicated. So it was urged that even if the properties were acquired by the Keralasseri High School Society there was no trust which would enable a suit being instituted in accordance with the provisions of Section 92 of the CPC. If we may say so, with great respect, the position stated in the decision is the correct one. That was stated with reference to the facts of that case and the conclusion arrived at after discussing the facts is seen from paragraph 21 of the judgment which we shall extract.

"21. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga Community as Community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property was dedicated by it, or some members thereof, to public purpose, viz. some welfare of the community at large."

8. On the other hand the facts of this case show that the entire community in the area took an active interest and contributed funds for the purpose of creating a "trust fund" in order that a school may be established. Though it was what was called the "Keralasseri Food Committee" that first made a move for the establishment of a High School by submitting Ext. A9 memorandum to the Chief Minister, Madras, the public took up the matter and there was a meeting of the public on the 1st February, 1947 and at that conference a resolution was passed to start a private school. A committee was formed for collecting funds either as donations or as share capital. Ext. A14 is the proceedings of that meeting embodying the decisions taken at the meeting. These proceedings clearly indicate that the intention was to create a trust fund. It is so specifically stated in Ext. A14. We shall extract the relevant part. (Text in Malayalam Language.)

9. Long before the registration of the society funds were collected from the public towards share money is evidenced by Exts. A3, A4, A24 and B26 receipts. There have been contributions as well, has been established and this aspect has been discussed in the judgment of the court below. It is thus clear that there has been a clear intention to form a trust and that a trust fund was created and that the fund was utilised for the construction of the school building and for the ancillary purposes for establishing and maintaining the work of the school.

"A trust may be created by any language sufficient to show the intention, and no technical words are necessary. The use of such words as 'intent' or 'purpose' or a direction that a fund shall be applied by, or be at the disposal of, a person for the charitable purposes intended, may be as effectual as the use of the word 'trust'. Even the words 'authorise and empower' may be enough, upon the true

construction of the instrument". (See Tudor on Charities, Sixth Edition, Page 128).

10. No corporation would be created within the meaning of the word "incorporated" occurring in Entry 44 of List 1 of the Seventh Schedule to the Constitution by the formation and registration of a society under the Societies Registration Act. The society would continue to remain as an unincorporated society though under the Societies Registration Act it would have certain privileges some of them being analogous to those of corporations.

See Board of Trustees, Ayurvedic and Unani College, Delhi v. State of Delhi, AIR 1962 SC 458. If there was a trust created by the public for a public charitable purpose namely establishing, maintaining and running a school the fact of the registration of a society could not change the character of the properties which had already been constituted as trust properties and impressed with the trust and any addition to those properties must also have the same character.

11. We have therefore no hesitation in reaching the conclusion that a trust has been created and the High School buildings, the land, all appurtenances, furniture, equipment and all other properties are trust properties.

13. The suit is maintainable. By virtue of the registration of the society the nature of the trust properties has not been changed and on the allegations and the findings, a suit for the reliefs asked for is competent. We dismiss this appeal with costs."

(Emphasis supplied)

58. As indicated above, a crucial factual aspect in Kesava Panicker (supra), was that the public trust was already created by the public and that it pre-existed the registration of the society. It was in such circumstances that it was held that a 'subsequent' registration of the same entity as a society under the Societies Registration Act, 1860 would not take away from its character as a public trust and affect the maintainability of a suit under Section 92 of the CPC. A trust was already created by the public for a public charitable purpose and the properties were already imbued with the character of trust properties and impressed with the trust. The mere registration as a society to alter or circumvent the status of things which was already present, was what was disallowed. However, whether this factual peculiarity has a bearing on the facts of the present matter remains to be seen.

b. Views of different High Courts on the issue

59. Over the period of time, several decisions of different High Courts have been faced with the same question which remains at the centre of the present litigation

i.e., whether a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The High Court of Mysore in *C. Chikka Venkatappa & Another v. D. Hanumanthappa & Others* reported in 1970 SCC OnLine Kar 16 was concerned with a suit filed under Section 92 in relation to 'Devanga Sangha', a society registered under the Mysore Societies Registration Act of 1904 whose object was to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus.

The plaintiffs prayed that the defendants be removed from the office they held in the Devanga Sangha and that they also be directed to render true and proper accounts as regards the collections made by them on behalf of the Sangha in connection with the Silver Jubilee Building Fund of the Sangha. The suit was decreed and while the first prayer was not granted, the second prayer was granted only against two out of the five defendants. The High Court while holding that the suit was entirely misconceived on law and also wholly unnecessary on facts, observed as follows:

i. First, that the words 'creation of a trust' under Section 92 obviously has reference to similar phraseology employed in the Indian Trusts Act, 1882 although the same pertains to 'private trust'. 'Trust' is therefore, an obligation annexed to the ownership of property.

ii. Secondly, due regard was given to the object behind the enactment of the Karnataka Societies Registration Act, 1960 and the Mysore Societies Registration Act of 1904 respectively, along with the express provisions in those legislations which provided that the property, whether moveable or immoveable, belonging to a society shall be deemed to be vested in the Governing Body of the Society unless it is separately vested in trustees. While also referring to the provisions which provide that a society may sue or be sued, it was concluded that the obvious effect of these legal provisions would be that such property would belong to the society and be owned by the society like any other individual since the society by itself is invested with the character of a legal person.

This is despite the fact that the society's object may be described as being one of a charitable nature and that it acquires property for the purpose of achieving those objects. The existence of a trust, an author of the trust and a transfer of the said property as trust property to any trustee cannot be predicated in such circumstances where a society is involved. Further, it cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. On the contrary, the obligation to use the property for the purposes of the society is an obligation which is inherent or implicit in the MoA, which is the basic document constituting the society. The same cannot be construed as amounting to any declaration of trust in respect of a specified property.

iii. Thirdly, after clarifying the aforesaid differences in law between a trust and a society, it was stated that it would not be possible to begin with the assumption that there is a trust created for public purposes for the invocation of Section 92 of the CPC, unless some special circumstances are made out.

iv. Fourthly, it was stated that one must be able to draw a difference between an act which is purely and exclusively an activity or concern of the registered society in contrast to a matter in which an entire community takes any interest or steps, which may suggest that a specified item of property was dedicated for a public purpose or for the welfare of the community at large. Unless there are indications of a separate vesting of the society's property in a trust, effect must be given to the normal provisions of law which vest the property in the Executive Council.

v. Lastly, while agreeing that a trusteeship can be vested in a 'committee of persons' and that they can be treated as trustees for the purposes of Section 92, it was however, held that the same would be different from the vesting of properties in the governing body of a society registered under the Societies Registration Act, 1860.

60. The relevant observations in Chikka Venkatappa (supra) are reproduced hereinbelow:

"2. There is in Bangalore an association called the Devanga Sangha, which was registered as a society on the 12th of February 1924 under the Mysore Societies Registration Act of 1904. Like all other societies of that nature, the Sangha is governed by a Memorandum of Association, a set of Articles of Association and subsidiary bye-laws framed by the Society. The objects of the Sangha set out in the Memorandum are to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus.

The membership is limited to those belonging to the said community and is subject to payment of donations or periodical subscriptions. There are, as in other cases, different classes of members like Patrons who are called by two different Kannada names 'Poshaka and Sahavaka', Life members. Hon. members and ordinary members. The management of affairs of the Sangha is vested in a body called the Executive Council consisting of a President, four Vice-Presidents, a Secretary, a Treasurer and 50 other members.

16. It is clear that the trust referred to in this section is one actually created for a public purpose, whether that purpose be a charitable one or a religious one. The choice of the words 'creation of a trust' obviously has reference to the similar phraseology adopted in the Indian Trusts Act. 'Trust' is an obligation annexed to the ownership of property-vide S. 3 of the Act. A trust is created when the author

of the trust indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary and the trust property and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee-(vide S. 6 of the Act).

17. The question is whether the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose can at all be regarded as amounting to creation of a trust in the sense mentioned above. The Societies Registration Act is an Act promulgated for the ??? of making provision for regulating, controlling and improving the legal condition of societies established for the promotion of literature, science or fine arts or for the diffusion of useful knowledge or for any charitable purposes.

The Act of 1960 which was substituted for the previous Mysore Act No. 3 of 1904, has, however, limited the object to the mere provision for registration of literary, scientific, charitable or other societies in the State of Mysore. The manner in which the said objects are given effect to in the two statutes is the same. They enable individuals to get themselves formed into an incorporated body, like Corporations or Companies with a separate legal personality conferred upon the incorporated body.

And express provision is made (in S. 6 of the Act of 1904 and S. 14 of the Act of 1960) to the effect that the property, moveable or immoveable, belonging to a Society registered under the Act, unless it is vested separately in trustees, shall be deemed to be vested for the time being in the Governing Body of the society. S. 7 of the Act of 1904 corresponding to S. 15 of the Act of 1960 makes provision for the manner in which the societies may sue or be sued. The general provision is that every society registered under the Act may sue or be sued in the name of President or other office bearer specified for the purpose by the Rules and Regulations of the Society.

18. The obvious legal effect of these provisions is that although the object of a society may be described as a charitable purpose and by its regulations it is empowered to acquire property and use the same for achieving its objects, the property belongs to the society and is owned by the society like any other individual, because, the society is itself invested with the character of a legal person by virtue of the provisions of the statute.

It is not property in respect of which it is possible to predicate a trust, an author of the trust and a transfer of the said property as trust property to any trustee, nor can it be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The obligation to use the property for purposes of the society is an obligation which is inherent or implicit in the Memorandum

of Association which is the basic document constituting the society. That does not amount to nor can it be, by any stretch of imagination, read as amounting to any declaration of trust in respect of a specified property.

19. Such being the clear position in law in regard to trusts and in regard to registered societies and the clear difference between the two, the prima facie opinion in this case should necessarily be that unless some special circumstances are made out, it is not possible to start with an assumption that there is a trust created for public purposes, in regard to which the provisions of S. 92 CPC. could be invoked.

25. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga community as community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property, was dedicated by it, or some members thereof, to public purpose, viz., some welfare of the community at large.

26. All that happens is that the registered society acquires a certain item of property which, under the law, must be deemed to vest in the governing body unless they take steps to vest it separately in trustees. There is no suggestion here of any such separate vesting. Hence effect should be given to the normal provisions of law which vest the property in the Executive Council.

29. The other four-decisions are relied upon to make out one general proposition, namely, that for the purpose of applying the provisions of S. 92 CPC., it is not obligatory that the trustees should be individual human beings, but may be statutory committees or statutory bodies including incorporated bodies. In T. Sitharama Chetty's case [ILR. 39 Mad. 700.] , it was held that an Area Committee appointed under one of the provisions of the Madras Endowments Act, which was in management of a certain temple, may clearly be regarded as a trust for the purpose of S. 92 CPC. In Commissioner, Lucknow Division's case [AIR. 1937 PC. 240.], there was an unincorporated informal committee of persons who collected subscriptions for a specific purpose.

In Gomathinayagam's case [AIR. 1963 Mad. 387.], the founder of a certain school who had endowed properties for purposes of the school transferred those properties on trust to a Committee of persons who got themselves incorporated into a company without any motive of profits under S. 26 of the Indians Companies Act of 1913 (corresponding to S. 25 of the 1956 Act). In all these cases, it was held that the fact that the trusteeship vested in a Committee of persons, whether incorporated or not, made no difference to treating them as trustees for the purpose of S. 92 CPC.

But that does not carry the plaintiffs' case any further in this case. In every one of these decided cases, there was a clear creation of a trust for public purposes within the meaning of S. 92 CPC. as explained by us. In every case, there was already either a temple with endowed properties managed by the Area Committee or an actual transfer of property on trust by the founder of the school in favour of the Committee or the collection of funds by an informal committee for a specified public purpose amounting in law to a declaration of trust by themselves.

30. But one case which comes very near the present case is that in P. Mahadevayya's case [53 Mys H.C.R. 167]. That was a case of a registered society formed for the educational advancement of the Veerasaiva community which became the victim of serious differences of opinion between its members resulting in a split threatening to put an end to the useful activities of the society. A suit was filed with the consent of the Deputy Commissioner of the relevant district under S. 92 CPC. for the framing of a scheme. The bulk of the reported judgment discusses the facts and there is no discussion of the legal principles adverted to by us above.

The Court seems to proceed upon the assumption that the case was one to which S. 92, CPC. could be rightly applied. There is reference made to the case reported in T. Sitharama Chetty's case [ILR. 39 Mad. 700.] at page 175 of the Mysore High Court Reports. The contention disposed of by reference to the said decision was that according to one of the rules governing the society, no changes in the rules can be made without the consent of $\frac{3}{4}$ th of the members of the general committee and that as the rules themselves provided a proper procedure, it was not competent for the Court to interfere and frame a scheme. This is what the Court has stated in rejecting that contention:

"We do not think that there is much substance in this contention. The fact that there is a statutory body or committee which governs an institution does not bar the jurisdiction of the Court to frame a scheme because the Court is the ultimate protector of charities and it is the inherent right of the Court always to intervene to safeguard and preserve a charity whenever it is necessary to do so. In Sitharama Chetty v. S. Subramanja Iyer (ILR. 39 Mad. 700) where a similar contention was raised that the Court ought not to frame a scheme for a temple when there is a temple committee functioning under a statute, their Lordships Sir John Wallis and Seshagiri Ayyar repelled the contention and held that they had jurisdiction to do so."

31. It will be seen that the analogy sought to be drawn between the case in Sitharama Chetty's case [ILR. 39 Mad. 700.] and the case before the erstwhile High Court of Mysore may not have been possible if the great distinction that existed between a temple governed by an Area Committee under the Madras Endowments Act and a society registered under the Societies Registration Act

had been brought to the notice of the Court. The Area Committee referred to in Sitharama Chetty's case [ILR. 39 Mad. 700.] is certainly not the same as the governing body of a society registered under the Societies Registration Act.

32. As the ruling relied upon did not discuss the principle of law ??? before us we do not consider it to be a clear authority in support of the proposition sought to be made by Mr. Nagaraja Rao on behalf of the plaintiffs. If the decision should be regarded as laying down by implication, that even in the case of an ordinary society registered under the Societies Registration Act, a matter exclusively and completely governed by the provisions of the said Act and the general law, can be brought within the scope of S. 92 CPC. as if the position is clearly one of creation of a trust for public purposes, with respect, we find ourselves unable to agree with it."

(Emphasis supplied)

61. On the other hand, the High Court of Bombay in Shri Dnyaneshwar Madhuradwait Sampradayik Mandal, Amravati v. Charity Commissioner, Bombay and another reported in 1980 SCC OnLine Bom 120 while dealing with Section 2(13) of the Bombay Public Trusts Act, 1950 observed that a society registered under the Societies Registration Act, 1860 having an object which is religious or charitable or both, would be covered by the definition of a 'public trust' under Section 2(13). However, the said observation was made since the aforesaid State legislation which governed public trusts explicitly included societies functioning for a public purpose of a religious or charitable nature within the definition of a 'public trust'. The relevant observations are thus:

"7. Section 2(13) of the Bombay Public Trusts Act, 1950 which defines "public trust" is in the following terms:

"2(13) "public trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

8. The present case falls under the last clause of this definition and satisfies both the conditions, namely, that it is a registered society under the Societies Registration Act and as pointed out above, the society was formed for a religious purpose."

(Emphasis supplied)

62. In Board of Governors St. Thomas School and Others v. A.K. George and another reported in 1984 SCC OnLine Cal 56 leave to institute a suit under Section 92 of the CPC pertaining to St. Thomas School, a statutory body constituted under the St. Thomas School Act, 1923 was sought on the allegation that the Board of Governors were not properly constituted and that the trust property was not being properly managed by the trustees i.e., the Board of Governors of the said school.

Leave was granted ex-parte on the ground that the school constituted a public charitable trust. While holding that the school was not a public charitable trust, the High Court of Calcutta observed that the fact that a provision under the St. Thomas School Act, 1923 provided that all the property vested in the Governors by itself was not sufficient to lead to the conclusion that they were held in trust or that a charitable trust of a public nature was created. The relevant observations are thus:

"11. As regards the next contention that there is no public charitable trust in respect of the St. Thomas School which is expressly governed by the said St. Thomas School Act 1923, it was tried to be contended on behalf of the respondents by referring to Section 11 of the said Act that all the property vested in the Governors by or under this Act should be deemed to be held in Trust, thereby meaning constructive charitable trust of a public nature.

This contention, in our opinion, is totally devoid of any merit in view of the fact that Section 11 of the said Act does not at all either expressly or impliedly purport to create a charitable trust of a public nature. St. Thomas School and its property have to be administered in accordance with the provisions of St. Thomas School Act 1923 and if there is any breach of the provision of the Act then the remedy is to be sought under the said Act. The mode of constitution of the Board of Governors had been specifically laid down in S. 2 of the said Act.

In these circumstances the contention that the St. Thomas School is a public charitable trust cannot be sustained. Hence the instant suit filed under Section 92 of the Civil P.C. with the leave of the Court granted under the said section is not competent and the ex parte leave that was granted is liable to be revoked and withdrawn. I have already held that the St. Thomas School and its properties do not constitute a public charitable trust at all but they are governed by the provisions of the St. Thomas School Act, 1923 (Bengal Act XII of 1923)."

(Emphasis supplied)

63. In The Advocate General v. Bhartiya Adam Jati Sewak Sangh and Ors reported in MANU/HP/0182/2001, the High Court of Himachal Pradesh held that even if the defendant no. 1 and 2 societies respectively were performing

charitable functions, the same by itself would not attract the provisions of Section 92 of the CPC since there was no evidence that any trust was expressly or impliedly created. In the said case also the societies functioning for a charitable aim, i.e., the social and economic upliftment of the weaker section of the society and money was being raised from various sources, including the public at large as well as in the form of grants-in-aid from the government.

Further, the High Court interpreted Section 5 of the Societies Registration Act, 1860 to mean that if the properties were already vested in trustees, only then it shall not be deemed to be vested in the governing body of the society. In other words, the subsequent registration of a trust as a society would not have the effect of altering the properties belonging to the trust and the trustees would continue to be the legal owners of such properties. It adopted the interpretation given in Kesava Panicker (supra).

In this context, it was held that there was no evidence to show that any funds were collected from the general public before the defendant nos. 1 and 2 societies respectively came to be registered as societies and therefore, no trust as such could be said to have been existed. Hence, all the monies received or collected by them would vest in the governing body of the society only. Therefore, there being no trust and the defendant nos. 1 and 2 respectively admittedly being societies, the suit under Section 92 was not maintainable. The relevant observations are reproduced hereinbelow:

"17. At this stage, reference is required to be made to Section 5 of the Societies Registration Act, 1860, which provides: The property, movable and immovable, belonging to a society registered under this Act, if not vested in Trustees, shall be deemed to be vested, for the time being in the governing body of such society, and in all proceedings, civil and criminal may be described as the property of the governing body of such society by their proper title.

(Emphasis supplied in original)

18. Under the above provisions the properties shall not vest in the Society, if such properties were already with the trustees. In other words, the registration of a Trust as a Society under the Societies Registration Act, 1860 would not alter the position and the properties belonging to the trust would not vest in the society but the trustees would continue to be the legal owners of such properties.

21. In the present case, there are neither pleadings nor evidence to show that any funds were collected from the general public before the Defendants No. 1 and 2 came to be registered as Societies under the Societies Registration Act, 1860. Therefore there was no trust as such and vide Section 20 of the Societies Registration Act, 1860, all moneys received by the Defendants No. 1 and 2 either

by way of grants-in-aid or in the form of contributions from the public would vest in the societies, that is, Defendants No. 1 and 2.

24. In the present case, the very first condition is lacking. As stated above, it is the admitted case of the Plaintiff that Defendants No. 1 and 2 are "societies" registered under the Societies Registration Act, 1860. There is no averment and/or evidence that any trust was expressly or impliedly created. Even if Defendants No. 1 and 2 are carrying on charitable purpose, the same by itself would not attract the provisions of Section 92, Code of Civil Procedure.

25. On the facts and circumstances of the case neither the Defendants No. 1 and 2 are public trusts nor the Defendants No. 3 to 7 are the trustees. The issue is decided against the Plaintiff."

(Emphasis supplied)

64. In *Abhaya* (supra), the Kerala High Court also refused to accept the contention that a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The organisation therein was registered under the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955 and was constituted with the objectives of serving the mentally-ill, improving the social and non-social environment of the mental hospitals in Kerala, provision of facilities to improve the life-conditions of the mentally-ill, and rehabilitation of the recovered patients, especially those patients who have no familial support. The required capital of the society was also raised by membership/subscription fees, donations, loans, grants and other voluntary contributions, including from the public. Allegations of mismanagement, misconduct and misappropriation were levelled against the defendants. While dismissing the original petition, it was held as follows:

i. First, that there was absolutely nothing in the Rules and Regulations of the Memorandum of Association which indicated that prior to the formation and registration of the society there was a trust having any property. In such a scenario, the formation of a society to carry out any charitable or social purpose would not ipso facto make the society a public trust, especially since the society is also empowered to acquire property to use for its purposes.

Such a property which is then acquired will only be the property of the society which is a legal person by virtue of the provisions of the statute and will not be a property in respect of which a trust can be predicated. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. While it does have a legal obligation to use the property for its prescribed purposes and strictly in accordance with the Rules and Regulations of

the Memorandum of Association, by no stretch of imagination can it be considered as a declaration of trust.

ii. Secondly, on a reading of Section 8 of the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955, which is *pari materia* to Section 5 of the Societies Registration Act, 1860, it was inferred that unless the properties had already vested separately in trustees, they shall vest in the governing body of the society.

iii. Thirdly, it was opined that a procedure for the removal of the existing governing body, appointment of a fresh governing body and framing a scheme for the better and efficient management of the society was already contemplated within the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955. Such a relief could be availed by the members of the society as well, however, provided that a minimum of 10% of the members on the rolls of the society join together. It was opined that this express provision cannot be sought to be circumvented by the aggrieved members of the society by making an allegation that the society is a public trust and adopting the route under Section 92 of the CPC instead.

iv. Lastly, while acknowledging that it is the allegation in the plaint that determines the jurisdiction of the court under Section 92 of the CPC and that if a breach of trust is 'alleged', the grant of leave may be given, it was cautioned that when the very existence of a trust of any kind is seriously disputed/denied, the court must *prima facie* satisfy itself of the existence of the trust. It is true that if the contention is that there is no public trust but only a private one, a decision on whether the trust is of a public or private nature can only be made after taking in evidence. However, the same principle would not apply when the issue is that a trust by itself is absent in the circumstances. There must be some material to convince the court that a trust has been created.

65. The relevant observations made in *Abhaya* (supra) are reproduced hereinbelow:

"7. In the 1st paragraph of the petition itself it is admitted that the first petitioner-organisation "Abhaya" was constituted with the objectives of serving the mentally ill-persons, improving the social and non-social environment of the mental hospitals of Kerala, providing the mentally ill-persons with facilities to improve their life conditions and rehabilitating the recovered patients, especially those who are unwanted by their families. It is also admitted that in a general body meeting of the 1st petitioner held on 5-1-1986 it was decided to register the 1st petitioner-organisation under the provisions of Act XII of 1955 and the same was registered with Reg. No. 71 of 1986 by the Registrar of Co-operative Societies having its registered office at "Varda" Nandavanam, Trivandrum.

In paragraphs 3 to 13 the respondents 1 to 6 have extracted the various provisions of the Rules and Regulation of the Society. A copy of the Memorandum of Association is produced by respondents 1 to 6. The Memorandum of Association shows that the name of the Society is "Abhaya" and its registered office is at "Varada" Nandavanam, Trivandrum. The area of activity of the Society is limited to State of Kerala. Clause 4 of the Rules and Regulations of the Memorandum of Association deals with the main objectives of the Society, which reads as follows:-

4. The main objectives of the Society shall be the service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. The society shall aim at-

(a) Improving the social and non-social environment of the mental hospitals of Kerala.

(b) Providing the mentally ill with facilities to improve their life conditions.

(c) Rehabilitating the recovered patients, especially those who are unwanted by their families."

Clause 10 deals with the capital of the society, which reads as follows:-

"10. The required capital of the society shall be raised by the membership and subscription fees and donations, loans, grants and other voluntary contributions from the public State and Central Governments and other institutions or organisations."

8. It is true that Clause 4 of the Rules and Regulations shows that the Society is constituted with the main objectives of rendering service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. But, there is absolutely nothing in the Rules and Regulations of Memorandum of Association to show that prior to the formation and registration, of the society there was a trust having any property. On the other hand, a reading of the memorandum of Association shows that there were 7 promotees and they convened a General Body meeting on 5-1-1986.

The General Body held on 5-1-1986 decided to register the 1st petitioner as a Society under Act XII of 1955. Clause 10 shows that on the date of formation of the Society there was no property over which the Society had any ownership. A formation of a Society under the provisions of Act XII of 1955 to carry out any charitable or social purpose will not make the Society a public Trust. The Society is empowered to acquire property also to use for its purposes. But, that property which is to be Acquired will only be the property of the Society and it will not be

a property in respect of which it is possible to predicate a trust. The preamble of the Act XII of 1955 is relevant. It states as follows:-

"Whereas it is expedient that provision should be made for improving the legal condition of Societies, established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge or for charitable purposes."

Section 3 of the Act provides that any seven or more persons associated for any charitable purpose may by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves into a society. Section 32 of the Act provides that the following Societies may be registered under the Act:

"Charitable societies, societies established for the promotion of science literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art collections of natural history mechanical and philosophical inventions, instruments or designs."

Section 8 of the Act deals with the property of the Society. It reads as follows:-

"8. Property of society how vested. The property, movable and immovable, belonging to a society, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

A reading of Section 8 makes it clear that unless the properties had already vested separately in trustees, it shall vest in the governing body of the society.

Section 25 deals with application to court for dissolution framing schemes, etc. Section 25 reads as follows:-

"25. Application to Court for dissolution, framing a scheme, etc.-

(1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the Court may, after enquiry and on being satisfied that it is just and equitable pass any of the following orders:-

(a) removing the existing governing body and appointing a fresh governing body;
or

(b) framing a scheme for the better and efficient management of the society; or

(c) dissolving the Society.

(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in Court along with the application the sum of one hundred rupees in cash as security for costs."

Section 25 makes it very clear that a suit can be filed before the District Court by 10% of the members of the society against the Society for removing the existing governing body and appointing a fresh governing body or for framing a scheme for the better and efficient management of the society. The right to file the suit to frame a scheme is not confined to the State Government alone. The relief that the District Court can grant is not restricted to ordering dissolution of the society only. Section 25 confers power on the members of the society to institute a suit for removing the governing body or for appointing a fresh governing body and for framing a scheme. The only condition is that to file such suit minimum 10% of the members on the rolls of the society shall join together and the suit is to be filed before the District Court, Sub-section (2) of Section 25 provides that the plaintiff has to deposit Rs. 100/- as security for costs.

9. A reading of the various Sections of Act XII of 1955 shows that even if the object of a society formed under the provisions of Act XII of 1955 is a charitable purpose and even if it acquires property and use the same for achieving the object of the society, the property is owned by the Society and it belongs to it. The property is that of the society which is a legal person by virtue of the provisions of the statute. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The Society has a legal obligation to use the property for purposes of the society acquired strictly in accordance with the provisions contained in the Rules and Regulations of Memorandum of Association. By no stretch of imagination it can be considered as a declaration of trust in respect of a property acquired by the Society.

11. The preamble of the Indian Trusts Act, 182, states that it was enacted to define and amend the law relating to private trusts and trustees. Section 3 of the Indian Trusts Act defines "trust". It reads as follows:-

"A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

To constitute a trust, there must be an author of the trust, trustees, beneficiary, trust property and beneficial interest. The concept of trust involves four ingredients; a settlor or donor, a trustee or trustees, the beneficiaries and the subject matter. Of course, the beneficiaries may be a specified group or general public. Trust may be either express or constructive. But, a trust is created only

when the author of the trust indicates with reasonable certainty by words or act the intention in his part to create a trust, beneficiary and the trust property. The subject matter of a trust must be a property transferable to the beneficiary. It must not be merely a beneficial interest.

12. In *Kesava Panicker v. Damodara Panicker* 1975 Ker LT 797: (AIR 1976 Kerala 86) a Full Bench of this Court considered the effect of the subsequent registration of a society. That principle was followed in *Sukumaran v. Akamala Sree Dharma Sastha Idol* (1992) 1 Ker LT 432: (AIR 1992 Kerala 406), but in both those cases there were materials to show that a public trust was in existence and later that trust got registered under the provisions of Act XII of 1955. I shall consider whether there is any material in this case to show that the 1st petitioner was a trust and later it got itself registered under the provisions of Act XII of 1955.

13. A reading of various averments in the Original Petition shows that though the word "Trust" is used to describe the 1st petitioner, there is no averments in the pleadings to show the existence of a Trust, whether Public or Private. On the other hand, the materials on record clearly shows that the 1st petitioner is a Society registered under Act XII of 1955.

14. A comparison of Section 25 of the Act XII of 1955 and Section 92 of C.P. Code shows that the reliefs provided under Section 25 of the Act and under Section 92 of the C.P. Code are similar. The suit under Section 25 of the Act is also to be filed before the District Court. The main difference is that to file a suit under Section 25 of the Act a minimum 10% of the members of the Society must join together as plaintiffs. But they need not obtain any permission as contemplated under Section 92 of the C.P. Code. The minimum number of 10% of the members is insisted to see that the Society is not unnecessarily dragged to court of law. The member of the Society cannot be allowed to circumvent that provision by making an allegation that the Society is a Trust.

15. The learned counsel appearing for the contesting respondents has argued that when there are averments in the petition regarding the existence of a trust, the Court is bound to grant the permission sought for and the Court cannot consider whether the allegation regarding the existence of trust is true or not. It is argued that is a matter to be decided after taking evidence.

16. It is true that it is the allegation in the plaint that determines the jurisdiction of the Court under Section 92 of C.P. Code. If a breach of trust is alleged in the plaint, it is sufficient to confer jurisdiction to the Court. But, when the very existence of a trust of any kind is denied, the court must look into the pleadings and the documents produced by the plaintiffs to see whether there is any material to show a prima facie case of existence of the trust. Of course, if the contention is

that there is no public trust but only a private trust, a decision as to whether the trust is public or private can be taken only after taking evidence.

17. The learned counsel for the respondents 1 to 6 has argued that if there are averments in the original Petition to the effect that the O.P. relates to a trust the District Court shall not reject the O.P. on the ground that there is no trust. It is argued that the Apex Court has held that it is not even necessary to hear the respondent before granting leave. It is true that in *B.S. Adityan v. B. Ramachandran Adityan* 2004 AIR SCW 3044: (AIR 2004 SC 3448), the Apex Court has held that leave can be granted without issuing notice to the respondent. But in the very same decision it was also held that the respondent after appearing in the suit, can file petition to revoke the leave already granted. So, there is no merit in the contention of the contesting respondent that if there are averments in the petition regarding the existence of trust, the District Court shall entertain the application and grant leave.

18. The learned counsel appearing for respondents 1 to 6 has argued that the scope of enquiry in an Original Petition is very limited and the District Court has merely to see whether there is prima facie case for granting the relief. It is true that the plaintiff need only establish a prima facie case of existence of a trust. But, there must be materials to make a prima facie case of existence of a trust. There is total lack of any such materials in this case.

21. The learned District Judge allowed the Original Petition on a wrong assumption that the 1st petitioner Society is a Trust. There is absolutely no material to show prima facie that 1st petitioner is a Trust, either public or private. There is also no material to show that there was a Trust of public nature, which subsequently got registered under the provisions of Act XII of 1955. Since there is no material to make out a prima facie case that the 1st petitioner is a public Trust and any person had settled any properties for the benefit of the beneficiaries, the provisions of Section 92 of C.P.C. cannot be invoked. So, the impugned order is illegal, unsustainable and liable to be set aside."

(Emphasis supplied)

66. While dealing with the same issue, the Madras High Court also in *Periyar Self Respect Propaganda Institution* (supra), took the view that the properties in question vested with a society and not a trust, thereby rendering the suit under Section 92 not maintainable. Therein, the fact that the institution was registered under the Societies Registration Act, 1860 and that the properties were vested in the President and Secretary of the institution who were empowered to purchase and sell properties on behalf of the institution, were, in the opinion of the High Court, factors which indicated that a trust neither existed nor was created. The relevant observations are as thus:

"9. In order to maintain the suit under Section 92 CPC the petitioners/plaintiffs should show the existence of a Trust and the alleged breach of the terms of the Trust; besides which the interestedness of the petitioners/plaintiffs in the running the Trust shall also be made known.

10. But as seen from the Memorandum of Articles of Association of the Periyar Self Respect Propaganda Institution (first defendant), Tiruchirapalli, it is found that it was incorporated and found to have been registered under the Societies Registration Act 21/1860. That Certificate number is 13/1952 with a Memorandum of Articles of Association containing 13 life members and 30 Rules; according to Clause 22, the life members of the Executive Committee alone shall be the Trustees of the properties already purchased. According to Clause 23, the properties of the Institution shall be in the names of the President and the Secretary and they shall have to power to purchase and sell the properties on behalf of the Institution. If it is a Trust Property, there will not be a clause empowering the President to sell the properties. That itself indicates that it is not a Trust. The fact that it was registered under the Societies Act may also lend support to the above view.

14. In this case also the property vest with the President and Secretary of the first defendant as per clause 23 of the Memorandum of Articles of Association of the first defendant Institution, which was registered under the Societies Registration Act 21/1860. Therefore, the property is vested with a society and not with a Trust and as per the observations made in the above cited case a suit under Section 92, CPC is not maintainable, (to) which Societies Registration Act is applicable, proceeding with a suit under Section 92, CPC was deprecated in Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik ((1984) 2 SCC 50 : AIR 1984 SC 192). There is also no interestedness shown upon the plaintiffs in the running of the Trust."

(Emphasis supplied)

67. In S.R. Bahuguna (supra), the Delhi High Court had held that the suit under Section 92 was not maintainable for not having satisfied two crucial ingredients i.e., the defendant no. 1 was a society and not a public charitable trust, and the plaintiffs were also not 'persons interested' in the trust. Therein, for the purpose of constructing a building on a plot of land belonging to defendant society and develop it, a board of five trustees was set up by the standing committee of the defendant society through a registered trust deed dated 01.09.1975 where the President of the defendant society was the Managing Trustee.

However, the trust was revoked almost two years later since the construction was complete and the purposes for which it had been set up was fulfilled. In this context, the Delhi High Court emphasized that Section 5 of the Societies

Registration Act, 1860 cannot be construed to mean that the governing body members of the society would automatically become trustees if no trust is created to manage the assets of the society. The relevant observations are as follows:

"12. The sum and substance of the suit averments is that the AIWC, a registered Society, constituted a trust on 01.09.1975 for the purpose of constructing upon a plot of land allotted to it in 1962. This was part of the avowed objectives that govern the Society. The AIWC had resolved that after construction, the building would be utilized to provide housing for as many working women as was feasible and also at the same time generate rental income to sustain its other welfare activities.

The plaintiffs allege various acts of financial irregularities in relation to construction activity undertaken by the AIWC as well as alleged acts of embezzlement on part of the Treasurer. They also rely upon certain observations by the AIWC's Chartered Accountants or Auditors. Their claim to be persons interested for the purpose of obtaining leave is that they were associated with the Society having worked there for some time and are, therefore, 'interested for its proper management and functioning'.

14. Besides, there is no denial that the first defendant is a society, not a Trust; a Trust was set up for a limited period, for a special purpose, i.e. to construct a building. Apparently, after that objective was achieved, the Trust was dissolved or wound up. In these circumstances, the Court is of opinion that the suit is not maintainable.

16. In view of the above discussion, the Court is of opinion that the suit is not maintainable, because two crucial ingredients, which are essential pre-requisites for action under Section 92 are lacking; the first, defendant is a society, and not a public charitable Trust. The Trust which had been set up earlier was dissolved in 1997; that has not been disputed. The suit was filed in 2001. Section 5 of the Societies Registration Act 1860, says that the property and assets of a registered society vest either in a trust, set up for that purpose, or the society's governing council or body. This however, does not mean that the governing body members if no trust is created to manage the society's assets, become trustees. No authority was shown to advance such an argument. The second ingredient, i.e. the plaintiffs being 'persons interested' is also lacking, in this case.

17. For the above reasons, the plaintiffs cannot be granted leave to file a suit, under Section 92 of the CPC. The suit and all pending applications are, therefore, dismissed without any order on costs."

(Emphasis supplied)

68. In *Young Mens Christian Association of Ernakulam (supra)*, the plaintiffs alleged before the Delhi High Court that the defendant society owned a large number of movable and immovable properties across India and held in trust, various properties of its member associations. The High Court accepted such a contention and leave to institute a suit under Section 92 was granted by delineating the following:

i. First, emphasis was laid on several Articles of the Memorandum of Association of the defendant society of which one provided that certain properties were indeed held in trust by the defendant society on behalf of the member YMCAs. Furthermore, the historical background indicated that the defendant society started administering and looking after existing member YMCAs which were formed even before it was registered as a society, quite similar to the factual scenario in *Kesava Panicker (supra)*. The defendant society was not only holding properties in trust but also exercised the power to enter into transactions in respect of such properties. On a consideration of all the above, it was held that there remained no doubt that the defendant society was in both 'express' and 'constructive' trust of the properties belonging to its members.

ii. Secondly, by interpreting Section 3 of the Indian Trusts Act, 1882, the elements that were required to be fulfilled for an express or constructive trust were said to be - (a) ownership of a property, (b) a confidence reposed by the owner, and (c) the said confidence being accepted for the benefit of another. It was stated that if these elements are satisfied a trust could be said to be created. It was, however acknowledged that the term "express or constructive trust" in Section 92 of the CPC does not relate to a trust constituted under the Indian Trust Act, 1882 but any body or entity which holds in trust any property and is created for public purposes of a religious or charitable nature. Hence, a society might also be able to satisfy the test of an express or constructive trust, when the facts reveal the creation of a trust.

69. The relevant observations are reproduced as follows:

"11. A perusal of the above clauses of the Defendant's Memorandum reveals that the Society is one which possesses a public character. It is working for the people who constitute its members as also for the larger interest of the community. It is common knowledge that the Defendant not only has a large number of affiliated member associations in India but is also affiliated to the international network of YMCAs. It has been clearly created for a 'public purpose' and is both of a charitable and a religious nature.

12. The Defendant has two bodies which manage and administer its duties and functions. The National Board is the governing body of the Defendant and under Article III(1), the management of the society vests with it.

13. As per Article X of the rules and regulations, all the property of the society is deemed to vest in the National Board which consists of all the members of the National Executive, Secretary members, immediate past National President, and Chairmen of the National Standing Committees, etc.

14. The second body is the National Executive which is primarily an elected body.

15. Article X is relevant for the present purpose and is set out herein below:

"X (1). All property of the Society, whether movable or immovable, shall be deemed to be vested in the National Board who shall have power to sell, lease, mortgage or otherwise deal with the same, and also to purchase, take on lease, accept, grants of or otherwise acquire movable or immovable property on behalf of the society, and to enter into all contracts and covenants on its behalf."

16. Article XV in respect of 'Property matters' is extremely relevant and is set out below:

"1. All matters related to the use and management of properties owned and directly managed by the National Council shall be authorized by the National Board or its Executive Committee. Documents of such properties to which the seal of the society is affixed shall be signed on behalf of the society by the National General Secretary and by the President or Treasurer.

2. In respect of Property owned by the National Council and used for National Council projects, the signing authority will be the National General Secretary or his nominee as approved by the National Executive Committee and by the President of the National Council or the chairman of the project concerned as approved by the National Executive Committee.

3. In respect of the properties held in trust by the National Council on behalf of the member YMCA, for all dealings the Executive Committee may give a power of attorney on written requisition with a resolution of the Board of the member YMCA, to the President and Secretary of the member YMCA and such other representatives of the National Executive Committee if deemed necessary by the National Executive Committee. In respect of properties mentioned in section (1) and [2] above, all sales or disposals are to be approved by the National Board."

(Emphasis in original)

18. Considering the nature and constitution of the Defendant, the question is whether it comes under the purview of the Section 92 of the CPC, it being a Registered Society under the Societies Registration Act. 19. Section 3 of the Indian Trusts Act reads as under:

"Section 3 - Interpretation clause - 'trust' - A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in an accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner"

20. From a perusal of the above definition, it is clear that the elements that are required to be fulfilled for an express or constructive trust are:

- i) Ownership of a property;
- ii) A confidence reposed by the owner;
- iii) The said confidence being accepted for the benefit of another.

21. If these elements are satisfied, a trust is created.

22. In this backdrop, a perusal of Section 92 of the CPC reveals that the term "express or constructive trust" does not relate to a trust constituted under the Indian Trusts Act, but any body or entity which holds in trust any property and is created for public purposes of a charitable or religious nature. A society can also satisfy the test of express or constructive trust created for public purposes.

23. In *Abhaya* (supra) cited by the Defendant, the case involved a charitable Society which did not show that it held 'in trust' any property belonging to a different organisation. The property vested in the governing body of the Society itself. Thus, the Kerala High Court held that a suit under Section 92 of the CPC would not be maintainable.

24. Thus, in the facts of the said case, the Court held that there was no prima facie material to show existence of a trust.

25. Even in *Rukmini Devi Arundale* (supra), the Court held that the question was as to whether the property belonged to the Trust or the Society. In *Bhartiya Adam Jati Sewak Sangh* (supra), the High Court of Himachal Pradesh held that there was no evidence to show that any funds were collected from the general public before the Society was created.

26. In the present case, as per Clause 3(ii) of the Preamble of the Memorandum, one of the main objectives of the Defendant was to promote the work of the Young Men's Christian Association Movement in India and to resuscitate the existing languishing YMCAs and aid in formation of new YMCAs in India. In effect, the Defendant started administering and looking after the existing YMCAs which were formed even before it came into existence as a Society. Paragraph 14 of the Complaint clearly sets out the past YMCA movement which dates back to

1857, the fore-runner of the Defendant being formed in 1891 and thereafter the registration of the Defendant as a Society only in 1964.

All these organisations came under the administration and supervision of the Defendant. As per the Rules and Regulations set out hereinabove, the Defendant holds in trust, properties on behalf of the member YMCAs. The immovable properties are located across the country. Thus, there is no doubt that the Defendant is in both 'express' and 'constructive' trust of the properties belonging to its members. In fact, as pointed out by counsels, the agreements in respect of immovable properties are actually signed for and on behalf of the members by the Defendant. One such example is that of the property in Vishakhapatnam. The Defendant is thus playing the role of not merely an association holding something in trust but also has the power to enter into a transaction in respect of such properties."

(Emphasis supplied)

70. A conspectus of the aforesaid decisions of several High Courts indicate that they are unanimous in their view as regards the fact that a society registered under the Societies Registration Act, 1860 cannot be termed as a trust or a constructive trust merely by virtue of the fact that its properties are vested in its governing body. The facts must contain circumstances clearly indicating the creation of a trust. c. Section 5 of the Societies Registration Act, 1860 and the 'vesting' of properties in the Executive Committee.

71. The appellant Society has submitted that no trust has been created for the purpose of holding the society's properties or its assets and it has been 'vested' in its Executive Committee only as per the mandate under Section 5 of the Societies Registration Act, 1860 which reads as thus:

"5. Property of society how vested.- The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

72. A five-judge bench of this Court in Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi and Another reported in 1961 SCC OnLine SC 145 while deciding a challenge to a State legislation, had the occasion to decide whether an entity registered as a society can be considered to be a 'corporation'. Answering in the negative, it was stated that the most important aspect in resolving the said issue would be to determine whether there was an intention to incorporate. Upon perusal of the various provisions of the Societies Registration Act, 1860, it was concluded that there were no sufficient words to

indicate an intention to incorporate; on the contrary, the provisions only revealed the absence of such an intention.

Further, it was stated that the expression "property belonging to the society" under Section 5, did not give the society a corporate status in the matter of holding or acquiring property and that it merely described the property which either vests in the trustees or the governing body for the time being. Though the provisions of the Act undoubtedly confer certain privileges to a registered society and those privileges are of considerable importance, some may even be analogous to the privileges enjoyed by a corporation, it was held that there is no incorporation in the sense in which the word is legally understood. The relevant observations are thus:

"9. The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a corporation?

10. The learned Advocate for the petitioners has referred us to various provisions of the Societies Registration Act, 1860 and has contended that the result of these provisions was to make the Board a corporation on registration. It is necessary now to read some of the provisions of that Act.

11. Now, the question before us is - regard being had to the aforesaid provisions - was the Board a corporation? Our conclusion is that it was not. The most important point to be noticed in this connection is that in the various provisions of the Societies Registration Act, 1860, there are no sufficient words to indicate an intention to incorporate; on the contrary, the provisions show that there was an absence of such intention. Section 2 no doubt provides for a name as also for the objects of the society. Section 5, however, states that the property belonging to the society, if not vested in trustees, shall be deemed to be vested in the governing body of the society and in all proceedings, civil and criminal, the property will be described as the property of the governing body.

The section talks of property belonging to the society; but the property is vested in the trustees or in the governing body for the time being. The expression "property belonging to the society" does not give the society a corporate status in the matter of holding or acquiring property; it merely describes the property which vests in the trustees or governing body for the time being. Section 6 gives the society the right to sue or be sued in the name of the president, chairman etc. and Section 7 provides that no suit or proceeding in a civil court shall abate by reason of the death etc. of the person by or against whom the suit has been brought. Section 8 again says that any judgment obtained in a suit brought by or against the society shall be enforced against it.

It has been submitted before us that Sections 6, 7 and 8 clothe the society with a legal personality and a perpetual succession; and Section 10 enables the members of the society to be sued as strangers, in certain circumstances, by the society, and the costs awarded to the defendant in such a suit may be recovered, at his election, from the officer in whose name the suit was brought. Dealing with very similar provisions (Sections 7, 8 and 9) of the English Trade Union Act, 1871 (34 and 35 Vict. c. 31) Lord Lindley said in the celebrated case of *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901 AC 426]

13. It is clear from the aforesaid decision that provisions similar to the provisions of Sections 5, 6, 7 and 8 of the Societies Registration Act, 1860 were held not to show any intention to incorporate; on the contrary, the very resort to the machinery of trustees or the governing body for the time being acquiring and holding the property showed that there was no intention to incorporate the society or union so as to give it a corporate capacity for the purpose of holding and acquiring property.

It appears to us that the legal position is exactly the same with regard to the provisions in Sections 5, 6, 7 and 8 of the Societies Registration Act, 1860. They do not show any intention to incorporate, though they confer certain privileges on a registered society, which would be wholly unnecessary if the registered society were a corporation. Sections 13 and 14 do not carry the matter any further in favour of the petitioners. Section 13 provides for dissolution of societies and adjustment of their affairs.

It says in effect that on dissolution of a society necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the Rules of the society; if there be no rules, then as the governing body shall find it expedient provided that in the event of any dispute arising among the said governing body or the members of the said society, the adjustment of the affairs shall be referred to the court. Here again the governing body is given a legal power somewhat distinct from that of the society itself; because under Section 16 the governing body shall be the governors, council, directors, committee, trustees or other body to whom by the Rules and regulations of the society the management of its affairs is entrusted.

14. We have, therefore, come to the conclusion that the provisions aforesaid do not establish the main essential characteristic of a corporation aggregate, namely, that of an intention to incorporate the society. Those provisions undoubtedly give certain privileges to a society registered under that Act and the privileges are of considerable importance and some of those privileges are analogous to the privileges enjoyed by a corporation, but there is really no incorporation in the sense in which that word is legally understood."

(Emphasis supplied)

73. In Board of Trustees (supra), this Court while deciding on the question whether the Board members enjoyed any rights over the property of the society, clarified that, during the subsistence of the society, the right of the members was to ensure that the property was utilised for the charitable objects as set out in its memorandum and as such, that did not include any beneficial enjoyment on the part of the board members. The members also do not acquire any beneficial interest vis-à-vis the property on the dissolution of the society since Section 14 of the Societies Registration Act, 1860 expressly negatives the right of the members of the society to any distribution of the assets of the dissolved body.

Upon dissolution, the property has to be given over to some other society to be utilised for like purposes and the only right of the members was to determine which society the funds or property might be transferred to. The aforesaid right of the members to determine which new society the funds and property may be transferred to, was held to be not a right to "acquire, hold and dispose of property" within the meaning of the then Article 19(1)(f). The context in which the words "dispose of" occurred in Article 19(1)(f) was said to denote that the kind of property which a citizen has a right to hold and upon dissolution of the society, the members cannot be said to acquire any right to "hold" the property in their individual capacity. The relevant observations made are reproduced hereinbelow:

"23. We have already held that the impugned legislation was well within the legislative competence of the Delhi State Legislature. Now the question is - is the impugned legislation bad on the ground that it violates the right of the petitioners under Article 19(1)(f)? The property for the protection of which Article 19(1)(f) is invoked belonged either to the Board or to the members composing the Board at the date of the dissolution. In either event, on the terms of Section 5 of the Societies Registration Act, 1860, the property was to be deemed to be vested in the governing body of the Board.

There could be no doubt that if the Board was dissolved by competent legislative action, and in view of our conclusions on the first point raised it must be held that this had taken place, the Board would cease to exist and having ceased to exist cannot obviously lay any claim to the property. This however may not be sufficient to negative the contention urged before us by the petitioners. If the legal ownership of the property by the Board or the vesting of it in the governing body was merely a method or mechanism permitted by the law whereby the members exercised their rights quoad the property, the dissolution of the Board and with it of the governing body thereof would merely result in the emergence of the right of the members to that property.

It is, therefore, necessary to ascertain the precise rights the members of the Board possessed to see whether the changes effected by the impugned Act amount to an infringement of their rights within the meaning of Article 19(1)(f). During the subsistence of the society, the right of the members was to ensure that the property was utilised for the charitable objects set out in the memorandum and these did not include any beneficial enjoyment. Nor did the members of the society acquire any beneficial interest on the dissolution of the society; for Section 14 of the Act, quoted earlier, expressly negated the right of the members to any distribution of the assets of the dissolved body.

In such an event the property had to be given over to some other society i.e. for being managed by some other charitable organisation and to be utilised for like purposes, and the only right of the members was to determine the society to whom the funds or property might be transferred and this had to be done by not less than three-fifths of the members present at the meeting for the purpose and, in default of such determination, by the civil court. The effect of the impugned legislation is to vary or affect this privilege of the members and to vest the property in a new body created by it enjoined to administer it so as to serve the same purposes as the dissolved society.

The only question is whether the right to determine the body which shall administer the funds or property of the dissolved society which they had under the pre-existing law is a right to "acquire, hold and dispose of property" within the meaning of Article 19(1)(f), and if so whether the legislation is not saved by Article 19(5). We are clearly of the opinion that that right is not a right of property within the meaning of Article 19(1)(f).

In the context in which the words "to dispose of" occur in Article 19(1)(f), they denote that kind of property which a citizen has a right to hold - the right to dispose of being part of or being incidental to the right to hold. Where however the citizen has no right to hold the property, for on the terms of Section 14 of the Societies Registration Act the members have no right to "hold" the property of the dissolved society, there is, in our opinion, no infringement of any right to property within the meaning of Article 19(1)(f). In this view, the question as to whether the impugned enactment satisfies the requirements of Article 19(5) does not fall to be determined."

(Emphasis supplied)

74. In *Illachi Devi and Others v. Jain Society*, *Protection of Orphans India and Others* reported in (2003) 8 SCC 413, this Court held that a society cannot be the grantee of a probate or a letter of administration in accordance with the Indian Succession Act, 1925 by reiterating that a society registered under the Societies

Registration Act, 1860 is not a body corporate or a juristic person and therefore, ineligible to be a grantee for the aforesaid purposes.

The fact that a society is not capable of ownership of any property by itself was a characteristic which assumed significance in arriving at the conclusion that it cannot be construed to be a body corporate. It is due to this incapability that the property is vested either in trustees or the governing body of the society. Nevertheless, it was held that a probate or letter of administration can be granted to a person who is authorised by the society, either under the statute or through a resolution, so that a Will or gift in favour of a society does not become totally unenforceable in law. Such an authorised person would carry out the wishes of the testator for the benefit of the society. The relevant observations made are reproduced hereinbelow:

"20. The mere fact of registration of a society under the Societies Registration Act will not make the said society distinct from association of persons. Sections 223 and 236 of the Act in very categorical terms provide that an association of persons, be it a society, a partnership or other forms of associations, a Letter of Administration can be granted only to a company fulfilling the conditions laid down under the Rules. A society registered under the Societies Registration Act is not a "company" within the meaning of "company", as provided in the Act and the Rules. In terms of Sections 223 and 236, a "company" must be a "company" registered under the Companies Act. We are, therefore, of the considered opinion that neither the provisions of the Act nor the Rules framed thereunder contemplate that the societies registered under the Societies Registration Act would qualify to be considered as a company for the purpose of Sections 223 and 236.

21. A society registered under the Societies Registration Act is not a body corporate as is the case in respect of a company registered under the Companies Act. In that view of the matter, a society registered under the Societies Registration Act is not a juristic person. The law for the purpose of grant of a probate or Letter of Administration recognises only a juristic person and not a mere conglomeration of persons or a body which does not have any statutory recognition as a juristic person.

22. It is well known that there exist certain salient differences between a society registered under the Societies Registration Act, on the one hand, and a company corporate, on the other, principal amongst which is that a company is a juristic person by virtue of being a body corporate, whereas the society, even when it is registered, is not possessed of these characteristics. Moreover, a society whether registered or unregistered, may not be prosecuted in a criminal court, nor is it capable of ownership of any property or of suing or being sued in its own name.

23. Although admittedly, a registered society is endowed with an existence separate from that of its members for certain purposes, that is not to say that it is a legal person for the purposes of Sections 223 and 236 of the Act. Whereas a company can be regarded as having a complete legal personality, the same is not possible for a society, whose existence is closely connected, and even contingent, upon the persons who originally formed it. Inasmuch as a company enjoys an identity distinct from its original shareholders, whereas the society is undistinguishable, in some aspects, from its own members, that would qualify as a material distinction, which prevents societies from obtaining Letters of Administration.

26. Vesting of property, therefore, does not take place in the society. Similarly, the society cannot sue or be sued. It must sue or be sued through a person nominated in that behalf. 48. The apprehension of the High Court that in a case of this nature, in the event, a Letter of Administration is not granted in favour of the beneficiary society, the purport of the "Will" will be frustrated, is not wholly correct and for grant of Letter of Administration what is necessary is that the person duly authorised by the society in accordance with the law may file such an application.

52. We, however, intend to lay emphasis on the fact that a Will or gift in favour of a society is not totally unenforceable in law. A probate or Letter of Administration with a copy of the Will annexed although may not be granted in favour of a society but may be granted in favour of a person authorised by a society either in terms of the statute or a resolution adopted in this behalf by the society, as the case may be, so that such person may be answerable to the court. On grant of a Letter of Administration the person so nominated by the society shall carry out the wishes of the testator for the benefit of the society.

55. For reasons stated above, the appeal is allowed in part. The judgment under challenge stands modified. The matter is sent back to the High Court with liberty to the respondent to amend the petition for grant of the Letter of Administration. It would be open to the respondent Society to nominate any of its office-bearers to whom the Letter of Administration is granted. Such nominated person may move an application for substitution of his name for grant of the Letter of Administration. If such amendment application is made, the High Court shall permit this amendment and grant the Letter of Administration in favour of the person nominated by the Society for carrying out the wishes of the testator which is for the benefit of the Society."

(Emphasis supplied)

75. In *Tata Memorial Hospital Workers Union v. Tata Memorial Centre and Another* reported in (2010) 8 SCC 480, this court considered in detail the effect

of Section 5 of the Societies Registration Act, 1860. Therein, the Rules and Regulations of the respondent society had provided for the vesting of certain properties in the governing body of the society distinct from what was or may be vested separately in the trustees. While explaining the *raison d'être* behind Section 5, it was opined that:

i. First, the deeming provision, by default, creates a fictional vesting in favour of the governing body of the society and not automatically in the society itself or under a trust. The vesting is not with the society for the obvious reason that a society is not a body corporate capable of holding the property by itself. On the other hand, for a trust to hold the properties of the society, the creation of a separate trust and the dedication of the property belonging to society, to itself, must be made out. By keeping the smooth functioning of the society and its autonomy at the forefront, this Court opined that the law has created this automatic vesting of the property belonging to the society in its governing body since -

(a) the society cannot hold property in its name, and

(b) the vesting of properties solely in trusts would likely hinder the administration of the property, more particularly, when the trustees themselves or their legal representatives claim adversely to the trust,.

ii. Secondly, that the phrase, "property belonging to a person" has two general meanings - One, ownership, and two, the absolute right of user. The words "property belonging to the society" would therefore, in the context of Section 5, indicate that the society has an absolute right of user over its immovable properties which is vested in its governing body.

76. The relevant observations are reproduced hereinbelow:

"68. Rule 26 of the Rules and Regulations of the first respondent Society provides that all properties and funds of the Centre (except the immovable properties as specified) vest in the Council:

"26. Properties and funds vested in the Council.-

Except the existing immovable properties of the Centre and such immovable properties as may be vested in the holding trustees, all the other properties of the Centre shall vest in the Council and more particularly the following:

(a) recurring and non-recurring grants made by the Government;

(b) other grants, donations and gifts (periodical or otherwise), other than those intended to form the corpus of the property and funds of the Centre or held for the benefit of the Centre by the holding trustees;

(c) the income derived from the immovable properties and the income of the funds vested in the holding trustees and income of the funds vested in the Council and also fees, subscription and other annual receipts; and

(d) all plant and machinery, equipment and instruments (whether medical, surgical, laboratory, workshop or of any other kind), books and journals, furniture, furnishings and fixtures belonging to the Centre."

69. However, even when it comes to the immovable properties, Section 5 of the Societies Registration Act provides for deemed vesting of the properties belonging to a society into the governing body of such society. Section 5 of the Societies Registration Act reads as follows:

"5. Property of society how vested.- The property, movable or immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

70. In this behalf, we must keep in mind, the *raison d'être* of the above referred to Section 5 that once a trust is established and a society is registered for the administration of the trust, the statute contemplates that the society should be fully autonomous and that the lack of actual transfer of property of the trust should not prevent the governing body in its administration. Law recognises that it would be proper to regard that as done which ought to have been done. The deeming provision creates a fictional vesting in favour of the Governing Council and not in favour of the society or the trust.

This is also for the reason that society is not a body corporate which has also been held by this Court in *Ayurvedic and Unani Tibia College v. State of Delhi* [AIR 1962 SC 458] and reiterated in *Illachi Devi v. Jain Society, Protection of Orphans India* [(2003) 8 SCC 413 : AIR 2003 SC 3397] . Since the society cannot hold the property in its name, vesting of the property in the trustees is likely to hinder the administration of the trust property, particularly where the trustees themselves or their legal representatives claim adversely to the trust. It is for this reason that the law vests the property belonging to the society in its governing body.

71. The phrase "property belonging to a person" has two general meanings (1) ownership, (2) the absolute right of user (per *Martin, B. in Attorney General v. Oxford & C. Railway Co.* [(1862) 31 LJ 218] , LJ at p. 227). "Belonging"

connotes either ownership or absolute right of user (Wills, J. in *Governors of St. Thomas's, St. Bartholomew's and Bridewell Hospitals v. Hudgell* [(1901) 1 KB 364]). The Centre has an absolute right of user over its immovable properties which it has been exclusively exercising all throughout. Section 5 of the Societies Registration Act clearly declares that the property belonging to the society, meaning under its user, if not vested in the trustees shall be deemed to be vested in the Governing Council of the society.

72. In the present case, it is nobody's case that the property remains vested in the trustees of Dorabji Tata Trust. It has been canvassed on behalf of the first respondent that the property is vested in the Central Government. However, the Central Government has never claimed any title to the property adverse to the first respondent Tata Memorial Centre. It is true that the property dedicated to Tata Memorial Centre has not been transferred to the Society by the Central Government.

But the fact is that it is the Governing Council of the first respondent which has been administering and controlling the day-to-day affairs of Tata Memorial Centre and its property funds, employment of its staff and their conditions of service. Hence, in view of the above referred to factual as well as legal scenario the first issue will have to be decided that the property dedicated to the first respondent will be deemed to be vested in the Governing Council of the first respondent Society."

(Emphasis supplied)

77. What follows from a conspectus of the aforesaid decisions discussing Section 5 of the Societies Registration Act, 1860 and the vesting of property in the governing body of the society is that, a society registered under the aforesaid Act is not a juristic person or a body corporate capable of holding property by itself. It is for this reason that a fictional vesting of the 'property belonging to the society' has been made in favour of the governing body of the society.

78. However, it is to be noted that the property can also be held in trust by certain trustees and this is evident from the use of the phrase "if not vested in trustees". Several decisions have interpreted this to mean that there must be certain circumstances which give rise to the existence of a trust prior to the registration of the entity/institution as a society. However, it is our view that the aforesaid phrase cannot be restricted to such a narrow interpretation i.e., that the formation of the trust, either expressly or impliedly, must pre-exist the registration of the society. We say this simply because, if it were so, instead of using the phrase "if not vested in trustees", the language employed in the provision would have read "if not already vested in trustees". Therefore, the property belonging to the

society can be vested in trustees even after its registration as a society. There is nothing under Section 5 which bars the same.

79. However, if it is argued that a trust has instead separately been created for holding the property of the society after its registration as a society, the same must be clear and sufficiently proven. The considerations that would have to be weighed in order to ascertain if a public trust has been created prior to the registration of the society are already very lucidly elaborated in the decisions of this Court in Babu Bhagwan Din (supra), Gurunatharudhaswami (supra), Bihar State Board (supra) and Kuldip Chand (supra). Therein there remained no formal recognition of any sort of the entity/institution and the court was tasked to see if - (a) properties were vested in a public trust and, (b) if the trustee(s) was fettered with any obligation that required the properties to be applied for a certain purpose and, (c) if there was any condition or conduct which revealed a restriction of the exercise of individual rights over the said property or its proceeds.

The aforesaid considerations, along with some others may also be pertinent to determine if the society, after its registration, has created a trust or entrusted other trustees with the property belonging to itself. It is not possible to exhaustively lay down all those circumstances in which such a separate trust can be said to be created. Having said so, one of the possible methods in which the society can create or intend to create a separate trust for holding its properties is when its Rules and Regulations or the Articles of its Memorandum of Association provide for a separate trust or trustee(s) for the purpose of holding its properties.

Alternatively, as in Young Mens Christian Association of Ernakulam (supra), the trustee (if they happen to also be a society) can mention in their Articles of Memorandum of Association that they hold the property belonging to another society as trustees. Further, the existence of an unequivocal trust deed executed by the society or its member representative, in favour of another trustee, for the purpose of holding its properties, could also seal the deal as far as the separate creation of a trust is concerned. All these could be a pertinent factors in determining the existence of a trust, separate from the governing body of the society, in which the property belonging to the society is vested. In this scenario, such a trust could be subjected to the jurisdiction under Section 92 of the CPC provided the other conditions for its invocation are met.

80. In the absence of the creation of a trust as aforesaid, property would be deemed to be vested in the governing body only. The governing body of the society upon which property is otherwise vested is duty bound to ensure that the property is put towards and utilised for the purposes/aims of the society as laid out in its Memorandum of Association or any Rules and Regulations governing the said matter. In case the society is dissolved, a decision must be made to transfer or vest all the property in another society working towards a like cause

and the members would not have any right to distribute the assets belonging to the society between themselves. Therefore, both during the subsistence and dissolution of the society, the members or the governing body cannot be said to possess any beneficial or individual interest over the property vested in them.

81. Hence, it follows that whenever a property is transferred to a society which is working towards a public purpose of a religious or charitable nature, the property would be said to belong to the society and be automatically vested in its governing body. Once a society is registered, all gifts, donations, grants-in-aid, etc. would vest in its governing body as per the mandate of Section 5 of the Societies Registration Act, 1860, in the absence of the creation of a separate trust/entrustment to other trustee(s), for the said purpose.

82. Moving ahead, the mere fact that a distinct trust can also be created i.e., either prior to or post the registration of a society under the Societies Registration Act, 1860 would not alter the capacity in which the governing body holds the properties belonging to the society. The governing body would also hold such properties in a well-confined fiduciary capacity. In other words, the phrasing of Section 5, more specifically that "if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society", does not indicate that if a trust has not been created for the purpose of holding the society's properties, any fiduciary obligation that the governing body might owe to the society vis-à-vis the management and administration of the properties would dissipate into thin air.

The aforesaid language employed in Section 5 must not be seen as giving rise to two polar opposite mechanisms through which the property of the society can be held i.e., either in a trust with air-tight fiduciary obligations or not in a fiduciary capacity at all. In other words, it must not be read to mean that if the property is not vested in trustees, then it would remain vested in the governing body who would have zero fiduciary obligations. The governing body is also bound by duties of that of a fiduciary and this remains further fortified by the fact that the governing body does not enjoy any beneficial interest over the properties that it holds and must ensure that it is used for the object for which the society has been created.

83. In our opinion, the reason behind the use of the word "trustees" in the phrase "if not vested in trustees", is a reflection of the intention of the legislature that the vesting of the property belonging to the society cannot be made in a casual manner to any and all persons regardless of any obligation. For argument, let's say that the phrase instead read as "if not vested in any person". In such a scenario, the persons in whom the property of the society vested would be able to possibly assert their own individual title or a competing claim to the property. This would give rise to a conflicting situation and deviate from the original

purpose for which the property belonging to the society came to be vested in a third person.

This is precisely the reason due to which the word "trustees" has been used under Section 5 of the Societies Registration Act, 1860. While interpreting the words employed in Section 5, we must not detract from the underlying purpose and objective for which it came to be enacted. Legislative creativity was employed to ensure that the incapability of the society to hold the property by itself does not have any practical effect on its ability to use and administer those properties. The idea was to ensure that the property of the society may not be squandered or the object and purpose for which the society was formed may not be defeated by persons having control of the properties.

The property was vested in such persons such that, in all circumstances, they would remain bound and accountable to the society. The governing body of the society would, no doubt, remain tethered to the aims and objectives for which the society was formed and would be able to deal with the properties only as per the Rules and Regulations of the Memorandum of Association. The other persons who are capable and allowed to hold the property of the society were also intended to be bound in a similar fashion and hence, the provisions incorporated the word "trustees" to instil in such person(s), a fiduciary obligation which they could not deviate from or ignore.

However, this by itself, by no stretch of imagination, can be interpreted to mean that since the provision allows for the property to be held by trustees separately, the governing body of the society would not be constrained with any fetter as regards their dealing with the property belonging to the society. It may happen, more often than not, that a society does not create a trust for the purpose of holding its properties and that is precisely why, there is an automatic vesting in the governing body.

What must instead reinforced is that, despite this automatic vesting in the governing body, the fiduciary capacity in which the governing body would hold the properties, not be altered. In simpler words, Section 5 seemingly provides two options, or mechanisms through which a society can hold the property belonging to itself - One, in trustee(s) or, two, in the governing body of the society. Both these mechanisms/options belong to the same genus (fiduciaries), albeit they don't fall in the same species (the former is a trustee stricto sensu and the latter is not).

84. The governing body of the society would not only hold the properties and administer it as per their bye laws to fulfil its fundamental aims but also safeguard it for the future members of the society or the future governing body who would also have to tread the same path and continue the aims and objects of

the society as envisaged by the founding members or as reflected in its governing documents. Therefore, perpetuity is assigned not only to the identity of the society but also to the properties which belong to it, provided the society is not dissolved. This adds to the reason that the governing body also acts within the contours of a strict fiduciary relationship.

85. Therefore, while it cannot be considered as an 'express trust', what must also be noted, at this crucial juncture, is that, for an entity to be brought within the rigours of Section 92, the plaintiff has the option of also contending that a 'constructive trust' exists in the circumstances and a breach of such a constructive trust has occurred or that the directions of the Court are necessary for the administration of such a constructive trust.

d. The doctrine of constructive trust and its applicability to a society functioning for public purposes of a religious or charitable nature

86. In light of the discussion in the preceding paragraphs, we are tasked with determining whether a constructive trust could be created in a circumstance wherein a society vests its property in its governing body through the deeming fiction employed under Section 5 of the Societies Registration Act, 1860.

87. On the one hand, an express trust is a legal relationship which is created by an individual(s) out of his own volition, while manifesting an intention to create a trust. This manifestation of intention can be express, either by words or through conduct. However, it is not always necessary that such intention be overt, unambiguous and unequivocal. Sometimes, the existence of an express trust might have to be inferred from the attending circumstances.

In other words, a trust would be an express trust whether expressed in certain unambiguous language or whether inferred from uncertain ambiguous words and conduct of the settlor, for example, where precatory words are used by the settlor indicating a prayer or expectation that something be done in a specific manner such that it be imperative and binding in the circumstances. In English private trust jurisprudence, as expounded in the landmark decision in *Knight v. Knight* reported in (1840) 3 Beav 148, 'three certainties' were required -

(a) certainty of intention or an imperative that a trust be created;

(b) certainty of the subject-matter or the property subject to the trust and;

(c) the certainty of objects or the beneficiaries and the interest to be enjoyed by them. In that context, it was observed as thus:

"To create by precatory words such a trust as the Court will carry into execution, there are three requisites; first, the precatory words must be sufficiently clear;

secondly, there must be a certainty as to subject of the gift; and, thirdly, the objects to take must be certain. As to the first requisite, no particular form of words is necessary; it is sufficient for a testator "to express a desire as to the disposition of the property, and the desire so expressed amounts to a command. Secondly, the subject of the gift is sufficiently certain, being the estates and personal property devised and bequeathed by the will.

Thirdly, the persons to take are sufficiently defined being persons in the male line in succession; a description much more perfect than the expressions "family," "relations," which have been held sufficiently certain to be carried into execution; On the whole, I am under the necessity of saying, that for the creation of a trust, which ought to be characterised by certainty, there is not sufficient clearness to make it certain that the words of trust were intended to be imperative, or to make it certain what was precisely the subject intended to be affected, or to make it certain what were the interests to be enjoyed by the objects."

(Emphasis supplied)

88. The aforesaid principle has been codified in Indian jurisprudence under the Indian Trust Act, 1882 governing private trust which defines a private trust as an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

While we are not directly importing the aforesaid principles laid out under the Indian Trusts Act, 1882, which governs private trusts, for application to a 'public trust', these principles aid in construing how an express trust, whether public or private, may be created. P Ramantha Aiyar in his Advanced Law Lexicon also adds that it is not necessary that the word 'trust' be used. The trust would be express even if it has to be made out from the terms of an instrument. Therefore, a declared and ascertainable intention to create a trust is the cornerstone of an express trust which further determines where the trustee's fiduciary obligation can be sourced from.

89. Importing these principles to a society and its governing body which holds property on its behalf, it cannot be ascertained with reasonable certainty whether a fairly clear intention to create a trust on part of the settlor could be said to exist when the deeming fiction under Section 5 of the Societies Registration Act, 1860 is set into motion. It goes without saying that if the society creates a trust separately, as reflected in the words "if not vested in trustees", an express trust would be created. However, in the absence of the same, the intention of the settlor to create a trust is difficult to ascertain, more so because the legislative framework under which this vesting is done is distinct. This is notwithstanding the fact that the governing body would still be acting in a fiduciary capacity.

90. On the other hand, a constructive trust, arises by operation of law, without regard to or irrespective of the intention of the parties to create a trust. It is imposed predominantly because the person(s) holding the title to the property would profit by a wrong or would be unjustly enriched if they were permitted to keep the property. In other words, a constructive trust, does not, like an express trust, arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment.

A fiduciary element may be present in the declaration of a constructive trust when, say, for example, whenever a person clothed with a fiduciary character, gains some personal advantage by availing himself of his situation as a trustee. In such cases, such person would also become a trustee of the advantage so gained. In other words, if a trustee, by reason of his position, acquires any advantage of a valuable kind, he would be a constructive trustee of that advantage. Furthermore, although some form of wrongdoing is generally required for the imposition of a constructive trust, it is not always a necessary element. It may also be imposed in case of a mistake where no wrongdoing is involved, say, for instance, when a fiduciary makes some profit even though he has not acted fraudulently.

91. However, it cannot be strictly said that only cases which contain a fiduciary element would serve as a bedrock for the declaration of a constructive trust. The circumstances which give rise to it may or may not involve a fiduciary relation - at least, this is the proposition laid down under American jurisprudence. Quoting the observations of Cardozo, J. in *Beatty v. Guggenheim Exploration Co.* reported in (1919) 225 N. Y. 380 - "a constructive trust is a formula through which the conscience of equity finds expression.

When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee". In his subsequent decision rendered in *Meinhard v. Salmon* reported in (1928) 249 N.Y. 458, he also observed that - "A constructive trust is then the remedial device through which the preference of the self is made subordinate to loyalty to others". It is, therefore, designed to prevent fraud or other inequity. In applying this doctrine, courts be said to also resort to the maxim - "equity regards as done that which ought to be done".

According to American jurisprudence, an express trust is a substantive institution whereas a constructive trust is purely a remedial institution. That the term "constructive trust" was an expansive remedial concept and quite different from a fiduciary relation present in express trusts, was set in stone by the Restatement of the Law, Restitution promulgated by the American Law Institute in the year 1936. Comment (a) to Section 160 defining a constructive trust reads as follows:

"The term "constructive trust" is not altogether a felicitous one. It might be thought to suggest the idea that it is a fiduciary relation similar to an express trust, whereas it is in fact something quite different from an express trust. An express trust and a constructive trust are not divisions of the same fundamental concept. They are not species of the same genus. They are distinct concepts. A constructive trust does not, like an express trust, arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment. A constructive trust, unlike an express trust, is not a fiduciary relation, although the circumstances which give rise to a constructive trust may or may not involve a fiduciary relation."

(Emphasis supplied)

92. It is largely believed that English Courts are generally reluctant to accept the doctrine of unjust enrichment as a broad ground for imposing a constructive trust, whereas the United States is more open to recognising it as a sufficient basis. In other words, American courts more often use constructive trust as a remedial device where specific restitution is appropriate on detailed consideration of the facts, whereas English Courts adopt a more institutional approach where some form of a fiduciary or quasi-fiduciary relationship is a pre-requisite instead of just prioritizing the overall equities.

Therefore, in implying the existence of a constructive trust, the English Courts recognise or give legal efficacy to a relationship or 'institution' that already exists. Some critics argue that the traditional American approach was, however, akin to that of England but that the doctrine was slowly expanded beyond the parallels of a fiduciary relationship over the period of time.

93. An example of the modern American approach is evident from the decision in *Newton v. Porter* reported in 69 N.Y. 133 (1877) wherein a constructive trust was imposed on the products of larceny. According to experts, this decision marked the cusp in the change of approach by the American Courts (from the English model to a remedial one) because in *Campbell v. Drake* reported in 39 N.C. 94 (1845), on similar facts, the Supreme Court of North Carolina had held that where a clerk in a store pilfered money and goods from his employer and uses those proceeds in the purchase of a tract of land, the employer who was robbed could neither hold the clerk nor his representatives after his death, as trustees of the land for the benefit of the employer, so as to enable him to call for a conveyance of the legal title to himself. To further elaborate, *Campbell* (supra) held as follows:

"Nevertheless, we believe the bill cannot be sustained. The object of it is to have the land itself, claiming it as if it had been purchased for the plaintiff by an agent expressly constituted; and it seems to us, thus stated, to be a bill of the first

impression. We will not say, if the plaintiff had obtained judgment against the administrator for the money as a debt, that he might not come here to have the land declared liable, as a security, for the money laid out for it. But that is not the object of this suit. It is to get the land, which the plaintiff claims as his; and, upon the same principle, would claim it, if it were worth twenty times his money, which was laid out for it. Now, we know not any precedent of such a bill.

It is not at all like the cases of dealings with trust funds by trustees, executors, guardians, factors, and the like; in which the owner of the fund may elect to take either the money or that in which it was invested. For, in all those cases, the legal title, if we may use the expression, of the fund, is in the party thus misapplying it. He has been entrusted with the whole possession of it, and that for the purpose of laying it out for the benefit of the equitable owner; and therefore all the benefit and profit the trustee ought, in the nature of his office, and from his relation to the cestui que trust, to account for to that person.

But the case of a servant or a shop-keeper is very different. He is not charged with the duty of investing his employer's stock, but merely to buy and sell at the counter. The possession of the goods or money is not in him, but in his master; so entirely so, that he may be convicted of stealing them, in which both a cepit and asportavit are constituents. This person was in truth guilty of a felony in possessing himself of the plaintiff's effects, for the purpose of laying them out for his own lucre; and that fully rebuts the idea of converting him into a trustee.

If that could be done, there would be, at once, an end to punishing thefts by shop men. If, indeed, the plaintiff could actually trace the identical money taken from him, into the hands of a person who got it without paying value, no doubt he could recover it; for his title was not destroyed by the theft. But we do not see how a felon is to be turned into a trustee of property, merely by showing that he bought it with stolen money."

(Emphasis supplied)

94. However, in *Newton* (supra), the Court of Appeals of New York took the view that the absence of a conventional relation of a trustee and cestui que trust between the plaintiff and the persons who committed larceny, would not stand in the way of enforcing an equitable remedy in the form of a constructive trust. It was opined that this would place the owner, who had been a victim of larceny and was deprived of his property, in a less favourable position in a court of equity than persons who lost their property through an abuse of trust or by the wrongful acts of a trustee to whom the possession of that trust property was confided. This must not be countenanced, according to the Court. The relevant observations are thus:

"It is insisted by the counsel for the defendants that the doctrine which subjects property acquired by the fraudulent misuse of trust moneys by a trustee to the influence of the trust, and converts it into trust property and the wrong-doer into a trustee at the election of the beneficiary, has no application to a case where money or property acquired by felony has been converted into other property. There is, it is said, in such cases, no trust relation between the owner of the stolen property and the thief, and the law will not imply one for the purpose of subjecting the avails of the stolen property to the claim of the owner.

It would seem to be an anomaly in the law, if the owner who has been deprived of his property by a larceny should be less favorably situated in a court of equity, in respect to his remedy to recover it, or the property into which it had been converted, than one who, by an abuse of trust, has been injured by the wrongful act of a trustee to whom the possession of trust property has been confided. The law in such a case will raise a trust invitum out of the transaction, for the very purpose of subjecting the substituted property to the purposes of indemnity and recompense.

"One of the most common cases," remarks Judge Story, "in which a court of equity acts upon the ground of implied trusts in invitum, is when a party receives money which he cannot conscientiously withhold from another party." (Sto. Eq. Juris., § 1255.) And he states it to be a general principle that "whenever the property of a party has been wrongfully misapplied, or a trust fund has been wrongfully converted into another species of property, if its identity can be traced, it will be held in its new form liable to the rights of the original owner, or the cestui que trust." (§ 1258. See also, Hill on Trustees, p. 222.) We are of opinion that the absence of the conventional relation of trustee and cestui que trust between the plaintiff and the Warners, is no obstacle to giving the plaintiff the benefit of the notes and mortgage, or the proceeds in part of the stolen bonds. (See Bank of America v. Pollock, 4 Ed. Ch., 215.)"

(Emphasis supplied)

95. In a similar fashion, in Pope v. Garrett reported in 147 Tex. 18 (1948), the Supreme Court of Texas had opined that a constructive trust could arise in a situation wherein the testator was prevented, by physical force or by creating a disturbance, shortly before her death, by two of her heirs, from executing a will solely in favour of the plaintiff who was the intended beneficiary. Therein, the legal title to the heirs has passed on account of intestate succession and it was held that the heirs who were guilty of the wrongful acts would become constructive trustees for the intended beneficiary.

Additionally, since some of the other innocent heirs would not have inherited interest in the property but for the wrongful acts committed by some of the heirs,

it was opined that the imposition of a constructive trust on the property that passed to all the heirs was a necessary remedy in the interests of justice. In other words, the policy against unjust enrichment was also considered sufficient to justify the imposition of a constructive trust upon the other innocent heirs as well. In deciding so, it was observed as follows:

"In *Binford v. Snyder*, 144 Texas 134, 138, 189 S.W. (2d) 471, the court quoted with approval the general rule as to the use of the constructive trust thus stated in *Ruling Case Law*: "It is a well settled general rule that if one person obtains the legal title to property, not only by fraud, or by violation of confidence of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner." See also 54 Am. Jur., pp. 167-169, Sec. 218.

It has been said that "The specific instances in which equity impresses a constructive trust are numberless, - as numberless as the modes by which property may be obtained through bad faith and unconscientious acts." *Pomeroy's Equity Jurisprudence*, (5th Ed.) Vol. 4, p. 97, Sec. 1045. A few cases will be cited where trusts have been raised on account of facts like, or somewhat like, those in the instant case. The argument is often made that the imposition of the constructive trust in a case like this contravenes or circumvents the statute of descent and distribution, the statute of wills, the statute of frauds, or particularly a statute which prohibits the creation of a trust unless it is declared by an instrument in writing.

It is generally held, however, that the constructive trust is not within such statutes or is an exception to them. It is the creature of equity. It does not arise out of the parol agreement of the parties. It is imposed irrespective of and even contrary to the intention of the parties. Resort is had to it in order that a statute enacted for the purpose of preventing fraud may not be used as an instrument for perpetrating or protecting a fraud. In this case *Claytonia Garrett* does not acquire title through the will. The trust does not owe its validity to the will. The statute of descent and distribution is untouched.

The legal title passed to the heirs of *Carrie Simons* when she died intestate, but equity deals with the holder of the legal title for the wrong done in preventing the execution of the will and impresses a trust on the property in favor of the one who is in good conscience entitled to it. The policy against unjust enrichment argues in favor of the judgment rendered herein by the district court rather than that of the Court of Civil Appeals. But for the wrongful acts the innocent defendants would not have inherited interests in the property.

Dean Roscoe Pound speaks of the constructive trust as a remedial institution and says that it is sometimes used "to develop a new field of equitable interposition, as in what we have come to think the typical case of constructive trust, namely, specific restitution of a received benefit in order to prevent unjust enrichment." 33 Harvard Law Review, pp. 420-421. See also Pomeroy's Equity Jurisdiction, (5th Ed.) Vol. 4, p. 95, Sec. 1044; 54 Am. Jur. p. 169, Sec. 219; Restatement of the Law of Restitution, Sec 160, Subdivisions c and d, pp. 642-643. Further and in the same trend, it has been said that equity is never wanting in power to do complete justice. Hill v. Stampfli (Com. App.) 290 S.W. 522, 524."

(Emphasis supplied)

96. In Pope (supra), it was clarified that there may be multiple circumstances in the background of which a constructive trust may be impressed upon the property in favour of the one who is, in good conscience, entitled to it and who would be considered as its beneficial owner in equity. It may be when one person obtains legal title to property by (a) fraud, or (b) violation of confidence of fiduciary relations, or (c) in any other unconscientious manner, such that he cannot equitably retain the property which belongs to another. Further, it was added that there may be a numberless amount of situations, as numberless as the modes by which the property may be obtained through bad faith and unconscientious acts, wherein equity can impress a constructive trust.

97. In McAnulty v. Std. Ins. Co. reported in (2023) 81 F.4th 1091, the United States Court of Appeals for the Tenth Circuit was faced with a dispute over the life insurance proceeds between a decedent's ex-wife and his wife during his death. The ex-wife complained of unjust enrichment and imposition of a constructive trust on her behalf.

The decedent's only life insurance policy named his wife as the beneficiary while a divorce decree between the decedent and his ex-wife required him to maintain a \$10,000 life insurance policy with the plaintiff as the sole beneficiary until his maintenance obligation to her was lawfully terminated. Amongst other things, while remanding the matter for further proceedings, it was underscored that unjust enrichment must first be established before the doctrine of constructive trust is resorted to as a remedy and that gaining an advantage for oneself through fraud or breach of fiduciary duty would not be the exclusive ground for establishing a constructive trust. The relevant observations are thus:

"One final comment on constructive trusts. The district court apparently assumed that a claim of unjust enrichment requires a showing that the defendant's property can be traced back to the plaintiff. But this is not so. The constructive-trust doctrine, including the practice of tracing, arises only after the plaintiff has established a cause of action for unjust enrichment. "The first step [in an unjust-

enrichment constructive-trust claim] is to establish that the defendant is liable in restitution."

Restatement (Third) § 55 cmt. a. Only once a cause of action has been shown does the inquiry turn to whether "the transaction that is the source of the liability is one in which the defendant acquired specifically identifiable property." Id. If the answer is yes, that property can be subject to a constructive trust with no need for any tracing analysis. But that entrusted property can then be traced forward to other property upon which a constructive trust can be imposed. That a "constructive trust is a remedy," Restatement (Third) § 55 cmt. a. not a prerequisite to a showing of unjust enrichment, is underscored by the Restatement (Third)'s placement of § 55 (the section dedicated to constructive trusts) in Chapter 7, which is titled "Remedies."

however, Coriell did not say that gaining an advantage for oneself through fraud or breach of fiduciary duty is the exclusive ground for establishing a constructive trust. Indeed, the very next sentence of the opinion states: "Constructive trusts are such as are raised by equity in respect of property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it." 563 F.2d at 982 (internal quotation marks omitted; emphasis added). Hence, Coriell is fully consistent with imposing a constructive trust in this case."

(Emphasis supplied)

98. Therefore, the American approach is that there is no unyielding formula to which a court of equity is bound to, in deciding whether a constructive trust can be imposed since it is the equity of the transaction which will shape the measure of the relief. To put it simply, the focus of judicial enquiry would shift from the establishment of a fiduciary/confidential relationship and its abuse, to a determination of only whether someone has been unjustly enriched and should therefore, be subject to an 'equitable duty' to return the unjust benefit.

99. On the other hand, English courts have stuck to the institutional model which is underpinned by the existence of a fiduciary/confidential relationship between the person(s) upon whom a constructive trust is imposed and the person(s) in whose favour it is created. Since the imposition of a constructive trust would have an impact on property rights, the English Court are circumspect in imposing it for the bare reason that justice be done inter se parties.

According to English jurisprudence, a constructive trust is an institution very much like the express trust - a trust by analogy. It arises by operation of the law but when one person is under an existent obligation to hold a certain property for another. The constructive trust would come into existence from the date of the

circumstances which give rise to it and the function of the court would only be to declare that such a trust has arisen in the past. In *Bailey v. Angove's Pty Ltd.* reported in (2016) UKSC 47, the United Kingdom Supreme Court stressed on the differences between an institutional and a remedial constructive trust as follows:

"27 English law is generally averse to the discretionary adjustment of property rights, and has not recognised the remedial constructive trust favoured in some other jurisdictions, notably the United States and Canada. It has recognised only the institutional constructive trust: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 714-715 (per Lord Browne-Wilkinson), *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015 AC 250, para 47. In the former case, the difference was explained by Lord Browne-Wilkinson in the following terms:

"Under an institutional constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. The consequences that flow from such trust having arisen (including the possibly unfair consequences to third parties who in the interim have received the trust property) are also determined by rules of law, not under a discretion. A remedial constructive trust, as I understand it, is different. It is a judicial remedy giving rise to an enforceable equitable obligation: the extent to which it operates retrospectively to the prejudice of third parties lies in the discretion of the court."

(Emphasis supplied)

100. *Keech v. Sandford* reported in (1726) Sel Cah Ch 61 is a landmark English decision on constructive trusts and a reflection of the rule that a person in a fiduciary position must not put himself in a position where his interest conflicts with that of the cestui que trust. Therein, a trustee, who held a lease on behalf of an infant beneficiary, made use of his influence in order to obtain a renewal of the lease for himself. Applying the principles of equity, the trustee was declared as holding the renewed lease also for the beneficiary and it was observed as thus:

"If a trustee on the refusal of a lessor to renew a lease to the trust were permitted to take a lease for himself, few leases would ever be renewed in favour of trusts. This prohibition was wholly understandable at that time. Many ecclesiastical, charitable and public bodies were by law restricted as to the length of leases which they were able to grant and leases were therefore renewed more or less as a matter of right. By taking a renewal of a lease for himself, a trustee was therefore in practice depriving the trust of a grant which it had a right to expect."

101. In *Paragon Finance plc v. Thakerar & Co.* reported in (1999) 1 All ER 400, the Court of Appeal highlighted a fine distinction between the use of the words

'constructive trust' and 'constructive trustee' by equity lawyers in two entirely different situations. The first, is where, a person, though not expressly appointed as a trustee, has assumed the duties of a trustee and is holding property by virtue of a lawful transaction or legal arrangement and subsequently, commits a breach of trust.

The legal arrangement through which he assumes the duties of a trustee/fiduciary in the first place, is independent of the breach of trust and such an underlying relationship by which control of the property is obtained is not what is assailed or impeached by any plaintiff. He does not receive the trust property in his own right but by an agreeable transaction and his possession of the property is characterised by the confidence/trust reposed in him. The subsequent appropriation of the property by him for his own use is a breach of that trust and he is made accountable since he was entrusted with obligations of a trustee and it would be unconscionable for him to assert any adverse beneficial interest over the property entrusted to him.

The second, is where the trust obligation itself arises as a direct consequence of the transaction through which control of the property is obtained. That very transaction is impeached by the plaintiff, as fraudulent. No obligation or confidence is reposed on the defendant and if he received any trust property at all, it would be by means of an unlawful transaction and from the moment of receipt, be adverse to the plaintiff. What English jurisprudence refers to as the 'institutional constructive trust' is the former scenario and not the latter. The relevant observations are reproduced below:

"Regrettably, however, the expressions 'constructive trust' and 'constructive trustee' have been used by equity lawyers to describe two entirely different situations. The first covers those cases already mentioned, where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust and is not impeached by the plaintiff. The second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the plaintiff.

A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which

he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust.

Well-known examples of such a constructive trust are *McCormick v Grogan* (1869_ LR 4 HL 82 (a case of a secret trust) and *Rochefoucauld v Boustead* [1897] 1 Ch 196 (where the defendant agreed to buy property for the plaintiff but the trust was imperfectly recorded). *Pallant v Morgan* [1952] 2 All ER 951, [1953] Ch 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties) is another. In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property. The second class of case is different.

It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff.

In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a proprietary remedy; they are 'nothing more than a formula for equitable relief': *Selangor United Rubber Estates Ltd v Cradock (No 3)* [1968] 2 All ER 1073 at 1097, [1968] 1 WLR 1555 at 1582 per Ungood-Thomas J. The constructive trust on which the plaintiffs seek to rely is of the second kind. The defendants were fiduciaries, and held the plaintiffs' money on a resulting trust for them pending completion of the sub-purchase. But the plaintiffs cannot establish and do not rely upon a breach of this trust. They allege that the money which was obtained from them and which would otherwise have been subject to it was obtained by fraud and they seek to raise a constructive trust in their own favour in its place."

(Emphasis supplied)

102. In *Stevens v. Hotel Portfolio II UK Ltd.* reported in (2025) UKSC 28, one Mr. Ruhan, a director of Hotel Portfolio II UK Ltd (hereinafter HP II) was a constructive trustee of unauthorised profits in the sum of around £95m made in breach of his fiduciary duty as the director of HP II. Starting about a week later, the whole of that dividend was spent by him upon speculative projects of his own such that all of it was lost, untraceable and could not be recovered. Therefore, there was a breach of his duties as a constructive trustee as well. The main issue

was whether a constructive trust of this kind would give rise to any liability on part of the dishonest assistant of the constructive trustee to compensate the beneficiary (HPH) for loss caused by such breach. While answering in the affirmative, the majority opinion observed as follows:

i. First, that there was no fundamental difference in the relationship between a trustee and beneficiary on one hand, and the analogous relationship between a fiduciary and principal on the other. Therefore, when unauthorised profits were made by the fiduciary, he became a constructive trustee of the said monies immediately upon its receipt under an institutional constructive trust. This principle, that a trustee or fiduciary hold such profits upon an immediate institutional constructive trust for the beneficiary cannot be said to depend upon the fact that the fiduciary acted dishonestly. This rule of equity must not be solely anchored on the existence of fraud or the absence of bona fides on part of the fiduciary. A constructive trust can be imposed in the absence of fraud as well.

ii. Secondly, when the unauthorised profits are dissipated, the constructive trustee is said to have breached his duties because, at the very least, he must conserve the said property/money for the benefit of the beneficiary and not deploy it in such a manner which destroys the beneficiary's proprietary interest in it. The relevant observations are thus:

"21. First, there is no fundamental difference between the relationship between trustee and beneficiary and the analogous relationship between fiduciary and principal (such as director and company) in the present context. Most of the basic principles were originally fashioned to regulate the former and later applied analogically to the latter, once it was clearly established, over a century ago, that a company is both legal and beneficial owner of its property: see *Rukhadze v Recovery Partners GP Ltd* [2025] UKSC 10; [2025] 2 WLR 529, paras 3, 16, 24-25. In what follows I will refer generally to trustee and beneficiary, save where it is necessary to speak distinctly of fiduciary and principal.

23. Thirdly and importantly, it is common ground that Mr Ruhan became a constructive trustee of the dividend immediately upon its receipt, under an institutional (rather than purely remedial) constructive trust. Furthermore, although there may be debate in particular cases about the precise nature and extent of the duties of the trustee under such a constructive trust, it is common ground that Mr Ruhan's dissipation of the dividend was a breach of them.

This is because at the very least the constructive trustee's duty is to conserve the trust property for the benefit of the beneficiary, rather than to deploy it in a way which destroys the beneficiary's proprietary interest in it, as Mr Ruhan did, dishonestly assisted in that regard by Mr Stevens. And it is inherent in that common ground that, whereas Mr Ruhan had been a fiduciary for HPH rather

than a trustee *stricto sensu*, the relationship between them in relation to the dividend once received by Mr Ruhan was that of trustee and sole beneficiary, in which capacity HPIL had a right to call on Mr Ruhan for the transfer of the property on demand, albeit in fact in ignorance of that right, or indeed of the existence of the dividend itself or of the constructive trust of it affecting Mr Ruhan.

25. The present case is not of course about bribes, but it is an example of a profit made by a fiduciary "as a result of his fiduciary position", squarely within the settled equitable principle which Lord Neuberger derived from *Keech v Sandford* and recently examined by this court in *Aquila Advisory Ltd v Faichney* [2021]UKSC 49; [2021] 1 WLR 5666 and *Rukhadze*. Applied to this case, it means that Mr Ruhan is to be taken as having made the profit constituted by the dividend on behalf of HPIL, so that from the moment of its receipt it was beneficially owned by HPIL.

Furthermore, to the extent that there is any discernible distinction between *Keech v Sandford* and this appeal, it is that this is a plain case of fraud, whereas the older case was not. But the principle that a trustee or fiduciary holds such profits upon an immediate institutional constructive trust for the beneficiary does not depend at all upon the fiduciary having acted dishonestly. As Lord Russell of Killowen put it in relation to the parallel liability to account in *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 at 144:

"The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of *bona fides*".

29. This is not how the constructive trust arises. It is equity's automatic and immediate response to a set of facts, just as is the common intention trust which ordinarily comes into existence when two people together buy a home which is conveyed into the name of one of them, with the mutual intent that they should be co-owners of it.

42. The constructive trust of profits imposes the usual obligation on the constructive trustee not to dissipate the trust property, and the usual obligation on both him, and upon any dishonest assistant in the dissipation, to compensate the beneficiary for any loss caused thereby.

100. It may assist in the digestion of this over-long judgment if I summarise my essential conclusions of law, as follows:

(1) Like any other trust, a constructive trust of unauthorised profits gives rise to an immediate proprietary interest of the beneficiary in the fund representing those profits, from the moment of their receipt by the trustee.

(2) A dissipation of the fund by the trustee is a breach of trust for which the trustee is liable to compensate the beneficiary for the loss of its proprietary interest. That loss is generally to be assessed by reference to the value of that proprietary interest, but for the dissipation of which would still belong to the beneficiary.

(3) A person who dishonestly assists the trustee in the dissipation is jointly liable with the trustee for the loss caused by the dissipation.

(4) Those general principles are unaffected by the facts that (a) the fund held on constructive trust is or represents unauthorised profits made in an earlier breach of fiduciary duty to the same beneficiary, (b) the making of the profits caused the beneficiary no loss and (c) the effect of the constructive trust of the profits was to confer a gain on the beneficiary."

(Emphasis supplied)

103. The constructive trust, according to England, arises the moment the breach of fiduciary duty occurs which obliges the fiduciary to treat the profit as belonging to the principal. They reject the idea that this constructive trust could be regarded as remedial which is imposed at some later date by the court in exercise of their remedial discretion. It is merely recognized at a later date but is 'institutional' since it is deemed to arise automatically as a matter of law in specified circumstances as opposed to being dependent on the discretion of the court.

104. Therefore, constructive trusts are usually regarded as a residual category and is a legal fiction 'constructed' by equity i.e., it attaches by law to specific property which is not expressly subject to any trust but held by a person in circumstances where it would be inequitable to allow said person to assert full beneficial ownership of the property. Therefore, it is imposed not necessarily to effectuate an expressed or implied intention but to redress a wrong. It is the result of judicial intervention. A constructive trustee is not necessarily a trustee in the traditional sense but is nevertheless treated as such by equity. While English courts emphasize on a pre-existing and underlying fiduciary obligation, American courts are much more liberal with the concept and impose it as a remedy where circumstances warrant such intervention.

105. Most common law jurisdictions are accepting towards the doctrine of constructive trust as adopted in England i.e., the institutional model rather than a purely remedial one. Therefore, jurisprudentially there would remain no bar for India to also adopt such an approach. We say so also because, the Indian Trusts Act, 1882 (although dealing with private trusts) recognises the concept of an English 'constructive trust'. Under Chapter IX titled 'Obligation in the nature of

trusts' delineates several provisions wherein a resulting or a constructive trust, as accepted in common law may be created. Additionally, the Statement of Objects and Reasons of the Act reads as follows:

"With the few exceptions mentioned in this Statement, the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of 'justice, equity and good conscience') by the Courts of British India.

The Bill distributes the subject under the following heads : I, Preliminary : II, the creation of trusts : III, the duties and liabilities of trustees : IV, their rights and powers : V, their disabilities : VI, the rights and liabilities of the beneficiary : VII, vacating the office of trustee : VIII, the extinction of trusts; and IX, certain obligations of the nature of trusts.

Where no trust is declared, but for the purposes of justice the law deems one to have been created, the trust is by English lawyers termed constructive. Benami transactions, where property is transferred to A for a consideration paid by B, and B makes the payment for his own benefit, have for centuries been familiar to the people of India : gains made by one person at the cost of another are an everyday source of litigation; and in no country, owing to the extreme sub-division of immovable property and the partition of inheritances, are constructive trusts more common. Chapter IX avoids the fiction implied in the term 'constructive trusts' by treating such confidences as obligations in the nature of trusts properly so called. It specifies the fourteen principal cases in which such an obligation arises, as follows:

1. Where it does not appear that the transferor of property intended to dispose of the beneficial interest (Section 80):
2. Where property is transferred to one person for a consideration paid by another (Section 81):
3. Where the trust is incapable of execution or is executed without exhausting the property (Section 82):
4. Where a transfer of property is made for an illegal purpose (Section 83):
5. Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (Section 84):
6. Where a transfer is made in pursuance of a rescindable contract (Section 85):
7. Where a transfer is made in fraud of the transferor's creditors (Section 86):

8. Where a debtor becomes his creditor's legal representative (Section 87):

9. Where a pecuniary advantage is gained by a person in a fiduciary character (Section 88):

10. Where an advantage is gained by the exercise of undue influence (Section 89):

11. Where an advantage is gained by a tenant for life or other qualified owner in derogation of the rights of other persons interested in the property (Section 90):

12. Where property is acquired with notice of an existing contract affecting it (Section 91):

13. Where a person contracts to buy property to be held on trust (Section 92):

14. Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (Section 93): The Bill also contains a general clause (Section 94) providing for cases not so specified. It is believed that this clause will cover that form of constructive trust which the Punjab Courts have held to arise when a co-sharer in a village community absents himself without expressly abandoning his rights."

(Emphasis supplied)

106. It is evident from the Statement of Objects and Reasons that the provisions contained in the Indian Trusts Act, 1882 are substantially those which were administered by the English Courts of Equity. As regards Chapter IX, a reference is made to the English approach of constructive trusts and it is stated that where no trust is declared but the law deems one to have been created for the purposes of justice, such a trust would be termed as 'constructive'. The rationale behind the enactment of Chapter IX was to avoid the fiction implied in the term 'constructive trusts' and to codify the doctrine within established parameters so that, even when motivated by the canons of justice, equity and good conscience, unfettered discretion is not employed by the courts while declaring a constructive trust (like in American jurisprudence).

However, merely because the Chapter is titled 'Obligations in the nature of a trust', it cannot be stated that the concept of constructive trusts have been effaced from our statute books. Furthermore, the repeal of a few provisions under this Chapter, more specifically Sections 81, 82 and 94 respectively, by the Prohibition of Benami Property Transactions Act, 1988, cannot be considered to reflect the intention of the legislature to do away with the concept of constructive trusts in the Indian context, in its entirety.

At the most, it could be said that certain types of constructive trusts were declared to be impermissible under the Indian regime. Therefore, there being no prohibition on the declaration of 'constructive trusts' or as we call it, 'obligations in the nature of a trust' as far as private trusts are concerned, there would also remain no inhibition on courts to declare or impose a constructive trust on public entities. The same is an equitable doctrine which can be resorted to when the conditions for its imposition are met.

107. That constructive trusts can be imposed in the Indian regime was also alluded to by this Court in *Janardan Dagdu Khomane and Another v. Eknath Bhiku Yadav & Ors.* reported in (2019) 10 SCC 395 which elaborated on the doctrine of constructive trust. While also quoting Story who explained the doctrine of 'constructive trust' in equity jurisprudence, it was stated that the receiving of money which cannot be conscientiously retained is sufficient to raise a trust, in equity, in favour of the party for whom or on whose account the money was received. It was reiterated that a constructive trust arises by operation of law, irrespective of whether the parties harboured any intention to create a trust. The relevant observations are reproduced as thus:

"32. A constructive trust arises by operation of law, without regard to the intention of the parties to create a trust. It does not require a deed signifying the institution of trust. Under a constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it. The function of the court is only to declare that such a trust has arisen in the past.

33. Constructive trust can arise over a wide range of situations. To quote Cardozo, J., "a constructive trust is a formula through which the conscience of equity finds expression".

34. Story on Equity Jurisprudence has explained "Constructive Trust" as:

"One of the most common cases in which a Court of equity acts upon the ground of implied trusts in invitum, is where a party has received money which he cannot conscientiously withhold from another party. It has been well remarked, that the receiving of money which consistently with conscience cannot be retained is, in equity, sufficient to raise a trust in favour of the party for whom or on whose account it was received. This is the governing principle in all such cases. And therefore, whenever any controversy arises, the true question is, not whether money has been received by a party of which he could not have compelled the payment, but whether he can now, with a safe conscience, ex aequo et bono, retain it.

Illustrations of this doctrine are familiar in cases of money paid by accident, or mistake, or fraud. And the difference between the payment of money under a

mistake of fact, and a payment under a mistake of law, in its operation upon the conscience of the party, presents the equitable qualifications of the doctrine in a striking manner. It is true that Courts of Law now entertain jurisdiction in many cases of this sort where formerly the remedy was solely in Equity; as for example, in an action of assumption for money had and received, where the money cannot conscientiously be withheld by the party; following out the rule of the Civil Law; *Quod condition in debiti non datur ultra, quam locupletior factus est, qui accepit.*

But this does not oust the general jurisdiction of Courts of Equity over the subject-matter, which had for many ages before been in full exercise, although it renders a resort to them for relief less common, as well as less necessary, than it formerly was. Still, however, there are many cases of this sort where it is indispensable to resort to Courts of Equity for adequate relief and especially where the transactions are complicated, and a discovery from the defendant is requisite.

35. Section 90 (sic) of the Trusts Act states that if there is a person in a fiduciary relation to another, he cannot take advantage of that position so as to gain something exclusively for himself, which he otherwise would not have obtained, but for the position which he held. 36. Section 94 of the Trusts Act, 1882 has allowed the creation of a constructive trust when situations went beyond the confines of the Act. Section 94 has later been repealed by the Benami Transactions Prohibition Act, 1988. Section 94 of the Trusts Act read:

"94. Constructive trusts in cases not expressly provided for.- In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands."

37. In *Gopal L. Raheja v. Vijay B. Raheja* [Gopal L. Raheja v. Vijay B. Raheja, 2007 SCC OnLine Bom 399 : (2007) 4 Bom CR 288] , the Bombay High Court restrained itself from exercising its equitable jurisdiction to apply the English doctrine of constructive trust when the legislature had specifically deleted it from the Trusts Act.

38. In our view, the repeal of Section 94 of the Act does not put any fetter in declaring a trust, even if the situation falls outside the purview of the Act. Its jurisdiction can be derived from Section 151 CPC and Section 88 of the Trusts Act.

(Emphasis supplied)

108. In Janardan Dagdu Khomane (supra), this Court also noted that Section 88 of the Indian Trusts Act, 1882 provides that if a person is in a fiduciary relation to another, he cannot take advantage of that position so as to gain something exclusively for himself, which he otherwise would not have obtained but for the position he held. Although the decision of the Bombay High Court in Gopal L. Raheja v. Vijay B. Raheja reported in 2007 SCC OnLine Bom 399 had refrained from exercising its equitable jurisdiction to apply the English doctrine of 'constructive trust' citing the repeal of Section 94 in the Indian Trusts Act, 1882 by the Prohibition of Benami Property Transactions Act, 1988, this Court disagreed with the said view and remarked that such a repeal does not put any fetter in declaring a trust "even if the situation falls outside the purview of the Act". It was opined that the jurisdiction to invoke the said doctrine can always be derived from Section 151 of the CPC and Section 88 of the Indian Trusts Act, 1882.

109. However, it must be noted that an institutional constructive trust would arise the very moment any fiduciary removes or diverts the property from its intended beneficiaries for his exclusive benefit or for the benefit of those who are not the intended beneficiaries. This need not necessarily be due to an intention to defraud but may also arise due to a mistake. In other words, the moment the fiduciary receives money which he cannot conscientiously retain for himself, a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received.

To put it simply, the factum that the fiduciary 'withheld' the property from its rightful beneficiaries must be established. This would constitute a breach of his/her fiduciary duty and this benefit which has accrued to him would be held in constructive trust. The breach of his fiduciary duty i.e., his duty towards the society and its intended beneficiaries, must exist.

110. Coming back to the facts of the present case, the main aim and objective of the appellant Society is of a public and charitable nature. It is also limpid from the MoA, that all the incomes, earnings, movable or immovable properties are to be solely dedicated and applied towards to the promotion of the society's aims. The MoA also lays down a strict "no profit rule" to the members of the Board, in any manner whatsoever. Article 11.2.1 of the AoA vests all the properties, both movable and immovable and all other kinds of assets in the Executive Committee of the appellant Society.

Article 11.2.3.4 provides for a fundraising mechanism by way of gifts, donations, grants-in-aid or otherwise, both within and outside India. Article 11.2.3.5 allows for the Executive Committee to raise loans for the purpose of furthering the objects of the appellant Society. Article 11.2.3.6 allows the receiving of monies, securities, instruments, investments or any other assets for and on behalf of the

appellant Society. Article 13, in the most unambiguous manner states that funds will be raised by way of grants-in-aid, donations, gifts, subscription fees and income from investments, loans and other means available to the Society and that they will be used to carry out the aims and objectives of the Society.

111. A perusal of the MoA and AoA of the appellant society reveals that it is a society of a charitable nature, having its properties vested in the governing body, who act as its fiduciaries. As elaborated previously, any conduct by the fiduciary which deprived the intended beneficiaries of their beneficial interest in the property, in such a manner that is in contravention to the covenants that bind him and confers an advantage to him to the detriment of the intended beneficiaries, must be taken into consideration to see if a constructive trust can be raised in law.

All those diverted properties would then be held in a constructive trust by those fiduciaries who diverted it, in the capacity of 'constructive trustees'. The respondent nos. 1 and 2 respectively have levelled several allegations of siphoning of funds by the respondent nos. 3 and 4 respectively. The same would have to be conclusively proved for a constructive trust to have been created in equity. Obviously, at the stage of this present litigation, it is not possible for this Court to enter into an extensive factual inquiry in this regard.

That is for the High Court to satisfy after the suit is allowed to progress. However, the allegations in the plaint may be said to prima facie satisfy the condition required to apply the doctrine of constructive trust to the present facts. Not to mention that, if these allegations are found to have no substance or plainly false, the entire suit would fail. But, in the peculiar circumstance in which the present matter rests, that would happen also for the reason that the circumstances which required the imposition of a constructive trust do not exist.

112. Thus, yet another ingredient under Section 92 of the CPC which requires to be satisfied, has been fulfilled. The counsel for the appellant society has also submitted that the plaint is not entirely convincing on the whether the appellant society can be considered to be a constructive trust for the purposes of Section 92 and that there is only one paragraph in the plaint devoted to the aforesaid question. However, it is our view that the plaint cannot be scrutinised in such a mechanical manner. It is the substance of the claim which must be looked into and not merely the wording. Read in the right context, the plaint is sufficiently forthcoming about the facts and circumstances which evidence the existence of a constructive trust, at least at present, under the eyes of law.

B. A breach of trust or the directions of the court being necessary for the administration of the trust

113. A suit under Section 92 can be maintainable for two broad reasons - one, that there has been a breach of any express or constructive trust created for a charitable or religious purpose or, two, that the directions of the court are necessary for the administration of such an express or constructive trust. The same was also emphasized by the decision of this Court in *Syed Mohd. Salie Labbai v. Mohd. Hanifa* reported in (1976) 4 SCC 780. Therein, it was held that a suit against persons exercising de facto control over property which has been dedicated for public use, would be maintainable, specifically when such properties are alleged to have been mismanaged and not maintained. The relevant observations are thus:

"64. It is true that Section 92 of the Code of Civil Procedure applies only when there is any alleged breach of any express or constructive trust created for a public, charitable or religious purpose. It also applies where the direction of the court is necessary for the administration of any such public trust. In the instant case the defendants have no doubt been looking after the properties in one capacity or the other and had been enjoying the usufruct thereof. They are, therefore, trustees de son tort and the mere fact that they put forward their own title to the properties would not make them trespassers. We, therefore, hold that Section 92 of the Code of Civil Procedure is clearly applicable to the case.

65. Counsel for the appellants lastly argued that there is no evidence to show that the appellants have committed any negligence in managing the trust properties. Even the trial court which had dismissed the plaintiffs' suit had returned a clear finding of fact that the defendants were guilty of gross negligence in managing the properties. In this connection the trial court found as follows:

"It was pointed out that there was mismanagement. That there is mismanagement cannot be disputed. For one thing, in spite of the decree of the court for removal of certain superstructures on the burial ground the Labbais evaded the issues for a period of over twenty years. The plaintiffs have proved that Plaint B schedule property has been dedicated to the durga. But this property has been alienated by the predecessors-in-interest of the defendants. In exchange, they have obtained C Schedule property. The next contention was that the defendants have not maintained accounts. It is true that the evidence does not disclose that any accounts were maintained or being maintained by the Labbais defendants."

The learned Judge, however, tried to explain away these acts of misfeasance on the ground that as the Rowthers undertook not to interfere with the management or ask for the account, the negligence committed by the defendants, if any, was not actionable. In view of our findings, however, that the mosque, its adjuncts and the burial ground are public wakfs the question of negligence assumes a new complexion. Apart from the acts of mismanagement, there is definite oral evidence of the plaintiffs to show that the graveyard is not properly managed and

maintained. The boundary wall has broken and cattle enter the graveyard leading to its desecration.

The evidence of the plaintiffs also shows that even the mosque is in a state of disrepair and no attempt is made to repair or maintain it properly. Further-more, the defendants have constructed shops on a part of the graveyard and in spite of several decrees of the courts to demolish those shops they have not yet obeyed the orders of the court to demolish the same. In these circumstances, therefore, there is overwhelming evidence on the record to show that the defendants were guilty of grave mismanagement, and therefore a clear case for formulating a scheme under Section 92 of the Code of Civil Procedure by a suit has been made out by the plaintiffs. The scheme, however, will be confined only to the mosque, its adjuncts and the burial ground and not to the durgah which has been held to be the private property of the defendants."

(Emphasis supplied)

114. In *Ramji Tripathi (supra)*, this Court while holding that a suit for the vindication of personal or individual rights was not maintainable, observed that:

i. First, the facts and particulars as regards the defect in the machinery for administration which plagued the trust and which required rectification, must be specifically pleaded. A bald and standalone prayer that the direction of the court may be necessary would not be enough and would be a mere pretence for the purpose of bringing the suit under Section 92. In simpler words, it must be shown that the directions of the court are 'necessary' in the facts and circumstances of the matter and such a statement must not be made in vacuum without any basis in reason or facts.

ii. Secondly, that it is only the allegations in the plaint that need to be looked into in the first instance to determine whether a suit would fall within the contours of Section 92. However, once the evidence is taken, if the court is of the opinion that the alleged breach of trust has not been made out and the prayer seeking directions from the court is vague and/or rests on a flimsy foundation, then the suit may be dismissed. The relevant observations are thus:

"13. The trial court as well as the High Court found that there was no evidence to substantiate the allegations regarding the breach of trust said to have been committed by Respondent 1. In para 20 of the plaint, there was an allegation that the direction of the Court was necessary for the administration of the Trust. But no reasons were given in the plaint why the plaintiffs were seeking the direction of the Court. There were no clear allegations of maladministration viz. that Respondent 1 was diverting the Trust properties for his personal benefit or that he was committing any devastavit.

The High Court was of the view that since the plaintiffs did not plead facts and particulars as regards the defect in the machinery for administration which had crept in under custom or rules which required rectification, the prayer for direction was a mere pretence to bring the suit under Section 92. A direction cannot be given by the Court unless it is shown that it is necessary for the proper administration of the Trust.

We do not think it necessary to decide for the purpose of this case whether the words "where the direction of the court is deemed necessary for the administration of any such Trust" must be interpreted as meaning that where the court has to give directions in the nature of framing a scheme or otherwise for the administration of the Trust or whether those words can refer only to directions given to existing trustee when there is one or to new trustee when one is to be appointed or to directions when there are allegations of maladministration amounting to breach of trust. It is sufficient for the purpose of this case to say that the prayer for direction was a prayer in vacuum without any basis in reason or facts.

14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (See *Association of R.D.B. Bagga Singh v. Gurnam Singh* [AIR 1972 Raj 263 : 1972 WLN 157 : 1972 Raj LW 182] , *Sohan Singh v. Achhar Singh* [AIR 1968 P&H 463 : ILR 1968 Punj 359 : 1968 Cur LJ 480] and *Radha Krishna v. Lachhmi Narain* [AIR 1948 Oudh 203 : 1948 OWN 179]). But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Section 92."

(Emphasis supplied)

115. In *Vidyodaya Trust* (supra), this Court had explained that in order to constitute a breach of trust, there must be an element of dishonest intention and lack of probity. If a mistaken action has been undertaken but with all bona fides, the same would not amount to a breach of trust. The Court also employed the test of a 'prudent man' to see whether the required standards of care, caution, rectitude and accuracy, without any reckless indifference has been exhibited by the trust and its trustees.

In the first instance, the court is required to only look into the allegations in the plaint to see whether a suit under this provision lies. Once the suit commences and after the evidence is taken, if it is revealed that the breach of trust which has

been alleged is not made out or, that the prayer for direction of the court is vague and not based on any solid factual or reasonable foundation, the court would be free to dismiss the suit for the said reasons. The relevant observations are reproduced hereinbelow:

"12. Only if the preconditions are satisfied then only leave can be granted as provided in Section 92. There must be an element of dishonest intention and lack of probity. When action is taken bona fide though there may be mistaken action, that would not amount to breach of trust.

14. In reply, learned counsel for the respondents submitted that while deciding on the question whether leave is to be granted the statements in the plaint have to be seen and not the allegations in the written submissions. It is permissible to strike down the portion of averment. Though the general principle may apply to the facts of the present case, what is expected to be seen is if the trust has acted as a prudent man would do and the standards of care and caution required to be taken by a prudent man, and there should not be reckless indifference and highest standard of rectitude and accuracy is to be maintained.

20. In Swami Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the section then suit purporting to be brought under Section 92 must be dismissed."

(Emphasis supplied)

116. In the present case, the respondent nos. 1 and 2 respectively have alleged that the respondent nos. 3 and 4 respectively, were indulging in gross financial impropriety, misconduct and siphoning off of funds/donations received by the appellant Society for personal gains. As discussed in the previous section of this judgment, having arrived at the conclusion that the present situation pertains to a 'constructive' and not an 'express' trust, the question remains how the aforesaid allegations are to be considered, particularly in light of the condition vis-à-vis Section 92 CPC presently discussed in this section.

As elaborated, the aforesaid allegations would have to be proven to serve a dual purpose i.e., to first, attract the doctrine of 'constructive trust' to be imposed in equity and second, to proceed to prove that there has been a subsequent breach of that constructive trust or at least, that the directions of the court would be necessary for the administration of that constructive trust. To assert that there has

been a breach of the constructive trust which was imposed upon an fiduciary who became a constructive trustee by virtue of his/her actions, it must be proven that the funds or property of the society that were allegedly diverted or siphoned by the respondent nos. 3 and 4 respectively were further 'divested' by them for purposes which do not align with the aims and objectives of the appellant Society, similar to that which occurred in Stevens (supra).

In other words, the duties which bound the respondent nos. 3 and 4 respectively upon being designated as 'constructive trustees' must have also been breached. Even if a further divestment of those diverted/siphoned funds had not occurred and they still remained intact but in the possession of the constructive trustees (respondent nos. 3 and 4 respectively) in their individual and not their fiduciary capacity, the plaintiffs can assert that directions pertaining to that constructive trust would still be needed from the court. Presently, we are convinced that directions, at the very least, are indeed necessary.

117. The respondent nos. 3 and 4 respectively have vehemently assailed the credibility of the Interim Forensic Audit Report and the Final Forensic Audit Report as being riddled with inconsistencies, unsubstantiated findings and categorical bias. However, at this stage of the proceeding, it would not be appropriate for the court to assess the veracity and legitimacy of all those observations/findings arrived at in the aforesaid reports with a view to verify the allegations made by the respondent nos. 3 and 4 respectively.

118. This Court in Ramji Tripathi (supra) had observed that at the stage of grant of leave, it is only the allegations in the plaint which must be looked into in the first instance with a view to ascertain if the alleged breach of trust or the fact that the directions of the Court may be necessary, is evident or palpable and if the suit can be brought within the ambit of Section 92. Even keeping aside the several forensic and audit reports which suggest that the affairs of the appellant Society must be scrutinised, a reading of the averments of the plaint fairly reveals the questionable conduct on behalf of respondent nos. 3 and 4 respectively.

The allegations made therein are serious and cannot be ignored. Ultimately, as explained by us in the preceding paragraphs, if those allegations are proven to be false, mala fide and unfounded in the course of the suit proceedings, the entire case of the plaintiffs may fall and the suit be dismissed. However, to force a halt and sever the suit at its root, on the aforesaid contentions of the respondent nos. 3 and 4 respectively, which require an extensive factual inquiry, would not be proper at this stage.

C. The institution of the suit must be made by two or more persons "having an interest in the trust"

119. The phrase "persons having an interest in the trust" must neither be construed too narrowly or too widely. It must not be narrow for the reason that the word used is "interest" instead of "direct interest". However, it must also be remembered that while no direct interest is required, the interest must denote a present and substantial interest and not a sentimental, remote, fictitious or purely illusory interest. It must be clear and direct. The reason behind the incorporation of this phrase under Section 92 of the CPC again boils down to the object of preventing frivolous and mischievous applications being filed by busy bodies, unconnected members of the public, and persons who do not possess a specific interest in the trust.

120. In *T. Varghese George v. Kora K. George* reported in (2012) 1 SCC 369, this Court considered the locus standi of the plaintiffs to institute the suit under Section 92 concerning a secular public educational trust. Therein, of the three plaintiffs, one was a member of the Board of Trustees nominated by the founder himself, the second plaintiff was the brother-in-law of the founder who had raised funds for buying lands for the institution and for the construction of its school buildings and the third plaintiff was a parent of a student attending the institution. Considering the above, this Court had opined that none of these persons could be criticised as persons who lacked any good intention for the Trust and that they were persons interested in the functioning of the Trust. The relevant observations are reproduced hereinbelow:

"31. As can be seen from this section two or more persons having interest in the trust may institute a suit in the Principal Civil Court of Original Jurisdiction to obtain a decree concerning a public charity for various purposes mentioned therein. Such suit will lie where these persons make out a case of alleged breach of any trust created for public purposes or for directions of the court for administration of the trust. One of the purposes set out in sub-section (1)(g) is settling a scheme, sub-section (1)(b) speaks about a new trustee being appointed, and sub-section (1)(a) speaks about removing a trustee.

Out of the three persons who filed Civil Suit No. 601 of 1987, Shri D.V.D. Monte was a member of the Board of Trustees nominated by the founder Shri T. Thomas himself. Shri Kora K. George is brother-in-law of Shri T. Thomas. He has raised funds for buying lands for the Institution, and for constructing the buildings of the School. Therefore, although the Single Judge held that he could not be said to be a person having interest in the Trust, that finding was reversed by the Division Bench in OSA No. 49 of 1995. Dr. Natrajan is a parent of a student of the Institution. None of these persons can be criticised as persons lacking good intention for the Trust."

(Emphasis supplied)

121. Coming back to the facts of the present case, it can be seen that the respondent no. 1 (original plaintiff no. 1) was the co-founder-cum-President of the board of the appellant Society who had devoted around 15 years in service of the appellant Society and the public at large. The respondent no. 2 (original plaintiff no. 2) albeit being the mother of the respondent no. 1, is a current board member of the appellant Society. Both of them can be said to have been closely associated with the functioning of the appellant Society. Therefore, they can also be said to have a genuine, clear and direct interest in the preservation and proper management of the appellant Society and the properties which may be subject to a constructive trust, especially since they have devoted time and energy into the establishing and running of the appellant Society.

122. While scrutinising whether the respondent nos. 1 and 2 respectively are persons interested in the trust and whether they are bringing the suit in a representative capacity, it is not just their designation or position which must be given importance to. They might be seen members of a society (former and current), who happen to be agitating a suit against other members, however, due regard must be given to whether they're representing themselves solely as members in seeking certain remedies or if they have also brought the suit in the interest of the public at large, especially the beneficiaries. It must also be seen whether it is a vested interest in the matter which is the pure and sole reason for bringing the suit or if public interest is also brought to the notice of the court.

We are not convinced that the respondent nos. 1 and 2 respectively are merely bringing forward some issues pertaining to disputes between members. While they have sought some remedies related to personal grievances and the wrongful dismissal of the respondent no. 1 which could be seen as unduly magnifying an election dispute, there are several other allegations in the plaint which cannot simply be ignored and which give the respondent nos. 1 and 2 respectively, a dual role/capacity, whilst they're agitating the matter under Section 92 of the CPC. The larger background in which the suit is brought alludes to the existence of public interest also at play.

123. The respondent nos. 3 and 4 respectively have primarily objected to the inclusion of the respondent no. 2 as one of the original plaintiffs since they contend that she has been roped in merely to fulfil the mandatory condition of having a minimum of two plaintiffs under Section 92. They have also alleged that there might be some discrepancies in the signatures of the respondent no. 2 and that there is a possibility of them being forged.

However, it is not for a court at this stage of the suit to assess the validity of these allegations, especially when the respondent nos. 3 and 4 have not been able to categorically assert that the respondent no. 2 is not a board member of the appellant Society or is in no manner associated with the organisation or is a

person not having a direct interest in the functioning of the appellant Society. Such being the case, the impugned decision was right in so far as taking the view that the respondent nos. 1 and 2 respectively are "persons having an interest in the trust".

D. The reliefs falling within the scope of those enumerated under Section 92(1) of the CPC along with the object, purpose and capacity in which the suit is brought.

124. Section 92(1) of the CPC provides for a list of reliefs which can be obtained by the plaintiffs through a decree from the court. They relate to removing a trustee, appointing a new trustee, vesting any property in a trustee, directing accounts and inquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorising the whole or any part of the trust property to be let, sold, mortgaged, or exchanged, settling a scheme, or granting such further or other reliefs as the nature of the case may require. As has been indicated by us in the preceding paragraphs, a suit under Section 92 is a special suit of a representative nature which must essentially be brought by plaintiffs in their capacity as representatives of the public and for the vindication of public rights.

125. In *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai* reported in (1952) 1 SCC 323, this Court had held that the plaintiffs must pray for one or the other of the reliefs that are specifically mentioned under Section 92(1). Therein, the courts had concurrently found, after examining the evidence on record that was adduced by the parties, that the allegations of breach of trust were not made out. The plaintiffs therein, had not sought for any direction from the court for the proper administration of the trust either.

Therefore, the very foundation of the suit under Section 92 became wanting and there remained no cause of action for the institution of the suit. In such circumstances, while dismissing the suit, the High Court had, however, recorded a conclusive finding about the existence of a public trust and made a declaration to that effect. This Court was of the view that such a finding was wholly inconsequential and could not be made a part of the decree or the final order in the shape of a declaratory relief for the reason that it cannot fall under those reliefs mentioned under Section 92(1). The relevant observations are thus:

"9. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92CPC. As was observed by the Privy Council in *Abdur Rahim v. Mohd. Barkat Ali* [*Abdur Rahim v. Mohd.*

Barkat Ali, (1927-28) 55 IA 96 : 1927 SCC OnLine PC 98], a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92CPC.

10. In the case before us, the prayers made in the plaint are undoubtedly appropriate to the terms of Section 92CPC and the suit proceeded on the footing that the defendant, who was alleged to be the trustee in respect of a public trust, was guilty of breach of trust. The defendant denied the existence of the trust and denied further that he was guilty of misconduct or breach of trust.

The denial could not certainly oust the jurisdiction of the court, but when the courts found concurrently, on the evidence adduced by the parties, that the allegations of breach of trust were not made out, and as it was not the case of the plaintiffs, that any direction of the court was necessary for proper administration of the trust, the very foundation of a suit under Section 92CPC, became wanting and the plaintiffs had absolutely no cause of action for the suit they instituted. In these circumstances, the finding of the High Court about the existence of a public trust was wholly inconsequential and as it was unconnected with the grounds upon which the case was actually disposed of, it could not be made a part of the decree or the final order in the shape of a declaratory relief in favour of the plaintiffs.

11. It has been argued by the learned counsel for the respondents that even if the plaintiffs failed to prove the other allegations made in the plaint, they did succeed in proving that the properties were public and charitable trust properties-a fact which the defendant denied. In these circumstances, there was nothing wrong for the court to give the plaintiffs a lesser relief than what they actually claimed. The reply to this is, that in a suit framed under Section 92CPC the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the section.

A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under the provision of Section 92CPC. The finding as to the existence of a public trust in such circumstances would be no more than an obiter dictum and cannot constitute the final decision in the suit.

12. The result is that in our opinion the decision of the High Court should stand, but the decree and the concluding portion of the judgment passed by the trial court and affirmed by the High Court on appeal shall direct a dismissal of the

plaintiff's suit merely without it being made subject to any declaration as to the character of the properties. To this extent the appeal is allowed and the final decree modified. The order for costs made by the courts below will stand. Each party will bear his own costs in this appeal."

(Emphasis supplied)

126. In Mahant Pragdasji (supra), it was argued that even though the plaintiffs failed to prove the other allegations in the plaint, they had indeed succeeded in proving that the properties in question were public and charitable trust properties and that, therefore, the High Court had merely granted a 'lesser' relief than what was claimed under the suit, which relief did not offend Section 92. However, this Court had categorically held that in such a suit, the only reliefs which the plaintiff(s) can claim and the court can grant, are those enumerated specifically under the different clauses under section 92(1).

Therefore, the relief granted by the High Court in the form of a declaration that the properties in suit are in fact trust properties does not come under any of the clauses under Section 92(1). Had the situation been different i.e., if the plaintiff had succeeded in bringing an action under Section 92 and where the defendant had denied the existence of a trust, a declaratory relief that the trust does exist may be made as ancillary to the main relief under Section 92(1) claimed by the plaintiff(s). However, if the suit fails for want of cause of action, it would not be appropriate for the court to grant a declaratory relief purportedly under Section 92(1).

127. The aforesaid decision has been discussed only with a view to emphasise that the reliefs claimed by the plaintiffs, must fall within those reliefs outlined under Section 92(1). In this context, the nature of relief(s) which could be claimed or granted under the residual clause (h) under Section 92(1) was discussed by the three-judge bench decision of this Court in Charan Singh v. Darshan Singh reported in (1975) 1 SCC 298.

This Court elaborated on whether clause (h) providing for "further or other relief" must be taken in connection with or considered as akin to clauses (a) to (g) or, whether any relief other than those outlined under clauses (a) to (g) would in all circumstances be covered by clause (h) in case of an alleged breach of an express or constructive trust. Attention was drawn to the fact that the word used after clause (g) and before clause (h) was "or". In a given context, it was stated that it may be construed as "and" conjunctively and in others, it would remain as "or" in the disjunctive sense.

Further elaborating on the aforesaid, it was stated that if any "further relief" was asked for in addition to any of the reliefs already mentioned under clauses (a) to

(g), then the word "or" must be construed as "and". However, if the relief prayed for is an "other relief" which is not in any way consequential to or in addition of the reliefs already mentioned under clauses (a) to (g), then the word "or" must be construed in the literal sense as an "or". It is in the latter scenario, where an "other relief" is claimed that the relief must be akin to or of the same nature as any of the reliefs enumerated under clauses (a) to (g). The relevant observations are thus:

"1. The plaintiffs respondents in this appeal filed by the defendants-appellants by special leave of this Court from the decision of the High Court of Judicature of Punjab and Haryana filed a suit in the year 1963 against Appellant 1 alone (for the sake of brevity described as the appellant hereinafter in this judgment) praying for a decree for permanent injunction against him to restrain him. "from interfering with the maintaining of the Guru Granth Sahib for religious recitals in the Darbar Sahib in the Dharamsala also known as Dharamsala Dera Baba Jaimal Singh situated in Village Balsarai Tehsil and District Amritsar as also restraining him from interfering with the plaintiffs and other satsangis' rights of reciting the Guru Granth Sahib and holding and joining the religious congregations and Satsang in the abovementioned Gurdwara Baba Jaimal Singh."

6. Out of the three conditions which are necessary to be fulfilled for the application of Section 92, two are indisputably present in this case viz. (1) the suit relates to a public charitable or religious trust;

(2) it is founded on an allegation of a breach of trust and the direction of the Court is required for administration of the trust. The debate and dispute between the parties centered round the requirement of the fulfilment of the third condition, namely, whether the reliefs claimed are those which are mentioned in sub-section (1) of Section 92 of the Code.

7. The High Court in the letters patent appeal has taken the view that the relief sought for in the suit does not fall under any of the clauses (a) to (h) of Section 92 of the Code. Learned counsel for the appellant has assailed this view and submitted that the relief sought for falls under clause (e) or (g) or in any event under clause (h). In our judgment the relief sought for in this case does not strictly or squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h).

8. Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in *Abdur Rahim v. Syed Abu Mahomed Barkat Ali Shah* [AIR 1928 PC 16 : 55 IA 96 : 108 IC 361] rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in clause (h) must be taken, not in connection with the previous clauses (a) to (g) but in connection with the nature of the suit. The argument was that any relief other than (a) to (g)

in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clauses (a) to (g).

It would be noticed that the word used after clause (g) and before clause (h) is "or". It may mean "and" in the context, or remain "or" in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief asked for is other relief which is not by way of a consequential or additional relief to any of the reliefs in terms of clauses (a) to (g), then the word "or" will mean "or". The other relief however, cannot be of a nature which is not akin to or of the same nature as any of the reliefs mentioned in clauses (a) to (g).

According to the plaintiffs case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under clause (e). The plaintiffs could also ask for the settling of a scheme under clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib - the holy Granth. The plaintiffs in their plaint did not in terms ask for the one or the other. They, however, alleged acts of breach of trust, mismanagement, undue interference with the right of the public in the worship of Granth Sahib.

They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of their right in the religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

11. In our judgment therefore the courts below were right in taking the view that the present suit was a suit for a decree under Section 92 of the Code and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the letters patent appeal is not correct."

(Emphasis supplied)

128. In Charan Singh (supra), the contentious relief prayed for was not a "further relief" under clause (h) i.e., there were not multiple prayers of which some already fell under the reliefs contemplated under clauses (a) to (g) and the prayer in question fell outside the scope of clauses (a) to (g). It was a solitary relief which solely and completely fell under the ambit of "other relief" mentioned under clause (h). Therefore, this Court had to delve into whether the "other relief" claimed could be said to be akin to or of the same nature as those already enumerated under clauses (a) to (g). In conducting such an examination, it was opined that the relief prayed for was in the background of allegations of breach of trust, mismanagement and undue interference with the right of the public in the worship of the Granth Sahib.

In essence, what the plaintiffs wanted was a decree of the Court against the defendant in order to force him to carry out the objects of the trust and to perform his duties as a trustee. It was further held that, upon reading the plaint as a whole, what was claimed was not a declaration of the rights of the plaintiffs in the religious institution in respect of the Granth Sahib, but an enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. Therefore, this solitary "other relief" was akin to those already mentioned under clauses (a) to (g) and was held to fall within the clause (h) and consequentially, under Section 92 of the CPC.

129. It has been sufficiently explained that the special nature of the suit under Section 92 requires it to be filed fundamentally on behalf of the public for the vindication of public rights. In *Sugra Bibi v. Hazi Kummua Mia* reported in 1968 SCC OnLine SC 99, this Court had placed reliance on the reasoning given by Woodroffe, J., in *Budreedas v. Choonilal* reported in ILR 33 Cal 789 and the opinion of Leach, C.J. in *Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnayya Shanbhaga* reported in 1943 SCC OnLine Mad 48, to state that, the fact that a suit relates to a public trust of a religious or charitable nature and that the reliefs claimed fall within clauses (a) to (h) of Section 92(1) 'would not by themselves attract the operation of the section'.

It must be shown that the suit is of a representative character which is instituted in the interests of the public and not merely for the vindication of the individual or personal rights of the plaintiff(s). In other words, the Court must go beyond the reliefs and also give due regard to the capacity in which the plaintiffs are suing along with the purpose for which the suit is brought. The relevant observations are reproduced hereinbelow:

8. It is true that the facts that a suit relates to public trust of a religious or charitable nature and the reliefs claimed fall within clauses (a) to (h) of sub-section (1) of Section 92 of the Civil Procedure Code would not by themselves attract the operation of the section, unless the suit is of a representative character

instituted in the interests of the public and not merely for vindication of the individual or personal rights of the plaintiff. As was stated by Woodroffe, J. in *Budreedas v. Choonilal* [ILR 33 Cal 789 at p 807]:

"It is obvious that the Advocate-General, Collector or other public officer can and do sue only as representing the public, and if, instead of these officers, two or more persons having an interest in the trust sue with their consent, they sue under a warrant to represent the public as the objects of the trust. It follows from this, that when a person or persons sue not to establish the general rights of the public, of which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be brought under the section."

9. This principle was accepted as sound by a Full Bench of the Madras High Court in *Appanna v. Narasigna* [ILR 45 Mad 113] . In that case, a suit was instituted by a trustee of a public religious trust against a co-trustee for accounts and the Full Bench decided that it did not come within Section 92 of the Civil Procedure Code, the claim being to enforce a purely personal right of the plaintiff as a trustee against his co-trustees. The same view was taken by the Madras High Court in *The Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnaya Shanbhaga* [ILR 1943 Mad 619].

In this case the general trustees of a public temple filed a suit against the trustees for the recovery of moneys which the latter had collected on behalf of the former praying for a decree directing accounts and inquiries. It was held that the right to collect moneys was entirely independent of Section 92 of the Civil Procedure Code and no sanction of the Advocate-General was necessary for the institution of the suit. Leach, C.J. who delivered the judgment of the Court observed as follows:

"After hearing the arguments of learned Counsel in the present case we can see no reason for disagreeing with anything said in *Shanmukham Chetty v. Govinda Chetty* [ILR 1938 Mad 39]. On the other hand we find ourselves in full agreement with the opinion of Varadachariar, J. that, in deciding whether a suit falls within Section 92, the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit is brought. The judgment of the Privy Council in *Abdur Rahim v. Mahomed Barkat Ali* [(1927) ILR 55 Cal 519 (PC)] lends no support for the opinion expressed by the Full Bench in *Janki Bai v. Thiruchitrambala Vinayakar* [(1935) ILR 58 Mad 988 (FB)]".

10. Applying the principle laid down in these authorities, we are of opinion that in the present case the suit brought by the appellant must be treated as a suit brought by her in a representative capacity on behalf of all the beneficiaries of the

Wakf. As we have already stated, the Wakf created by Haji Elahi Bux was a Wakf created for a public purpose of charitable or religious nature. The reliefs claimed by the appellant in the suit are not reliefs for enforcing any private rights but reliefs for the removal of the defendant as trustee and for appointment of a new trustee in his place.

The reliefs asked for by the appellant fall within clauses (a) and (b) of Section 92(1) of the Civil Procedure Code and these reliefs claimed by the appellant indicate that the suit was brought by the appellant not in an individual capacity but as representing all the beneficiaries of the Wakf estate. We are accordingly of the opinion that the suit falls within the purview of the provisions of Section 92, Civil Procedure Code and in the absence of the consent in writing of the Advocate-General the suit is not maintainable."

(Emphasis supplied)

130. In *Sugra Bibi (supra)*, the suit was brought by the plaintiff-appellant who was the wife of a deceased joint-Mutwalli praying that the defendant-respondent who was the other joint-Mutwalli, be removed from his office and that her minor son be instead appointed as Mutwalli of the Wakf Estate. Still, this Court had held that the suit brought by the appellant must be treated as one instituted in a representative capacity on behalf of all the beneficiaries of the Wakf. It was stated that the reliefs were not for enforcing any private rights but for the removal of the defendant as a trustee and for the appointment of a new trustee in his place. Therefore, what follows is that the true nature of the suit must be determined on a comprehensive understanding of the facts of the matter and not merely on a superficial consideration of who is bringing the suit.

131. The aforesaid principle was reiterated in *Ramji Tripathi (supra)* wherein this Court endeavoured to ascertain the 'real nature of the suit' to assess whether it was for the vindication of personal or public rights. It was stated that it is the object or purpose of the suit and not the reliefs that must decide whether the suit is one for agitating personal or public rights. Further, it was opined that taking into account the dominant purpose of the suit in light of the allegations made in the plaint would also aid in assessing the true nature of the suit.

Applying the said principle, the suit was ultimately said to not fall within the contours of Section 92 of the CPC since the issue centred around the succession to the headship of a Math and was concerned with the right to the office of a trustee. The Court also observed that if the real purpose in bringing the suit was to vindicate the general right of the public i.e., to have the rightful person appointed to the office, then there was no reason for the plaintiffs to have omitted to implead or at least refer to the other persons who were nominated by the

predecessor in his Will, in the plaint. The relevant observations are reproduced hereinbelow:

"10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section.

It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 (see *N. Shanmukham Chetty v. V.M. Govinda Chetty* [AIR 1938 Mad 92 : 176 IC 26 : 1937 MWN 849], *Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga* [AIR 1943 Mad 466 : (1943) 56 LW 260], *Sugra Bibi v. Hazi Kummua Mia* [AIR 1969 SC 884 : (1969) 3 SCR 83 : (1969) 2 SCJ 365] and *Mulla: Civil Procedure Code* (13th edn.) Vol. 1, p. 400).

A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

11. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a Trust bring a suit purporting to be under Section 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into

account the dominant purpose of the suit in the light of the allegations in the plaint.

If, on the allegations in the plaint, it is clear that the purpose of the suit was to vindicate the individual right of Krishnabodhashram to be the Shankaracharya, there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the Trust, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate-General and claiming one or more of the reliefs specified in the section. There is no reason to think that whenever a suit is brought by two or more persons under Section 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons.

12. The trial court, after reading the allegations in the plaint and after looking into the entire evidence in the case, came to the conclusion that the suit was primarily one for declaration that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that Respondent 1 had no right to be nominated as the Head of the Math by Brahmanand as he did not possess the requisite qualification and that his possession of the Trust property was only in the capacity of a trustee de son tort, and so he must be removed from the headship of the Math. The High Court saw no reason to differ from the finding. We would be slow to disturb a finding of this nature especially when we see that the allegations in the plaint are reasonably susceptible of being so read.

We think that the purpose of the suit was to settle the controversy as to whether Krishnabodhashram or Respondent 1 had the better claim to the headship of the Math and to the possession and management of its properties by obtaining a declaration of the Court. If the real purpose in bringing the suit was to vindicate the general right of the public to have the rightful claimant appointed to the office, there was no reason why the plaintiffs omitted to implead or at least refer in the plaint to the three persons nominated by Brahmanand in his Will to succeed him in the order indicated therein especially when it is seen that the plaintiffs accepted the custom of the Math to have the successor nominated by the incumbent for the time being of the office of Shankaracharya."

(Emphasis supplied)

132. The same was reiterated in by this Court in Vidyodaya Trust (supra). It was cemented that the court must go beyond what is literally stated in the reliefs and focus also on the purpose and object for which the suit was filed. On a comprehensive analysis of the averments in the plaint, if it is revealed that the primary object was the vindication of individual or personal rights of some

person, then such a suit must fall. That a hard-and-fast rule cannot be made for ascertaining what the real purpose of the suit is was also emphasized. The same was elaborated as follows:

13. To find out whether the suit was for vindicating public rights there is necessity to go beyond the relief and to focus on the purpose for which the suit was filed. It is the object and purpose and not the relief which is material. A co-trustee is not remediless if the leave is not granted under Section 92.

19. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

23. One of the factual aspects which needs to be highlighted is that the allegations which have been made against Respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board's decision. As was observed by this Court in Swami Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48], to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard-and-fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

24. On a close reading of the plaint averments, it is clear that though the colour of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes."

(Emphasis supplied)

133. On a comprehensive reading of the averments of the plaint in the instant case, what comes across is that the plaintiffs have made serious allegations as regards the misadministration of the appellant Society along with levelling accusations of gross financial impropriety, misconduct and siphoning off of funds

by the respondent nos. 3 and 4 respectively. This, they contend, has ultimately affected the public at large who are the beneficiaries of the activities of the appellant society. However, having said the above, it cannot be ignored that the respondent nos. 1 and 2 respectively have also vehemently made averments regarding the wrongful dismissal of the respondent no. 1 from the post of the President and also as a board member of the appellant Society, and seek her reinstatement in one of the prayers. Additionally, they seek a declaration that all the decisions made by the board of the appellant Society after the date of dismissal of the respondent no. 1 be termed as illegal and void. The impugned decision is right in so far as observing that the respondent no. 1 has also sought to agitate personal/private grievances through this suit. It must be kept in mind that a suit under Section 92 is one of a 'special nature'. Therefore, issues involving the day-to-day management of the institution and grievances regarding election of members or certain board decisions pertaining to the reshuffling of the elected/board members, must not be made in a suit of this nature, especially when such grievances can be redressed through other mechanisms or under a regular suit not falling within Section 92. Such issues must not be deviously magnified or amplified as if there is a breach of trust warranting intervention under this provision.

134. However, the fact that certain private rights are being agitated must not be reason enough to ignore the other allegations made in the suit regarding the functioning of the appellant Society and dismiss the suit outrightly, provided the suit is instituted in a representative capacity. It would always be open for the High Court, during the course of the suit proceedings, to grant not all but only some of the reliefs claimed by the respondent nos. 1 and 2 respectively, for the reason that the others are clearly beyond the scope of what is contemplated under Section 92 of the CPC. The reliefs in the present plaint, insofar as they agitate private rights, cannot be granted under a suit of this nature.

135. Additionally, as opined in Charan Singh (supra), when there exist some reliefs which clearly fall under clauses (a) to (g), the other prayers must be seen as constituting "further relief" and be interpreted with a conjunctive "and". The non-conformity of those "further reliefs" with the reliefs enumerated under clauses (a) to (g) would not necessarily affect the maintainability of the suit itself. Herein, it is limpid that prayers (c), (d) and (e) of the plaint respectively, fall within clauses (a), (d) and (g) respectively of Section 92(1) for the removal of trustee(s), directing accounts and inquiries, and settling a scheme respectively for the appellant Society.

In other words, there exist prayers which clearly bring the scope of the suit within that of Section 92. In such a scenario, the prayers in the plaint which are specific to the vindication of personal rights of the respondent no. 1 would fall under "further relief(s)" and not "other relief(s)" and not have the consequence of

affecting the maintainability of the suit, by themselves. For the sake of argument, had they been the only reliefs prayed for by the respondent nos. 1 and 2, they would have instead fell under the ambit of "other relief(s)", and the word "or" under clause (h) would have literally been construed as a disjunctive "or".

We would have then examined whether those "other relief(s)" were akin to or of the same nature as those already enumerated under clauses (a) to (g) of Section 92(1). Those prayers clearly being for vindication of personal rights would have revealed that the suit's sole and unequivocal purpose was not for any public purpose and have resulted the application for grant of leave to be dismissed. However, that not being the case presently, the prayers made by the respondent nos. 1 and 2 respectively largely fall under the ambit of Section 92(1).

136. As expounded by us in the preceding paragraphs and rightly pointed out in *Sugra Bibi* (supra), *Ramji Tripathi* (supra) and *Vidyodaya Trust* (supra), what must be looked at, is not only whether the reliefs prayed for fall within clauses (a) to (h) of Section 92(1) but also the predominant object or purpose for which the suit has been filed on a holistic reading of the entire plaint. The question as to whether the suit has been filed by the plaintiffs, as representatives of the public for the vindication of public rights must assume paramount importance. The capacity in which the plaintiffs are suing must be given due consideration. As elaborated by us above, some prayers i.e., prayers (a) and (b) of the plaint fall outside the scope of Section 92(1) and some i.e., prayers (c), (d) and (e) of the plaint fall within the scope of Section 92(1).

A reading of the contents of the plaint reveal several averments regarding the circumstances which led to the dismissal of the respondent no. 1 as also circumstances and events indicating the questionable conduct on part of respondent nos. 3 and 4 respectively in their capacity as fiduciaries. Therefore, the allegations in the plaint by themselves are also not clearly indicative of a single object/purpose for which the suit has been instituted i.e., whether it has been instituted by the respondent nos. 1 and 2 for the vindication of public rights in a representative capacity or for the purpose of canvassing personal grievances alone.

No doubt, the respondent nos. 1 and 2 respectively may also have a personal axe to grind with the appellant Society and also respondent nos. 3 and 4 respectively, however, insofar as the background in which prayers (c), (d) and (e) have been made, it cannot be said with certainty that these prayers are also made with an absence of bona fides and a with vested interests. It cannot be said that the appellant Society is being needlessly entangled in a frivolous litigation or in a dispute which only pertains to the election/day-to-day management of the appellant Society.

F. CONCLUSION

137. For the sake of convenience, a conspectus of the legal and factual discussion in the preceding paragraphs is as follows:

i. A suit under Section 92 of the CPC is a representative suit of a special nature since the action is instituted on behalf of the public beneficiaries and in public interest. Obtaining a 'grant of leave' from the court before the suit can be proceeded with, acts as a procedural and legislative safeguard in order to prevent public trusts from being subjected to undue harassment through frivolous suits being filed against them and also to obviate a situation that would cause a further wastage of resources which can otherwise be put towards public charitable or religious aims. However, at the stage of grant of leave, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties.

ii. Several decisions of this Court have outlined certain conditions or essential pre-requisites that need to be fulfilled for a suit to be maintainable under this provision. This Court in *Ashok Kumar Gupta* (supra) delineated them as follows -

(a) the trust in question must be created for public purposes of a charitable or religious nature;

(b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and

(c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. In order to successfully establish that a suit is not maintainable under Section 92, it would be sufficient to prove that any one of the conditions enumerated above has not been met, however, in order to assert its maintainability, all the aforesaid conditions need to be satisfied.

iii. A trust can be said to have been created for a 'public purpose' when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.

iv. A crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'.

v. When no formal recognition has been given to the institution, the creation of a public trust can be inferred from the relevant circumstances surrounding the

coming into existence of and functioning of the institution/entity in question. Although it is not possible to provide an exhaustive list of the same, yet they may include -

(a) the method of devolution of the property to the institution or its acquisition and the circumstances along with the intention behind the grant of property i.e. whether it was for the benefit of the organization/public beneficiaries or for the personal benefit of any particular individual/family;

(b) whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee;

(c) whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property in another individual (trustee) for the said object;

(d) whether the public user or an unascertained class of individuals could exercise any 'right' over the organization and its properties;

(e) the manner of use of the profits accrued, more particularly, whether it is applied/re-applied towards the benefit of the organization and its objectives, etc.

vi. If the aforementioned circumstances exist and the entity has been, much later in time, registered as a society under the Societies Registration Act, 1860, it would still be treated as a 'public trust' as per the dictum of the Full Bench of the Kerala High Court in Kesava Panicker (supra) wherein it was observed that the mere factum of registration of a society under the Societies Registration Act, 1860, after it attained the characteristics of a public trust, could not change the character of the properties which had already been constituted as trust properties.

vii. However, if the institution has been registered, from its inception, as a society under the Societies Registration Act, 1860, it is true that whenever a society acquires property, it cannot be said that it declares itself a trustee in respect of said property. In other words, the effect of registration under the Societies Registration Act, 1860 would not be to automatically invest the properties of the society with the character of trust property. This has been consistently laid down by the decisions of several High Courts.

viii. Having said so, one must examine what effect the mechanism of vesting provided under Section 5 of the Societies Registration Act, 1860 has on the society. It reads that - "The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society". What follows is that the property belonging to the society can either be vested in 'trustees' or in

the governing body of the society. This vesting has been envisaged because a society registered under the aforesaid Act is not a juristic person or a body corporate capable of holding property by itself.

ix. The phrase, "if not vested in trustees" must be read to mean that a trust can be created, either expressly or impliedly, before or after the registration of a society, for the purpose of holding its properties. A public trust would be created prior to the registration of a society if the broad circumstances enumerated under point (v) are met. In such a case, all the properties of the society which had been imbued with the character of 'trust property' would be subject to Section 92.

However, if it is argued that a trust has instead separately been created for holding the property of the society after its registration as a society, the same must be clearly and sufficiently proven. Here, the separate trust which has been created and the properties which has been vested in said trust would be subject to scrutiny under Section 92. In both these scenarios, an 'express trust' would be created and in a suit under Section 92 CPC, the first criteria i.e., the existence of an express or constructive trust, would be met.

x. In the absence of such a separate vesting in trustees as aforesaid, the property belonging to the society would be automatically vested, through a deeming fiction, in the governing body of the society. Such a governing body is duty bound to ensure that the property is put towards and utilised for the purposes/aims of the society as laid out in its Memorandum of Association or any Rules and Regulations governing the said matter. In the event of the society's dissolution, the members would not derive any right to distribute the assets belonging to the society between themselves.

Both during the subsistence and dissolution of the society, the members or the governing body cannot be said to possess any beneficial or individual interest over the property vested in them. They would also safeguard the society's property for the future members of the society or the future governing body such that perpetuity is assigned to both the society and its property, unless expressly dissolved. All these factors evidence that the governing body must also act within the contours of a strict fiduciary relationship.

xi. Legislative creativity was employed to ensure that the incapability of the society to hold the property by itself does not have any practical effect on its ability to use and administer those properties while also ensuring that the property of the society may not be squandered or the object and purpose for which the society was formed may not be defeated by persons having control of the properties. Therefore, Section 5 can be seen as providing two options, or mechanisms through which a society can hold the property belonging to itself - One, in trustee(s) or, two, in the governing body of the society. Both these

mechanisms/options belong to the same genus (fiduciaries), albeit they don't fall in the same species (the former is a trustee stricto sensu and the latter is not).

xii. Therefore, while the society cannot be considered as an 'express trust', what must also be noted, at this crucial juncture, is that, for an entity to be brought within the rigours of Section 92, the plaintiff has the option of also contending that a 'constructive trust' exists in the circumstances and a breach of such a constructive trust has occurred or that the directions of the Court are necessary for the administration of such a constructive trust.

xiii. A constructive trust, arises by operation of law, without regard to or irrespective of the intention of the parties to create a trust. It is imposed predominantly because the person(s) holding the title to the property would profit by a wrong or would be unjustly enriched if they were permitted to keep the property. The American and English models of 'constructive trust' although similar in nomenclature, bears a doctrinal difference, the former is remedial while the latter is institutional.

In other words, in implying the existence of a constructive trust, the English Courts recognise or give legal efficacy to a fiduciary/confidential relationship or 'institution' that already exists. It would arise, by operation of law, but when one person is under an existent obligation to hold a certain property for another. This constructive trust would come into existence from the date of the circumstances which give rise to it and the function of the court would only be to declare that such a trust has arisen in the past.

xiv. What must, however, be noted is that, for this equitable doctrine to be applied, the fiduciary must receive property or money which he cannot conscientiously retain. It is only thereafter that a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received. To put it simply, the factum that the fiduciary 'withheld' the property from its rightful beneficiaries must be established.

That such a fiduciary sought to misapply the property in contravention to the covenants that bound him, or sought to gain an advantage for himself, must be proved for a constructive trust to come into existence by the operation of law. That he further divested the said siphoned property/funds, would have to be proved in order to assert that the 'constructive trust' has additionally been breached. Even in the absence of such a further divestment, the directions of the court may still be necessary for the administration of the constructive trust.

xv. The respondent nos. 1 and 2 respectively, having made several allegations of siphoning of funds by the respondent nos. 3 and 4 respectively, for their own personal use, could be said to have prima facie satisfied the condition required to

apply the doctrine of constructive trust to the present facts. Not to mention that, if these allegations are found to have no substance or plainly false, the entire suit would fail.

But, in the peculiar circumstance in which the present matter rests, that would happen also for the reason that the circumstances which required the imposition of a constructive trust do not exist/have not been proven. However, if found true, all the property diverted for the purpose of obtaining a pecuniary advantage would be subject to a constructive trust, the administration of which can be sought in a suit under Section 92 of the CPC and the respondent nos. 3 and 4 respectively would be considered to be 'constructive trustees'.

xvi. The phrase "persons having an interest in the trust" must neither be construed too narrowly nor too widely. It must not be narrow for the reason that the word used is "interest" instead of "direct interest". However, it must also be remembered that while no direct interest is required, the interest must denote a present and substantial interest and not a sentimental, remote, fictitious or purely illusory interest.

xvii. While scrutinising whether the respondent nos. 1 and 2 respectively are persons interested in the trust and whether they are bringing the suit in a representative capacity, it is not just their designation or position which must be looked into or given importance to. While recognising that they have also sought some remedies related to personal grievances and the wrongful dismissal of the respondent no. 1 which could be seen as unduly magnifying an election dispute, there are several other allegations in the plaint which cannot simply be ignored and which give the respondent nos. 1 and 2 respectively, a dual role/capacity, whilst they're agitating the matter under Section 92 of the CPC. The larger background in which the suit is brought alludes to the existence of public interest also at play.

xviii. The reliefs claimed by the plaintiffs, must fall within those reliefs outlined under Section 92(1). As regards the question when a relief can be considered to fall under the residual clause (h) providing for "further or other relief" under Section 92(1), this Court in Charan Singh (supra) elaborated that if the relief prayed for is not a "further relief" but an "other relief" which is not in any way consequential to or in addition of the certain other reliefs already mentioned under clauses (a) to (g) and prayed for, then the "other relief" must be akin to or of the same nature as any of the reliefs enumerated under clauses (a) to (g).

xix. Furthermore, the special nature of the suit under Section 92 requires it to be filed fundamentally on behalf of the public for the vindication of public rights. Therefore, courts must go beyond the reliefs and also give due regard to the object and purpose for which the suit is brought. The true nature of the suit must

be determined on a comprehensive understanding of the facts of the matter and a hard-and-fast rule cannot be made for the same. The fact that certain private rights are being agitated must not be reason enough to ignore the other allegations made in the suit and dismiss it outrightly, provided the suit is instituted in a representative capacity. The reliefs in the present plaint, insofar as they agitate private rights, cannot be granted under a suit of this nature.

xx. It is clarified that the issues involving the day-to-day management of the institution and grievances by members qua other members as regards the election of members or certain board decisions pertaining to the reshuffling of the elected/board members, must not be made in a suit of this nature, especially when such grievances can be redressed through other mechanisms or under a regular suit not falling within Section 92.

Such issues must not be deviously magnified or amplified as if there is a breach of trust warranting intervention under this provision. Therefore, the reliefs insofar as the removal of the respondent no. 1 from the post of President and board member respectively are concerned along with the grievances which the respondent nos. 1 and 2 respectively may have with the other board members, would have to be agitated in a separate suit not being falling under Section 92 of the CPC.

138. For all the foregoing reasons, this appeal fails and is hereby dismissed. The underlying suit bearing CS (OS) No. 153 of 2020 filed before the Single Judge of the High Court must be commenced at the earliest and the High Court must pay careful attention to whether the circumstances necessitating the imposition of a 'constructive trust' is made out. If yes, it must delineate the properties which would be subjected to the constructive trust and assess whether the reliefs prayed for under prayers (c), (d) and (e) respectively of the present plaint may be granted.

139. The Registry shall circulate one copy each of this judgment to all the High Courts.

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

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

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

New Delhi.

August 05, 2025.

IN THE SUPREME COURT OF INDIA

**Jamnallal
Vs.
State of Rajasthan and Anr.**

**[Criminal Appeal No. _____ of 2025
@ SLP (Crl.) No.69 of 2025]**

HEADNOTE – Under Sec. 389 Cr.P.C., to suspend sentence, the High Court should assess if convict has fair chance of acquittal

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. We have heard Mr. K.L. Janjani, learned counsel for the appellant, Ms. Sansriti Pathak, learned Additional Advocate General for the first Respondent - State of Rajasthan, and Mr. Namit Saxena, learned counsel for Respondent No.2.

3. The present Appeal by the father of the prosecutrix challenges the order of the High Court of Judicature for Rajasthan, Bench at Jaipur dated 03.09.2024 in S.B. Criminal Misc. Suspension of Sentence Application (Appeal) No. 852 of 2024 in S.B. Criminal Appeal No. 397 of 2024. By the said order, the sentence imposed on Respondent No.2 herein was suspended till the final disposal of the appeal and Respondent No.2 was directed to be released on bail, subject to certain conditions imposed on him by Special Judge (POCSO) Karauli (Rajasthan) by her judgment and order dated 07.02.2024.

4. Respondent No.2 has been found guilty for the offences punishable under Section 3/4 (2) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') as well as under Section 376(3) of the Indian Penal Code, 1860. Respondent No.2 was sentenced under Section 3/4 (2) of POCSO Act and no sentence was imposed under Section 376(3) in view of Section 42 of POCSO Act.

Insofar as Section 3/4 (2) of POCSO Act was concerned, Respondent No.2 was sentenced to undergo 20 years rigorous imprisonment and was ordered to pay a fine of Rs. 50,000/-. In default of payment of fine, Respondent No.2 was directed to undergo additional 2 years rigorous imprisonment. Respondent No.2 had undergone imprisonment for a period of 1 year and 3 months after which his sentence was suspended by the High Court.

5. The High Court while suspending the sentence, after setting out the contention of the respective parties, has recorded only the following reasons before enlarging Respondent No.2 on bail:

"5. Upon a consideration of the arguments advanced on behalf of the appellant as well as learned State Counsel and counsel for the complainant and having regard to the facts and circumstances as available on the record and especially the fact that no sign of sexual assault was found by the medical expert on the body of the prosecutrix; no FSL as well as DNA report is available on record; despite the availability of washrooms in the house, it is little difficult to digest that prosecutrix will go out for toilet; there is no prospect of being heard and disposal of this appeal in near future, this Court is of the opinion that the appellant has available to him strong grounds to assail the impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentences awarded to the applicant-appellant during pendency of the instant appeal."

6. The Trial Court, while convicting Respondent No.2, relied on the evidence of prosecutrix PW-3 who had deposed to the following effect:-

On 13.06.2023, at 4 PM, when she had gone to the field to defecate, Respondent No.2 came from behind and at gun point after closing her mouth took her to Amro's house near the dry tank located in the field. Thereafter, the prosecutrix deposed that Respondent No.2 committed rape on her; that she came back and narrated the incident to her mother and other family members; that her father had gone out at that time and he came little while thereafter; that she went with her father to the police station where her father lodged the First Information Report.

She also deposed that she was medically examined, and she had given her undergarments and Pajama to the Doctor. The statement under Section 164 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C') was recorded earlier where she maintained her case against Respondent No.2. She further deposed that Respondent No.2 had forcibly removed her clothes and laid her on the mattress on the cot on the ground floor of the house.

7. The Trial Court found that no material contradictions had emerged in the evidence. The Trial Court further relied on the evidence of the mother of the prosecutrix-PW-2 and father PW-4. Dealing with the age of the victim, the Trial Court, by relying on the admission application filled for admission to the school (Exhibit P-1) the original school record register (Exhibit P-2) as well as the birth certificate (Exhibit P-9), came to the conclusion that the prosecutrix was a child under Section 2(d) of POCSO Act, since the date of birth was 07.03.2009. The date of incident being 13.06.2023, the victim was 14 years and 3 months of age. According to the Trial Court, the documentary evidence fulfilled the parameters

set out under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

8. Dealing with the medical evidence, the Trial Court stated that the prosecutrix was medically examined and the evidence was to the effect that no external visible injury was found on the body and genitals of the victim and her hymen was in an old torn healed state. The medical evidence was to the effect that no conclusive opinion about the crime could be given and FSL report was kept awaited for further opinion.

9. The Trial Court also noticed that the prosecution did not furnish the FSL and DNA report till the Trial was over. However, the Court held that the case was not adversely affected, since DNA report could only be corroborative in nature. The Trial Court raised the presumption under Section 29 and 30 of POCSO Act to presume that unless the contrary was proved, it was the accused who had committed the offence.

10. One would have expected the High Court hearing an application under Section 389 of Cr.P.C. for suspension of sentence to examine whether prima facie there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction. In Omprakash Sahni v. Jai Shankar Chaudhary and Another¹, this Court had the following to say on the scope of Section 389 of the Cr.P.C.

"23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the

abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal.

However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappraise the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

11. The State has also filed an affidavit before us setting out the criminal antecedents of Respondent No.2, including details about the cases in which he has been acquitted. Out of the 11 cases mentioned in the Chart, 5 have ended in acquittal and 6 are pending. The chart is set out hereinbelow:-

S. No.	Case Nos. along with Date	Challan No. along with Date	Police Station	Any other particular
1.	FIR No. 279/2010 dated 06.12.2010 under Sections 3/25, Arms Act	Challan No. 176/10 dated 23.12.2010	Nadouti	
2.	FIR No. 332/2010 dated 05.08.2010 under Sections 341, 323, 325 IPC	Challan No. 62/10 dated 30.08.2010	Karouli	
3.	FIR No. 47/2011 dated 05.04.2011 under Sections 457 and 380 IPC	Challan No.64/12 dated 28.06.2012	Kudhgaon	
4.	FIR No.128/2011 dated 25.06.2011 under Sections 457 and 380 IPC	Challan No. 91/12 dated 20.06.2012	Karauli	Judgement on 18.03.2013 By ACJM Acquitted:
5.	FIR No.105/2012 dated 24.04.2012 under Sections 3 and 25 Arms Act	Challan No. 100/12 dated 16.07.2015		Judgment on 11.02.2021 Acquitted
6.	FIR No. 82/2012 dated	Challan No.	Karauli	Judgement on

	01.04.2012 under Sections 394, 120B IPC and 3 and 25 of Arms Act	96/12 dated 12.07.2012		25.01.2014 by ACJM, Karauli Acquitted: benefit of doubt given
7.	FIR No.166/2015 dated 03.09.2015 under Sections 323, 341 IPC	Challan No. 116/15 dated 16.10.2015		Acquitted on 08.02.2020 by ACJM
8.	FIR No. 59/2017 dated 25.04.2017 under Sections 323, 341 and 34 IPC	Challan No. 44/17 dated 04.05.2017		Acquitted on 08.02.2020 by ACJM, Lok Adalat
9.	FIR No. 43/2019 dated 27.01.2019 under Sections 3 and 25 Arms Act	Challan No. 33/19 dated 25.03.2019		
10.	FIR No.318/20 dated 13.12.2020 under Sections 379, and 411 IPC	Challan No. 40/21 dated 10.03.2021		
11.	FIR No. 147/2021 dated 08.07.2021 under Sections 147, 323, 341 IPC	Challan No. 121/21 dated 30.09.2021		
12.				

12. Taking into account the fact that the High Court has not adverted to any of the relevant factors for considering the case for suspension under Section 389 and keeping in mind the antecedents, we are of the opinion that High Court was not justified in suspending the sentence.

13. In the affidavit filed before us, Respondent No.2 has contended that there is no allegation of post-bail misconduct or breach of conditions warranting the setting aside of the bail order. The submission is fallacious. There is clear distinction in law between setting aside of the bail by a higher Court and cancellation of the bail. While cancellation of bail is due to some supervening circumstances like breach of bail condition, setting aside of the bail is concerned not with the breach of condition but with the justifiability and soundness of the order granting bail (See Neeru Yadav v. State of Uttar Pradesh and Another2).

14. It has been further contended that there was lack of corroborative medical and forensic evidence. The State, in its counter affidavit, averred that the FSL/DNA report could not be presented by the prosecution before the conclusion of trial and that the FSL report which has since been received does mention the presence of male DNA/semen of the accused on the private part and underwear of the

victim. We are not inclined to comment one way or the other on the merits of the FSL report and we leave it to the prosecution if it so desires to resort to such legally permissible procedure as is available in law to bring the same on record.

15. Independent of the FSL and DNA report and considering the nature of the case and the antecedents of Respondent No.2 and after carefully examining the judgment of conviction, we feel that the High Court was not justified in suspending the sentence.

16. The reasoning of the High Court, set out above, falls far short of the parameters required under Section 389 of Cr.P.C. for enlargement of a convict, punished for heinous offence, on bail after suspending the sentence. The finding that no sexual assault was found, without considering the overall nature of the evidence of the case, is completely untenable. According to the evidence of the prosecutrix, Respondent No.2, at gunpoint, closed her mouth and forcibly took her to the house of Amro and committed rape on her.

All that the medical evidence said was that no conclusive opinion about the crime could be given since FSL Report was awaited. That does not mean that the ocular evidence could be ignored. As far as non-availability of FSL Report is concerned, the prosecution has explained the situation and the Trial Court has also found that the non-availability of the DNA Report did not adversely affect the case of the prosecution. The reasoning that despite the availability of washrooms in the house it was difficult to believe that the prosecutrix could go out for the toilet, is conjectural in nature.

17. In *Vijay Kumar v. Narendra and Others*³ this Court observed as follows:

"10. On perusal of the record and on consideration of the submissions made by the learned counsel appearing for the parties, we are of the view that in the context of the facts and circumstances of the case the High Court was in error in passing the order releasing the respondents on bail. The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents.

In the above circumstances, it is difficult for us to even surmise the circumstance which prompted the learned Single Judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well settled that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

Our attention has not been drawn to any material which would show that the learned Single Judge took into consideration the relevant factors while passing the bail order. We refrain ourselves from making any observation touching on merits of the case lest it may prejudice any of the parties. Suffice it to state that we do not consider this a fit case for grant of bail to the respondents during pendency of the appeal filed by them."

Though said in the context of Section 302 IPC, it applies with equal force to a case of the present nature under the POCSO Act, also.

18. We make it clear that the observations made herein are only for the purpose of setting aside the order of suspension of sentence.

19. In view of what has been stated hereinabove, we set aside the order of the High Court dated 03.09.2024 in S.B. Criminal Misc. Suspension of Sentence Application (Appeal) No. 852 of 2024 in S.B. Criminal Appeal No. 397 of 2024.

The appeal is allowed. Respondent No.2 is directed to surrender before the Court of Special Judge (POCSO) Karauli, (Rajasthan), on or before 30th August 2025, failing which, the State shall take Respondent No.2 into custody.

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

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

New Delhi;

August 06, 2025

1 (2023) 6 SCC 123

2 (2014) 16 SCC 508

3 (2002) 9 SCC 364

IN THE SUPREME COURT OF INDIA

XXX

Vs.

Union of India and Ors.,

[Writ Petition (Civil) No. 699 of 2025]

HEADNOTE – Dismissed the writ petition filed by Allahabad High Court Judge Justice Yashwant Varma challenging the in-house inquiry report, which indicted him in the case-at-home scandal.

JUDGMENT

Dipankar Datta, J.

PREFACE

1. A deeply anguished Judge of the Allahabad High Court¹ has petitioned this Court for enforcement of his Fundamental Rights under Articles 14 and 21 of the Constitution of India by invoking his Fundamental Right to constitutional remedy guaranteed by Article 32 thereof.

2. Lest any observation made by us denies the petitioner a level playing field in any future proceedings that he might face, we would tread the path cautiously and refer to, very briefly, only the bare facts leading to presentation of this writ petition as well as deal with only such of the several contentions, as urged, to the extent the same are absolutely necessary for our decision.

FACTS

3. Petitioner finds himself in an unsavoury situation. While the Petitioner was a Judge of the Delhi High Court, there was an incident of fire at a store-room in the bungalow premises allotted to him. On the date of the incident, the Petitioner was away from home. In the process of dousing the fire, certain burnt currency notes were discovered in the store-room. Such discovery gave rise to suspicion that the Petitioner may not have followed the universally accepted values of judicial life including those included in the Restatement of Values of Judicial Life dated 31st October, 1997; consequently, his conduct fell for scrutiny. Without wasting time, the "In-house Procedure" devised by the Supreme Court in its Full Court meeting dated 15th December, 1992 was set in motion.

The Chief Justice of the Delhi High Court³ vide letter dated 21st March, 2025 sought a response from the Petitioner. In his response dated 22nd March, 2025,

the Petitioner's defence, inter alia, was that no cash was ever placed in the store-room by him or his family members and he strongly denounced the suggestion that the cash belonged to him or his family members. Petitioner also stated that the same must have been planted in the store-room to frame him. However, the Petitioner neither denied the incident of fire nor discovery of the burnt currency notes. Upon receipt of the response, the same was considered. Inter alia, on 22nd March, 2025, a three-member Committee⁴ was constituted by the Chief Justice of India⁵.

A press release of even date named the members of the COMMITTEE, and also disclosed that the CJ, DHC was asked not to assign judicial work to the Petitioner. At or about the same time, presumably on the orders of the CJI, certain documents/photographs/video footage linked to the fire incident and discovery of currency notes had been placed in the public domain. On 24th March, 2025, the Collegium of the Supreme Court recommended the Petitioner's repatriation to his parent High Court. Immediately thereafter, the COMMITTEE set out to accomplish the task assigned to it. The fire ravaged storeroom was inspected. Versions of several witnesses having some knowledge of and/or relation with the incident of fire/discovery of burnt currency notes were recorded by the COMMITTEE.

Petitioner was furnished the versions of the witnesses. Thereafter, he was afforded an opportunity to state his case. An inquiry report⁶ dated 3rd May, 2025 of the COMMITTEE followed. On the basis of appreciation of the materials collected in course of the inquiry, the COMMITTEE recorded in the REPORT of having found sufficient substance in the allegations raised in the letter dated 22nd March, 2025 of the CJI. It was recorded by the COMMITTEE that misconduct found proved is serious enough to call for initiation of proceedings for removal of the Petitioner from his office.

Vide letter dated 4th May, 2025, the CJI gave the Petitioner the option to resign or to seek voluntary retirement within 6th May, 2025, failing which the competent authorities would be intimated to initiate action for removal. Petitioner responded on 6th May, 2025 seeking reconsideration of the letter dated 4th May, 2025 and more time to submit a written representation upon thorough review of the REPORT. At the same time, the Petitioner further expressed his inability to either resign or seek voluntary retirement in the event his prayers for grant of additional time and reconsideration were not allowed.

According to the Petitioner, acceptance of such advice could imply acquiescence to a process and outcome that he considered fundamentally unjust. Petitioner also urged that strict confidentiality be maintained by all stakeholders. The prayers, apparently, were not granted and a further press release of 8th May, 2025 came to be issued recording that in terms of the PROCEDURE, the CJI had written to the

nation's Hon'ble President and Hon'ble Prime Minister and forwarded the REPORT of the COMMITTEE and the response of the Petitioner dated 6th May, 2025. What exactly were the contents of the CJI's letter is, however, unknown to the Petitioner as well as us.

4. In the prevailing circumstances, the Petitioner presented this writ petition on 17th July, 2025, claiming the following relief from the Court:

a. Issue an appropriate writ, order or direction declaring Paragraphs 5(b) and 7 of In-House Procedure dated 15.12.1999 to the extent that it enables the In-House Committee to inquire and comment on the existence of 'serious misconduct warranting removal' and the Hon'ble CJI to intimate the same to the Hon'ble President and the Hon'ble Prime Minister for initiating proceedings for removal and other consequential action as being unconstitutional and ultra vires.

b. Issue an appropriate writ, order, or direction declaring the intimation by the Hon'ble CJI to the Hon'ble President and the Hon'ble Prime Minister (as referred to in the Press Release dated 08.05.2025) for initiation of action for removal as being unconstitutional and ultra vires art 124 and 218 and quash the same.

c. Issue an appropriate writ, order, or direction to quash and set aside the Final Report dated 03.05.2025 submitted by the Committee, and all consequential actions taken pursuant to the same.

d. Pass such other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.

ARGUMENTS FOR THE PETITIONER

5. Mr. Kapil Sibal, learned senior counsel, duly assisted by other senior counsel, advanced arguments at length in support of the writ petition. A brief note of submissions was also placed by Mr. Sibal before the Court, which duly captures the points of challenge and the contentions in support of the relief claimed.

6. Mr. Sibal commenced his arguments by submitting that "it is a matter of moment".

7. According to Mr. Sibal, the Petitioner is aggrieved by the PROCEDURE to the extent it permits the Committee to opine as to whether the misconduct calls for initiation of proceedings for removal. He is also aggrieved because the PROCEDURE permits the CJI to intimate the President and the Prime Minister that the misconduct warrants initiation of proceedings for removal.

8. In course of his arguments, Mr. Sibal outlined what the Petitioner was not challenging. While fairly admitting that the PROCEDURE itself is a valid in-

house mechanism contemplated for the purpose of discipline by self-regulation by the higher judiciary, Mr. Sibal laid challenge to paragraphs 5(b) and 7 (ii) thereof on the ground that these are ultra vires the Constitution violating Articles 124 and 218 thereof. It was also fairly admitted that even though the COMMITTEE'S remit was to conduct a fact-finding exercise, the subsequent recommendation by the COMMITTEE regarding the necessity to initiate proceedings for removal of a Judge is unconstitutional.

9. Moving ahead, Mr. Sibal accepted that he did not see any wrong in the CJI in advising the Chief Justice of the concerned High Court not to allocate judicial work to the Judge under probe or the CJI's authority to forward the report of the Committee to the President and the Prime Minister along with intimation of the advice to the Chief Justice of the concerned High Court not to allocate judicial work to the concerned Judge.

10. While, however, confining the constitutional challenge to the validity of paragraphs 5(b) and 7 (ii) of the PROCEDURE, Mr. Sibal contended that Articles 124 and 218 of the Constitution are the only provisions under which a Judge of a High Court may be removed. In exercise of the powers under Article 124(5), the Parliament has enacted the Judges (Inquiry) Act, 1968. He argued that the constitutional provisions read with the Inquiry Act constitute a complete and comprehensive code which occupies the field of the process for removal.

11. Continuing further, Mr. Sibal stressed that the tenure of a High Court Judge is protected by the Constitution, and such a Judge is subject to the Constitution and the Constitution alone. Even Parliament is not permitted to discuss the conduct of any Judge either of the Supreme Court or of the High Courts except when a MOTION for presenting an address is admitted. Hence, any procedure/process for removal, other than that provided for under Article 124, would be unconstitutional. As per the constitutional scheme, removal of a Judge from office is subject to the Judge being found guilty of proved misbehaviour or incapacity in an inquiry conducted under the Inquiry Act; however, the PROCEDURE to the extent it could trigger proceedings for removal, without being bound by the constitutional rigours, is liable to be held ultra vires.

12. Mr. Sibal further argued that the removal process, set in motion by the PROCEDURE with the Committee being empowered to make recommendation, lacks constitutional sanction or contemplation. As against the safeguards provided in the Inquiry Act, such as framing of charges, presentation of evidence in support of the charge(s), statement of defence, cross-examination of witnesses, strict proof, etc.- all of which are compliant with the overarching mandate of Article 14 - the PROCEDURE contemplates such procedure as may be appropriate in the facts of a case.

The PROCEDURE does not obligate the Committee to follow the codified or defined rules of evidence and permits the Committee to adopt such procedure as necessary, potentially leading to holding a Judge guilty, not just of serious misconduct but also calling for his removal. Such process, based only on a preliminary or prima facie view, where the Judge is denied the procedural safeguards which are otherwise available in consonance with due process, is wholly arbitrary and violative of Article 14 of the Constitution.

13. The report of the COMMITTEE, Mr. Sibal further contended, could only be used by the CJI to take corrective measures within his domain. It cannot possibly interfere with the process envisaged under Article 124. Separation of powers that is in-built in the Constitution demands that the judicial institution remains clear of the constitutional process undertaken for removal.

14. Finally, Mr. Sibal sought to again impress upon us that the PROCEDURE to the extent it permits the CJI to trigger the initiation of removal process by the Parliament through his recommendation is bound to have its own impact. Though termed as a recommendation or advice, such recommendation/advice from a high constitutional functionary such as the CJI would clearly be far more than being merely persuasive and is bound to influence the decision making and evaluation process. It would act as a virtual death knell for a Judge, particularly based on a prima facie evaluation of the allegations. Such process would also circumvent the constitutionally prescribed mechanisms.

15. In any case, Mr. Sibal argued, uploading of the photographs/video footage on the website of the Supreme Court together with the REPORT of the COMMITTEE has the effect of convicting the Petitioner even before the procedure under Article 124 has been initiated. Such being the state of affairs, the powers of the CJI cannot extend to making such a recommendation. Hence, paragraphs 5(b) and 7(ii) of the PROCEDURE need to be set aside not only being violative of the constitutional scheme for removal of Judges but also because they deprive the Petitioner of equal protection of the laws, thereby infringing his valuable right under Article 14 of the Constitution.

16. Having completed his address on the constitutional challenge, Mr. Sibal placed reliance on the decisions of this Court in *Indira Jaising v. Supreme Court of India*⁸ and *Sahara India v. SEBI*⁹, to contend that the allegations against the Petitioner and the correspondence exchanged by and between him and the CJI as well as the evidence (photographs/video footage), ought not to have been put in the public domain.

By so doing, not only has the good reputation of the Petitioner as a Judge (which he built by years of dedicated work) been tarnished, the public perception based on viewing of such evidence led to an exercise which has held the Petitioner

guilty even before an inquiry according to fair procedure could commence and he being afforded the opportunity to raise an effective defence. Highly critical of uploading of the photographs/video footage on the website of this Court, Mr. Sibal contended that the Petitioner's precious right under Article 21 stood abrogated right from the inception.

17. Relying heavily on the decision of the Constitution Bench in *Sub-Committee on Judicial Accountability v. Union of India*¹⁰, Mr. Sibal argued that the powers of the CJI in case of removal of a High Court Judge stand restricted. It was pointed out that as the CJI has no disciplinary control over Judges of the High Courts, the procedure for removal is not akin to removal of a delinquent employee. The CJI, it was contended, cannot have an authoritative say or partake in the process, which is otherwise the preserve of the Parliament.

18. Referring to the decision in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*¹¹, Mr. Sibal urged that the observations made therein were only intended to fill the 'yawning gap between proved misbehaviour and bad conduct inconsistent with the high office'. The PROCEDURE, however, reaches far and beyond filling the gap and, in fact, attempts to kick-start the process under Article 124(5), which is the sole prerogative of the Parliament.

19. While concluding, Mr. Sibal prayed that paragraphs 5(b) and 7(ii) of the PROCEDURE be declared ultra vires. He also prayed for a declaration that none including the Parliament be influenced either by the REPORT of the COMMITTEE or the recommendation/advice of the CJI.

20. We heard Mr. Rohatgi, learned senior counsel assisting Mr. Sibal, submit at the very end that the Petitioner ought to have been given an opportunity of personal hearing by the CJI before making his recommendation/tendering his advice to the President and the Prime Minister. To support such submission, he referred to a similar opportunity that was extended by the then CJI to a Judge of the Calcutta High Court who also went through the same PROCEDURE. Non-grant of such opportunity, according to him, breached principles of equality before law.

PROCEEDINGS BEFORE THE COURT

21. Although the challenge read with the prayers in the writ petition relate to the constitutionality of the PROCEDURE and the legality of the inquiry conducted by the COMMITTEE together with its REPORT, as part of the PROCEDURE, Mr. Sibal rightly did not argue the second point¹² and restricted his arguments on the point of constitutionality.

22. It is placed on record that the Petitioner not having objected to uploading of the photographs/video footage at the first available opportunity and having

participated in the inquiry conducted by the COMMITTEE without raising any demur, we posed a query: why should we entertain the writ petition at such a belated stage, notwithstanding the challenge laid on the constitutional aspect, particularly when the inquiry had culminated in submission of the REPORT by the COMMITTEE to the CJI who, in turn, had written to the President and the Prime Minister while forwarding the REPORT together with the Petitioner's response?

23. In answer thereto, Mr. Sibal submitted that since a constitutional challenge was being raised by the Petitioner and law being settled that there could be no waiver of a Fundamental Right, the Court may not decline interference and decide the writ petition based on the points argued by him.

24. During the course of hearing, we had also put it across to Mr. Sibal whether the Judges (Protection) Act, 1985¹³ would have any application in the instant case. Faced with the Protection Act, Mr. Sibal sought to counter it by submitting two points. First, that no law as is referred to in sub-section (2) of Section 3 - either the Constitution or any statutory enactment - confers such power on the Supreme Court; hence the Protection Act has no application. Secondly, since sub-section (2) of Section 3 includes Central Government/State Government, it would then mean that these authorities could also initiate proceedings for removal of a High Court Judge which would be wholly unconstitutional and could not have been the intention of the Parliament.

25. Upon hearing Mr. Sibal and Mr. Rohatgi, we did not consider it necessary to issue notice to the respondents and reserved judgment.

QUESTIONS

26. Based on Mr. Sibal's arguments as well as the facts on record, the following substantial questions of law arise for an answer:

I. Should the writ petition be entertained at all having regard to the conduct of the Petitioner?

II. Does the PROCEDURE have legal sanction?

III. Is an inquiry and the consequent report in terms of the PROCEDURE (which could be unfavourable to the Judge under probe) a parallel and extra-constitutional mechanism?

IV. Does paragraph 5(b) of the PROCEDURE foul Article 124 and Article 125 read with Articles 217 and 218 of the Constitution or abrogate any Fundamental Right of a Judge of a High Court?

V. Did the CJI/the COMMITTEE constituted by the CJI act in terms of the PROCEDURE or in deviation thereof?

VI. Is the requirement of paragraph 7(ii) of the PROCEDURE obliging the CJI to forward the report of the Committee to the President and the Prime Minister unconstitutional?

ANALYSIS AND FINDINGS WITH REASONS

27. Appreciating the merits of the arguments advanced on behalf of the Petitioner and expressing our opinion ought to be preceded by an examination of the provisions in the Constitution relating to removal of a Judge of a High Court from office, the law in terms whereof inquiry has to be held, the genesis of the PROCEDURE, what this PROCEDURE is all about, the role of the CJI, the nature of inquiry the PROCEDURE contemplates, what impact does such inquiry have on a Judge of a High Court whose conduct is under probe, and other related issues including the aspect of applicability of the Protection Act.

This would also necessarily require us to take note of the precedents in the field which find place in the compilation of judgments handed over by Mr. Sibal. In our view, such an exercise would significantly facilitate and aid answering the above questions effectively and thereby enable us to complete the task at hand appropriately.

CONSTITUTIONAL PROVISIONS AND THE INQUIRY ACT

28. That a Judge of a High Court cannot be removed from office except on the ground of proved misbehaviour or proved incapacity admits of no doubt. The provisions relatable to removal of a Judge of a High Court from office are traceable to Articles 217 and 218 read with Article 124. Clauses (4) and (5) of Article 124 read as follows:

124. Establishment and constitution of Supreme Court

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

29. Articles 217 (to the extent relevant) and 218 provide:

217. Appointment and conditions of the office of a Judge of a High Court

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that-

(a) ***

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) ***

(2) ***

(3) ***

218. Application of certain provision relating to Supreme Court to High Courts The provisions of clauses

(4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

30. The law that is referred to in clause (5) of Article 124 is the Inquiry Act.

31. The Constitution itself does not prescribe the procedure for the presentation of an address and for investigation and proof of the misbehaviour or incapacity of a Judge but leaves it for the Parliament to regulate the same by law. In exercise of such powers, as discussed above, the Parliament enacted the Inquiry Act. The Inquiry Act, inter alia, provides for constitution of a committee which is to conduct an investigation/inquiry into the allegation of misbehaviour or incapacity levelled against the Judge. The procedure enumerated in the Inquiry Act is in consonance with the principles of natural justice in that, formal charges are framed, the Judge is provided with the supporting material for each charge, opportunity is extended to cross-examine witnesses as well as to present his defence.

The committee has the same powers as that of a civil court under the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of a person, examining a person on oath, requiring discovery and production of documents, receiving evidence on oath, issuing a commission for examination of witnesses or documents, and for all such other matters as may be prescribed. It is imperative to note that if the Judge is not found guilty of any charge(s) by the committee, then the pending MOTION in the House or Houses of Parliament will not be proceeded with. Thus, it marks the end of the proceedings.

32. The process for impeachment of a Judge, however, is very rigid at all levels - starting with a MOTION in the House, followed by an investigation/inquiry conducted by a committee comprising of persons of high calibre, adherence to fair procedure, then the necessity of approval by a majority of the Houses and finally the approval by the President whereafter a Judge can be removed from office by impeachment.

33. These provisions apart, there are two other similarly worded articles in the Constitution which, though not directly related to removal of a Judge of a High Court, impose restrictions on discussions in the Parliament/State Legislatures with respect to the conduct of a Judge of a High Court. They are Articles 121 and 211.

34. Mr. Sibal is right in his contention that apart from proviso (b) of clause (1) of Article 217 and Article 218 read with clauses (4) and (5) of Article 124, there is no other provision in the Constitution relating to removal of a Judge of a High Court from his office. He is also right in contending that Article 121 even bars the Parliament to discuss the conduct of a Judge of a High Court except in the stated situation. Similar is the restriction imposed by Article 211.

35. A reading of the Constituent Assembly debates does not reveal any discussion or debate on any proposed measure, other than removal by the Parliament in the manner constitutionally ordained, if the conduct of a Judge of a High Court amounts to misbehaviour but does not amount to such misbehaviour as would warrant the extreme measure of removal from office. The framers of the Constitution, in their wisdom, possibly might have thought that having regard to the status of a Judge, being a high constitutional functionary in whom the people would repose trust and faith for rendering justice, only such individuals possessing the highest standards of integrity and moral character, apart from legal acumen, would be considered for appointment to the judicial office; yet, should there be an exceptional situation calling for removal of a Judge from office and to ensure that the Constitution is not incomplete without an in-built mechanism for a disciplinary measure, provisions for removal (by impeachment) were incorporated.

Indeed, it took Parliament long 18 (eighteen) years after the advent of the Constitution to enact the law wherefor it was empowered by clause (5) of Article 124. It is also noteworthy that the first process of removal of a Judge by impeachment did not see the light of the day till the early nineties of the last century, i.e., almost 4 (four) decades after the people proclaimed India as a sovereign democratic republic¹⁴. It does suggest that the framers of the Constitution were not amiss in thinking that an exceptional case for disciplining a Judge might seldom arise.

36. Nonetheless, times have changed and changed drastically. With the process of appointment becoming executive-centric, fissures in the system became apparent; aberrations of Judges started attracting notice. However, possibly because of the cumbersome process that a process for removal by impeachment involves, many a Judge could have escaped unscathed without such aberration being brought in the public domain.

37. There have, however, been certain reported instances since the eighties of the last century of Judges having indulged in (perceived) misbehaviour leading to some of them being disciplined internally by the Chief Justices of the concerned High Courts.

38. Till date, there have been only 4 (four) instances of MOTIONs for removal of a Supreme Court/High Court Judges being admitted by the Parliament and not a single instance of the MOTION being carried through (although one cannot ignore that a couple of Judges strategically resigned prior to culmination of the proceedings).

39. Be that as it may, the Constitution was and is silent with regard to any disciplinary measure, short of removal by impeachment, should there be an aberration or bad conduct by a Judge of a High Court as distinguished from misbehaviour in the discharge of his judicial duties or administrative/nonjudicial/official duties.

40. It is worthy of note that six years before the turn of the last century, the Chief Justice of the Bombay High Court was compelled to demit office on the ground of alleged misbehaviour as a sequel to exertion of pressure by the local Bar Council/Bar Associations. A writ petition under Article 32 of the Constitution presented by a practising advocate changed the legal landscape of the country. The decision on such writ petition, which laid down a precedent and which we propose to consider a little later, has rightly been commented in one of the subsequent decisions of this Court as having sowed the seeds for the PROCEDURE.

THE PROCEDURE - ITS GENESIS AND CONTENTS

41. The PROCEDURE (commonly known as the "In-house Procedure"), which has been developed by the Full Court of the Supreme Court through an administrative resolution, serves as an internal mechanism to deal with complaints of misconduct or incapacity against sitting Judges, both of the High Courts and the Supreme Court.

42. Reading of paragraph 32 of the decision in Additional District and Sessions Judge 'X' v. Registrar General, High Court of Madhya Pradesh¹⁵ provides useful guidance as to how the PROCEDURE came to be devised. It reads:

"32. In furtherance of the directions issued in C. Ravichandran Iyer case, this Court constituted a committee comprising of three Judges of this Court, namely, Justices S.C. Agrawal, A.S. Anand (as he then was) and S.P. Bharucha (as he then was), and the then two seniormost Chief Justices of the High Courts i.e. Justices P.S. Misra and D.P. Mohapatra (of the Andhra Pradesh High Court and the Allahabad High Court, respectively), to lay down the 'In-House Procedure', for taking suitable remedial action against Judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the 'Restatement of Values of Judicial Life'.

The Committee submitted its report on 31-10-1997. The same was adopted with amendments, in a Full Court Meeting of the Supreme Court of India, on 15-12-1999. In the aforesaid report, three sets of procedure for taking such suitable remedial action against Judges were laid down. The first, related to the Judges of the High Courts, the second, to the Chief Justices of the High Courts, and the third, to the Judges of the Supreme Court."

43. At the outset, the PROCEDURE itself records complaints made against Judges of the High Court and the Supreme Court often being received either by the Chief Justices of the High Courts or the CJI. Such complaints, also made to the President of India, are generally forwarded to the CJI for being looked into. Considering the lack of any constitutional mechanism or otherwise based whereon measures could lawfully be taken when the CJI is seized of such complaints, the Full Court of the Supreme Court by its resolution dated 15th December, 1999 adopted the PROCEDURE.

44. The process under the PROCEDURE begins when a written complaint containing verifiable and specific allegations is received by the CJI or the Chief Justice of a High Court. What actions are required to be taken thereunder if the complaint is found to be of a serious nature have been provided in paragraphs 1 to 3 of the PROCEDURE.

45. Should the matter merit a deeper probe, the CJI would constitute a Committee consisting of two Chief Justices of the High Courts (other than the High Court to which the Judge belongs) and one High Court Judge (paragraph 3), and the Committee so constituted has the liberty to devise its own procedure consistent with the principles of natural justice (paragraph 4). The inquiry, being in the nature of a fact-finding exercise, entitles the Judge under probe to appear and have his say recorded. Since it is not a formal judicial inquiry and given its fact-finding and non-punitive character, examination/crossexamination of witnesses and representation by lawyers are excluded.

46. Upon receipt of the report of inquiry from the Committee, the CJI is empowered to take one of three possible courses of action, depending on the nature and gravity of the findings qua the allegations. Firstly, if the Committee concludes that the allegations are unfounded or lacking in substance, the CJI may choose to close the matter [paragraph 5(a) read with paragraph 6]. Secondly, if the inquiry reveals serious misconduct, the CJI may advise the Judge to resign his office or seek voluntary retirement [paragraph 7(i)].

If the concerned Judge elects not to do so, the CJI shall intimate the President and the Prime Minister that the allegations are serious enough to warrant initiation of proceedings for removal and hence, judicial work has been withdrawn [paragraph 5(b) read with para 7(ii)]. Thirdly, where the misconduct is established but it is not so serious as to warrant removal, the CJI may call the Judge concerned and advise him accordingly; the report of the Committee to be placed on record may also be directed [paragraph 5(c) read with paragraph 8].

47. Despite the decision in Additional District and Sessions Judge 'X' (supra) at paragraph 47 thereof having delineated the various steps in the PROCEDURE through which the proceedings must pass, we have given a brief overview for our own understanding.

PRECEDENTS

48. Having noted the genesis and the contents of the PROCEDURE, we proceed to consider the precedents that have been cited which directly dealt with proceedings/initiation of proceedings for removal of a Judge of a High Court.

49. The decision of the Constitution Bench of this Court in Sub-Committee on Judicial Accountability (supra) is, incidentally, the sheet anchor of Mr. Sibal's arguments.

50. At the same time, other decisions of this Court having a material bearing for deciding the question of constitutionality of the PROCEDURE would also necessarily fall for consideration which we propose to consider in seriatim.

51. Sub-Committee on Judicial Accountability (supra) had to consider issues of some importance bearing on the construction of Articles 121 and 124 of the Constitution as well the provisions of the Inquiry Act. The occasion for the controversy raised in the proceedings, the issues arising for decision and the broad contentions raised by the parties are noted in paragraphs 3, 4 and 15, respectively, of the majority judgment authored by Hon'ble B. C. Ray, J. (as His Lordship then was).

For the sake of completeness but, at the same time, to maintain brevity, we discern that the main issues arising for decision were (i) what is the legal position and status of a MOTION for the removal of a Judge under a law made pursuant to Article 124(5) of the Constitution? (ii) whether the Doctrine of Lapse would apply to such a MOTION upon the dissolution of the Lok Sabha? (iii) whether the matters arising out of or relating to a MOTION for removal of a Judge in either House of the Parliament are at all justiciable before courts of law? and (iv) whether the Court should decline to exercise jurisdiction as its decision and its writ might become infructuous (in view of the fact that in the ultimate analysis, the final arbiter whether at all any Address is to be presented rests exclusively with the Houses of Parliament and which are wholly outside the purview of the courts)?

52. One of the contentions was Contention F, reading as follows:

"Contention F:- The process of removal by means of a MOTION for address to the President is a political remedy. But the fundamental right to move the Supreme Court for enforcement of fundamental rights take within its sweep the right to access to a court comprising of Judges of sterling and unsullied reputation and integrity which is enforceable. This judicial remedy is independent of the constitutional remedy and that the court has jurisdiction to decide as to its own proper constitution. In exercise of this jurisdiction it should examine the grounds of the alleged misbehaviour and restrain the Judge from judicial functioning."

53. While rejecting the said contention, this Court, inter alia, held thus:

"111. The relief of a direction to restrain the Judge from discharging judicial functions cannot be granted. It is the entire Constitutional Scheme including the provisions relating to the process of removal of a Judge which are to be taken into account for the purpose of considering this aspect. It is difficult to accept that there can be any right in anyone running parallel with the Constitutional Scheme for this purpose contained in clauses (4) and (5) of Article 124 read with Article 121. No authority can do what the Constitution by necessary implication forbids.

Incidentally, this also throws light on the question of interim relief in such a matter having the result of restraining the Judge from functioning judicially on initiation of the process under the Judges (Inquiry) Act, 1968. The Constitutional Scheme appears to be that unless the alleged misbehaviour or incapacity is 'proved' in accordance with the provisions of the law enacted under Article 124(5) and a MOTION for presenting an address for removal of the Judge on the ground of proved misbehaviour or incapacity is made, because of the restriction contained in Article 121, there cannot be a discussion about the Judge's conduct even in the Parliament which has the substantive power of removal under Article 124(4).

If the Constitutional Scheme therefore is that the Judge's conduct cannot be discussed even in the Parliament which is given the substantive power of removal, till the alleged misconduct or incapacity is 'proved' in accordance with the law enacted for this purpose, then it is difficult to accept that any such discussion of the conduct of the Judge or any evaluation or inferences as to its merit is permissible according to law elsewhere except during investigation before the Inquiry Committee constituted under the statute for this purpose. The indication, therefore, is that interim direction of this kind during the stage of inquiry into the alleged misbehaviour or incapacity is not contemplated it being alien to our Constitutional Scheme."

(emphasis laid by Mr. Sibal)

54. Having read what Sub-Committee on Judicial Accountability (*supra*) ruled while not accepting Contention F, we proceed to take note of the next relevant decision, i.e., C. Ravichandran Iyer (*supra*).

55. Hon'ble K. Ramaswamy, J. (as His Lordship then was) speaking for the Bench in C. Ravichandran Iyer (*supra*), after referring to previous decisions, reaffirmed the importance of the CJI as the head of the institution, when a matter questioning the integrity of a Judge arises, in paragraphs 35 and 36 of the decision. In very clear words, His Lordship suggested an in-house procedure to be followed by the Chief Justices of the High Courts or the CJI, when they are seized of a complaint related to a Judge's conduct. The CJI, upon receipt of information from the Chief Justice of a High Court could take such action as "deemed necessary or warranted". Although, the concerned Judge in this case had demitted office before the judgment was delivered, this Court held that its statements were to be treated as a precedent. Relevant passages from the decision read as follows:

"35. It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned

reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted.

40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter.

This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that.

This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated

above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

43. Since the 1st respondent has already demitted the office, we have stated as above so that it would form a precedent for future."

(emphasis ours)

56. After the PROCEDURE was devised in 1999 by the Full Court, acting on the precedent set by C. Ravichandran Iyer (supra), Indira Jaising (supra) happened to be the first reported decision that had the occasion to consider whether a report of the Committee, constituted by the CJI in terms of the PROCEDURE, ought or should be placed in the public domain. Answering the question in the negative, what the Court said [speaking through Hon'ble S. Rajendra Babu, J. (as the Chief Justice of India then was)] provides valuable guidance. Relevant passages read as under:

"2. In the Chief Justices' Conference held in December 1999, sixteen clauses formed part of the Code of Conduct in addition to the declaration of assets by the Judges and in-house procedure was suggested in the event of any complaint against any Judge. However, sanction for these guidelines is absent. In our constitutional scheme it is not possible to vest the Chief Justice of India with any control over the puisne Judges with regard to conduct, either personal or judicial. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations.

It is possible to criticise that decision on the ground that no enquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. There is no adequate method or machinery to enforce the Code of Conduct. Article 124 provides for appointment of Judges of this Court and also their removal. Similarly, Article 217 deals with the appointment and removal of the Judges of the High Court. In the Judges (Inquiry) Act of 1968 provisions are made for investigation into misbehaviour or incapacity of a Judge. It may be noted that since Judges of the superior courts occupy very high positions,

disciplinary proceedings which exist in the case of all other employees cannot be thought of.

3. The Committee referred to by the petitioner is stated to have been constituted as a part of in-house procedure. A Judge cannot be removed from his office except by impeachment by a majority of the House and a majority of not less than 2/3rds present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner of conducting inquiry into the allegation of judicial conduct upon a MOTION of impeachment sponsored by at least hundred Lok Sabha Members or fifty Rajya Sabha Members. The Presiding Officer of the House concerned has the power to constitute a committee consisting of three persons as enumerated therein.

No other disciplinary inquiry is envisaged or contemplated either under the Constitution or under the Act. On account of this lacuna in-house procedure has been adopted for inquiry to be made by the peers of Judges for report to the Hon'ble the Chief Justice of India in case of a complaint against the Chief Justices or Judges of the High Court in order to find out the truth of the imputation made in the complaint and that in-house inquiry is for the purpose of his own information and satisfaction. A report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment.

In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. It is not appropriate for the petitioner to approach this Court for the relief or direction for release of the report, for what the Chief Justice of India has done is only to get information from peer Judges of those who are accused and the report made to the Chief Justice of India is wholly confidential. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed.

If any further action is to be taken as indicated in the in-house procedure itself, the Chief Justice of India may take such further steps as he deems fit. Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on

moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him."

(emphasis ours)

57. This decision was followed by P.D. Dinakaran (1) v. Judges Inquiry Committee¹⁶. In this case, no part of the PROCEDURE or any step taken in furtherance thereof was under challenge. The challenge in the writ petition under Article 32 of the Constitution was to an order of the Chairman of the Rajya Sabha constituting a three-member committee under Section 3(2) of the Inquiry Act. The principle, *nemo debet esse iudex in propria sua causa*, was sought to be invoked and a pointed challenge to the inclusion of a senior advocate in the committee in the category of 'jurist' was laid on the ground of bias. The petitioning judge had not approached the Court soon after the committee was constituted; on the contrary, he did so ten months later when he was notified of the charges. Based on such conduct, this Court held:

"80. The issue deserves to be considered from another angle. Admittedly, the petitioner raised the plea of bias only after receiving the notice dated 16-3-2011 which was accompanied by the statement of charges and the lists of documents and witnesses. The petitioner's knowledgeable silence in this regard for a period of almost ten months militates against the bona fides of his objection to the appointment of Respondent 3 as member of the Committee. A person of the petitioner's standing can be presumed to be aware of his right to raise an objection.

If the petitioner had the slightest apprehension that Respondent 3 had prejudged his guilt or he was otherwise biased, then, he would have on the first available opportunity objected to his appointment as a member of the Committee. The petitioner could have done so immediately after the publication of the Notification dated 15-1-2010. He could have represented to the Chairman that investigation by a Committee of which Respondent 3 was a member will not be fair and impartial because the former had already presumed him to be guilty.

81. However, the fact of the matter is that the petitioner never thought that Respondent 3 was prejudiced or ill-disposed against him and this is the reason why he did not raise any objection till April 2011 against the inclusion of Respondent 3 in the Committee. This leads to an irresistible inference that the petitioner had waived his right to object to the appointment of Respondent 3 as member of the Committee. The right available to the petitioner to object to the appointment of Respondent 3 in the Committee was personal to him and it was always open to him to waive the same."

58. Next in line is the decision in Additional District and Sessions Judge 'X' (supra). Hon'ble J. S. Khehar, J. (as the Chief Justice of India then was), speaking for the Court, went deep into the PROCEDURE and observed that:

"35. It is, therefore, apparent that the seeds of the 'In-House Procedure' came to be sown in the judgment rendered by this Court in C. Ravichandran Iyer case. It is also apparent, that actions have been initiated under the 'In-House Procedure', which has the approval of the Full Court of the Supreme Court of India. And, based on the aforesaid 'In-House Procedure', impeachment proceedings were actually initiated by Parliament under Article 124 of the Constitution of India. There can therefore be no doubt whatsoever, that in the above situation, the 'In-House Procedure' is firmly in place, and its adoption for dealing with matters expressed by this Court in C. Ravichandran Iyer case is now a reality.

36. Despite the above conclusion, it is imperative to take into consideration the observations recorded by this Court in Indira Jaising v. Registrar General, Supreme Court of India , as under : (SCC pp. 496-97, paras 2-3)

A perusal of the observations made by this Court in the extract reproduced above, reveals that the existence of the 'In-House Procedure' is now an established means for inquiring into allegations levelled against a Judge of a superior court, through his peers. It is a confidential inquiry for institutional credibility under the charge of the Chief Justice of India. And therefore, its affairs are to be kept out of public domain. The proceedings under the above procedure being sensitive, are required to be inaccessible to third parties. And therefore, the prayer seeking the disclosure of the report submitted on the culmination of the 'In-House Procedure' was declined. The object sought to be addressed through the 'In-House Procedure', is to address concerns of institutional integrity. That would, in turn, sustain the confidence of the litigating public, in the efficacy of the judicial process.

37. It is impermissible to publicly discuss the conduct of a sitting Judge, or to deliberate upon the performance of his duties, and even on/of court behaviour, in public domain. Whilst the 'In-House Procedure' lays down means to determine the efficacy of the allegations levelled, it is now apparent, that the procedure is not toothless, in the sense, that it can lead to impeachment of the Judge concerned under Article 124 of the Constitution of India. But, that should not be understood to mean, that an individual concerned, who is called upon to subject himself/herself to the contemplated procedure, should be precluded or prevented from seeking judicial redress.

It is now well understood, that an individual who subjects himself/herself to the jurisdiction of an authority, cannot turn around to find fault with it at a later juncture. If there is a fault, the same should be corrected, before one accepts to

submit to the jurisdiction of the authority concerned. The submission of the petitioner in the present case, to the 'two-Judge Committee', would certainly have had the above effect. We are therefore satisfied to hold, that those who are liable to be affected by the outcome of the 'In-House Procedure', have the right to seek judicial redressal, on account of a perceived irregularity.

The irregularity may be on account of the violation of the contemplated procedure, or even because of contemplated bias or prejudice. It may be on account of impropriety. The challenge can extend to all subjects on which judicial review can be sought. The objections raised on behalf of Respondent 3, in respect of the sustainability of the instant petition at the hands of Addl. D & SJ X, are therefore wholly untenable. The challenge to the maintainability of the instant writ petition, is accordingly declined.

55. In view of the consideration and the findings recorded hereinabove, we may record our general conclusions as under:

55.1. The 'In-House Procedure' framed by this Court, consequent upon the decision rendered in C. Ravichandran Iyer case can be adopted to examine allegations levelled against the Judges of the High Courts, Chief Justices of the High Courts and Judges of the Supreme Court of India.

55.2. The investigative process under the 'In-House Procedure' takes into consideration the rights of the complainant, and that of the Judge concerned, by adopting a fair procedure, to determine the veracity of allegations levelled against a sitting Judge. At the same time, it safeguards the integrity of the judicial institution.

55.3. Even though the said procedure should ordinarily be followed in letter and spirit, the Chief Justice of India would have the authority to mould the same, in the facts and circumstances of a given case, to ensure that the investigative process affords safeguards, against favouritism, prejudice or bias.

55.4. In view of the importance of the 'In-House Procedure', it is essential to bring it into public domain. The Registry of the Supreme Court of India, is accordingly directed to place the same on the official website of the Supreme Court of India."

59. It is in the conspectus of the above noted precedents that the contentions urged by the Petitioner would fall for consideration.

OTHER TOPICS

60. Dwelling on a few more topics having relevance and materiality would not be inapt. Hence, we venture to do that now while making our own observations to assist us in accomplishing our task.

ROLE OF THE CJI

61. While the CJI is no doubt *primus inter pares* - first among equals - and also does not exercise powers of superintendence over the High Courts and the Judges of the High Court, nonetheless, the CJI bears a significant moral responsibility as the foremost judicial officer to ensure that the judiciary of the country functions in a transparent, efficient and constitutionally appropriate manner.

62. Petitioner has challenged the CJI's recommendation for initiation of proceedings for removal (if at all such recommendation has been made, for we do not know what exactly was intimated to the President and the Prime Minister) on the ground that the CJI, under the constitutional scheme, has no authority to make such recommendation and moreover, such opinion would prejudice the Members of the Parliament and violate the spirit of separation of powers.

63. The PROCEDURE contemplates withdrawal of judicial work of the Judge under probe. While forwarding the report of inquiry to the President/the Prime Minister, the CJI does so for indicating why judicial work is not assigned to the Judge, not as to why he should be impeached/removed. Withdrawing judicial work from a Judge is indeed an extreme measure and, therefore, has to be based on sound reasons; hence, the report of inquiry forms the plinth for the President and the Prime Minister to be intimated of such an action. This is an important distinction, not noticed by the Petitioner.

64. Assuming *arguendo* that the CJI endorsed the findings in the REPORT submitted by the COMMITTEE and did recommend initiation of proceedings against the Petitioner for removal from office, we have no hesitation to say that the CJI is not a mere post office between the COMMITTEE and the President/the Prime Minister that the REPORT is to be forwarded without any remarks/recommendation. The CJI is clearly an important person, if not the most, in the larger scheme of maintaining institutional interest and credibility to ascertain whether a Judge has indulged in misconduct.

As per the PROCEDURE, after receiving a complaint against a Judge or a report from the Chief Justice of the High Court of which he is a Judge, the CJI has to apply his mind to the nature of complaint/report together with supporting materials, if any. If the CJI believes that the matter requires a deeper probe, he is required to constitute a Committee for an in-house inquiry. The report of inquiry may, or may not, find the allegations against the Judge to be serious, so as to call for any measure. However, if it does, the CJI is under an obligation to forward

the report to the President and the Prime Minister. We see no justification to hold that in so forwarding, the CJI may not give his own views.

65. Moreover, the President of India is not a stranger to the judicial process. In *K. Veeraswami v. Union of India*¹⁷, the Court noted that:

"51. The President is not an outsider so far as judiciary is concerned. The President appoints the Judges of the High Courts and the Supreme Court in exercise of his executive powers. Clause (1) of Article 217 provides that every Judge of the High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

Similarly the President appoints the Judges of the Supreme Court. Clause (2) of Article 124 provides that every Judge of the Supreme Court shall be appointed by the President in consultation with such of the Judges of the Supreme Court and of the High Courts as the President may deem necessary for the purpose and in case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted. The President exercises this power with the aid and advice of his Council of Ministers under Article 74 of the Constitution. (*Shamsher Singh v. State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] and *S.P. Gupta v. Union of India* [1981 Supp SCC 87 : AIR 1982 SC 149]). Parliament has no part to play in the matter of appointment of Judges except that the executive is responsible to the Parliament."

66. We wish to go a bit further in observing that the President is not only not an outsider to the judiciary but also not an outsider to the PROCEDURE itself. In the prefatory paragraphs of the PROCEDURE, as devised by the Full Court, it has been acknowledged that complaints are received by the CJI from the office of the President. Having received such complaints from the President, it is quite but natural that the CJI would not only acknowledge receipt of such complaints but also apply his mind and respond to the same, wherever necessary.

67. Pausing here for a moment, what else is the CJI expected to do, if he is of the view that the matter requires a deeper probe? We hasten to add that where the Committee itself (constituted by the CJI) finds substance in the allegations and the misconduct found is serious enough to call for initiation of proceedings for removal, the CJI does have the authority, in a fit and proper case, to endorse such finding while forwarding the report of inquiry.

68. Next, the argument that the Members of either or both houses of the Parliament could be influenced by the CJI's opinion is not acceptable since the opinion is not forwarded either to the Speaker of the Lok Sabha or to the

Chairman of the Rajya Sabha. For arguments sake, even if it is assumed that Members of Parliament have had access to the recommendation/advice of the CJI, if any, nothing much turns on it.

The Inquiry Act includes a specific mechanism which has to be statutorily followed before any address for impeachment is made in the House(s). The report of the Committee being preliminary in nature, ad hoc and not final, as held in *Indira Jaising* (supra), cannot affect the Petitioner in future proceedings unless such report is relied upon at a future stage of the proceedings/at the inquiry; if relied upon, the Petitioner would be free to exercise his rights as are available in law.

69. At the same time, it needs no emphasis that although the CJI is the head of the institution, he too is not above the law which is supreme; hence, utmost care has to be taken to ensure that any action of the CJI is not in deviation of the PROCEDURE which permits the in-house inquiry to be undertaken.

THE JUDGES (PROTECTION) ACT

70. The relevant provisions of the Protection Act are reproduced hereunder:

"2. Definition.-

In this Act, 'Judge' means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).

3. Additional protection to Judges.-

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in

force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

(emphasis ours)

71. The Protection Act, we guess, may not have been brought to the notice of this Court in any of the previous decisions considered here by us. Viewed in that light, this decision could be the first of judicial pronouncements by this Court touching Section 3(2) of the Protection Act vis-à-vis the PROCEDURE; hence, we propose to deal with it in some detail while assigning reasons for our firm opinion on applicability of the Protection Act in the instant case.

72. First, the definition of a Judge in the Protection Act is an expansive one intended to take into its fold anyone empowered by law to give a definitive judgment in a legal proceeding. Therefore, the protection envisaged thereunder applies not only to the Judges appointed under the Constitution (i.e., the Supreme Court and the High Courts) and the Judges recognised by the Constitution (the district Judiciary) but also to judges of various tribunals and quasi-judicial bodies having powers of adjudication across the country.

73. Secondly, Section 3(1) of the Protection Act provides that no Court would entertain any civil or criminal proceeding against a judge acting in his official or judicial duty or function. In the case of D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India¹⁸, it was observed that:

"57. The protection of Articles 124(4), 121, 211, the Judicial Officers Protection Act, 1850 and the Judges (Protection) Act, 1985 is to ensure independence to the judiciary. Threat to judicial process is a challenge to the authority of the court or the majesty of justice. It would be ex facie contumacious conduct."

74. While referring to the Statement of Objects and Reasons of the Protection Act, this Court in *State of Rajasthan v. Prakash Chand*¹⁹ noticed its object and purport as follows:

"35. Even under the Judges (Protection) Act, 1985 immunity has been given to judicial officers in relation to judicial work done by them as well as for the judicial orders made by them. The Statement of Objects and Reasons for introducing the Bill in relation to the 1985 Act which reads thus is instructive: 'Judiciary is one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal.'."

75. A similar sentiment was noticed in the Constitution Bench decision in Supreme Court Advocates-on-Record Assn. v. Union of India²⁰ wherein it was observed:

"724. Similarly, Section 3 of the Judges (Protection) Act, 1985 provides, inter alia, that no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. This is in addition to the protection given by Section 77 of the Penal Code, 1860."

76. Indeed, Section 3(1) is subject to Section 3(2) and does not expressly prohibit a departmental proceeding or otherwise but bars entertainment and continuance of civil or criminal proceedings against a Judge as defined in Section 2 for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

77. Section 3(2) starts with a non-obstante clause with reference to Section 3(1) and inter alia specifically ordains that the authorities mentioned therein are not denuded of the power to initiate civil, criminal, or departmental proceedings or otherwise against any Judge as long as the law in force allows them to do so. We place sufficient emphasis on the word "otherwise" as present in Section 3(2).

The PROCEDURE having provisions for an in-house inquiry, with which we are concerned, is admittedly not akin to any inquiry connected with a departmental proceeding since it lacks the bearings of a true, valid and legal departmental proceeding. It is a proceeding akin to a preliminary fact-finding inquiry intended to serve a specific purpose. However, the PROCEDURE contemplating a fact-finding inquiry can and does very well fit in the mould of the word "otherwise". It is a cardinal principle that no word in a statute is superfluous. We need not burden our judgment with referring to precedents on this point.

78. We have noted the response of Mr. Sibal earlier that no law exists conferring power on the Supreme Court to initiate proceedings against a Judge of a High Court.

79. Attractive though at first blush, and accepting that a Judge cannot be removed from office except in the manner ordained by the Constitution, this submission of Mr. Sibal fails to take note of the legal position flowing from Article 141 of the Constitution. As noted in the decisions starting with C. Ravichandran Iyer (supra), the "In-house Procedure" proposes to fill the gap in the constitutional mechanism and the ground realities present. Paragraph 43 of the decision quoted above provides the guiding light for this purpose. Parliament has saved the

Supreme Court's authority to initiate such proceedings and take such action as it thinks fit, provided there is a law for the time being in force in that regard by enacting sub-section (2) of Section 3; and, the law declared by the Court in *C. Ravichandran Iyer (supra)* is what bridges the breach.

80. Moreover, the 1999 Full Court resolution has been framed on the basis of this decision; therefore, there is full legal sanction to the PROCEDURE when read in the light of guidance provided by Article 141 of the Constitution.

81. It was also submitted that if we propose to interpret the Protection Act as conferring power to proceed against a Judge of a High Court, then the Central Government/State Government would also be able to initiate proceedings for such removal. While respectfully disagreeing with Mr. Sibal, we have no hesitation to hold that inclusion of the Central Government or the State Government or such other authority in sub-section (2) of Section 3 is for the simple reason that 'Judge', as defined in the Protection Act, is not limited to the Judges of the Supreme Court and/or the High Court but also includes judges conducting judicial and quasi-judicial proceedings in the Tribunals and quasi-judicial bodies, thereby ensuring that the protection granted under the Protection Act encompasses all such individuals having authority to exercise judicial power under the law.

82. In our considered opinion, the Protection Act does not offend the constitutional scheme present; and, being in addition to the extant provisions, does not affect the Supreme Court's authority to take such action, as deemed fit, against a Judge of a High Court who is alleged to have indulged in misconduct in terms of the PROCEDURE.

83. In interpreting the Protection Act, we are once again reminded of the "yawning gap" in the procedure as noticed in *C. Ravichandran Iyer (supra)*, on 'who' sets the ball rolling. If we were to accept the contention of Mr. Sibal, the Supreme Court and the CJI would be powerless to initiate any action even on the face of allegations of gross misconduct against a sitting Judge of a High Court which cannot be the legislative intention. To address the growing concern of incidents of misconduct, the PROCEDURE has been craftily designed to discipline Judges internally for such misconduct that is sufficient to tarnish the dignity of his office as well as the institution to which he belongs.

The recognition that self-imposed ethical norms are integral to the judiciary's credibility, forms the cornerstone of the non-statutory but wholly legal internal procedure for maintaining discipline and, by extension, integrity of the institution. On this construction, we hold that the CJI's discretion as to whether, where and when to act, mindful of the substance in the complaints received, would obviously be a regulated discretion; but, once the ball is set rolling by the

CJI, it must end with his recommendation/advice to the President and the Prime Minister depending on what the Committee records as its findings.

84. It does not require any emphasis that judicial officers in every rank, and more specifically, the Judges in the higher echelons of the Judiciary owe huge obligation to the people of this country. No Judge, either of the Supreme Court or the High Courts, being above the law, acting in the discharge of his judicial or administrative/non-judicial or official duties in a manner attracting a possible complaint of not abiding by the Restatement of Values of Judicial Life (widely regarded now as the Code of Conduct for Judges of the Supreme Court and the High Courts) has to be shunned. Frivolous complaints being lodged by disgruntled litigants, lawyers and others, though cannot be avoided, the path of probity also can never be abandoned by a Judge.

Any thought of there being absence of disciplinary measure other than removal by impeachment (which has never fructified over the years despite occasions calling for it) and therefore escaping unscathed despite committing a misbehaviour or indulging in bad conduct/misconduct, is what is normal, should be eschewed. With the advancement in science and technology and all other spheres of work, it is quite possible to bring to the CJI's notice how a particular Judge might have conducted himself inappropriately calling for strict action. Withdrawal of judicial work from a Judge is an extreme measure that the PROCEDURE expressly permits.

There are other measures too, which could be explored if Judges are found to deviate from the Code of Conduct. The Judges should, therefore, act cautiously and exercise their discretion wisely, to evade creation of a situation where initiating action becomes imperative. The judiciary in India is characterised by judicial independence; however, judicial independence signifies flexibility of judicial thought and the freedom to adjudicate without external and internal pressure, and not unfettered liberty to act as one might wish. Just as judicial independence is fundamental, so too is judicial accountability; compromising one compromises the other.

85. Given that the only formal mechanism for addressing judicial misbehaviour under the Constitution is impeachment by Parliament, it must be remembered that not all misbehaviour of Judges necessarily rise to the level of "proved misbehaviour" attracting Articles 217 and 218 read with clauses (4) and (5) of Article 124. The Constitution's silence on cases that do not rise to the level of proven misbehaviour creates a significant structural vulnerability, which has since been addressed by the PROCEDURE.

The PROCEDURE acts as a check on Judges' unbridled freedom of action and thereby seeks to prevent outcomes that could be harmful or unjust. Under the

present set-up, impeaching the PROCEDURE or any part thereof may itself be viewed as unreasonable and unjustified. Expressing our imprimatur of the PROCEDURE, we close our discussion on the Protection Act without spilling further ink on this issue.

THE NATURE OF INQUIRY UNDER THE PROCEDURE

86. We wish to now dwell on the nature of inquiry that the PROCEDURE contemplates.

87. The inquiry that is part of the PROCEDURE is designed to be a fact-finding inquiry as distinguished from a guilt-finding inquiry; and it is, therefore, akin to a preliminary inquiry that precedes regular disciplinary proceedings against a delinquent employee.

88. To repeat, Indira Jaisingh (supra) terms the report of the in-house inquiry as preliminary in nature, ad-hoc and not final.

89. Once the CJI constitutes the Committee, it is required to hold an inquiry into the allegations contained in the complaint in the manner that the PROCEDURE ordains. The Committee does have some leeway to devise its own procedure consistent with the principles of natural justice. Though the Committee is not required to extend opportunity of cross-examination of the persons who come before it for giving their versions or opportunity to the Judge under probe to be represented by a lawyer, the Judge must be called upon to appear and given opportunity to have his say recorded.

After concluding the inquiry, the Committee may conclude and report to the CJI that (a) there is no substance in the allegations contained in the complaint, or (b) there is sufficient substance in the allegations contained in the complaint and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Judge, or (c) there is substance in the allegations contained in the complaint but the mis-conduct disclosed is not of such a serious nature as to call for initiation of proceedings for removal of the Judge.

90. Given its very nature, the Committee by preparing its report and recording its findings, effectively assists the CJI in arriving at a conclusion as regards the proposed action in a given case based thereon.

91. Admittedly, this is a case falling within the second situation where the COMMITTEE has recorded an opinion that there is sufficient substance in the allegations contained in the letter of the CJI and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Petitioner.

92. Insofar as the purpose that a preliminary enquiry seeks to serve, there are multiple decisions of this Court on the point. A Constitution Bench in *Champaklal Chimanlal Shah v. Union of India*²¹ observed that a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused.

In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra*²², it has been held that a preliminary inquiry has nothing to do with the inquiry conducted after the issue of charge-sheet; once regular inquiry is held under the rules, the preliminary inquiry loses its importance and whether the preliminary inquiry was held strictly in accordance with law or by observing principles of natural justice remains of no consequence. *Nirmala J. Jhala v. State of Gujarat*²³ is one other decision where this Court categorically observed that the material collected in a preliminary inquiry has no relevance once a regular inquiry has started and no material obtained during such preliminary enquiry can be used against the delinquent employee, if such employee had no occasion to cross-examine the concerned witnesses.

All these decisions are authorities on the point that generally, in the sphere of disciplinary proceedings against delinquent officers/employees, the concept of a preliminary inquiry contrasted with an inquiry, which is part of a disciplinary/departmental enquiry, is different. The *raison d'être* of a preliminary enquiry is to determine whether a full-fledged inquiry is at all needed based on the materials collected in course thereof.

93. That the "In-house Procedure" is not toothless and may very well trigger initiation of proceedings in the Parliament for removal is acknowledged in *Additional District and Sessions Judge 'X' (supra)*; however, no action for removal can be taken merely on the basis of the Committee's report since the Inquiry Act contemplates a full-fledged inquiry against the concerned Judge. To that extent, the report of the Committee may not carry much weight. Even though the report might record that there is sufficient substance in the allegations, the Inquiry Act does not debar the Judge charged with misbehaviour to raise an effective defence by presenting such evidence as are admissible and relevant once the evidence of the witnesses supporting the charge are recorded.

Needless to say, if any reliance is placed by the Committee under the Inquiry Act upon the report of the Committee prepared under the PROCEDURE, the Judge charged has a right to be informed whereupon it shall be open to him to raise such points as to non-reliability/nonacceptability thereof as are available in law. All rights of a Judge charged with misbehaviour have, necessarily to be traced to the Inquiry Act as well as rules of fair play so as to facilitate a fair, reasonable and adequate opportunity of hearing. Nonetheless, the lack of opportunity of a

fair hearing in the PROCEDURE cannot prejudice the concerned Judge given the nature of the inquiry.

94. In line with the previous decisions, we have no hesitation to hold that the nature of inquiry in the instant case is preliminary, ad-hoc and not final as well as not violative of any principle of natural justice.

WHY IS THE DECISION IN SUB-COMMITTEE ON JUDICIAL ACCOUNTABILITY (SUPRA) NOT APPLICABLE?

95. Reliance placed by Mr. Sibal on the decision in Sub-Committee on Judicial Accountability (supra) is, in our considered view, misplaced. That decision is distinguishable both on facts and on law for the following reasons: First, the issue which arose in such case was materially different from the one in the present case. The questions which were required to be answered by this Court in the said decision have been noted earlier in paragraph 51 (supra). Anything and everything said in a decision, while answering the questions which might arise, do not form a precedent. It is settled law that a decision is an authority for what it decides.

What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from every observation made in the decision. Secondly, the Constitution is not a static document. Constitutional Courts are obligated to interpret the Constitution in the light of evolving standards and institutional needs. The decision in C. Ravichandran Iyer (supra) marked a turning point by recognising the necessity of an "In-house Procedure" to address complaints against Judges.

The decision in Sub-Committee on Judicial Accountability (supra), rendered years earlier, could not have envisioned the framework developed in C. Ravichandran Iyer (supra) simply because of the nature of problem that the latter had to solve. Thirdly, C. Ravichandran Iyer (supra), while being one amongst few authoritative pronouncements by this Court acknowledging the primacy of the CJI in preserving the institutional integrity of the judiciary, categorically held that the CJI may take preliminary steps when credible allegations arise, without encroaching upon the domain of the Parliament under Article 124(4).

The role assigned to the CJI in this context is entirely distinct and was never under contemplation in Sub-Committee on Judicial Accountability (supra). Fourthly, in C. Ravichandran Iyer (supra), though the concerned judge had tendered his resignation and demitted office before the judgment was pronounced, the Court nonetheless proceeded to lay down the legal foundation for an in-house mechanism and setting it as a precedent for all future cases.

The Court's stance makes it evident that Sub-Committee on Judicial Accountability (supra) is not applicable to the issue of "In-house Procedure". Fifthly, the Protection Act did not exercise the consideration of the Court in Sub-Committee on Judicial Accountability (supra). Sixthly and finally, the evolution of the law post C. Ravichandran Iyer (supra) has seen consistent affirmation of the in-house mechanism of discipline by self-regulation by this Court. The PROCEDURE has since received judicial endorsement in at least three subsequent decisions.

96. The scope of the present matter, to a discerning eye, goes beyond the principles laid down in Sub-Committee on Judicial Accountability (supra), which did not have the occasion to address the permissibility or validity of an in-house mechanism. In any event, we do not see any observation in Sub-Committee on Judicial Accountability (supra) made by the Court precluding the judiciary from instituting internal, non-punitive mechanisms for the purpose of fact-finding and disciplinary introspection by self-regulation. The constitutional silence on internal mechanisms, in our opinion, cannot be seen as a prohibition but rather it provided a space for responsible judicial innovation which has stood the test of time.

97. For all the foregoing reasons, the ruling in Sub-Committee on Judicial Accountability (supra) cannot be read as a limitation upon the constitutional powers and responsibilities of the CJI, particularly in matters concerning internal judicial discipline and the preservation of institutional integrity.

98. Mr. Sibal's contention relying on Sub-Committee on Judicial Accountability (supra) is, thus, rejected.

ANSWERS

99. Resting on the observations/findings given above, our endeavour to answer the questions is rendered easy.

ANSWER TO QUESTION (I)

100. The question of entertainability of the writ petition assumes importance, keeping the conduct of the Petitioner in perspective as distinguished from a waiver of his rights. It has been noted that not only did the Petitioner not object to the photographs/video footage being uploaded, he participated in the inquiry without demur.

In his representation dated 6th May, 2025 addressed to the CJI too, there was no whisper of the PROCEDURE fouling any constitutional provision. Challenge to the constitutionality of paragraph 5(b) and paragraph 7 (ii) of the PROCEDURE has been raised in this writ petition only after the CJI had written to the President

and the Prime Minister, while enclosing therewith copy of the REPORT of the COMMITTEE together with the Petitioner's response dated 6th May, 2025, as required by the PROCEDURE.

101. We had repeatedly asked Mr. Sibal as to why the Petitioner waited to invoke the writ jurisdiction. Why did the Petitioner not object to the photographs/video footage being uploaded? Should the Petitioner not have approached the Court earlier without submitting to the jurisdiction of the Committee? Once the Petitioner submitted to the jurisdiction, is it not to be presumed that he did so expecting a favourable outcome and the writ petition came to be filed only when the outcome was not palatable to him? Having regard to the caution sounded in paragraph 37 of Additional District and Sessions Judge 'X' (supra), was it not incumbent for the Petitioner to point out any perceived fault or flaw in the PROCEDURE before submitting to the jurisdiction of the COMMITTEE? In view of P.D. Dinakaran (1) (supra), does the Petitioner pass the test of acting bona fide?

102. P.D. Dinakaran (1) (supra) emphasised that the petitioning judge should not have waited for 10 months to approach the Court when he had objection regarding inclusion of a member in the committee as a jurist. Mr. Sibal's argument that there cannot be a waiver of a Fundamental Right is unexceptionable. However, what was said in paragraph 81 of the decision is important. The Petitioner can well be held disentitled to relief based on his tardy conduct but not, perhaps, on the ground of waiver.

103. Mr. Sibal was, however, heard to submit that if the Petitioner had approached it earlier, the Court could well have declined interference on the ground that the writ jurisdiction may be invoked if at all the report of inquiry were adverse to his interest.

104. We do not consider this answer worthy of acceptance. There are umpteen decisions of this Court ruling that when the vires of a provision is under challenge in a writ petition, it forms one of the four exceptions to the selfimposed restraint, propounded by decisions of this Court, of not entertaining a writ petition because an alternative remedy is available to the petitioner. Then again, there are good number of decisions of this Court to the effect that challenge in a writ petition to a show-cause notice for stalling inquiries or investigative processes is not to be entertained unless the Court is satisfied that the notice is non-est for total lack of jurisdiction of the notice issuing authority to inquire into/investigate facts.

This Court, in criminal matters, even entertains challenges to criminal proceedings after police reports (charge-sheets) have been filed and interfered in fit and proper cases. There does hardly exist any strait-jacket formula that the

Courts would be loath to interfere or refuse to entertain a writ petition since the proceedings are yet to draw to a conclusion.

Every case coming before the Court for adjudication would necessarily depend on its own facts and the nature of challenge, i.e., whether challenge to the vires of a provision has been raised on prima facie strong grounds or whether a total lack of jurisdiction is shown to exist in the notice issuing authority even to inquire into or investigate facts; and, there can be no rule of universal application that the Courts must invariably decline interference for no better reason than that the proceedings, out of which the challenge stems, are pending. It was, therefore, not open to the Petitioner to believe that the Court would have refused to entertain the writ petition had he approached earlier, which made him wait.

105. Uploading of the photographs/video footage, according to the Petitioner, caused him immense harm. Not only did it lower his reputation, he was convicted in the public eye without even a preliminary inquiry. It could be so. However, what baffles us is the conduct of the Petitioner to acquiesce to such uploading, participate in the inquiry without demur, and to question such uploading only after the COMMITTEE submitted its report to the CJI recording that there was sufficient substance in the allegations.

The argument of Mr. Sibal that such uploading has had the effect of vitiating the enquiry is untenable. Though uploading of incriminating evidence available against a Judge under probe in the public domain is not a step which the PROCEDURE requires and while such uploading may not be considered to be proper, it is indeed a fait accompli. No benefit can be claimed because of such uploading of the incriminating evidence at this stage, once in a duly constituted inquiry findings have been recorded as regards the failures/omissions of the Petitioner to abide by the Restatement of Values of Judicial Life.

106. Even otherwise, inquiry had been initiated against the Petitioner in terms of the PROCEDURE which itself has been affirmed by this Court multiple times before. If indeed any fault were found in the PROCEDURE and questions were to be raised, the Petitioner ought not to have waited for completion of the factfinding inquiry set in motion by the CJI.

107. The conduct of the Petitioner, therefore, does not inspire much confidence for us to entertain the writ petition.

108. We could have closed the writ petition based on our observation as above. However, we do not wish to tread the easy route but would rest our conclusions based on the answers to the other questions too.

ANSWER TO QUESTIONS (II) AND (III)

109. These questions being related, are taken up for consideration together.

110. Mr. Sibal has referred to the decision in Indira Jaising (supra) to urge that the only source or authority of the CJI to exercise the power of ordering an inquiry is moral and ethical. According to him, the PROCEDURE has no legal sanction.

111. We are of the firm opinion that the argument is unacceptable for twin reasons, based on two key tenets.

112. The first reasoning rests on the rulings of this Court in the decisions noted above affirming the PROCEDURE, with which we are ad idem. Significantly, C. Ravichandran Iyer (supra) in express terms made it abundantly clear that the yawning gap between proved misbehaviour and bad conduct inconsistent with the high office of a Judge of a High Court could be disciplined by selfregulation through "In-house Procedure" which, in turn, while filling up the constitutional gap, would yield salutary effect.

Even though the respondent Judge had demitted office as the Chief Justice, but noting the absence of legal sanction to such procedure, the Court ruling is a revelation that its statements should form a precedent for the future. Once the dicta in C. Ravichandran Iyer (supra) constitutes a precedent, it is law declared under Article 141 of the Constitution. It is judicial legislation that emerged because of the vacuum in the field of disciplining a Judge who shows signs of delinquency.

Additional District and Sessions Judge 'X' (supra) traced the history of the PROCEDURE and stamped its approval. Merely because in Indira Jaising (supra) the source of authority was held to be moral and ethical would not assist the Petitioner. We unhesitatingly hold that might have originated as moral and ethical authority gradually transformed into legal authority of the CJI in view of C. Ravichandran Iyer (supra).

113. There is one other compelling reason for us to hold that the PROCEDURE could be seen as having a legal sanction. Sub-section (2) of Section 3 of the Protection Act has been noticed by us, above. Although sub-section (1) of Section 3 extends protection to Judges and restrains courts from entertaining and continuing proceedings - civil or criminal - in respect of any act, thing or word committed, done or spoken by a Judge when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function, the same is subject to sub-section (2).

In terms thereof, a person who is or was a Judge is not immune from proceedings being initiated by the Central Government or the State Government or the Supreme Court or any High Court or any other authority, as the case may be, under any law for the time being in force. The action that could lawfully be taken against anyone, who is or was a Judge, might be civil, criminal, departmental proceedings or otherwise; but, such an action, has to be at the instance of the named authority only if it is conferred with such authority by law.

114. That the PROCEDURE has its roots in the law declared by this Court under Article 141 of the Constitution admits of no doubt. Accordingly, we hold that 'law for the time being in force' in sub-section (2) of Section 3 of the Protection Act would include law laid down by this Court and that the term 'otherwise' read in conjunction with 'such action', appearing in the said sub-section, is wide enough to encompass measures that the PROCEDURE contemplates.

115. The contention that the PROCEDURE lacks legal sanction must, accordingly, fail.

116. Having held so, we are inclined to the view that it is not the law that once the Committee constituted by the CJI records in its report that the conduct of the Judge under probe warrants initiation of proceedings for his removal and the CJI, in turn, upon accepting such report furnishes the same together with his recommendation, if any, to the President and the Prime Minister, that would invariably in all cases result in initiation of proceedings under Article 124(4) and (5) of the Constitution (for Supreme Court Judges) and Articles 217 and 218 read with Article 124 (for High Court Judges) and the inquiry under the Inquiry Act. Report or no report, recommendation or no recommendation, whatever is the case, the Parliament's power to initiate proceedings for removal of a Judge for alleged misbehaviour or incapacity remains unfettered.

Even though there could be a case where good grounds for initiation of proceedings do exist, the Parliament may in its wisdom elect not to go ahead to initiate proceedings for removal. Contrarily, even if it is reported by the Committee under the PROCEDURE that there exists any of the two situations [para 5(a) or 5(c)] and the CJI, accepting such report, does not make any recommendation, nothing prevents the Parliament to initiate proceedings for removal if for reasons aliunde it considers necessary so to do.

Notably, if the Parliament, despite strong indication of a Judge either having indulged in misbehaviour or suffering from incapacity, does not initiate any proceedings for removal, no proceeding in a judicial forum would perhaps lie for activating the Parliament to have such Judge removed from office. The power, competence, authority and jurisdiction of the Parliament to decide what is in the best interests of the nation is left untrammelled by the PROCEDURE; hence, it is

fallacious to argue that the PROCEDURE is a parallel and extra-constitutional mechanism for removal of a Judge.

117. Yet again, the in-house inquiry or its report forming part of the PROCEDURE in itself does not lead to removal of a Judge, unlike the constitutionally ordained procedure. Thus, the in-house inquiry is not a removal mechanism in the first place, much less an extra-constitutional mechanism. We reiterate that "a stitch in time saves nine".

118. Questions (II) and (III), thus, stand answered.

ANSWER TO QUESTION (IV)

119. More than once, we have observed above how the PROCEDURE found its way into the system. The PROCEDURE having been discussed and affirmed in multiple precedents since C. Ravichandran Iyer (supra) and we having expressed our agreement therewith, the argument that para 5(b) contravenes the constitutional scheme for removal of Judges by taking recourse to Article 124 is unsustainable.

Our observations, while dealing with the relevant topics, do provide ample reasons why the PROCEDURE or the inquiry contemplated thereunder has not been considered to be in violation of any provision of the Constitution, much less Articles 14 and 21 of the Constitution. The procedure that has been laid down in the PROCEDURE is fair and just which does not compromise judicial independence either, a basic feature of our Constitution. A judge by his conduct of being fair and just is supposed to earn for himself as well as the judiciary the trust and respect of the members of the bar as well as the litigants and all other stakeholders.

If a complaint of misconduct committed by a Judge is received and if at an inquiry conducted under the PROCEDURE the allegations against such a Judge are found to have sufficient substance, he cannot claim any immunity - either by citing abrogation of his Fundamental Rights or breach of the constitutional scheme for removal of a Judge by initiating proceedings for impeachment - that his conduct is not open to be commented upon by the Committee or even by the CJI.

120. We see no reason to hold that para 5(b) of the PROCEDURE in any manner transgresses or is in conflict with any constitutional provision.

ANSWER TO QUESTION (V)

121. We have noticed each and every stage through which the proceedings against the Petitioner have passed. Right from the constitution of the

COMMITTEE till intimations were given to the President and the Prime Minister by the CJI - we have neither been shown nor is it a fact proved that either the CJI constituted COMMITTEE or the CJI acted in any manner in deviation of the PROCEDURE, except when the photographs/video footage were uploaded on the website of the Supreme Court.

We wish to observe here that placing incriminating evidence available against a Judge under probe in the public domain is not a measure provided in the PROCEDURE, either expressly or by implication. Indira Jaising (supra) holds in clear terms that the inquiry under the PROCEDURE is for the information and satisfaction of the CJI and the report of inquiry is confidential and, therefore, such report cannot be made public. That being the clear position, we are inclined to hold the entire process under the PROCEDURE too as confidential having ascertainment of truth as one of its objectives. The demands of being fair and transparent, in such cases, have to yield to the confidential nature of the process.

Thus, uploading of the photographs/video footage on the website of this Court cannot be viewed as a necessary requirement of the "In-house Procedure" and, thus, approved. But, then again, nothing really turns on the uploading of the photographs/video footage since the Petitioner, as observed above, did not have any grievance in relation thereto which is obvious from his failure to question such uploading at an appropriate time thereby allowing a situation to grow where the Court is faced with a fait accompli. Even in this writ petition, no relief is claimed in respect of such uploading.

122. Now that nothing is pending at the end of the Supreme Court and/or the CJI, the Petitioner may exercise his rights in accordance with law as and when an appropriate occasion arises.

Answer to Question (VI)

123. The CJI, as the leader of the judiciary, apart from his various other duties owes a duty to the people of the country to keep the justice delivery system pure, clean and unpolluted. It is unreasonable to even think that despite an incident of the present nature, the CJI would wait for the Parliament to take action. As observed before, it is up to the Parliament whether or not to activate Article 124. Left to him, the CJI upon being informed of a Judge's remissness does have the authority - moral, ethical and legal - to take such necessary action as is warranted to keep institutional integrity intact.

Any adverse impact on the credibility of the institution could prove dear. It is keeping in view such concerns and the legal position of the President being the ultimate appointing authority of Judges and the Prime Minister being the head of the Council of Ministers, upon whose aid and advice the President acts under our

Constitution, coupled with receipt of complaints from the office of the President that we find the provision in paragraph 7(ii) of the PROCEDURE requiring the CJI to write to the President and the Prime Minister along with the report of the Committee to be quite in order, legal and valid. We repeat, the office of the CJI is not to be regarded as a post office that the report should only be routed through the CJI without his observations.

124. We say again, we are unaware like the Petitioner of what the CJI remarked while forwarding the REPORT of the COMMITTEE and the Petitioner's response dated 6th May, 2025 to the President and the Prime Minister. However, if indeed, the CJI has reiterated the finding of the Committee as contained in the REPORT and recommended initiation of proceedings for removal of the Petitioner from office, such a recommendation cannot be impeached on any valid and legal ground. Notwithstanding that the recommendation of the CJI carries much weight, one has to realize that the intimation given by the CJI, under the PROCEDURE, is for the eyes of the President and the Prime Minister alone and not anyone else.

125. Therefore, we see no reason to hold paragraph 7(ii) of the PROCEDURE as infringing either any provision of the Constitution or the concept of separation of powers.

126. Before we conclude, one other contention is left to be dealt with which was advanced by Mr. Rohatgi. It could be true that the then CJI granted an opportunity of hearing to the Judge of the Calcutta High Court under probe. However, it must be realised that it was a step going beyond the PROCEDURE.

Here, the CJI has scrupulously followed the PROCEDURE which does not envisage a hearing to be given to the Judge under probe after he has expressed his inability to resign or voluntarily retire. Even though a hearing 'could have been given', it cannot be equated with 'should have been given' in the absence of any such express obligation in the PROCEDURE. The contention, thus, fails to impress us.

CONCLUSION

127. For the foregoing reasons, no interference is called for. The writ petition stands dismissed.

.....J. (Dipankar Datta)

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

New Delhi;

1 Petitioner

2 PROCEDURE

3 CJ, DHC

4 COMMITTEE

5 CJI

6 REPORT

7 Inquiry Act, hereafter

8 (2003) 5 SCC 494

9 (2012) 10 SCC 603

10 (1991) 4 SCC 699

11 (1995) 5 SCC 457

12 we need not spell out the reasons therefor in the judgment

13 Protection Act

14 on 26th November, 1949

15 (2015) 4 SCC 91

16 (2011) 8 SCC 380

17 (1991) 3 SCC 655

18 (1996) 5 SCC 216

19 (1998) 1 SCC 1

20 (2016) 5 SCC 1

21 AIR 1964 SC 1854

22 (1997) 1 SCC 299

23 (2013) 4 SCC 301

IN THE SUPREME COURT OF INDIA

Brij Bihari Gupta

Vs.

Manmet & Ors.

[Civil Appeal Nos. 6338-6339 of 2024]

[Civil Appeal No. 6341 of 2024]

[Civil Appeal No. 6340 of 2024]

[Civil Appeal No. 6342 of 2024]

HEADNOTE – The insurer of the registered owner of a vehicle will be liable to compensate third-party losses arising out of the use of the vehicle, if the registration of the vehicle was not changed despite its transfer.

JUDGMENT

K. Vinod Chandran, J.

1. The appeals arise from the orders of the High Court of Chhattisgarh at Bilaspur, wherein the order of the Motor Accidents Claims Tribunal granting compensation with respect to the death/injuries suffered in a motor vehicle accident was challenged by both the insurance company and the claimants. There were a total of 11 claim petitions before the Tribunal out of which the insurance company choose to challenge the award in only three such claim petitions.

The challenge was on the ground of there being no liability to indemnify, since the injured were gratuitous passengers in the goods vehicle and the driver was in possession and ownership of the vehicle on the strength of an agreement with the registered owner, while the policy was in the name of the registered owner. Before the Tribunal, though these contentions were taken, compensation was awarded and the registered owner, the driver alleged to be the ostensible owner and the insurance company were made jointly and severally liable.

2. The claimants and the insurance company filed appeals before the High Court in which the company's appeals were allowed finding the insurer absolved of its liability. In the claimant's appeals, in two cases, the compensation was enhanced, and the other appeal was dismissed, affirming the Tribunal's award insofar as the compensation is concerned. The present appeals are filed by the ostensible owner who also was the driver of the vehicle, who had also unsuccessfully sought a review insofar as the liability cast on him personally, to satisfy the award; which order in review also is challenged in two appeals captioned above.

3. That the vehicle had a valid insurance policy in the name of the registered owner and that the driver had a valid driving license are admitted. Insurer claimed no liability to indemnify the registered owner because at the time of the accident, even according to the registered owner, by an agreement the possession and ownership of the vehicle was handed over to the appellant who was also driving the vehicle. The appellant did not transfer the registration, nor did he take out a policy in his name. It is also argued before the High Court that the injured claimants and the deceased were gratuitous passengers.

4. Sh. Kaustubh Shukla learned counsel for the appellants would first point out that the issue as to the passengers being gratuitous has to be considered in the context of the village setting where the goods vehicle was plying. The injured /deceased were petty hawkers who had been transporting their goods in the goods vehicle and their presence in the vehicle was in their capacity of the owner of the goods. It is also argued that at the time of accident, the ownership had not been transferred in the name of the appellant.

The appellant assails the order of the High Court mulcting the entire liability for the satisfaction of the awards on him. It is also argued that there were eleven claim petitions in which awards were passed, and the insurer employed a pick and choose method to challenge only three awards. The learned counsel also relied on a decision of this Court in Naveen Kumar vs. Vijay Kumar & Ors.¹ to further his claim for indemnification by the insurer, determining the liability on the registered owner.

5. Sh. Subhranshu Padhi, learned Amicus Curiae for the claimants supported the appellant and also provided a chart dealing with the facts of the case, award of compensation as also the enhancement made by the High Court. The learned counsel for the insurance company Sh. Rajesh Kumar Gupta resisted the claim pointing out that on both the grounds urged, the insurer has no liability. Insofar as the eleven claim petitions filed, the learned counsel sought time to appraise this Court about the fate of the other eight claim petitions and verify whether there were appeals filed.

6. We are not concerned with the compensation as awarded by the Tribunal and enhanced in two cases by the High Court in these appeals, which seek determination of liability and its indemnification. It has to be first noticed, as submitted by learned Amicus Curiae, that in Civil Appeal Nos.6341 and 6342 there has been a settlement arrived at in the Lok Adalat. The documents relating to the Lok Adalat have been filed along with I.A. No.190313/2022, produced as Annexure R7. The entire claim has been settled by the appellant in a Lok Adalat by payment of part amount and issuance of a cheque for the balance amount and nothing survives in the said appeals, which stand dismissed.

7. Insofar as the contention regarding the passengers in the goods vehicle being gratuitous, we have to notice the evidence as produced by the second respondent along with I.A. No.190303/2022 in C.A. Nos. 6338-6339/2024. The deposition of the claimant injured in the said appeal clearly indicates that he was a fish monger and the basket with fish for sale, was being carried in the goods vehicle, in which the claimant was also accompanying the goods. Likewise in C.A. No.6340/2024, the deceased passenger was a vegetable hawker, who too accompanied the goods carried in the vehicle.

We see from the cross-examination by the learned counsel for the insurer that the said fact was challenged by way of a suggestion. In the examination-in-chief of the witness for the insurer produced as Annexure- R/13, the Administrative Officer asserted that the passengers were gratuitous. But, in cross-examination he categorically stated that he did not have any knowledge regarding the status of the deceased / injured in the accident and he does not have any information as to whether they were accompanying the goods in the vehicle or not. The suggestion made to the claimant hence has to be ignored.

It is pertinent that in the reply to the claim filed, produced as Annexure-R/11, the insurer had raised a contention that if there were goods in the vehicle then the seizure of such goods would have been recorded in the mahazar prepared in the criminal case. However, the insurance company did not take any effort to produce any such mahazar. The claimant while being cross-examined was also not confronted with the records of the criminal case which were produced and marked by the claimants in their evidence.

8. We also find that the Tribunal had specifically found so with respect to the issue of gratuitous passengers:

“बीमा कंपनी का केवल एक ही बचाव है कि, आवेदिका दुर्घटनाग्रस्त वाहन, जो कि माल वाहक यान है, में अनुग्रह यात्री थी और उसे तृतीय पक्ष नहीं माना जा सकता है परंतु प्रकरण में उपलब्ध तथ्यों एवं साक्ष्यों से स्पष्ट होता है कि आवेदिका दुर्घटनाग्रस्त वाहन में अपने सामान की सुरक्षा के लिए बैठी हुई थी और मोटर यान अधिनियम के प्रावधानों के अनुसार माल वाहक यान में अपनी सामान की सुरक्षा के लिए बैठे व्यक्ति को अनुग्रह यात्री नहीं माना जा सकता।”

The High Court has interfered with the said finding of fact without any material and in a perfunctory manner. We hence find that the contention raised by the insurer that the deceased/injured in the accident were gratuitous passengers in the vehicle remains in the realm of mere assertion without substantiation. Section 147 which has the nominal heading "Requirements of policies and limits of liability" by sub-section (1)(b)(i) enables indemnification by the insurer, any liability with respect to the death or bodily injury to third parties and any person including owner of the goods or his authorized representative carried in the motor vehicle.

9. The next contention is with respect to the transfer of ownership to the appellant herein which even the registered owner asserts. To substantiate, the agreement is produced as Annexure-R/1 again in IA No.190313/2022 in the appeals we have dismissed herein above for having settled the matter in the Lok Adalat.

The agreement only indicates that the sale consideration was fixed at Rs.90,000/- and on payment of Rs.80,000/- there was a transfer of possession. The recital in the agreement clearly indicates that the balance of Rs.10,000/- shall be paid within two months and only after the balance is paid the registration of the vehicle would be transferred. The recitals clearly indicate that there has been no transfer of ownership of the vehicle and the appellant merely had possession of the same.

10. There is considerable reliance placed by the insurer on the fact that the appellant had received the vehicle from the Magistrate's Court, asserting his ownership. The order directing handing over the vehicle to the appellant is produced as Annexure-R/4, in IA No.190313/2022, where it is indicated that even at that point the registered owner's name was not changed. The registered owner was present before the Magistrate as we see from the order and while ordering handing over of the vehicle, the applicant/appellant was directed to change the ownership within 30 days. Hence obviously the balance consideration of Rs.10,000/- had not been paid till that date.

The transfer of the registration as per Section 50 of the Motor Vehicle Act, 1982 requires the transferee to report the fact of transfer in the prescribed form to the Registering Authority within whose jurisdiction the transfer is affected within 14 days of the transfer. There is no contention raised by the registered owner that he made such a report as required under Section 50(1)(a)(i) of the Act. Hence the ownership was with the registered owner even at the time of the accident and it is his liability to compensate the victims in the accident, which also has to be indemnified by the insurer.

We also notice that in Naveen Kumar¹, the definition of owner in the Act of 1988 was interpreted to facilitate fulfilment of the object of the law, which was not to

burden the claimant to follow the trail of successive transfers. The liability to pay falls squarely on the registered owner, even if there has been successive transfers which has to be indemnified by the insurer.

11. We also notice that the contention raised of eight claim petitions having not been challenged has not been repelled by the insurer. We were not inclined to grant any time to the learned counsel for the insurer to verify as to what occurred in the eight other claim petitions, since the judgment of the High Court clearly records the contention of the claimants, that there was a pick and choose employed.

The High Court has failed to consider the same and it was for the insurer to have refuted the same with documentary proof in the present appeals. In any event, the said issue does not assume relevance since we have negated the grounds raised by the insurer to absolve itself of the liability. We hence allow C.A. No.6338-6339/2024 and C.A. No.6340/2024.

For completeness we notice that the Tribunal had granted 12% interest from the date of the claim petition and for the enhanced amount, the High Court has granted 6% interest, again from the date of filing of the claim petition. Awards impugned in the appeals, other than that dismissed shall be satisfied by the insurer. Ordered accordingly.

12. Pending applications, if any, shall stand disposed of.

.....**J. (K. Vinod Chandran)**

.....**J. (N. V. Anjaria)**

New Delhi;

August 08, 2025

1 (2018) 3 SCC 1

2 "the Act"

IN THE SUPREME COURT OF INDIA

Ashok Dhankad

Vs.

State NCT of Delhi and Anr.

[Criminal Appeal No. 3495 of 2025

@ SLP (Crl.) No. 5370 of 2025]

HEADNOTE – Appeal against the grant of bail can be entertained by a superior court if it is shown that the bail order was passed without taking into relevant factors such as gravity of offence, impact of crime, the order being illegal, perverse, possibility of influencing the witnesses, etc.

However, the same grounds cannot be urged while applying for cancellation of bail, as for bail cancellation it needs to be looked upon supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief, such as the conduct of the accused subsequent to grant of bail cannot be urged in an appeal against the bail order, but in application seeking bail cancellation.

The Hon'ble Court issued the following principles regarding the appeal against the grant of bail:

- (i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;
- (ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;
- (iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. **[See: Y v. State of Rajasthan (Supra); Jaibunisha v. Meherban & Ors. and Bhagwan Singh v. Dilip Kumar @ Deepu]**
- (iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;
- (v) However, the Court may not take the conduct of an accused subsequent to the grant of bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and
- (vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.

JUDGMENT

Sanjay Karol, J.

1. Leave granted.

2. The grant of bail constitutes a discretionary judicial remedy that necessitates a delicate and context-sensitive balancing of competing legal and societal interests. On one hand lies the imperative to uphold the personal liberty of the accused -an entrenched constitutional value reinforced by the presumption of innocence, which remains a cardinal principle of criminal jurisprudence. On the other hand, the court must remain equally mindful of the gravity of the alleged offence, the broader societal implications of the accused's release, and the need to preserve the integrity and fairness of the investigative and trial processes.

While liberty is sacrosanct, particularly in a constitutional democracy governed by the rule of law, it cannot be construed in a manner that dilutes the seriousness of heinous or grave offences or undermines public confidence in the administration of justice. The exercise of judicial discretion in bail matters, therefore, must be informed by a calibrated assessment of the nature and seriousness of the charge, the strength of the prima facie case, the likelihood of the accused fleeing justice or tampering with evidence or witnesses, and the overarching interest of ensuring that the trial proceeds without obstruction or prejudice.

3. The case at hand is one such case, where this Court has been called upon to ensure the above-mentioned balance. The present Appeal has been preferred by the complainant against the final judgment and order dated 4th March 2025 passed by the High Court of Delhi at New Delhi in Bail Application No. 2654/2024 whereby Respondent No. 2, Sushil Kumar (hereinafter the 'Accused') came to be enlarged on regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with FIR No. 218/2021 under Sections 308, 325, 323, 341, 506, 188, 269, 34 of the Indian Penal Code, 1860 (hereinafter 'IPC') and Sections 25, 54, 59 of the Arms Act, 1959.

4. At the outset, we would be well served to remind ourselves of the observations made by three learned judges of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan*¹ which are as follows:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are

nonbailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law.

Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of nonbailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so."

[See also: Sanjay Chandra v. Central Bureau of Investigation²; Vinod Bhandari v. State of Madhya Pradesh³]

Prosecution case against the Accused

5. As per the charge sheet, police investigation revealed that on the intervening night of 4th - 5th May 2021, the Accused and his associates abducted one Mr. Ravindra @ Bhinda and Mr. Amit @ Khagad from Shalimar Bagh and Mr. Sagar, Mr. Jai Bhagwan @ Sonu and Mr. Bhagat @ Bhagtu from Model Town, New Delhi. All of them were taken to Chhatrasal Stadium, where they attacked them with wooden lathis and sticks, with an intention to kill them due to personal enmity. The Accused persons also fired gunshots, due to which a PCR call was received wherein the caller reported that two men fired gunshots near Chhatarsal Stadium.

6. ASI Jitender Singh took reins of the investigation and arrived at the spot of the alleged crime. On enquiry, the police party were informed that the Accused and his associates, after beating the injured persons, fled away.

7. At the spot of the incident though five vehicles were found, but none was present. A 'parna' stained with blood was recovered from the registered vehicle of the Accused, one amongst five. The four other vehicles belonged to his associates and upon a search of the said vehicles, a loaded double barrel gun was found with 3 cartridges of live ammunition. Additionally, two wooden sticks were recovered. Blood samples were taken from different spots and objects from the scene of the crime.

8. The police party were informed that the injured persons had been taken to BJRM Hospital, Jahangir Puri, New Delhi for treatment. Upon arriving at the hospital, ASI Jitender Singh recorded their MLCs. One of the injured persons, Mr. Sagar, succumbed to his injuries while undergoing treatment. His postmortem captured the cause of death as, "cerebral damage as a result of blunt force/object impact. All injuries are antemortem in nature." Thereafter, a charge under Section 302, IPC was also added against the Accused and his associates.

9. During investigation, one of the associates, Mr. Prince, came to be arrested. A mobile device recovered from his possession, which held within it, which had a video recording of the incident, allegedly depicting the Accused attacking the injured persons with deadly weapons. The mobile was sent for FSL examination, and the expert report concluded that, "no sign of edit/adulteration/tampering was observed in the video file."

10. The Accused was absconding at the time of investigation and consequently, on 15th May 2021, non-bailable warrants were issued against him. On 18th May 2021 the Delhi Police announced cash reward for any information about his whereabouts. He was finally arrested on 23rd May 2021.

11. Trial commenced against all the Accused. Charges were brought under Sections 302, 307, 308, 364, 365, 452, 323, 342 along with other Sections of the IPC and Sections 25(1)(B) and 27(1) of the Arms Act, 1959. As on date 35 out of 189 witnesses stand examined by the Trial Court and all other 21 accused persons, apart from the present Accused, continue to remain in custody with respect to the subject FIR.

Our View

12. We have heard the parties at length. Mr. Siddharth Mridul, learned Senior Counsel appeared for the Appellantcomplainant. The NCT of Delhi was represented by Mr. Vikramjit Banerjee, learned Additional Solicitor General, and Mr. Mahesh Jethmalani, learned Senior Counsel was for the Accused. The learned senior counsel for the Appellantcomplainant has prayed for bail granted to the Accused by the High Court of Delhi to be set aside.

The significant points of challenge are that the Courts below did not take the conduct and influence of the Accused, as also the seriousness of the allegations into consideration. The learned Additional Solicitor General appearing on behalf of the State of NCT of Delhi has supported the case of the Appellant-complainant and has further submitted that the Accused is attempting to influence witnesses.

13. Meanwhile, Mr. Mahesh Jethmalani, learned Senior Counsel for the Accused, has submitted that the Courts below correctly passed the impugned order releasing the Accused on bail. To buttress his submission, he emphasized that the Accused has never misused the liberty of temporary bail, granted to him on earlier occasions. Further, he submitted that given the nature of evidence on record, the Accused is entitled to bail.

14. At the outset, we must clarify that setting aside an order granting bail and cancellation of bail are two distinct concepts. While the former contemplates the correctness of the order itself, the latter pertains to the conduct of the Accused

subsequent to the order granting bail. Judicial pronouncements of this Court have time and again reiterated this position.

Law on the issue

15. This Court in *Jayaben v. Tejas Kanubhai Zala*⁴, while setting aside the order granting bail to the Accused therein, had expounded that different considerations must be applied while considering an order of releasing an Accused on bail and an application for cancellation (which would include breach of bail conditions). Moreover, the Court observed that the conduct of the accused subsequent to an order granting bail would not be relevant while considering an appeal against such order.

16. The discussion of this Court in *Y v. State of Rajasthan*⁵ underscored that an order granting bail can be tested on illegality, perversity, arbitrariness and being based on unjustified material. While setting aside the order granting bail, the Court made the following observations:

"15. It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439CrPC in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyse whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation.

16. In *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] this Court held as follows : (SCC p. 513, para 12)

"12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse.

If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening

circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."

17. In the present case, it is necessary to determine whether the High Court while granting bail to Respondent 2-accused has properly exercised its discretion under Section 439 CrPC by following various parameters laid down by this Court. A bare perusal of the impugned order [Omprakash v. State of Rajasthan, 2021 SCC OnLine Raj 3499] passed by the High Court does not suggest that the Court has considered any of the relevant factors for grant of bail."

17. A division bench of this Court in Meena Devi v. State of U.P.⁶ had observed to similar effect:

"26. At the cost of repetition, it may be highlighted that the considerations that weigh with the appellate court when called upon to examine the correctness of an order granting bail is not on the same footing when it comes to examining an application moved for cancellation of bail. The yardstick for testing the correctness of an order granting bail is whether the court below has exercised its discretion in an improper or arbitrary manner thereby vitiating the said order. When it comes to assessing an application seeking cancellation of bail, the appellate court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief."

(emphasis supplied)

18. More recently, this Court in State of Rajasthan v. Indraj Singh Etc.⁷, while setting aside the bail granted to a person accused of an offence under Sections 419, 420, 467 of the IPC and Section 3 & 10 of the Rajasthan Public Examination (Prevention of Unfair Means Act), 2022, placed reliance on an earlier decision of this Court in Ajwar v. Waseem⁸ and observed:

"8.3 The discussion made in Ajwar v. Waseem³ by a coordinate Bench of this Court (which included one of us, i.e., Amanullah J.) is on point. The relevant paragraphs are as under:-

"Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail

is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer : Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974]; Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977]; Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; Anil Kumar Yadav v. State (NCT of Delhi) [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558].]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of M.P. [P v. State of M.P., (2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words : (SCC p. 224, para 24)

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Considerations for setting aside bail orders

28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the

accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner.

We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused."

(emphasis supplied)

19. The principles which emerge as a result of the above discussion are as follows:

(i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;

(ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;

(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: Y v. State of Rajasthan (Supra); Jaibunisha v. Meherban & Ors⁹ and Bhagwan Singh v. Dilip Kumar @ Deepu¹⁰]

(iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;

(v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and

(vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.

20. Keeping in view the above expositions of law, this Court is of the view that the High Court has erroneously passed an order releasing the Accused on bail. While considerations such as the period of custody and testimonies of key prosecution witnesses having been recorded are relevant, the Court erred by inter alia, not considering the grievous nature of the crime, the possibility of

influencing the trial by the Accused and the conduct of the accused during investigation.

21. It is a matter of record that after registration of the subject FIR, inter alia against the Accused, he remained absconding and evaded arrest. This had resulted in the passing of the Order at Annexure P2, by the learned Metropolitan Magistrate - 03, North: Rohini, whereby non-bailable warrants had to be issued against him and his associates, securing their custody.

Despite such warrants being issued, his whereabouts remained unknown and consequently, on 18th May 2021, as per Annexure P3, the Delhi Police, declared a cash reward for giving information about the Accused as he was evading custody and remained absconding. Despite a submission to this effect before the High Court, the above facts did not form part of the consideration of the order releasing him on bail. The High Court ought to have taken this relevant fact into its deliberation, while adjudicating the entitlement of the present Accused for regular bail.

22. This Court must also be cognizant of the seriousness of the allegations against the Accused. As per the allegations in the FIR, the national capital was made into a criminal playground to settle scores, with no regard for the law of the land. The accused persons, allegedly abducted certain individuals; violently attacked them with dangerous weapons; and caused grievous injuries. The injuries were of such nature that they resulted in the unfortunate death of the Complainant's son.

23. From the contents thereof, it is also borne that a loaded firearm was recovered from the vehicle of these persons. Other weapons stained in blood were also recovered from the spot of the crime. Moreover, it cannot be disputed that the recording of the alleged incident was found in the phones of one of the coaccused persons. While the veracity of the above evidence is a matter of trial, but there can be no doubt that these allegations are shocking and serious in nature.

24. Furthermore, this Court cannot lose sight of the influence an accused wields in society while considering the grant of bail, as was expounded by this Court in *Bhagwan Singh v. Dilip Kumar*¹¹. Undoubtedly, the Accused is a celebrated wrestler and an Olympian, who has represented the nation at the international level. It cannot be doubted that he carries societal impact. In such circumstances, it cannot be said that he would have no domineering influence over witnesses or delay the proceedings of trial. Needless to add that allegations of pressurizing the witnesses have been made, before the order granting bail was passed. Certain witnesses had, in writing lodged complaints, apprehending threat to their lives at the behest of the Accused.

25. On the above aspect, the State has further submitted that the whenever Accused was granted temporary bail [five occasions i.e. on 4th November 2022 (8 days); 6th March 2023 (3 days); 23rd July 2023 (7 days); 30th July 2023 (9 days) and 18th August 2023 (2 days)] the visible pattern seen is that, the prosecution witness be it for whatever reason, influence or threat, upon examination have turned hostile. However, at this stage we refrain from affirming seal of approval thereupon. But pertinently, this pattern underscores the possibility of interference into the trial by the Accused. Noticeably, out of 35 witnesses examined, 28 have turned hostile.

26. The cumulative result of the above discussion is that the impugned order cannot be sustained. We clarify that the above observations are only for the purpose of examining the order granting bail and should not be construed as remarks on the merits of the main matter before the Trial Court.

27. In view of the above, the impugned order passed by the High Court of Delhi in Bail Application No. 2654/2024 titled as Sushil Kumar vs. State of NCT of Delhi, is set aside. The present Appeal is allowed. Let the Accused/Respondent No. 2 surrender before the concerned Court within one week. It shall be open for the accused to apply afresh for bail, with a change in circumstances, before the appropriate Court, to be decided on its own merits.

Pending applications, if any, are disposed of.

.....J. (Sanjay Karol)

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

New Delhi

August 13, 2025

1 (2005) 2 SCC 42.

2 (2012) 1 SCC 40.

3 (2015) 11 SCC 502.

4 (2022) 3 SCC 230.

5 (2022) 9 SCC 269.

6 (2022) 14 SCC 368.

7 2025 SCC Online SC 518.

8 (2024) 10 SCC 768.

9 (2022) 5 SCC 465.

10 (2023) 13 SCC 549.

11 (2023) 13 SCC 549.

IN THE SUPREME COURT OF INDIA

Abhinav Mohan Delkar
Vs.
State of Maharashtra and Ors.

[Criminal Appeal Nos. 2177-2185 of 2024]

HEADNOTE – Even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107 IPC, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life.

To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide

JUDGMENT

K. Vinod Chandran, J.

1. Whether every allegation or accusation levelled, a reprimand or rebuke made, an insinuation or insult voiced or even continuous acts of ill-treatment, harassment and defamation; as alleged in this case, would lead to a charge of abetment, if the person at the receiving end commits suicide, is a vexed question the Courts are called upon to decide when a charge is raised under Section 306 of the Indian Penal Code, 1860¹.

Despite a wealth of precedents, the police still have not come to terms with what constitutes an abetment as envisaged under Section 306 read with Section 107 of the IPC, now Sections 108 & 45 of the Bharatiya Nyaya Sanhita, 2023²; in pari materia. On a complaint raised, FIRs are registered, investigation carried out and for reason of abject ignorance or on tainted instigation or at times deliberate design, the alleged perpetrator is even taken into custody without examining the existence of mens rea.

2. A seven-time Member of Parliament committed suicide on 22.02.2021, leaving behind a suicide note which named persons, both in the administration and the police, who according to him, conspired to defame, degrade and demean him so as to end his political career and bring down his social standing, thus driving him

to suicide; which he proclaimed in his last note, was his only option. The accused, the respondents herein; named in the suicide note, filed separate applications to quash the FIR, under Section 482 of the Code of Criminal Procedure, 1973³, which were allowed by the High Court by a common order, against which the present appeals have been filed.

3. Ms. Meenakshi Arora, learned Senior Counsel appearing for the appellant took us through the minutes of the Committee of Privileges in the Lok Sabha which had been looking into the complaints raised, on breach of parliamentary privileges, by the deceased. It is pointed out that the accused were named by the deceased before the Committee and from the various statements made, it is discernible that a concerted effort was underway to diminish his public image and finish off his political life.

The statements of the witnesses; read over to us, it is argued would clearly indicate that there was an attempt also of extortion and an attempt of forceful takeover of a college owned and managed by a Trust, formed by the deceased. A conspiracy was hatched to tarnish his political image, especially because he had won as an independent candidate, without any political affiliation, to the Lok Sabha seven times.

4. Answering the query regarding absence of a live link with the alleged harassment, it was pointed out that the deceased was a man of public standing and the continuous humiliation he suffered at the hands of the administration, which was pursued unabated, despite his raising it before the Committee of Privileges, eventually led to the drastic step. The Division Bench of the High Court failed to look into the suicide note or the material on record which surely warrants a trial and definitely not a quashing as has been done under Section 482, Cr.PC.

Reliance was placed on *Dammu Sreenu v. State of Andhra Pradesh*⁴, *State of Haryana v. Surinder Kumar*⁵, and *Munshiram v. State of Rajasthan*⁶. It was argued on the strength of these precedents that there could be circumstances and instances when the death by suicide is not preceded by a proximate incident. The totality of the circumstances has to be looked into and it is only in the rarest of rare cases, where there is absolutely no evidence or the charges are not made out prima facie that trial can be frustrated by resort to Section 482, Cr. PC.

5. Shri Tushar Mehta, learned Senior Counsel appearing for the respondent State rests contend with the statement of law coming out from the various precedents, a compilation of which has been placed before us. It is pointed out that the allegations, on the face of it, arise from oversensitivity. Shri Mahesh Jethmalani, learned Senior Counsel appearing for one of the accused, the Administrator, points out that there was no complaint of extortion before the Parliamentary

Committee and it was for the first time raised in the suicide note. The witnesses are all associates of the deceased who have merely paid lip service to the suicide note.

It is pointed out that even as per the FIR, the deceased had written a letter to the Administrator, less than a month before his death, seeking his help which clearly indicates that the allegation of conspiracy levelled against the Administrator is without any basis. The accusation of extortion is one made for the first time in the suicide note and was never complained of anywhere including the Privileges Committee. The learned Counsel appearing for the other respondents too urged that the judgment of the High Court is unimpeachable and requires to be upheld.

6. The Division Bench which considered the matter has listed out the various acts and omissions of the police and the administration, which constituted the continued harassment complained of, as has been reproduced in the statement of the son, which led to the registration of the FIR. According to the appellant; the son of the deceased who is also the first informant, the officers of the administration, under the orders of the Administrator were targeting the deceased, tarnishing his image and reputation.

Briefly put, the conspiracy was hatched with the intention of taking over SSR College and further to prevent the deceased from contesting the next elections. At the instructions of the Administrator the other accused threatened and insulted the deceased in public, giving short shrift to his status as a Parliamentarian and attempted to extort money. By reason of such continuous torture inflicted, the deceased who belonged to a Scheduled Tribe, was forced to commit suicide.

It was stated in the First Information Statement⁷ that, on being made aware of the death of his father, the informant came to Mumbai, took back the body of the deceased on the same day to Silvasa and later, on 01.03.2021 when he enquired about the investigation he was told of the suicide note, which was handed over along with the minutes of the Lok Sabha Committee of Privileges, based on which the FIS was recorded on 09.03.2021.

7. The deceased raised his voice against the Administrator and the maladministration of Dadra and Nagar Haveli in the Parliament and also in the media, which received a lot of publicity. This enraged the Administrator at whose instance the local administration and police deliberately harassed the deceased and intentionally insulted him in public. The instances of such public humiliation were stated to be numerous. The M.P. was not invited or allowed to speak at the function celebrating the Liberation Day of Dadra and Nagar Haveli, which fell on 02.08.2020, against which he had lodged a complaint before the Speaker of the Lok Sabha and its Committee of Privileges.

Another instance of violation of protocol occurred when the M.P. was not invited to a programme attended by the Union Minister of State (Home), in his constituency and spreading a canard of the M.P. having deliberately kept away from the function. The authorised representative of the deceased was not given a hearing by the Deputy Collector who was considering a civil suit, against which representative an illegal complaint was filed. And lastly a reinvestigation attempted of a criminal case by an Inspector at the behest of the Superintendent of Police.

8. The only private individual arrayed as an accused in the FIR was accused of circulating defamatory video clips on the social media platforms. One of the accused, a Talati (Revenue Official) also lodged a false and baseless complaint against the deceased in the office of the Administrator. The administrative officers failed to follow the established etiquette due to an M.P., in official and public functions and disrespected the deceased, to bring disrepute.

These actions were alleged to be intended at preventing the participation of the M.P. in official functions and on public platforms, declining him a fair hearing and lowering his public image. A further statement also is seen recorded detailing the threats levelled on the deceased to further the process of take-over of SSR College, run by a Trust formed by the deceased, demand of Rs.25 crores and the arrest of a close associate of the deceased.

9. We would first look at the precedents placed before us, which, we have to pertinently observe, turns on the facts of each case. The decisions relied on by the de facto complainant are specifically on the requirement of a proximate incident to suicide, being not imperative. In *Surinder Kumar*⁵ the deceased was accused of stealing 10 grams of gold and committed the extreme act after 20 days. An application under Section 482 of the Cr.P.C. was allowed by the High Court, which order was set aside by this Court, pointing out that the guilt or otherwise of the accused would have to be decided on the basis of the evidence; without any discussion on the question of delay, which again was only of 20 days.

There cannot be any dictum ferreted out from the said decision but for the broad principle that ordinarily a case will have to proceed for trial and be decided on the evidence led and the closure at the initial stage can only be on the principles laid down regarding invocation of the extra ordinary power under Section 482 of the Cr.P.C.

10. In *Dammu Sreenu*⁴, the deceased, troubled by his wife carrying on an illicit relationship, sent her for counselling, to her parental home. The paramour, who was the appellant, enraged with the act of the deceased went to his house and proclaimed his intention to continue the relationship and later took the wife away from her brother's house. The wife returned to her parental house on 06.01.1996

and the husband committed suicide on the night of 07.01.1996. It was found that there was proximate instigation and intimidation which led to the suicide, which acts of the accused 1 and 2 had a direct nexus to the death of the deceased.

11. Munshiram⁶ again was a marital dispute with the husband at the receiving end, who met his end at his own hands. The wife had initiated multiple legal actions against the husband which were once compromised and then resurrected. The husband committed suicide, leaving behind two suicide notes specifically alleging illicit relationship on the wife, and an attempt, along with her family, to take over the factory belonging to the father of the deceased/husband.

The High Court invoked the power under Section 482 of the Cr.P.C. to quash the proceedings which was reversed by this Court. It was found on a reading of the FIR, as also the FSL report; which categorically found similarity in the handwriting on the suicide note, to the admitted handwriting of the deceased, that the case was not one which could be quashed at the initial stage and requires evidence to be led.

12. Much reliance was placed on Ude Singh and Ors. v. State of Haryana⁸ which again was a case in which an 18-year-old girl hanged herself for reason of the continued harassment and humiliation meted out by her own relatives, who were at logger heads with the family of the deceased. Admittedly there were criminal cases pending between the families, who were related to each other. The first accused who was in the status of her uncle had been repeatedly referring to the young girl as his wife which was actively supported by the brother and even the sons of the first accused.

The public humiliation meted out and the canard spread by the accused resulted in her engagement being broken off. There was a proximate incident on the previous day of the suicide, when the accused together, publicly taunted the deceased, which resulted in an altercation; witnessed by PW2 and spoken of by the deceased to her mother, PW11. It is on the unwavering testimony of the witnesses regarding the continued harassment and the just prior incident, which led to the suicide that the conviction entered was upheld by this Court.

13. It is very pertinent that a reading of the above decisions would only indicate that always a proximate incident or act prior to the suicide was held to be a very relevant aspect in finding the death to be a direct causation of the acts of the person accused of abetting the suicide. We think it apt to look at the decisions discussed in Ude Singh⁷. Ramesh Kumar v. State of Chhattisgarh⁹ which was a case in which the husband pursuant to a quarrel asked the wife to go wherever she pleased, after which she set herself ablaze. This Court opined that the wife, on the husband freeing her, impulsively felt that she could do nothing but kill herself. It was held so in paragraph 20:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation." [underlining in all the extracts, by us, for emphasis]

14. This Court also relied on *State of West Bengal v. Orilal Jaiswal*¹⁰, wherein it was held so:

"If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

15. *Pawan Kumar v. State of Himachal Pradesh*¹¹ was a case of elopement which resulted in a criminal prosecution against the boy, later acquitted on the girl's testimony in his favour. The boy continued to harass the girl, holding her responsible for the criminal proceeding initiated and even threatened to kidnap her; which proximate threat led to the girl setting herself ablaze. A dying declaration in the form of a letter, pinned the responsibility of her death on the accused. While upholding the conviction entered into by the High Court reversing the acquittal by the Trial Court, this Court held so on the scope of the words 'abetment' and 'instigate':

"43. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

44. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit suicide. The cruelty meted out to her has, in fact, induced her to extinguish her life spark."

Here again the live link, to the just prior threat was emphasised while also noticing the fact that a young girl living in a village setting, also belonging to the poor strata of society, was threatened and teased constantly, resulting in her resort to the extreme step. The accused would have known that his acts would lead to the drastic consequence.

16. Amalendu Pal vs. State of West Bengal¹² also held:

"Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

17. S.S.Chheena v. Vijay Kumar Mahajan¹³¹³ emphasised the requirement of a positive act on the part of the accused to instigate or aid in committing suicide. Looking at Section 306, it was held so:

"in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

18. Chitresh Kumar Chopra v. State (NCT of Delhi)¹⁴¹⁴ spoke on the suicidal ideation and behaviour in human beings which were complex and multifaceted (sic). It was held that:

"Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for selfprotection or an escapism from intolerable self."

19. Madan Mohan Singh v. State of Gujarat¹⁵ was a case in which the accused was alleged to have continuously harassed and insulted the deceased and spoken as to how he was still alive despite the insults levelled. There was also a suicide note in which the deceased, a driver, accused his employer of having driven him to suicide. Despite such an allegation in the suicide note, this Court found that there was absolutely nothing in the suicide note or the F.I.R. which could even distantly be viewed as an offence, much less under Section 306 of the I.P.C.

20. Again, the ingredients under Sections 107 and 306 of the I.P.C. was interpreted by one of us in Prakash and Ors. v. State of Maharashtra and Anr.¹⁶ (B.R. Gavai J., as he then was) in the following manner:

"14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide."

21. It was held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused, in aiding or instigating or abetting the deceased to commit suicide, a conviction cannot be sustained.

22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, 'the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide.

What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.

23. The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test.

Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of mens rea would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

24. We have already seen that even a rebuke to "go, kill yourself"; often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306.

25. In this context, useful reference can be made to Sections 113A & 113B of the Indian Evidence Act, 1872 providing statutory presumptions in aid of Sections 498A & 304B, respectively, of the IPC. When a woman dies by suicide within seven years of her marriage, if it is shown that she was subjected to cruelty by her husband or his relative, there arises a presumption that the husband or such relative abetted the suicide, in which event the penalty under Section 306 is attracted.

The presumption under Section 113A was statutorily employed by the Parliament, realizing the menace and in an attempt to prevent domestic violence unleashed on women in the patriarchal society, by deterrence. This exercise would not have been necessary if Section 107 did provide for finding abetment without conscious instigation constituting mens rea. This Court held in *Mangat Ram v. State of Haryana*¹⁷ that the provision only enabled the court to presume on the abetment, having due regard to all other circumstances of the case and drawing such presumption is purely within the discretion of the Court.

26. We also notice Section 304B which penalises the death of a woman, caused by any burns and bodily injuries or occurs otherwise than under normal circumstances, within seven years of her marriage; if it is shown that the victim was subjected to cruelty or harassment by her husband or any relative of her husband soon before her death, in connection with any demand for dowry, as 'a dowry death', punishable with imprisonment for a term which shall not be less than seven years and which extends to imprisonment for life. In law this is made possible by the presumption brought about by Section 113B; which all the same requires a proximate incident, as discernible from the words employed, in both Sections 113B & 304B, of 'and it is shown that soon before her death such woman was subjected to.' cruelty or harassment with a demand for dowry.

27. *Kashmir Kaur v. State of Punjab*¹⁸ considered the import of the words "soon before". It was held that "soon before" is a relative term depending on the circumstances of each case and there can be no straitjacket formula prescribed. It normally implies existence of proximate or live link between the demand of dowry amounting to cruelty and the death. It cannot be so remote that it is stale but all the same no narrow meaning can be assigned to the words to defeat the purpose of the provision.

28. Disputes in marital spaces are not uncommon. Tragically dowry demands, despite punitive legislation, is the major cause for domestic violence, unnatural death and suicide within marital spaces. Hence, a presumption was drawn on the dowry death of a woman, within 7 years of marriage, by the legislature, carefully incorporating the requirement of a proximate trigger. It cannot be said that the said requirement is absent in bringing home a conviction for abetment to suicide.

If it is so held, then it would follow that when a poor woman commits suicide within 7 years of her marriage, pursuant to a "soon before" incident, it would be a dowry death. But if the death occurs after 7 years, then there will be no reason to look for a proximate trigger. The necessity to find a trigger, proximate to the suicide cannot at all be wished away.

29. At the outset, on the facts coming out in the present case, it is to be noticed that the deceased was no ordinary person, though he had his roots in a

marginalised community. There is no allegation of any public humiliation on the basis of caste or a casteist slur having been spoken. He rose up in the political front presumably by his grit and determination, especially having been elected to the Lok Sabha seven times, loosing only once in three decades, that too as an independent candidate.

The first of these allegations, which allegedly led to the suicide refers to an incident on the 2nd of August 2020, the Liberation Day of the Union Territory, including the constituency of the deceased. The deceased was not given proper respect and regard due to an M.P., was the allegation. This has to be looked at, on the basis of the counter affidavit filed, which indicates curbs imposed for reason of the Covid pandemic, raging at that time, the country having opened up after the worldwide lockdown.

Restrictions were imposed on official functions and public celebrations were toned down, to arrest the spread of the pandemic. The further allegation is regarding the M.P. having not been invited for a function in which the Minister of State for Home, of the Union Government, participated, that took place in December 2020. The deceased M.P. was a seasoned politician, and we cannot infer such instances of disrespect alone having goaded him into suicide, that too after a couple of months.

30. The Parliamentarian stood up to the insult and approached the Committee of Privileges in the Lok Sabha, the minutes of which have been produced and painstakingly read over to us by the learned Senior Counsel. The deceased was a person of standing, aware of his rights and privileges and conscious of the remedies possible. Insofar as the allegation of circulation of news items and videos, as alleged against a private individual, it was pointed out that the deceased had issued a legal notice alleging defamation.

31. While highlighting the above referred two instances, the M.P. had also spoken of other instances of harassment by certain officers, not named, but their designations spoken of before the Committee of Privileges. In fact, when speaking of the Deputy Collector as seen from the written complaint and also the statements made, he is said to have misbehaved not only with the M.P. but also with other persons in the political arena. Probably, an officer who oversteps his authority, but it is difficult to discern any conspiracy by the entire administration at the instigation of the Administrator.

32. The Parliamentarian also spoke of an investigation in a crime having been reopened but does not speak on any specifics about the crime proper or its nature. The policemen-accused; an Inspector and a Superintendent of Police, have clearly stated that they were not involved in such reinvestigation and had also in

their counter affidavit pointed out that the crime number referred by the M.P. was wrong.

33. It is also pertinent that before the Committee of Privileges, there is no whisper about the Administrator or the extortion attempted or even the take over of the trust as alleged. In any event, the Committee of Privileges had seriously considered the complaint raised by the M.P. and the Chairman of the Committee, had on 12.02.2021 informed the M.P. of the investigation initiated insofar as the conduct of the administration, as recorded in the minutes. It was also recorded that a letter has been sent for the safety of the M.P.

The dated minutes, in which the same was recorded, is produced at page 190 of the SLP. The M.P. then travelled to Mumbai, presumably with his fears assuaged and the insults he complained of mitigated, by the action proposed by the Committee of Privileges. After 10 days on 22.02.2021, without any intervening circumstance or incident, the Parliamentarian committed suicide. Neither the incident of 02.08.2020 nor the failure of the administration alleged in December 2020; both of not respecting the hierarchical protocol for an M.P., can be seen as an instigation or causation of suicide or the proximate and prior trigger.

34. One other allegation raised is of the arrest of an associate who was authorised to represent the MP in a case before the Deputy Collector. It has been clarified in the counter affidavit that the preventive detention of the said person under the Gujarat Prevention of Anti-Social Activities Act, 1985 was confirmed by the Advisory Board chaired by a retired Chief Justice of a High Court. The allegation of extortion has never been raised, either in the complaint to the Hon'ble Speaker or in the statements made before the Privileges Committee.

35. Emphasis was laid by the learned Senior Counsel appearing for the appellant, on the suicide note which too was meticulously read over to us, from the translated copy produced as Annexure P/12. Before we look into the suicide note, we cannot but observe that going by the FIS, the suicide note, presumably was discovered by the police when the body was detected. The appellant who had gone to Mumbai, on hearing about his father's death was not immediately informed of the suicide note. On that day, when the body was taken back to Silvassa for the last rites, there was also no FIR registered on the basis of the suicide note.

Surely an FIR would have been registered for unnatural death as provided under Section 174 of the Cr.P.C. If a suicide note had been recovered, with the discovery of the body or later, then necessarily it has to be seized and a FIR registered and investigation commenced under Section 157 which enables the police officer to commence the investigation after sending a report to the jurisdictional Magistrate empowered to take cognizance of such offence. Under

Section 157 the investigation has to be commenced on information received under Section 154 or 'otherwise' of a cognizable offence.

36. It was later, even according to the FIS; on 01.03.2021, the suicide note was handed over to the appellant, when enquiries were made with the police. The appellant registers the FIR, still later on 09.03.2021. There is nothing produced either by the appellant or the State to show that the suicide note was recovered along with the body; which definitely would have been indicated in the Mahazar recorded at the inquest. There is also no verification carried out of the handwriting in the suicide note, juxtaposed with the admitted handwriting of the deceased. Above all, the suicide note makes pointed allegations against named individuals, which was not done earlier.

It is for the first time that the Administrator was mentioned, with an allegation of extortion and attempt to forcefully take-over a Trust and the college it runs. The actions of the officers of the administration, alleged to be a direct result of the conspiracy hatched by the Administrator to coerce the petitioner, was never raised any time earlier. We cannot place any absolute reliance on the suicide note, to ferret out a case of abetment, allegations in which were not disclosed in the written complaint to the Hon'ble Speaker or the statements made before the Committee of Privileges.

37. If the executive officers are disrespectful to a Parliamentarian, the people's representative is entitled to demand and get his due status recognised by virtue of the legislative office he holds and also the electoral support he retains. As a seasoned politician would do, he raised the issue before the Committee of Privileges, which initiated necessary action, in which circumstance, we cannot find the suicide to be a direct result of the actions complained of. Tragically a life is lost, leaving questions unanswered.

Despite our anxious reading and re-reading, the complaints made, the statements recorded, the suicide note; over which there is a cloud, and the subsequent conduct of the police regarding the delay in registering a crime and the casual statements made in the FIR, persuade us to negate the contention that the allegations levelled were the direct causation of the death.

38. The learned Senior Counsel for the appellant also referred to the various statements made by the son and others associated with the M.P. It was argued that at least, the statements should have persuaded the resort to a full-fledged trial rather than a quashing of the FIR, which quashing, in the given facts is presumptuous. We are not convinced, since we cannot incorporate those statements made by others, a clear hearsay, into the written complaint. The statements made by the deceased himself, bereft of the various allegations in the suicide note, do not sketch out a case for abetment of suicide. As has been held in

State of Haryana v. Bhajanlal¹⁹, the allegations in the FIS or the complaint do not constitute any offence or make out a case against the accused.

39. We are of the opinion that the Division Bench of the High Court had rightly quashed the proceedings, finding the charge of abetment to commit suicide to be absent. Much emphasis was laid on the charge of extortion, which has been first stated in the suicide note and not disclosed in any of the complaints earlier made to the Hon'ble Speaker or the Committee of Privileges.

40. True, a person unable to bear the pressure or withstand a humiliation or unable to oppose, may succumb to the extreme act of ending his own life, in desperation; but that would not necessarily mean that the alleged perpetrator had an intention to lead the victim to eventual death by his own or her own hands.

We find no such instigation on the part of the accused in this case, or a definitive abetment to suicide, as alleged in the FIR. There arises a cloud on the suicide note, when looking at the admitted statements recorded in the proceedings of the Committee of Privileges and also the manner in which the note was introduced in the case.

Before the Committee of Privileges, no reference was made to the various allegations in the suicide note, against the named officers. We have found the suicide note to be suspect and we are not convinced that there is any modicum of material in the case to find abetment of suicide. The High Court was not in error, when it quashed the FIR, when no case is made out from the FIS.

41. The Criminal Appeals stand dismissed.

42. Pending applications, if any, shall stand disposed of.

.....CJI. (B. R. Gavai)

.....J. (K. Vinod Chandran)

New Delhi;

August 18, 2025.

1 the 'IPC'

2 the 'BNS'

3 the 'Cr.PC'

4 (2009) 14 SCC 249

5 (2000) 10 SCC 337

6 (2018) 5 SCC 678

7 for short 'FIS'

8 (2019) 17 SCC 301

9 (2001) 9 SCC 618

10 (1994) 1 SCC 73

11 (2017) 7 SCC 780

12 (2010) 1 SCC 707

13 (2010) 12 SCC 190

14 (2009) 16 SCC 605

15 (2010) 8 SCC 628

16 2024 SCC OnLine SC 3835

17 (2014) 12 SCC 595

18 (2012) 13 SCC 627

19 (1992) Supp (1) 335

IN THE SUPREME COURT OF INDIA

Devendra Kumar
Vs.
The State (NCT of Delhi) and Anr.

[Special Leave Petition (Crl.) No. 12373 of 2025]

HEADNOTE – Section 195 Cr.P.C. bars a magistrate from taking cognizance of offences under Sections 172–188 IPC unless the concerned public servant files a complaint. The bar also extends to other offences that are so closely connected with those provisions that they cannot be split up.

The law can be summarized to the effect that there must be a complaint by the public servant who was voluntarily obstructed in the discharge of his public functions. The complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

The Hon'ble Court laid down the following principles to be followed while dealing with a category of offences that fall within the protective sphere of Section 195 CrPC.

(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint

for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.

(vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed.

JUDGMENT

J.B. Pardiwala, J.:

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

Index

- A. BRIEF FACTUAL MATRIX.....
- B. IMPUGNED ORDER
- C. SUBMISSIONS ON BEHALF OF THE PETITIONER
- D. ANALYSIS.....
 - i. Section 186 of the I.P.C.....
 - ii. Section 195 of the Cr.P.C.....
- E. CONCLUSION.....

1. This petition arises from the judgment and order passed by the High Court of Delhi dated 12th September 2024 in Writ Petition (Criminal) No. 2047 of 2013 and connected Criminal Miscellaneous Application No. 18861 of 2013 by which the writ petition along with the connected application came to be rejected, thereby affirming the order dated 28.11.2018 passed by the Chief Metropolitan Magistrate directing registration of the FIR against the petitioner-herein for the offence punishable under Sections 186 and 341 respectively of the Indian Penal Code, 1860 (for short, "I.P.C").

A. BRIEF FACTUAL MATRIX

2. It appears from the materials on record that the respondent no. 2 herein at the relevant point of time was serving as a Process Server, Nazarat Branch, Shahdara. He was assigned the duty to serve warrants and, in this connection, he had to visit the Nand Giri police station on 03.10.2013. It is the case of the respondent no. 2 that few police officials, more particularly, the petitioner-herein misbehaved with him when he insisted for a receipt of the summons. According to him, he was detained in the police station till 4:30 PM. It is only after the arrival of the Head Constable that the warrants were accepted.

3. The respondent no. 2 brought the alleged misconduct on part of the petitioner to the notice of the District and Sessions Judge of Shahdara in the form of voluntary obstruction said to have been caused in the discharge of his public functions. The District and Sessions Judge assigned the complaint to the Administrative Civil Judge who in turn lodged a private complaint in the court of the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi.

4. The Chief Metropolitan Magistrate vide order dated 28.11.2013 directed the registration of FIR under Sections 186 and 341 respectively of the I.P.C. The order passed by CMM, Shahdara, Delhi dated 28.11.2013 reads thus:

"The present complaint case was filed u/s. 195 Cr.P.C. by Ld. ACJ, Shahdara. Allegations of Shri Ravi Dutt Sharma (Process Server) are that one warrant issued by the court of Shri Sharad Gupta, Ld. MM and one summon issued by the court of Shri Arvind Kumar, Ld. AD) were assigned to him to be served to SHO PS Nand Nagri. On 3.10.2013 he reached PS Nand Nagri at about 12.30 P.M. One Ct Sanjay Kumar Sharma was present in the room of 5-8. The said constable received the processes but signed as HC Brahmjeet. Process Server Ravi Dutt asked him not to do so. Upon this Ct. Sanjay cut the signatures made by him in the name of HC Brahmjeet and took the processes to the Reader of SHO who also refused to receive the processes.

The process server went to duty officer who also refused to take the processes. The process server went to SHO Insp. Devender Kumar and told him all the facts.

The said SHO kept the processes and abused the process server badly. SHO asked process server to stand there raising his hands and wait till the Havaladar/Head Constable comes. For about half an hour process server stood there, raising his hands as a punishment. He was also made to sit on the floor for about 3-4 hours as punishment. The process server begged SHO to allow him to go as he had to serve other processes also and told him that, he would come after serving other processes. The SHO, however, did not allow the process server to go.

At about 4.30 p.m. one head constable come who took the processes and gave receipt. From these allegations offence U/s. 106, 341 and 342 IPC are clearly made out. The conduct of the SHD PS Nand Nagri cannot be tolerated. This case cannot be taken lightly. Hence, U/s. 156(3) Cr.P.C., it is ordered that FIR be registered against SHO P.S. Nangi for the above said offence. The FIR be registered at PS Nand Nagri itself as the offence took place within the premises of PS Nand Nagri itself. Investigation be conducted by Officer of the rank of ACP and under direct supervision of Addl. CP concerned. Copy of this order be sent to CCP and Addl. CP concerned for immediate compliance. Put up for status report on 14.12.2023."

(Emphasis supplied)

5. The aforesaid order came to be challenged by the petitioner-herein in the court of the Sessions Judge, Karkardooma Courts, Delhi by filing Criminal Revision Application No. 174 of 2013. The revision application came to be rejected vide order dated 03.12.2013. The order reads thus:

"10. A perusal of the record reveals that the Process Server Mr. Ravi Dutt Sharma posted at Nazarat Branch, Karkardooma Court, Delhi has submitted his complaint dated 10/10/13, to Ld. District & Sessions Judge, Shahdara, Delhi. Ld. District & Sessions Judge, Shahdara had made an endorsement dated 14/10/13 assigning the said complaint to Ld. Administrative Civil Judge, Shahdara to deal with the matter. Shri Neeraj Qaur, Ld. Administrative Civil Judge, Shahdara District. Karkardooma Court, Delhi, thereafter made a complaint dated 15/10/13 U/s 195 Cr.P.C to the Ld. Chief Metropolitan Magistrate, Shahdara District, Karkardooma Courts, Delhi enclosing, the original complaint made by the Process Server. In the said complaint he had observed that allegations made in the complaint prima facie constitute offences U/s 186 IPC and U/s 341 IPC.

11. Ld. CMM on receipt of the complaint had issued notice to the DCP for 29/10/13 vide order dated 17/10/13. On 29/10/13, ACP Seemapuri had appeared and sought adjournment for filing the report and the matter was adjourned for 13/11/13. On that day, further time was sought by ACP and matter was adjourned to 28/11/13. On 28/11/13, report was filed on behalf of Addl. DCP vide letter No.

179/13 dated 27/11/13 submitting that inquiry into the matter was got conducted by ACP Seemapuri wherein fault on the part of the Inspector Devender Kumar, SHO, PS Nand Nagri was established.

In the impugned order, Ld. Trial Court has reproduced the contents of the complaint wherein allegations were made against the SHO concerned and the staff and after considering the complaint, Ld. Trial court had observed: that from the allegations made in the complaint offences U/s 186, 341 and 342 IPC are clearly made out. Therefore, Ld. Trial court has substantially complied with the guidelines issued by Hon'ble High Court in authority: reported as Subhash Manchanda v State & Anr., 2013 II AD (Delhi) 277 and Subhkaran Luharuka and Shree Ram Mills Ltd. v State (Govt of NCT of Delhi) and Utility Premises Pvt Ltd.

It Is pertinent to mention here that in the present case, the complainant is a Process Server posted at Karkardooma Court who had gone to PS Nand Nagri to serve the summons issued from the court of Shri Arvind Kumar, Ld. ADJ and warrants-issued from the court-of Shri Sharad Gupta, Ld. MM but he faced the difficulty in execution of the process at police station. He has narrated the entire episode in his complaint which reflects that in VB Room, one person disclosed his identity as Ct. Sanjay Kumar, who received the processes and signed as HC Brhamjeet and on protest by the complainant, he struck off the signatures made by him and took the complainant to Reader of SHC and then to Duty Officer who both refused to receive the processes.

He was thereafter, produced before the revisionist to whom facts were disclosed, whereupon he started misbehaving by remarking whatever has" been done by Ct. Sanjay, Reader and Duty Officer was correctly done and that he would, teach complainant how to do service; that complainant is below a Constable and he being fourth class employee was nobody to teach them work and made him to stand up for half an hour with hands up and was made to sit on floor for 3-4 hours as punishment. He also asked his staff to bring DD register and remarked that complainant should be confined (band karo) and then he would see as to what the Judge of complainant would do and that he (complainant) should make the revisionist talk on phone with the Judge then he would see as to what a Judge can do as Judge is also an officer so is revisionist.

Despite request of complainant to let him go and come back after executing the court work, complainant was not allowed. Complainant has placed on record the photocopies of the process bearing the cuttings allegedly done by the Constable who had put the signatures of other Head Constable and subsequently the signatures were struck off. The original or copy of the process was not delivered to the Process Server but he was provided only photocopy, thereof.

He was allegedly illtreated, wrongly confined, punished by making him stand hands-up and was also allegedly asked to sit on the floor for about 3-4 hours, He has made the complaint against the SHO concerned, the revisionist herein. Under the circumstances, he could not have been expected to have first approached the revisionist against whom he had the grievance and therefore the contention that he could not have made the complaint directly to the court has no merit.

12. The contention raised by Ld. Counsel for the revisionist that the complaint U/s 195 Cr.P.C by Ld. ACJ to the court of Ld. CMM could only be filed subsequent to holding an inquiry U/s 340 Cr.P.C is not tenable because the question of holding an inquiry U/s 340 Cr.P.C would arise only when the offence referred to falls in clause (b) of Sub-section (1) of Section 195 Cr.P.C which appears to have been committed in or in relation to a proceeding In that court or as the case may be in respect of a document produced or given in evidence in a proceeding in that Court.

The complainant Process Server Ravi Dutt Sharma is a public servant and being employee in the court he was administratively subordinate to Ld. Administrative Civil Judge, who had made the complaint U/s 195 Cr.P.C and therefore in the complaint he had formed a view after considering the contents of the complaint that from the allegations made therein prima facie offence U/s 186 IRC and U/s 341 IPC are constituted and therefore there was no illegality in the complaint. The question of obtaining sanction against the offender being a police officer, is to be appreciated at the time of taking cognizance of offence or filing of chargesheet and contention in this regard is pre-mature at this juncture.

13. The impugned order has been passed by Ld. CMM, Shahdara and PS Nand Nagri falls in the territorial jurisdiction of District Shahdara, Delhi and therefore Ld. Trial Court was competent and had territorial jurisdiction to pass the impugned order.

14. The contention that Ld. Trial court has completely failed to appreciate the distinction between Chapters XV and XXVI has no merit. In authority reported as Baru Ram v State of Haryana 1990 Cr.L.J NOC 153, it was held that if cognizance of offence has not been taken by the Magistrate U/s 190(1)(a) Cr.P.C on receipt of complaint, he can direct investigation U/s 156(3) Cr.P.C after registration of the case. In authority reported as Minu Kumari & Anr v State of Bihar and Ors (2006) 4 Supreme Court Cases 359, It was held that the Magistrate is not bound to follow the procedure laid down in sections 200 and 202 of the Code for taking cognizance of a case U/s 190(1)(i)(a) Cr.P.C.

15. It cannot be said that -the complaint made by Ld. Administrative Civil Judge to Ld. CMM U/s 195 Cr.P.C accompanied with the complaint of Process Server is abuse of court process or of provisions of law. The contention that allegations

made by the Process Server are improbable and absurd cannot be outrightly rejected or disbelieved rather the photocopies of the warrant and summons placed by him on record prima facie support his allegations. The letter No. 179/13 dated 27/11/13 submitted by Mr. Rajender Singh Sagar, Additional DCP, N/E District, Delhi also supports the complainant as it has been reported that in the inquiry conducted by ACP Seemapuri fault on the part of Inspector Devender Kumar SHO, PS Nand Nagri was established.

16. There is no doubt that a Magistrate cannot direct investigation to be conducted by an officer of a particular rank, However, in the present case the complainant had made the allegations against the SHO, PS Nand Nagri, (the revisionist herein) and therefore an order directing investigation to be conducted by an Officer of the rank of ACP cannot be said to be illegal because investigation by a superior officer alone can serve the purpose of inquiry or investigation.

17. In my considered view there appears no illegality, irregularity or impropriety in the Impugned order. The revision is therefore dismissed. Copy of order alongwith trial court record be sent to the Ld. Trial Court. Revision file be consigned to Record Room."

(Emphasis supplied)

B. IMPUGNED ORDER

6. The aforesaid order passed by the Additional Sessions Judge came to be challenged before the High Court. The High Court declined to interfere and rejected the writ petition. The impugned order passed by the High Court reads thus:

"31. Prima facie; it is established that there was indeed an obstruction/delay caused by the Police Officials of P.S. Nand Nagri in execution of the court duties of the Complainant in the service of the summon/warrants.

32. The first plea of the Petitioner that the Ld. CMM could not be specifically directed registration of FIR u/s 186/341/342 IPC, 1860 is not tenable for the simple reason that the observations are that these offences are prima facie made put, but it does not curtail the investigations to be confined only to these offences. The I.O. is obligated, to conduct investigations fair and the submit the final report on the offences if any, are established on the basis of the investigations.

33. The second ground taken is that direct registration of FIR in non-cognizable offences u/s 186 IPC, 1860 in the absence of any complaint by the Court, is in contravention of S.195 Cr.P.C. This argument is totally fallacious for the simple reason that firstly, the complainant/Process Server who is a public servant and as

an employee of the court, is administratively subordinate to the Learned Administrative Civil Judge, who filed the complaint under Section 195 of the Cr.P.C. to the Ld. CMM who in turn forwarded it by endorsing the prima facie commission of the offences and directing the investigations. Secondly, the alleged misconduct of the Petitioner, by no stretch of imagination, can be termed as acts in discharge of his official duties. Thirdly, the Complaint under S.195 Cr.P.C. is required for taking cognizance on the charge sheet; the issue of obtaining sanction is premature at this stage. Thus, the Ld.ASJ has rightly observed that there is no illegality in the complaint and the need for sanction against the accused, a police officer, should be addressed when taking cognizance or filing the chargesheet.

34. The Third challenge is to the directions by the Ld. CMM for the investigations to be conducted by officers of Rank of ACP. Considering that the complainant has made allegations against the SHO of PS Nand Nagri, it has been rightly ordered that the investigation be carried out by an officer of the rank of ACP. Such directions cannot be held illegal, as only an investigation conducted by a higher-ranking officer can effectively serve the purpose of a proper inquiry or investigation.

35. Fourth ground to challenge the Impugned Order was that a Preliminary Enquiry should have been conducted before directing registration of an FIR against a government servant. However, the holding of an inquiry u/s. 340 Cr.P.C. does not arise in the present case as the Ld. CMM had filed a complaint u/s. 195(1)(a)(i) Cr.P.C. along with the complaint of the respondent no. 2 for the offence under s. 186 IPC. The Ld. ASJ has rightly observed that the question of Preliminary enquiry under s. 340 Cr.P.C. would have arisen only when the offence referred falls within s. 195(1)(b) Cr.P.C. and does not pertain to the offence under s.186 IPC.

36. The Fifth contention raised by the Petitioner that the Ld. ASJ has failed to discuss the Enquiry Report dated 25.11.2013 of ACP, is completely misplaced as the Ld. ASJ has not only discussed and referred to the Inquiry report dated 25.11.2013 but has concluded that the same clearly establishes the fault of the Petitioner: The reliance of the Petitioner on this Report self-destructive as the same clearly highlights the misconduct of the Petitioner who used harsh words against the process server on being provoked.

37. In light of the foregoing discussion, it is held that there is no infirmity in the Order dated 28.11.2018 of the Ld. CMM, directing registration of the FIR against the concerned police officials which is upheld by the Ld. ASJ vide the Order dated 03.12.2013 and the same warrant no inference by this Court.

38. The Petition, along with pending application(s) if any, are hereby dismissed."

(Emphasis supplied)

7. In such circumstances referred to above, the petitioner is here before this Court with the present petition.

C. SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Mr. Nikilesh Ramachandran, the learned counsel appearing for the petitioner vehemently submitted that even if the entire case put up in the FIR is believed to be true or accepted to be true, none of the ingredients to constitute the offence punishable under Section 186 of the I.P.C. could be said to be disclosed. In other words, the counsel contends that the whole of the complaint even if taken to be true does not reveal the commission of any offence by the petitioner-herein. He would submit that the contents of the complaint even if read together as true would not attract Section 186 of the I.P.C. far from Section 341 of the I.P.C. According to the learned counsel for the petitioner, mere obstruction is not enough unless it is accompanied by use of some criminal force.

9. The learned counsel vehemently submitted that no order could have been passed in exercise of powers under Section 156(3) of the Cr.P.C. for the registration of an offence under Section 186 of the I.P.C. as the same is encompassed within Section 195(1)(a) of the Cr.P.C. and cognizance of the offence punishable under Section 186 of the I.P.C. can only be taken upon a complaint as defined under Section 2(d) of the Cr.P.C.

10. In such circumstances referred to above, it was prayed that there being merit in this petition, the same may be allowed and the First Information Report be quashed.

D. ANALYSIS

11. We could have disposed of the present petition by just observing that the petitioner may avail appropriate legal remedy before an appropriate forum in accordance with law if at all at the end of the investigation a chargesheet is filed. However, there is one issue which needs a little clarification at our end.

12. It is not in dispute that the Administrative Civil Judge upon instructions from the District and Sessions Judge, Shahdara lodged a private complaint in the court of the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi. This was in tune with the procedure prescribed under Section 195(1)(a) of the Cr.P.C. that it is either the public servant concerned or some other public servant to whom he is administratively subordinate, who would be allowed to file a complaint in writing. To the extent of filing a private complaint everything proceeded in accordance with law.

However, the Chief Metropolitan Magistrate should have straightaway taken cognizance upon the said complaint and issued process to the petitioner-herein. Asking the police to investigate the complaint under Section 156(3) of the Cr.P.C. was a very serious error that the Chief Metropolitan Magistrate could be said to have committed. What was the need to involve the police in a complaint lodged by a Civil Judge for the offence punishable under Sections 186 and 341 respectively of the I.P.C.?

13. If an accused person, in situations such as the present, obstructs a public servant in the discharge of his public function, the accused person commits two offences. One offence committed by him is the alleged obstruction which comes within Section 186 I.P.C. and the other offence committed by him is the offence of having been guilty of undermining the authority of the court. In our view, therefore, if an accused is alleged to have committed an offence within Section 186, he would seem to have committed also an offence of contempt of court.

14. In the facts of the present case, the right thing to do for the Chief Metropolitan Magistrate should have been to take cognizance and issue process under Section 204 of the Cr.P.C. In the present case, there is no other serious offence or any offence figuring under Section 195(1)(b)(ii) of the Cr.P.C. that perhaps would have required the assistance of the police. In the case in hand, the dignity of the court was at stake. There is lot of sanctity attached to a complaint lodged by none other than a civil judge. In a complaint lodged by a public servant, even verification of the contents of the complaint on oath is not required. In such circumstances, we do not approve of the order of police investigation under Section 156(3) of the Cr.P.C.

15. It would be argued that as the FIR was registered for non-cognizable offences; Section(s) 186 and 341 of the I.P.C., respectively, and even if Section 341 of the I.P.C. is to be treated as a distinct offence being not covered under Section 195 of the Cr.P.C., the police report if at all filed in future, insofar as the offence under Section 186 of the I.P.C. is concerned, may be treated as a "complaint" in view of the explanation to Section 2(d) of the Cr.P.C. Section 2(d) Cr.P.C. reads as follows:

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

(Emphasis supplied)

16. As per the explanation appended to the definition clause, a police report disclosing a non-cognizable offence (Sections 186 and 341 I.P.C. respectively in the present case) shall be deemed to be a complaint and the police officer shall be deemed to be the complainant. Even then, the legal embargo under Section 195 Cr.P.C., so far as Section 186 of the I.P.C. is concerned is not dispelled as the legal fiction deems the police officer and not the aggrieved public servant as the complainant. [See: Umashankar Yadav and Another v. State of U.P., 2025 SCC OnLine SC 1066]

17. The entire trial would have been over within a period of three months from the date of filing of the complaint in writing, had the CMM taken cognizance on the very first day and issued process under Section 204 of the Cr.P.C. Having not done so at the right time and in the right manner, it has been now twelve years that this litigation is still pending.

18. Look at the mess created by one and all over a period of twelve years. We are talking about upholding and maintaining the dignity of court. This entire prosecution for the alleged offence is to uphold the dignity of court. However, it has been twelve years but no one has been able to uphold the dignity of the court by proceeding in the right direction.

i. Section 186 of the I.P.C.

19. Before proceeding further to discuss as to whether mere obstruction itself would be enough or the act of obstruction is to be accompanied by use of some criminal force, it may be necessary to notice one particular allegation made against the petitioner herein in the complaint. In the complaint the allegations are:

"one warrant issued by the court of Shri Sharad Gupta, Ld. MM and one summons issued by the court of Shri Arvind Kumar, Ld. AD) were assigned to him to be served to SHO PS Nand Nagri. On 3.10.2013 he reached PS Nand Nagri at about 12.30 P.M. One Ct Sanjay Kumar Sharma was present in the room of 5-8. The said constable received the processes but signed as HC Brahmjeet. Process Server Ravi Dutt asked him not to do so. Upon this Ct. Sanjay cut the signatures made by him in the name of HC Brahmjeet and took the processes to the Reader of SHO who also refused to receive the processes. The process server went to duty officer who also refused to take the processes.

The process server went to SHO Insp. Devender Kumar and told him all the facts. The said SHO kept the processes and abused the process server badly. SHO asked process server to stand there raising his hands and wait till the Havaladar/Head Constable comes. For about half an hour process server stood there, raising his hands as a punishment. He was also made to sit on the floor for

about 3-4 hours as punishment. The process server begged SHO to allow him to go as he had to serve other processes also and told him that, he would come after serving other processes. The SHO, however, did not allow the process server to go. At about 4.30 p.m. one head constable came who took the processes and gave receipt."

20. In *Nishi Kanta Pal v. Emperor* reported in AIR 1917 Calcutta 180, the accused who were not parties to a suit in which a public right of way was claimed, did not allow a Munsif, in whose Court the suit was pending, to pass in a boat through a ditch which was their private property, when the Munsif wanted to pass through it for the purpose of making a local inspection in connection with the suit. The Calcutta High Court held that the accused did not commit any offence under Section 186 of the I.P.C. The Court took the view that there was no right of way as such and to pass through it for the purpose of making a local inspection and therefore, the accused are right in obstructing the Munsif from passing through their lands.

21. In *Jaswant Singh v. King Emperor* reported in AIR 1925 Lahore 139, the Lahore High Court held that the use of the word voluntarily in Section 186 of I.P.C. indicates that the Legislature contemplated the commission of some overt act of obstruction, and did not intend to render penal mere passive conduct. The Allahabad High Court in *Phudki v. State* reported in AIR 1955 All. 104, held that the word obstruction in Section 186 connotes some overt act in the nature of violence or show of violence.

It cannot be said that a man obstructed another if that man runs away from arrest or if he does not actually submit to the arrest. The Patna High Court in *Janki Prasad Tibrewal v. The State of Bihar* reported in 1975 CrL. L.J. 575 (Patna) while construing the expression 'obstruct' used in Section 186 observed that the expression obstruct envisages actual resistance and obstacle in the way of public servant and it implies the use of criminal force.

However, the Patna High Court in *Diljam Sahu v. Emperor* reported in AIR 1937 Patna 633 observed that sufficient indication that any attempt to effect attachment by a public servant having warrant of attachment would be resisted by force is quite enough to constitute obstruction within the meaning of Section 186 of the Act. Mere resistance of warrant of attachment by a public servant would be an offence punishable under Section 186 of I.P.C.

22. The Bombay High Court in *Emperor v. Sideman Abba* reported in AIR 1935 Bom. 24 also took the similar view that mere obstruction or prevention of discharge of duties may be enough to constitute an offence under Section 186 of the I.P.C. A Division Bench of Bombay High Court in *State v. Babulal Gaurishanker Misar* reported in AIR 1957 Bombay 10 held that to constitute

'obstruction' within Section 186 of the I.P.C., it is not necessary that there should be actual criminal force.

It is sufficient if there is either a show of force or threat or any act preventing the execution of the process of the civil Court. It was held by the Court that if an accused obstructs a public servant in the discharge of his public function (execution of a warrant of possession) he commits two offences. One offence committed by him is the alleged obstruction which comes within Section 186 and the other offence committed by him is the offence of having been guilty of undermining the authority of the Court.

23. "Obstructing" the police is not confined to physical obstruction. [See: Sykes v. Director of Public Prosecutions, 1962 A.C. 528]

24. The word 'obstruction' in Section 186 of the I.P.C is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant.

25. In Santosh Kumar Jain v. The State reported in 1951 SCC 190, the General Manager of the Jagdishpur Zamindari Co. who were the lessees of a sugar factory, was prosecuted for obstructing the District Magistrate and the Special Officer of Rationing, Patna, in the discharge of their official functions when they went to the factory on 06.12.1947 to remove, 5,000 maunds of sugar which had been seized out of the stock held by the Company pursuant to an order of the Government of Bihar dated 05.12.1947.

The named officers went to the Factory on 06.12.1947 to carry out the order of the Government. The Officers were told by the accused General Manager that he would do everything possible to obstruct the removal of the sugar and accordingly it was found that the sugar godowns had been locked and the road leading to them blocked by heaps of coal, firewood and tins placed across, so as to make vehicular traffic impossible.

As a result of such obstruction, the officers had to seek the aid of armed police to break open the locks, repair the railway line and clear the road block before the sugar could be removed from the factory. The main defense of the accused was that on a proper construction of Section 3 of the Essential Supplies (Temporary powers) Act, 1946 it was not competent for the Government to pass the order dated 05.12.1947, which was consequently illegal and void and that obstruction to the execution of that order could not constitute an offence under Section 186 I.P.C.

The contention was rejected by the Court below and the accused was convicted and sentenced to imprisonment for a term of three weeks under Section 186 of

I.P.C. The Patna High Court confirmed the conviction and the sentence. The revision came up before this Court. This Court observed that the seizure of the Company's sugar must therefore be regarded as duly authorized and lawful and the accused by obstructing its removal committed an offence under Section 186 of I.P.C.

26. In Collector of Customs and Central Excise v. Paradip Port Trust reported in (1990) 4 SCC 250, this Court while construing the expression 'obstruction' used in Section 133 of the Customs Act, 1962 observed that:

"On the authority of Hinchliffe v. Sheldon [(1955) 1 WLR 1207], it can be said that obstruction is not confined to physical obstruction and it includes anything which makes it more difficult for the police or public servant to carry out their duties."

(Emphasis supplied)

27. It may be necessary to have a look at Section 133 of the Customs Act, 1962 which is analogous to Section 186 of the I.P.C. Section 133 reads thus:-

"133. Obstruction of officer of customs.- If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

28. Now let us compare Section 133 of the Customs Act, 1962 with Section 186 of the I.P.C. Section 186 of I.P.C. reads:

"186. Obstructing public servant in discharge of public functions.- Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both".

29. Under Section 186, the expression "whoever voluntarily obstructs any public servant in the discharge of his public functions" is used and whereas in Section 133 of the Customs Act, 1962 the expression "if any person intentionally obstructs any officer of customs" is used. In our considered opinion, the expression 'intentionally' used in Section 133 of the Customs Act and the expression 'voluntarily' used in Section 186 of I.P.C. connote the same meaning. The decision of this Court in Collector of Customs (supra) concludes and decides the issue.

Therefore, we hold that the expression 'obstruction' used in Section 186 of the I.P.C. is not confined to physical obstruction. It need not necessarily be an act of

use of criminal force. The act need not be a violent one. It is enough if the act complained of results in preventing a public servant in discharge of his lawful duties. Any act of causing impediment by unlawfully preventing public servant in discharge of his functions would be enough to attract Section 186 of the I.P.C. Any other interpretation would be to encourage people to take the law into their hands, frustrate the investigation of the crimes and thwart public justice. Such an interpretation cannot be commended by the Courts.

30. We have already noticed the averments made in the complaint against the petitioner herein and others. Their acts prima facie, in our considered opinion, amount to obstructing the public servant in the discharge of their public functions. Therefore, the complaint itself, in our considered opinion does not suffer from any legal infirmity.

31. It is entirely a different matter altogether that the allegations levelled against the petitioner may be true or not. The same has to be enquired into by the trial court, in accordance with law, uninfluenced by the observations relating to the acts themselves, as this Court has not expressed any opinion whatsoever on the merits of the case. But if the allegations are true and established as is required in law, they would certainly constitute an offence punishable under Section 186 of the I.P.C.

32. The aforesaid is one view of the matter. The courts should be mindful of the position of law that we have explained as aforesaid.

33. We now proceed to consider the matter from a different angle with a view to decide whether we should interfere with the impugned judgment passed by the High Court or not.

ii. Section 195 of the Cr.P.C.

34. Section 195 of the Cr.P.C. reads thus:

"195. Prosecution for contempt of lawful authority of public servant, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in subclause (i) or subclause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of subsection (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of subsection (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

35. As a general rule, any person, having knowledge of commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. There are exceptions to this general rule, as evident from Sections 195 and 196 respectively of the Cr.P.C. Section 195 is one of those sections, which prohibits a court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person. The other sections, with similar prescriptions, are sections 196 to 199 of the Cr.P.C. respectively. Section 195 of the Cr.P.C. has been enacted as a safeguard against the irresponsible and reckless prosecutions by the private individuals in respect of the offences, which relate to the administration of justice and contempt of lawful authority.

36. It is true that Section 195 of the Cr.P.C. does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, having said so, if the perusal of the first information report makes it clear that the offence under Section 186 of the I.P.C. is closely interconnected with another distinct offence(s), which in this case is Section 341 of the I.P.C. and it cannot be split up, then in such circumstances, the bar of Section 195 of the Cr.P.C. will apply to such other distinct offence also.

37. In the aforesaid context, we may refer to the following decisions of this Court;

(i) In the case of State of U.P. v. Suresh Chandra Srivastava & Ors., reported in AIR 1984 SC 1108 a three-judge bench very succinctly explained the provisions of Section 195 of the Cr.P.C. and stated that if the other distinct offences form an integral part of the offences as enumerated under Section 195 Cr.P.C so as to fall under the same transaction, then those distinct offences would also be covered under the ambit of Section 195 Cr.P.C. The relevant observations are as under:-

"6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under Sections 467, 471 and 120-B

IPC are committed, the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in section 195, section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of sec. 195 of the Code."

(Emphasis supplied)

(ii) In the case of State of Karnataka vs. Hemareddy & Anr. reported in AIR 1981 SC 1417, this Court held that in the cases where in the course of the same transaction, an offence, for which, no complaint by a court is necessary under Section 195(1)(b) of the Cr.P.C., and an offence, for which, a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b), Cr.P.C. should be upheld. We may quote the observation as contained in para 8. The same reads as under:-

"8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under s. 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in s. 195(1)(b) of the Code of Criminal Procedure should be upheld."

(Emphasis supplied)

(iii) In the case of Saloni Arora vs. State of NCT of Delhi, [Criminal Appeal No.64 of 2017], decided on 10.01.2017, this Court explained the object of Section 195 of the Cr.P.C., observing as under:-

"10. As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.

11. It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 Cr.P.C. Section 182 does not require that action must always be taken if the person who moves the public

servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action.

Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildars complaint in writing is, therefore, without jurisdiction *ab initio*.

12. It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void *ab initio* being against the law laid down in the case of Daulat Ram (*supra*) quoted above."

(Emphasis supplied)

38. Thus, what is discernible from the decisions referred to above is that if in truth and substance, an offence falls in the category of Section 195, it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences. This would depend on the facts of each case. However it cannot be laid as a straitjacket formula that the Court cannot undertake the exercise of splitting up. It would depend upon the nature of the allegations and the materials on record.

39. In *Basir-ul-huq and others v. State of West Bengal* reported in (1953) 1 SCC 637, a three-judge bench of this Court held that the magistrate would not be debarred from taking cognizance of the distinct offences not falling within the ambit of Section 195(1)(a), thereby, effectively stating that the offences falling under Section 195(1)(a) and those not falling under Section 195(1)(a) can be split up. Therein, one of the appellants had lodged an information at the police station that one D had beaten and throttled his mother to death.

While the funeral pyre was in flames, the appellants therein along with the police arrived at the cremation ground, extinguished the fire and sent the body of the deceased for post-mortem examination. However, no injury was found on the body of the deceased. Upon investigation, the sub-inspector reached the conclusion that a false complaint had been made against D. Therefore, an offence under Section 182 I.P.C. was made out.

However, D had separately instituted a complaint against the appellants and they stood convicted for having committed the offence under Sections 297 and 500 of the I.P.C. respectively. It was in such a circumstance that this Court stated that the Magistrate could take cognizance of the distinct offences i.e., Sections 297 and 500 of the I.P.C. respectively despite the facts also disclosing the commission of an offence under Section 182 I.P.C. for which a complaint by the proper authority under Section 195 Cr.P.C would be a pre-requisite. Opining so, it was observed as follows:

"12. Section 195 CrPC, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under Sections 172 to 188IPC, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under Section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well.

The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the Magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made.

It was however argued that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.

13. In our judgment, the contention raised by the learned counsel for the appellants is without any substance so far as the present case is concerned. The charge for the offence under Section 297IPC, could in no circumstance, as pointed out by the High Court, be described as falling within the purview of Section 195 CrPC. The act of trespass was alleged to have been committed subsequent to the making of the false report and all the ingredients of the offence that have been held to have been established on the evidence concern the conduct of the appellants during the post-report period. In these circumstances, no serious

contention could be raised that the provisions of Section 195 would stand defeated by the Magistrate having taken cognizance of the offence under that section.

14. As regards the charge under Section 500IPC, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of Section 195 from seeking redress for the offence committed against him. Section 499IPC, which mentions the ingredients of the offence of defamation gives within defined limits immunity to persons making depositions in court, but it is now well settled that that immunity is a qualified one and is not absolute as it is in English law.

Under Section 198CrPC, 1898, a complaint in respect of an offence under Section 499IPC, can only be initiated at the instance of the person defamed, in like manner as cognizance for an offence under Section 182 cannot be taken except at the complaint of the public servant concerned. In view of these provisions there does not seem in principle any warrant for the proposition that a complaint under Section 499 in such a situation cannot be taken cognizance of unless two persons join in making it i.e. it can only be considered if both the public servant and the person defamed join in making it, otherwise the person defamed is without any redress. The statute has prescribed distinct procedure for the making of the complaints under these two provisions of the Penal Code and when the prescribed procedure has been followed, the court is bound to take cognizance of the offence complained of."

(Emphasis supplied)

40. In *Durgacharan Naik and Others v. State of Orissa* reported in AIR 1966 SC 1775, a process server had to execute a writ of attachment against the judgment-debtors, however, there was some resistance when he reached their village. After the arrival of police, the judgment-debtors paid the decretal dues to the process server. However, when the process server and the police were leaving the village and were crossing a nearby river in a boat, the appellant along with 10-12 persons threatened to assault them if their money were not returned.

The situation had de-escalated upon the intervention of some outsiders and subsequently, on the next morning, the ASI lodged an FIR against the appellants. While the trial court had acquitted the appellants, the High Court set aside the order of acquittal and convicted them for the offence under Section 353 I.P.C. As regards the charge under Section 186 I.P.C., the High Court observed that the prosecution was barred under Section 195 Cr.P.C. Finding no infirmity in the judgment of the High Court and allowing the offences to be split up, this Court observed as follows:

"5. We pass on to consider the next contention of the appellants that the conviction of the appellants under Section 353 of the Indian Penal Code is illegal because there is a contravention of Section 195(1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the ASI. It was submitted that the charge under Section 353 of the Indian Penal Code is based upon the same facts as the charge under Section 186 of the Indian Penal Code and no cognizance could be taken of the offence under Section 186 of the Indian Penal Code unless there was a complaint in writing as required by Section 195(1) of the Criminal Procedure Code.

It was argued that the conviction under Section 353 of the Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the requirement of Section 195(1) of the Criminal Procedure Code and the conviction of the appellants under Section 353 of the Indian Penal Code by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under Section 353 of the Indian Penal Code is based are the same as those constituting the charge under Section 186 of the Indian Penal Code but it cannot be ignored that Sections 186 and 353 of the Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so.

The ingredients of the two offences are also distinct. Section 186 of the Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under Section 353 of the Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Chapter X of the Indian Penal Code dealing with contempts of the lawful authority of public servants, while Section 353 occurs in Chapter XVI regarding the offences affecting the human body. It is well established that Section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section.

6. In the present case, therefore, we are of the opinion that Section 195 of the Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under Section 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under Section 186 of the Indian Penal Code."

(Emphasis supplied)

41. While deciding whether the distinct offences can be split up, courts must remain circumspect. It is agreed that, the law is not that once the facts of a given

case disclose an offence falling within the scope of Section 195 Cr.P.C. and also other offences, prosecution can be launched regarding the latter only upon the complaint of the court or the lawfully authority concerned. To hold otherwise would be to extend the scope of Section 195 Cr.P.C. to regions and horizons not contemplated by the legislature.

The facts in a case may give rise to distinct offences including offences against the authority of public servants or against public justice, as also offences against private individuals; the bar under Section 195 of the Cr.P.C. cannot, in such circumstances, affect the offences other than those against public authority or public justice. Prosecution for such other offences does not require the instrumentality of the public authority or court.

However, the position may be different when during the course of the same transaction offences falling within the two categories are committed. In such cases, it may not be possible to split up the transaction, and to hold that there can be valid prosecution for offences not mentioned in Section 195 of the Cr.P.C., without the written complaint of the public authority or the court, as the case may be. Courts must be able to see through any attempt to render Section 195 of the Cr.P.C. nugatory by hiding the real nature of the transaction by verbal jugglery.

If in principle and substance the offence alleged falls within the categories mentioned in Section 195, the operation of the bar cannot be avoided; if in essence the alleged offence falls outside the categories, the bar would not operate. At the same time, if the facts give rise to distinct offences, some attracting the operation of Section 195 and others not so, the bar can operate only regarding the former and not regarding the latter.

42. Therefore, the courts must ascertain whether during the course of a single transaction, the offences falling within both the categories are committed, in which case it would be difficult to split up the offences or, whether there are two different transactions which occur successively, nevertheless separately and distinctively, in which case the offences may be split up.

One another aspect that may be looked into is whether, apart from the offences committed in contempt of lawful authority of public servants, or against public justice or, relating to documents given in evidence which fall under the scope of Section 195 Cr.P.C., the other distinct offences are of such a nature that private individuals are aggrieved. In such a scenario, it would not be reasonable to bar a private prosecution by the aggrieved individual for the reason that the public official or the court concerned has also not instituted a complaint.

43. Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of the offence punishable under Section 186 I.P.C., unless there is a written

complaint by the public servant for voluntarily obstructing him from discharge of his public functions. The object of this provision is to provide for a particular procedure in a case of voluntarily obstructing a public servant from discharging his public functions. The court lacks competence to automatically take cognizance in certain types of offences enumerated therein.

The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and also to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.P.C. that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person.

Other provisions in the Cr.P.C. like sections 196 and 198 respectively do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. [See: Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119]

44. The test of whether there is evasion or non-compliance of Section 195 Cr.P.C. or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. (supra) and Durgacharan Naik & Ors. (supra), this Court cautioned that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of I.P.C., though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.P.C. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

45. In M.S. Ahlawat v. State of Haryana & Anr. reported in AIR 2000 SC 168, this Court considered the matter at length and held as under:-

"Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."

(Emphasis supplied)

46. In *Sachida Nand Singh & Anr. v. State of Bihar & Anr.* reported in (1998) 2 SCC 493, this Court while dealing with this issue observed as under:-

"7. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well- recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise."

(Emphasis supplied)

47. In *Daulat Ram v. State of Punjab* reported in AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 of the Cr.P.C. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant i.e., the Tahsildar, had not filed any complaint. This Court held as follows:-

"The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."

(Emphasis supplied)

48. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant who was voluntarily obstructed in the discharge of his public functions. The complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

49. The learned counsel appearing on behalf of the petitioner would submit that the bar of Section 195 of the Cr.P.C., so far as the offence punishable under Section 186 of the I.P.C. is concerned, is absolutely unlike Section 195 (1)(b) of the Cr.P.C. In other words, Section 195(1)(b) would apply provided certain conditions are fulfilled, and if those conditions are not applicable, then it is open for the police to carry out the investigation after registering an F.I.R.

50. The heading of Chapter XIV of the Code of Criminal Procedure is "Conditions Requisite for Initiation of Proceedings". The first provision in this Chapter is Section 190 and it deals with the power of the Magistrate to take cognizance of the offences. There are some other provisions in this Chapter which create an embargo on the power of the Court to take cognizance of offences committed by persons enumerated therein except on the complaint in writing of certain specified persons or with the previous sanction of certain specified authorities.

51. A plain reading of Section 195 of the Cr.P.C. would indicate that no Court can take cognizance of an offence punishable under Section 186 of the I.P.C., except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. The opening words of the Section are "No Court shall take cognizance", and consequently, the bar created by the provisions is against taking of cognizance by the Court. There is no bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 of the Cr.P.C.

52. This Court in *Iqbal Singh Marwah v. Meenakshi Marwah* reported in AIR 2005 SC 2119, while interpreting Section 195 Cr.P.C. has held as follows:-

"9. This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court.

The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court."

(Emphasis supplied)

53. This Court, referred to its earlier decision in *Sachida Nand Singh* (supra), wherein it had been held that Section 195 Cr.P.C. is invoked where the offences affected the administration of justice. It is for that reason, that only the concerned

Court can take cognizance, and the procedure under Section 340 Cr.P.C. also empowers the same Court before whom the offence is committed in respect of documents produced or given in evidence before that Court. The reason why the jurisdiction to take cognizance of such an offence is restricted to the concerned Court is also noted by this Court and the same is culled out from the previous decision in Patel Lalji Bhai Samabhai (supra).

The purpose underlying Section 195(1)(b) seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous, vexations or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process or the administration of public justice which is the direct and immediate object or the victim of these offences. As the purity of the proceedings of the court is directly sullied by the crime, the court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party who might ultimately suffer can persuade the Civil Court to file the complaint.

54. In Iqbal Singh Marwah (supra), this Court took note of the legal position that in view of the language used in Section 340 of the Cr.P.C., the Court is not bound to make a complaint regarding commission of an offence referred to Section 195(1)(b), as the Section is conditioned by the words "court is of opinion that it is expedient in the interest of justice". The concerned Court would file a complaint only if the interest of justice so requires and not in every case. Even before making the complaint, the Court would hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to Section 195(1)(b).

This expediency would be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged documents, but having regard to the effect or impact that such commission of offence as upon administration of justice. It is possible that such forged documents or forgery may cause very serious or substantial injury to a person, inasmuch as, it may deprive him of very valuable property or status or the like. If it is held that in a case it would be the concerned Court alone, which would be entitled to lodge the complaint, it would render the victim of such forgery or forged documents remediless.

This Court held that any interpretation which leads to such a situation where a victim of a crime is rendered remediless has to be discarded. This Court also took a note of the fact that the holding of a preliminary inquiry under Section 340 of the Cr.P.C. by the concerned Court would normally get unduly delayed. This important aspect also dissuaded this Court from accepting the broad interpretation sought to be placed on Section 195(1)(b)(ii) of the Cr.P.C. to the

effect that Section 195 is a bar to private prosecution. This Court held that an enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery, the document is subsequently produced in Court, is capable of great misuse.

After preparing a forged document or committing an act of forgery, a person may manage to get the proceeding instituted in any civil, criminal or revenue Court either by himself or someone set up by him, or simply file the document in the said proceeding. If the broad interpretation to Section 195(1)(b)(ii) is accepted, he would be protected from prosecution either at the instance of a private party or the police, until the concerned Court, where the document is filed, itself chooses to file a complaint. Such an interpretation would be highly detrimental to the interest of the society at large.

This Court also took notice of the fact that the Courts are generally reluctant in directing filing of a criminal complaint and such a course is rarely adopted. The Court held that it would not be fair and appropriate to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in Clause (b)(ii) is not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Such a broad interpretation would also lead to impracticable results, which should be avoided.

55. In *State of Punjab v. Raj Singh* reported in AIR 1998 SC 768, this Court further stated that Section 195(1)(b)(ii) of the Cr.P.C. cannot be seen as prohibiting the entertainment of, and investigation into the offence(s) by the police. The bar comes into operation only when the Court intends to take cognizance of the offence under Section 190 Cr.P.C. In other words, the statutory power of the police to investigate under the Cr.P.C. is not in any way controlled or circumscribed by Section 195 Cr.P.C. The legal position was elaborated in the following words:-

"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. Lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court.

In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr. P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C."

(Emphasis supplied)

56. A more elaborate discussion is found in *M. Narayandas v. State of Karnataka* reported in AIR 2004 SC 555, wherein this Court has held as follows:-

"8. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of *State of Punjab v. Raj Singh* reported in 1998(2) SCC 391 Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code.

Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.

10. The law on the point is clear. At the stage of investigation Section 195 has no application. We are therefore not concerned with the question whether Section 195 applies to documents forged/fabricated prior to their being produced in Court. That question only arises after the Court takes cognizance. At this stage the only question is whether the investigation should be permitted to proceed or not. As stated above there is no ground or reason on which the complaint/FIR can be quashed."

(Emphasis supplied)

57. We may note that the decision of the Constitution Bench in *Iqbal Singh Marwah* (supra) does not in any way express its disagreement with the view in *Raj Singh* (supra) and *M. Narayandas* (supra). On the contrary, a perusal of *Iqbal Singh Marwah* (supra) shows that the Court has leaned in favour of giving an interpretation, which limits the scope of Section 195 of the Cr.P.C. There is no

contradiction in invocation of Section 156(3) by the learned Magistrate, the registration of the F.I.R. and the conduct of the investigation by the police, with Section 195 read with Section 340 Cr.P.C.

As noticed in *M. Narayandas* (supra) once the investigation is completed, then the embargo under Section 195 would come into play and the Court would not be competent to take cognizance. However, the concerned Court could then file the complaint for the offence mentioned in Section 195(1)(b)(ii) on the basis of the F.I.R. and the material collected during investigation and by following the procedure laid down in Section 340 Cr.P.C.

58. The procedure contemplated under sub-section (1) of Section 340 of the Cr.P.C. is limited to such cases, as are provided in clause (b) of sub-section (1) of Section 195 of the Cr.P.C. only. Section 340 of the Cr.P.C. does not envisage a procedure with reference to an offence described in Section 195(1)(a) of the Cr.P.C. However, the observations made in *Raj Singh* (supra) and *M. Narayandas* (supra), more specifically that Section 195 Cr.P.C. does not have any application at the stage of investigation holds good as regards both Section 195(1)(a) and 195(1)(b) of the Cr.P.C. respectively. The overall bar contemplated under Section 195 could be said to kick in only at the stage of cognizance.

E. CONCLUSION

59. We may summarize our final conclusion as under:

(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of

Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.

(vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed.

60. In view of the aforesaid, we dispose of this petition leaving it open to the petitioner to raise the contention as regards the bar of Section 195 of the Cr.P.C. before the trial court if at all, at the end of the investigation, chargesheet is filed for the offences enumerated above in the FIR.

61. Registry shall circulate one copy each of this judgment to all the High Courts.

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

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

New Delhi;

August 20, 2025

IN THE SUPREME COURT OF INDIA

**Iqbal Ahmed (Dead) By LRs. and Anr.
Vs.
Abdul Shukoor**

[Civil Appeal No. 10458 of 2010]

HEADNOTE – Additional evidence cannot be introduced at the appellate stage under Order XLI Rule 27 CPC if it is inconsistent with the pleadings. The Court emphasized that appellate courts must first examine the pleadings before allowing such evidence, as evidence unrelated to the pleadings serves no purpose, rendering them inadmissible.

JUDGMENT

Atul S. Chandurkar, J.

1. The short issue involved in this Civil Appeal is whether it is necessary for the Appellate Court to consider the pleadings of the parties before adjudicating the prayer made for leading additional evidence under the provisions of Order XLI Rule 27(1) of the Code of Civil Procedure, 1908?

2. The appellants are the unsuccessful plaintiffs, who are aggrieved by the reversal of the decree for specific performance of agreement dated 20.02.1995, that was granted by the Trial Court. The Appellate Court has reversed the said decree after taking into consideration the additional evidence led by the respondent - defendant.

2.1 It is the case of the appellants - plaintiffs that on 20.02.1995, the respondent - defendant entered into an agreement to sell his house property for a consideration of ₹10,67,000. An amount of ₹2,50,000 was paid on the date of the agreement, while further amount of ₹2,50,000 was paid on 30.03.1995. The agreement was to be completed within a period of one and a half years. As per the said agreement, if the defendant was not in a position to deliver vacant possession, the consideration payable was to be ₹8,67,000.

2.2 The plaintiffs on 18.04.1996 issued a notice to the defendant calling upon him to execute the sale deed. There was no response to this notice. Thereafter on 11.07.1996, a telegraphic notice was issued by the plaintiffs. The plaintiffs thereafter on 19.07.1996 filed the suit for specific performance of the agreement dated 20.02.1995.

2.3 In the plaint, it was pleaded by the plaintiffs that they had disposed of other immovable properties for purchasing the suit property, which they intended to use for their occupation. It was further pleaded that the plaintiffs were always ready and willing to perform their part of the agreement and that the balance consideration was available with them.

2.4 In the written statement filed by the defendant, the case set up by the plaintiffs was denied. According to the defendant, he had borrowed an amount of ₹1,00,000 for expansion of his business from the plaintiff No.1 and that on 18.02.1995, his signatures were obtained on blank stamp papers. While he admitted his signatures at two places on the stamp papers, he denied the other signatures. As regards the plaintiffs' case that they had sold their immovable properties for purchasing the suit property, the defendant stated that it was not within his knowledge that the plaintiffs had done so.

2.5 The plaintiff No.1 examined himself and two other witnesses. The defendant examined himself before the Trial Court. On consideration of the aforesaid evidence, the Trial Court held that the plaintiffs had proved that an agreement to sell dated 20.02.1995 was entered into by the defendant. It was further held that the plaintiffs had proved their readiness and willingness. The Trial Court exercised discretion in favour of the plaintiffs and after disbelieving the evidence led by the defendant, decreed the suit for specific performance on 19.02.2000.

2.6 The defendant being aggrieved by the aforesaid decree challenged the same by filing an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short "the Code"), During pendency of the appeal, an application under provisions of Order XLI Rule 27(1) of the Code was filed by the defendant. He sought to produce additional documentary evidence in support of the appeal. The documents intended to be produced were:-

"1. Certified copy of extract of the house tax demand register pertaining to House Property bearing No.13, Old. No. 29/30, E No. 6th Street, HKB Road, Bangalore 550 001.

2. Certified copy of the Encumbrance Certificate pertaining to House Property bearing No.13, Old No.29/30, E No. 5th Street, HKB Road, Bangalore 550 001.

3. Certified copy of the sale deed dated 22nd day of October 1948. E No. 5th Street, HKB Road, Bangalore 550 001.

4. Certified copy of the City Survey Endorsement."

2.7 The application was opposed by the plaintiffs. The Division Bench of the High Court while considering the appeal proceeded to hold that in view of the pleadings in paragraph 9 of the plaint, wherein the plaintiffs had stated that they

had sold the immovable properties for purchasing the suit property and that the defendant had subsequently got information that no such sale had taken place, it was necessary to permit additional evidence to be led. After considering the same, the High Court was of the view that the agreement dated 20.02.1995 was not proved and that the case set up by the plaintiffs was not true. On that basis, the High Court reversed the decree for specific performance and directed the defendant to return the amount of ₹1,00,000 borrowed by him from the plaintiff No.1.

3. Mr. Raghavendra Srivatsa, learned Senior Advocate for the appellants - plaintiffs submitted that the High Court was not justified in reversing the decree passed by the Trial Court. The plaintiffs had pleaded and proved their readiness and willingness to perform their part of the contract in accordance with the agreement dated 20.02.1995. The Trial Court after examining entire evidence on record, rightly held that the agreement dated 20.02.1995 had been duly proved and that the High Court erred in reversing this finding.

The defendant having admitted his signatures on the said agreement, it was not permissible for the High Court to have compared the signatures and thereafter take a different view from the one taken by the Trial Court. The additional evidence sought to be led by the defendant was accepted without granting any opportunity to the plaintiffs to counter the same.

It was further submitted that there was considerable delay on the part of the High Court in delivering the impugned judgment, after the parties were heard and the judgment was reserved. Reliance in this regard was placed on the decisions in Anil Rai Vs. State of Bihar, (2001) 7 SCC 318 and Ratilal Jhaverbhai Parmar and Others Vs. State of Gujarat and Others, 2024 INSC 801. It was thus submitted that the Appellate Court had erred in reversing the well-reasoned judgment of the Trial Court.

4. Per contra, Ms. Mahalakshmi Pavani, learned Senior Advocate for the respondent - defendant supported the impugned judgment. According to her, the High Court was justified in reversing the finding that the agreement dated 20.02.1995 had been proved. It was clear from the deposition of the defendant, who had accepted his signatures at three places but had denied the other signatures on the document dated 20.02.1995. The High Court was justified in undertaking the exercise of comparing the signatures in exercise of the power conferred by Section 73 of the Indian Evidence Act, 1872 (for short "the Act of 1872").

Since it came to the knowledge of the defendant that the plaintiffs had not sold any immovable property as pleaded by them, the application seeking permission to lead additional evidence under provisions of Order XLI Rule 27 of the Code

had been moved by the defendant. The same was rightly allowed by the High Court and after considering the public documents obtained from the State authorities, the same were taken into consideration. Since the High Court had considered the entire evidence in the proper perspective, there was no reason to interfere with the impugned judgment. It was, thus, urged that the appeal was liable to be dismissed.

5. Having heard the learned Senior Advocates for the parties and having perused the documentary evidence on record, it would be first necessary to consider whether the High Court was justified in permitting the defendant to lead additional evidence in the appeal as this is the principal reason that the decree passed by the Trial Court has been reversed by the High Court in view of the additional evidence brought on record by the defendant.

5.1 In paragraph 9 of the plaint, it was specifically pleaded by the plaintiffs that they had disposed of their valuable immovable properties in order to purchase the suit property, which they required for their bona fide use and occupation. In the written statement, the defendant in paragraph 11 stated that as regards the averments contained in paragraph 9 of the plaint, it was not within the knowledge of the defendant that the plaintiffs had sold their valuable immovable properties so as to invest the return of the same in purchasing the suit property.

5.2 The plaintiff No.1 in his deposition stated that since he wanted to purchase the suit property for his residence and he did not own any property in Bengaluru, he had sold a house one month prior to the date of the agreement of sale so as to make the payment to the defendant. In his cross-examination, he stated that about two months prior to 20.02.1995, he was authorised by the plaintiff No.2 to sell his property located at Benson Town. Some portion of that property was accordingly sold to Mr. R. Maqbool for ₹7 lakhs while the remaining portion was sold to Mr. Gulzar Ahamed for ₹2.5 lakhs. He further stated about the manner in which the proceeds from the sale were invested.

5.3 The Trial Court on the basis of the evidence of the plaintiff No.1 and other witnesses, as well as the evidence of the defendant, accepted the case of the plaintiffs and granted a decree for specific performance.

5.4 In the grounds raised by the defendant in the appeal filed before the High Court, a challenge was raised to the document dated 20.02.1995, by stating that it was not an agreement of sale, but that the said document had been executed by way of security since the defendant had obtained a loan of ₹1,00,000 from the plaintiff No.1.

5.5 As stated above, during pendency of the appeal before the High Court, the defendant filed the application under the provisions of Order XLI Rule 27(1) of

the Code. The High Court was of the view that in the light of the pleadings in paragraph 9 of the plaint as well as the evidence of the plaintiff No.1, the documents in the form of extracts of the house tax demand register, encumbrance certificate, certified copy of the sale deed and certified copy of the City Survey Endorsement were material documents that were required to be taken into consideration as additional evidence.

It was further stated that being public documents, the same ought to be accepted under Section 74 of the Act of 1872, being maintained by the authorities in discharge of their duties in normal course. For these reasons, the High Court was of the view that it was not necessary to remand the proceedings to the Trial Court for recording additional evidence and that the said documents could be considered by it. The decree for specific performance was accordingly reversed and instead the defendant was directed to return an amount of ₹1,00,000 to the plaintiff No.1.

6. Considering the averments in paragraph 9 of the plaint and the response of the defendant to the said averments in paragraph 11 of the written statement, it is clear that while the plaintiffs asserted that they had sold the immovable properties located at Benson Town for arranging the funds to undertake the transaction, the defendant stated that he was unaware of this factual aspect.

7. In the application preferred under Order XLI Rule 27(1) of the Code, the defendant stated that he got the information that there was no such sale by the plaintiffs in the last week of June, 2000. After making inquiries in the office of the Sub-Registrar, he got such information and obtained certified copies of extracts of said documents. It can be seen that the High Court has proceeded to consider the application under provisions of Order XLI Rule 27(1) of the Code without examining as to whether the additional evidence sought to be led was supported by the pleadings of the defendant in the written statement.

8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration.

Useful reference in this regard can be made to the decisions in *Bachhaj Nahar Vs. Nilima Mandal and Anr.*, AIR 2009 SC 1103 and *Union of India Vs. Ibrahim Uddin and Anr.*, (2012) 8 SCC 148. Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for

the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.

9. As we have found that the application for leading additional evidence has been considered by the Appellate Court without examining the aspect as to whether the additional evidence proposed to be led was in consonance with the pleadings of the defendant and whether such case had been set up by him coupled with the fact that the additional evidence taken on record has weighed with it while reversing the decree, the matter requires reconsideration by the High Court. Since we find that the matter requires re-consideration at the hands of the High Court afresh, we have not gone into the aspect of delay in deciding the appeal by the High Court as was urged on behalf of the appellants.

10. For the aforesaid reasons, we find the judgment under challenge to be unsustainable in law. The appeal requires to be re-considered along with the application filed by the defendant under provisions of Order XLI Rule 27(1) of the Code afresh. Accordingly, the judgment and order dated 30.12.2008 passed in RFA No.440 of 2000 is set aside. The proceedings are remanded to the High Court to reconsider the same afresh in accordance with law. Since the suit was filed in 1997, we request the High Court to expedite the consideration of RFA No.440 of 2000. It is clarified that we have not expressed any opinion on the merits of the matter.

11. The Civil Appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

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

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

.....J. [Atul S. Chandurkar]

New Delhi;

August 22, 2025.

4. Study Material-G.K.

QUIT INDIA MOVEMENT

The Quit India Movement was launched on **August 8, 1942**, under Mahatma Gandhi's leadership, was a significant anti-colonial struggle. Gandhi's slogan, "Do or Die," marked a decisive call for ending British rule. Initially a civil disobedience movement, it soon turned violent, aiming to dismantle the colonial regime. Acknowledging the nation's mood, Gandhi deemed resistance against state oppression morally justified, even if it led to riots.

Also called the "**August Kranti Movement**," it represented a firm rejection of British rule rather than traditional Satyagraha and set the stage for transformative events in Indian history over the next five years.

What is Quit India Movement?

Quit India Movement was a massive anti-colonial struggle in India, launched on August 8, 1942, under the leadership of Mahatma Gandhi, who gave the mantra of "Do or Die" during this Movement.

Background of Quit India Movement 1942

The background of the Quit India Movement lies in the failure of the Cripps Mission, economic hardships during World War II, and rising nationalist sentiments from earlier movements like Civil Disobedience and the demand for Purna Swaraj. With Britain weakened by the war, Gandhi launched the movement in 1942, urging Indians to "Do or Die" for independence.

Causes of Quit India Movement

The Quit India Movement was the culmination of years of Indian disillusionment with British rule, with the immediate causes being the failure of Cripps mission, hardships caused during World War II and the Japanese knocking at the doors of Indian borders. Some of the major causes of the Quit India Movement are as follows:

1. The Attitude of the British Government – The Indian people had grown increasingly disillusioned with the British government's failure to fulfil its promises regarding India's self-rule. The British, although they gained Indian support in World War II, did not want to transfer the power easily. The August offer and Cripps mission failed to satisfy the demands of the nationalists.

Further, the British support to the demand of Pakistan by the Muslim League was making the Indian nationalists (particularly Gandhi) infuriated.

2. Growing Nationalism – By 1942, India's struggle for independence had been ongoing for several decades. The nationalistic sentiments were at its peak, and people grew increasingly impatient with British rule.

The extent and activities of the people during the Quit India Movement also reflect this sentiment.

They had participated wholeheartedly in the Individual Satyagraha movements of 1940. Further, along with the Kisan Sabha movements, it had prepared the ground for the final battle against the imperialist forces.

They already had tasted the sweetness of self-rule through the Congress rule in the period of 1937-39. Therefore, now the people wanted to drive out the British from India.

3. Socio-Economic factors – India's participation in World War II placed significant economic burdens and restrictions on the country. The war effort led to rising prices, shortages of essential goods, and increased taxation, causing immense hardships for the Indian population. The shortage of supply of essential goods and the export of rice caused large-scale deprivation and death, ultimately resulting in the Bengal Famine of 1943.

4. The Defeat of the British in World War II – Reverses suffered by the British in Southeast Asia and the advancement of Japanese troops towards the borders of India increased the popular discontent among the people.

The retreat of the British troops from Burma further enhanced this fear.

The British attitude towards Indian subjects also exposed the racial discrimination policy of the British.

Indians thought they were on their own. Thus there was the utmost need of a nationalist government to defend its borders.

And in this situation, the failure of the Cripps Mission led Gandhi and Congress to launch the final strike against the British.

Launch of the Quit India Movement 1942

Congress Working Committee of the Indian National Congress met at Wardha on July 14, 1942, and decided to launch a mass civil disobedience movement under the leadership of Gandhi. The All India Congress Committee met at Gowalia

Tank, Bombay, on 8 August 1942 and passed the famous Quit India Resolution. Gandhi sloganed his 'Do or Die' call on the same day.

Demands: It demanded an end to British rule in India with immediate effect, the formation of a provisional government after the war and the declaration of free India.

Government's response: On the 8th and 9th of August 1942, the government arrested all the prominent leaders of Congress.

Mahatma Gandhi was imprisoned in Poona. Jawaharlal Nehru, Abul Kalam Azad, and other leaders were imprisoned in the Ahmednagar Fort.

Nature of the Quit India Movement 1942

Although the Movement was initially started as a civil disobedience movement, it differed from other movements launched by Gandhi.

Different from earlier movements: The NCM of 1920-22 and the CDM of 1930-34 were conceived as the peaceful resistance to British rule, and the social base expanded slowly to accommodate wider participation of people.

On the contrary, the Quit India Movement was a massive uprising from the very beginning to compel the British to quit India.

Ends justifying means: The British' attitude towards Indians and their endorsement to Jinnah's communal polity frustrated Gandhi.

Knowing the mood of the Indians, especially in the limited but symbolic Individual Satyagrahas, he even believed that the masses could adopt a violent path in self-defence against a well-equipped and strong aggressor. It was reflected in his article in 'the Harijan' in March 1942.

He opined that every individual must consider himself free and should act for himself to attain freedom.

Thus, he was more concerned for the ends (freedom) than the means (methods).

Clear goal and objectives: The 1942 Movement's goal was less ambiguous in its objectives as it was launched to make the complete withdrawal of the British from India. It has four main features:

- (a) Accommodative of violence against the state,
- (b) Aimed at destroying the British rule involving anybody believing in complete independence instead of trained satyagrahis,

- (c) Students were called to play the major role and should lead the Movement after the arrest of senior Congress leaders and
- (d) Total defiance of government authority.

Leaderless Movement: Once the main leaders were arrested on 9 August, the Movement took a radical turn, often cited as the most ‘un-Gandhian’ method of the freedom movement.

As Gandhi had already sanctioned violence and the role of younger generations, the movement developed at the grassroots level.

Underground activities: The movement saw the emergence of underground radical activities.

Purpose: The purpose of such underground activities was to maintain popular morale, establish a line of command, provide guidance, and distribute arms and ammunition.

Key personalities: Rammanohar Lohia, Jayaprakash Narayan, Aruna Asaf Ali, Usha Mehta, Biju Patnaik, Chhotubhai Puranik, Achyut Patwardhan, Sucheta Kripalani, and R.P. Goenka. Usha Mehta established an underground radio station in Bombay.

Parallel governments: The movement also saw the emergence of parallel governments in certain parts of India.

Spread of the Quit India Movement 1942

Quit India Movement had two phases: the mass movement phase (August to September 1942), and the quasi-guerrilla insurgency phase (afterwards). The people started burning and destroying anything that symbolised British authority, such as post offices, police stations, government buildings, Railways and telegraph lines. The scale of participation in Bihar and eastern UP was unparalleled.

Participation in the Quit India Movement

The Quit India Movement saw widespread participation from various sections of Indian society. Among other, the following section of society participated in movement:

Students: Workers, students and middle-class radicals were involved in most parts of the country, and the movement spread to the villages.

Bihar and eastern Uttar Pradesh witnessed the unprecedented participation of the students.

Militant students of Patna and Benares played a significant role in this movement.

Peasants: The extent of the peasants' participation was limited as the Quit India Movement was focused more on nationalism than anything else. Still, in Bihar and Eastern UP, they were more active.

Tribals: In Bengal and Orissa, they participated in the struggle.

Government officials: Government employees, particularly those from lower ranks of the police and administration, took part, which decreased people's devotion to the government. Some government officials, including police, passed on secret information to the activists.

Women: Women's participation was remarkable during the Quit India Movement. They actively took part in protests, strikes, and demonstrations and played a significant role in organising and mobilising local communities.

Regional Participation of Quit India Movement

The Quit India Movement saw vibrant participation across various regions of India. Following table illustrate some notable examples:

Region	Activities
Bihar	➤ Students, peasants, and workers played a significant role. ➤ Underground activities disrupted law and order, with severe organizations and dacoit gangs linked to Jayprakash Narayan and the Congress Socialist Party. ➤ JP Narayan and Rammanohar Lohia established a parallel government near the Nepal border until 1944. ➤ The socialist group Azad Dastas conducted underground activities.
Uttar Pradesh	➤ Armed villagers targeted police posts and local courts and engaged in looting. ➤ There were strikes in Kanpur, Lucknow and Nagpur and violent clashes with striking millworkers in Delhi.
Bengal	➤ Movement primarily occurred in towns and cities, where protests, acts of sabotage, and damage to essential services took place. ➤ In many parts of Bengal, the worker, tribal and peasant movements picked up momentum by linking up with the Quit

	India movement.
Western India	➤ In districts like East Khandesh, Satara, Broach, and Surat, peasants engaged in guerrilla attacks on government property, communication lines, and British sympathizers. ➤ Gujarat saw the establishment of the "Azad Government" in Ahmedabad. ➤ Bombay was influenced by underground publications like the Bombay Provincial Bulletin, Do or Die News-sheet, Free India
South India	K.T. Bhashyam, a Bangalore-based Congress leader who was active in trade unions and organised strikes.

British Response to Quit India Movement 1942

The British responded to the Quit India Movement with swift repression, arresting key Congress leaders like Gandhi, Nehru, and Patel, detaining over 100,000 people, and declaring the Congress unlawful. Violent clashes led to significant casualties, with deaths ranging from 1,028 to over 10,000.

The British, supported by the Viceroy's Council, the All India Muslim League, Hindu Mahasabha, princely states, Indian Imperial Police, and British Indian Army, used raids and force to suppress the movement.

Despite this, the economic disruption and political pressure reinforced the inevitability of India's independence.

Limitations of the Quit India Movement 1942

While the Quit India Movement played a crucial role in India's struggle for independence, it also had several limitations that affected its overall impact:

Failed to meet its objectives: The movement did not immediately lead to freedom, and it took more years of struggle and negotiations before independence was achieved.

Lack of central leadership: This hindered effective coordination and decision-making, leading to confusion and fragmentation within the movement.

No consensus: Some political parties and leaders opposed the Quit India Movement.

Muslim League, Communist Party of India, and Hindu Mahasabha were against the Movement.

Bureaucracy was also against the Movement.

B. R. Ambedkar and Periyar were also against the Movement.

Communal divide: Muslim participation in the movement was even lower than the CDM. Jinnah appealed to Muslims to join the armed forces. Muslim League used this time period to mobilise masses that helped it in the next elections of 1945-46, which strengthened its demand of a separate state, ultimately resulting in the Partition.

Further, there were some areas of communal violence during the Movement.

Significance of the Quit India Movement 1942

The Quit India Movement, active until 1944, was ultimately suppressed by the British. Although it did not immediately achieve its goal of driving out the British, it was a defining phase in India's struggle for independence.

A Radical and Widespread Movement: The Quit India Movement was marked by unprecedented enthusiasm, surpassing earlier movements like the Non-Cooperation Movement (NCM) and the Civil Disobedience Movement (CDM).

Unlike the urban-focused NCM and broader CDM, it was the most radical and violent, driven largely by the poor and labor classes, who were severely affected by wartime inflation.

Mass Participation and Grassroots Leadership: Despite the absence of central leadership, it witnessed massive participation from diverse groups, including younger generations, peasants, tribals, and women.

The movement had a grassroots character, with a bottom-up approach led by the subaltern classes, making it a true people's movement.

Role of Emerging Leaders: Leaders of the Congress Socialist Party, such as Jayaprakash Narayan and Ram Manohar Lohia, played a crucial role in mobilizing the masses.

The movement also saw the rise of new leaders like Aruna Asaf Ali, who became an enduring symbol of resistance.

Impact on the British Rule: While it did not force an immediate British exit, the movement weakened their authority and control.

It set the tone for subsequent protests, including the public response during the INA Trials, and created momentum contributing to India's eventual independence.

5. Study Material-Language

Rules of Precis Writing

A précis is a summary, and précis writing means summarising. Precis-writing is an exercise in compression. A précis is the gist or main theme of a passage expressed in as few words as possible. It should be lucid, succinct, and full (i.e. including all essential points), so that anyone on reading it may be able to grasp the main points and general effect of the passage summarised.

Precis-writing must not be confused with paraphrasing. A paraphrase should reproduce not only the substance of a passage, but also all its details. It will therefore be at least as long as, and probably longer than, the original. But a précis must always be much shorter than the original; for it is meant to express only the main theme, shorn of all unimportant details, and that as tersely as possible. As the styles of writers differ, some being concise and some diffuse, no rigid rule can be laid down for the length of a précis; but so much may be said, that a précis should not contain more than a third of the number of words in the original passage.

USES OF PRECIS-WRITING

1. Precis writing is a very fine exercise in reading. Most people read carelessly, and retain only a vague idea of what they have read. You can easily test the value of your reading. Read in your usual way a chapter, or even a page, of a book; and then, having closed the book try to put down briefly the substance of what you have just read. You will probably find that your memory of it is hazy and muddled. Is this because your memory is weak? No; it is because your attention was not fully centred on the passage while you were reading it. The memory cannot retain what was never given it to hold; you did not remember the passage properly because you did not properly grasp it as you read it. Now precis-writing forces you to pay attention to what you read; for no one can write a summary of any passage unless he has clearly grasped its meaning. So summarizing is an excellent training in concentration of attention. It teaches one to read with the mind, as well as with the eye on the page. A French word (pronounced pressed) connected with the French word precise.

2. Precis-writing is also a very good exercise in writing a composition. It teaches one how to express one's thoughts clearly, concisely and effectively. It is a splendid corrective of the common tendency to vague and disorderly thinking and loose and diffuse writing. Have you noticed how an uneducated person tells a story? He repeats himself, brings in a lot of irrelevant matter, omits from its proper place what is essential and drags it in later as an after-thought, and takes

twenty minutes to say what a trained thinker would express in five. The whole effect is muddled and tedious. In a precis you have to work within strict limits. You must express a certain meaning in a fixed number of words. So you learn to choose your words carefully, to construct your sentences with an eye to fullness combined with brevity, and to put your matter in a strictly logical order.

3. So practice in precis-writing is of great value for practical life. In any position of life the ability to grasp quickly and accurately what is read, or heard, and to reproduce it clearly and concisely, is of the utmost value. For lawyers, businessmen, and government officials it is essential.

METHOD OF PROCEDURE

You must make up your mind from the beginning that precis-writing means intensive brain-work. There is no easy short cut to summarising a passage. To tear the heart out of a passage means concentrated thought, and you must be prepared for close attention and hard thinking.

1. Reading - (a) First read the passage through carefully, but not too slowly, to get a general idea of its meaning. If one reading is not sufficient to give you this clearly, read it over again, and yet again. The more you read it, the more familiar will it become to you, and the clearer will be

(i) its subject, and

(ii) what is said about that subject.

Ask yourself, "What is it I am reading? What does the author mean? What is his subject? What is he saying about it? Can I put in a few words the pith of what he says?"

Usually you are required to supply a title for your precis. This is a good stage at which to do this. Think of some word, phrase or short sentence that will sum up briefly the main subject of the passage. Sometimes this is supplied by what we may call a key sentence. This key-sentence may be found at the beginning or at the end of the passage. For example, "Hospitality is a virtue for which the natives of the East in general are highly and deservedly admired". This at once suggests the short title of "Eastern Hospitality". But you will not always find such convenient key-sentences in the passage you have to summarise. In their absence, you must get a clear idea of the subject from the passage as a whole, and then sum it up in a suitable heading.

The effort to find a suitable title at this stage will help you to define in your mind what exactly the subject, or main theme, of the passage is.

(c) Further reading is now necessary to ensure that you understand the details of the passage as well as its main purport. Take it now sentence by sentence, and word by word. If the meanings of any words are not clear, look them up in a dictionary. Detailed study of this kind is necessary, because a phrase, a sentence, or even a single word, may be of prime importance, and the misunderstanding of it may cause you to miss the whole point of the passage.

(d) You should now be in a position to decide what parts of the passage are essential and what parts are comparatively unimportant and so can be omitted without any loss. This process of selection is not so easy as some people think. Beginners select but they often select in a haphazard or mechanical way. It requires some practice to be able to say, "This is essential to the meaning of the passage, and that is only incidental and unimportant." The best guide, of course, is the subject or main theme of the passage. If you have a clear and correct idea of that you will soon see what is important and what is unimportant.

At this stage it is useful to jot down your conclusions in brief notes-writing down the subject, the title, and the details which you consider essential or important. (This is a better plan than underlining sentences and phrases in the original.)

2. Writing - (a) Rough Drafts-You should now be ready to attempt the writing of the precis; but be sure of the limits within which it must be compressed. If the number of words is given you this is easy: but if you are told to reduce the passage to say, a third of its length, count the number of words in the passage and divide by three. You may use fewer words than the number prescribed, but in no case may you exceed the limit. It is not likely that your first attempt will be a complete success. The draft will probably be too long. In fact you may have to write out several drafts before you find how to express the gist of the passage fully within the limits set. A good deal of patience and revision will be required before you get it right. It is a good plan to write the first draft without having the actual words of the original passages before one's eyes.

(b) Important Points - The following points must be kept in mind:

(i) The precis should be all in your own words. It must not be a patchwork made up of phrases and sentences quoted from the original.

(ii) The precis must be a connected whole. It may be divided into sections or para-graphs, according to changes in the subject-matter, but these must not appear as separate notes, but must be joined together in such a way as to read continuously.

(iii) The precis must be complete and self-contained; that is, it must convey its message fully and clearly without requiring any reference to the original to complete its meaning.

(iv) It is only the gist, main purport, or general meaning of the passage which you have to express. There is no room in a precis for colloquial expressions, circumlocutions, periphrasis or rhetorical flourishes. All redundancies of expression must be rigorously pruned. If faithful reproduction of the main theme is the first essential of a summary, conciseness is the second.

(v) The precis must be in simple, direct grammatical and idiomatic English.

(c) The Art of Compression - You are not bound to follow the original order of thought to the passage to be summarised. If you can express its meaning more clearly and concisely by transposing any of its parts.

In condensing, aim rather at remodeling, than at mere omission. We may omit mere repetitions, illustrations and examples; but we change figures of speech into literal expressions, compress wordy sentences, and alter phrases to words.

Take a few examples:-

“His courage in battle might without exaggeration be called lion-like'. He was very brave in battle.”

“The account the witness gave of the incident moved everyone that heard it to laughter.”

The witness, story was absurd.

“There came to his recollection”

He remembered.

“The clerk who is now in his employ.”

His present clerk.

“They acted in a manner that rendered them liable to prosecution.”

They acted illegally.

“He got up and made a speech on the spur of the moment.”

He spoke off-hand.

“John fell into the river and, before help could reach him, he sank.”

John was drowned in the river.

“He was hard up for money and was being pressed by his creditor! He was in financial difficulties.”

The England of our own days is so strong and the Spain of our own days is so feeble, that it is n, possible, without some reflection and care, to comprehend the full extent of the peril which England had from the power and ambition of Spain in the 16th century." (51 words.)

We cannot nowadays fully realise what a menace Spain was to England in the 16th century (16 words.)

(d) Indirect Speech — As a rule, a precis should be written in indirect speech, after a "verb of saying" in the past tense. **For example:—**

“Whether we look at the intrinsic value of our literature, or at the particular situation of this country, we shall see the strongest reason to think that of all foreign tongues the English tongue is that which would be the most useful to our native subjects.” —Macaulay

Condensed in indirect speech :—

Lord Macaulay said that England's noble literature and the universality of her language made English the foreign language most useful for India.

The change from direct to indirect speech calls for attention to the following points:—

- (i) Correct sequence of tenses after the “verb of saying” in the past tense.
- (ii) Clear differentiation of the various persons mentioned in the passage. Care must be taken with pronouns he, she and they. To avoid confusion proper names should be used occasionally.
- (iii) Correct use of adverbs and other words indicating time.
- (iv) Proper choice of "verbs of saying", to indicate questions, commands, warnings, threats or exhortations.

Great care must be taken to avoid lapsing into direct speech—a very common fault.

Some passages, however, are best summarised in direct speech.

3. Revision — When you have made your final draft, carefully revise it before you write out the fair copy. Be sure that its length is within the limits prescribed. Compare it with the original to see that you have not omitted any important point. See whether it reads well as a connected whole, and correct any mistakes in spelling and punctuation, grammar and idiom. Then write out the fair copy neatly, prefixing the title you have chosen.

TO SUM UP

1. First carefully read the passage, if necessary, several times, apprehend clearly its main theme or general meaning.

2. Examine the passage in detail. to make sure of the meaning of each sentence. phrase and word.
3. Supply a short title which will express the subject.
4. Select and note down the important points essential to the expression of the main theme.
5. Note the length of number of words prescribed for the precis, and write out a fits, draft.
6. In doing this remember that you are to express the gist of the passage in your own words, and not in quotations from the passage; that you should condense by remodelling than by mere omission: and that your precis must be self-contained and a connected whole. Add nothing; make no comment; correct no facts.
7. Revise your draft. Compare it carefully with the original to see that you have included all the important points. If it is too long, still further compress it by omitting unnecessary words and phrases or by remodelling sentences. Correct all mistakes in spelling, grammar and idiom, and see that it is properly punctuated. Let the language be simple and direct.
- 8 Write out neatly the fair copy under the heading you have selected.

6. Current Affairs

AUGUST 2025

1. Australia to Enforce Under-16 Age Ban on Social Media from Dec 10
2. 8.8 Magnitude Earthquake Near Russia Triggers Tsunami Across Japan & U.S.
3. Trump Imposes 25% Tariff on Indian Imports Over Russia Ties
4. Anant Ambani Appointed Executive Director on Reliance Industries Board
5. Revised GDP Base Year Series to Launch on Feb 27, 2026
6. Gene Test Mandatory for Female Athletes in Global Events from Sep 1
7. India and UAE Agree to Deepen Defence Ties at JDCC Meet
8. Nikhil Ravishankar Appointed CEO of Air New Zealand
9. Suhani Shah Wins “Best Magic Creator” Award at FISM 2025
10. Rs. 13,000 Cr NISAR Satellite Launched by India and U.S. from Sriharikota
11. DPIIT signs MoU with Roche India to support healthcare startups in critical therapeutic areas.
12. Cabinet approves four multi-tracking railway projects worth ₹11,169 crore across six states.
13. From August 1, PSBs allowed to transfer unclaimed assets to IEPF under amended Banking Laws.
14. Khalid Jamil becomes first Indian in 13 years to be appointed head coach of Indian men's football team.
15. Shubman Gill becomes highest run-scorer as Indian Test captain in a single series with 743 runs.
16. Indian Navy receives third Project 17A stealth frigate ‘Himgiri’ from GRSE, Kolkata.
17. ISRO scientist A. Rajarajan appointed Director of Vikram Sarabhai Space Centre from August 1.
18. Lt. Gen. Pushpendra Singh to take over as Vice Chief of Army Staff on Friday.
19. Eminent economist and author Lord Meghnad Desai passes away at age 85.
20. World Breastfeeding Week 2025 to be observed from August 1 to 7 with focus on healthcare system support.
21. Cabinet approves Rs. 6,520 crore outlay for PM Kisan Sampada Yojana till 2025–26.
22. Fitch cuts India’s FY26 GDP forecast to 6.3%, cites limited impact of U.S. tariffs.
23. Mascot unveiled for Asia Rugby U-20 Championship to be held in Bihar’s Rajgir.

24. Malta to host 2027 Commonwealth Youth Games with eight-sport lineup including sailing and water polo.
25. Lt Gen Pushpendra Singh assumes charge as Vice Chief of Army Staff.
26. Deepak Reddy appointed CEO of Manappuram Finance to lead next growth phase.
27. Vice-Admiral Sanjay Vatsayan assumes charge as Vice Chief of the Indian Navy.
28. '12th Fail' wins Best Film at 71st National Film Awards; multiple actors honoured across categories.
29. Google to invest Rs. 51,000 crore in Asia's largest data centre in Visakhapatnam.
30. Bihar's draft voter list shows reduction of 65 lakh voters after intensive revision.

31. River Kopili (NW-57) was made operational with the first 300-tonne cement cargo dispatched in Assam.
32. 'Matri Van' urban forest project launched on 750 acres in Aravalli hills under 'Ek Ped Maa Ke Naam' initiative.
33. India Post Payments Bank launched Aadhaar-based face authentication to enable secure and convenient digital banking.
34. India's first-ever FIFA Talent Academy for girls was inaugurated in Hyderabad under FIFA-AIFF-Telangana partnership.
35. Government approved PM MITRA Parks in 7 states to boost textiles and generate 20 lakh jobs with ₹4,445 crore investment.
36. Lando Norris won the 2025 Hungarian Grand Prix after a close final-lap battle with Oscar Piastri.
37. Joe Root became the first batter to cross 6000 runs in ICC World Test Championship history.
38. China and Russia commenced a three-day joint naval exercise "Joint Sea-2025" in the Sea of Japan to strengthen maritime cooperation.
39. Dr. Mayank Sharma took charge as Financial Advisor (Defence Services) on August 1, 2025.
40. Former Jharkhand CM and JMM founder Shibu Soren passed away at the age of 81 in New Delhi.
41. NMPB signs two MoUs to promote cultivation, conservation, and research of medicinal plants.
42. Bank of Baroda launches 'bob FxOne' digital forex platform for real-time corporate transactions.
43. BSNL and NRL sign MoU to deploy India's first 5G Captive Non-Public Network in refinery sector.

44. Tamil Nadu CM M.K. Stalin inaugurates VinFast's first EV plant in India, set to create over 3,500 jobs in 5 years.
45. Magnus Carlsen wins inaugural Chess Esports World Cup in Riyadh, defeating Alireza Firouzja.
46. Argentina wins double gold at 2025 Pan American Hockey Cup, qualifying for 2026 Hockey World Cup.
47. India receives final C-295 aircraft from Spain; 40 more to be manufactured domestically.
48. Rajiv Anand appointed as MD & CEO of IndusInd Bank for a three-year term.
49. Tata Motors appoints P B Balaji as first Indian CEO of Jaguar Land Rover.
50. PM Modi's 'Pariksha Pe Charcha' sets Guinness World Record for most registrations on a citizen engagement platform in one month.
51. PFRDA launches modernised website under 'PFRDA CONNECT' to improve pension sector services.
52. ICICI Bank reshuffles top management; B. Prasanna moves to ICICI Securities.
53. CCI approves Dalmia Cement's 100% acquisition of Jaiprakash Associates under insolvency resolution.
54. Repco Bank gives ₹22.90 crore dividend cheque to Union Home Minister Amit Shah.
55. PM GatiShakti reviews 293 infrastructure projects worth ₹13.59 lakh crore for integrated planning.
56. NITI Aayog report projects \$200 billion opportunity in India's electric vehicle sector by 2030.
57. IRDAI fines Policybazaar ₹50 million for regulatory violations.
58. Defence Acquisition Council approves ₹67,000 crore procurement to enhance Army and Navy capabilities.
59. Rajiv Anand appointed new MD & CEO of IndusInd Bank after leadership reshuffle.
60. Former J&K Governor Satyapal Malik passes away at 79; played key role in Article 370 abrogation.
61. Moldova joined the International Solar Alliance as its 107th member country.
62. OpenAI launched gpt-oss models that can run locally on devices with only 16GB RAM.
63. Trump imposed an additional 25% tariff on Indian imports, raising total tariffs to 50% due to India's oil trade with Russia.
64. RuPay partnered with BookMyShow to offer cardholders exclusive access and benefits at major entertainment events.
65. The Archery Association of India announced the first franchise-based Archery League to be held in October 2025.

66. Annu Rani won gold in javelin throw at the Wiesław Maniak Memorial in Poland with a 62.59m throw.
67. Bimaplan appointed Anurag Mishra as CEO to lead its global insurance expansion strategy.
68. Study of dinosaur teeth revealed Earth's climate was much hotter 150 million years ago.
69. Punjab became the first Indian state to empanel sign language experts under the Juvenile Justice Act.
70. Shayok village in Ladakh is developing the UT's first botanical garden on 10 hectares of barren land.
71. Government amended the 2011 Vegetable Oil Regulation Order under the Essential Commodities Act to improve edible oil data transparency.
72. India organized a Youth Leaders' Roundtable with Nepalese delegation, chaired by Dr. Mansukh Mandaviya in New Delhi.
73. Mera Yuva Bharat (MYBharat) launched an all-India online quiz on the National Flag to promote patriotism and awareness.
74. PM Narendra Modi inaugurated the M.S. Swaminathan Centenary International Conference themed
75. Apple to invest \$600 billion in the U.S. over four years, including full domestic production of iPhone and Watch glass in Kentucky.
76. Retired IAS officer S. Radha Chauhan took over as Chairperson of the Capacity Building Commission, succeeding Adil Zainulbhai.
77. Himesh Reshammiya became the first Indian artist to feature on Bloomberg's Global Pop Power List.
78. NASA says August's full moon, called the 'Sturgeon Moon', will peak on August 9 and is rooted in Native American traditions.
79. Preliminary surveys in Jabalpur, Madhya Pradesh, revealed potential gold and metal deposits across 100 hectares.
80. Hubble discovered a rare ultra-massive white dwarf 'zombie star', WD 0525+526, formed by two-star merger, 130 light-years away.
81. PM E-DRIVE scheme extended till March 2028 to support electric buses, trucks, and ambulances.
82. Parliament passes Coastal Shipping Bill, 2025 to modernize maritime laws and boost India's coastal economy.
83. AIM and Bhashini partner to promote innovation in Indian languages and bridge the digital divide.
84. RBI grants AU Small Finance Bank approval to become a universal bank, expanding its national presence.
85. Philippines delegation led by Agriculture Secretary Francisco P. Tiu Laurel Jr. agrees to increase imports of rice, meat, and other food products from India.
86. Trump announces 100% tariff on chips from companies not investing in the U.S., hitting Asian markets hard.

87. Reliance Industries creates 5x shareholder value over a decade with massive growth in market cap and profits.
88. Victoria Mboko stuns Naomi Osaka to win her first WTA 1000 title at the Canadian Open.
89. Over 1-million-year-old human tools discovered near Sulawesi Island, challenging migration timelines.
90. Illinois bans AI from acting as therapists, mandates human oversight in mental health care.
91. Indian Railways tests 'Rudrastra,' Asia's longest 4.5 km freight train.
92. Government clears Rs. 2,157 crore Marakkanam–Puducherry 4-lane highway project.
93. Armenia, Azerbaijan sign U.S.-brokered peace deal, open 'Trump Route' corridor.
94. PayMate enters Indonesia with \$400 million acquisition of DigiAsia.
95. PM Modi inaugurates Bengaluru Metro Yellow Line, lays Phase-3 foundation.
96. Cabinet approves Rs. 30,000 crore compensation for OMCs' domestic LPG losses.
97. MakeMyTrip launches 'Myra,' an AI-powered multilingual travel assistant.
98. ICICI Bank hikes minimum monthly balance for new savings accounts to ₹50,000.
99. India bags 14 medals, including 3 gold, at Asian U-19 Boxing Championship.
100. Ramesh Budihal wins India's first-ever individual medal at Asian Surfing Championships.
101. WHO confirmed Kenya has eliminated sleeping sickness as a public health problem.
102. Tata's Nelco and France's Eutelsat will provide OneWeb satellite internet services in India.
103. Aadhaar Face Authentication transactions doubled from 100 crore to 200 crore in just six months.
104. Kerala's KSFE became the first miscellaneous NBFC in India to cross Rs. 1 lakh crore turnover.
105. Lok Sabha passed the revised Income Tax Bill 2025, expanding officials' powers for search operations.
106. DPIIT signed an MoU with Zepto to support manufacturing startups under the Zepto Nova Innovation Challenge.
107. ONGC will invest Rs. 4,600 crore in Andhra Pradesh's KG Basin for drilling, offshore platforms, pipeline, and gas processing.
108. China and Hong Kong won the Asia Rugby U-20 Sevens titles, while India's women claimed bronze in Bihar.
109. Indian Navy will commission stealth frigates INS Udaygiri and INS Himgiri together for the first time on 26 August 2025.

110. India's defence production reached a record ₹1.51 lakh crore in FY 2024-25, up 18% from last year.
111. Lok Sabha passes Indian Ports Bill, 2025 to modernise century-old port governance system.
112. MHA tightens OCI rules; registration can be cancelled for offences with two years' sentence or more.
113. MY Bharat signs 3-year MoU with SOUL Foundation to train 1 lakh youth leaders in governance, policy, and skills.
114. Cabinet approves Rs. 4,600 crore semiconductor projects in Odisha, Punjab, and Andhra Pradesh.
115. UIDAI and ISI sign 5-year R&D pact to boost Aadhaar security and fraud detection.
116. Dewald Brevis scores unbeaten 125 to set new South African T20I record against Australia.
117. Shubman Gill, Sophia Dunkley named ICC Players of the Month for July 2025; Gill sets record with fourth win.
118. Namrata Batra wins India's first-ever Wushu medal at World Games with silver in 52kg category.
119. Jharkhand Women's Hockey Team wins 15th Junior National Championship for second year in a row.
120. India wins 27 medals at Asian U19 & U22 Boxing; Ritika bags gold in women's 80+ kg event.
121. Steel Minister H.D. Kumaraswamy launched the 'Bharat Steel' logo, brochure, and website in New Delhi.
122. HDFC Bank's SmartWealth app now supports nine Indian languages for investment services.
123. SBI will levy nominal charges on online IMPS transfers above Rs. 25,000 from August 15.
124. SEBI permits advisers and analysts to use liquid and overnight mutual funds for deposit requirements.
125. Rapido launched its 'Ownly' app in Bengaluru with a zero-commission model for restaurants.
126. Vikram Solar will launch a Rs. 2,000 crore IPO on August 19, including Rs. 1,500 crore fresh issue and Rs. 1,745 lakh shares OFS.
127. ICICI Bank cut minimum savings account balance to Rs. 15,000 for metros, effective August 1.
128. Chennai's Rohith Krishna, 19, becomes India's 89th Chess Grandmaster after winning in Kazakhstan.
129. Scientists discovered marine virus PelV-1 with the world's longest viral tail at 2.3 micrometres.
130. Typhoon Podul struck eastern Taiwan, causing heavy rain, strong winds, and transport disruptions.
131. Former CJI DY Chandrachud to release debut book Why the Constitution Matters in August 2025.

132. Government approves fresh Rs. 47,000 crore capex plan to expand BSNL's telecom network.
133. India's trade deficit widens to \$27.35 billion in July 2025, highest in eight months.
134. SBI launches Rs. 4 lakh collateral-free personal loan scheme for Agniveers under Agnipath programme.
135. India and Singapore hold 4th Joint Working Group meeting on Trade & Investment in New Delhi.
136. Abhishek Bachchan wins Best Actor award at IFFM 2025; Amitabh calls him "family's pride".
137. Former Australia Test captain Bob Simpson passes away at 89 in Sydney.
138. PixxelSpace India-led consortium selected to build nation's first private EO satellite constellation.
139. ISRO-NASA's ₹13,000 crore NISAR satellite deploys world's largest antenna reflector in space.
140. Indian aquanauts set record by diving 5,002 metres deep in the Atlantic Ocean.
141. BJP announced Maharashtra Governor CP Radhakrishnan as NDA's candidate for Vice-President after Jagdeep Dhankhar's resignation.
142. Union Minister Rajiv Ranjan Singh to launch AI-powered tool 'SabhaSaar' in Delhi for automatic Panchayat meeting minutes.
143. NHAI launched FASTag Annual Pass at 1,150 toll plazas; 1.4 lakh users registered on the first day.
144. On 79th Independence Day, PM Modi delivered India's longest-ever Independence Day speech lasting 103 minutes.
145. PM Modi inaugurated ₹11,000-crore Dwarka Expressway and UER-II projects in Delhi, pledging to make the Capital a world-class city.
146. Bihar CM Nitish Kumar unveiled logo, mascot 'Chand' and trophy of 12th Men's Asia Cup Hockey, to be held in Rajgir from Aug 29–Sept 7, 2025.
147. German Grandmaster Vincent Keymer clinched Quantbox Chennai Grand Masters 2025, entering the world's live Top 10 rankings.
148. 'Himalayan Kingfisher' mascot and logo of Khelo India Water Sports Festival unveiled in Srinagar; event to be held at Dal Lake from Aug 21–23, 2025.
149. Shwetha Menon and Kukku Parameswaran became first women to lead Malayalam actors' body AMMA in its 30-year history.
150. After Nagaland Governor La. Ganesan's demise, Manipur Governor Ajay Kumar Bhalla given additional charge of Nagaland.
151. The Centre released Rs. 36,027 crore to states under the Special Assistance Scheme for Capital Expenditure.
152. The Union Government launched the PM Viksit Bharat Rojgar Yojna portal to generate 3.5 crore jobs.

153. RBI released a framework with 7 principles for responsible AI adoption in financial services.
154. Former captain Virat Kohli completed 17 years since his international debut on 18 August 2008.
155. India's Bhavina Patel won gold in Women's Singles (Class 4–5) at the ITTF World Para Elite event in the USA.
156. Kapil Bainsla and Girish Gupta bagged gold medals for India at the 16th Asian Shooting Championship in Kazakhstan.
157. Shareholders approved Noel Tata's appointment to the Tata Sons board at the 107th AGM.
158. Bibi Fatima Women's SHG from Karnataka's Teertha village won the UNDP Equator Initiative Award 2025.
159. World Humanitarian Day was observed on 19 August to honor aid workers and support crisis-hit people.
160. The Geological Survey of India discovered 10–20 tonnes of gold reserves in four districts of Odisha.
161. Opposition nominates ex-Supreme Court judge B. Sudershan Reddy as Vice-Presidential candidate.
162. NABL launches new Medical Application Portal for ISO 15189:2022 applicant laboratories.
163. Press Registrar General launches 'Press Sewa' portal to simplify newspaper, periodical registration.
164. Cabinet approves Rs. 1,507 crore Greenfield Airport project at Kota-Bundi, Rajasthan.
165. Rashmika Sahgal wins gold in junior women's air pistol at Asian Shooting Championship.
166. Veteran actor Achyut Potdar, known for 3 Idiots role, passes away at 91 in Thane, Mumbai.
167. CERT-In issues high-level security alert for Microsoft Windows and Office users in India.
168. IIT Madras licenses India's first silicon photonics-based quantum RNG for Rs. 1 crore.
169. Warwick University scientists develop diamond-based sensor for safer cancer tumour detection.
170. Karnataka Assembly passes Bill to rename Bengaluru City University after Dr. Manmohan Singh.
171. NCERT includes Operation Sindoor modules in school curriculum for Classes 3–12.
172. Railways commissions India's first removable solar panel system between tracks at BLW, Varanasi.
173. India and Eurasian Economic Union sign Terms of Reference in Moscow to launch FTA negotiations.
174. International Solar Alliance to set up 17 Centres of Excellence globally and a Global Capability Centre in India as a solar innovation hub.

175. UIDAI ties up with Starlink to use Aadhaar Authentication for secure customer verification.
176. Dubai introduces unified free zone licence scheme; Louis Vuitton becomes first beneficiary.
177. Honda Motor launches Honda Finance India to offer loans and leasing for its products; will seek NBFC licence.
178. Liverpool's Mohamed Salah becomes first player to win PFA Players' Player of the Year three times.
179. India successfully test-fires indigenous Agni-5 ballistic missile from Chandipur, Odisha.
180. West Bengal CM announces ₹5,000 monthly aid for returning migrant workers under Shramshree scheme.
181. Monsoon Session adjourned sine die after 21 sittings and 15 Bills passed.
182. PM Modi inaugurates ₹13,000 crore projects in Gaya, including ₹1,870 crore Ganga bridge.
183. Supreme Court bans public feeding of stray dogs; Delhi civic body to set feeding zones.
184. Govt extends Fortified Rice Scheme till 2028 with ₹17,082 crore funding.
185. Meta signs \$10 bn, six-year deal with Google Cloud to boost AI development.
186. UIDAI launches Aadhaar authentication framework for Cooperative Banks nationwide.
187. India bans all bilateral sports events with Pakistan across disciplines.
188. Cyberattack on DaVita compromises data of 2.7 million patients, costing \$13.5 mn.
189. HDFC Bank invests in BharatGPT developer CoRover to promote sovereign AI.
190. New moth species *Carcina ingridmariae* identified after decades of confusion.
191. Since December 2024, Assam Rifles has mapped 42,000 Myanmar nationals entering India temporarily under the Free Movement Regime.
192. Ethel Caterham, the world's oldest living person, celebrated her 116th birthday on August 21.
193. PNB signed an MoU with CRPF to provide enhanced insurance and welfare benefits under the 'Rakshak Plus' scheme.
194. India's GDP growth for FY26 is projected at 6.3%, slightly lower than RBI's 6.5% estimate, as per SBI report.
195. Wipro will acquire Samsung's HARMAN DTS unit for \$375 million, bringing over 5,600 employees under its fold by December 2025.
196. Gujarat will host seven international sporting events in Ahmedabad over the next five years, including the Commonwealth Weightlifting Championship 2025.

197. Ravi Narayanan has been appointed as the new CEO of SMFG India Credit, effective August 28, 2025.
198. Manika Vishwakarma from Rajasthan has won Miss Universe India 2025 and will represent India at Miss Universe in Thailand.
199. August 22 is observed as International Day for Victims of Religious Violence, as designated by the UN General Assembly.
200. Kerala has been declared India's first fully digitally literate state after the success of the Digi Kerala project.
201. NITI Aayog released a report providing a roadmap to boost India's homestay and BnB ecosystem for tourism and rural economy.
202. NCERT has included Indian classical music, dance, theatre, and visual arts in school textbooks for Classes 3 to 8.
203. CBI has filed a ₹2,929-crore loan fraud case against Reliance Communications, Anil Ambani, and others based on SBI's complaint.
204. India has been elected Chairman of the AIBD Executive Board at the General Conference in Thailand after nearly a decade.
205. India's Kajal Dochak won gold in the women's 72kg category at the U-20 World Wrestling Championships in Bulgaria.
206. Chikitha Taniparthi and Sharvari Shende won gold medals at the World Youth Archery Championships in Canada, with India finishing with 8 medals overall.
207. Satish Golcha has been appointed as the new Commissioner of Police, Delhi, replacing interim chief S.B.K. Singh.
208. Former CRPF chief Anish Dayal Singh has been appointed Deputy NSA to handle internal security matters.
209. ICMR has launched CEREBOS, a handheld, radiation-free, and cost-effective device to detect brain injuries within a minute, especially useful in rural and emergency care.
210. August 23 was observed as International Day for the Remembrance of the Slave Trade and its Abolition.
211. India suspends postal services to the USA after new US tariff order removes duty-free exemption.
212. India and Fiji reaffirm commitment to free and open Indo-Pacific, agree to deepen defence ties.
213. AMFI signs MoU with India Post to train 1 lakh postmen for mutual fund distribution.
214. India sweeps all three mixed air rifle gold medals at Asian Shooting Championship in Kazakhstan.
215. Sharvari Somnath Shende wins U18 women's recurve gold at World Youth Archery Championships.
216. Indian Test cricket stalwart Cheteshwar Pujara retires from all formats.
217. INS Kadmat completes goodwill port visit to Surabaya, strengthening India-Indonesia naval ties.

218. RBI's Rajiv Ranjan appointed Vice President and Chief Risk Officer of New Development Bank.
219. Sajith Sivanandan appointed CEO of Tata Digital, to take charge from September 1, 2025.
220. Srinivasan K. Swamy elected as president of AAAI for 2025-26; new board members announced.
221. Lok Sabha Speaker Om Birla to lead Indian delegation at the 68th Commonwealth Parliamentary Conference in Barbados.
222. Suzuki to invest Rs. 70,000 crore in India over next six years to boost EV production and clean mobility.
223. PM Modi inaugurates and dedicates development projects worth ₹5,400 crore in Ahmedabad, including major railway upgrades.
224. India partners with World Food Programme to supply fortified rice for fighting global hunger.
225. IREDA signs MoU with MNRE, sets ₹8,200 crore revenue target for FY 2025-26 after surpassing last year's goal.
226. Mirabai Chanu wins gold with record lifts at 2025 Commonwealth Weightlifting Championships, qualifies for Glasgow 2026.
227. India close to finalising \$1 billion deal with US company GE for 113 fighter jet engines to power Tejas aircraft.
228. Metropolitan Stock Exchange raises Rs. 1,000 crore and reappoints Latika S Kundu as CEO for three years.
229. Former England fast bowler Ken Shuttleworth passes away at the age of 80.
230. 200-million-year-old fossil of phytosaur discovered in Jaisalmer, India's first well-preserved find of its kind.
231. PM Jan Dhan Yojana completes 11 years, hailed as the world's largest financial inclusion initiative.
232. Lithuania appoints Social Democrat leader Inga Ruginiene as new Prime Minister.
233. CCI approves Adani Group's 100% acquisition of debt-ridden Jaiprakash Associates Limited.
234. Meta to invest \$50 billion in building the world's largest data centre in Louisiana, says US President Trump.
235. China's Yangwang U9 hypercar sets world EV speed record at 472.41 kmph in Germany.
236. India's Union Cabinet approves bid to host 2030 Commonwealth Games in Ahmedabad, calling it the ideal host city.
237. Indian scientists discover IgM antibody can stabilise and neutralise bacterial toxins, opening new treatment avenues.
238. First-ever World Lake Day observed on August 27 to highlight lakes' ecological and cultural importance.
239. Mizoram Assembly passes bill banning begging and ensuring rehabilitation for affected individuals.

240. Delhi CM relaunches upgraded 'U-Special' DTC bus service with electric buses and enhanced safety features for students.
241. Centre forms PM-led committees for Patel's and Birsa Munda's 150th birth anniversaries and Vajpayee's centenary celebrations.
242. Cabinet approves restructuring of PM SVANidhi Scheme with extension till March 2030 to benefit 1.15 crore street vendors.
243. Raksha Rajya Mantri Sanjay Seth inaugurates MILMEDICON-2025, global military medicine conference, in New Delhi.
244. India and Bhutan sign MoU to enhance cooperation in agriculture, livestock, and allied sectors.
245. Murugappa Group's CG Semi launches Rs. 7,600 crore semiconductor pilot line in Gujarat under India Semiconductor Mission.
246. Gangwal family trust sells Rs. 2,933 crore stake in IndiGo, taking 2025 divestment total beyond Rs. 39,500 crore.
247. SEBI approves Groww IPO, paving way for \$1 billion fintech listing in India.
248. Former RBI Governor Urjit Patel appointed as IMF Executive Director for a three-year term.
249. Indian-origin banker Piyush Gupta appointed Alternate Member of Singapore's Council of Presidential Advisers for four years.
250. Astronomers capture first-ever direct image of baby planet WISPIT 2b orbiting star WISPIT 2 in constellation Aquila.