As on 31.10.2025

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. 10 OF 2025

NEWSLETTER

October 2025

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Established in Sept. 2022

For Judicial Service Aspirants

IN THE SERVICE OF JUDICIAL FRATERNITY

V.S. DREAM COACHING

1. Forensic and Electronic Evidence

Introduction

With the advent of the digital age, the transformation of the criminal justice system has been so radical that it is almost unrecognizable. It may seem somewhat that the whole journey is from one extreme to another, that is, from the times when investigations were carried out 100% based on witness accounts to completely digital means of proof. Besides sophisticated electronic evidence, DNA profiling, and complex forensic procedures, some of which were sci-fi just a few decades ago, modern courts also use software and hardware that help the human intelligence aspect of these technologies.

In 2025, we are at a point where forensic and electronic evidence are gripping the world. Besides that, this knowledge has become necessary for lawyers, police, and every person who wants to get justice.

Digital Revolution in Indian Courts

A question arises: Can electronic evidence in India be merely a gadget, or should it be a must-have item in the justice seeker's toolbox? The Information Technology Act, 2000, specifically Section 65B, changed the face of the way digital evidence in Indian courts is presented and admitted. According to this provision, a certificate is to be attached to electronic records that identify the record the way it was created and give details about the device used for creation.

The Apex Court decision in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal (2020) 7 SCC 1,** is one of the most decisive ones. The court, from then on, sets out to define the requirements of Section 65B certificates as mandatory. It has been clearly determined that any electronic evidence that lacks a proper 65B certification will not be admissible, and hence, the trial courts are informed of the very essence of this stage of the litigation process. At this stage of the proceedings, the decision stresses the point that the certificate is fundamental to the authenticity and integrity of electronic evidence, and the nature of it is not merely procedural.

The Chain of Custody Preserving Evidence Integrity

The chain of custody in India is a concept that goes a long way beyond just maintaining physical evidence. It is a system of documentation in detail; the

whole process must be recorded from the time the evidence is collected incidentally in the court of law, and so on. Such documentation becomes very important in the case of forensic evidence, as they are very susceptible to contamination or alteration.

The problem gets even more complicated when it comes to electronic evidence. Digital data can be changed, erased, or corrupted without any signs showing it. So, the procedure of creating an unalterable chain of custody for electronic evidence should be very detailed in the documentation of every human who had access to the data, every piece of equipment that was used, and the processes of each transfer or copy.

DNA Evidence

One of the most outstanding achievements of the last decade is the great rise of DNA evidence as a key tool for law enforcement. This evidential type, in addition to solving an enormous number of cases, has become the leading cause of the acquittals of patients who were wrongly assumed guilty. However, the question of DNA evidence admissibility and dependability is still very sensitive and is tied to the observance of proper collection, handling, and analysis routines. Delhi High Court's Verdict in Santosh Kumar Singh v. State through CBI (2010) gives due prominence to a well-established methodical rule to be strictly adhered to while carrying out DNA evidence collection. The Court observed that DNA evidence could be of no use in case there was contamination at collection or analysis. It also clarified that the importance of the chain of custody for biological samples must be even more rigorous than for other types of evidence.

The National Forensic Science University (NFSU) and the increased number of forensic facilities in various states are two important signs of India's commitment to the quality and accessibility of DNA analysis.

Digital Forensics Faces New Problems

It is seen that as technology gets more advanced, the legal systems are facing bigger problems. The new technologies of cloud computing, artificial intelligence, and encrypted communications have become new areas to search for electronic evidence. The creation of deepfakes and the use of advanced methods of manipulation have led to the fact that it is quite difficult to find the real digital evidence from the fake ones.

The changes made to the blockchain and the signatures in the online world are there to help the court and the police to be sure that the data provided as evidence is true. Some states in India that are very modern have started to use blockchain technology in the creation of evidence storage systems. These systems keep a

record of the evidence that cannot be changed, which means they may be a real breakthrough in the digital age when it comes to ensuring the chain of custody.

Future of Forensic Evidence

As we move further into 2025 and later on, the use of forensic and electronic evidence in Indian courts will become more and more entrenched. One day, technologies such as quantum computing may be able to break today's encryption methods, and forensic science might be able to extract even less of the microscopic traces of the evidence. The crucial point in going through this complicated terrain is to keep the balance between getting the benefit from technological innovations and, at the same time, safeguarding the rights of the accused persons. The courts should always check whether the evidence they have obtained passes the basic standards of being relevant, authentic, and reliable.
The story of forensic and electronic evidence in India is a mirror of our wider changes as a digitally linked community. We are not only redefining our legal frameworks and forensic capabilities but also getting nearer to a justice system that can take on the challenges of our era while being faithful to the principles of fairness and truth.

Conclusion

Forensics and electronic evidence integration have completely revolutionized the court system in India in 2025. Apart from the legal provisions such as Section 65B of the IT Act and the Supreme Court's landmark judgments, the Indian judiciary has also constructed a series of seemingly unstoppable protections for digital evidence, while at the same time embracing the use of technology.

The future of forensic science in India is a question that is decided by technology as well as by our pledge to justice, the qualities we represent, and our truthfulness. We need to ensure that technology is there to serve justice by accepting digital transformation, hence making our legal system more accessible, efficient, and reliable for all citizens, and at the same time keeping the individual rights and due process.

2. Freedom of Expression and Speech

Introduction

In the Indian Constitution, the Freedom of Speech and Expression is defined under Article 19(1)(a) which states that 'All citizens shall have the right to freedom of speech and expression'. It is a fundamental right that enables every citizen of India to express their thoughts, beliefs, opinions, and ideas. Freedom of speech and expression catalyzes progress and innovation resulting in the healthy functioning of a democratic society. It promotes an open marketplace of ideas where every citizen is able to express themselves freely. They can voice their views regarding various aspects such as political activities, laws introduced by the government, protests, and many more. In this way, they are able to play their part as a noble citizen of India. This right extends to various mediums, including print media, the Internet, social media platforms, and public gatherings. As freedom of speech & expression is not an absolute right, it is subjected to certain restrictions which are being imposed under Article 19(2) of the Constitution of India. This article will explore the main elements of freedom of speech and expression, grounds for restrictions, and related case laws.

Elements of the Right to Freedom of Speech & Expression

- Only Indian citizens have the right to freedom of speech and expression which means individuals belonging to other nations (foreign nationals) do not enjoy this right.
- This right under Article 19(1)(a) includes the right to express one's views and opinions regarding any matter and can be done via different types of mediums such as by writing, by printing, by word of mouth, by picture, by movie, etc.
- It is not an absolute right as it allows the Government to frame laws imposing certain restrictions.
- If the state fails to guarantee this right to all the citizens then it would constitute a violation of Article 19(1)(a) of the Indian Constitution.

Certain Aspects related to the Right to Freedom of Speech and Expression involved in Article 19(1)(a) of the Constitution of India

- Freedom of Press
- Freedom of Commercial Speech
- Right to Broadcast
- Right to Information
- Right to Criticize
- Right to expression beyond national boundaries
- Right not to speak or right to silence

Restrictions

Grounds on which the freedom of speech and expression can be restricted are defined under Article 19(2) of the Indian Constitution. It states that "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." These restrictions are crucial to strike a balance between protecting individual rights and preventing abuse of freedom.

- **Security of the State:** The Government may restrict speech and expression that jeopardizes the security of the state. The terms security of the state and public order seem to be similar but are different in terms of intensity. The aggravated and serious forms of public disorder refer to the security of the state for instance, rebellion, insurrection, waging war against the state or any part of the state, etc.
- **Friendly relations with Foreign States:** Restrictions may be imposed if an individual's speech and expression affects negatively India's friendly relations with other States. This ground for the restriction was added by the Constitution (First Amendment) Act, 1951.
- **Public Order:** Speech or expression that poses a clear and imminent threat to public safety or incites violence may be restricted to maintain law and order.
- **Decency and Morality:** Restrictions may be imposed to protect public morality and decency. These are defined under Section 292, Section 293, and Section 294 of the Indian Penal Code, 1860 (IPC). Speech or expression that is considered vulgar, obscene, or offensive, especially in public places, may be subject to limitations to uphold societal standards.
- **Contempt of court:** This expression is defined under Section 2 of the Contempt of Courts Act, 1971. Restrictions may be imposed to prevent speech or expression that interferes with administrative justice. Statements or publications that undermine the authority or integrity of the judiciary or obstruct the fair trial process may be subject to legal restrictions.
- **Defamation:** Freedom of speech and expression does not grant the right to defame. False statements, libel, or slander may be legally restricted to prevent harm to an individual's reputation. In India, Defamation is a serious crime and is defined under Section 499 and Section 500 of the IPC.
- **Incitement to an offence:** It restricts or prohibits anyone from making statements that incite or encourage other people to commit an offence. This was added by the Constitution (First Amendment) Act, 1951.

- **Sovereignty and integrity of India:** It restricts anyone from making statements that challenge India's integrity and sovereignty. This ground was added by the Constitution (Sixteenth Amendment) Act, 1963.

Related Case Laws

- **Romesh Thappar Vs. State of Madras, AIR 1950 SC 124:** In this case, the Supreme Court of India upheld the right to freedom of press as an essential part of democracy. The bench observed, "Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible."
- **Bijoe Emmanuel Vs. State of Kerala, AIR 1987 SC 748:** The top court held that "The expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand up respectfully when the anthem is sung, is a violation of their fundamental right 'to freedom of conscience and freely to profess, practice and propagate religion'. The Fundamental Rights of the appellants under Arts. 19(l)(a) and 25(l) have been infringed and they are entitled to be protected."
- **Odyssey Communications (P) Ltd Vs. Lokvidayan Sanghatana, AIR 1988 SC 1642:** In this case, the Supreme Court held that "It can no longer be disputed that the right of a citizen to exhibit films on the Doordarshan subject to the terms and conditions to be imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Art. 19(1)(a) of the Constitution of India which can be curtailed only under circumstances which are set out in clause (2) of Article 19 of the Constitution of India. The right is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement hoardings, etc. subject to the terms and conditions of the owners of the media."
- **Union of India Vs. Association for Democratic Reforms, (1989) 2 SCC 574:** In this case, the Supreme Court bench observed that "one-sided information, disinformation, misinformation, and non-information all equally create a uniformed citizenry which makes democracy a farce. Therefore, casting of a vote by misinformed and non-informed voters or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes the right to impart and receive information which includes freedom to hold opinions."

Conclusion

To conclude, the right to freedom of speech and expression is a fundamental right that empowers an individual to express their opinions, thoughts, beliefs, and ideas. The scope of this has been expanded to include the freedom of the press, the right to information, including commercial information, the right to quiet, and the right to criticize. While reasonable restrictions are necessary to maintain public order, it is important to safeguard this right and ensure its effective implementation.

3. Important Supreme Court Cases

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S.N.	Subject	Case Reference
1.	To constitute a valid hiba, all its necessary ingredients- declaration by donor, acceptance by donee and taking possession of land are done publicly rather than secretly.	Dharmrao Sharanappa Shabadi and Ors. Vs. Syeda Arifa Parveen, decided on 07.10.2025
2.	It is not mandatory for the Appellate Court to impose a condition for deposit of the amount in dispute for grant of stay of execution under Order XLI Rule 5 CPC	Lifestyle Equities C.V. & Anr. Vs. Amazon Technologies Inc., decided on 07.10.2025
3.	Mere presence at the crime scene would not ipso facto render a person a member of the unlawful assembly to book him under Section 149 IPC. The liability would shift to the bystander only when he shared the common object with the unlawful assembly.	Zainul Vs. State of Bihar, decided on 07.10.2025
4.	Only that part of the disclosure statements under Section 27 of Evidence Act would be admissible which supports the recovery of an object, and not that part which supports the maker's statement about the use of the object in the crime, as it would amount to a confession being inadmissible under the Act.	Rajendra Singh and Ors. Vs. State of Uttaranchal Etc., decided on 07.10.2025
5.	A voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct. It is not always necessary for a minor to institute a suit for cancellation of a voidable sale transaction executed by	K.S. Shivappa Vs. Smt. K. Neelamma, decided on 07.10.2025

	his guardian on attaining majority within the limitation provided and that such a transaction can be avoided or repudiated by his conduct.	
6.	The invalidity or inoperability of an arbitration clause, such as one naming an ineligible arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996, does not nullify the underlying arbitration agreement between the parties. In such cases, the Court is empowered to step in and appoint a neutral arbitrator under Section 11(6) to preserve the efficacy of the arbitration mechanism.	Offshore Infrastructures Ltd. Vs. M/s. Bharat Petroleum Corporation Ltd., decided on 07.10.2025
7.	Judicial officer, who has a combined experience of seven years as a judicial officer and an advocate, is eligible to apply for direct appointment as a District Judge. The eligibility will be seen as on the date of the application. To ensure a level playing field, the minimum age of the in-service candidates applying for District Judges' direct recruitment must be 35 years. The state governments will have to frame rules providing eligibility for in-service candidates. The rules should provide that in-service candidates should be eligible if they have a combined experience of 7 years as a judicial officer and advocate. The judgment will only apply prospectively, and won't affect processes already completed or appointments already made.	Rejanish K.V. Vs. K. Deepa and Ors., decided on 09.10.2025
8.	Juvenile Justice Act 2000 applies retrospectively	Hansraj Vs. State of Uttar Pradesh, decided on 09.10.2025
9.	Land Acquisition can't be challenged after accepting compensation	State of West Bengal and Ors. Vs. M/s. Santi Ceramics Pvt. Ltd. and Anr., decided on 13.10.2025
10.	A Magistrate can direct the collection	Rahul Agarwal Vs. State of West

	of voice samples not only from accused persons but also from witnesses. Such samples, whether voice, fingerprints, handwriting, or DNA, constitute material evidence rather than testimonial evidence, and therefore do not infringe the constitutional protection against self-incrimination under Article 20(3).	Bengal and Anr., decided on 13.10.2025
11.	Courts should not routinely or casually invoke their discretionary powers under Section 154 Evidence Act. (now Section 157 of the Bharatiya Sakshya Adhiniyam, 2023) to allow a party to cross-examine its own witness. Such discretion must be exercised only after carefully examining and weighing the surrounding circumstances. This should be done only in exceptional situations where the witness completely departs from the prosecution's case, gives false testimony, or shows clear hostility towards the party on whose behalf they are testifying.	Shivkumar @ Baleshwar Yadav Vs. State of Chhattisgarh, decided on 14.10.2025
12.	Waitlist of candidates cannot operate indefinitely and ceases once all the posts are filled up via recruitment process.	Union of India & Ors. Vs. Subit Kumar Das, decided on 15.10.2025
13.	An application for rejection of the plaint under Order VII Rule 11 CPC shall be decided based on the averments made in the plaint, and does not consider the defendant's defence or any external evidence.	Karam Singh Vs. Amarjit Singh and Ors., decided on 15.10.2025
14.	A Muslim wife having no child, is entitled to receive only 1/4th share.	Zoharbee and Anr. Vs. Imam Khan (D) Thr. LRs. and Ors., decided on 16.10.2025
15.	When deciding a commercial suit involving a request for urgent interim relief in intellectual property infringement cases, the plaintiff's perspective must be duly considered, and courts may dispense with the	Novenco Building and Industry A/S Vs. Xero Energy Engineering Solutions Pvt. Ltd. & Anr., decided on 27.10.2025

	mandatory pre-institution mediation requirement under Section 12A of the Commercial Courts Act, 2015.	
16.	The offence of threatening a witness under Section 195A IPC is a cognizable offense, empowering the police to directly register an FIR and investigate, without waiting for a formal complaint from a court.	State of Kerala Vs. Suni @ Sunil, decided on 28.10.2025
17.	It is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object.	Haribhau @ Bhausaheb Dinkar Kharuse and Anr. Vs. State of Maharashtra, decided on 29.10.2025
18.	Even when multiple dying declarations exist, the first declaration cannot be disregarded if it is reliable, consistent, and supported by corroborative evidence.	Jemaben Vs. State of Gujarat, decided on 29.10.2025
19.	2018 amendment to the Specific Relief Act, 1963, which made the grant of specific performance of contracts a mandatory relief, has no retrospective effect and does not apply to suits or transactions that arose before its enforcement on October 1, 2018.	Annamalai Vs. Vasanthi and Ors., decided on 29.10.2025
20.	Issued directions to ensure that investigating agencies do not arbitrarily issue summons to advocates in criminal cases over the legal advice given by them to the accused.	In Re : Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues, decided on 31.10.2025

IN THE SUPREME COURT OF INDIA

Dharmrao Sharanappa Shabadi and Ors.
Vs.
Syeda Arifa Parveen

[Civil Appeal No._____ of 2025
@ SLP (C) No. 16996 of 2022]

HEADNOTE – To constitute a valid hiba, all its necessary ingredients- declaration by donor, acceptance by donee and taking possession of land are done publicly rather than secretly.

JUDGMENT

S.V.N. Bhatti, J.

1. Leave granted.

2. The Civil Appeal arises from the judgment and decree dated 06.07.2022 in RFA No. 200204 of 2019 in the High Court of Karnataka, Kalaburagi Bench, Kalaburagi. The Civil Appeal is at the instance of the Defendants in OS No. 212 of 2013 in the Court of Principal Senior Civil Judge at Kalaburagi. The sole Respondent is the Plaintiff.

3. The following chronology is prefaced before adverting to the pleadings, evidence and findings in the impugned judgments.

3.1 Khadijabee w/o Syed Abdul Basit filed OS No. 68 of 1971 against her brother for partition and separate possession of agricultural land in Sy.No. 107 measuring 24 acres and 28 guntas at village Kusnoor, Taluka and District Gulbarga ('Suit Property'). On 27.10.1987, OS No. 68 of 1971 was decreed (Ex. P-1), declaring that the Suit Property belongs to Khadijabee. It is averred that on 05.12.1988, Khadijabee, under an oral gift/Hiba, conveyed to the Plaintiff 10 acres in Sy.No. 107. On 05.01.1989, the Memorandum of Gift (Ex. P-8) is stated to have been executed by Khadijabee in favour of Plaintiff.

On 06.06.1989, registration of a change of rights (Ex. P-2) in the Record of Rights ('ROR') in favour of Khadijabee was carried out covering the entire extent of 24 acres and 28 guntas. Khadijabee died on 29.11.1990 (Ex. P-3). On 23.05.1991, Abdul Basit, the husband of Late Khadijabee, again got the mutation (Ex. D-2) effected for 24 acres and 28 guntas. On 25.02.1995, Abdul Bas (as set out in the sale deeds) sold, through five sale deeds (Exs. D-3 to D-7), the extent of 24 acres and 28 guntas in favour of Defendant nos. 1 to 5, and through Exs. D-9 to D-43, the Suit Property has been mutated in their names. On 09.09.2001, Abdul Basit died.

On 28.10.2013, Syeda Arifa Parveen, w/o Mushtaq Ahmed, filed OS No. 212 of 2013, praying for the reliefs of declaration that the Plaintiff is the owner of the Suit Property and perpetual injunction. The suit property is land Sy.No.107, admeasuring Ac. 24-28 Gts., situated at Village Kusnoor, Taluka and District Gulbarga. The Suit Property is bounded by a Government Road to the East, Sy.No.151 to the West, Sy.No.106 to the North, and Sy.No.119 to the South.

3.2 The Plaintiff, by way of amendment, prayed for a further declaration that the sale deeds alleged to be executed by Abdul Bas, dated 25.02.1995, in favour of Defendants are null and void and not binding on the Plaintiff (Exs. D-3 to D-7).

4. The averments in the plaint in support of the declaratory relief of title and cancellation of Exs. D-3 to D-7 state that Khadijabee died on 29.11.1990, and the Plaintiff is her only daughter and heir. Khadijabee's husband is also deceased, and she left no other legal heirs. Khadijabee, during her lifetime, made an oral gift/Hiba of 10 Acres of land out of the Suit Property in favour of the Plaintiff on 05.12.1988, and delivered possession, which the Plaintiff accepted. Subsequently, a Memorandum of Gift Deed was executed on 05.01.1989. Based on the oral gift and succession, the Plaintiff claims to be the owner and in possession of the Suit Property.

The Plaintiff asserted that the Defendant No. 1 was previously an agricultural servant of Khadijabee (original owner) on a yearly salary basis. The Plaintiff further asserts that the Defendants have no concern with either the ownership or possession of the suit land. Taking advantage of Dussehra Vacation, the plaintiff alleged that on 14.10.2013, the Defendants came to the suit land, tried to dispossess the Plaintiff by force, and asked her to vacate, claiming they had purchased the land. They also tried to stop agricultural operations. The Defendants claimed to have purchased portions of the Suit Property through registered sale deeds dated 25.02.1995, with the alleged vendor being Abdul Bas S/o Syed Hussain Saheb.

The purchased portions are as follows: (i) Defendant No.1: 4 Acres 38 Guntas, (ii) Defendant No.2: 5 Acres, (iii) Defendant No.3: 5 Acres, (iv) Defendant No.4: 5 Acres and (v) Defendant No.5: 5 Acres. The Plaintiff contends that "Abdul Bas" S/o Syed Hussain Saheb (executor of the sale deed) does not exist, was never the owner, nor in possession of the suit land. The sale deeds were not executed by Khadijabee or her husband, "Abdul Basit Saheb". The Plaintiff alleges that the Defendants created these false sale deeds to make a false claim over the Suit Property.

Therefore, these sale deeds have not conferred any right, title, and the Defendants have not become owners of the Suit Property. The Plaintiff argues that the entries in the revenue records were entered without following proper procedure. Further,

the plaintiff stated that these entries are illegal because notices were not served upon the Plaintiff nor the original owners at the time of mutation of entries. These entries, therefore, do not confer any right, title, or interest on the Defendants.

5. The Defendants resisted the suit on all fours. The Defendants admit that Khadijabee was the original owner of the Suit Property, and she died on 29.11.1990 and her husband has also died. However, they deny that the plaintiff is Khadijabee's only daughter, that Khadijabee left no other heirs, that Khadijabee made an oral gift of 10 Acres of land to the plaintiff on 05.12.1988, or that possession was delivered. According to Defendants, Khadijabee and her husband died issueless. They further deny that Khadijabee executed a Memorandum of Gift on 05.01.1989, or that the plaintiff became the owner and possessor of 10 Acres of land out of the total extent of the Suit Property. They allege that the plaintiff made up a story to grab their property by illegal means.

They highlight that the alleged oral gift has not been heard of for 25 years, and the alleged Memorandum of Gift has not seen the light of day for all these years. The Defendants specifically contest that Defendant No. 1 was Khadijabee's agricultural servant, or that the Defendants have no concern with the ownership or possession of the Suit Property. The Defendants deny that on 14.10.2013, they tried to dispossess the plaintiff by force, or that they informed the plaintiff they purchased the lands through various sale deeds. The Defendants assert that during the Dussehra Vacation, they did not attempt to stop agricultural operations or ask the plaintiff to vacate and hand over possession.

Further, the Defendants stated that the sale deeds were not executed by the plaintiff or her parents. Defendant Nos. 1 to 5 assert they are bona fide purchasers. They verified revenue and other records and were satisfied with the title of Abdul Bas @ Abdul Basit s/o Syed Hussain Sab as it was duly mutated in their vendor's name. The Defendants detail their individual purchases of land in Sy.No.107 on 25.02.1995 through registered sale deeds, specifying the document numbers and acreage for each Defendant. They assert that they are in possession of their portions as absolute owners since the date of purchase without any interference.

They also mention that Abdul Bas @ Abdul Basit had previously sold house properties to Defendant No. 2's family in 1981. The Defendants' names were mutated in the revenue records based on these registered sale deeds after due process and have continued without objections from anyone, particularly the plaintiff. They deny that the said sale deeds did not confer any right, title, or interest on the Defendants, or that the Defendants did not become the owners. They further deny that notices were not served on the plaintiff, Khadijabee, or her

husband when entries were made in the ROR, or that such entries are illegal and do not confer any right, title, or interest on the Defendants.

6. The following issues and additional issues were framed by the Trial Court:

"1. Whether the Plaintiff proves that, she is having right, title and ownership over the suit schedule property?

2. Whether the Plaintiff further proves that, she is in lawful possession and enjoyment over the suit schedule property as on the date of filing of this suit?

3. Whether the Plaintiff further proves that, defendants have interfered in the peaceful possession and enjoyment of suit schedule property as alleged in the plaint?

4. What order or decree?

Additional issues:

1. Whether suit of Plaintiff is barred by limitation?

2. Whether suit of the Plaintiff in present form is maintainable?"

7. The Plaintiff examined herself as PW1 and PWs 2 to 4 on her behalf and got marked Exs. P-1 to P-8. The second Defendant was examined as DW1, and the third Defendant was examined as DW2. Exs. D-1 to D-44 have been marked on their behalf.

8. The respective pleadings of the parties are, to the extent needed, adverted to while taking up the contentions by the learned counsel appearing for the parties. The Trial Court, in effect, decreed the suit in part, granting a decree of title and permanent injunction to an extent of 18 acres and 21 guntas of the Suit Property. The Trial Court disbelieved the case of the Plaintiff on Oral Gift, and the view taken by the Trial Court can be summed up as follows.

8.1 Plaintiff was the daughter of Khadijabee and Syed Abdul Basit. This finding was based on the testimony of PW2 and PW3, who had special means of knowledge of the familial relationship. The Court did this by invoking Section 50 of the Indian Evidence Act, 1872 ('Evidence Act').

8.2 The Trial Court, by referring to Section 73 of the Evidence Act, compared the disputed signatures and found that the signature of Syed Abdul Basit on Ex. P-8 (Memorandum of Gift) matched his signature on the sale deeds, concluding that they belonged to the same person.

8.3 The Trial Court held that the oral gift was not acted upon because the delivery of possession could not be established. Under Mohammedan Law, delivery of possession is an essential condition. The court also noted a discrepancy in the property's boundaries, as mentioned in the gift memorandum. This created doubt about the identification of the gifted portion, and it was concluded that a valid gift deed requires handing over of actual possession.

8.4 Trial Court held that as per the Mohammedan Law of succession, the shares of the legal heirs after Khadijabee's death were to be divided as 3/4th to the daughter and 1/4th to the father.

8.5 The sale deed was only valid to the extent of 1/4th share (6 acres and 7 guntas). The remaining 3/4th share of 18 acres and 21 guntas was declared void.

9. The Defendants filed RFA No. 200204 of 2019, in the High Court of Karnataka, Kalaburagi Bench and through the impugned judgment, while dismissing the appeal, modified the decree by holding that the Plaintiff is the absolute owner of 10 acres derived through Oral Gift and Ex. D-8, and of a 3/4th share in the balance of extent in the Suit Property, i.e., 14 acres 28 guntas. To conclude the introductory narrative, the High Court, through its findings:

9.1 Upheld the Trial Court findings on the Plaintiff being the daughter of Khadijabee and Abdul Basit.

9.2 It overturned the Trial Court's findings on the oral gift. The High Court found that the evidence proved the delivery of possession of 10 acres; thereby, completing the oral gift. It also noted that the testimony of witnesses PW2 and PW4 supported the Plaintiff's claim of possession.

9.3 The High Court modified the decree by noting that the Plaintiff is the absolute owner of the 10 acres gifted by her mother, and the 3/4th share in the remaining 14 acres and 28 guntas.

10. Hence, the civil appeal at the instance of the Defendants.

11. We have heard learned Senior Counsel, Mr. Rauf Rahim, for the Defendants and Mr. Amit Kr Deshpande for the Plaintiff.

11.1 It is argued for the Defendants assailing the findings of the High Court and the Trial Court that they bristle with perversity and suffer from unavailable presumptions and assumptions in law. To wit, it is explained that after the death of Khadijabee in 1990, her husband, Abdul Basit, became the sole heir and had his name recorded in the land records on 23.05.1991. On 25.02.1995, Abdul Basit sold the land to the petitioners through five registered sale deeds. The petitioners' names have been entered on the ROR and Crop Cultivation Column from 1995 to

2022-2023. They have paid agricultural taxes and obtained crop loans for the land.

The respondent has not conclusively proven her relationship as the daughter of Khadijabee and Abdul Basit, and no primary documentary evidence, such as a birth certificate, school records or a marriage certificate, was ever produced to prove her lineage. The Trial Court and High Court relied on Section 50 of the Evidence Act, ipse dixit, and accepted the testimony of three "interested witnesses". The alleged "Oral Gift" and the "Memorandum of Gift" (Hibanama) dated 05.01.1989, are doubtful and sham transactions. While Khadijabee signed her name in Urdu in the plaint, the gift deed only bears her thumb impression, which was not identified by anyone.

Further, the document was never acted upon in the revenue records. The suit filed by the Plaintiff on 28.10.2013 was barred by limitation as it was filed 18 years after the 1995 sale deeds were registered. The High Court had exceeded its appellate jurisdiction by recognising the oral gift and granting 10 acres of the land to the respondent, especially since the trial court had rejected this claim and the respondent had not filed a cross-appeal. While the case was sub judice at the Supreme Court, the respondent forcefully dispossessed them on 02.01.2023 and had her name mutated in the land records without their knowledge.

11.2 Appearing for the Plaintiff, at the outset, it is argued that the reappreciation of oral and documentary evidence is not warranted in the facts and circumstances of this case. The findings recorded are concurrent and conform to section 50 of the Evidence Act, and do not warrant re-appreciation under Article 136 of the Constitution of India. Supporting the impugned judgments, it is argued by the Learned Senior Counsel that Khadijabee, was the owner of the suit land, who made an oral gift of 10 acres to the Plaintiff and later executed a memorandum of gift on 05.01.1989.

Following her death, her husband, Abdul Basit and the Plaintiff inherited the Suit Property at the first instance. After Abdul Basit's death, the Plaintiff became the sole owner. This is supported by the testimony of PW-2, a cousin, and PW-3, a brother-inlaw, who had intimate knowledge of the family and testified that the Plaintiff is Khadijabee's daughter. The memorandum of gift (Ex. P-8) was proven by presenting the original document and through the testimony of attesting witnesses.

The suit was filed on 28.10.2013, after the Defendants attempted to dispossess the Plaintiff on 14.10.2013. The suit is within the statutory limitation period. The oral gift's essential conditions, including formal delivery of possession, were met, as confirmed by the deposition of PW-4, a neighbour. Furthermore, the alleged sale deeds were executed by an individual named Abdul Bas, not the deceased

Abdul Basit. Even if Abdul Basit executed them, they would only be valid for his 1/4th share of the property.

12. A few citations are relied on by both the counsel, and we may refer to them if, in the analysis, the same is warranted.

13. The above narrative presents the following points for consideration.

i. Whether the impugned judgments suffer from perversity and misreading of evidence, warranting re-appreciation of evidence under Article 136 of the Constitution of India?

ii. Whether the High Court is correct in reversing the finding of the Trial Court on the Oral Gift without an appeal/cross-appeal by the Plaintiff?

iii. Whether the Plaintiff established her claim as the daughter of Khadijabee and Abdul Basit?

iv. Whether the claim of the Plaintiff under oral gift/Hiba is validly proved, and the title is derived to an extent of 10 acres?

v. Whether the suit for declaratory relief is barred by limitation?

Point I

14. Re-appreciation of evidence is normally not undertaken by this Court under Article 136 of the Constitution of India. The learned senior counsel appearing for the parties, in support of their respective arguments, have invited our attention to both the oral and documentary evidence. We have taken note of the incorrect appreciation of evidence and a few inconsistent findings in the impugned judgments.

The re-appreciation is undertaken primarily to examine whether the Trial Court and the High Court have accurately recorded the available findings. In a given case, the reappreciation of evidence is not barred under Article 136 of the Constitution of India. This principle is elucidated in Mahesh Dattaray Thirthakar v. State of Maharashtra1, which has helpfully summarised the position of law on appreciation of evidence under Article 136 of the Constitution of India, and the relevant extracts are as follows:

"34. xxxx this Court does not normally reappreciate evidence under Article 136, but when the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions, the Supreme Court can reappreciate the evidence to prevent further delay instead of remanding the matter. (See N.G. Dastane v. S. Dastane [(1975) 2 SCC 326] at SCC p. 329.]

35. From a close examination of the principles laid down by this Court in the aforesaid series of decisions as referred to hereinabove on the question of exercising power to interfere with findings of fact by this Court under Article 136 of the Constitution, the following principles, therefore, emerge:

- The powers of this Court under Article 136 of the Constitution of India are very wide.
- It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.
- When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it is highly unsafe and improper to act upon it.
- The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.
- The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.
- Where findings of subordinate courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.
- When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions.
- The judgment was not a proper judgment of reversal."

15. The argument of learned senior counsel for the Plaintiff is noted, and having regard to the ratio in Mahesh Dattaray Thirthakar (supra), we are of the view that, to appreciate the real issue between the parties, the objection is rejected.

Point II

16. The Plaintiff categorically claimed that she is the only daughter and heir to Khadijabee. On 29.11.1990, Khadijabee died, and on 09.09.2001, Abdul Basit died. According to Plaintiff, as noted supra, Khadijabee, during her lifetime, made an oral gift/hiba for 10 acres of agricultural land in the Suit Property and delivered possession, which was said to have been accepted by the Plaintiff. Ex. P-8 memorandum of gift deed dated 05.01.1989 is produced to evidence the factum of oral gift. The Plaintiff claims, through the oral gift, an extent of 10 acres. With the demise of Khadijabee on 29.11.1990, it is stated that the Plaintiff and Abdul Basit are the heirs entitled to the property. Since Abdul Basit died on 09.09.2001, the Plaintiff claims a declaration of title to the entire Suit Property.

17. The Defendants admit the demise of Khadijabee on 29.11.1990. They categorically deny that (a) Plaintiff is the daughter of Khadijabee, (b) Khadijabee executed an oral gift for 10 acres of land in the Suit Property and (c) possession according to Defendants was with their predecessors-ininterest and is presently with the Defendants pursuant to Exs. D-3 to D-7. The claim is based on the oral gift being a concocted version to grab the Suit Property.

18. The party to a lis is not under a legal obligation to file an appeal against mere findings recorded by the Court. Let us examine if the finding on oral gift by the Trial Court is a mere finding, and whether the High Court has substantially altered the relief without there being an appeal or cross-appeal. The Trial Court, while rejecting the oral gift, accepted the case of the Plaintiff over 18 acres and 21 guntas (3/4th share). The high court, while reversing the finding, has substantially altered the relief by increasing the extent to which the Plaintiff is entitled to a declaration.

To wit, the trial court granted the relief of permanent injunction and held that her ownership of 3/4th share in Khadijabee's property of 18 acres and 21 guntas was established. The Appellate Court enhanced her share by including the 10 acres allegedly gifted by her mother through hiba and 3/4th share in the remaining 14 acres and 28 guntas; thus, totalling 24 acres and 28 guntas. Now, let us refer to the power of the appellate court in modifying the decree.

19. In Banarsi and others v. Ram Phal,2 this Court held that:

"8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See Phoolchand and Anr. v. Gopal Lal, [1967] 3 SCR 153; Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd., [1970] 3 SCC 573; Smt. Ganga Bai v. Vijay Kumar and Ors., [1974] 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.

13. We are, therefore, of the opinion that in the absence of cross appeal preferred or cross objection taken by the plaintiff-respondent the First Appellate Court did not have jurisdiction to modify the decree in the manner in which it has done. Within the scope of appeals preferred by the appellants the First Appellate Court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the

defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals.

What the First Appellate Court has done is not only to set aside the decree to the extent to which it was in favour of the appellants but also granted an absolute and out and out decree for specific performance of agreement to sell which is to the prejudice of the appellants and to the advantage of the respondent who has neither filed an appeal nor taken any cross objection."

(emphasis supplied)

20. Juxtaposition of the view taken by the Trial Court and the High Court on the oral gift/Hiba would explain the infirmity pointed out by the Defendants against the impugned judgment.

ISSUE	TRIAL COURT REASONING	HIGH COURT REASONING
Validity of Hiba under Mohammedan Law	Disbelieved the theory of the oral gift dated 05.12.1988, because of doubt regarding the identification of 10 acres due to boundary discrepancies in Ex. P-8. The Trial Court concluded that no actual possession was handed over.	Reversed the Trial Court finding and stated that the finding that the gift deed has not been acted upon cannot be accepted. The evidence discloses delivery of possession and thereby the gift became complete and the Plaintiff held its possession. To rebut the finding of boundary discrepancies, the High Court attributed it to poor drafting and that the cross-examination was lacking.
Possession of the suit property	The Trial Court accepted the Plaintiff's case of possession to the extent of the share inherited.	Possession of the Plaintiff can be said to have continued on the remaining extent of her share in the suit property after the death of her mother. It also inferred delivery of possession for the gifted land due to the mother-daughter relationship.

21. By applying the ratio in Banarsi (supra), we notice that the impugned judgment has not considered whether a ground is made out for modifying a decree or not. The High Court has disturbed a finding of fact, leading to modifying the decree of the Trial Court in OS No. 212 of 2013 without there being an appeal/cross-appeal. To this extent, the findings of the High Court are

not tenable in the facts and circumstances of this case. The other reasons assigned by the High Court are independently examined while considering the plea of Hiba and the Plaintiff as the daughter of Khadijabee. The finding on this point, noted as an illegality, may not conclude the consideration of other issues.

Point III

22. The Plaintiff claims the status of the only daughter of Khadijabee and Abdul Basit. On 29.11.1990, Khadijabee died, and on 09.09.2001, Abdul Basit died. The suit was filed on 28.10.2013, i.e., nearly 23 years from the demise of Khadijabee and 12 years after the demise of Abdul Basit. The Defendants denied the status claimed by the Plaintiff as the only daughter and legal heir to Khadijabee and Abdul Basit. The Defendants contend that the lineage claimed by the plaintiff is particularly with respect to the Suit Property. The Trial Court, on the status of Plaintiff by referring to Section 50 of the Evidence Act and relying on the oral evidence of PWs 2 and 3, concludes that the Plaintiff is the daughter of Khadijabee and Abdul Basit. The High Court has broadly agreed with the view taken by the Trial Court.

23. Mr. Rauf Rahim argues that Section 50 of the Evidence Act enables receiving opinion evidence of a person having special means of knowledge on a fact in issue on the relationship. The requirements of Section 50 are strictly complied with, and the mere statement of a witness is not conclusive of a claim for a relationship with the deceased Khadijabee. Section 50 has three steps for allowing opinion evidence, and the next threshold is that the witnesses so tendered in evidence must conform to the credibility, reliability and inspire confidence in a court to treat the oral evidence as deciding the issue in favour of a party.

The impugned judgments, it is argued, have reproduced oral evidence in an abstract way, without either weighing or testing the reliability or credibility of the witnesses examined on behalf of the Plaintiff. Generally, the best evidence is documentary evidence, and the circumstances as shown in the plaint disclose that the proof of status could have been through documentary evidence such as a birth certificate, school admission and leaving record, voters list, ration card or any contemporaneous document where the deceased parents have accepted the Plaintiff as their daughter.

He contends that the foremost suspicious circumstance, not verified by the courts, is that the claim for status as daughter is coming fairly late after two-and-a-half decades since the demise of Khadijabee and twelve years from the date of the demise of Abdul Basit. The Trial Court, by referring to Section 73 of the Evidence Act, assumed the role of a handwriting expert and compared the signatures between Ex. P-8, a disputed document, and Exs. D-3 to D-7.

The court, in exceptional cases, sits in the armchair of a handwriting expert and can compare a signature in dispute with an admitted signature. In the case at hand, the Plaintiff does not admit Exs. D-3 to D-7, and Defendants are not admitting Ex. P-8. There is no proof or presumption with a semblance of evidence as to the conduct in the relationship of the Plaintiff with Khadijabee. The status is an important declaratory relief, the findings per se are perverse, and the Plaintiff failed to prove her status as the daughter of Khadijabee.

24. Mr. Ameet Kr Deshpande contends that Section 50 of the Evidence Act provides an opportunity to adduce oral evidence in proof of the status or relationship of a party, which is a fact in issue. There is no requirement in law that the documentary evidence alone can enable a court to decide on the status claimed by a party. The evidence of PWs 2 and 3 is consistent, coherent and has means of special knowledge; thus, there is no reason to discredit the evidence of PWs 2 and 3.

25. The argument has two facets: (i) the scope, appreciation and applicability of evidence under section 50 of the Evidence Act, and (ii) whether, on the established principles, the oral evidence is sufficient to accept the claimed status of Plaintiff as daughter of Khadijabee.

26. Dolgobinda Paricha v. Nimai Charan Misra3 is an apt authority for appreciating the contours of Section 50 of the Evidence Act on the opinion evidence on the relationship in issue of fact. The following principles can be culled out from Dolgobinda Paricha (supra):

a. Section 50 specifically makes the opinion expressed by the conduct of a person with special knowledge relevant.

b. For the applicability of the section, there are three essentials.

i. Firstly, the court has to form an opinion as to the relationship of one person to another.

ii. Secondly, the opinion on this relationship must be expressed through conduct.

iii. Thirdly, the person whose conduct expresses the opinion must have special means of knowledge on the subject, such as being a member of the family or otherwise.

c. The term "opinion" is defined not as a casual statement or gossip but as a "judgment or belief" or a "conviction." This belief is demonstrated and proved through the person's conduct or behavior. The conduct must be of a tenor that can only be explained by the existence of that inner belief about the relationship.

26.1 Chandu Lal Agarwala v. Khalilar Rahman,4 further clarifies by stating that conduct is not the ultimate proof of relationship but an intermediate step. It allows the court to infer the "opinion" of the person whose conduct is in evidence. The court then weighs this opinion to arrive at its own conclusion regarding the relationship in issue. Hence, Section 50 does not make evidence of mere general reputation (without accompanying conduct) admissible as proof of a relationship.

Further, if the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the Court to weigh such evidence and come to its own opinion as to the factum probandum, as to the relationship in question. In conforming to the above, the conduct, being a perceptible external fact, must be proved by "direct evidence" as defined in Section 60 of the Evidence Act. This means that the witnesses must testify to what they personally saw or heard.

26.2 The opinion expressed by conduct of any person as a member of the family or of any person otherwise has special means of knowledge on the subject is a relevant fact. This testimony remains as direct evidence under Section 60 of the Evidence Act.

27. The Evidence Act teaches us principles on perception and discrimination of relevant facts. The perception permitted as a relevant fact does not automatically amount to a fact proved till the same passes the test of discrimination, namely, the triple test of relevancy, admissibility and competence of the witness. It has been pithily held in Pottem Subbarayudu And Another v. Kothapalli Gangulu Naidu And Others,5 by referring to Govinda v. Champa Bat,6 a Learned Single Judge of the High Court of Andhra Pradesh held that:

"17. There can be no straightjacket formula for the appreciation of oral evidence of the witnesses. The credibility of the witness is the paramount consideration for the Court. After passing the three legal tests viz., relevancy, admissibility, and competence of the witness, while considering the credibility of the witness, the Court has to consider various parameters so as to appreciate the oral evidence on the point by testing the same on the touch stone of two important yardsticks viz., the probabilities and surrounding circumstances among various other parameters. Even when no rebuttal is adduced by the adversary the ocular testimony of the witnesses examined on the side of the party on whom the burden lies, cannot implicitly be relied upon without testing the same with reference to the probabilities and surrounding circumstances."

28. Keeping in perspective the above principles, we appreciate the oral evidence relied on by the Plaintiff.

28.1 In chief examination, PW2, Mohammad Khayamulla, stated that he knew both Khadijabee and the Plaintiff, Syeda Arifa Parveen. That his mother and Khadijabee's mother were first cousins, which is how he was related to both the Plaintiff and Khadijabee. He lived as a tenant in the same house as Khadijabee and the Plaintiff in Maqdumpura, and used to take the Plaintiff to school, confirming his knowledge that Khadijabee was her mother. Khadijabee, as the owner of Sy.No. 107, had only one daughter, the Plaintiff, and gifted her 10 acres out of love and affection on 05.12.1988. This oral gift was made in Khadijabee's house in the presence of Khadijabee, the Plaintiff, Abdul Basit Sab, Abdul Raheman Sab, Mustaq Ahmed, and Ayub Ali.

The credibility of this witness comes under serious scrutiny when the witness includes Mustaq Ahmed as one of the witnesses to the oral gift dated 05.12.1988. He noted that Khadijabee handed over possession of the land and all agricultural implements to the Plaintiff and that he was also present when she executed the Memorandum of Gift on 05.01.1989. He stated that Khadijabee put her thumb impression on the document, which was also signed by the Plaintiff and two witnesses, Syed Abdul Basit and Md. Abdul Rahman, although he himself did not sign it, as he was told the two witnesses were sufficient.

28.2 In cross-examination, the witness states that his mother is the first cousin of Khadijabee's mother. He notes that Khadijabee made an oral gift of 10 acres of land to the Plaintiff out of love and affection and handed over possession. He also states that he was present at the time of the oral gift and that Khadijabee gave a plough and two cows to her daughter for cultivation, which symbolised the delivery of possession. He states that the gifted 10 acres of land was located on the southern side of the total land. He claimed to have seen Khadijabee's Ration Card, which listed the Plaintiff as her daughter, and had also seen school documents regarding the same. He denied that the Plaintiff's father and mother had no children. He denied that the names Abdul Basit and Abdul Bas were the same.

28.3 The oral evidence proceeds to speak on the relationship, etc., without primarily establishing the competence and credibility of the witness to depose to these circumstances. To infer special means of knowledge, the witness does not refer to any document except his oral evidence. The oral evidence dealing with aspects not stated by the Plaintiff are in the pleadings.

28.4 In chief examination, PW3 stated that he knows the Plaintiff and that she is the daughter of Syed Abdul Basit, also known as Munshi. He noted that the Plaintiff's husband, Mustaq Ahmed, is his brother. He stated that prior to the marriage proposal, they had made inquiries and were aware that the Plaintiff was Syed Abdul Basit's daughter. He testified from personal knowledge that the Plaintiff is the daughter of Abdul Basit. The witness further asserted that Abdul

Basit, the Plaintiff's father, died on 09.09.2001 and was never referred to as Abdul Bas.

28.5 In his cross-examination, he holds that he is the brother of the Plaintiff's husband. He had inquired about the Plaintiff's parentage with the Plaintiff and her relatives. He claimed that Abdul Basit gave the land to his daughter in 1989. He denied that Abdul Basit and his wife had no children and volunteered that they had a daughter. When asked if he had seen the Plaintiff's documents to prove she was the daughter of Abdul Basit and Khadijabee, he replied that he knew it because he was a relative, and he denied not being their relative. He also denied the suggestion that the names Md. Abdul Rehman and M.A. Rehmansab were different, volunteering that they were the same person. He volunteered that he had not told his full name and age to the Plaintiff. He denied the suggestion that Abdul Basit was also known as Abdul Bas.

29. The trial court failed to properly evaluate the oral evidence of witnesses PW2 and PW3 in accordance with the principles set forth in Dolgobinda Paricha (Supra) and Chandu Lal Agarwala (Supra). It failed to independently assess the credibility of the witnesses' opinion and to form its own conclusion about the Plaintiff's relationship with Khadijabee and Abdul Basit. The trial court, while examining the testimonies of PW2 and PW3, correctly identified that their opinions on the Plaintiff's relationship were admissible under Section 50 of the Evidence Act because they were people with special means of knowledge about the relationship of the Plaintiff with deceased Khadijabee.

However, the evidence does not prima facie satisfy the triple test of section 50, and has not appreciated that even if the evidence conforms to the three requirements, the evidence thus far is at an intermediate stage. The Trial Court referred to the suggestion of the Defendants and that the witnesses asserted special means of knowledge. The further finding that it will suffice if he(witness) has special means of knowledge, so a person watching the conduct of members has to be treated as having special means of knowledge. The issue is answered by looking into the signatures in Ex. P-8 and Exs. D-3 to D-8.

30. To appreciate, yet another illegality in the approach of the Trial Court, we notice the discretionary power of courts under Section 73 of the Evidence Act. Section 73 of the Evidence Act empowers a court to compare disputed signatures, writings, or seals with others that have been admitted or proven to be authentic. It also grants the court the power to direct any person present in the court to write any words or figures for the purpose of comparison.

30.1 Comparison with Admitted or Proven Documents: The primary function of Section 73 is to allow the court to compare a disputed signature or handwriting with a standard document that is either admitted by the parties or has been proven

to the satisfaction of the court to be genuine. The comparison can be made by the court itself. In Fakhruddin v. State of Madhya Pradesh,7 this Court emphasised that a court should not assume the role of a handwriting expert. The Court held that while the court can compare a disputed signature with an admitted one under Section 73, it would be hazardous to rely solely on this comparison without the assistance of an expert. The Court underscored the importance of corroboration, stating that the court's own comparison can be used as corroborative evidence to support the testimony of an expert witness, or vice versa.

30.2 Comparison by the Court in a Prudent Measure: Section 73 gives the court the power to compare documents. The power to compare documents, and the available power, should be exercised as a measure of last resort, and the court's conclusion should not be the sole basis for a decision in serious matters. It is apposite to excerpt the following finding from the judgment of the Trial Court:

"21. It is worth to note here that, in case signature of Syed Abdul Basith S/o Syed Hussain Saheb in Ex.P.8 which is memorandum of gift is compared with signatures of Abdul Bas S/o Syed Hussainsab in Ex.D3 to Ex.D7 and Ex.D8 with bare eyes, one can say these signatures are one and the same belong to only one person. As per Sec. 73 of Indian Evidence Act court can compare signatures of the person in documents. Though plaintiff has contended Syed Abdul Basith and Abdul Bas are altogether different, but in order to show there are two persons by name Syed Abdul Basith and Abdul Bas, who are altogether different, nothing is placed on record.

22. It is material to note here that, in Ex.P8 and Ex.D3 to Ex.D8 name of father of either Abdul Basith or Abdul Bas is shown as Syed Hussainsab. In case there is material to demonstrate in Kusnoor village there were two persons by name Syed Hussain Saheb and each of them got sons of by name Syed Abdul Basith and Abdul Bas, then version of plaintiff that, both Syed Abdul Basith and Abdul Bas are altogether different can be acceptable. In view of absence of such material on record, comparing signature of Syed Abdul Basith S/o Syed Hussainsab in Ex.P8 with signatures Abdul Bas S/o Syed Hussain Saheb in Ex.D3 to Ex.D8 one can easily say Syed Abdul Basit was also used to called as Abdul Bas.

23. As it is clearly stated by plaintiff and same is mentioned in Ex.P8 Syed Abdul Basit had put his signature as one of attesting witness to Memorandum of Gift, said signature of Syed Abdul Basit is tally with signature of Abdul Bas in Ex.D3 to Ex.D8 it can be held these Syed Abdul Basiit and Abdul Bas are one and the same person.

24. Looking into signature of Syed Abdul Basith on Ex.P8, it can be held the plaintiff is daughter of Khadijabee and Syed Abdul Basit."

31. The above consideration establishes that the Trial Court accepts the relationship based upon a document which is contested by the Plaintiff, and compares the signature to a document disputed by the Defendants. More specifically, the Plaintiff categorically denied the execution of Exs. D-3 to D-5 as having been made by Abdul Basit.

31.1 It did not proceed to the crucial second step of evaluating the intermediate opinion in light of all evidence before drawing a final conclusion on the relationship. The trial court treated the witnesses' opinion as a fact to be adopted, rather than a piece of evidence to be weighed. It took their assertion as proof of the relationship itself, bypassing its own duty to form a conclusive opinion. It did not take into consideration the possibility of bias of PW2 and PW3, both of whom are close relatives of the Plaintiff. Conduct is an intermediate step, allowing the court to infer an opinion, but it does not serve as the final proof of the relationship. The omissions made by the trial court undermine the evidentiary rigour required under Sections 50 and 60 of the Evidence Act.

31.2 Both the courts have overlooked the oral evidence that the Plaintiff admits to having studied up to the 10th standard in Urdu medium. No documentary evidence is filed, and non-filing of relevant documents is appreciated in the total context of the Plaintiff's claim. PW2 states that he has seen the ration card of Khadijabee showing Plaintiff as her daughter. He has also seen the school documents in this regard. PW4 claims to be a next-neighbour to the land owner of the Suit Property. His evidence is mostly for proving the possession of the Plaintiff of the Suit Property.

The appreciation of oral evidence cannot be illustrated in a straight-jacket formula. The experience and the expertise of the court would enable appreciation of oral evidence. In the process, the credibility of the witness is the paramount consideration for the court. In the sequence of narrative, atleast if one fact is proved or admitted by the opposite party, from such proof or admission, the existence of sequential facts can be inferred. The impugned judgments have resorted to circular reasoning, which is impermissible and illegal.

32. We have taken note of the oral evidence and also the approach of the Trial Court and the High Court. To sum up, it may be noted that the Trial Court has exercised its jurisdiction under Section 73 of the Evidence Act, referred to Section 50 of the Evidence Act, and, without testing the credibility, relevancy, admissibility and competence of the witnesses, in an abstract way, has held that the Plaintiff is the daughter of Khadijabee.

The Trial Court further found that the mere suggestion to these witnesses does not discredit the evidence of PWs 2 and 3. The Trial Court failed to note that the Plaintiff and the witnesses, going by their evidence, are withholding the

documents in their possession, namely, school-leaving records, ration card, etc. The perversity in appreciation is evident from the improvements in the evidence of PWs 1 to 3 on all material aspects.

33. Adverting to the consideration by the High Court, we notice that the evidence of PWs 2 and 3 has been accepted as the witnesses having special means of knowledge of the Plaintiff with Khadijabee. The appreciation, we are of the view, failing to adhere to the standard tests in appreciating oral evidence, and abstract findings have been recorded on the status of the Plaintiff vis-à-vis Khadijabee. The emphasis is on relevant facts admissible in evidence. Assuming the evidence is admissible, the same must conform to the triple test.

We hasten to add that the proof of status or relationship need not always necessarily be through documentary evidence, but, when oral evidence is the basis on which the opinion is required to be formed by a Court, the Courts are allowed to treat an opinion on conduct about a relationship as only a relevant fact. This should not be confused with 'as factum probandum'. We observe that the impugned judgments are liberal in their approach to accepting the status claimed by the Plaintiff as the daughter of Khadijabee. The point is answered accordingly.

Point IV

34. The Plaintiff, for the relief of declaration, sets up two narratives; namely, (a) that on 05.12.1988, Khadijabee, through an oral gift/Hiba, gifted to Plaintiff 10 acres in the Suit Property. On 05.01.1989, Ex.-P8, a memorandum of gift deed, recording a past oral gift, was executed, and (b) on 09.09.2001, Abdul Basit died, and she remained the only heir and successor to the estate of Khadijabee.

As PW1, the Plaintiff deposes that the three elements of a valid Hiba/oral gift were complied with, and the property with an extent of 10 acres stood transferred. The Plaintiff, being the donee, her evidence is appreciated after appreciating other oral and documentary evidence available on record. The Defendants have denied the oral gift and also Ex. P-8, a memorandum of gift deed. As discussed supra, the Trial Court disbelieved the oral gift and also Ex. P-8. The High Court, by introducing a case not stated by the Plaintiff, accepted Hiba.

35. In Abdul Rahim v. Sk. Abdul Zabar,8 Rasheeda Khatoon v. Ashiq Ali,9 Hafeeza Bibi v. Sk. Farid,10 and Mansoor Saheb v. Salima,11 this Court had considered the various aspects underlying the transfer of property through Hiba. Hiba is a disposition between living persons and is fundamentally an act of benevolence. The theological underpinnings trace back to the Prophet

Mohammed (PBUH), who is reported to have said, "Exchange gifts among yourselves so that love may increase."12

36. The oral gift and the effect of a valid oral gift are reiterated as follows:

36.1 There are three essential conditions for an oral gift under Mohammedan Law. First, a clear manifestation of the wish to give on the part of the donor. Second, an acceptance of the gift by the donee, which can be either implied or explicit. Third, taking of possession of the subject-matter of the gift by the donee, either actually or constructively.

36.2 A gift under Mohammedan Law does not require a written document to be valid. An oral gift that fulfils the three essential requisites is complete and irrevocable. The mere fact that a gift is reduced to writing does not change its nature or character. A written document recording the gift does not become a formal instrument of gift.

36.3 The distinction that a written deed of gift is not required to be registered if it "recites the factum of a prior gift" but must be registered if the "writing is contemporaneous with the making of the gift" is considered "inappropriate and is not in conformity with the rule of gifts in Mohammadan Law".13 Section 129 of the Transfer of Property Act, 1882 ('Transfer of Property Act') excludes the rule of Mohammedan Law from the purview of Section 123, which requires registration for the gift of immovable property.

36.4 Delivery of possession is a critical and necessary element for a valid gift. It can be actual or constructive. Constructive possession can be demonstrated by overt acts by the donor that show a clear intention to transfer control. For example, the donor applies for the mutation of the donee's name in the revenue records.

36.5 Continuous evidence of acting under the oral gift is crucial to prove the delivery of possession. The donee must be able to demonstrate "exclusive control" over the property to derive benefit under it, such as by collecting rent, or by the donor performing acts like mutation on behalf of the donee. Conversely, the donor's continued collection of rent and the donee's lack of control over title documents or mutation records can be evidence that possession was not transferred.

37. In Mussamut Kamarunnissa Bibi v. Mussamut Husaini Bibi,14 the Privy Council held that proof of a transfer of possession, especially in the absence of consideration, is required to enable an oral gift. It also held that "the Court is bound to watch with the greatest care, perhaps even with suspicion, the case of a verbal gift set up after the alleged donor's death; and if the case had rested upon

oral testimony alone, their Lordships probably might not have had this Appeal before them."

The case of oral gift was strengthened by subsequent actions such as publicising the gift and the signing of a mukhtarnama (power of attorney) to enact the mutation of names in government records. The Privy Council considered several actions taken by the recipient after the oral gift was made, including filing receipts for government payments, paying income tax, and suing a tenant for ejectment to accept the existence of an oral gift.

38. The oral gift confines to 10 acres of the total extent of 24 acres 28 guntas. The oral gift is stated to be on 05.12.1988, and Ex. P-8 was said to have been executed on 05.01.1989. The first circumstance, which remains unexplained by the Plaintiff, is that Khadijabee herself requested the mutation of her name for the entire Suit Property, i.e., 24 acres and 28 guntas. Ex. P- 2, marked on behalf of Plaintiff, refers to the court decree and mutation of the ROR from Haji Mohammed Yusuf to Khadijabee. The oral gift, as said to have been stated by the Plaintiff, was anterior in point of time, and if the same is valid, the donor ceased to be an owner to the extent of 10 acres.

The probability or conduct of the donor and donee would be in consonance with the alleged oral gift that the name of the Plaintiff had to be mutated for an extent of 10 acres. The mutation of right, title and possession to the entire extent of the Suit Property in favour of Khadijabee would cast a serious doubt on the Oral Gift. The second circumstance is that Khadijabee died on 29.11.1990, and Late Khadijabee's husband, Abdul Basit, got his name entered for the total extent of the suit schedule. If the twin narratives stated by her for claiming the Suit Property are established, then the Plaintiff, both as donee and successor-in-interest, must have got mutation in her favour but not in favour of Abdul Basit.

The Defendants, through Exs. D-3 to D-7, assert that they have purchased the Suit Property from Abdul Bas (Abdul Basit). As evidenced by Exs. D-9 to D-43, the names of Defendants are entered in the ROR. Abdul Basit died on 09.09.2001. The Plaintiff, either in her capacity as donee, or as at least now the sole heir to the Suit Property, has not taken steps to get her name entered in the ROR. It is axiomatic that hiba is operative with immediate effect and deprives the transferor of his control and ownership over the property.15 The Privy Council, giving due recognition to transfer through Hiba, laid down that evidence of possession is an important consideration. Rasheeda Khatoon (supra) is a case closer to the circumstances of the issue at hand.

38.1 In Rasheeda Khatoon, the Plaintiff's plea of collecting rent was not accepted because no rent receipts were filed. The fact that the donor continued to issue rent receipts after the alleged gift was used as evidence against the donee's claim of

possession. The absence of proof that the land was mutated in the donee's favour by revenue authorities was considered a point against the donee's claim of possession. The donee not being in possession of the title deeds was another factor considered by the court. Hence, the court concluded that the Plaintiff could not prove either actual or constructive possession, thereby making the oral gift incomplete.

38.2 Therefore, the evidence of acting under the gift (e.g., collecting rent, holding title, mutation) is essential to substantiate the claim of possession. While Mohammedan Law allows for a gift to be made orally without a written document, the validity of such a gift is contingent on the demonstration of all three essential elements, particularly the delivery of possession. The courts will scrutinise "contemporaneous" and "continuous" evidence of the donee's actions and control over the property to determine if possession was indeed transferred. The lack of evidence (e.g., failure to collect rent, donor's continued control, lack of mutation) will lead to proving that a gift was never completed, regardless of any written declaration.

39. The precedents are that to constitute a valid conveyance through an oral gift, the three contemporaneous conditions of declaration by donor, acceptance by donee, possession by donee and to continue to establish possession through contemporaneous evidence to show that Hiba is acted upon. The Hiba is not used as a surprise instrument and cannot sprout into a transfer of property as per the convenience of a party. Moreover, to keep in line with the sanctity of Hiba, it is in the interest of the donor, donee and a third person interested in the subject matter that Hiba is acted upon by completing all three essential requirements in public knowledge rather than in secrecy.

The Courts appreciate fulfilment of contemporaneous requirements and possession through evidence while recognising conveyance through an oral gift. Possession is one of the important conditions to constitute a valid oral gift. The courts presume possession of a party from the circumstances pleaded and proved. In the case at hand, there is a consistent revenue record, Ex. P-2, Ex. P-3, Ex. P-4, Ex. P-5 and Exs. D-9 to D-43 showing in the revenue records that the names of Defendants are entered in ROR and their predecessors in interest, both in the title and possession columns. The Plaintiff places oral evidence, and the circumstances summed up above do not inspire confidence for accepting that there has been a valid oral gift in any capacity, i.e., as a daughter or otherwise, in favour of Plaintiff.

The impugned judgments presume possession in favour of Plaintiff on ipse dixit statements, and the courts below fell in grave error in not appreciating the long lapse of years and continued silence of Plaintiff vis-à-vis the Suit Property. The next limb is whether Ex. P-8 satisfies as a Memorandum recording the past

transaction and would come to the aid of the Plaintiff, at least to the extent of 10 acres said to have been given. Ex. P-8 bears L T I of Khadijabee. The plaint in OS No. 68 of 1971 is marked as D-44. Khadijabee has signed the plaint in Urdu, and during cross-examination, PW2 specifically stated that Khadijabee was signing, not affixing her L T I.

This inconsistency remained unexplained. Further, under Ex. P-8, in clause 5, which reads that the donee shall hereafter peacefully hold and possess and enjoy the land property with all its inclusions without any interference, claim or demand whatsoever from the donor. Ex. P-8 belies the possession and transfer said to have been made on 05.12.1988. From the above, except the self-serving and oral evidence from interested witnesses of Plaintiff, there is no evidence on possession, whether actual or constructive, having been delivered to Plaintiff.

On the other hand, the Exhibits relied on by the Plaintiff, coupled with D-8 to D-43, do not enable, presuming that the Plaintiff continued to be in possession of 10 acres of the suit schedule. The High Court was liberal in explaining away the minor variations, if any, in Ex. P-8 do not adversely affect the Plaintiff's claim. With respect, we are unable to subscribe to the said view. Consequently, the claim of the Plaintiff under Hiba and Ex. P-8, for want of evidence on possession, fails, and the point is answered in favour of the Defendants.

Point V

40. The additional issue no. 1 is whether the suit of the plaintiff is barred by limitation. The Trial Court answered the issue in negative and in favour of the Plaintiff. The Trial Court reasons that the cause of action arose on 14.10.2013, when the Defendants allegedly tried to dispossess the Plaintiff from the suit property; and thus, notes that there is interference with the rights of the Plaintiff in the suit property on the said date.

41. On 28.10.2013, the present suit OS No. 212 of 2013 was filed for declaration that the Plaintiff is the owner and possessor of the Suit Property, and declare that the sale deeds dated 25.02.1995, Exs. D-3 to D-7, in favour of the Defendants, is null and void. The plaint in paragraphs 9 and 10 refers to the circumstances constituting the cause of action. For brevity, we note whether there is a cause of action or whether the suit is within the period of limitation, which are determined by the averments in the plaint. Therefore, the averments in the written statement are not determinative in this aspect.

42. Article 58 of the Limitation Act, 1963 ('Limitation Act') provides for the period of limitation in a declaratory suit. The use of the words "when the right to sue first accrues", as mentioned in Article 58, is very relevant and important. It categorically provides that the limitation of three years has to be counted from

the date when the right to sue first accrues.16 The declaratory relief for title is based on the oral gift and successorship of the Plaintiff. The plaintiff also prays for setting aside Exs. D-3 to D-7, for which Article 59 of the Limitation Act is applicable. The crux of consideration is whether the averments in the plaint continue to keep the cause of action alive, or by constructive notice and negligence on the part of the Plaintiff, even if, at one given point of time, there was a cause of action, whether the same is barred by time or not is the crux of the matter.

43. It becomes relevant to refer to the timelines in this case to determine if the cause of action is continuing, or, by constructive notice and negligence on the part of the Plaintiff, the cause of action is barred by time. There are two claims made by the Plaintiff: first, on the oral gift of 10 acres, and second, on the claim that she is the legal heir to the suit property.

43.1 The domino with respect to the oral gift is set into motion on 05.12.1988, when Khadijabee said to have orally gifted 10 acres in Sy.No.107. On 05.01.1989, this oral gift was written down as a Memorandum of Gift. Khadijabee died on 29.11.1990, and Abdul Basit died on 09.09.2001. Despite this, the Respondent did not apply for mutation either in 1989, 1990, 2001 or in the interregnum till 2013, asserting her right as the transferee of the Suit Property from late Khadijabee.

43.2 With respect to the claim that the Respondent is the legal heir of 24 acres and 28 guntas in the Suit property, it is pertinent to note that Khadijabee died on 29.11.1990, and Abdul Basit got his name mutated for 24 acres and 36 guntas in his name on 23.05.1991 through Ex. D- 2. Subsequently, on 25.02.1995, five sale deeds were executed by Abdul Basit in favour of the Defendants, and D-9 to D-23 entries in ROR indicate a presumption of possession.

44. The mutation entry in Exs. P-1 and P-2, coupled with the execution of Exs. D-3 to D-7 are sources of potential mischief to the claim of the Plaintiff to the suit property. Plaintiff has not acted in time in challenging the maintenance of ROR, or registered sale deeds, within the time stipulated by law. The conduct for over a period of 23 years cannot be appreciated as the conduct of a passive observer but amounts to failure to use the care that a reasonably prudent and careful person would use under these circumstances. Negligence in law signifies a failure in the performance of duty.

45. The interpretation clause in Section 3 of the Transfer of Property Act deals with constructive notice. Depending on the facts and circumstances of each case, if the inquiry that a reasonable person would conduct in the specific circumstances is not made, then Courts, through constructive notice, may impute

knowledge on such persons. Thus, constructive notice in equity treats a man who ought to have known a fact as if he actually knows it.17

46. In the present case, the Plaintiff had opportunities to mutate the Suit Property in her name on 05.01.1989, 29.11.1990, 25.02.1995, and 09.09.2001. Furthermore, the Respondent did not file the suit until 2013, which, in any case, exceeds the three-year limitation period. Therefore, we impute knowledge through constructive notice in the present case, and consequently, it cannot be stated that there was a continuing cause of action.

47. Moreover, to set aside instruments of sale (Exs. D-3 to D-7), the muster under Article 59 of the Limitation Act must be met. It is axiomatic that there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, the Respondent has not been able to rebut the said presumption.18 Interestingly, in the impugned judgment, constructive notice is put against the Defendants despite there being no public record of the Oral Gift or the claim to the Suit Property.

48. The circumstances have been chronologically explained, and the earliest cause of action to the Plaintiff in the case on hand was when Ex. P-2, dated 06.06.1989, was brought into existence at the instance of Khadijabee, and the cause of action has again arisen when Ex. P-3 was brought into existence, denying the claim of the Plaintiff by Late Abdul Basit. Abdul Basit is said to have executed Exs. D-3 to D-7 on 02.05.1995.

The names of ve.ndees have been mutated, and the continued negligence would result in constructive notice of transactions covered by Exs. D-3 to D-7. The impugned judgments failed to appreciate the effect of constructive notice in answering whether the suit is within the period of limitation or not. On consideration of the circumstances and by applying the precedents on the point, we hold that the suit filed on 28.10.2013 is barred by limitation, particularly for the reliefs sought for. The point is answered accordingly.

49. For the above reasons and discussion, the Impugned Judgments are set aside; The Plaintiff's suit, OS No. 212 of 2013, is dismissed; and the Civil Appeal is allowed. All pending applications are disposed of accordingly. No order as to costs.

.....J. [Ahsanuddin Amanullah]

.....J. [S.V.N. Bhatti]

New Delhi;

1 (2009) 11 SCC 141.

2 (2003) 9 SCC 606.

3 AIR 1959 SC 914.

4 ILR (1942) 2 Cal 299, 309.

5 2000 SCC OnLine AP 296.

6 AIR 1965 SC 354.

7 1966 SCC OnLine SC 55.

8 (2009) 6 SCC 160.

9 (2014) 10 SCC 459.

10 2011 5 SCC 654.

11 (2023) SCC OnLine SC 3809.

12 Al-Marghinani, Burhan al-Din, Al-Hiadaya, Quran Mahal, Karachi Vol. III, p. 283; Mulla, Principles of Mahomedan Law, 20th Edition, Chapter XI (Gifts).

13 See, Hafeeza Bibi (Supra).

14 1880 UKPC 36.

15 Rasheeda Khatoon (supra).

16 Nikhila Divyang Mehta and another v. Hitesh P. Sanghvi and others, 2025 INSC 485.

17 Noorul Hoda v. Bibi Raifunnisa, (1996) 7 SCC 767.

18 Prem Singh and others v. Birbal and others, 2006 AIR SC 3608.

IN THE SUPREME COURT OF INDIA

Lifestyle Equities C.V. & Anr.
Vs.
Amazon Technologies Inc.

[Petition for Special Leave to Appeal (C) No. 19767 of 2025]

HEADNOTE – It is not mandatory for the Appellate Court to impose a condition for deposit of the amount in dispute for grant of stay of execution under Order XLI Rule 5 CPC

Summarized the law regarding the grant of benefit of stay of execution of a decree by an appellate court in term of Order XLI as under: -

(I) Order XLI Rule 5 contains the provision for the grant or refusal of stay of execution of the decree by the appellate court under the CPC. It categorically stipulates that mere filing of an appeal against an order of execution, shall not ipso facto operate as stay of proceedings. Any execution proceeding or an order therein, shall be stayed only if a specific, reasoned order granting such stay is passed by the appellate court, after proper application of mind.

(II) For the grant of stay of execution of a decree in terms of Order XLI, a prayer to such effect has to be specifically made to the appellate court and the appellate court has the discretion to grant an order of stay or to refuse the same.

(III) Order XLI Rule 5(3) of the CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree, and it casts an obligation upon the appellate court to record its satisfaction for stay of execution such decree.

(IV) The power of the Appellate Court to order stay of execution of the decree is circumscribed and made subject to the existence of a "sufficient cause" in favour of the appellant being shown. In order to ascertain whether a "sufficient cause" exists for the grant of stay of execution of a decree under Order XLI of the CPC, the appellate court as per sub-rule (3) of Rule 5 is required to examine:-
(i) Whether there will be substantial loss to the party applying for stay;
(ii) Whether the application has been made without unreasonable delay; and
(iii) Whether security has been given by the applicant for due performance of the decree.

(V) For the grant of stay of execution of the decree, the appellate court is required, after perusing the materials on record, to assign reasons for its satisfaction regarding the existence of a "sufficient cause". Such reasons should

be cogent and adequate. The reasons assigned must indicate the necessity for the status quo prevailing on the date of the decree and/or the date of making of the application for stay, to continue by granting stay, and not merely the reasons why stay should be granted.

(VI) Although, Order XLI Rule 5 CPC, uses the word "shall", yet a combined reading of the sum and substance of Rule(s) 1(3) and 5(5) would reveal, that for the grant of stay of execution, it is not mandatory for the appellate court to impose a condition for deposit of the amount in dispute. The aforesaid provisions make it abundantly clear that the appellate court, for the grant of stay of execution, has a discretion to impose a condition of deposit of the amount depending on the facts and circumstances of each case.

(VII) A deposit is not a condition precedent for an order of stay of execution of the decree by the appellate court. The only guiding factor and statutory mandate, for the grant of such stay of execution as indicated in Rule 5, is the existence of "sufficient cause" in favour of the appellant, on the availability of which the appellate court would be inclined to pass an order of stay.

(VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.

(IX) A lodestar for bringing a case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question: -
(i) is egregiously perverse;
(ii) is riddled with patent illegalities;
(iii) is facially untenable; and/or
(iv) such other exceptional causes similar in nature.

(X) For the purpose of the grant or refusal of stay of execution of the decree under Rule 5 of Order XLI, it is immaterial whether the decree is a money decree or any other decree. The language couched in the said provision is very clear. Order XLI, Rule 5 of the makes no distinction between a money decree and other decrees, and the said provision applies with full rigour in both instances. Yet as a rule of prudence and established practice evolved over a period of time, no stay of execution of a money decree should be granted, except on the condition that the decretal amount be deposited in the court. However, such condition for deposit cannot be said to be mandatory and non-prescription thereof does not operate as a bar to staying the execution of a money decree.

(XI) There is no provision under Order XLI Rule 5 of the CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellant to abide by the decree, seeking stay of execution.

JUDGMENT

J.B. Pardiwala J.,

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

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i. History of the Legislation in Question ....

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vi. Reading of Section 36 of the Arbitration Act and Order XLI Rule 3 and Rule 5 respectively of the CPC .....

vi. Relevant aspects which the High Court looked into for the purpose of granting unconditional stay 0

F. CONCLUSION .....

1. Our Order dated 24.09.2025 passed in the instant petition reads thus:

"1. Exemption Application is allowed.

2. Heard Mr. Mukul Rohatgi and Mr. Gaurav Pachnanda, the learned Senior counsel appearing for the petitioners and Dr. Abhishek Manu Singhvi, Mr. Neeraj Kishan Kaul and Mr. Arvind Nigam, the learned Senior counsel appearing for the respondent.

3. We are of the view that there is no good reason for us to interfere with the impugned Judgment and Order passed by the High Court.

4. The Special Leave Petition is, accordingly, dismissed.

5. In view of the dismissal of the Special Leave Petition, no orders are required to be passed on the application for intervention/impleadment and the same stands disposed of.

6. However, reasons to follow by a separate Order."

2. This petition arises from the judgment and order passed by the High Court of Delhi, dated 01.07.2052 in the CM Application No. 26455 of 2025 filed in the RFA(O.S.)(COMM) No.11 of 2025 by which the application filed by the respondent herein (judgment debtor-original defendant) under Order XLI Rule 5(1) and Rule 5(3) of the Civil Procedure Code, 1908, (for short, "the CPC") respectively came to be allowed, and thereby the Court stayed the operation of the judgment and money decree dated 25.02.2025 passed by a learned Single Judge in the suit instituted by the petitioner herein. In short, the Division Bench of the High Court granted stay of the execution of the money decree suffered by the respondent herein without insisting for the deposit of the decretal amount.

3. For the sake of convenience, the petitioners herein shall be referred to as the original plaintiffs and the respondent herein shall be referred to as the original defendant.

A. FACTUAL MATRIX

4. The plaintiffs along with its subsidiaries and licensees claim to be engaged in the business of manufacturing, distribution and sale of a wide range of products including garments, apparels, footwear for men, women and children, furniture, textiles, watches and other lifestyle/personal care products under the trademark Beverly Hills Polo Club (hereinafter referred to as, "BHPC").

5. The plaintiff No. 1 is an Amsterdam based company and is the proprietor of the BHPC trademark and claims to hold exclusive rights for its use and commercialisation. The BHPC trademark consists of a distinctive look featuring a charging Polo pony with a mounted rider wielding a raised polo stick (mallet) symbolising the sport of Polo.

6. The plaintiff no. 2 is the licensee of the said trademark pursuant to the Master License and Licensing Service Agreement dated 20.05.2008.

7. The plaintiffs instituted Civil Suit (COMM) No. 443 of 2020 in the Delhi High Court, inter alia, seeking permanent injunction and damages against the defendant for the alleged infringement of their registered trademark BHPC.

8. It is the case of the plaintiffs that they are the rightful proprietors of the BHPC Mark which enjoys extensive goodwill and recognition in the domestic and international markets. The plaintiffs instituted the suit contending that the defendant has been unlawfully using a mark identically or deceptively similar to the plaintiffs' trademark, thereby violating their statutory and common law rights.

9. In such circumstances referred to above, the plaintiffs prayed for the following reliefs:

"a. Decree for permanent injunction restraining die Defendants, its partners, directors, shareholders or proprietor as the case may be, its assigns in business, franchisees affiliates, subsidiaries, licensees, and agents from selling, offering for sale, advertising, directly or indirectly dealing in any products or reproducing or using in any manner whatsoever, the Infringing Logo Mark or any other trade mark or logo/device, which is identical to and/or deceptively similar to, or is a deceptive variant of, and/or includes the Plaintiffs' well known Logo Mark amounting to infringement of the Plaintiffs' registered trade marks as disclosed in the Plaint.

b. Decree for permanent injunction restraining the Defendants, its partners, directors, shareholders or proprietor as the case may be, its assigns in business, franchisees, affiliates, subsidiaries, licensees and agents from selling, offering for sale, advertising, directly or indirectly dealing in any products or reproducing or using in any manner whatsoever, the infringing Logo Mark or any other trade mark or logo/device, which is identical to and/or deceptively similar to or imitation of, or is a deceptive variant of, and/or includes the Plaintiffs' artistic Logo Mark amounting to infringement of the Plaintiffs' copyright in the said logo.

c. Decree for permanent injunction restraining the Defendants, its partners, directors, shareholders or proprietor as the case may be, its assigns in business, franchisees, affiliates, subsidiaries, licensees and agents from selling, offering for sale, advertising, directly or indirectly dealing in any products or using in any manner whatever, the infringing Logo Mark or any other mark or logo/device, which is identical to, or is a deceptive variant of and/or deceptively similar to and/or includes the Plaintiff's well known Logo Mark amounting to passing off of

the goods/services and/or business of the Defendants for those of the Plaintiffs, dilution of goodwill and unfair competition.

d. A decree for delivery up of all products and material including stationery, visiting cards, hill boards, brochures, promotional material, letterheads, cash memos, sign boards, sign posts, leaflets, cartons, or any other items of whatsoever, bearing the infringing Logo Mark and/or any other mark, logo or device which may be identical and/or deceptively similar, or is a deceptive variant of and/or includes the Plaintiff's well-known Logo Mark.

e. A decree for damages amounting to Rs. 2,00,05,000/- (Rupees Two Crores and Five Thousand only) or any such amount as found due in favour of the Plaintiffs. The Plaintiffs submit that the valuation of damages is an approximate figure only, and the Plaintiffs undertake to pay further Court fees as may be determined by this Hon'ble Court upon the damages that the Plaintiffs are able to prove in the course of trial.

f. An order for rendition of accounts of profits in favour of the Plaintiffs and against the Defendants to ascertain the profits made by Defendants through sale of its apparel products or any other products which bear the infringing Logo Mark. The Court fees as and when the accounts of profit are determined precisely and accurately in the course of trial, and upon disclosure of profits made by the Defendants.

g. An order awarding costs of this suit to the Plaintiffs;

h. Any other and further relief(s) as this Hon'ble Court may deem fit and proper to meet the ends of justice."

10. It appears from the materials on record that in the suit filed by the plaintiffs there were three defendants including the respondent herein as the original defendant No. 1. The plaint computed the damages claimed from all the defendants to the tune of Rs. 2,00,05,000/- (Rupees Two Crore and Five Thousand Only), or such other amount as the court would find it to be payable.

11. It further appears that the defendant No. 1 was proceeded ex parte vide Order dated 20.04.2022. Of the remaining two defendants, the suit was decreed against the defendant No. 2 for Rs. 4,78,484/- vide the Order dated 02.03.2023. The very same order deleted the defendant No. 3 from the array of parties.

12. In such circumstances, the respondent before us is the only defendant now contesting the litigation.

13. It appears that upon institution of the suit by the plaintiffs the following Order dated 12.10.2020 came to be passed:

"1. Allowed, subject to all just exceptions.

2. Original documents, if any, be filed within two weeks of the resumption of the normal functioning of the Court.

3. Application is disposed of.

I.A. 9256/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.

2. Application is disposed of. Signing Date:13.10.2020 07:06:56 This file is digitally signed by PS to HMJ Mukta Gupta CS(COMM) 443/2020 I.A. 9254/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Plaint be registered as a suit.

2. Issue summons in the suit and notice in the application to the defendants.

3. Learned counsel for the defendant No.2 and defendant No.3 accept summons in the suit and notice in the application.

4. Summons in the suit and notice in the application be now issued to defendant No.1 on the plaintiff taking steps through email and whatsapp, returnable before this Court on 2nd February, 2021.

5. Written statement and reply affidavit along with affidavit of admission/denial be filed within 30 days of the receipt of summons in the suit and notice in the application.

6. Replication and rejoinder affidavit, along with affidavit of admission/denial, be filed within three weeks thereafter.

7. Case of the plaintiff is that the plaintiff is a brand-owner of "BEVERLY HILLS POLO CLUB" which was established by its predecessors in the year 1981. The first registration for the trademark "BEVERLY HILLS POLO CLUB" was applied on 3rd December, 1992 and thereafter the plaintiff has number of registrations for the said mark. The mark of the plaintiff is a device mark, that is, and the plaintiff is the owner of the registered trademark and the copyright thereof.

8. Grievance in the present suit of the plaintiff is limited to defendant No.1 which is a group company of defendant No.3 but not working as an intermediary but is selling its own brand, copying the logo of the plaintiff as. It is thus claimed that by infringing the plaintiff's device mark as also the copyright in the logo, the

defendant No.1 is selling its goods representing them to be as the plaintiff's brand. Learned counsel further states that defendant No.2 is selling the products of the defendant No.1 under the impugned logo mark by listing the same on the platform of defendant No.3.

9. None appears on behalf of defendant No.1 despite advance notice however, learned counsel for defendant No.3, that is, Amazon Seller Service Pvt. Ltd. enters appearance and states that in an earlier suit filed by the plaintiff being CS(COMM) 1015/2018 Lifestyle Equities C.V. and Ors. vs. Amazon Seller Services Pvt. Ltd., vide order dated 16th July, 2018, this Court had already directed the defendant No.3 to take down the URLs wherein the brand/logo/device mark of the plaintiff is copied including those mentioned in the plaint and as and when the plaintiff gives any further information in this regard. Learned counsel for the defendant No.3 states that since the defendant No.3 is covered by the said order of this Court dated 16th July, 2018, no fresh suit is maintainable and the plaintiff was only required to intimate the same to the defendant No.3 and hence the present suit is mala fide.

10. Learned counsel for the defendant No.2 states that the defendant No.2 has already taken down the listing and will further investigate into the matter and take down any further listing which is either on the defendant No.3's platform or any other platform.

11. Case of the plaintiff is that in the earlier suit, that is, CS (COMM) No.1015/2018, the plaintiff had impleaded parties who were selling their products on the defendant No.3's listing by infringing the plaintiff's device mark and the copyright and in the earlier suit the defendant No.1 was not a party and in the present suit, not only does the plaintiff seek delisting of the brand of the defendant No.1 from the defendant No.3's platform but also seeks the relief of injunction against the defendant No.1 which is infringing and diluting the plaintiff's mark by selling its products on a much cheaper rates representing to be that of the plaintiff.

12. Considering that the defendant No.1 is a separate entity, this Court is prima facie of the view that the present suit would be maintainable. From the averments in the plaint as also the documents filed therewith, this Court finds that the plaintiff has made out a prima facie case in its favour and in case no ex-parte ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff.

Consequently, till the next date of hearing, defendant No.1 and defendant No.2, their Partners, Directors, Proprietors, Shareholders, Affiliates, Licensees, Agents etc. are restrained from selling, offering for sell, advertising, directly or indirectly dealing in any products or reproducing or using in any manner whatsoever the

infringing logo mark which is identically/deceptively similar to the plaintiff's logo mark "BEVERLY HILLS POLO CLUB". In the meantime, defendant No.3 is directed to take down the products of the defendant No.1 with the infringing logo within 72 hours of the URLs being provided by the plaintiff. 13. Compliance under Order XXXIX Rule 3 CPC be made within one week."

14. Thus, the Court while registering the plaint as a suit noted that the defendant No. 1, i.e., the respondent before us despite an advance notice failed to enter appearance, and accordingly granted an ex parte ad interim injunction restraining the defendants, their partners, directors, proprietors, shareholders, etc., from selling, offering for sale, advertising, directly or indirectly dealing in any products which is identically/deceptively similar to the plaintiffs' logo mark "BHPC".

15. The suit ultimately came to be adjudicated ex parte, and came to be decreed in favour of the plaintiffs and against the defendant No. 1, i.e., the respondent before us in the following terms:

"121. The suit is accordingly decreed as under in favour of Plaintiffs and against Defendant No. 1 in the following terms:

(i) A decree of permanent injunction is granted in terms of paragraphs 64(a), (b) and (c) of the plaint,

(ii) A decree of damages to the tune of $38.78 million as on date Rs. 336,02,87,000.00/- is granted in favour of the Plaintiffs against Defendant No. 1. If the said amount is paid within three months, no interest would be liable to be paid. However, if the same is not paid by the Defendant No.1, interest @ 5% per annum would he payable from the date of this judgment until the full realization of the said amount.

(iii) A decree of costs to the tune of Rs. 3,23,10,966.60/- along with the Court Fee.

122. The details of the relief granted are summarized below:

S.NO.	DECREE DETAILS	AMOUNT / TERMS
1	Compensatory Damages	
1A	Lost Royalties	USD 33.78 million (Rs.292,70,37,000,00/)
1B	Increased Advertising & Promotional Expenses	USD 5 million (Rs.43,32,50,000.00/-)
1C	Total Compensatory Damages	USD 38.78 million (Rs.336,02,87,000.00/)
2	Costs	Rs.3,23,10,966.60/- along with the

		Court Fee.
3	Grand Total (Damages + Costs)	Rs.339,25,97,966.60/- + Court Fee

123. Decree sheet be drawn up in the above terms.

124. The suit along with all pending applications, if any are disposed of."

16. The defendant being dissatisfied with the judgment and money decree passed by the learned Single Judge of the High Court challenged the same by filing RFA (O.S.) (COMM) No. 11 of 2025.

17. In the appeal filed by the defendant, an application was filed under Order XLI Rule 5(1) and Rule 5(3) of the CPC respectively, seeking stay of the operation of judgment and money decree passed by the learned Single Judge referred to above.

18. The Division Bench of the High Court after hearing the decree-holders and the judgment-debtor allowed the stay application in the following terms:

"181. We, therefore, dispose of the present application by staying the operation of the impugned judgment dated 25 February 2025, passed by the learned Single Judge, insofar as it awards damages of Rs. 336,02,87,000/-, and costs of Rs. 3,23,10,966.60/-.

182. This shall, however, be subject to an undertaking being furnished by the appellant Amazon Tech to comply with the impugned judgment, in the event of its failing in the present appeal, to be furnished with the Registry of this Court within a period of two weeks from pronouncement of the present judgment.

183. CM Appl 26455/2025 stands flowed to the aforesaid extent.

184. Observations and findings contained in the present judgment, we clarify, are only intended to be prima facie and for the purposes of disposing of the present application. They shall not be binding on Court while deciding the present appeal."

19. In such circumstance referred to above, the original plaintiffs/decreeholders are here before us with the present petition.

B. SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

20. Mr. Mukul Rohatgi and Mr. Gaurav Pachnanda, the learned Senior Counsel appearing for the plaintiffs submitted that the Division Bench of the High Court committed an egregious error in granting the benefit of unconditional stay of the execution of money decree. It was vehemently submitted that the impugned

judgment and order passed by the Division Bench of the High Court is in gross violation and flagrant disregard of the mandatory provisions of Order XLI Rule 5(1) and Rule 5(3) of the CPC respectively.

21. Mr. Rohatgi vehemently submitted that impugned judgment and order is erroneous on all counts. According to the learned Senior Counsel, the High Court is not correct in saying that there was no valid service of summons to the defendant.

22. The learned Senior Counsel vehemently submitted that Order XLI Rule 1(3) of the CPC makes it abundantly clear that in an appeal against a decree for payment of amount, the appellant is obliged in law, within the time permitted by the Appellate Court, to deposit the amount awarded or furnish such security in respect thereof as the Court may think fit. He laid much stress on the fact that under Order XLI Rule 5(5) of the CPC a deposit or security, is a condition precedent for an order by the Appellate Court staying the execution of the decree.

23. In other words, according to the learned Senior Counsel the provision is mandatory in character. With a view to fortify the submissions noted aforesaid, the learned Senior Counsel placed strong reliance on the decision of this Court in the case of Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co., reported in (2005) 4 SCC 1.

24. It was vehemently argued that, if according to the defendant it is a case of an ex parte decree, i.e., decree passed without service of valid summons, then why the defendant did not prefer any application under Order IX Rule 13 of the CPC? Why defendant thought fit to prefer an appeal against such so called ex parte decree?

25. The learned Senior Counsel invited our attention to the second Proviso to Order IX Rule 13 of the CPC. Relying on the same, it was argued that the defendant had the requisite knowledge of the date of hearing and had sufficient time to appear, file its written statement, and to contest the suit. It was argued that the delivery of the suit papers and the order passed by the High Court dated 12.10.2020 granting ex parte injunction subject to compliance of Order XXXIX Rule 3 of the CPC would amount to adequate service of summons in accordance with law. To fortify this submission reliance was placed on the decision of this Court in the case of Sunil Poddar and Others v. Union Bank of India, reported in (2008) 2 SCC 326, and the decision of the Delhi High Court in the case of LT Foods Ltd. v. Saraswati Trading Company, reported in 2022 SCC OnLine Del 3694.

26. It was also submitted by the learned Counsel that the Division Bench of the High Court committed an egregious error in staying the money decree on mere

asking the defendant to furnish an undertaking on oath, that in the event, if the appeal is dismissed the defendant shall deposit the decretal amount. This according to the learned Senior Counsel cannot be termed as adequate security.

27. In such circumstances referred to above, the learned Senior Counsel prayed that there being merit in his petition the same may be allowed and the impugned judgment and order be set aside, and further the defendant may be directed to deposit the decretal amount with interest in the court below.

C. SUBMISSIONS ON BEHALF OF THE DEFENDANT

28. On the other hand, Dr. Abhishek Manu Singhvi, Mr. Neeraj Kishan Kaul and Mr. Arvind Nigam, the learned Senior Counsel appearing for the defendant, while vehemently opposing this petition submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order.

29. The learned Senior Counsel submitted that all the relevant aspects of the matter could be said to have been looked into by the Division Bench painstakingly, and upon being fully convinced on all aspects, the Division Bench in its discretion thought fit to grant the benefit of stay of the execution of the money decree without insisting for the deposit of the decretal amount with interest or any other tangible security.

30. It was argued that the decision of this Court in Sihor Nagar Palika (supra) upon which strong reliance has been placed on behalf of the petitioner is of no avail in view of the decision of this Court in Malwa Strips Pvt. Limited v. Jyoti Limited, reported in (2009) 2 SCC 426.

31. It was pointed that in Malwa Strips (supra), this Court considered Sihor Nagar Palika (supra) and took the view that the word "shall" in Order XLI Rule 5 of the CPC is not mandatory, and if an exceptional case is made out then it is always open for the Appellate Court to grant the benefit of stay of the execution of a money decree without insisting for deposit of the entire decretal amount with interest.

32. It was argued that the Division Bench of the High Court was fully convinced that not only any valid summons was not served upon the defendants and the suit proceeded ex parte, but even on other counts, the judgment and decree passed by the Court, prima facie, suffers from various legal infirmities.

33. The learned Senior Counsel submitted that the Division Bench of the High Court in its impugned judgment and order has recorded few shocking facts like the plaintiffs enhancing the claim of damages consequently from Rs. 2 crore in the plaint to Rs. 3,780 crore at the stage of written submissions post-trial, and that

too without any amendment and without putting the defendant to notice of such enhanced claim without any basis in the pleadings. It was argued that having regard to the gross perversities and illegalities writ large in the decree and conduct of the suit proceedings, asking the defendant to furnish security or deposit of any particular amount as a pre-condition for stay would be wholly disproportionate and excessive.

34. In such circumstances referred to above, the learned Senior Counsel prayed that there being no merit in the present petition the same may be dismissed.

D. REJOINDER TO THE SUBMISSIONS CANVASSED ON BEHALF OF THE DEFENDANTS

35. Mr. Gaurav Pachnanda, the learned Senior Counsel appearing for the plaintiffs in rejoinder put forward an important submission, which we must take record and deal with the same.

36. The learned Senior Counsel invited our attention to Section 36(3) of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"). He would submit that the second Proviso attached to Section 36(3) of the Arbitration Act is an indication that ordinarily by applying the principles of Order XLI Rule 5 of the CPC, as mentioned in Section 36(3) of the Arbitration Act, the Court would not be empowered to unconditionally stay an arbitration award or a judgment.

37. In the alternative, the learned Senior Counsel sought to argue that, even if it was to be understood that the second Proviso attached to Section 36(3) of the Arbitration Act provides that instead of exercising discretion, the Court must grant unconditional stay in cases of fraud and corruption, the same would lead to a logical inference that the discretion to grant an unconditional stay under Order XLI Rule 5 of the CPC would be restricted to only cases of fraud or corruption, or grounds that take colour from those two grounds and not cases of an extreme or egregious view on the merits of the adjudication.

E. ANALYSIS

38. Having heard the learned Senior Counsel appearing for the parties and having gone through materials on record, the only question that falls for our consideration is whether the Division Bench of the High Court committed any error in passing the impugned judgment and order?

39. Before adverting to the rival submissions canvassed on either side, we must look into few relevant provisions of law and also look into few decisions of this Court and various High Courts.

40. Order XLI Rule 1(3) of the CPC reads thus:-

"1. Form of appeal - What to accompany memorandum.-

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

41. Order XLI Rule 5 of the CPC reads as under:-

"Order XLI Rule 5. Stay by Appellate Court. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation- An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree.- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree."

i. History of the Legislation in Question

42. The Bill No. 27 of 1974, being a Bill to amend the CPC and the Limitation Act, 1963, was introduced in the Lok Sabha on April 8, 1974. The text of the Bill is found published in the Gazette of India, Extraordinary dated April 8, 1974, in Part-II, Section 2 at pages 203 to 293.

43. The Statement of Objects and Reasons accompanying the Bill recites in paragraph 5 at page 295 that after carefully considering the recommendations made by the Law Commission in its Twenty-seventh, Fortieth, Fifty-fourth and Fifty-fifth Reports, the Government had decided to bring forward the said Bill for the amendment of the Code of Civil Procedure, 1908, keeping in view, among others, the following basic considerations, namely:

(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

44. Clause 90 of the Bill provided for the amendment of Order XLI. In Rule 1 of Order XLI, after sub-rule (2), sub-rule (3) in the following terms was sought to be introduced:

"(3) Where the appeal is against an order made in execution of a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

(Emphasis supplied)

45. In addition, the following provision was sought to be introduced by way of amendment as sub-rule (1A), after sub-rule (1), in Rule 3 of Order XLI:

"(1A) Where the appellant fails to make the deposit or furnish security specified in sub-rule (3) of Rule 1, the Court shall reject the memorandum of appeal."

46. Sub-rule (5) of Rule 5 of Order XLI, as now enacted, did not find place in the Bill, in the same or any other form.

47. The Notes on Clauses annexed to the Bill point out at page 336 that Rule 1 of Order XLI was being amended by introduction of sub-rule (3) to provide for the deposit, or the furnishing of security for decretal amount by judgment-debtor when the appeal is against an order made in execution of a money decree. As regards amendment of Rule 3 of Order XLI by insertion of sub-rule (1A), it was mentioned that the provision was meant to provide that where the appellant fails to make the deposit of the decretal amount or to furnish security specified in sub-rule (3) of Rule 1, the memorandum of appeal shall be rejected.

48. After the Bill was introduced in Lok Sabha on April 8, 1974, the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha on May 2, 1974, and it was adopted. The Rajya Sabha concurred in the said motion on May 14, 1974. The Joint Committee constituted accordingly submitted its Report to Lok Sabha on April 1, 1976. The Report is found published at pages 804/3 to 804/34 in the Gazette of India, Extraordinary, Part-II, Section 2 dated April 1, 1976. At page 804/21, the Joint Committee offered its observations in paragraph 65 of the Report with regard to Clause 87 (Original clause 90) of the Bill. The relevant portion from paragraph 65 of the Report of the Joint Committee is extracted hereinbelow:

"65. Clause 87 (Original clause 90),-

(i) The Committee note that under the proposed new sub-rule (1A) of Rule 3 in Order 41, if the appellant fails either to deposit the amount disputed in the appeal or to furnish security for such amount, the memorandum of appeal shall be rejected. The Committee feel that such a provision will deprive a judgment-debtor having a good case, to pursue the appeal on account of his inability to deposit the disputed amount or to furnish security for such amount."

49. The Committee is, therefore, of the opinion that in order to see that justice is done to both the parties, the proposed sub-rule might be amended in such a way that neither the judgment-debtor is deprived of his right to pursue the appeal nor the decree-holder is deprived of the remedy. Proposed sub-rule (1A) has been amended to provide that stay of execution of the decree will not be granted unless the deposit is made or security is furnished and has been transposed as sub-rule (5) of Rule 5.

50. Be it stated that the Committee made no specific recommendation in regard to sub-rule (3) of Rule 1 of Order XLI proposed to be inserted by original Clause 90 of the Bill. In other words, the Committee recommended no change in the form or content of sub-rule (3) which was proposed to be inserted by way of

amendment in Rule 1 of Order XLI. However, the Bill reported by the Committee incorporated a material change in the said sub-rule which will be presently noticed.

51. The Code of Civil Procedure (Amendment) Bill, 1974 (Bill No. 27B of 1974) as reported by the Joint Committee is found published in the Gazette of India, Extraordinary, Part-II, Section 2, dated April 1, 1976 at pages 804/35 to 804. At page 804/111, Clause 87 finds place and the relevant portions of the said clause are reproduced hereinbelow:

"87. In the First Schedule, in Order 41,- (i) Rule 1,-

(b) after sub-rule (2), the following sub-rules shall be inserted, namely:

"(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

(ii) xxx

(iii) in rule 5,-

(a) xxx

(b) xxx

"(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree."

(Emphasis supplied)

52. The Bill having been considered and passed by both the Houses of Parliament was enacted into the Code of Civil Procedure (Amendment) Act, 1976 (No. 104 of 1976). The Act received the assent of the President of India on September 9, 1976, and it was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated September 10, 1976. The material amendments, namely, the insertion of sub-rule (3) in Rule 1 and sub-rule (5) in Rule 5 of Order XLI were duly enacted and stood inserted in the CPC by Section 87 of the Amendment Act, which is to be found at page 1337 of the Gazette, and they came into force on and with effect from February 1, 1977.

53. The substance of the legislative history set out hereinabove is that Clause 90 of Bill No. 27 of 1974 stood materially altered as per clause 87 of Bill No. 27B of 1974, as reported by the Joint Committee, in the following respects:

"(1) In sub-rule (3) of Rule 1 of Order 41, the provision relating to the requirement of the appellant depositing the amount disputed in the appeal or furnishing such security in respect thereof as the Court may think fit in cases where the appeal is against an order made in execution of a decree for payment of money was substituted by the provision requiring such deposit being made or security being furnished where the appeal is against a decree for payment of money.

(2) Sub-rule (1A) of rule 3 of Order XLI requiring the Court to reject the memorandum of appeal where the appellant fails to make the deposit or furnish security specified in sub-rule (3) of Rule 1 of Order 41, was deleted. (3) Sub-rule (5) was added in Rule 5 of Order 41 providing that where the appellant fails to make the deposit or to furnish the security, the Court shall not make an order staying the execution of the decree."

(Emphasis supplied)

54. These changes are also found reflected in the Code of Civil Procedure (Amendment) Act, 1978, and they now find place in the parent Act, namely, the CPC.

ii. Principles required to be followed while Interpreting a Provision of a Statute

55. As the entire debate revolves around the interpretation of the provisions of Order XLI Rule 5(1) and Rule 5(3) of the CPC respectively, we must discuss the well settled principles required to be followed while interpreting a provision of a statute.

56. The well-settled principles required to be followed by a court while interpreting a provision of a statute is that the intention of the legislature is primarily to be gathered from the language used, and consequently, a construction which results in rejection of words as meaningless, has to be avoided. It is not a sound principle of construction to brush aside words or phrase in a statute as being inapposite surplusage if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In interpretation of statutes, the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words, or to say anything in vain. [See: Mithilesh Singh v. Union of India, reported in (2003) 3 SCC 309].

57. Similarly, in the case of Padma Sundara Rao v. State of Tamil Nadu, reported in (2002) 3 SCC 533, it was held that two principles of construction - one relating to casus omissus, and the other in regard to reading the statute as a whole appear to be well-settled. Under the first principle, the rule of casus omissus cannot be supplied by the court except in the case of clear necessity.

The rule of casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context of the statute and other clauses thereof, so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so, if literal construction of a particular clause leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. Therefore, if the language is plain, there is no necessity of taking aid of external aid for gathering the real intention of the legislature.

58. Over and above, we should bear in mind the following well-known rule of interpretation of the statute reiterated by this Court in the case of Union of India v. Deoki Nandan Agarwal, reported in 1992 Supp (1) SCC 323:

"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts.

The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the Constitutional harmony and comity of instrumentalities."

(Emphasis supplied)

59. Applying the aforesaid principles, if we read the plain language of Order XLI Rule 1 sub-rule (3) of the CPC, we get the clear intention of the legislature that deposit of the decretal amount, or giving security thereof is not a condition precedent for maintaining a money appeal, and the court is vested with the discretion to grant time for depositing such amount and giving security before disposal of the appeal, and at the same time, the Appellate Court has also the power to extend the time by taking aid of Section 148 of the CPC. On the other

hand, a less grave consequence for non-compliance of such condition, was envisaged, namely, to disentitle the appellant to the benefit of stay of execution of the decree as provided in Rule 5(5) of Order XLI.

60. The aforesaid view has been expressed by this Court in the case of Kayamuddin Shamsuddin Khan v. State Bank of India, reported in (1998) 8 SCC 676, wherein it has been held as follows:-

"6. The learned counsel for the respondent has invited our attention to Sub-rule (3) of Rule 1 of Order XLI in the CPC, as amended in the State of Maharashtra, which reads as under:

"(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit:

Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause."

7. The submission of the learned counsel for the respondent is that the High Court was right in giving the direction regarding the deposit of Rs 75,000 as per the aforesaid provision and since the appellant has failed to comply with the same the appeal has been rightly directed to be dismissed. We, however, find that the only consequence for non-compliance with the direction given under Sub-rule (3) of Rule 1 of Order XLI is as provided in Sub- rule (5) of Rule 5 of Order XLI which reads as under:

"(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree."

61. It may be apposite to observe that this Court in the aforesaid decision was dealing with the interpretation of Order XLI Rule 1(3) of the CPC, as amended in the State of Maharashtra, where the appellate Court has power to dispense with making deposit or security in fit and proper cases.

62. In Malwa Strips (supra) this Court interpreted Order XLI Rule 1(3) of the Code as provided in the Central legislation, i.e., the CPC, and held that the said provision although couched with the expression "shall" yet must be read as directory and not mandatory. It quoted with approval the ratio laid down in Kayamuddin (supra).

63. In view of the law declared by this Court in Kayamuddin (supra) and Malwa Strips (supra), there is no escape from the conclusion that the obligation under

Order XLI Rule 1(3) is not mandatory but directory in nature, and failure to comply with the same shall not result in rejection of the appeal, but would disentitle the appellant the benefit of stay of execution of the money decree.

64. The provisions of Order XLI Rule 5 of the CPC govern the question of grant or refusal of stay of execution of the decree by the appellate court. A mere reading of the provision makes it clear that it does not make any distinction between a money decree and other decrees. The powers of the Appellate Court to order stay of execution of the decree are not fettered in any way if there is "sufficient cause" for passing such an order. Even with regard to money decrees, the discretion of the court is circumscribed by the same limitations imposed under the provisions of Order XLI Rule 5.

There is no reason why decrees for payment of money should receive a consideration different from the other decrees in the matter of stay pending appeals. In suitable cases, where the court is satisfied that substantial loss may result to the applicant, if no stay is granted or there are any exceptional circumstances, the court may grant stay as prayed for either with or without any condition whatsoever. Otherwise, in the absence of any exceptional circumstance, money decree ordinarily would not be stayed unconditionally from its execution by the appellate court pending the final disposal of appeal on its own merits.

65. Mere filing of an appeal would not operate as stay of execution of decree, but the Appellate Court may, for "sufficient cause", order stay of execution of decree. The other relevant part of the rule is contained in sub-rule (3) of Rule 5 of Order XLI. As per the provisions of subrule (3) of Rule 5 of Order XLI, the Court has to see;

(1) whether there will be substantial loss to the party applying for stay;

(2) whether the application has been made without unreasonable delay; and (3) whether security has been given by the applicant for due performance of the decree.

66. Thus, the provisions of the Rule are very clear and they do not make any distinction between money decrees and other types of decrees.

67. This Court in Sihor Nagar Palika (supra), observed the following as regards the power of the Appellate Court to stay the decree in first appeal:-

"Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5), a deposit or

security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree.

A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases."

(Emphasis supplied)

68. In Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., reported in (2005) 1 SCC 705, this Court while deciding a litigation arising from the Delhi Rent Control Act, 1958 observed as under:-

"6. The order of eviction passed by the Rent Controller is appealable to the Rent Control Tribunal under Section 38 of the Act. There is no specific provision in the Act conferring power on the Tribunal to grant stay on the execution of the order of eviction passed by the Controller, but sub-section (3) of Section 38 confers the Tribunal with all the powers vested in a court under the Code of Civil Procedure, 1908 while hearing an appeal. The provision empowers the Tribunal to pass an order of stay by reference to Rule 5 of Order 41 of the Code of Civil Procedure, 1908 (hereinafter "the Code" for short). This position was not disputed by the learned Senior Counsel appearing for either of the parties.

8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate court and the appellate court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate court is that in spite of the appeal having been entertained for hearing by the appellate court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed.

This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the court below be

deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the court dealing with a prayer for the grant of stay asks itself is: why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.

9. In our opinion, while granting an order of stay under Order 41 Rule 5 CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal insofar as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder.

Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on."

(Emphasis supplied)

69. In Malwa Strips (supra), this Court after looking into the decision in Sihor Nagar Palika (supra) observed as under:-

"9. In terms of sub-rule (5) of Rule 5 of Order 41, the court shall not make an order staying the execution of the decree notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1. We will proceed on the assumption that although the word "shall" has been used in Order 41 Rule 1(3) of the Code, the same is not mandatory in character, and, thus, may be read as directory.

10. In Rajasthan SEB v. Ram Deo [AIR 1999 Raj 264] after noticing some of the aforementioned decisions as also the legislative history of the said provision, a learned Single Judge of the Rajasthan High Court held as under: (AIR pp. 267-68, para 19)

"19. After close scrutiny of the aforesaid observations, I am of the opinion that in view of the provisions of sub-rule (5) of Rule 5 of Order 41 CPC it cannot be held that appeal against the decree for payment of money is not maintainable, if filed without making compliance with the provisions contained in sub-rule (3) of

Rule 1 of Order 41 CPC and it is the duty of the Registry to see that on application under Order 41 Rule 5 CPC seeking stay of money decree the appellant has to incorporate a note in regard to his readiness and willingness to comply with the directions under sub-rule (3) of Rule 1 of Order 41 CPC. If the appeal is preferred against the decree for payment of money without any stay application under Order 41 Rule 5 CPC then in that event, it is the duty of the appellant to incorporate a note in the memo of appeal in respect of his readiness and willingness to comply with the directions issued by the court under sub-rule (3) of Rule 1 of Order 41 CPC."

11. We may, however, notice that although the provisions of sub-rule (3) of Rule 1 of Order 41 have been held not to be mandatory, this Court in Kayamuddin Shamsuddin Khan v. SBI [(1998) 8 SCC 676] opined that non-compliance with a direction to deposit the decretal amount or part of it or furnish security therefor would result in the dismissal of the stay application but not the entire appeal, stating: (SCC p. 677, para 8)

"8. This would mean that non-compliance with the direction given regarding deposit under sub-rule (3) of Rule 1 of Order 41 would result in the Court refusing to stay the execution of the decree. In other words, the application for stay of the execution of the decree could be dismissed for such non-compliance but the Court could not give a direction for the dismissal of the appeal itself for such noncompliance."

To the same effect is the decision of this Court in Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co. [(2005) 4 SCC 1], wherein it was held: (SCC pp. 2-3, para 6)

"6. Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5), a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit.

Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is

there, of course a discretionary power, and is meant to be exercised in appropriate cases."

To the same effect is the decision of this Court in B.P. Agarwal v. Dhanalakshmi Bank Ltd. [(2008) 3 SCC 397]

12. The High Court in this case failed to notice the provisions of sub-rule (3) of Rule 1 of Order 41. The appellate court, indisputably, has the discretion to direct deposit of such amount, as it may think fit, although the decretal amount has not been deposited in its entirety by the judgmentdebtor at the time of filing of the appeal. But while granting stay of the execution of the decree, it must take into consideration the facts and circumstances of the case before it. It is not to act arbitrarily either way. If a stay is granted, sufficient cause must be shown, which means that the materials on record were required to be perused and reasons are to be assigned. Such reasons should be cogent and adequate.

13. The High Court, with respect, failed to notice that suit was one under Order 37 of the Code. Whether it was maintainable or not may fall for consideration in the appeal. Even assuming that the same was not maintainable, the question which should have been posed by the High Court was as to whether sufficient cause had been made out to reverse the decree passed in favour of the appellant. Even a decree could have been passed having regard to the defence raised by the respondent under Order 12 Rule 6 of the Code. We, therefore, see no justification at all as to why an order of stay of the nature was passed by the High Court.

14. Even if the said provision is not mandatory, the purpose for which such a provision has been inserted should be taken into consideration. An exceptional case has to be made out for stay of execution of a money decree. The parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the decretal amount or a part of it and/or directly through the judgment-debtor to secure the payment of the decretal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety."

(Emphasis supplied)

70. Thus, in Malwa Strips (supra), this Court unequivocally observed that although the word "shall" has been used in Order XLI Rule 5 CPC, yet the same is not mandatory in character. The Court further observed that the purpose for which such a provision has been inserted, should be taken into consideration. An exceptional case has to be made out for unconditional stay of execution of a money decree. Thus, it is necessary to imply that if an exceptional case is made

out, the Appellate court has the discretion to stay the execution of the money decree without imposing any condition.

iii. Decisions of various High Courts on the Subject

71. We may now look into few old decisions of various High Courts on the subject. In the case of A.A. Khan v. Ameer Khan, reported in 1949 SCC OnLine Kar 11, the High Court of Mysore has observed as follows (headnote):-

"The court can stay execution of money decrees pending appeal on such security as it deems fit in proper cases in which sufficient cause for a stay has been made out, without requiring in all cases that the decree amount should be deposited in court."

(Emphasis supplied)

72. Similarly, the Division Bench of the Saurashtra High Court in the case of Borough Municipality v. Firm Ramji Vashram, reported in AIR 1955 Guj 113, has in terms held that the judgment of the Bombay High Court in the case of Dhunjibhoy Cowasji Umrigar v. Lisboa, reported in ILR 1889 13 Bom 252, cannot serve as a useful guide for cases under Order XLI Rule 5 of the CPC. It is further observed therein that when the Bombay High Court decided the case of Dhunjibhoy (supra), the provisions of the Civil Procedure Code, 1882, were applicable and therein, there was no provision similar to that of Order XLI Rule 5 of the CPC. The relevant observations read thus:-

"6. We are not concerned with sub-rule (4) which deals with ex parte orders for stay of execution pending the hearing of the application. The power of the Court to stay execution of a decree has to be exercised within the four corners of the above Rule. The intention of the Legislature which appears from the language of this rule seems to be that an appeal should not automatically operate as a stay of execution of the decree and no order for stay of execution should be made merely by reason only that an appeal has been preferred from the decree.

7. The reason of the rule appears to be that the rights of the decree-holder having been determined by a competent Court, it is not fair that he should be deprived of the fruits of his decree merely because the judgment-debtor prefers an appeal against the decree. At the same time if execution of the decree is likely to result in substantial loss to the decree-holder, discretion is given to the Court to stay execution provided the other two conditions of sub-r.

(3) are satisfied. It is, therefore, impossible to formulate any uniform rule of practice and each case must be decided on its own facts.

8. In the case of money decrees, a Bench of the Bombay High Court decided in Dhunjibhoy Cowasji Umrigar v. Lisboa, 13 Bom 241 (A) that where a decree orders payment of money and an appeal is lodged against that decree by the party directed to pay, then on his application execution of the decree should be stayed, so far as it directs payment, on the judgment-debtor lodging the amount in Court, unless the other party gives security for the repayment of money in the event of the decree being reversed.

9. If such security is given by the successful party, then stay of execution should not be granted. This order was made in 1888 under the Code of Civil Procedure of 1882. That Code did not have any provision similar to O. 41 R. 5 of the CPC and the order must be taken to have been passed in the exercise of the inherent power of the Court.

10. But after the enactment of O. 41 R. 5 in the Code of 1908 the discretion of the Court is very much limited and has to be exercised within the limits prescribed by the rule, and in a proper case where substantial loss is likely to result to the judgment-debtor if a decree for payment of money is executed, the Court can stay execution of the decree even before the judgment-debtor deposits the amount in Court. The above decision therefore cannot serve as an useful guide for the cases under O. 41 R. 5."

(Emphasis supplied)

73. In the case, Movie Enterprises v. M.S. Periasamy Mudaliar, reported in 1952 SCC OnLine Kar 14, the High Court of Mysore has observed as under (headnote):

"Order 41, rule 5, cannot be read as imposing any limitation that the decrees for payment of money should receive a consideration different from the other decrees in the matter of stay pending appeal. Therefore, there could be no restriction on the discretion of the court for staying a decree for payment of money in suitable cases where the court is satisfied that substantial loss will result to the applicant if no stay is made. In this view, it cannot be contended that a decree directing payment of money should not be stayed unless the decree amount is lodged into court."

(Emphasis supplied)

74. In Borough Municipality (supra), the Saurashtra High Court referred to the Bombay High Court decision in the case of Dhunjibhoy (supra). We must look into this decision of Dhunjibhoy (supra).

75. In the case of Dhunjibhoy (supra), the Bombay High Court had observed that no stay of execution of money decree should be granted without asking the

judgment debtor to deposit the decretal amount. In Dhunjibhoy (supra) the Bombay High Court held that:

"A party appealing against a decree, which directs him to pay money, may obtain stay of execution of-decree, so far as it directs payment, on his lodging the amount in court, unless the other party gives security for the repayment of the money in the event of the decree being reversed. If such security be given by the successful party, then stay of execution should not be granted."

76. The case of Dhunjibhoy (supra) was decided by the Bombay High Court on August 31, 1888, under the provisions of the Civil Procedure Code, 1882. In that Code, there was no provision similar to Order 41 Rule 5 of the CPC. Therefore, the order must be taken to have been passed by the court in exercise of its inherent powers. On the other hand, the facts and circumstances of the present case are governed by the provisions of the CPC, wherein there is an express provision regarding grant or refusal of stay of execution of decree. Hence, it is not permissible to the court to have recourse to the inherent powers of the court. This distinction makes a world of difference between the two situations.

77. It may also be noted that in Dhunjibhoy (supra), the suit was for injunction restraining the defendant from erecting a building which will interfere with the free access of light and air through certain windows in the plaintiff's house. The plaintiff had obtained a decree in respect of the windows and had also obtained a decree for compensation by way of damages for the injury done to the windows. The decree also directed the defendant to pay the plaintiff's costs of the suit. The defendant had filed an appeal and a question arose regarding the execution of the decree so far as it related to costs. It is in this context, i.e., where the prayer was for recovery of the amount of costs awarded by the trial court, the aforesaid observations were made by the Bombay High Court.

78. Thus, it cannot be said as a principle of universal rule that in all cases of money decree, the defendant should be directed to deposit the amount in court and then only the question of stay be considered.

79. The decisions of the High Court of Mysore in A.A. Khan (supra) and Movie Enterprises (supra) have been followed by the Rajasthan High Court in the case of Bansidhar v. Pribhu Dayal, reported in 1952 SCC OnLine Raj.

80. Then the question is: Is there an established practice that the execution of money decree should not be stayed unless the judgment debtor deposits the decretal amount in court, and on such deposit, the successful party be permitted to withdraw the money on furnishing security to the satisfaction of the court. We do observe that in a large number of cases where a money decree is passed, this

Court generally does not grant stay unless the defendant deposits the amount in court.

But this appears to be a rule of prudence and not a principle of law of universal application. We also believe and hold that this practice based on the rule of prudence should ordinarily be followed by appellate courts. The practice of not granting stay in money decrees except on condition that the decretal amount be deposited in the court, and the successful party be permitted to withdraw the same on furnishing security to the satisfaction of the trial court appears to have been well entrenched, and for good reasons. [See: Central Bank of India v. State of Gujarat, reported in (1987) 4 SCC 407]

81. Hence, the term "sufficient cause" occurring in Order XLI Rule 5 of the CPC has got to be interpreted and understood in the light of the aforesaid discussion. After all, what is "sufficient"? One may again turn to Black's Law Dictionary. "Sufficient" means "adequateenough" as much as may be necessary-equal or fit for end proposed-and that which may be necessary to accomplish an object.

iv. Meaning and Import of "sufficient cause" under Order XLI Rule 5 of the CPC

82. Having regard to the case law discussed above and for reasons to be recorded, we are inclined or rather persuaded to take the view that the benefit of stay of execution of a money decree may be granted by the Appellate Court unconditionally, if it:

i. is egregiously perverse;

ii. is riddled with patent illegalities;

iii. is facially untenable; and/or

iv. such other exceptional causes similar in nature.

83. The aforesaid factors would bring the case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree.

84. We are at one with the submission canvassed on behalf of the defendant that in contradistinction to Order XLI, the word "deposit" does not figure in Rule 1(3), Rule 5(5) and Rule 5(3) respectively.

85. Under Rule 5(3) sub-clause (c) - security has to be furnished for "due performance" of the decree. We find it difficult to read any mandate for direction to deposit the decretal amount.

86. As noted above, the provision under Order XLI Rule 5(3) of the CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree. It casts an obligation upon the court to record its satisfaction for stay of execution such decree. Therefore, security can be in the shape of property, bond, or by undertaking from the appellant to abide by the decree, seeking stay of execution.

87. However, there is no provision under Order XLI Rule 5 of the CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree.

v. Service of Summons and Irregularity in the Service of Summons

88. At this stage, we must deal with one submission canvassed on behalf of the petitioners that in view of the second Proviso to Order IX Rule 13 of the CPC, the defendant could be said to have had the requisite "knowledge" of the date of hearing and sufficient time to appear. It was sought to be argued vehemently that the delivery of suit papers and the order granting ex parte injunction dated 12.10.2020 could be said to be valid service of summons. In this regard, strong reliance was sought to be placed on the decision of this Court in the case of Sunil Poddar (supra) and the Delhi High Court judgment in the case of LT Foods (supra) respectively referred to above.

89. We do not find any merit in the aforesaid submission, for the simple reason that the second Proviso to Order IX Rule 13 of the CPC would come into play only when there is "irregularity" in the service of summons (for instance, the publication in wrong newspaper, no acknowledgment on duplicate summons being received etc).

90. This has been well explained by this Court in its decision in Basant Singh v. Roman Catholic Mission, reported in (2002) 7 SCC 531. In the case in hand, the High Court has noted that prima facie there was nothing on record to establish valid service of "summons". If that be so, the second Proviso would not come into play. This proposition is again well explained by this Court in its decision Sushil Kumar Sabharwal v. Gurpreet Singh & Ors., reported in (2002) 5 SCC 377.

91. In the aforesaid context, the reliance placed on behalf the petitioners, on the decision in Sunil Poddar (supra) is of no avail. The undisputed facts in the said case were that the parties had already filed their pleadings before the civil court much prior to the case being transferred to the DRT. The parties were also aware of the transfer of the suit to the DRT. Despite such knowledge the party concerned consciously avoided service of summons in those proceedings. The decision in Sunil Poddar (supra) is distinguishable on the facts.

92. In the case on hand, the Division Bench in its impugned judgment has prima facie noted that there was nothing to indicate whether:

(a) the plaintiffs had actually served all the documents with their notices under Order XXXIX Rule 3 and;

(b) the defendant was actually made aware with sufficient time of the claim as regards the next date of hearing in the proceedings.

93. In the same manner the decision of the Delhi High Court in LT Food (supra) is also of no avail as the same is distinguishable on the facts.

94. We now proceed to deal with the submission canvassed by Mr. Gaurav Pachnanda, the learned Senior Counsel in rejoinder as noted by us in paras 35 and 36 respectively of our judgment.

vi. Reading of Section 36 of the Arbitration Act and Order XLI Rule 3 and Rule 5 respectively of the CPC

95. At this stage, we need to clarify something important. At the outset, we must state that this litigation has nothing to do with Section 36 of the Arbitration Act. In the present litigation, we are only concerned with Order XLI Rule 3 and 5 respectively, of the CPC. We are referring to Section 36 of the Arbitration Act only for the limited purpose of answering the specific contention raised by Mr. Gaurav Pachnanda.

In other words, whether the learned counsel is right in extending the analogy of Section 36 of the Arbitration Act to the present case or rather to the provisions of Order XLI Rule 3 and 5 of the CPC, is inappropriate. For this limited purpose only, we have thought fit to look into the two decisions of this Court one in the case of Sepco Electric Power Construction v. Power Mech Projects Limited, reported in 2022 SCC OnLine SC 1243, and the other, in the case of Pam Developments Private Limited v. State of West Bengal, reported in (2019) 8 SCC 112.

96. Section 36 reads thus:

"36. Enforcement.-

(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a Prima facie case is made out that,-

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.-For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)"

(Emphasis supplied)

97. Section 36 of the Arbitration Act was substituted vide the Arbitration and Conciliation (Amendment) Act 2015 (for short, "the Amendment Act, 2015"). Prior to the 2015 Amendment, the mere filing of an application challenging arbitral award under Section 34 of the Arbitration Act was understood in many quarters as a stay of the award in terms of the unamended Section 36 of the Arbitration Act.

98. This "automatic stay" became a subject matter of legal debate as being a great obstacle to the ease of enforcement of arbitral awards. In such circumstances, and with a view to address this lacuna, the Amendment Act, 2015, was introduced in the Arbitration Act. Under the Amendment Act, 2015, the existing provision in Section 36 was wholly substituted. Sub-section (2) of the amended provision provided that the filing of an application to set aside the arbitral award did not by

itself render the award unenforceable unless an order was passed by "granting a stay on the operation of the award pursuant to a separate application filed to that effect". Therefore, Section 36(2) of the Arbitration Act contemplated a separate application seeking stay.

99. In Hindustan Construction Company & Anr. v. Union of India & Ors., reported in (2020) 17 SCC 324, this Court held that there would be no automatic stay on the enforcement of an arbitral award under Section 36 of the Arbitration Act due to the mere fact that an application to set aside the award under Section 34 had been field before a court. In the said case, the constitutional validity of Section 87 of the Arbitration Act as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 (for short, "the Amendment Act, 2019") was challenged along with repeal of Section 26 of the Amendment Act, 2015 by Section 15 of the Amendment Act, 2019. This Court in the final analysis held as under:

i. The language of Section 36 of the Arbitration Act does not warrant an automatic stay on the enforcement of an arbitral award due to the mere filing of a Section 34 petition.

ii. The legislature, by inserting Section 87 and deleting Section 26 through the Amendment Act, 2019, had subverted the purpose of the Arbitration Act, 1996 and the Amendment Act, 2015, and was contrary to public interest because it sought to revive the pre-2015 Amendment automatic stay regime that was a major cause of delay to the disposal of arbitral proceedings, and thus, the Court declared Section 13 and 15 of the Amendment Act, 2019 as manifestly arbitrary and unconstitutional as being violative of Article 14 of the Constitution.

iii. The ratio in the BCCI v. Kochi Cricket Pvt. Ltd., reported in (2018) 6 SCC 287, was the position of law, prevailing at that time and would be used to interpret the applicability of the Amendment Act, 2015, to the arbitral proceedings and proceedings in relation to them.

100. Section 36(3) of the Arbitration Act provides that upon such an application being filed, the court may grant a stay "subject to such conditions as it may deem fit" for reasons to be recorded in writing. In terms of Section 36(3) of the Arbitration Act, the Court is conferred with the discretionary power to grant a stay of an arbitral award. Such discretionary power flows from the usage of the words "may" for grant of stay and the employment of the phrase "such conditions as it may deem fit" for the conditions that may be imposed if a stay was granted. Therefore, in terms of Section 36(3), the court retains its discretionary power to grant a stay of an arbitral award.

101. Further, the first Proviso to Section 36(3) provides that if the arbitral award was for payment of money, the court shall have "due regard" to the provisions for grant of stay of money decree under the CPC.

102. The aforesaid was, the legal position for a period of six years from 2016 to 2021. In 2021, Section 36 of the Arbitration Act was once again amended with retrospective effect from 23.10.2015, vide the Arbitration and Conciliation Amendment Act, 2021 (for short, "the 2021 Amendment"). The 2021 Amendment, inter alia, introduced a second Proviso to Section 36(3) which provided that if a prima facie case is made out that either the arbitration agreement/contract which is the basis of the award, or the making of the award was induced or effect by fraud or corruption, the Court "shall" stay the award "unconditionally" pending the disposal of the challenge.

103. As is clear from a plain reading of the second Proviso referred to above, it was provided that if, inter alia, the making of the award was induced or effected by fraud or corruption then the court was mandated to stay the award and such a stay was to be unconditional.

104. Mr. Gaurav Pachnanda, the learned Senior Counsel would argue that the courts cannot grant the benefit of unconditional stay of an award in cases other than those covered by the second Proviso to Section 36(3) of the Arbitration Act. In the same manner, according to the learned Senior Counsel, when it comes to staying a money decree unconditionally, the judgment-debtor needs to make out more than a prima facie case of fraud or corruption, or something analogous to the same, and it is just not sufficient to point out our serious infirmities in the judgment granting money decree.

105. In the aforesaid context, we must look into the decision of this Court in the Sepco Electric (supra). In the said decision, this Court was dealing with an appeal against a judgment of the Delhi High Court where the learned Single Judge had granted a stay of the arbitral award subject to deposit of 100% of the award amount. This order was passed in an application filed under Section 9 of the Arbitration Act which was heard together with an application under Section 36(3) of the Act in a connected petition. This decision was affirmed in appeal by this Court which held that there were no grounds made out for interfering with the judgment below.

106. This Court, while considering the contention of the appellant therein observed that a court may grant an unconditional stay if it is appropriate to do so. While so observing, this Court stated that unconditional stays were covered by the second Proviso to Section 36(3). The relevant portions of the judgement are extracted below:

"The power under subsection (3) of Section 36 to grant stay of an award is coupled with the duty to impose conditions which could include the condition of securing the award by deposit in Court, of the amount of the Award. It may be true as argued by Mr. Vishwanathan that the Court may not impose condition for stay, if it deems appropriate not to do so. The power of Court to grant unconditional stay of an Award is not unfettered. The power of unconditional stay is subject to the condition in the second proviso that is:

The Court is satisfied that a prima facie case (sic) is made out that

(i) the arbitration agreement or contract which is the basis of the award; or

(ii) the making of the award, was induced or effected by fraud or corruption"

(Emphasis supplied)

107. While this Court acknowledged that an unconditional stay could be granted in appropriate cases, it quickly followed up saying that the power to grant an unconditional stay is governed by the second Proviso to Section 36(3). This may indicate that the Court acknowledged the grant of an unconditional stay to the existence of the grounds mentioned in the second Proviso. This would indicate that the benefit of unconditional stay could be granted only in cases of fraud or corruption.

108. Notwithstanding the above, this Court in order to fortify its conclusion in the case, subsequently also noted that the appellant therein was not able to show any cogent and glaring error that went to the root of the award. This observation was repeated later where the Court stated that no cogent ground had been made out even, prima facie, for interference with the impugned award. The relevant observations are extracted below:

"26. It is settled law that grounds for interference with an award is restricted. Even before this court, the Appellant has not been able to advert to any cogent and glaring error which goes to the root of the award. The contention of the award being opposed to the public policy of India, is devoid of any particulars whatsoever.

35. It is not in dispute that there is an award of Rs. 142 Crores in favour of the Respondent. No cogent ground has been made out even prima facie, for interference with the impugned award.

37. We find no ground at all to interfere. The Appeals are dismissed."

109. After arriving at such a finding, this Court proceeded to dismiss the appeal. Therefore, the observations referred to above formed part of this Court's reasoning in arriving at its decision.

110.The aforesaid observations of this Court would suggest that the Court thought it fit to consider the merits of the award at a prima facie level in order to decide whether the conditional stay of the award was justified or not. In the facts of the present case, the Court felt that it was justified.

111. In light of the abovementioned observations, it is possible to legitimately argue that if the second Proviso to Section 36(3) was the sole source for granting an unconditional stay, there would have been no occasion for the Court to examine whether any prima facie cogent ground that went to the root of the award is forthcoming or not. Therefore, by relying upon this Court's observations, it could be plausibly argued that in exceptional cases an unconditional stay can be granted even in cases not arising under the second proviso to Section 36(3). Such unconditional stay would instead be relatable to the main part of Section 36(3).

112. The above reading of Sepco Electric (supra) would also be in tune with the discretionary power of the court under the main part of Section 36(3) both with respect to the power to grant stay and the power to impose conditions if a stay is granted. After all, it is not inconceivable to contend that a power to impose conditions would also include the power not to impose conditions.

113. Be that as it may, Sepco Electric (supra) does not clearly answer the question whether an unconditional stay can be granted in cases not covered by the second Proviso to Section 36(3). This confusion remains because while the Court states an unconditional stay can be granted in cases covered by the second Proviso, it does not categorically exclude the possibility of an unconditional stay in cases not covered by the second proviso.

114. This Court in Pam Developments (supra) had occasion to consider the nature of applicability of provisions of the CPC vis-à-vis the proceedings under the Arbitration Act, and specifically, the interpretation of the phrase "due regard" appearing in the first Proviso. The respondent therein had preferred an application seeking an unconditional stay of the arbitral award on the strength of Order XXVII Rule 8A, CPC which inter alia exempted Government from furnishing a security while seeking stay of a decree. Aggrieved by the application being allowed by the Calcutta High Court, the appellant-award holder approached this Court.

115. This Court allowed the appeal and directed deposit of the award amount as a condition for continuing the stay. The Court reasoned that the exemption from furnishing security under Order XXVII Rule 8A that would otherwise be

applicable to the ordinary civil proceedings could not be strictly applied to the arbitration proceedings. Therefore, the respondent-government could not have relied upon that provision to avoid furnishing security for staying the award.

The Court further held that even if the exemption from furnishing security was made applicable to the arbitration proceedings, such exemption would not extend to making deposit of the award amounts. This was based on the Court's interpretation of the difference between Order XXVII Rule 8A which was introduced in 1937 and exempted furnishing of 'security' and sub-rule (5) of Rule 5 of Order XLI that was introduced in 1976 and which differentiated between 'security' and 'deposit'. The Court also referred to the implications of a provision introduced during the colonial period and its continuance in the present constitutional setup.

116. This Court in Pam Developments (supra) held that the phrase "due regard" would only mean that the provisions of CPC are to be taken into consideration and not that they are mandatory. The relevant observations are extracted below:

"20. In our view, in the present context, the phrase used is "having regard to" the provisions of CPC and not "in accordance with" the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a selfcontained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act."

(Emphasis supplied)

117. On the strength of the above reasoning, this Court held that the exemption from furnishing security could not be applied to the arbitration proceedings. The Court clarified that while courts must have due regard to the CPC, they are not rigidly bound by its provisions. The CPC serves as a guiding framework rather than a strict mandate because the Arbitration Act being a self-contained Act is to be first applied by the court.

118. Although not explicitly stated by the Court as a reason for its decision, yet this Court did note the consequence of accepting the contention that Order XXVII Rule 8A was applicable. The result would be that wherever the government was the judgment-debtor in the arbitration proceedings, it would be

entitled to an unconditional stay on the mere filing of an application under Section 36(2).

119. While Pam Developments (supra) relied on the phrase "due regard" appearing in the first Proviso to decline the rigid application of an exemption from furnishing security provided under the CPC it could also be argued that insisting on a conditional stay in all cases of a money award would be a rigid application of Order XLI Rule 5. This is because Rule 5 mandates the furnishing of security or deposit as a condition for granting stay. Relying on Pam Developments (supra), it could possibly be argued that "due regard" to the provisions of CPC, especially Order XLI Rule 5, would not mean a mandatory grant of conditional stay in all cases. This is because the provisions of the Act, especially Section 36, would have to be first applied wherein a discretionary power is vested in the court.

120. If the first Proviso has to be interpreted as done in Pam Developments (supra) and merits of the award have to be considered on a prima facie level as done in Sepco Electric (supra), it is difficult to rule out the existence of an unconditional stay in cases outside the second Proviso. A closer analysis of the decision in Sepco Electric (supra) and this Court's interpretation of the first proviso in Pam Developments (supra) suggests that unconditional stays can be granted even in cases outside the second Proviso.

121. At this stage, we must look into one decision of the Bombay High Court in the case of ITD Cementation India Ltd. v. Urmi Trenchless Technology Pvt. Ltd., reported in 2020 SCC OnLine Bom 10611, wherein the High Court after referring to and relying upon Pam Developers (supra) observed as under:

"11. The provision of Section 36(3) are clear, that one must have regard to the provisions of the Code of Civil Procedure 1908 ("CPC") and specifically the provisions of Order 41 Rule 5 while addressing the question of stay. The words 'have due regard' have received judicial interpretation. Certainly there is no blanket prohibition barring a Court from unconditionally staying either a money award or a money decree. The three-fold requirement of Order 41 Rule 5(3) will have to be kept in mind. But, as the Supreme Court held in Pam Developers Private Limited v. State of West Bengal (2019) 8 SCC 112 the provisions of Order 41 Rule 5 are for guidance.

They do not indicate that a Section 36 Court lacks all discretion to grant an unconditional stay. That said, it is equally well settled that a strong and exceptional case must be made for unconditional stay of a money decree or a money award. The three matters to consider under Order 41 Rule 5(3) are (a) whether the Applicant will be put to a substantial loss if stay is refused; (b) whether there is a delay in making the application and (c) whether the Applicant

has furnish sufficient security to satisfy any ultimate decree. There is a delay, though slight. I do not see how the question of substantial loss arises. The fact that it has suffered an Award is neither here or there. The third requirement is that the party applying for stay must show sufficient security. There is no such attempt made."

(Emphasis supplied)

122. In such circumstances referred to above, we find it difficult to subscribe to the submission of Mr. Gaurav Pachnanda, that even for the purpose of grant of benefit of unconditional stay of money decree under Order XLI Rule 5 of the CPC, the judgment-debtor has to make out more than a prima facie case of fraud or corruption and not solely on the basis of an extreme or egregious view on the merits of the adjudication.

123. We once again clarify that the analogy of Section 36 of the Arbitration Act sought to be applied is inappropriate. The decision of this Court in Pam Developments (supra) should also be understood and confined only to matters relating to arbitration, more particularly, Section 36 of the Arbitration Act.

124. We are of the view that if fraud or corruption or something analogous to the same is only to be seen for the purpose of granting benefit of unconditional stay of execution of money decree then in such circumstances, the decree holder may argue that although there may not be a valid service of summons to the defendant/judgment-debtor yet, the same by itself would not be sufficient to grant the benefit of unconditional stay of execution of money decree. This would lead to nothing but serious miscarriage of justice. vi. Relevant aspects which the High Court looked into for the purpose of granting unconditional stay

125. The first thing that the Division Bench of the High Court looked into was that the suit had proceeded in the absence of the respondent herein. In the aforesaid context, the findings recorded by the Division Bench may be looked into:

"168. We also find prima facie substance in the contentions of Mr. Nigam and Mr. Kaul that the manner in which, after excluding all defendants from the proceedings, the entire trial of the suit, arguments and rendition of judgment took place solely in the presence of the plaintiff Lifestyle, may not sustain legal scrutiny.

169. The learned Single Judge has repeatedly observed, in the impugned judgment, that Amazon Tech was deliberately staying away from the proceedings despite being aware of their pendency, and has relied, for the said purpose, on the order dated 5 September 2022 passed in the suit. A reading of the order discloses

that the appearance of Counsels are noted only for Defendant 2 Cloudtail and Defendant 3 ASSPL.

The mere fact that learned Senior Counsel appearing for Cloudtail advanced a submission, on behalf of his client as well as on behalf of Amazon Tech, that they were willing to suffer reasonable damages, cannot be seen as proof of Amazon Tech being aware of the proceedings or deliberately refraining from participating therein. Even prior to this date, Amazon Tech had been proceeded ex parte on 20 April 2022. As a matter of fact, therefore, Amazon Tech was never present before the learned Single Judge on any date of hearing.

170. When one peruses the orders passed in the suit, vis-à-vis the notings of the Registry, it becomes apparent that, in fact, no summons in the suit were ever served on Amazon Tech. This, to our mind, is a serious infirmity, which may plague all other proceedings. Amazon Tech was proceeded ex parte, by the learned Single Judge, on 20 April 2022. In the order passed by the learned Joint Registrar on 7 July 2021, which was the immediately preceding effective date, it was specifically noted that there was no report regarding service of the suit on Amazon Tech. In the circumstances, Lifestyle was directed to file an affidavit of service. No affidavit of service was filed by Lifestyle, between 7 July 2021 and 20 April 2022. The only affidavit of service which was filed by Lifestyle was of 25 March 2021.

That affidavit enclosed, by it, an email dated 8 March 2021. No email, after 8 March 2021, was sent by Lifestyle to Amazon Tech. There is no question of the summons having been served by the email dated 8 March 2021, as the delay in filing process fee was condoned only on 16 April 2021. After 16 April 2021, the summons have never been sent to Amazon Tech, by any means of communication including email. It was for this reason that the order dated 7 July 2021 of the learned Joint Registrar required Lifestyle to file an affidavit of service. This was never done. As such, it is apparent that the learned Single Judge was in error in proceeding ex parte against Amazon Tech by order dated 20 April 2022.

171. In fact, even before us, Mr. Pachnanda, with characteristic candour and forthrightness, did not seek to contend that formal service of summons on Amazon Tech, as directed by the Court while issuing summons on 12 October 2020, ever took place. His submission is, however, that, prior to issuance of summons by the Court on 12 October 2020, as well as by way of attachment to the email dated 8 March 2021, all the documents relating to the suit, as well as applications filed therewith, were forwarded to Amazon Tech. Besides, due compliance with the requirements of the proviso to Order XXXIX Rule 13 of the CPC was also ensured. In these circumstances, Mr. Pachnanda's submission is that the learned Single Judge was correct in holding that Amazon Tech

deliberately absented itself from the proceedings and cannot, now, therefore, seek to raise a grievance that it was proceeded ex parte.

172. We cannot, in law, accept the submission.

173. The law does not require a defendant to enter appearance in a suit, unless summons in the suit are served on it. The Commercial Courts Act, 2015 contains strict provisions in that regard. No amount of service, on the defendant, of the papers relating to the suit, by the plaintiff, absent actual summons issued by the suit, can compel a defendant, in law, to enter appearance. The law does not permit a defendant to be proceeded ex parte, even before summons in the suit are served on it. This is plain, and elementary.

The learned Single Judge could not, therefore, have proceeded against Amazon Tech ex parte on 20 April 2022, even before formal summons in the suit had been served on it. In doing so, it appears that the learned Single Judge was not made aware of the order passed by the learned Joint Registrar on the immediately preceding date, i.e. 7 July 2021, in which it was specifically noted that there was no report regarding service of the suit on Amazon Tech. In holding that Amazon Tech had not appeared despite service and, therefore, proceeding against Amazon Tech ex parte, therefore, we are of the opinion that the learned Single Judge materially erred in law and on facts.

174. This, by itself, is a lapse serious enough to vitiate all proceedings in the suit after 20 April 2022, at least insofar as the appellant Amazon Tech is concerned. It also, therefore, suffices, even by itself and independent of all other considerations, as enough to justify entertainment of the present appeal without requiring any deposit of the decretal amount to be made by Amazon Tech.

175. We also find considerable substance in the submission of learned Senior Counsel for the appellant Amazon Tech that, in any event, all these developments took place at a time when the damage claimed by Lifestyle were only to the tune of ₹ 2,00,05,000/-. Enhancement of these damages are necessarily to be proceeded by an amendment of the plaint, of which Amazon Tech had to be put on due notice. This was never done. In fact, the written submissions filed by Lifestyle, which enhanced the damages, earlier computed at ₹ 20,005,000/- to ₹ 3780 crores, were also not served on the Appellant Amazon Tech. In accepting the enhancement of the claim for damages, therefore, we agree with learned Senior Counsel for the appellant Amazon Tech that the learned Single Judge has not acted strictly in accordance with the law.

176. In some circumstances, we are also of the opinion that lifestyle cannot seek sanctuary behind Order VII Rule 2 or Order VII rule 7 of the CPC, or even Rule 120 of the IPD Rules. Order VII Rule 2, in fact requires a plaint, seeking

recovery of money, to state the precise claimed amount. The proviso to Order VII Rule 2 applies only in cases of suits for mesne profits, or for an amount which would be found on rendition of accounts between the Plaintiff and the Defendant, or for movables in the possession of the defendant or debts of which the value cannot be reasonably estimated at that stage. The present suit does not fall within any of these categories.

The suit does not claim mesne profits, or value of movables in the possession of the defendants, or any debt of which the value was not ascertainable. Moreover, para 86 of the impugned judgment records the submission of Lifestyle that it was not pressing for its prayer for rendition of accounts. In that view of the matter, the proviso to Order VII Rule 2 of the CPC would not apply, and the main provision, which requires the precise claim to be quantified in the suit, would apply with all force. The precise amount quantified in the suit was only ₹ 2,00,05,000/-. There is, therefore, substance in the contention of learned Senior Counsel for Amazon Tech that, without an amendment of the plaint, the damages could not have been enhanced, much less to ₹ 3780 crores.

177. Order VII Rule 7, plainly, does not apply, as it exempts a plaintiff from requiring to claim "general or other relief", apart from the specific relief sought in the plaint. 178. In any event, what lies at stake, here, is something far more empirical. The question that is required to be addressed is whether (i) a claim for damages, assessed in the plaint at ₹ 2,00,05,000/-, could be inflated to ₹ 3780 crores merely in written submissions filed by the plaintiff after conclusion of arguments, without amending the plaint and without even serving a copy of the written submissions on a defendant against whom the enhanced damages were claimed and (ii) the Court would, in such circumstances, have awarded damages in excess of ₹ 336 crores, without any prior opportunity to the concerned defendant to contest the proposed judgment."

126. The second relevant aspect that the Division Bench looked into was the fact that there were no pleadings of infringement against the respondent herein worth the name. In this regard, the following observations are relevant:

"156. Mr. Sai Deepak, appearing on behalf of Lifestyle and supplementing the submissions advanced by Mr. Pachnanda, sought earnestly to convince us that the requisite factual basis or alleging involvement of Amazon Tech in the infringement of Lifestyle's registered trademark, is forthcoming in the plaint. We are unable to agree.

157. We have already set out, from para 29 of the present judgment on words, the relevant averments contained in the plaint. We do not find, therein, any prima facie sustainable allegation of involvement, by Amazon Tech, in any infringement of Lifestyle's registered trademark.

158. Para 41 of the plaint alleges that Amazon Tech is, under its brand 'SYMBOL', "manufacturing, offering for sale and/or selling products which bear the infringing logo mark. These allegations are completely defeated by the assertions in the replication filed by Lifestyle, to the written statement of Cloudtail - also reproduced supra - that it was Cloudtail manufacturing and selling the apparel bearing the mark, and, thereby, infringing Lifestyle's registered trademark.

159. Para 41 goes on to state that ASSPL was selling products of Amazon Tech on its platform under the trademark 'SYMBOL', bearing the infringing mark. This allegation, again, is incorrect. The products sold by ASSPL were not of Amazon Tech, but of Cloudtail. The only connection of Amazon Tech, with the said products, was the 'SYMBOL' mark, which Cloudtail affixed on the said apparel under license from Amazon Tech. This does not, in any way, connect Amazon Tech with the infringing mark.

160. In fact, after making such bald and unsubstantiated allegations, Lifestyle, in the same para 41 of the plaint, acknowledges that it was not certain about the actual relation between Amazon Tech, Cloudtail and ASSPL. Obviously, the allegations against Amazon Tech, regarding its complicity in the affixation of the mark on the apparel sold by Cloudtail on the ASSPL platform, were merely shots in the dark, without any knowledge of the actual state of affairs.

In fact, para 46 of the plaint acknowledges the fact that the invoice, raised by ASSPL, with respect to the apparel purchased by Lifestyle, only contained the name and details of Cloudtail. Despite this, para 48 of the plaint alleges that it was an "admitted case of Defendant No 3 (ASSPL) that orders for the infringing product of the Defendant No 1 (Amazon Tech) are being fulfilled by Defendant No 2 (Cloudtail)", without any such "admitted case" being available on record. The plaint does not disclose where this "admission" is to be found.

161. At this juncture, we may also refer to the affidavits dated 21 July 2022 and 1 September 2022 of ASSPL, on which Mr. Pachnanda sought to place reliance as supporting the finding of the learned Single Judge, in the impugned judgment, that Amazon Tech, Cloudtail and ASSPL constitute a "cohesive commercial entity". We find no such inference being forthcoming from the affidavits. In any case, we are not concerned, here, with the interlink, as commercial entities, between Amazon Tech, Cloudtail and ASSPL. They are, admittedly, independent commercial entities, as was, in fact, noted by the learned Single Judge in the order dated 12 October 2020, reproduced in para 19 of the impugned judgement. What is to be seen is whether there was any material to indicate involvement of Amazon Tech in the allegedly infringing activities of Cloudtail. There is, in fact, none.

162. Apart from this, the plaint only refers, repeatedly, to the infringing mark as belonging to Amazon Tech and has having been adopted by it. No factual basis for these allegations is forthcoming.

163. We have already explained, in para 18 to 26 supra, why it cannot be said that any substantial allegation of involvement, by Amazon Tech, in the allegedly infringing activities of Cloudtail, by affixation of the mark on the apparel sold by it, can be said to exist.

164. This, therefore, is not merely a case in which damages have been awarded against Amazon Tech without any finding, by the learned Single Judge, of involvement, in the alleged infringing activities, but is, in fact, a case where no such pleadings exist."

127. The third aspect which the Division Bench looked into was one relating to no pleadings for the purpose of claiming Rs. 3,36,02,87,000/- towards damages. In this regard, the findings recorded are:

"136. Leave alone the fact that there were no pleadings, claiming ₹ 336,02,87,000/-, there were also no pleadings on the basis of which is claim could be supported or sustained. The learned Single Judge has herself ventured into an exercise of computing the awardable damages as ₹ 336,02,87,000/-, without the said exercise being supported by any pleadings of Lifestyle. The position that has resulted is, therefore, that (i) the pleadings of Lifestyle only justified damages of ₹ 2,00,05,000/-, (ii) without amending its pleadings, Lifestyle, in its written submissions before the learned Single Judge, worked out the damages to which it was allegedly entitled as approximately ₹ 3780 crores, and (iii) the impugned judgment decrees in favour of Lifestyle and against Amazon Tech, ₹ 336,02,87,000/-, again on the basis of a computation solely devised by the learned Single Judge, not pleaded by the parties and unsupported by any pleading on record.

137. Mr. Pachnanda sought to submit that the damages to which the Plaintiff is entitled need not be specifically computed and claimed in the pleadings. The submission, in our view, begs the issue. This is not merely a case where there are no pleadings, supporting the damages of ₹ 3780 crores, claimed by Lifestyle in its written submissions, or the damages of ₹ 336,02,87,000/-which ultimately came to be awarded by the learned Single Judge. Even the basis for the claim of ₹ 3780 crores, all for the amount of ₹ 336,02,87,000/-which was ultimately awarded, is not to be found anywhere in the pleadings of Lifestyle.

138. The basis for the claim for damages are, at all costs, to be contained in the pleadings of the Plaintiff. It cannot be reserved for evidence. It is a legal truism that evidence cannot traverse the pleadings."

128. The fourth aspect that the Division Bench looked into was the fact that the learned Single Judge had recorded no findings as regards the role of the respondent herein in the alleged infringement. The relevant observations are as under:

"142. With greatest respect, it appears to us that the impugned judgement is more concerned with the fact that e-infringement is a new phenomenon, and that it is very difficult to identify the actual players in the act. Paras 42 to 44 of the impugned judgment deal with the menace of e-infringement, and the difficulty in localising liability in such cases. Para 44, in fact, refers to intermediary liability, which is of no particular relevance, as Amazon Tech does not claim itself to be an intermediary. We may note, even at this juncture, that the learned Single Judge has, in para 99 of the impugned judgment, observed that Amazon Tech was identifying itself as an intermediary.

This is a prima facie erroneous finding. At no point of time has Amazon Tech claimed to be an intermediary. In fact, in earlier orders passed in the suit, particularly in the orders dated 2 March 2023 and 7 August 2023 - which the latter was passed by the learned Single Judge herself - it has been correctly noted that Defendant 3 ASSPL was claiming to be an intermediary and was, in fact, one. In the impugned judgment, therefore, the learned Single Judge has proceeded on an apparently mistaken assumption that Amazon Tech was also claiming to be an intermediary.

143. Returning to the findings in the impugned judgment, following the adverse observations regarding the menace of e-infringement is a new species of trademark infringement, which poses significant challenges in localising of liability, the learned Single Judge proceeds, in para 45, to characterise the present case as a case of einfringement - with which there can be no serious cavil. Following this, however, the learned Single Judge was on to note that the brand 'Symbol', being used by Cloudtail, was owned by Amazon Tech. This is also; however, is difficult to understand how the ownership, by Amazon Tech, of the brand 'Symbol' is of any relevance. The mark 'Symbol' is, quite clearly, not infringing in nature.

144. In fact, even the plaint in the suit does not so assert. The case that Lifestyle has sought to build up, in the plaint, is that, as the infringing mark figured on the same apparel, which bore the 'SYMBOL' mark of Amazon Tech, Amazon Tech could not escape liability from the tort of infringement by use of the mark. In our considered view, the said plea, which has apparently found favour with the learned Single Judge in the impugned judgment, has no basis in law.

145. The learned Single Judge proceeds to lay considerable stress on order dated 5 September 2022, passed in the suit, particularly on the opening sentence of the order, which reads:

"The learned senior counsel for the defendant no. 2/applicant herein submits that the said defendant, including for and on behalf of the defendant no. 1 is willing to suffer a decree of injunction and also for paying reasonable damages to the plaintiff."

The learned Single Judge has treated this sentence, from the order dated 5 September 2022, as recording some kind of a concession, on behalf of Amazon Tech, admitting its liability for infringement and agreeing to pay damages. Significantly, prior to the passing of this order, Amazon Tech had already been proceeded ex parte on 20 April 2022. Even if it were to be assumed that Amazon Tech had agreed, through learned Counsel who appeared on behalf of Cloudtail, to suffer reasonable damages, that statement, if at all, was made at the stage when the damages claimed by Lifestyle were of ₹ 2,00,05,000/-.

In the face of this claim, it would be preposterous to hold that the order dated 5 September 2022 amounts to an admission, by Amazon Tech, to suffer damages of ₹ 336,02,87,000/-. Before awarding such damages, therefore, it was incumbent on the learned Single Judge to render specific findings of infringement, or at least of complicity in the infringing activities, by Amazon Tech. With greatest respect, we do not find this to have been done.

146. Para 47 of the impugned judgment observed that Amazon Tech, Cloudtail and ASSPL were "closely related to or interlinked with each other". Para 48 records that "it is a matter of public knowledge that the www.amazon.in platform is closely linked with Defendant No. 1", i.e. the present appellant Amazon Tech. To a large extent, it is clear that the impugned judgement proceeds on the premise that Amazon Tech, Cloudtail and ASSPL, i.e., all the defendants, were acting in concert and were one commercial entity.

147. We also find, prima facie, that the learned Single Judge has, in para 52 of the impugned judgment, completely misread the Licensing Agreement dated 23 December 2015 as fastening liability on Amazon Tech for infringement whereas, in fact, it does nothing of the kind. The learned Single Judge observes that the License Agreement dated 23 December 2015, between Amazon Tech and Cloudtail indicated "that Amazon retains significant control over Cloudtail's branding and distribution activities".

Following this, the learned Single Judge returns an opinion that "the clauses in the Agreement clearly diminish Amazon's liability to distance itself from the alleged infringement committed by Cloudtail", that "the contractual restrictions

on unauthorised trademark use, coupled with indemnification obligations, provide strong legal grounds for (Lifestyle) to argue Amazon's direct involvement in trademark infringement", "the agreement being a license agreement, Defendant No. 1 being a licensor an Defendant No. 2 being a licensee, any infringement or unlawful use by the licensee would also affix liability about the licensor", "while licensing the word mark SYMBOL" Amazon would be unable to distance itself from the use of the accompanying horse logo device mark" and that "thus, the consequences of infringement squarely fall upon Defendant No. 1".

148. We are, prima facie, unaware of any law which supports these observations and findings. The Licensing Agreement dated 23 December 2015 was restricted to the 'SYMBOL' mark, owned by Amazon Tech. Amazon Tech had, by the agreement, licensed, to Cloudtail, the right to use the mark 'SYMBOL'. The agreement does nothing beyond this. By no stretch of imagination could be Licensing Agreement be read as authorising Cloudtail to affix, on the apparel sold by it, the allegedly infringing mark.

In fact, the Licensing Agreement makes no reference to the said mark at all, obviously because Amazon Tech had no concern with the said mark. If, therefore, Cloudtail did affix the mark on the apparel sold by it, it certainly did not do so by virtue of any authorisation or permission granted by the Licensing Agreement dated 23 December 2015. In fact, the Licensing Agreement contained a specific clause proscribing any infringement, by Cloudtail, of the trademark of any third party, and indemnified Amazon Tech in that regard.

149. The observations contained in para 52 of the impugned judgment, extracted by us earlier in paragraph 139, are unsupported by law. In a Licensing Agreement, whereby and whereunder Amazon Tech had only licensed, to Cloudtail, the right to use the 'SYMBOL' mark, we are unable to understand how Amazon Tech could be fastened with liability for use, by Cloudtail, of the mark, with which the Licensing Agreement - and, indeed, Amazon Tech itself - had no concern.

150. Needless to say, a licence by one party to another, to do a particular act, cannot render the first party liable for every infringing or illegal act committed by the second, in the absence of any material to indicate that the commission of the illegal infringing act was also authorised by the license. The findings in para 52 of the impugned judgment, in our prima facie view, are contrary to this principle which, according to us, is practically fossilized in the law. They, therefore, suffer from patent illegality.

151. In para 98, the learned Single Judge observes that the judgment would proceed to examine, inter alia, "the degree of culpability of the Defendants".

Paras 98 to 99 proceed, apparently, to record certain observations regarding Amazon Tech which, in our view, are not incriminating in any manner. Before, however, adverting thereto, the learned Single Judge observes, in para 98 and in the opening part of para 99 of the impugned judgment, that the mark 'SYMBOL', of which the right to use had been licensed by Amazon Tech to Cloudtail, was used "along with" the infringing mark, on the apparel sold by Cloudtail.

Even if it was, we are unable to understand how any liability or responsibility for infringement, on the ground, be fastened on Amazon Tech. Amazon Tech was not the manufacturer of the apparel on which the infringing mark was used. It had never licensed, to Cloudtail, the right to use the infringing mark, with which, in fact, it had no concern. In fact, Cloudtail itself conceded, before this Court on 2 March 2023, that the decision to use the infringing mark on the apparel sold by was not of Amazon, but of Cloudtail itself.

Unfortunately, the learned Single Judge has entirely overlooked this concession, regarding which no objection or reservation was ever expressed by Lifestyle, either before this Court on 2 March 2023 or at any point thereafter. In view thereof, it is plainly obvious that the affixation, on the apparel sold by Cloudtail, of the infringing logo, could not incriminate Amazon Tech in any manner, merely because the same apparel also happened to carry the 'SYMBOL' mark, the use of which had been licensed by Amazon Tech to Cloudtail.

152. Para 99 of the impugned judgment proceeds to observe that Amazon Tech was "one of the most dominant players in the ecommerce space", that it "possesses ways and means to utilise its dominant presence in the e-commerce space to promote its own products as also products which it might otherwise wish to promote", and that it had "the leverage through its own platforms to dilute Plaintiff's brand/logo by indulging in deep-discounting of its own products which compete with the Plaintiff by using a similar mark/logo".

These findings are, prima facie, entirely in the realm of presumption and conjecture. They reflect an impression, by the learned Single Judge, that Amazon Tech was in a position to indulge in infringing activities by means such as deep discounting - with respect to which there is not even a whisper of an allegation against Amazon Tech in the entire plaint of Lifestyle - and that, therefore, it must have done so. On the face of it, we are of the view that these findings suffer from perversity in law, and cannot, therefore, sustain.

153. Para 99 goes on further to observe that "it is well known reality that all 3 Defendants belong to the Amazon Group of Companies and operate as a cohesive commercial entity". This finding has nothing forthcoming, available on the record, to support it. There is certainly no pleading to that effect. The plaint, filed by Lifestyle, does not allege, even indirectly, that Amazon Tech, Cloudtail and

ASSPL constituted a "cohesive commercial entity". A finding that 3 companies, which are independent corporate ventures, constitute a cohesive commercial entity, cannot be returned without any pleading to that effect. We are constrained to observe that the learned Single Judge has, in so holding, made out a case in favour of Lifestyle which it itself did not plead.

154. There are no other findings, in the impugned judgment, against Amazon Tech. Of course, the learned Single Judge has adversely commented on what she perceives as Amazon Tech's deliberate absence from the proceedings in the suit. Even if it were to be presumed, merely for the sake of argument, that Amazon Tech took a conscious decision not to participate in the suit proceedings, that cannot justify mulcting it with damages of ₹ 336,02,87,000/-.

155. The case, therefore, is one of awarding, against Amazon Tech and in favour of Lifestyle, of damages of ₹ 336,02,87,000/-, without any sustainable finding of infringement, or of complicity in infringement, against Amazon Tech."

129. If the Division Bench after looking into all the relevant aspects referred to above thought fit to grant benefit of unconditional stay of execution of money decree then, applying the principles of law discussed by us, it cannot be said that the Division Bench committed any error much less an error of law in passing the impugned judgment and order.

130. It goes without saying that whatever has been observed by the Division Bench in its impugned judgment and order is not an expression of any final opinion but are prima face observations for the purpose of granting the relief as prayed for by the respondents.

131. It is necessary for us to observe that the Court's jurisdiction over a respondent is founded on a valid service of summons. Without a valid service, the Court cannot acquire jurisdiction over the respondent, unless the defendant voluntarily submits to it. The original defendant-respondent must be properly be apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.

132. In an action strictly in personam, personal service on the defendant is the preferred mode of service, i.e., by handing a copy of the summons to the defendant in person. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service."

133. In the case in hand, what is important for us to note is the Order passed by the Joint Registrar (Judicial) of the High Court of Delhi dated 01.03.2021 which reads thus:

"CS(COMM)443/2020

"1. Written statement filed by the defendant No. 2 & 3 with affidavit of admission/denial.

2. Replication to the written statement of the defendant no.3 with affidavit of admission/denial of the documents has been filed by the plaintiff.

3. It is submitted by counsel for the plaintiff that replication and affidavit of admission/denial of the documents qua the defendant no.2 has also been filed but the same is lying under scrutiny. Let necessary steps be taken to ensure that replication and affidavit of admission/denial of the documents are placed on record.

4. Affidavit of service filed by the plaintiff reflects that entire paper book was delivered to the defendant no.1 through speed post and courier. However, from the report of the Registry it appears that PF was not filed for service of the defendant no.1 and summons of the suit through e-mail and Whatsapp were not issued to the defendant no.1 as per orders of the Hon'ble Court which is dated 12/10/2020. Let the order be complied with, and process be Issued, returnable for the next date.

5. Re-notify the matter for completion of service, completion of pleadings and admission/denial of the documents on 22"" April, 2021."

(Emphasis supplied)

F. CONCLUSION

134. We summarize our final conclusion on the grant of benefit of stay of execution of a decree by an appellate court in term of Order XLI as under:-

(I) Order XLI Rule 5 contains the provision for the grant or refusal of stay of execution of the decree by the appellate court under the CPC. It categorically stipulates that mere filing of an appeal against an order of execution, shall not ipso facto operate as stay of proceedings. Any execution proceeding or an order therein, shall be stayed only if a specific, reasoned order granting such stay is passed by the appellate court, after proper application of mind.

(II) For the grant of stay of execution of a decree in terms of Order XLI, a prayer to such effect has to be specifically made to the appellate court and the appellate court has the discretion to grant an order of stay or to refuse the same.

(III) Order XLI Rule 5(3) of the CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree, and it casts an obligation upon the appellate court to record its satisfaction for stay of execution such decree.

(IV) The power of the Appellate Court to order stay of execution of the decree is circumscribed and made subject to the existence of a "sufficient cause" in favour of the appellant being shown. In order to ascertain whether a "sufficient cause" exists for the grant of stay of execution of a decree under Order XLI of the CPC, the appellate court as per sub-rule (3) of Rule 5 is required to examine:-

(i) Whether there will be substantial loss to the party applying for stay;

(ii) Whether the application has been made without unreasonable delay; and

(iii) Whether security has been given by the applicant for due performance of the decree.

(V) For the grant of stay of execution of the decree, the appellate court is required, after perusing the materials on record, to assign reasons for its satisfaction regarding the existence of a "sufficient cause". Such reasons should be cogent and adequate. The reasons assigned must indicate the necessity for the status quo prevailing on the date of the decree and/or the date of making of the application for stay, to continue by granting stay, and not merely the reasons why stay should be granted.

(VI) Although, Order XLI Rule 5 of the CPC, uses the word "shall", yet a combined reading of the sum and substance of Rule(s) 1(3) and 5(5) would reveal, that for the grant of stay of execution, it is not mandatory for the appellate court to impose a condition for deposit of the amount in dispute. The aforesaid provisions make it abundantly clear that the appellate court, for the grant of stay of execution, has a discretion to impose a condition of deposit of the amount depending on the facts and circumstances of each case.

(VII) A deposit is not a condition precedent for an order of stay of execution of the decree by the appellate court. The only guiding factor and statutory mandate, for the grant of such stay of execution as indicated in Rule 5, is the existence of "sufficient cause" in favour of the appellant, on the availability of which the appellate court would be inclined to pass an order of stay.

(VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.

(IX) A lodestar for bringing a case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question:-

(i) is egregiously perverse;

(ii) is riddled with patent illegalities;

(iii) is facially untenable; and/or

(iv) such other exceptional causes similar in nature.

(X) For the purpose of the grant or refusal of stay of execution of the decree under Rule 5 of Order XLI, it is immaterial whether the decree is a money decree or any other decree. The language couched in the said provision is very clear. Order XLI, Rule 5 of the makes no distinction between a money decree and other decrees, and the said provision applies with full rigour in both instances. Yet as a rule of prudence and established practice evolved over a period of time, no stay of execution of a money decree should be granted, except on the condition that the decretal amount be deposited in the court. However, such condition for deposit cannot be said to be mandatory and nonprescription thereof does not operate as a bar to staying the execution of a money decree.

(XI) There is no provision under Order XLI Rule 5 of the CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellant to abide by the decree, seeking stay of execution.

135. In view of the aforesaid, we have reached the conclusion that we should not disturb the impugned judgment and order passed by the Division Bench of the High Court.

136. It is needless to clarify that the main appeal shall be decided on its own merits and without being influenced in any manner by any of the observations made in the impugned judgment and order passed by the High Court including our judgment.

137. It shall be open for the parties to put forward all contentions available to them in law at the time of the final hearing of the Regular First Appeal.

138. Registry shall forward one copy each of this judgment to all the High Courts.

.....J. [J.B. Pardiwala]

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

New Delhi;

October 07, 2025

IN THE SUPREME COURT OF INDIA

Zainul
Vs.
State of Bihar

[Criminal Appeal No. 1187 of 2014
arising out of SLP (Crl.) No. 740 of 2014]

Sattar & Ors.
Vs.
State of Bihar
[Criminal Appeal No. 1188 of 2014
SLP (Crl.) No. 726 of 2014]

HEADNOTE – Mere presence at the scene does not ipso facto render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object.

Laid down the test to determine whether the bystander shared a common object with the unlawful assembly, such as:
(a) the time and place at which the assembly was formed;
(b) the conduct and behaviour of its members at or near the scene of the offence;
(c) the collective conduct of the assembly, as distinct from that of individual members;
(d) the motive underlying the crime;
(e) the manner in which the occurrence unfolded;
(f) the nature of the weapons carried and used;
(g) the nature, extent, and number of the injuries inflicted, and other relevant considerations.

JUDGMENT

J.B. Pardiwala, J.

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

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VI. CONCLUSION .....

1. Since the issues raised in both the captioned appeals are the same, the appellants are co-convicts and the challenge is also to the selfsame judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. These appeals arise from the common judgment and order passed by the High Court of Judicature at Patna dated 17.07.2013 in Criminal Appeal (DB) No. 202 of 1990 (hereinafter, "the impugned judgment"), by which the High Court dismissed the appeal preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court in Sessions Case No. 124 of 1989 holding the appellants herein guilty of the offence of murder punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short, "the IPC").

I. CASE OF THE PROSECUTION

3. It appears from the materials on record that the investigating officer recorded the statement of one Jagdish Mahato (PW-20), an injured eyewitness, dated 20.11.1988, while he was admitted in the hospital, which later came to be reduced in the form of a first information report (Ext. 7). The statement of the PW-20 recorded by the investigating officer dated 20.11.1988 reads thus:

"ST No. 124/89

5055
16.2.90
Statement of Jagadish Mahato, S/o- Jamun Mahato, R/o-Raharkhal, PS- Ajam Nagar, District- Katihar, recorded by the S.I. AK Jha, OIC of Ajam Nagar PS, Date: 20.11.88, Time: 13.30 in the State Dispensary, Ajam Nagar.

My name is Jagadish Mahato, S/o- Jamun Mahato, R/o-Baharkhal, PS- Ajam Nagar, District- Katihar. Today, on 20.11.88 at about 13.30 hrs, I give my statement to the Inspector of the Ajam Nagar PS in an injured condition in the Government hospital, Ajam Nagar, that today at about 8.00 AM, I was watching my field which used to be grazed by buffaloes along with my brother Meghu Mahato. Seeing the buffalo not there, we both the brothers went to the field of Aslam which I have taken on 'Batai and doing the sweet potato cultivation and came to our paddy field and sat down there. Yesterday, on 19.11.88, I had got the paddy cut by the labourers from the land given to me by the Government of Bihar.

I had cultivated the said land. Due to this Sh. Jainul Sarkar, Muslim Sarpanch, Barik, Aftab, all R/o- Mahila along with 400-500 people were hiding there. All of them armed with gun, country made pistol, bhalla, farsa, gadasa, sword, suli and kachia etc. Some of them were having stones. Some of them were cutting the paddy from the land given by the Government of Bihar. Seeing me and my brother, all of them ran towards us from all directions and surrounded us.

At first they threw stones. Among them, I found 1. Masiad, S/o- Mahi, 2. Ajam, S/o- Shekh Nausad, 3. Khwaja, S/o- Shekh Nausad, 4. Shekh Aladi, S/o- Shekh Shekh Sadiq, 5. Shekh Karim, S/o- Sekh Sadiq, 6. Kaimuddin, S/o- Shekh Habib, 7. Sahebuddin, S/o- Habib, 8. Hoda, S/o- Habib, all R/o- Mahila, 9. Manoria, S/o- Unknown, 10. Asarul, S/o- Jhagru, 11. Rajjak, S/o- Salim, 12. Sikandar, S/o- Salim, 13. Aku, 14. Sallu, all are S/o- Gaffur, 15. Israel Munsi, S/o- Shekn Kalu, 16. Shekh Muslim, 17. Shekh Barik, 18. Shekh Jainul, 19. Shekh Mustaffa, 20. Sheikh Aftab, all are S/o Kalimuddin, 21. Abbu Naser, S/o- Basir, 22. Haklu, S/o- Bazaru, 23. Gulam, S/o- Haklu, 24. Jaina, S/o- Shekh Mallu, 25. Shekh Mahsuddin, S/o- Massu, 26. Niajuddin, S/o- Shekh Masu, 27. Ismail, S/o- Shekh Chutharu, 28. Masiyad, S/o- Shekh Mohidi, 29. Shekh Udhva, S/o- Shekh Mohidi all are R/o-Mahila, PS-Ajam Nagar, out of whom Manoriya was holding

three-not pistol, Abu Nasar was holding gun, Gulam holding 'suli' and others were holding lathi, bhala, farsa, gadasa, sword, suli and stones. At first those people having surrounded threw stones on us.

Then I and my brother raised alarm and tried to flee. During this time I was hit by a stone. When we fell down upon this Gulam hit me in the ribs with 'suli'. Then they assaulted us with lathi, and farsa. Then my brother Meghu fled when 30. Ibrahim, S/o- Unknown, R/o- Kantakosh, PS- Manihari who was with those persons opened fire from a pistol on my brother Meghu. Then he fell down. By that time, hearing our alarm, people of the village, Dudhnath Mahato S/o- Bhuneswar Mahato, Faiju Mahato S/o- Jagdev Mahato, Sripati Mahato S/o- Bhujangi Mahato, Dasu Mahato S/o- Ram Govind Mahato, Sarjug Mahato S/o- Munni Lal Mahato, all R/o- Baharkhal arrived there running. Behind them a large number of men and women also came there running.

Those people assaulted them also. Among them Sarjug Mahato also suffered gun-shot injuries and he had succumbed to death. My brother Meghu had sustained gun-shot injury and he died there. The other injured persons Doodhnath, Faizu, Sripati and Dasu had told me that 31. Allauddin, S/o- Alam, 32. Abbas, 33. Safat, both S/o- Nseer, 34. Basir, 35. Phooli, S/o Balal, 36. Hakkimul, S/o- Suleman, 37. Mahtab, S/o- Hakimuddin, 38. Khalil, S/o- Jamal, 39. Sattar, S/o- Taslim, 40. Mister, S/o- Garibul, 41. Matru, 42. Motiya, 43. OC Mohammed, S/o- Alimuddin, 44. Nizam, 45. Ishaq, both S/o- Badaruddin, 46. Sakur Ahmmed, 47. Habib, both S/o- Mehdi, 48. Dhelu, 49. Dablu, both S/o- Siraj, 50. Nizam, S/o- Modi Khalil, 51. Kalimuddin, S/o- Sarfailly, 52. Mouzia, S/o- Kalimuddin, 53. Mahamuddij, S/o-Safar Ali, 54. Allouddin, S/o- Sadi Mahajan, 55. Saha, 56. Jamal, both are S/o- Basarat, 57. Mustaffa, 58. Fajak, 59. Imamdi, 60. Faijuddin, all S/o- Banka Naseer, 61. Pachharu, S/o- Hanif, 62. Najim, 63. Jabir, S/o- Naushad, 64. Arif, 65. Majibbul, 66. Jamir, S/o- Maqbool, 67. Ayub, S/o- Makbool, 68. Farooq, S/o- Jhagru, 69. Asarul, S/o- Jhagru, 70. Aslam, S/o- Alum, 71. Mokhtiyar, S/onot known, all are R/o-Mahila, PS-Ajam nagar, District- Katihar and Mulla Master's aide who is having pox marks on his face, were also armed with bhalla, farsa, gadasa, sword, suli, kachia, stones, gun, pistol.

They had surrounded them and injured them. Kaimuddin had fired from pistol on Sarjug Mahato and he died instantly. After Sarjug Mahato and Meghu Mahato had succumbed to their injuries, those people had dragged their dead bodies to take those away. But seeing other men and women near the embankment, they left them there and took Sripati Mahato with them. They had left him near the Mahila embankment. This incident had been seen by all the men and women of the village. They will narrate the incident. They will identify the accused persons. The injured persons will tell who had injured them. After those people left the

spot, the covillagers took us and the deceased Sarjug Mahato and Meghu Mahato to the Government hospital on a cot, where we are under treatment.

This is my statement. I claim that the aforementioned accused persons with the intention to kill us were hiding in the field being armed with bhalla, farsa, gadasa, sword, suli, kachia, stones, gun and country made pistol and killed Sarjug Mahato and Meghu Mahato and injured us.

This statement of mine was read over to me which I found correct and put my thumb impression on this.

Witness:
1. Ram Suraj Mahato
2. Uttam Mahato
3. Suresh Mahato

RTI
Jagadish Mahato

This statement of the informant was read over to him which he found correct and put his thumb impression on this. ST/124

Sd.//Arvind
Ajam Nagar PS
20.11.88"

4. The aforesaid statement later came to be reduced in the form of a first information report as prescribed under Section 154 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") and was numbered as FIR No. 148 of 1988 registered with the Ajam Nagar Police Station, Kathiar. In the FIR, in all 72 persons came to be arrayed as accused. The FIR reads thus:

"Brief facts of the case and offence with sections and details of the property stolen: Assault by lathi, bhalla, farsa, gadasa, sword, suli, kachia, stones, gun, pistol with the intention to murder by forming unlawful assembly and injuring others, Offence committed U/s. 147/148/149/342/302/324/323 IPC and section 27 of the Arms Act."

5. As per the FIR, on the fateful day of the incident, the first informant, Jagdish Mahato (PW-20) decided to visit his agricultural field on 20.11.1988 alongwith his brother (deceased). A day prior, i.e., on 19.11.1988, he had harvested paddy crop from the field that was assigned to him by the Government. It is the case of the prosecution that the accused nos. 2, 16, 17, and 21 respectively alongwith 400- 500 persons were hiding nearby the agricultural field of the PW-20 with weapons. These persons did not want the PW-20 to harvest the paddy. According

to the case of the prosecution, some of those persons even started causing damage to the paddy crop. All these persons upon seeing the PW-20 and his brother cornered them and started pelting stones.

6. The PW-20 named 30 persons as accused in his statement recorded by the investigating officer at the hospital. According to him, the accused no. 9 named in the FIR had a pistol in his hand, the accused no. 21 named in the FIR was holding a gun, the accused no. 23 named in the FIR had a suli in his hand and others were having weapons like lathi, bhala, farsa, gandasa, sword, suli, stones etc. It is alleged that the accused persons laid an assault on the PW-20 and his brother was shot dead in the incident. Upon hearing the alarm, the PWs 3, 4, 5, 6, and 10 respectively alongwith one Sarjug Mahato (deceased) accompanied by other villagers reached at the place of occurrence. The accused persons are said to have assaulted the aforesaid witnesses as well. Sarjug Mahato is alleged to have been shot dead by the accused no. 1.

7. On the strength of the FIR referred to above, the investigation started. On conclusion of the investigation, the chargesheet came to be filed against 24 accused persons for the offences punishable under Sections 148, 149, 307 and 302 of the IPC respectively.

8. The criminal case came to be committed by the Magistrate to the court of Sessions under the provisions of Section 209 of the CrPC. Upon committal, the same came to be registered as the Sessions Case No. 124 of 1989 in the court of Sessions Judge, District Katihar.

9. The Trial Court proceeded to frame charge against the accused persons for the offences enumerated above. The accused persons denied the charge and claimed to be tried.

10. The prosecution examined the following 24 witnesses.

Sr. No.	Prosecution Witness	Particulars
1.	Suraj Mahto	Resident of Baharkhal.
2.	Ram Surat Mahto	Witness to inquest report prepared by the PW-24.
3.	Dasu Mahto	Injured eyewitness; cousin of PW-20.
4.	Chhedi Mahto	Injured eyewitness.
5.	Faizu Mahto	Injured eyewitness.
6.	Sripati Mahto	Injured eyewitness.
7.	Munilal Mahto	Father of the deceased Sarjug, resident of Baharkhal.
8.	Chinta Devi	Wife of the deceased Sarjug, resident of Baharkhal.
9.	Ram Nath Mahto	Witness to seizure lists, resident of Baharkhal.
10.	Dudh Nath Mahto	Injured eyewitness.

11.	Maharania Devi	Wife of the deceased Meghu, resident of Baharkhal.
12.	Tilaki Devi	Wife of the PW-5, resident of Baharkhal.
13.	Samudri Devi	Wife of the PW-6, resident of Baharkhal.
14.	Tusia Devi	Wife of the PW-20, resident of Baharkhal.
15.	Bhubneshwar Mahto	Father of the PW-10, Resident of Baharkhal.
16.	Suresh Mahto	Brother of the PW-6, resident of Baharkhal.
17.	Uttam Mahto	Witness to inquest report prepared by the PW-24.
18.	Radhe Mahto	Witness to seizure lists; cousin of deceased Sarjug.
19.	Arjun Mahto	Witness to seizure lists.
20.	Jagdish Mahto	Injured eyewitness; brother of deceased Meghu; resident of Baharkhal.
21.	Dr. B.P. Gupta	At Kishanganj Hospital, conducted post-mortem on dead body of deceased Sarjug and Meghu.
22.	Dr. Narayan Mishra	Medical Officer at the Azam Nagar Hospital; examined injuries on 5 injured persons.
23.	Arvind Kumar	Investigating Officer
24.	Surendra Prasad Singh	Assistant Sub-Inspector at the Azam Nagar Police Station; prepared the inquest reports.

11. It also relied upon few pieces of documentary evidence.

Exhibit	Particulars
Ext. 2 to 2/4	Parcha granted by the State of Bihar
Ext. 3 and 3/1	Rent receipts of the P.O. Land
Ext. 4	Fardbeyan
Ext. 5 and 5/1	Post-mortem reports of the deceased
Ext. 6 to 6/4	Injury reports
Ext. 7	Formal FIR
Ext. 8 to 8/4	Injury Reports prepared by the police
Ext. 9 and 9/1	Inquest reports
Ext. 10 and 10/1	Seizure lists

12. Upon closure of the recording of the oral evidence, the Trial Court recorded the further statements of the accused persons under Section 313 of the CrPC. The accused persons stated that they all were innocent and had been falsely implicated in the crime.

13. The Trial Court, upon appreciation of the oral as well as documentary evidence on record, held 21 accused persons guilty of the alleged offence whereas the remaining 3 accused persons were acquitted of all the charges. All the convicted accused persons were sentenced to undergo life imprisonment for the offence of murder.

14. The appellant herein being dissatisfied with the judgment and order passed by the Trial Court went in appeal before the High Court. The High Court after reappreciation of the oral as well as the documentary evidence on record dismissed the appeal preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court.

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

a. Oral Evidence on Record

16. Jagadish Mahto (PW-20), the brother of the deceased Meghu Mahto, on whose statement the FIR was registered, and one of the eyewitnesses to the incident deposed that, at about 8 AM, the PW- 20 and the deceased had gone to have a look at their paddy field. Thereafter, they went to the sweet potato field where they saw the accused nos. 17, 2, 21, and 16 respectively loitering around the settlement land. The witness has further deposed that at some distance, he saw 400-500 people, all armed with weapons like gun, pistol, suli, pick-axe, spear, sickle, etc.

17. The witness further stated that out of the 400-500 people, 10-11 persons started cutting the paddy from his field, and when the deceased and the witness tried to stop them, they started pelting stones on them. The PW-20 went on to identify the accused nos. 9, 4, Aladi (not arrayed as an accused in the FIR), accused nos. 20, 5, 22, 8, 6, 1, 18, 11, 10, 12, Abbas (accused no. 32 in the FIR), Safak (accused no. 33 in the FIR), Nayazuddin (not arrayed as an accused in the FIR), Jaharuddin (not arrayed as an accused in the FIR), Ismail (accused no. 27 in the FIR), accused nos. 2, 17, 21, and Gulam (accused no. 23 in the FIR) respectively. He deposed that after being hit by a stone, he fell down.

Thereafter, Gulam hit him on his ribs with a suli, the accused no. 10 assaulted him by a pick-axe on his head, the accused no. 12 assaulted him with a lathi, the accused no. 2 assaulted him with a gandasa and the accused no. 11 with a bana. According to the PW-20, his brother was also assaulted. During this time, the PWs 3, 5, 6, 10, and the deceased Sarjug Mahto respectively, reached at the place of occurrence but they, too, were assaulted by them.

18. The PW-20 further deposed that his brother was done to death by a gun-shot and was also assaulted with a suli. After the assault, all accused fled away. Thereafter, the villagers took them to the Azam Nagar Hospital. The Police Inspector recorded his statement, and obtained his signature. He stated that prior to the incident, he had no quarrel of any nature with the residents of the village Mahila with respect to the settlement land. He further deposed that the accused persons were not concerned in any manner with the settlement land. One

Hakimul of the village Mahila had set the house of Fekan Mahto on fire which had led to a murder on account of the said dispute.

19. The PW-20 admitted that the accused persons were never in possession of the settlement land. He denied stating before the police that the accused persons were hiding being agitated because of the harvesting of the paddy which had taken place a day prior to the incident. He deposed that he was unable to identify the persons harvesting the paddy crop and identified them as labourers.

According to him, he fell unconscious after the assault and was unable to witness as to who had assaulted the deceased Sarjug and the PWs 3, 6, and 10 respectively. He stated that he was unable to remember whose names he had disclosed. He categorically stated that the injured persons had disclosed before the police as to who all had assaulted them. In his cross-examination, the witness partly resiled from his previous statement and stated that he was unable to remember whether the statement that he had given to the police in the hospital was read over to him or not.

20. The medical examination of the PW-20 revealed the following injuries on him:

i. Incised wound on the right-side scalp 1" X 1/4" X bone deep;

ii. Lacerated wound on the scalp 2½" X 1/2" X bone deep;

iii. Punctured wound on the right side of the back ¼" diameter X ½" deep;

iv. One bruise in the right thigh 2½ X ½";

v. Bruise on the left wrist joint 1½" X 1½";

vi. Bruise over right wrist joint 1" X 1½";

vii. Bruise on the left side chest 3" X ½".

21. Dasu Mahto (PW-3), the cousin-brother of the PW-20 and one of the eyewitnesses to the incident deposed that the PW-20 and his brother (deceased Meghu Mahto) had gone to the paddy field. When he heard shouts, he ran towards the field. He was followed by deceased Sarjug and the PWs 5, 6, and 10 respectively. He deposed that the accused no. 12 assaulted him on his head with a lathi, the accused no. 10 assaulted him on his leg with a gandasa, the accused nos. 2 and 17 respectively were holding a gun, the accused no. 2 was holding a spear, the accused no. 11 was holding a suli. The PWs 5, 6, 10, and 20 respectively, were injured. The accused persons killed Sarjug and Meghu respectively.

22. The witness further deposed that the fight ensued because of the cutting of the paddy crop. He stated that he was at his house when he heard the sound of the firing of two gun-shots. He fell unconscious after being assaulted and regained consciousness only after some time. He further deposed that the police had arrived between 11:00 AM and 12:00 noon and he had given his brief statement. He deposed that he had not stated the names of 40 accused persons out of the 72 accused persons to PW-20, and he does not remember whether the accused no. 2 was armed with a spear and the accused no. 11 was armed with a suli.

23. The medical examination of the PW-3 revealed the following injuries on him:

i. One lacerated wound on the forehead 1½" X ½" X bone deep;

ii. One bruise over left scapular region 2½" X ½";

iii. Bruise over left thigh outer aspect 3" X ½";

iv. One bruise over left knee joint outer aspect 2" X ½".

24. Faiju Mahto (PW-5), one of the eyewitnesses to the incident deposed that after he heard some noise from the southern side of the settlement land, he ran in that direction. The PW-3 was running ahead of him. The PWs 6, 20, and deceased Sarjug and Meghu respectively were also there. Upon reaching the place of occurrence the residents of the village Mahila surrounded them and accused no. 5 (acquitted accused) assaulted him on his right hand with a farsa and Sayab (absconder) assaulted him on his head with a pick-axe. Further, the accused nos. 6, 8, and 22 respectively, assaulted him with lathis. Thereafter, he was taken to the hospital, where he came to know that the assailants had killed Sarjug and Meghu, and the PWs 3, 6, and 20 had suffered serious injuries. The PW-5 had heard two rounds of firing.

25. In his cross-examination, the PW-5 deposed that he regained consciousness in the boat while on his way to the hospital. All five injured persons were taken to the police station. They reached the police station at about 9:00 AM where the police recorded their statements. Thereafter, he was admitted to the hospital. In the night, the Sub-Inspector had recorded his statement.

26. The medical examination of the PW-5 revealed the following injuries on him:
i. One incised wound on the right forearm measuring 2½" X ½" X muscle deep;
ii. Incised wound on the middle of scalp 1½" X ¼" bone deep.

27. Sripati Mahto (PW-6), one of the eyewitnesses to the incident deposed that the incident had occurred at about 8:30 AM. He heard a commotion coming from the direction where the settlement land was situated. He ran behind the PW-3, and the PWs 5 and 10 respectively ran alongwith him. The witness deposed that

even before he could reach the settlement land, the residents of the village Mahila assaulted them. The accused no. 19 hit him with a pick-axe, the accused no. 14 assaulted him with a sword, and the accused nos. 18, 7, 3, 13, Matru (absconder) and Jamshed (absconder) assaulted him with a lathi. The witness denied having stated before the police that he had heard the commotion coming from the direction where the settlement land was situated. He had reached the hospital at 5 PM but his statement was not recorded on that day.

28. The medical examination of the PW-6 revealed the following injuries on him:

i. One incised wound 1½" X ¼" X bone deep over root of right ring finger;

ii. Incised wound 1" X ¼" over right side of injury No. 1;

iii. Incised wound ¾" X 1/6" X muscle deep over right middle finger;

iv. One lacerated wound ¾" X ¼" over right side of scalp; v. One abrasion 1" diameter over right cheek;

vi. One incised wound with out of radius bone 1½" X ½" over left forearm.

29. Doodhnath Mahto (PW-10), one of the eyewitnesses to the incident, deposed that the incident occurred between 8:00 AM and 9:00 AM. On hearing some noise, he ran towards the settlement land. Jalla (not arrayed as an accused in the FIR) hit him on his head with a lathi. Thereafter, someone assaulted him on his neck with a pickaxe. He was unable to see the assailant as he was assaulted from behind. At this juncture, the witness was declared hostile. He denied stating before the police that upon reaching the settlement land, the residents of the village Mahila surrounded him and he was assaulted. Thereafter, he named Masiyan (not arrayed as an accused in the FIR) as the assailant who assaulted him on his neck from behind.

30. Further, he denied stating before the police that the accused no. 10 had assaulted him on his head with a lathi, the accused nos. 18 and 22 had assaulted him with a lathi, the accused no. 4 had assaulted him with a pick-axe on his wrist, the accused no. 1 was armed with a pistol, the accused nos. 11 and 20 were armed with a spear, and the accused no. 8 was armed with a lathi.

31. The medical examination of the PW-10 revealed the following injuries on him:

i. One incised wound on the back of neck 4" X 1" X 1½" (deep) with bending of neck;

ii. One incised wound on the back 1" X ¼" X ¼" deep;

iii. One incised wound on the scalp back side 1" X ¼";

iv. One incised wound on the right wrist joint 1 ¼" X ¼" X muscle deep.

32. Chhedi Mahto (PW-4), resident of the village Mahila and one of the eyewitnesses to the incident, deposed that the incident had occurred at about 8:00 AM. At the time of the incident, he was in his sweet potato field. He identified the accused nos. 1 and 18 respectively. He first stated that the accused no. 1 was holding a gun. Then, he stated that he was armed with a spear. He deposed that all were fighting with eachother.

He further deposed that the accused no. 1 shot dead deceased Sarjug, and the PWs 3, 5, 6, 10, 20 respectively, were injured. The accused no. 19 had a gandasa in his hand, Jamir (absconder) held a suli. In his cross-examination, the witness stated that he had no idea of the cause behind the fight. He further deposed that there were many people and it could not be said as to who were the assailants and who were the spectators. The police arrived at about 12:00 to 1:00 PM, and his statement was recorded on the spot.

33. Chinta Devi (PW-8), the wife of deceased Sarjug Mahto and one of the eyewitnesses to the incident, deposed that she and her husband were sowing crops in the morning of the day of the incident. At that time, the deceased-Meghu raised an alarm. The PW-8 alongwith her husband ran in that direction. She deposed that her husband was surrounded by the residents of the village Mahila.

She identified the accused no. 18 passing on a gun to the accused no. 1, who in turn fired a shot towards her husband. Thereafter, the accused no. 14 assaulted him with a suli, the accused no. 11 with a pick-axe, the accused no. 17 with a suli. In her cross-examination, the witness deposed that there was a crowd of around 400-500 people. While some were armed, some were unarmed. She further deposed that the Station-House-Officer of the police station arrived after 2 hours of the incident and interrogated her.

34. Arvind Kumar Jha (PW-23), the Officer-In-Charge of the Azam Nagar Police Station, deposed that on the day of the incident at about 1:25 PM, he received an O.D. Slip from the Govt. Hospital. On the basis of the same, he recorded the statement of PW-20, and the same was reduced in the form of an FIR. He deposed that he had collected the injury reports of the PWs 3, 5, 6, and 10 respectively, from the hospital and then immediately left for the place of occurrence. He reached the place of occurrence, i.e., the settlement land at 3:20 PM. He found blood at various places on the ground and a blood stained lathi. He inspected the documents pertaining to the settlement land, which he found to be in the joint names of the deceased Meghu Mahto, Lalu Mahto, Dharmu Mahto,

and the PW-20 respectively. On 21.11.1988, he recorded the statements of the PWs 3, 5, 6, 10, and 15 respectively.

35. The police officer further deposed that the PW-4 had stated that the accused no. 17 inflicted injuries with a suli on the body of the deceased-Meghu, Ibrahim was armed with a pick-axe, Kirouri (not arrayed as an accused in the FIR) was armed with a sword, Tara (not arrayed as an accused in the FIR) was armed with a gupti, Manoriya (accused no. 9 in the FIR) had come with a pistol, and Kaimuddin snatched the gun from accused no. 18 and fired a shot at the deceased-Sarjug. Further, the PW-8 neither stated that the accused nos. 14 and 17 respectively had assaulted her husband with a suli nor that accused no. 11 assaulted him with a pick-axe. She had named Sarful, Hamzu, Mozamil, Tulku, Shakil, Faltu, Nasir, Azimuddin, Ishahak, and Chhotiya as the asssailants.

b. Judgment of the Trial Court

36. Upon appreciation of the oral as well as documentary evidence on record, the Trial Court vide its judgment and order dated 24.05.1990 passed in Sessions Case No. 124/1989 held 21 accused persons guilty of the alleged crime and acquitted the remaining 3 accused persons. The findings recorded by the Trial Court in its judgment can be better understood in seven parts:-

a. First, on the factum of assault, it was observed that the PW- 21, i.e., the doctor who performed postmortem on the dead bodies had found several injuries, including a firearm injury, on both the dead bodies. The description of injuries given by the PW-22, who examined the injured witnesses, lend credence to the version of assault narrated by the five-injured persons, i.e., the PWs 3, 5, 6, 10, and 20 respectively. The injuries were found to be on vital parts of the body like neck, chest, and head, caused by sharp and hard blunt weapons. They were reflective of the intention of the assailants at the time of causing such injuries.

They had knowledge that the injuries were sufficient in the ordinary course of nature to cause death. Further, the oral testimony of the other eyewitnesses and IO read with the inquest report and seizure list, entirely supported the case of the prosecution. The Trial Court further observed that the blood marks at different places, the trails of dragging marks and the presence of a blood-stained lathi also substantiated the case made out by the prosecution. It noted that the two deaths and the injuries to five persons were not in dispute. It held that from the oral evidence of the PWs 21, 22, 23, and 24 respectively, the factum of assault as narrated by the PW-20 stood fully corroborated.

b. In continuation of the above, the Trial Court declined to accept the version of the defence that the deceased and the witnesses wanted to forcibly harvest the paddy from the settlement land and as they started harvesting the paddy, the

accused nos. 3 and 24 respectively objected, due to which the deceased and the witnesses had assaulted both the accused persons. The court declined to believe such defence on the ground that paddy was not found at the spot at which the accused persons claimed to have harvested it. The relevant observations read as under:-

"39. From the evidence of P.Ws. referred to in different para above, it is apparent that the medical officer who held postmortem on the dead bodies found numerous injuries on both the dead bodies. There was injury of fire arm on both the dead bodies. In this way the doctor fully supports the picture of assault given by the eye witnesses of the alleged occurrence. The Medical Officer of Azamnagar Hospital who has examined the five injured persons had also found various injuries on the persons of Jagdish Mahto, Dudhnath Mahto, Faiju Mahto, Sripati Mahto and Dasu Mahto. Their injuries disclose that on the vital parts of the body like neck, chest, head etc. the sharp cutting weapons and hard blunt substance caused injuries and the injuries were of the quality which would have caused fatal results.

These injuries are sufficient to show the intention of the assailants that at the time of causing these injuries they had very clear knowledge that these injuries could have led to the worst result of death of these injured persons. These injuries found by the doctor fully corroborates the story of assault given by the five injured persons Jagdish Mahto (P.W. 20), Dasu Mahto (P.W. 3), Faizu Mahto (P.W. 5), Sripati Mahto (P.W. 6), and Dudh Nath Mahto (P.W. 10). The evidence of other eye witnesses on the point of assault is also corroborated by the medical evidence of the two doctors P.Ws. 21 and 22. The I.O. P.W. 23 and the A.S.I. P.W. 24 have also supported the prosecution story the fair injury reports (Ext. 8 series) inquest reports and seizure lists fully support the story.

The P.O. of this case described by the I.O. (P.W. 23) speaks clearly that the parcha land is the P.O. field and the occurrence covered a big area of about 50 yards. The blood marks at different places and the dragging mark and the trampling mark and presence of "dhelas" and blood stained lathi fully corroborates the picture of assault given by the prosecution that a large number of persons took part in this assault and the assault was indiscriminate. One thing is very clear from the evidence of the I.O. that there was no paddy bundle nor there was any harvested paddy in any field near the P.O.

According to the prosecution story few members of the mob started forcibly harvesting the paddy from the parcha land which was objected to by the complainant Jagdish Mahto and his brother Meghu Mahto on which they were surrounded by the mob and they were assaulted. Against this according to the defence story the complainant party had gone in a group to forcibly harvest the paddy from the P.O. land and they were harvesting the paddy against which

Habib and Allauddin protested on which the complainant party assaulted Habib and Allauddin causing injuries then villagers came in the help of Habib and Allauddin and there was "marpeet".

It is worth consideration that the defency story contained in the complaint petition filed by Habib speaks about the theft of paddy from 6-7 bighas on the date of occurrence. The two murders and injuries to five persons is not seriously disputed by the defence side. If actually there was harvesting of paddy by the complainant party and there was protest by the accused side to protect their paddy and exercised their right of defence of property as the defence side has argued then there was no time for the complainant and others to remove even a single bundle of paddy. Therefore, in the natural circumstances one will expect that the harvested paddy of the entire 6-7 bighas of land should have been found there. But there was no such harvested paddy either in bundle shape or in spread shape.

This falsifies the story presented by the defence side. The I.O. and the two doctors examined in this case are independent responsible public servants. They have no reason to depose falsely against the accused persons. In their cross-examination also there is nothing it discredit there. Therefore I find nothing to doubt the correctness of their evidence. Accordingly I rely on the evidence of the public servants examined as P.Ws. 21, 22, 23 and 24. From their evidence the picture of assault given by the complainant in the fard bayan and in the evidence as well as in the evidence of other injured persons and eye witnesses finds full corroboration."

c. Secondly, the Trial Court rejected the defence of right to private defence, observing that the accused persons could not have cultivated paddy on the settlement land as it had previously been in the possession of the State of Bihar, and later with the PW-20 alongwith his brothers. It further ruled out the possibility of paddy been grown by the accused persons as none of the witnesses or the deceased had harvested the paddy from the settlement land. The relevant observations read as under:-

"40. Therefore the claim presented by the accused persons in this case clearly speaks that they want to force the settles of the State of Bihar to flee away from the settled land only due to the strength of the accused side. This tendency cannot create any right of private defence rather it clearly suggests. that the whole occurrence is the result of the principle of might is right. The accused persons had no justification for going to the parcha and but they went upon the strength of their violence to take possession of the land which the complainant and his brothers and cousins had got settlement. In this way I find that there is no scope to argue for right of private defence."

d. Thirdly, the Trial Court noted that the contradictions in the testimonies of the witnesses would not be of any help to the accused persons as the witnesses were not found to have suppressed the relevant facts. The relevant observations read as under:-

"42. The learned defence lawyer has tried to show some contradictions in the evidence on the point of occurrence with the help of witnesses who have gone hostile. I do not think that such contradictions can be used in favour of the defence when the case diary and the evidence on the record speaks that they are not suppressing the relevant facts. I do not find any merit in the contradictions pointed out by the defence side. The P.Ws. are all illiterate simple and rustic villagers. If something is extracted by the lawyer from them due to complicated questions it can't be used to contract other P.Ws."

e. Fourthly, the oral evidence of the PWs 3, 4, 7, 8, and 20 respectively, was found to be inspiring confidence, more particularly, the fact that the accused no. 1 had fired shots killing deceased Sarjug Mahto, the accused Ibrahim had fired shots killing deceased Meghu Mahto, and that the other members of the mob had assaulted them. It noted that the common object of the members of the unlawful assembly was apparent from the fact that they had arrived there with weapons without any provocation.

f. Fifthly, the charge under Section 302 r/w Section 149 of the IPC stood duly proved as the accused persons wanted that the PW- 20 and his brothers give up their claim over the settlement land to enable the accused persons to forcibly occupy it. It held that the common object of all the members of the unlawful assembly was to cause the death of any person coming in the way of their illegal design to forcibly dispossess the PW-20 and his brothers from the settlement land. Further, the charge under Section 307 of the IPC against all the accused persons also stood duly proved qua the assault on the PWs 3, 5, 6, 10, and 20 respectively. The relevant observations read as under:-

"44. Question No. II: From the evidence of the P.Ws. it is well proved that Kaimuddin fired killing Sarjug Mahto and Ibrahim fired killing Meghu Mahto. There are numerous other injuries on dead bodies besides the injuries of fire arms which speak that several other members of the mob also assaulted both the deceased. From the evidence of P.W. 4 Chhedi Mahto, P.W. 8 Chinta Devi, P.W. 7 Munilal Mahto, P.W. 3 Dasu Mahto and the complainant P.W. 20 it is proved that Kaimuddin fired on Sarjug Mahto killing him on the spot. It is further proved that Ibrahim fired on Meghu Mahto and other members of the mob also assaulted him. This Ibrahim has absconded in this case.

The preplanning of all the members of the mob is apparent from the fact that they had collected there variously armed and without any provocation they started

assaulting the complainant and his brother Meghu Mahto and the persons who came to their rescue were also indiscriminately assaulted mercilessly. This clearly speaks that all had one and the same object that the complainant and his brothers who had got parchas in respect of the land should abandon their claims and allow the accused persons to forcibly occup7y those settled lands and if there was any protest the persons should be killed. Therefore the common object of all the members of the mob was one and the same to cause the death of the persons coming in the way of their illegal design to forcibly dispossess the complainant party from the settled land.

Therefore all the members of the mob are equally responsible for causing the death of Meghu Mahto and Sarjug Mahto. Therefore the charge u/s 302/149 IPC is well proved against the accused persons who have taken part in this assault. There is no evidence to connect accused Aslam, Kalimuddin and Allauddin. Therefore they are not found responsible for this incident. The charge framed u/s 302 IPC against Kaimuddin is well proved. The charge u/s 307 IPC framed against the accused persons for murderous attack on Dudhnath Mahto, Jagdish Mahto, Dasu Mahto, Sripati Mahto and Faiju Mahto is also well proved from the evidence discussed above."

g. Sixthly, the Trial Court found that the accused no. 10 was identified as an assailant by the PWs 3, 7, and 20 respectively. Further, the accused no. 12 was identified by the PWs 3, 7, 8, 20 respectively; the accused no. 11 by the PWs 3, 8, 20 respectively; the accused no. 18 by the PWs 4, 6, 8, 20 respectively; the accused no. 19 by the PWs 4, 6, 16 respectively; the accused no. 5 by the PWs 8 and 20 respectively; the accused no. 8 by the PWs 5 and 20 respectively; the accused no. 22 by the PWs 5 and 20 respectively; the accused no. 2 by 3 and 20 respectively; the accused no. 14 by the PWs 7 and 8 respectively; the accused nos. 3, 7, 13, 16 by the PW-6; the accused nos. 4, 9, 16, 20, and 21 respectively by the PW-20. The relevant observations read as under:-

"45. In the evidence of P.Ws. I have found that accused Allu @Allauddin has been identified as an assailants in the members of mob by P.W. 3 Dasu Mahto, and the complainant P.W. 20 Jagdish Mahto. Further his name has come in the evidence of P.W. 7 Munilal Mahto as dying declaration of Sarjug Mahto. Accused Sallu has been identified by P.W. 3 Dasu Mahto, P.W. 8 Chinta Devi, P.W. 20 Jagdish Mahto and his name also comes in the evidence of P.W. 7. Accused Hoda has been identified by P.W. 3, P.W. 8 and P.W. 20. Accused Samuddin stands identified P.W. 4 Chhedi Mahto, P.W. 6 Sripati Mahto, P.W. 8 Chinta Devi and P.W. 20 Jagdish Mahto.

Accused Garibul has been identified by P.W. 4, P.W. 6 and P.W. 16 Suresh Mahto. Accused Asarul has been identified by P.W. 8 Chinta Devi and P.W. 20 Jagdish. Accused Razak has been identified by P.W. 5 Faiju Mahto and P.W. 20

Jagdish Mahto. Accused Sikander has been identified by P.W. 5 Faiju Mahto and P.W. 20 Jagdish Mahto. Accused Muslim Sarpanch has been identified by P.W. 3 Dasu Mahto and P.W. 20 Jagdish Mahto. Accused Udwa has been identified by P.W. 6 Sripati Mahto. Accused Majia @ Mojib has also been identified by P.W. 6.

Accused Mister has been identified by P.W. 8 Chinta Devi and he has also been named by P.W. 7 in the dying declaration. Accused Barik has been identified by the complainant Jagdish Mahto. Accused Aftab, Masiat, Azam and Khaza have also been identified by the complainant Jagdish Mahto P.W. 20. Accused Habib has been identified by P.W. 6 Sripati Mahto. In this way all these 21 accused persons have been specifically alleged by the P.W. b with definite identification that they took part in this assault."

h. Lastly, as the prosecution had failed to prove the charges beyond reasonable doubt against the accused nos. 15, 23, and 24 respectively, the Trial Court acquitted them. The relevant observations read as under:-

"44. Accordingly I find that the prosecution has proved the charges beyond reasonable shadow of doubts against all the accused persons except accused Aslam, Kalimuddin and Allauddin."

II. IMPUGNED JUDGMENT

37. The 18 convicts being dissatisfied with the judgment and order passed by the Trial Court, went in appeal before the High Court by way of Criminal Appeal (DB) No. 202 of 1990. The High Court vide its impugned final judgment and order dated 17.07.2013 partly allowed the appeal by acquitting 7 accused persons. As a sequitur, the High Court affirmed the conviction of 11 accused persons. The impugned judgment and order of the High Court is in three-parts.

i. First, the High Court by relying on the Exhibit I series (petitions filed by the respective PWs for settlement of land), held that the defence had admitted the validity of Exhibit 2 series (purcha granted by the State Government in favour of the PW-20 and others), more particularly, it acknowledged the khata and khasra number. Thus, the Exhibit 2 series could be said to be conclusive on account of it not being challenged. The relevant observations read as under:-

"52. This case suffers from some sort of peculiarity and that is with regard to its origin. The origin happens to be connected with the right to possess actual physical possession of the land under dispute. The position would have been very much clear, had the defence allowed the prosecution to sail on its boat without pouncing upon the same but as is evident, the defence was not satisfied with the suggestion whatever they have during course of cross-examining the P.Ws. They

jumped into fray and advanced their plea that the land was possessed by them and to support the same, they have exhibited trace-map, C.S. Khatian, R.S. Khatian.

Not only this by having Ext-I to 1/4 the defence had also brought on record the petitions filed by the respective prosecution witnesses for settlement of the land and by such action the defence had admitted its propriety, genuineness and on account thereof the defence had accepted validity of Ext-2 series, the Purcha granted by State Government in favour of the prosecution party. It is no where the case of the defence that they have had ever challenged Ext-2 series, Parcha before the competent authority. That means to say, there happens to be acceptance of the aforesaid Ext-2 in its conclusiveness.

53. When particular act is performed in pursuance of mandate of specific law then its genuineness, its propriety, its effectiveness, its execution will be accepted unless and until contrary is proved. The defence had nowhere challenged or tried to rebut the genuineness of purcha as well as even having purcha issued in favour of prosecution party, they never came over the land side by side when there happens to be specific claim on behalf of defence, then in that event it should have been proved at least to such extent to cast doubt with regard to the prosecution version relating to possession over the land brought under Ext-2 series, Ext-2 relates to Meghu Mahto which discloses settlement of 1.25 Acres of land of Khesra no. 29/3 of Khata No. 94 of village, Giddhaur, 2/1 relates to Jagdish Mahto to the extent of area 1.50 Acre of Khesra no. 29/1 of Khata No. 94 of village, Giddhaur, 2/2 relates to Dharmu Mahto covering an area of 1 Acre of Khesra no. 108 (MI) of Khata No. 94 of village Giddhaur, 2/3 relates to Dasu Mahto of area of 1 Acre of Khesra no. 29/5 of Khata No. 94 of village, Giddhaur, 2/4 relates to Lalu Mahto to the extent of area 1 acre under Khesra no. 29/4 of Khata No. 94 (MI) of village, Giddhaur.

55. None of the exhibits, that means to say, Ext-F series, Ext-g relates to Khata No. 94, the Khata having under Purcha and not Khata No. 14 so claimed under Ext-C. The defence by exhibiting respective petitions filed by the prosecution party under Ext-I series, in real sense had shown their status acknowledging Khata No, Khesra No. incorporated therein and by such measure they have virtually sacked their own status to advance their claim or having their claim with regard to land covered under Khata No.94, the Khata having been allotted in favour of prosecution party."

ii. Secondly, the High Court noted that the presence of injured witnesses, i.e., the PWs 3, 5, 6, 10, and 20 respectively, cannot be doubted. It observed that the oral testimonies of the said witnesses were found to be reliable and trustworthy. Further, by relying on the decision of this Court in Shyam Babu v. State of Uttar Pradesh, reported in (2012) 8 SCC 651, it was held that the oral evidence of the

witnesses cannot be discarded solely because they are related to each other. The relevant observations read as under:-

"60. Coming to the remaining witnesses, as stated above, 1.C PWs, 3,-4-, 5, 6 and 20 are injured witnesses whose presence cannot be doubted. After going through their testimony, it is found reliable and trustworthy because of the fact that from their testimony it is apparent that they have hot tried to inter-mingle their evidence with any sort of development or going beyond their status what they have perceived as eyewitnesses as well have been victimized. at the hands of appellants during course of occurrence. It has also been found from their evidence that they are inter-related."

iii. Thirdly, on the applicability of Section 149 of the IPC, the High Court by relying on the decision of this Court in Kanhaiya Lal & Ors. v. State of Rajasthan, reported in (2013) 5 SCC 655, and Subal Ghorai & Ors. v. State of West Bengal, reported in (2013) 4 SCC 607, held that all the accused persons were members of the unlawful assembly and the common object of the unlawful assembly was to commit the crime as alleged. After a meticulous examination of the oral evidence on record, the High Court found that the prosecution was able to prove its case against some of the accused persons beyond reasonable doubt. Having said so, it acquitted the accused nos. 4, 5, 16, 18, 20, 21, and 22 respectively, as their possibility of being passive onlookers could not have been ruled out. The relevant observations read as under:-

"75. Thus after meticulously examining the evidence of PWs, including that of injured witnesses, it is found and held that prosecution has succeeded in proving its case beyond reasonable doubt. However, appellants Azam, Asarul, Aftab Alam, Shahabuddin, Md. Khaza, Barik, Md. Sikandar find their involvement as a member of an unlawful assembly but without having any sort of allegation at the end of prosecution and and as as revealed by the prosecution on its own showing presence of large numbers of persons, then in that circumstances presence of person as spectators at the place of occurrence cannot be ruled out.

76. Consequent there upon, they should at least are found entitled for benefit of doubt and accordingly are acquitted. They are on bail. Hence, they are directed to be discharged from the liability of bail bond."

38. In such circumstances referred to above, the appellants are here before us with the present appeals.

III. SUBMISSIONS ON BEHALF OF APPELLANT

39. Mr. Ashwani Kumar Singh, the learned Senior Counsel appearing for the sole appellant in Criminal Appeal No. 1187/2014, submitted that the FIR was lodged at 2:35 PM on the basis of the statement of the PW-20. However, the statements

of other witnesses indicate that the statement of the PW-20 was not the first information to the police. He submitted that it is inconceivable that the complainant was able to see and identify 72 assailants in a sudden assault. He further submitted that the Trial Court failed to properly appreciate the evidence so far as the accused no. 17 is concerned.

i. Mr. Singh further submitted that the PW-20 has named accused nos. 2, 10, 11, and 12 respectively as his assailants. The PW-20 had deposed that the accused no. 17 was loitering with accused nos. 16 and 21 respectively near the settlement land. The High Court has acquitted both the accused nos. 16 and 21 on the possibility of them being passive onlookers. Moreover, it has also come clearly on record that the land of many residents of the village Mahila is situated towards north of the settlement land. Hence, their presence cannot be said to be unusual. Notably, the accused no. 17 is not related to either the accused nos. 1 or 2 respectively, who have been claiming their right over the settlement land.

ii. Mr. Singh pointed out that the PWs 5 and 6 respectively, failed to identify the accused no. 17 as being present or having been as assailant. Further, the PW-3 has improved upon his version which has come on record in the statement of the PW-23, i.e., the Investigating Officer. The I.O. deposed that the PW-3 had not stated in his police statement that the accused no. 17 was armed with a spear.

iii. He argued that the PW-3 cannot be said to be a credible witness as the other witnesses, i.e., the PWs 5, 6, and 10 respectively have neither identified the accused no. 17 to be present nor have stated that he was one of the assailants even when all of them have stated to have arrived at the place of occurrence together. The statement of the I.O. also revealed that the PW-8 had not stated before him that the accused no. 17 had assaulted her husband.

iv. As regards the applicability of Section 149 of the IPC, Mr. Singh relied on the decision of this Court in Musa Khan v. State of Maharashtra, reported in (1977) 1 SCC 733, to submit that courts should not presume that any and every person who is present near a mob at any time or to have joined or left it at any stage, is guilty of every act committed by it from the beginning till the end. He further relied on the decision of this Court in Ranvir Singh & Ors. v. State of Madhya Pradesh, reported in (2023) 14 SCC 41, to fortify his submission that, in such cases, courts should evaluate the evidence more closely as there is always a tendency to implicate the innocent with the guilty. He argued that the oral testimony of the witness could be termed as consistent only when the evidence is found to be credible, and satisfies the conscience of the court.

v. In the last, Mr. Singh submitted that the High Court committed a serious error by not properly marshalling the evidence. It has merely referred to the evidence, and not appreciated the same. He submitted that Section 149 of the IPC demands

a greater degree of appreciation of the evidence. He urged that the impugned judgment be set aside and the appellant be acquitted.

40. Mr. Ashwani Kumar Singh, the learned Senior Counsel appearing for nine appellants in Criminal Appeal No. 1188/2014, would argue that the FIR is ante-timed and an afterthought. The incident allegedly took place on 20.11.1988 at about 8 AM. The I.O. recorded the statement of the informant at about 1:30 PM, and the FIR was registered on the same day at 2:35 PM. However, the same was transmitted to the concerned Magistrate after 2 days, as is apparent from the Column 8 of the said FIR. Therefore, on account of substantial delay in forwarding the FIR and non-explanation thereof, the FIR becomes doubtful and would come under the suspicion of being an exaggerated version.

i. He submitted that the PW-5 stated in his deposition that he reached the police station at about 9 AM alongwith all the five injured persons, i.e., the PWs 3, 6, 7, 10, and 20 respectively. The Sub-Inspector of Police prepared the papers of the injured persons after which they were taken to the hospital. Further, PW-3, in his cross-examination admitted that the Sub-Inspector reached the hospital at about 11 AM, wherein his statement was recorded. Whereas, the PW-4 deposed that the Sub-Inspector arrived at the place of occurrence at about 12 PM, where his statement was recorded by him.

ii. In light of the conflicting versions given by the aforesaid witnesses, the possibility that the statement of PW-20, on the strength of which the FIR was registered, might have been recorded after due deliberations and consultations cannot be ignored. In such circumstances, the statement given by PW-20 could not have been treated as the FIR. Consequently, the investigation could be termed as tainted, and it would be unjust to rely upon such a tainted investigation.

iii. With a view to fortify the aforesaid submission, Mr. Singh highlighted one another contradiction in the deposition of the PW- 22, i.e., the Medical Officer of the Azam Nagar Hospital and the PW-23, i.e., the I.O. The I.O. had deposed that he had gone to the hospital on the basis a O.D. Slip received from the hospital. Whereas, the PW-22 stated that he examined the injuries on the injured persons upon police requisition. He further submitted that there are contradictions in the form of material omissions in the testimony of the witnesses before the Trial Court.

iv. In the last, he submitted that the High Court failed to appreciate the evidence in its true prespective. The PW-5 had deposed that the accused no. 5 had hit him with a farsa on his right-hand, and the accused nos. 6, 8, and 22 respectively had assaulted him with a lathi. Strikingly, the High Court acquitted the accused nos. 5 and 22 respectively but affirmed the conviction of the accused nos. 6 and 8 respectively. He highlighted that the case against the accused nos. 6 and 8

respectively stood at par with that of the accused persons acquitted by the High Court.

IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE

41. Mr. Divyansh Mishra, the learned counsel would argue that the evidence on record clearly indicates the specific role played by the appellants in the assault. They all were heavily armed and laid an indiscriminate attack on the prosecution party in pursuance of their common object. He submitted that the appellant-accused no. 17 was identified by the PWs 3 and 8 respectively as one of the assailants. The accused no. 6 was identified as one of the assailants by the PW- 5, and was identified by the PW-20 as one of the members of the unlawful assembly.

i. Further, the PW-5 had deposed that the accused no. 8 assaulted him with a lathi. He was also identified as one of the members of the unlawful assembly by the PW-20. The PWs 3 and 20 respectively deposed that the accused no. 10 assaulted the PW-3 on his left leg with a gandasa and the PW-20 on his head with a pick-axe. The PWs 3 and 20 respectively deposed that the accused no. 12 was one of the assailants who assaulted them with a lathi. The PW-8 also witnessed the accused no. 12 assaulting her deceased husband Sarjug Mahto. The PW-6 deposed that the accused nos. 7 and 13 respectively had assaulted him. Mr. Mishra also submitted that the injuries sustained by the witnesses are consistent with the description of assault given by them in their testimonies.

ii. Mr. Mishra relied on this Court's decision in Joy Devaraj v. State of Kerala, reported in (2024) 8 SCC 102, to submit that the discrepancies in the testimonies of the witnesses must be viewed in the context of the chaotic incident, where multiple accused persons are alleged to have assaulted the witnesses with various weapons. In such circumstances, minor inconsistencies qua the weapons are natural and do not undermine the credibility of the witnesses. The discrepancies are not fatal to the case of the prosecution when the ocular version stands fully corroborated with medical evidence.

iii. He further submitted that the motive behind the incident was the previous enmity between the witnesses belonging to the Mahto community and the residents of Mahila village. He placed reliance on the decision of this Court in the case of Bikau Pandey & Ors. v. State of Bihar, reported in (2003) 12 SCC 616, to submit that the existence of the common object under Section 149 of the IPC is to be inferred from the conduct, language, and acts of the members of the unlawful assembly. The nature of the weapons carried by the members holds considerable significance. The common object of the assembly could be ascertained from the formation of the assembly, the arms carried, and the conduct of the members before, during, and after the occurrence.

iv. Applying the ratio of the aforesaid judgment, Mr. Mishra submitted that the injured witnesses, i.e., the PWs 3, 5, 6, and 20 respectively, have attributed specific overt acts to each of the appellants. The unlawful assembly was armed with deadly weapons like firearms, pick-axes, suli, gandasa, lathi, etc., which reflects on the common object.

v. Elaborating on the liability of the accused persons under Section 149 of the IPC, Mr. Singh submitted that the liability under Section 149 of the IPC is not dependent on the individual intention of each member of the assembly. He relied on the decision of this Court in the case of Vasant @ Girish Akbarasab Sanavale v. State of Karnataka, reported in 2025 SCC OnLine SC 337, to submit that a person may be held guilty for an offence committed by another member of the assembly, even if it was contrary to their personal intention, so long as the act was in prosecution of the common object and the individual continued to be a part of the assembly at the material time. The provision focuses on collective action directed at a shared objective.

vi. He further relied upon the decision of this Court in Mizaji & Ors. v. State of U.P., reported in 1958 SCC OnLine SC 95, to submit that where a body of persons go armed to take forcible possession of land, it is reasonably inferred that they knew murder was likely to be committed in the course of achieving the object.

vii. In the present case the appellants were armed with lethal weapons. Further, their presence at the place of occurrence as part of the mob is proved by the oral testimony of the witnesses. Therefore, it can be inferred that the appellants knew that death was likely to be caused by the assembly in an attempt to take forcible possession of the land.

V. ANALYSIS

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

43. We take notice of the fact that 24 accused persons were put to trial, excluding 5 persons who were declared as absconding accused. At the conclusion of the trial, 21 persons stood convicted. Whereas, 3 persons came to be acquitted. Out of the 21 convicts, 19 preferred appeals before the High Court. The High Court upheld the conviction of 12 and acquitted 7. Therefore, 12 convicts whose conviction was affirmed came before this Court in appeal. However, the appeals stood abated in so far as two appellants were concerned vide orders of this Court (Md. Muslim in Criminal Appeal No. 1187/2014 and Kaimuddin in Criminal

Appeal 1329/2014). Accordingly, the present two appeals concern 10 convicts. The chart as below would make the picture further clear:-

Before the TC		**Status**
A-1	Kaimuddin	Since Deceased
A-2	Md. Muslim	Since Deceased
A-3	Habib	
A-4	Azam	Acquitted by HC
A-5	Asarul	Acquitted by HC
A-6	Sattar	Appellant no. 1 in Crl. Appeal No. 1188/2014
A-7	Udua	Appellant no. 2 in Crl. Appeal No. 1188/2014
A-8	Razaque	Appellant no. 3 in Crl. Appeal No. 1188/2014
A-9	Md. Mashiyat	Appellant no. 4 in Crl. Appeal No. 1188/2014
A-10	Allauddin @ Allu	Appellant no. 5 in Crl. Appeal No. 1188/2014
A-11	Hoda	Appellant no. 6 in Crl. Appeal No. 1188/2014
A-12	Salahuddin @ Sallu	Appellant no. 7 in Crl. Appeal No. 1188/2014
A-13	Md. Mojib @ Mujiya	Appellant no. 8 in Crl. Appeal No. 1188/2014
A-14	Md. Mister	Appellant no. 9 in Crl. Appeal No. 1188/2014
A-15	Aslam	Acquitted by TC
A-16	Aftab Alam	Acquitted by HC
A-17	Zainul	Appellant no. 1 in Crl. Appeal No. 1187/2014
A-18	Sahabuddin @ Samuddin	Acquitted by HC
A-19	Garibul	
A-20	Md. Khaza	Acquitted by HC
A-21	Barik	Acquitted by HC
A-22	Md. Sikander	Acquitted by HC
A-23	Kalimuddin	Acquitted by TC
A-24	Allauddin	Acquitted by TC

44. There is no gainsaying that appreciation of evidence primarily falls within the domain of the trial court, and the first appellate court. However, if the courts below could be said to have faltered by overlooking material aspects resulting in the miscarriage of justice, this Court in exercise of its jurisdiction under Article 136 is dutybound to intervene and look into the matter closely.

A. Interpretation of Section 149 of the Indian Penal Code

45. Albeit the essentials of Section 149 of the IPC are oft-repeated and firmly established, they are reiterated herein for the sake of convenience:

i. There must be an assembly of five or more persons;

ii. An offence must be committed by any member of that unlawful assembly;

iii. The offence committed must be in order to attain the common object of that assembly, or

iv. The members of the assembly must have the knowledge that the particular offence is likely to be committed in order to attain the common object.

46. Section 149 of the IPC stipulates that if an offence is committed by any member of an unlawful assembly (of 5 or more persons) in prosecution of the common object (as defined in Section 141 of the IPC) of that assembly, or if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who, at the time of committing that offence, was a member of that assembly, will be guilty of that offence.

47. The first limb of the provision envisages the commission of an offence by a member of an unlawful assembly in order to attain the common object of that assembly. Whereas, the second limb of the provision encapsulates knowledge on the part of a member of the unlawful assembly qua the likelihood of such offence being committed in order to attain the common object.

48. The distinction between the two limbs of Section 149 of the IPC was elucidated in the decision of Mizaji v. State of U.P., reported in 1958 SCC OnLine SC 95. The relevant observations are reproduced hereinbelow:-

"6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members.

Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149.

Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabid Ali case [(1873) 20 WR 5 Cr] that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object.

That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

(Emphasis supplied)

49. The expression "in prosecution of the common object" means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In Charan Singh v. State of U.P., reported in (2004) 4 SCC 205, this Court held that the test for determining the "common object" of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident. The relevant observations read as thus:-

"13. Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141.

It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly,

it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it.

A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object.

There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

14. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances.

It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful.

Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful

one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti."

(Emphasis supplied)

50. To put it briefly, Section 149 of the IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of a common object. The essentials of Section 149 were succinctly explained by the Constitution Bench in the decision of Mohan Singh v. State of Punjab, reported in AIR 1963 SC 174. It reads thus:-

"8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object.

It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more."

(Emphasis supplied)

51. Undoubtedly, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a "member" of the unlawful assembly.

52. While ascertaining this fact, it is of utmost importance to consider whether the assembly consisted of some persons who were merely passive onlookers who had joined the assembly as a matter of idle curiosity, without the knowledge of the common object of the assembly, since such persons cannot be said to be

members of the unlawful assembly. We say so because, the nucleus of Section 149 is "common object".

a. Innocent Bystander v/s Member of an Unlawful Assembly

53. Once the two broad essentials of Section 149 are fulfilled, i.e., (1) an offence is committed by any member of an unlawful assembly in prosecution of the common object, or (2) if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who at the at the time of commission of the offence was a member of the assembly is to be held guilty of that offence.

54. At the same time, mere presence at the scene does not ipso facto render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object. The existence of a common object is to be inferred from the circumstances of each case, such as:

a. the time and place at which the assembly was formed;

b. the conduct and behaviour of its members at or near the scene of the offence;

c. the collective conduct of the assembly, as distinct from that of individual members;

d. the motive underlying the crime;

e. the manner in which the occurrence unfolded;

f. the nature of the weapons carried and used;

g. the nature, extent, and number of the injuries inflicted, and other relevant considerations.

i. Rule of Prudence in Convicting Members of an Unlawful Assembly

55. This Court, as a matter of caution, has enunciated parameters to safeguard innocent spectators or passive onlookers from being convicted merely on account of their presence. This cautionary rule, however, does not dilute the doctrine of constructive liability, under which proof of an overt act by each individual is not

indispensable. Where the presence of a large number of persons is established and many are implicated, prudence mandates strict adherence to this rule of caution.

56. In Masalti v. State of Uttar Pradesh, reported in 1964 SCC OnLine SC 30, 40 persons were charged with having committed several offences, the principal ones of which were under Section 302 r/w Section 149 of the IPC. The accused persons were alleged to be armed with guns, spears, swords, gandasas, and a lathi. While dealing with the oral evidences, the High Court observed that most of the witnesses belonged to the prosecution faction. Further, the evidence of all the witnesses gave an account of the incident in similar terms.

The High Court held that unless at least four witnesses give a consistent account against the accused persons, the allegations against them cannot be said to have been proved beyond reasonable doubt. A Four-judge Bench of this Court approved the test applied by the High Court and held that a conviction in cases involving a large number of offenders and victims can be sustained only when supported by the consistent account of two or three, or more, reliable witnesses. The relevant observations are reproduced hereinbelow:-

"16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.

In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case."

(Emphasis supplied)

57. In Muthu Naicker v. State of T.N., reported in (1978) 4 SCC 385, two factions in a village were involved in a dispute over the laying of pipelines. In the facts of the case, 28 persons were put to trial and 34 witnesses were examined, 6 of whom were injured eyewitnesses. The Court noted that whenever a fight amongst factions happens in rural society, numerous people appear on the scene as curious spectators. In such a case, mere presence in the assembly shall not be treated as evidence of the fact that the person was a member of the unlawful assembly. It further observed that the presence of those accused would be accepted as satisfactorily proved if there was reliable evidence of at least three witnesses against them. The relevant extracts have been reproduced hereinbelow:-

"6. Where there is a melee and a large number of assailants and number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence and where the evidence as in this case is undoubtedly partisan evidence, the distinct possibility of innocent being falsely included with guilty cannot be easily ruled out. In a faction-ridden society where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country.

Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in a situation as it unfolds in the case before us, the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution. It is in such a situation that this Court in Masalti v. State of U.P. [AIR 1965 SC 202 : (1964) 8 SCR 133 : (1965) 1 Cri LJ 226] adopted the course of adopting a workable test for being assured about the role attributed to every accused. To some extent it is inevitable that we should adopt that course.

7. Before we proceed to look into the evidence it is also necessary to make it clear that whenever in uneventful rural society something unusual occurs, more so where the local community is faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating in the occurrence but as curious spectators. In such an event mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly.

Vicarious liability would attach to every member of the unlawful assembly if that member of the unlawful assembly either participates in the commission of the

offence by overt act or knows that the offence which is committed was likely to be committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly and becomes or continues to remain a member of the unlawful assembly. If one becomes a member of the unlawful assembly and his association in the unlawful assembly is clearly established, his participation in commission of the offence by overt act is not required to be proved if it could be shown that he knew that such offence was likely to be committed in prosecution of the common object of the unlawful assembly.

But while finding out whether a person was a curious spectator or a member of an unlawful assembly it is necessary to keep in mind the life in a village ordinarily uneventful except for small squabbles where the village community is faction ridden and when a serious crime is committed people rush just to quench their thirst to know what is happening. In this case we will have occasion to point out that there are accused who are convicted with the aid of Section 149 of the IPC but in respect of whom we have no doubt in our minds that they were mere spectators and could hardly be said to be members of the unlawful assembly.

39. Now, turning to the case of the rest of the accused, we would ordinarily accept the presence of those accused as satisfactorily proved in respect of whom at least there is reliable evidence of three Criminal Appeal No. 1187-1188 of 2014 Page 52 of 74 witnesses and while analysing the evidence we would be rather slow to accept the evidence of PW 19 standing by itself who, as we would presently point out, has been materially contradicted by her statement under Section 161, CrPC Approaching the matter from this angle, we would briefly set out the evidence. The presence of Accused 6 is consistently spoken to by PWs 1, 19, 20 and 24 and that evidence establishes the fact that Accused 6 was a member of unlawful assembly and charge under Section 148 IPC is brought home to him.

54. Turning now to the Charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30, it must be pointed out that under these charges all the accused were convicted with the aid of Section 149 IPC in respect of specific offences committed by each individual accused in the case of one or the other prosecution witness. Without elaborating we must at once say that in a case of this nature where a large crowd collected all of whom are not shown to be sharing the common object of the unlawful assembly, a stray assault by any one accused on any particular witness could not be said to be an assault in prosecution of the common object of the unlawful assembly so that the remaining accused could be imputed the knowledge that such an offence was likely to be committed in prosecution of the common object of the unlawful assembly.

To illustrate, when it is alleged that a certain accused pelted a stone and caused an injury to some one who came within the trajectory of the stone, could it be said that all other members of the unlawful assembly knew that such an offence

would be committed? We are, therefore, not inclined to sustain the conviction of the accused for charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30 and accordingly the conviction of the accused under the aforementioned charges and the sentence imposed for the same are set aside and they are acquitted of these charges."

(Emphasis supplied)

58. Where allegations are levelled against a large number of persons, the courts must carefully scrutinize the evidence, more particularly, if the evidence available on record is hazy. In Sherey v. State of U.P., reported in 1991 Supp (2) SCC 437, six eyewitnesses had deposed about the incident, and the complainant had attributed overt acts to nine accused persons. One of the eyewitnesses, therein in his deposition, named further five accused persons who attacked the deceased.

Regarding the others, he had mentioned that the accused persons were armed with lathis; no overt act was attributed to anyone. In such circumstances, this Court cautioned saying that the evidence of witnesses should be subjected to a close scrutiny visà- vis their former statements. This Court thought it fit to convict only those who were consistently named from the stage of the earliest report. The relevant extract has been reproduced thus:-

"4. We have carefully gone through the evidence. We have no doubt that all the eye-witnesses were present. Nothing significant has been elicited in their cross-examination. However, the eye-witnesses simply named these appellants and identified them. So, the question is whether it is safe to convict all the appellants. In a case of this nature, the evidence of the witnesses has to be subjected to a close scrutiny in the light of their former statements. The earliest report namely the FIR has to be examined carefully. No doubt in their present deposition they have described the arms carried by the respective accused but we have to see the version given in the earliest report.

In that report PW 1 after mentioning about the earlier proceedings has given a fairly detailed account of the present occurrence. He has mentioned the names of the witnesses and also the names of the three deceased persons. Then he proceeded to give a long list of names of the accused and it is generally stated that all of them were exhorting and surrounded the PWs and the other Hindus and attacked them. But to some extent specific overt acts are attributed to appellants 1, 4, 5, 7, 8, 10, 17, 22 and 25. It is mentioned therein that these nine accused were armed with deadly weapons and were seen assaulting the deceased Ram Narain and others.

Now in the present deposition he improved his version and stated that in addition to these nine accused, five more persons also attacked the deceased and others. In view of this variation we think that it is safe to convict only such of the appellants who are consistently mentioned as having participated in the attack from the stage of earliest report. With regards the rest PW 1 mentioned in an omnibus way that they were armed with lathis. He did not attribute any overt act to any one of them. Further, the medical evidence rules out any lathis having been used. The doctor found only incised injuries on the dead bodies and on the injured PWs.

Therefore, it is difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they are charged. We feel it is highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. But so far as the above nine accused are concerned the prosecution version is consistent namely that they were armed with lethal weapons like swords and axes and attacked the deceased and others. This strong circumstance against them establishes their presence as well as their membership of the unlawful assembly."

(Emphasis supplied)

59. In Akbar Sheikh v. State of W.B., reported in (2009) 7 SCC 415, this Court observed that in cases of convoluted facts, the rule of prudence should be applied. The Court held that something more than their being cited as an accused in a witness box would be necessary. There must be some material before the Court to form an opinion that the accused had shared a common object. The relevant observations read as under:-

"41. In a case of this nature, the rule of prudence should be applied. Something more than their being cited as an accused in a witness box would be necessary. The court must have before it some materials to form an opinion that they had shared a common object. It has not been denied or disputed that whereas five brothers were implicated as one brother had deposed against PW 9 and sons had also been implicated because a father had deposed against them. Whereas PW 1 in his deposition denied that the accused deposed in the case in which a son was found to be guilty of murder of Dol Gobinda Acharya (ex-Pradhan), PW 9 admitted that he committed the said murder in broad daylight. The defence that there were other reasons for their false implication cannot also be ruled out.

43. We are not unmindful that Akbar and Kanku have been named by both the witnesses but even against them no overt act has been attributed. We, therefore, are of the opinion that doubts legitimately arise as regards their presence and/or sharing of common object. While saying so, we are not oblivious of the fact that the incident had taken place at the dead of night. Enmity between two groups in the village is admitted. But, we cannot also lose sight of the fact that a person

should not suffer rigorous imprisonment for life although he might have just been a bystander without anything more."

(Emphasis supplied)

60. In Subal Ghorai (supra), about 200/250 persons armed with weapons had launched an attack, in which three persons succumbed to their injuries. The trial court convicted 36 persons. The Court held that the constructive liability enshrined in Section 149 of the IPC can be extended to the acts done only in pursuance of the common object. The commission of an overt act by such a person would prove that he shared the common object. It ought to be proved that the accused was not only a member of the unlawful assembly but shared the common object of the assembly at all stages that he was a part of the assembly. At the same time, the Court left a note of caution stating that the courts must guard against the possibility of convicting mere passive onlookers. The relevant observations read thus:-

"52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object.

The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses "First", "Second", "Third", "Fourth" and "Fifth" of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial.

If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults

intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly.

Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object.

What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution."

(Emphasis supplied)

61. The law on the point can be summarized to the effect that where there are general allegations against a large number of persons, the court must remain very careful before convicting all of them on vague or general evidence. Therefore, the courts ought to look for some cogent and credible material that lends assurance. It is safe to convict only those whose presence is not only consistently established from the stage of FIR, but also to whom overt acts are attributed which are in furtherance of the common object of the unlawful assembly.

b. Principles of Law relating to Appreciation of Evidence of the Witnesses

62. This Court in State of Madhya Pradesh v. Balveer Singh, reported in 2025 SCC OnLine SC 390, wherein one of us, J.B. Pardiwala, J., was a part of the

Bench, had underscored two principal considerations for assessing the value of the evidence of eyewitnesses. It read thus:-

"57. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence.

In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere bald assertion of tutoring, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raises a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(Emphasis supplied)

63. At this stage, we would also like to discuss the established principles of law on the evaluation of the testimony of injured eyewitnesses. The testimony of an injured eyewitness is accorded a special status in law because the injuries on the person lends credence to the fact that the witness was present at the scene of the occurrence. The courts lend credence to the testimony of an injured eyewitness, assuming that the witness would not want to let his actual assailant go unpunished. Thus, unless there are cogent grounds for disbelieving the evidence of an eyewitness due to major contradictions and discrepancies, ordinarily, such evidence should be relied upon.

64. In Balu Sudam Khalde & Anr. v. State of Maharashtra, reported in (2023) 13 SCC 365, one of us, J.B. Pardiwala, J., had the benefit of expounding the law on this subject as follows:-

"26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

65. Keeping in view the above principles of law and the rule of caution, we shall now look into and discuss the evidence on record. The case in hand revolves around the evidence of five injured eyewitnesses, and two eyewitnesses to the occurrence. Upon a careful scrutiny of the evidence, we find that the oral testimony of the prosecution witnesses is marred by material inconsistencies and embellishments striking at to the root of the matter.

66. The oral evidence of PW-20, an injured eyewitness, on whose police statement the FIR was registered, would indicate that he had no dispute with the accused persons regarding the settlement of land. Further, he denied stating before the police that the accused persons were hiding because they were opposed to the harvesting of paddy. He was unable to identify the persons harvesting the paddy, and rather described them as labourers.

In the fardbeyan, he stated that a day prior to the incident, he had harvested paddy from the field that was allotted to him by the Government and, for this reason, the accused nos. 2, 16, 17, and 21 respectively, alongwith 400 to 500 other persons, were hiding with weapons in order to stop him from further harvesting the paddy. More importantly, he admitted that he was unable to disclose the names of the assailants as stated by the PWs 3, 6, and 10 respectively, as he fell unconscious after the assault. However, in the fardbeyan, while naming forty-one assailants, the PW-20 stated that the PWs 3, 5, 6, and 10 respectively had told him about the assailants.

67. The deposition of the PW-20 stands at variance with his fardbeyan. In his oral testimony, the PW-20 admitted that he fell unconscious after the assault and, therefore, was unable to name the assailants who had attacked the PWs 3, 6, and

10 respectively. In stark contrast, his fardbeyan categorically records that the PWs 3, 5, 6, and 10 respectively had informed him that forty others, armed with various weapons, had participated in the assault. This contradiction strikes at the root of his credibility. To add to this, the PW-3 deposed that he had never disclosed the names of forty assailants to the PW- 20, thereby further undermining the credibility of the witness.

68. The PW-3, an injured eyewitness, in his oral evidence has attributed overt acts to the accused nos. 12 and 10 respectively. He stated that the accused no. 10 assaulted him with a gandasa on his leg. However, the medical evidence on record indicates not only the absence of any injury on the leg of the witness but also that an injury caused by a gandasa would ordinarily result in an incised wound. It further emerges from his deposition that he reached the scene of occurrence later, upon hearing the sound of two gunshots. He also admitted that he had not disclosed the names of forty accused persons to the PW-20.

i. Conflict between the Ocular Version and the Medical Evidence

69. The law on conflict between the medical evidence and ocular evidence has been succinctly explained in Abdul Syeed v. State of M.P., reported in (2010) 10 SCC 259, succinctly explained thus:-

"Medical evidence versus ocular evidence

32. In Ram Narain Singh v. State of Punjab [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727] this Court held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case.

38. In State of U.P. v. Hari Chand [(2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] this Court reiterated the aforementioned position of law and stated that : (SCC p. 545, para 13)

"13. In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

(Emphasis supplied)

70. The PW-5, an injured eye-witness, has in his oral evidence attributed overt acts to the accused nos. 8 and 6 respectively. However, the medical evidence does not support the version of assault as narrated by the witness. While both, i.e., the accused nos. 8 and 6 respectively, are alleged to have assaulted the witness with lathis, the medical evidence discloses only incised wounds on his body. His oral testimony further indicates that he had reached the scene of the occurrence much after the deceased had already been shot.

71. The oral testimony of the PW-6, another injured eyewitness, would reveal that he was assaulted even before he could reach the scene of the occurrence. It appears from the materials on record that his statement was recorded on 30.11.1988, i.e., 10 days after the incident. Whereas, according to the investigating officer, he had recorded the statement of the said witness on 21.11.1988. The PW- 6 has attributed overt acts to the accused nos. 14, 7, and 13 respectively; however, no other witness has said anything about the complicity of the accused nos. 14, 7, and 13 respectively. From the oral testimony of PW-10, it emerges that he was assaulted by one Jalla and Masiyan, who were neither named as accused in the FIR nor charge-sheeted. He further denied having stated before the police that the accused no. 10 had assaulted him.

72. Further, what is significant from the oral testimony of the PW-4 is that he does not say anything about the presence of any of the appellants. On the contrary, he states that there were a large number of persons at the spot, and he was unable to distinguish between the assailants and the spectators. However, the PW-23, i.e., the investigating officer, has deposed that the PW-4 had disclosed before him many names. Further, the PW-8 had not stated that the accused nos. 14, 11, and 17 respectively had assaulted her husband. In fact, she had also disclosed different names.

73. In the present case, prudence demands that we should believe the presence or participation of only those accused as satisfactorily established with the aid of at least two reliable witnesses. The oral testimonies of the PWs 3 and 5 respectively, also suffer from material contradictions.

74. Likewise, the accused nos. 7, 13, and 14 respectively have been implicated only by the PW-6. Their presence or participation finds no support from the testimony of any other witness, nor stands corroborated by any intrinsic evidence on record. So far as accused no. 9 is concerned the only evidence against him is the identification by the PW-20, which, in the absence of any supporting evidence, cannot be regarded as sufficient to bring home his guilt. The presence of the accused no. 10 is also doubtful.

75. According to the PW-3 he was assaulted by accused no. 10 with a gandasa. However, the evidence reveals something else. The fardbeyan recorded at the instance of the PW-20 does not name the accused no. 10 as one of the assailants. Further, there is nothing cogent or credible to indicate the presence or participation of the accused nos. 11 and 12 respectively. Lastly, there is no credible evidence even against the accused no. 17 except an omnibus identification by the PW-20.

76. In the aforesaid view of the matter, we hold that the accused nos. 6, 7, 8, 9, 10, 11, 12, 13, and 14 respectively are entitled to the benefit of doubt. Their conviction cannot be sustained in the eye of law.

77. A common man may legitimately argue that if all the eyewitnesses are to be disbelieved then who is to explain the various injuries suffered by them. In other words, a common man may say that it is not even the case of the accused persons that no injuries were suffered by the eyewitnesses or that they were self-inflicted. In such circumstances, why should the eyewitnesses be outrightly disbelieved?

78. It needs to be emphasized that injuries on the eyewitnesses, at the best, may ensure their presence at the scene of occurrence but that is not enough. Before a criminal court even accepts the testimony of an injured eyewitness, it has to be satisfied that he is a truthful witness and had no reason to falsely implicate the accused persons. We have extensively explained or rather discussed the various infirmities in the oral evidence of all the eyewitness. These eyewitnesses in their police statements recorded under Section 161 of the Cr.P.C. have gone to the extent of implicating even those persons who were ultimately not arrayed as an accused in the chargesheet including those who ultimately came to be acquitted by the trial court.

79. In cases like the one in hand, the courts must make an attempt to separate grain from the chaff, the truth from falsehood, yet this could only be possible when the truth is separate from the falsehood.

80. In the aforesaid context, we may refer to the decision of this Court in Balaka Singh & Ors. v. State of Punjab, reported in (1975) 4 SCC 511. In paragraph 8, this Court observed thus:-

"8. The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the previous murder case. It was to wreak fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with

one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other.

A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood.

Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

(Emphasis supplied)

c. Whether the Prosecution could be said to have proved its case Beyond Reasonable Doubt?

81. In Ramakant Rai v. Madan Rai, reported in (2003) 12 SCC 395, this Court explained the meaning of "reasonable doubt". It means doubts that are free from abstract speculation, not a result of an emotional response, which are actual and substantial doubts on the guilt of the accused person, and not vague apprehensions. It cannot be an imaginary, trivial or a possible doubt, but a doubt based upon reason and common sense. The relevant observations have been reproduced hereinbelow:-

"23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to "proof" is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case,

different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] ."

(Emphasis supplied)

82. It cannot be said that the prosecution has proved its case beyond reasonable doubt. A case attains that standard when all its links are firmly established and recognizable to the eyes of a reasonable person. In the present matter, the prosecution version does not appear to stem from a truthful narration of facts. 83. The oral testimonies of the witnesses neither corroborate each other nor align with the medical records. The various contradictions in the form of material omissions go to the root of the matter, and in such circumstances, it cannot be held that the prosecution has discharged its burden of proof.

B. Whether the Statement of the PW-20 could have been treated as an FIR?

84. The FIR, based on the statement of the PW-20 recorded by the investigating officer, arrayed as many as 72 persons as accused, several of whom find no mention in the statements of the prosecution witnesses. Out of these 72 accused persons, chargesheet was filed only against 24 persons who were eventually put to trial. What is indeed disconcerting is that the individuals against whom direct and specific allegations were levelled have either not been named in the FIR or have been inexplicably dropped from the chargesheet.

The materials on record do not indicate what action, if any, was taken by the police against them. 85. We consider it necessary to address yet another pertinent issue. It appears from the oral evidence of the injured eyewitnesses and other eyewitnesses that the fardbeyan of PW-20 could not have been treated as the first information report. A bare perusal of the oral evidence of the PWs 3, 4, 5, 8, and 22 respectively, would indicate that the information about the commission of the offence had reached the police much prior to the recording of the statement of the PW-20 and lodging of the FIR. We have arrived at this conclusion on the basis of the reading of the following evidence:

a. First, the oral evidence of the Investigating Officer (PW-23) reveals that he received an O.D. Slip from the Government Hospital, Azam Nagar, and thereafter, he proceeded towards the hospital to record the fardbeyan of the PW-20. Whereas, the PW-22 (Medical Officer of the Government Hospital, Azam Nagar) stated that he had examined the injured persons on police requisition.

b. Secondly, the oral evidence of the PW-23, i.e., the I.O. indicates that he recorded the statement of the PW-20 around 1:25 PM.

i. However, the PW-3 testified that when he regained consciousness at the scene of occurrence, he saw that the police had arrived. It was around 11:00 AM to 12:00 noon, and his statement was recorded.

ii. The PW-5, on the other hand, stated that he regained consciousness in the boat while being taken to the hospital, and that all the injured persons first went to the police station around 9 AM, where their statements were recorded, and thereafter, proceeded to the hospital.

iii. The PW-4, another eyewitness to the incident, stated that after the injured persons were taken to the hospital, the police arrived at the scene of occurrence at around 12:00 noon to 1:00 PM and recorded his statement. The testimony of the PW 4 in this regard finds corroboration from the testimony of the PW-8. She stated that the police arrived approximately two hours after the incident and interrogated her.

c. Thirdly, the PW-20 in his oral evidence admitted that after the assault he fell unconscious, and hence, he was not able to identify the assailants of the deceased

and the PWs 3, 6, and 10 respectively. Whereas, in his fardbeyan/statement to the police, it is recorded that the PWs 3, 5, 6, and 10 respectively had informed him that forty other persons, armed with various weapons, had assaulted them.

86. From the foregoing, it appears that the statement of the PW-20 could not have been treated as the FIR, since the first information about the occurrence had already reached the police prior to its recording of statements at the hospital. Resultantly, the statement of PW-20 becomes a police statement recorded under Section 161 of the CrPC.

87. In State of A.P. v. Punati Ramulu & Ors., reported in 1994 Supp (1) SCC 590, this Court observed that once it is found that the investigating officer deliberately failed to record the first information report on receipt of the information of a cognizable offence, and had prepared the FIR after deliberations, consultations and discussions, the FIR would fail to inspire confidence. The relevant observations have been reproduced below:-

"5. Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues.

Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."

(Emphasis supplied)

88. In Ranbir Yadav v. State of Bihar, reported in (1995) 4 SCC 392, the police officer had already started to investigate about a riot in the night, however, he did not record the statements of any of the persons he talked to. The FIR of the incident only came to be reported in the next morning on the basis of the information given by one of the witnesses. This Court held that the courts below

erred in treating the statement as an FIR as the same was a statement under Section 161 of the CrPC. The following are the relevant excerpts:-

"38. Having gone through the evidence of PW 96 we are constrained to say that the courts below were not justified in treating Ext. 10/1 as an FIR. Undisputedly PW 96 had reached Village Laxmipur Bind Toli in the night of 11-11-1985 to investigate into the two cases registered over the incident that took place in the morning. He deposed that after reaching the village at 10.30 p.m. he got information about the second incident also and in connection therewith he had talked to several persons. He, however, stated that he did not record the statements of the persons to whom he talked to. In cross-examination it was elicited from him that on the very night he learnt that houses of some people had been looted and set on fire, some people had been murdered and that some villagers were untraceable.

While being further cross-examined he volunteered that he had started the investigation of the case registered over the second incident in the same night. In the face of such admissions of PW 96 and the various steps of investigation he took in connection with the second incident there cannot be any escape from the conclusion that the report lodged by PC PW 1 on the following morning could only be treated as a statement recorded in accordance with Section 161(3) of the Code and not as an FIR. The next question, therefore is whether the evidence of PC PW 1 is inadmissible as contended by Mr Jethmalani."

(Emphasis supplied)

89. There is no gainsaying that an FIR must faithfully reflect the information furnished by the informant at the very time it is presented. The true test for an information to qualify as an FIR lies in whether it is capable of supplying grounds for the police officer to suspect the commission of a cognizable offence. Once this requirement is met, the officer is bound to reduce it into writing.

90. In the present case, in the natural course of events, the PWs 3, 4, 5, and 8 respectively, would have disclosed the commission of the alleged offence to the police. The very first statement relating to the two homicidal deaths ought to have been treated as an FIR. However, the daily diary or the roznamcha entry of the police station about the visit of the witnesses to the police station or the visit of the investigating officer to the scene of occurrence or even visit of the investigating officer to the hospital was not brought on record which further creates a doubt as regards the genuineness of the FIR. In such circumstances, the statement of the PW-20 reduced as an FIR fails to inspire confidence.

VI. CONCLUSION

91. In the result, the appeals succeed and are hereby allowed. The impugned judgment and order to the extent of holding the appellants herein guilty of the offences they were charged with, is set aside. The appellants are accordingly acquitted. Their bail bonds stand discharged.

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

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

New Delhi;

October 07, 2025

IN THE SUPREME COURT OF INDIA

Rajendra Singh and Ors.
Vs.
State of Uttaranchal Etc.

[Criminal Appeal Nos. 476-477 of 2013]

HEADNOTE – Only that part of the disclosure statements under Section 27 of Evidence Act would be admissible which supports the recovery of an object, and not that part which supports the maker's statement about the use of the object in the crime, as it would amount to a confession being inadmissible under the Act.

JUDGMENT

Pankaj Mithal, J.

1. All the three appellants, father, son and son-in-law are accused in Session Trial No.215 of 2000 for the murder of Pushpendra Singh, son of Diler Singh.

2. They were acquitted by the Trial Court but have been convicted under Section 302 of Indian Penal Code (for short, 'IPC') with life imprisonment and a fine of Rs.10,000/- each by the High Court vide the judgment and order dated 02.01.2013 passed in Government Appeal No.347 of 2007 (State of Uttaranchal vs. Rajendra Singh and Ors.).

3. All the three accused have challenged the aforesaid judgment and order of their conviction and sentence by means of this appeal.

4. The prosecution story in brief is that on the morning of 03.06.2000, the appellant no.1 - Rajendra Singh and his son appellant no.2 - Bhupender Singh started digging the field of Diler Singh, the father of the deceased, for laying down plinth. Due to the aforesaid action of the appellants, an altercation took place between them and Diler Singh.

5. On the same day at about 1.30 p.m. when the deceased - Pushpendra Singh was sitting at the Jogither diversion (Tiraha), his father - Diler Singh who had gone to the flour mill of Kakka Singh, while returning accompanied by his brother-in-law - Papender Singh, saw the appellants coming on the motorcycle driven by the appellant no.3 - Ranjeet Singh at the said spot. They parked their vehicle and exhorted the deceased who started running followed by all the three accused persons armed with swords and carrying a kanta (a sharp edged weapon).

6. The deceased ran for some time towards the northern fields raising an alarm. Witnessing the same, Diler Singh, Papender Singh and some other persons

including Jwala Singh started running behind the accused persons to save the deceased. The deceased, attempting to save his life, entered into the house of one Mukhtyar Singh.

The appellants also entered the said premises and inflicted blows with swords and Kanta upon the deceased who ultimately died on the spot. The father of the deceased Diler Singh (PW-1) on the same day lodged an FIR at 02.50 p.m. at Police Station, Nanak Matta under Section 302 of IPC (Section 103(1) BNS). The panchnama was prepared, statement of the witnesses were recorded, site plan was also prepared and the dead body was sent for post-mortem, which was conducted the next day.

7. The appellant nos.1 and 3 were arrested on 05.06.2000 and one sword and the Kanta, the alleged weapons of crime, were recovered as per the disclosure made by the appellants.

8. The appellant no.2 was arrested on 07.06.2000 and the sword used by him in the commission of the offence was recovered based on his disclosure.

9. Upon completion of investigation, the police submitted the chargesheet on 14.06.2000 charging all the three accused for an offence under Section 302 read with Section 34 of the IPC. 10. We had heard Shri Rajul Bhargava, senior advocate and Shri Siddharth Agarwal, senior advocate along with Shri Vivek Singh, advocate-on-record from the side of the appellants and Shri Kuldeep Parihar, D.A.G and Ms. Anubha Dhulia, advocate for the State of Uttarakhand.

11. The primary submission on behalf of the appellants is that they have been falsely implicated. There is no reliable evidence to establish the identity of the appellants as the alleged assailants. There is no eyewitness to the incident, except the lady of the house into which the deceased had entered to save his life. There are large contradictions in the statements of the witnesses and that the discovery of the weapons of crime is false and otherwise also has no relevance to establish the identity of the accused with that of the assailants.

12. The State counsel has stoutly opposed the submissions advanced from the side of the appellants and has submitted that all the three accused were seen by the witnesses chasing the deceased, who had entered the house of Mukhtyar Singh, and assaulted him with the swords and the kanta which fact was witnessed by the lady of the house, Amarjeet Kaur (PW-7). The clothes of PW-7 which had blood stains were sealed by the police and the FSL report confirmed the presence of blood on the clothes.

On the disclosure of the appellants, the weapons of crime were recovered, and they admitted to having committed the crime with the same. The above evidence leaves no scope for doubt about the commission of the offence at the hands of the

appellants. Therefore, the High Court rightly reversed the decision of acquittal recorded by the Trial Court, so as to convict the appellants for the offence under Section 302 of IPC and sentenced them to life imprisonment.

13. There is no dispute to the fact that on the morning of the fateful day, appellant nos.1 and 2 had a quarrel with the father of the deceased - Diler Singh, as they were stopped from digging the field for laying the plinth. The aforesaid altercation between the two groups may be a motive to attack and kill the son of Diler Singh, but that by itself would not be sufficient to rope in the appellants unless their involvement in the offence is established by cogent evidence. Therefore, the primary issue which arises for our consideration is, whether the appellants are the real persons who chased the deceased and killed him. This has to be ascertained on the basis of the ocular evidence.

14. In this connection, the primary evidence is of the lady of the house Amarjeet Kaur (PW-7). The said witness, who is the wife of Mukhtyar Singh, the owner of the house, clearly deposed that the three accused persons killed the boy in the house. They entered carrying swords and other weapons in their hands. She tried to refrain them from assaulting the boy, and in that process, her kurta received blood stains. The victim fell down on the dewan after sustaining injuries. Nobody inflicted any injury after the victim fell on the dewan. The victim's father and other people came there within half an hour of the departure of the assailants. The police took her blood-stained kurta and even the bedsheet in their possession, which she identified as Exhibit-1 and Exhibit-2. She categorically stated that she did not know the name of the accused persons.

15. The aforesaid testimony of PW-7 clearly reflects that she had seen three unknown persons, assaulting the deceased with weapons like swords and that the deceased fell down on the dewan, whereafter the assailants left without inflicting further injuries upon him. The father of the deceased and other persons came there only after about half an hour. A careful reading of the testimony of PW-7, as a whole, would indicate that she did not know the names of the accused persons and thus, could not disclose their identity. She had only seen three persons attacking and assaulting the boy but could not identify those persons.

16. No identification parade was carried out and PW-7 was not even asked to confirm whether the appellants were the accused persons. The police failed to get the appellants identified by her. Therefore, it is doubtful whether the persons who assaulted the deceased were actually the appellants.

17. The prosecution sought to establish the identity of the accused persons with the help of testimony of Diler Singh (PW-1) and Jwala Singh (PW-2).

18. A close look at the testimony of PW-1 would reveal that on 03.06.2000 at about 1.30 p.m., on returning from the flour mill of Kakka Singh, he saw his deceased son sitting at Jogither diversion on a bench, when all the three appellants came on motorcycle carrying naked swords. They parked the motorcycle and threatened/provoked his son, whereupon his son started running towards the fields. The appellants chased him with swords and kanta. His son kept crying "Save Me, Save Me".

Thereupon, on hearing the scream, he and his brother-in-law - Papender Singh, ran after the accused persons to save the deceased. They were followed by Jwala Singh, Bachan Singh and Bhagat Singh. The deceased entered the house of Mukhtyar Singh to save himself. The appellants also went inside. He saw the appellants striking his son with weapons. His son fell on the dewan and died due to the injuries. The appellants, thereafter, fled from the scene.

19. In his cross-examination, he admitted that the Jogither diversion is about 1.5 kms. away from his house and that there are three to four shops at the diversion itself. The house of Mukhtyar Singh is also at a distance of 1.25 kms. At the time of the incident, people were working in the fields and they also saw the appellants chasing his son. He also stated that he chased the appellants for about 10-15 minutes towards the house of Mukhtyar Singh and was about 40 to 50 steps behind them when his son entered the house of Mukhtyar Singh.

The appellants attacked his son with swords and Kanta even after he fell down on the dewan. They kept hitting him, mainly on the head, for about a minute. Amarjeet Kaur (PW-7) had tried to save his son and, in the process, her clothes got blood stains. Thereafter, he hugged his son due to which his clothes also got blood stains. He went to the police station in those very clothes, but the clothes were neither taken nor seized by the police.

20. If the testimony of PW-1 is seen in the light of the testimony of PW-7, there are striking contradictions in the statements of the two witnesses. The testimony of PW-7 is quite trustworthy and natural. She is an independent witness and therefore, it is safer to rely upon her statement. She has categorically stated that the father of the deceased and other persons had arrived at her house about half an hour after the incident or after the accused had left the place.

The testimony of PW-7 is apparently quite trustworthy as there is no reason to disbelieve it. It is clear from her statement that PW-1 had reached the place of incident after half an hour of the incident. He is, therefore, not actually an eyewitness who was present at the time when the appellants allegedly attacked the deceased. He had come there after about half an hour and as such cannot be an eyewitness to the incident of attack. Secondly, PW-1 categorically stated that

when his son fell down on the dewan, he hugged him and, in the process, his clothes were stained with blood.

He never offered his blood-stained clothes to the police for investigation, nor did the police seized the same, despite the fact that he had gone to the police station wearing them. Rather, he stated that he washed them and wore them again. This is quite unnatural and an indicator to the fact that the PW-1 was not actually present when the incident of assault took place in the house of Mukhtyar Singh, and that the story of hugging the deceased is concocted.

21. It is also very unnatural for PW-1 to go to the Jogither diversion while returning from the flour mill of Kakka Singh as admittedly the said diversion is not on the way back to his home. He is, therefore, a chance witness and probably may not have seen the appellants coming on the bike or even chasing the deceased. In these circumstances, PW-1 cannot be treated as a trustworthy witness and his evidence cannot be relied upon to identify the appellants as the persons who have attacked and assaulted the deceased.

22. PW-2 - Jwala Singh also appears to be a chance witness. He was going to Jogither Diversion to purchase a soap but when he found the PW-1 chasing the appellants, he also ran behind him in order to help him and save the life of the deceased. He categorically stated that he was 60-70 steps behind PW-1. Naturally, his entry in the house of Mukhtyar Singh would have been only after PW-1, who had entered the house as per the ocular evidence of PW-7, about half an hour after the incident. In the above situation, PW-1 could not have been an actual eyewitness of the incident of assault or the person who would have seen the appellants well enough to recognize them as the real assailants. Therefore, his evidence also could not have established the identity of the appellants.

23. Furthermore, no independent person of the area, the shopkeepers or the labourers working in the fields, who allegedly saw the appellants chasing the deceased, were called upon to enter the witness box to corroborate the evidence of PW-1 and PW-2.

24. In view of the aforesaid facts and circumstances, the ocular evidence of PW-7, PW-1 and PW-2, if read together, is not sufficient to identify the appellants as the persons who attacked and assaulted the deceased resulting in his death. It may be pertinent to mention here that even PW-4 - Kakka Singh, to whose flour mill PW-1 had allegedly gone and was said to be returning from there also did not support the statement of PW-1. He has nowhere stated that PW-1 had been to his flour mill, as alleged by him. Therefore, the presence of PW-1 at the scene of crime becomes doubtful. Once his presence is doubtful, the presence of PW-2 also 13 stands belied, because he categorically stated that he was following PW-1 and was 60-70 steps behind him.

25. The prosecution did not ask any of these witnesses to identify the accused persons.

26. This Court, in several decisions, while considering the evidentiary value of a chance witness, has held that the deposition of a chance witness whose presence at the place of incident is doubtful should be discarded, or at least be treated with great caution and close scrutiny. Such a chance witness must adequately explain his presence at the place of incident, which has not been satisfactorily done in the instant case.

27. Now, what remains before us is the recovery of the weapons of crime to establish the identity of the appellants as the persons involved in the crime. On the basis of the recovery of the said weapons, we have to determine if the said recoveries are good enough to connect the appellants with the crime.

28. Undoubtedly, the recovery of one of the swords was made from a garage, and the recovery of another sword and the Kanta was made from bushes in sugarcane field, which was an open space. The weapons were no doubt recovered allegedly on the pointing out of the appellants. However, no effort was made to match the blood on the said weapons with that of the deceased. The weapons were sent for forensic examination but no report of the forensic laboratory was produced to establish that the weapons so recovered were smeared with the blood of the deceased to prove that they were actually used in the murder of the deceased.

29. We are afraid that the submission of the State counsel, that as the appellants themselves stated that they took the police to the place where they hid the weapons, by which they committed the offence indicates that the appellants admitted to have committed the offence with the above weapons, cannot be accepted. The statement of the appellants that the weapons recovered were the weapons of crime cannot be read against them in view of Sections 25 and 26 read with Section 27 of the Indian Evidence Act, 1872. Only that part of the statement which leads the police to the recovery of the weapons is admissible, and not the part which alleges that the weapons recovered were actually the weapons of crime.

30. The above three provisions of the Evidence Act are beneficial to bring home the point. They read as under:

"25. Confession to police officer not to be proved.- No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.-In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)

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."

31. A simple reading of all the three provisions conjointly reveals that the first two provisions are substantive, whereas Section 27 is in the nature of an exception. Sections 25 and 26, at one hand, provide that no confession made to a police officer or to any person while in custody of the police, shall be admissible against a person accused of any offence, on the other hand, Section 27 provides an exception to the above provisions.

It states that so much of the information, received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible. This means that not all information disclosed by a person in police custody is required to be proved as against the accused person; only that part which distinctly relates to the discovery of a fact is admissible and can be proved.

32. In Pulukuri Kottaya and Ors. vs. The King Emperor1, the Privy Council while analysing the aforesaid three provisions of the Evidence Act, held that the fact of discovery, on information supplied by the accused is a relevant fact except in a case in which the possession or concealment of an object constitute the gist of the offence charged. Information supplied by a person in custody such as "I will produce a knife concealed in the roof of my house", only leads to the discovery of the knife concealed in the house of the informant, but whether the knife is proved to have been used in the commission of an offence is another question.

So if the above information is followed by the words, "with which I stabbed A", those words would be inadmissible since they do not relate to the discovery of the knife from the house of the informant, but are rather independent in nature, amounting to confession of the crime which cannot be used against the person making it i.e. the accused, in view of prohibition contained under Sections 25 and 26 of the Evidence Act.

33. The aforesaid decision has recently been followed with approval by the Division Bench of this Court in Manjunath and Ors. vs. State of Karnataka2

wherein it has been said that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible, and the rest of the information stands excluded. In other words, the information leading to the recovery of the weapons of crime is admissible, but not the information that the crime was actually committed by the said weapons.

34. In view of the aforesaid facts and circumstances, the identity of the appellants as the persons involved in the offence has not been established either by any ocular evidence or from the recovery of the weapons of crime.

35. It is important to note that the order of acquittal passed by the Trial Court was not open to interference by the First Appellate Court until and unless the findings recorded by the Trial Court were per se perverse or erroneous. It is safer and more appropriate to rely upon the findings of the Trial Court which has seen the demeanor of the witnesses rather than to rely upon the findings of the First Appellate Court. In our opinion, the High Court erred in reversing the finding of the Trial Court without coming to the conclusion that the findings of the Trial Court were perverse.

36. Thus, in the aforesaid facts and circumstances of the case, we are of the view that High Court manifestly erred in interfering with the findings of acquittal recorded by the Trial Court and reversing the judgment so as to convict the appellants. It is doubtful whether the offence has been committed by the appellants. The conviction of the appellants is accordingly set aside. The appeals are allowed, and the appellants are acquitted of the alleged offence by granting them the benefit of doubt.

37. The appellants are on bail. Their bail bonds stand discharged.

.....J. (Pankaj Mithal)

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

New Delhi;

October 07, 2025.

1 1947 MWN CR 45

2 2023 SCC OnLine SC 1421

IN THE SUPREME COURT OF INDIA

K.S. Shivappa
Vs.
Smt. K. Neelamma

[Civil Appeal No. 11342 of 2013]

HEADNOTE – A voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct.

It is not always necessary for a minor to institute a suit for cancellation of a voidable sale transaction executed by his guardian on attaining majority within the limitation provided and that such a transaction can be avoided or repudiated by his conduct.

JUDGMENT

Pankaj Mithal, J.

1. One Mahadevappa, son of Waderahalli Basappa of Village Shamanur was the owner of sites measuring 42 ft. x 30 ft. and 41 ½ ft. x 30 ft., which were carved out of Survey Nos. 113/2 and 114/1. These revenue sites were described as plots Nos. 56 and 57 respectively. The aforesaid plots Nos. 56 and 57 were purchased by Rudrappa on 15.09.1971, in the name of his three minor sons, namely, Maharudrappa, Basavaraj and Mungeshappa. Thus, all the three minors became the joint owners of the aforesaid two plots.

2. Rudrappa, the father and the natural guardian of the three minors, transferred one of the two plots i.e. plot No. 56 in favour of one S.I. Bidari by a registered sale deed without the court's permission. The said S.I. Bidari further transferred the said plot i.e. plot No. 56 to one Smt. B.T. Jayadevamma vide sale deed dated 31.01.1983. Subsequently, when the two surviving minors (as one of them died) attained majority, they along with their mother transferred the aforesaid plot in favour of one K.S. Shivappa vide sale deed dated 03.11.1989. Acting in furtherance of the above registered sale deed, K.S. Shivappa started working on the said land due to which Smt. B.T. Jayadevamma thought there was interference with her rights on the said land.

3. As a result, Smt. B.T. Jayadevamma filed an Original Suit No. 120/1997 in the Court of II Additional Civil Judge (Sr. Div.), Davanagere for declaration, possession and permanent injunction. The Trial Court decreed the suit in favour

of B.T. Jayadevamma holding that the minors on attaining majority failed to file a suit to get the sale deed executed by their father repudiated. Aggrieved by the aforesaid judgment and order, K.S. Shivappa filed Regular First Appeal No. 1522/2003 before the High Court.

The appeal was allowed, and the judgment and order passed by the Trial Court was reversed, holding that the sale deed of the said plot executed by the father of the minors was voidable at the instance of the minors and that the minors can repudiate the same within the prescribed time, upon attaining majority either by filing a suit or by unequivocal conduct, such as, by transferring the property to a third party. Thus, the transfer of the property by the minors, on attaining majority within the period of limitation, amounted to repudiation of the contract of sale of the property executed by their father without seeking the permission of the District Judge.

4. In a similar fashion, as above, Rudrappa, the father and natural guardian of the minors, transferred the second plot, i.e. plot No. 57 through a registered sale deed dated 13.12.1971 in favour of one Krishnoji Rao without taking any permission from the court. The said purchaser Krishnoji Rao vide Sale Deed dated 17.02.1993 transferred the said plot in favour of Smt. K. Neelamma. On the other hand, the surviving minors on attaining majority, along with their mother within the prescribed time sold the property, i.e., plot No. 57 to K. S. Shivappa, the purchaser of the earlier plot No. 56. The said Shivappa clubbed both the properties, i.e. plot Nos. 56 and 57 and built a house to live therein.

5. In the above background of the facts and circumstances, Smt. K. Neelamma, the purchaser of plot No. 57 who purchased it from Krishnoji Rao, as a plaintiff instituted O.S. No. 76/1997 in the Court of Additional Civil Judge, (Jr. Div.), Davanagere against K.S. Shivappa. The said suit was dismissed on 14.02.2003 by the Trial Court holding that the sale deed under which the predecessor-in-title of the plaintiff had purchased the aforesaid plot from the father and natural guardian of the minors was voidable as no permission of the court was taken for its sale. The minors could repudiate the same on attaining majority, which in fact, has been done by them by executing the sale deed in favour of K.S. Shivappa. Therefore, the plaintiff, Smt. K. Neelamma derives no legal rights in the said plot.

6. Aggrieved by the aforesaid judgment, order and decree, the plaintiff Smt. K. Neelamma preferred Regular Appeal No. 67/2003 before the Principal Civil Judge (Sr. Div.), Davangere. The said appeal was allowed, and the judgment and order of the Trial Court was reversed. It was held that since the minors have not challenged the earlier sale deed executed by their guardian, they could not have sold the plot subsequently on attaining majority.

7. The Second Appeal preferred by K.S. Shivappa against the aforesaid judgment and order was dismissed by the High Court vide judgment and order dated 19.03.2013 on the same reasoning that since no suit for cancellation of the earlier sale deed was filed by the minors on attaining majority, the sale deed executed by their natural guardian had attained finality. Thus, the plaintiff Smt. K. Neelamma is the valid title holder of the plot No. 57.

8. This is how, K.S. Shivappa, the purchaser of the two plot Nos. 56 and 57 has come up before this Court by way of this appeal.

9. It may be pertinent to clarify herein itself that the dispute in the present appeal is confined to plot No. 57 only. The dispute regarding plot No. 56 stands conclusively settled by the judgment and order of the High Court, which was never challenged by either party before any higher forum. No material is on record to indicate that any special leave petition or appeal was filed against it.

10. Upon hearing learned counsel for the parties, the moot question which falls for our consideration in this appeal is: whether it is necessary for the minors to have filed a suit upon attaining majority within the prescribed time period, to set aside the earlier sale deed executed by their natural guardian, with respect to plot no.57 or such a sale deed could be repudiated through their conduct within three years of attaining majority.

11. In order to answer the above question of law, it would be beneficial to refer and quote the relevant provisions of Section 8 of the Hindu Minority and Guardianship Act, 19561. The relevant provisions are sub-Section (2) and sub-Section (3) of Section 8 of the Act, which are being reproduced hereinbelow:

"8. Powers of natural guardian.-

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him."

12. A simple reading of the aforesaid provisions makes it abundantly clear that a natural guardian of a minor has no authority in law to mortgage, sell, gift or otherwise transfer any part of the immovable property of the minor or even to lease out any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority without the prior permission of the court. Therefore, prior permission of the court is a sine qua non for a guardian of a minor to transfer the property of the minor in any of the manners provided under sub-Section (2) of Section 8 of the Act.

13. Sub-Section (3) of Section 8 of the Act in unequivocal terms provides that the disposal of any immovable property by the natural guardian in contravention of sub-Section (1) or sub- Section (2) is voidable at the instance of the minor or any person claiming under him. In other words, if the natural guardian or a minor disposes of the immovable property of a minor in contravention of sub-Section (1) and sub-Section (2) particularly without the permission of the court, such a transaction would be voidable at the instance of the minor.

14. The aforesaid provision, however, nowhere categorically provide the manner in which such a transaction of disposal of the property of a minor by a guardian without the permission of the court would be a voidable. Such a transaction can be avoided or repudiated by the minor expressly by filing a suit for the cancellation of such a transaction or impliedly by his conduct namely by transferring the property himself on attaining the majority within the time prescribed.

The avoidance of such a transaction by conduct appears to be permissible for two reasons. First, at times the minor may not be aware of such a transaction and as such may not be in a position to institute any suit; secondly, the transaction of such a nature, if any, may not have been given effect to and the party acquiring right in the property may not be having possession of the property giving an impression that the property is intact in the hands of the minor, in which case also the minor on attaining majority may not deem it proper to institute a suit.

15. 'Travellyan' in his well-known book on Minors 5th Edition, on Page No.202 stated:

"A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor, by which he intends to communicate the repudiation, or which has the effect of repudiating it, for instance, a transfer of

land by him avoids a transfer of the same land made by his guardian before he attained the age of majority. It is not necessary that he should bring a suit."

16. Mulla's Hindu Law, 12th Edition, on Page No.276 observes as under:

"An alienation made by a Hindu widow without legal necessity and without the consent of the next reversioners is voidable at their option. They may affirm it, or treat it as a nullity without the intervention of a court, and they show their election to do the latter by commencing an action to recover possession of the property."

17. Both the above texts indicate that the transfer which is voidable, can be repudiated by the minor on attaining majority by his action and not necessarily by the intervention of the court.

18. In a century and quarter old case of Abdul Rahman vs. Sukhdayal Singh,2 a property of the minor was leased out by the guardian but not for the benefit of the minor. The minor sold the property on attaining majority. The court observed that it is not necessary that a suit should be instituted to set aside the lease which was executed by the guardian of the minor and that the act of the minor of selling the property on attaining majority is enough to repudiate the lease deed.

19. In G. Annamalai Pillai vs The District Revenue Officer, Cuddalore3, Madras a lease deed of minor's land was executed by his father in contravention of Section 8 (1) and (2) of the Act. The transferee moved an application for registering himself as a cultivating tenant on the basis of the above lease. The minor on attaining majority resisted the application on the ground that the lease is not valid and is in violation of sub-Section (2) of Section 8 of the Act. It was held that the lease having been avoided by the minor after attaining the age of majority, there was no valid lease and as such the transferee under the lease cannot claim the status of a cultivating tenant.

20. The above decision is certainly not binding upon this Court, nonetheless, it has some persuasive value. It in clear term reveals that the minor on attaining majority can avoid a transaction which is voidable under sub-Section (2) of Section 8 by his conduct such as by resisting the application of the transferee to register him as a cultivating tenant. It means that it is not mandatory to file a suit for the cancellation of the lease deed.

21. In another case reported in Chacko Mathew v. Ayyappan Kutty4, it was held thus:

"It is not always necessary that a party entitled to avoid a transaction not binding on him should sue for its rescission. He can himself avoid it by an unequivocal act repudiating it". The opinion so expressed throw enough light to support the

view that a transaction which is in violation or contravention of sub-Section (2) of Section 8 of the Act can be avoided by the minor not only by suing for the recession of such a transaction but by otherwise also.

22. In view of the legal opinion expressed by Travellyan, Mulla and the High Courts of Allahabad, Madras and Kerala, it is amply clear that a transaction in relation to the property of a minor executed in contravention of the express provisions of Section 8 of the Act is voidable at the option of the minor or any person claiming under him and such an option to avoid a transaction of the above nature can be by initiating a law suit or may be by conduct as enumerated above.

23. In Madhegowda vs Ankegowda5, this Court in paragraph 25 held as under:

"25. The minor, on attaining majority, can repudiate the transfer in any manner as and when occasion for it arises. After attaining majority if he/she transfers his/her interest in the property in a lawful manner asserting his/her title to the same that is sufficient to show that the minor has repudiated the transfer made by the "de facto guardian/manager"."

24. In Vishwambhar and Ors. vs Laxminarayan (Dead) through Lrs. and Anr.6 a Division Bench in a matter where the minor filed a suit for possession contending that the sale deeds executed by their guardian (mother) were inoperative and not binding upon them as the same were affected without the permission of the court in contravention of Section 8 (2) of the Act, and wherein the relief for setting aside the sale deeds was added after the period of limitation had expired, the Court held that though the sale deeds were executed without legal necessity and in contravention of Section 8 (2), but the suit was rightly dismissed as the relief for cancellation of the sale deeds could not have been added after the expiry of the limitation.

25. The aforesaid decision is not one which lays down that the filing of a suit by the minor on attaining majority for the cancellation of the sale deeds executed by the guardian is mandatory. It only lays down that the relief of cancellation of sale deeds, if added after expiry of limitation period, cannot be granted. The said decision, therefore, has no application to the facts and circumstances of the case at hand to answer the question whether a voidable transaction can be repudiated by the minor only by filing a civil suit or otherwise by his conduct also.

26. Another Division Bench of this Court in Nangali Amma Bhavani Amma vs Gopalkrishnan Nair and Ors.7 while holding that a transaction entered into by the guardian of a minor in violation of Section 8 (2) is voidable at the instance of the minor and is not void and that the minor can avoid the same on attaining majority. The Division Bench relying upon Vishwambhar (Supra) observed that a suit must be filed by minor in order to avoid transaction within period prescribed

under Article 60 of the Limitation Act, 1963. The aforesaid decision also nowhere rules that there are no other alternative modes to avoid the transaction which is in contravention of Section 8 (2) of the Act and that the filing of the suit alone is the remedy thereof.

27. The decision of this Court in Murugan & Ors. vs Kesava Gounder (Dead) through legal representatives & Ors.8, though in the facts and circumstances of the said case, states that alienations which are voidable at the instance of minor are required to be set aside before relief of possession can be claimed by such minor but even then the said decision is of no help to answer the question before us in this appeal.

28. The aforesaid decision is only an authority to the effect that relief of possession cannot be claimed by the minor without getting the sale deeds, which are voidable, set aside. However, the aforesaid decision also falls quite short of laying down that the suit for setting aside the voidable sale deeds is mandatory to repudiate a transaction entered into by the guardian on behalf of the minor in contravention of Section 8 (2) of the Act.

29. Apart from the above decisions of the Apex Court, there is another important decision of this Court in G. Annamalai Pillai vs District Revenue Officer and Ors.9 In the said case, the guardian of a minor who was the owner of the property, had executed the lease deed of the property of the minor in contravention of Section 8 of the Act. The lease was avoided by the minor on attaining majority. The Court held that the effect of such avoidance would be that though the lease was voidable but once it is avoided it becomes void from its very inception and no statutory rights accrue in favour of the lessee. It was held that the avoidance relates back to the date of the transaction. The Court quoted Salmond on Jurisprudence, 12th edition, page no.341 as under:

"A valid agreement is one which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute.

By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy but is deemed to have been void ab initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it."

30. The Court in the aforesaid decision went further ahead to state that the Privy Council in Satgur Prasad vs Mahant Har Narain Das10 and in S. N. R. Sundara Rao & Sons, Madurai vs Commissioner of Income-Tax, Madras11, held that when a person dissents from the alienation, his dissent is in relation to the whole transaction and not merely to the possession. In the result, the effect is to get rid of the transaction as if the transaction had never taken place.

31. In the light of the above observations, this Court in G. Annamalai Pillai (supra) went on to record that when the respondent avoided the lease deed executed by his father, the lease became void from its inception and no statutory rights could therefore accrue in favour of the other party.

32. In view of the above discussion, it can safely be concluded that a voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct.

33. In the case at hand, undisputedly the surviving minors on attainment of majority had repudiated the transaction of sale executed by their father by entering into a fresh contract of sale of the property in question. It is admitted on record that on the basis of the sale deed executed by the father of the minors, the purchaser or the subsequent purchasers have not entered into possession and the name of the minors continued to appear in the revenue records. There is no material on record that the minors had the knowledge of the execution of the sale deed by their father.

In the facts and circumstances, if they have avoided the sale executed by their father on attaining majority, it is sufficient repudiation of the said sale and it was not necessary for them to have instituted the suit for the cancellation of such a sale rather the purchasers of the property of the minors through the guardian on acquiring knowledge of the sale executed by the minors on attaining majority ought to have instituted a suit either for the cancellation of the sale deed executed by the minors or for declaration of their right, title and interest in the property.

34. The above discussion leads us conclusively to hold that it is not always necessary for a minor to institute a suit for cancellation of a voidable sale transaction executed by his guardian on attaining majority within the limitation provided and that such a transaction can be avoided or repudiated by his conduct. The question stands answered accordingly.

35. There is one another issue which goes in favour of K.S. Shivappa.

36. The plaintiff, Smt. K. Neelamma in instituting the original suit in the plaint simply pleaded that she had purchased the property vide registered sale deed

dated 17.12.1993 for a valuable consideration from Krishnoji Rao. She has nowhere stated or pleaded that she had verified the title of the vendor or that the vendor, Krishnoji Rao, was having a valid title over the property so as to transfer it in her favour.

37. She further pleaded that the cause of action for the suit arose on 27.01.1997 when she noted certain waste products on the suit land and requested the defendant, K.S. Shivappa to remove them, who refused to clear the same denying the title of the plaintiff.

38. The aforesaid plaintiff, Smt. K. Neelamma had not entered the witness box to prove her plaint case or to assert her title over the suit property. She had not even proved the sale deed dated 17.12.1993 under which she has allegedly purchased the suit land from Krishnoji Rao or to state that Krishnoji Rao was having a valid title over the said land to transfer her. In fact, she could not even upon entering the witness box could have proved the valid title of Krishnoji Rao in the absence of any plaint allegations to the above effect. It is settled that the evidence either ocular or documentary cannot travel beyond the pleadings.

39. The power-of-attorney holder of the plaintiff, Smt. K. Neelamma namely Shivaji Rao Salanki, PW-1 was not competent to depose or to prove anything which was not within his personal knowledge or was otherwise personally known to the plaintiff, Smt. K. Neelamma. The testimony of such a witness i.e. a power-of-attorney holder is inadmissible with regard to the facts within the personal knowledge of the plaintiff who has failed to enter the witness box.

This is settled by this Court in Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.12 In the recent case of Rajesh Kumar vs Anand Kumar and Ors.,13 a Division Bench of this Court in which one of us (P. Mithal, J. was a member) reaffirmed the principle that where the plaintiff refuses to testify, the proxies cannot substitute his personal testimony on key issues within the personal knowledge of the plaintiff. A Power-of-Attorney holder is thus, not entitled to depose in place of the principal.

40. In the overall facts and circumstances of the case, firstly for the reason that the plaintiff failed to enter the witness box so as to testify and prove her plaint case; and secondly for the reason that the sale deed executed by the father of the minors was repudiated by the minors within time on attaining majority, no valid right or title stood transferred to Krishnoji Rao from whom Smt. K. Neelamma had allegedly purchased the suit land. Therefore, the suit as instituted has to fail.

41. Accordingly, the judgment and order of the High Court dated 19.03.2013 and that of the First Appellate Court dated 30.06.2005 are set aside and that of the Trial Court is restored so as to decree the suit.

42. The appeal is allowed accordingly with no order as to costs.

.....J. (Pankaj Mithal)

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

New Delhi;

October 07, 2025.

1 Hereinafter referred to as 'the Act'

2 1905 SCC OnLine All 106

3 1984 SCC OnLine Mad 185

4 1961 SCC OnLine Ker 24

5 (2002) 1 SCC 178

6 (2001) 6 SCC 163

7 (2004) 8 SCC 785

8 (2019) 20 SCC 633

9 (1993) 2 SCC 402

10 1932 SCC OnLine PC 2

11 1956 SCC OnLine Mad 300

12 (2005) 2 SCC 217

13 2024 SCC OnLine SC 981

IN THE SUPREME COURT OF INDIA

Offshore Infrastructures Ltd.
Vs.
M/s. Bharat Petroleum Corporation Ltd.

[Civil Appeal Nos._____ of 2025
arising out of SLP (C) No. 22105-22106 of 2024]

HEADNOTE – The invalidity or inoperability of an arbitration clause, such as one naming an ineligible arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996, does not nullify the underlying arbitration agreement between the parties. In such cases, the Court is empowered to step in and appoint a neutral arbitrator under Section 11(6) to preserve the efficacy of the arbitration mechanism.

JUDGMENT

Augustine George Masih, J.

1. Leave granted.

2. The instant Civil Appeals assail the Judgment and Order dated 10.04.2024 passed in Review Petition No. 76 of 2024 and Judgment and Order dated 19.12.2023 passed in Arbitration Case No. 23 of 2022 by the High Court of Madhya Pradesh at Jabalpur ("High Court").

3. The High Court vide Judgment and Order dated 19.12.2023 in Arbitration Case No. 23 of 2022 has refused to appoint an arbitrator and dismissed the application filed under section 11 of the Arbitration and Conciliation Act, 1996 ("1996 Act") by the Appellant on the ground that the application is time-barred. The subsequent Review Petition No. 76 of 2024 filed by the Appellant was also dismissed by the High Court vide Judgment and Order dated 10.04.2024.

4. The Appellant herein is Offshore Infrastructures Limited, a Company incorporated under the Companies Act, 1956, having its registered office at Mulund Goregaon, Mulund (West) Mumbai. The Respondent is Bharat Oman Refineries Limited, which was merged to M/s Bharat Petroleum Corporation Limited with effect from 01.07.2022, having its registered office at Bharat Bhavan Ballard Estate, Mumbai.

5. The crux of the matter is that the Respondent had invited tenders for execution of composite works pertaining to the establishment of a new Modular Penex Unit along with associated works required for the revamp and capacity enhancement

at the Bina Refinery. Upon completion of the tendering process, the work was awarded to the Appellant vide letter of acceptance dated 31.12.2016. As per the terms of letter of acceptance, the work awarded to the Appellant was to be completed within a period of five months, i.e. 30.05.2017.

However, the work could not be completed within the stipulated time, and ultimately the work came to be completed on 31.01.2018. The Appellant raised the final Bill bearing RA Bill No. 7 on 20.03.2018 and thereafter a "No Claim Certificate" was issued by the Appellant on 03.10.2018. The completion certificate was issued on 05.02.2019. The final bill was released on 26.03.2019. The Respondent released part payment to the Appellant on 11.06.2019 and liquidated damages of 5% was deducted on account of delay. The Appellant on 26.04.2021, issued a consolidated claim of all its outstanding dues.

6. Subsequently, the Appellant on 14.06.2021 issued a notice to Managing Director of the Respondent for appointment of Arbitrator as per Clause 8.6 of General Conditions of the Contract ("GCC") stating that as per Clause 8.6 of GCC, the Arbitrator named is Managing Director of Bharat Oman Refineries Limited or an officer of Bharat Oman Refineries Limited who may be nominated by the Managing Director, however, in view of the provisions of the 1996 Act (as amended by Act 3 of 2016, w.e.f. 23.10.2015), neither the Managing Director nor an officer is entitled to act as an Arbitrator in the matter, therefore suggest names of at least four qualified persons unconnected with either party to be selected as Sole Arbitrator in the matter. The Respondent refused to entertain the claims via communication dated 02.07.2021.

7. Aggrieved by the failure of the Respondent to appoint the Arbitrator, the Appellant has filed Arbitration Case No. 23 of 2022 under Section 11 (6) of the 1996 Act before the High Court seeking appointment of Sole Arbitrator.

8. The High Court vide Judgment and Order dated 19.12.2023 dismissed the Arbitration Case No. 23 of 2022 holding that as per Schedule 26 (Periods of Limitation) and as per Section 2(j) & 3 Part-I of Limitation Act, 1963, the time from which the period of limitation starts has to be taken as the date on which accounts in writing were signed by the Appellant and also from the date of execution of reconciliation statement of foreclosure and settlement agreement. Since the final Bill was raised on 20.03.2018 and further the "No Claim Certificate" was issued on 03.10.2018, the limitation would run from the date of issuance of "No Claim Certificate". Therefore, the period of three years has lapsed on 02.10.2021 and the application for appointment of Arbitrator has been filed by the Appellant on 14.03.2022, which is much beyond the period of limitation.

9. The Judgment dated 19.12.2023 of the High Court was sought to be reviewed by the Appellant by filing a Review Petition No. 76 of 2024. The High Court on 10.04.2024 has dismissed the review petition holding that the cause of action accrued to the Appellant at the date of issuance of "No Claim Certificate" on 03.10.2018, and the Appellant ought to have filed the application for appointment of Arbitrator within three years from 03.10.2018, which was not done. The Appellant challenged both the Judgment and Order dated 19.12.2023 and Judgment and Order dated 10.04.2024 before this Court by way of the present appeals.

10. The learned Counsel for the Appellant submits that the application under Section 11 (6) of the 1996 Act was filed well within the period of limitation. To substantiate his contentions, reliance is placed upon the decision of this Court in Arif Azim Company Limited v. Aptech Limited1, which held that the period for the purpose of filing application for appointment of arbitrator commences only upon issuance of a valid notice invoking the arbitration followed by refusal or failure of the other party to appoint the arbitrator in accordance with agreed procedure.

11. He further submits that even if it is assumed that the cause of action accrued earlier on 03.10.2018, the part payment made by the Respondent on 11.06.2019 has extended the period of limitation under section 19 of the Limitation Act, 1963. Relying upon In Re: Cognizance for Extension of Limitation2, he submits that the limitation is covered by the COVID-19 extension Order dated 10.01.2022 passed by this Court, which excluded the period from 15.03.2020 to 28.02.2022 from computation of limitation.

12. Finally, it is contended that in Perkins Eastman Architects DPC and Another v. HSCC (India) Limited3, in an equivalent arbitration clause, where the appointing authority had failed to appoint an arbitrator till the time of filing of Section 11 (6) application, this Court had appointed an Arbitrator. The arbitration agreement in the present case was drafted prior to the 2015 Amendment in the 1996 Act, with the evident intent to provide for arbitration but power of appointing arbitrator was with the Managing Director of the Respondent, courts have upheld arbitration agreements including similar clauses and appointed arbitrators, despite disqualification of the named authority.

13. Per contra, the learned Counsel for the Respondent while supporting the Judgment and Order of the High Court submits that the cause of action accrued to the Petitioner on the date when final bill was raised on 20.03.2018, and according to the Appellant amount became due on or before 21.04.2018 i.e. 30 days from the date of submission of bill. The Appellant ought to have invoked arbitration within three years from 21.04.2018 by filing an application which was not done.

14. He further contends that categorial stipulation contained in Clause 8.6 (a) of GCC empowers the Managing Director or his nominee alone to act as Sole Arbitrator, as subsequent legislative changes in the 1996 Act through amendments renders such a contractual provision otiose and inoperative, thereby such arbitration clause ought to be deemed to have ceased to exist. Therefore, the arbitration mechanism itself stands effaced, disentitling the Appellant to invoke arbitration.

15. Having heard the Counsel for the parties and upon perusal of material on record, the issues for consideration are:-

(i) whether the court has power to appoint an arbitrator when the clause providing the arbitration mechanism has become bad in law pertaining to certain statutory amendments and

(ii) whether the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the Appellant is within the period of limitation.

16. It is pertinent to refer to the decision of this court in Perkins (supra), wherein a coordinate Bench of this Court while following the decision in TRF Limited v. Energo Engineering Projects Limited4 categorically held that once the Chairman and Managing Director of the respondent therein became ineligible by the virtue of Section 12(5) read with the Seventh Schedule of the 1996 Act (as amended by Act 3 of 2016 w.e.f. 23.10.2015), the ineligibility also extends to power of nomination, thereby rendering any appointment made by him legally unsustainable. Consequently, this Court appointed an independent sole arbitrator holding that jurisdiction under Section 11(6) of the 1996 Act is not ousted merely because an appointment has already been made by the respondent if such appointment is ex facie invalid or contrary to the agreed procedure.

17. Similarly, in Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Limited5 this Court underscored that the legislative intent behind the 2015 amendment of inserting Section 12(5) of the 1996 Act is to secure neutrality of arbitrators. By virtue of its nonobstante clause, any person whose relationship with the parties falls within the disqualifications provided in Seventh Schedule is rendered ineligible to act as an arbitrator, this is notwithstanding any stipulation provided in the arbitration clause.

If any arbitration clause runs contrary to the mandate provided in Section 12(5) of the 1996 Act, the power to appoint an independent arbitrator is vested with the court under section 11 of the 1996 Act, a principle consistent with pre-amendment jurisprudence under Section 11(8) of 1996 Act where courts had, even earlier, overridden restrictive arbitration clauses to ensure the appointment of impartial arbitrators.

18. Coming to the case in hand, the Clause 8.6 of GCC governs the arbitration mechanism. The arbitrator named in this Clause is Managing Director of Bharat Oman Refineries Limited or an officer of Bharat Oman Refineries Limited who may be nominated by the Managing Director. Subsequent amendments in the 1996 Act, as referred above, have made such clause bad in law and Managing Director or officer nominated by the Managing Director become ineligible by the operation of law to be appointed as Arbitrator.

19. The Respondent contends that once the arbitration clause referred to in the GCC has become obsolete and non-operative, it would render the entire arbitration mechanism non-existent therefore the Appellant cannot file an application for appointment of arbitrator.

20. We are not persuaded by this submission of the Counsel for Respondent. The very existence of the arbitration clause in the GCC referring to all disputes to arbitrator is the core part of contract. Merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referring the dispute for adjudication to arbitrator would be rendered nugatory.

The amendment in the statute has been enacted with the legislative intent to enforce neutrality of the arbitrator and bring impartiality in arbitration proceedings by virtue of Section 12(5) of the 1996 Act. It cannot be justified to literally interpret the clause in the contract in a manner or at the cost of the entire arbitration mechanism itself being abandoned. The arbitration agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to pursue the intended dispute redressal mechanism of contract.

Therefore, it cannot be said that non-operation of arbitration clause in GCC will result into forgoing of entire arbitration mechanism and rendering the Appellant disentitled for seeking appointment of arbitrator. The Appellant is, therefore, entitled to file application under section 11(6) of the 1996 Act for appointment of arbitrator and thereby the power is vested with the court to appoint an arbitrator upon filing of such application.

21. The next aspect which merits consideration is whether the application for appointment of arbitrator filed by the Appellant is within the period of limitation. It would be apposite to refer to the decision in Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited6, where a three-Judge Bench of this court while dealing with similar issue has held that the cause of action in respect of arbitration application arises when the final bill handed over to the respondent becomes due, and further correspondences between the parties subsequent to the due date of bill would not extend the time of limitation. The relevant portion of the judgment is reproduced herein:-

"19. Undoubtedly, a different scheme has been evolved under the 1996 Act. However we find that the same principles continue to apply with respect to the applicability of the law of limitation to an application under Section 11(6) of the 1996 Act as laid down in the decisions dealing with judicial appointment of an arbitrator under Sections 8 and 20 of the 1940 Act.

20. Our finding is supported by the decision of a three- Judge Bench of this Court in Grasim Industries Ltd. v. State of Kerala [(2018) 14 SCC 265 : (2018) 4 SCC (Civ) 612]. In Grasim Industries, similar to the present case, the arbitration agreement provided for reference to be made under the 1940 Act. However the appellant raised their claim in 2002, attracting the application of the 1996 Act. This Court was therefore faced with the issue of whether an application for appointment of an arbitrator under the 1996 Act would be barred by limitation in respect of the appellant's claim.

This Court found that, in view of Section 28 of the Contract Act, 1872, the parties in the arbitration agreement could not stipulate a restricted period for raising a claim. However, the limitation period for invocation of arbitration would be three years from the date of the cause of action under Article 137 of the Limitation Act, 1963. However in the facts of that case, this Court found that certain claims had arisen within the three-year limitation period and hence, could be allowed.

21. Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court that the appellant's cause of action in respect of Arbitration Applications Nos. 25/2003 and 27/2003, relating to the work orders dated 7-10-1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation.

Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose i.e. 8-2- 1986. Similarly, with respect to Arbitration Application No. 28/2003 relating to the work order dated 3-5-1985, the respondent has stated that final bill was handed over and became due on 10-8-1989. This has not been disputed by the appellant. Hence the limitation period ended on 10-8-1992. Since the appellant served notice for appointment of arbitrator in 2002, and requested the appointment of an arbitrator before a court only by the end of 2003, his claim is clearly barred by limitation.

24. In the present case, the appellant has not disputed the High Court's finding that the appellant itself had handed over the final bill to the respondent on 8-2-1983. Hence, the holding in Inder Singh Rekhi v. DDA [(1988) 2 SCC 338] will not apply, as in that case, the applicant's claim was delayed on account of the

respondent's failure to finalise the bills. Therefore the right to apply in the present case accrued from the date on which the final bill was raised (see Union of India v. Momin Construction Co. [(1997) 9 SCC 97]).

29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."

22. In the present case, the final bill was raised by the Appellant on 20.03.2018 and the amount became due on 21.04.2018 i.e. 30 days from the date of submission of bill, as submitted by the Appellant. The period of limitation to file an application under section 11 (6) 1996 Act would start from 21.04.2018 and an application for appointment of arbitration ought to be filed within three years from such date i.e. on or before 21.04.2021. However, the Appellant has filed the Arbitration Case No. 23 of 2022 before the High Court on 15.03.2022 which is beyond the period of three years.

23. In normal course of action, the application filed by the Appellant would have been hit by the statutory bar of three years, however, it is essential to refer to Order dated 10.01.2022 of this Court in In Re: Cognizance for Extension of Limitation (supra), where a three-Judge Bench of this Court has held that in view of COVID-19 pandemic period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The relevant portion of which reads thus:-

"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3- 2021, 27-4-2021 and 23-9-2021 , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3- 2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

24. The above decision came to be delivered by this Court considering the hardship faced by the people during COVID-19. It would be unjust and detrimental to not consider this while deciding upon the period of limitation in the present case. Therefore, the benefit of the period from 15.03.2020 to 28.02.2022 must be given to the Appellant and this period need to be excluded while counting the period of limitation for filing application for appointment of arbitrator. Once, this period is excluded, it can be concluded that the Appellant's application for appointment of arbitrator under section 11 (6) of the 1996 Act before the High Court was moved within the period of limitation. It is held accordingly.

25. In view of the aforesaid, the Judgment and Order dated 10.04.2024 passed in Review Petition No. 76 of 2024 and Judgment and Order dated 19.12.2023 passed in Arbitration Case No. 23 of 2022 by the High Court cannot sustain and are, therefore, set aside.

26. Consequently, we direct that the matter shall stand referred to the Delhi International Arbitration Centre, which shall proceed to appoint an arbitrator, who shall decide the matter in accordance with law and rules, as applicable.

27. The present appeals are allowed in the above terms.

28. There shall be no order as to costs.

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

.....J. [Dipankar Datta]

.....J. [Augustine George Masih]

New Delhi;

1 (2024) 5 SCC 313

2 (2022) 3 SCC 117

3 (2020) 20 SCC 760

4 (2017) 8 SCC 377

5 (2017) 4 SCC 665

6 (2020) 14 SCC 643

IN THE SUPREME COURT OF INDIA

Rejanish K.V.
Vs.
K. Deepa and Ors.

[Civil Appeal No. 3947 of 2020]

[Writ Petition (C) No. 759 of 2017]
[Writ Petition (C) No. 1278 of 2019]
[Review Petition (C) No. 381 of 2021]
[Writ Petition (C) No. 396 of 2018]
[Review Petition (C) No. 385 of 2021]
[Civil Appeal No. 1700 of 2020]
[Review Petition (C) No. 1027 of 2021]
[Writ Petition (C) No. 405 of 2016]
[Review Petition (C) No. 379 of 2021]
[Writ Petition (C) No. 578 of 2018]
[Miscellaneous Application No. 179 of 2021]
[Writ Petition (C) No. 405 of 2016]
[Review Petition (C) No. 669 of 2021]
[Writ Petition (C) No. 999 of 2019]
[Review Petition (C) No. 380 of 2021]
[Writ Petition (C) No. 222 of 2017]
[Miscellaneous Application No. 1050 of 2021]
[Civil Appeal No. 1698 of 2020]
[Review Petition (C) No. 781 of 2021]
[Writ Petition (C) No. 316 of 2017]
[Review Petition (C) No. 774 of 2021]
[Writ Petition (C) No. 744 of 2019]
[Review Petition (C) No. 780 of 2021]
[Writ Petition (C) No. 602 of 2016]
[Review Petition (C) No. 853 of 2021]
[Writ Petition (C) No. 1080 of 2019]
[Review Petition (C) No. 621 of 2021]
[Civil Appeal No. 1698 of 2020]
[Review Petition (C) No. 868 of 2021]
[Writ Petition (C) No. 414 of 2016]
[Review Petition (C) No. 867 of 2021]
[Writ Petition (C) No. 405 of 2016]
[Review Petition (C) No. 782 of 2021]
[Writ Petition (C) No. 639 of 2018]
[Writ Petition (C) No. 857 of 2021]
[Review Petition (C) No. 989 of 2021]

[Transfer Petition (C) No. 272 of 2018]
[Review Petition (C) No. 996 of 2021]
[Civil Appeal No. 1703 of 2020]
[Writ Petition (C) No. 864 of 2021]
[Review Petition (C) No. 835 of 2021]
[Civil Appeal No. 1704 of 2020]
[Review Petition (C) No. 836 of 2021]
[Civil Appeal No. 1706 of 2020]
[Review Petition (C) No._____ of 2025 Diary No. 18470 of 2021]]
[Writ Petition (C) No. 608 of 2018]
[Review Petition (C) No. 1354 of 2021]
[Civil Appeal No. 1698 of 2020]
[Review Petition (C) No. 1042 of 2022
[Writ Petition (C) No. 999 of 2019]
[Civil Appeal No. 11390 of 2025]
[Writ Petition (C) No. 827 of 2025]

HEADNOTE – (i) Judicial Officers who have already completed seven years in Bar before they were recruited in the subordinate judicial service would be entitled for being appointed as a District Judge/Additional District Judge in the selection process for the post of District Judges in the direct recruitment process;

(ii) The eligibility for appointment as a District Judge/Additional District Judge is to be seen at the time of application;

(iii) Though there is no eligibility prescribed under Article 233(2) for a person already in judicial service of the Union or of the State for being appointed as District Judge, in order to provide a level playing field, we direct that a candidate applying as an in-service candidate should have seven years' combined experience as a Judicial Officer and an advocate;

(iv) A person who has been or who is in judicial service and has a combined experience of seven years or more as an advocate or a Judicial Officer would be eligible for being considered and appointed as a District Judge/Additional District Judge under Article 233 of the Constitution;

(v) In order to ensure level playing field, we further direct that the minimum age for being considered and appointed as a District Judge/Additional District Judge for both advocates and Judicial Officers would be 35 years of age as on the date of application.

(vi) It is held that the view taken in the judgments of this Court right from Satya Narain Singh till Dheeraj Mor (supra), which take a view contrary to what has been held hereinabove do not lay down the correct proposition of law.

Court further ruled that :-

1. The 7-year practice must be continuous. The Court rejected the argument that persons with a break in practice must be considered if they have already completed 7 years of practice. "We say so because say if a person has practised for five years and thereafter, he takes a break of ten years and thereafter practises for two years, there will be a disconnect with the legal profession. We are, therefore, inclined to hold that only such persons working either as an advocate/pleader including Government Pleaders and Public Prosecutors or as a judicial officer who, on the date of application, have a continuous experience of either an advocate/pleader or a judicial officer or a combination thereof shall only be eligible to be considered for appointment as district judges through the stream of direct recruitment.

2. No quota for advocates under Article 233(2). The Court rejected the plea for a quota for practising advocates in direct recruitment.

3. To promote efficiency in the cadre of district judges, the young talented meritorious judicial officers should not be denied an opportunity. The experience the judicial officers gain while working as judges is much greater than the one, a person gains while working as an advocate. Apart from that, before commencing their work as judicial officers, the judges are also required to undergo rigorous training of at least one year.

4. No reason to deny an opportunity to such young talented judicial officers to compete with the advocates/pleaders having seven years' practice in the matter of direct recruitment to the post of district judge.

5. The object of any process of selection for entry into a public service should be to secure the best and the most suitable person for the job.

6. The Court held that Article 233 has to be read as a whole and both the sub-articles cannot be read independently. A purposive interpretation of Article 233 should be adopted, instead of a literal or pedantic view. The view which enhances the efficiency of administration and attracts meritorious candidates ought to be preferred.

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B.R. Gavai, CJI

A. INTRODUCTION

1. A three-Judge Bench of this Court in this batch of matters, vide order dated 12th August 2025, had referred the following substantial questions of law for consideration of a Constitution Bench:

(i) Whether a judicial officer who has already completed seven years in Bar being recruited for subordinate judicial services would be entitled for appointment as Additional District Judge against the Bar vacancy?

(ii) Whether the eligibility for appointment as a District Judge is to be seen only at the time of appointment or at the time of application or both?

2. When this batch of matters was listed for directions on 12th September 2025, the following additional questions were also framed by the Constitution Bench:

(iii) Whether there is any eligibility prescribed for a person already in the judicial service of the Union or State under Article 233(2) of the Constitution of India for being appointed as District Judge?

(iv) Whether a person who has been Civil Judge for a period of seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?

3. For ease of convenience, the parties that support the proposition and contend that the questions framed be answered in favour of in-service candidates and they be permitted to participate in direct recruitment for the post of district judges will be referred to as the Petitioners and those opposing the proposition and contending that the direct recruitment should be only from the category of advocates with seven years' practice will be referred to as the Respondents.

B. SUBMISSIONS

4. We have extensively heard Mr. Jayant Bhushan, Mr. Arvind P. Datar, Mr. P.S. Patwalia, Mr. V. Giri, Ms. Vibha Datta Makhija, Mr. Jaideep Gupta, Dr. Manish Singhvi, Mr. Dama Seshadri Naidu, Mr. George Poonthottam, Mr. Gopal Sankaranarayanan, Dr. Menaka Guruswamy, Mr. Rajive Bhalla, Mr. Anil Kaushik, Mr. Amit Anand Tewari, Mr. B.H. Marlapalle, Mr. Narendra Hooda and Mr. Anand Sanjay M. Nuli learned Senior Counsel appearing on behalf of the Petitioners.

5. We have also extensively heard Mr. C.U. Singh, Mr. Nidhesh Gupta, Mr. Vijay Hansaria, Mr. Ravindra Shrivastava, Mr. Rajiv Shakdher learned Senior Counsel along with Mr. Amit Gupta, Mr. Kanhaiya Singhal, Mr. Rashid N. Azam, Mr. Sandeep Sudhakar Deshmukh, Ms. Sindoora VNL, Mr. Yashvardhan,

Ms. Kavya Jhawar and Ms. Nandini Rai learned counsel for the Respondents and Mr. Siddharth Gupta and Mr. Satyam Chand Soriya for the intervenors.

6. We have also perused the material painstakingly put together by Mr. Ajay Kumar Singh and Mr. John Mathew who assisted the Court as Nodal Counsel for the Parties.

7. The gist of the arguments advanced by the learned Senior Counsel appearing for the Petitioners is that:

i. The judgment of this Court in Dheeraj Mor v. High Court of Delhi1 misreads Article 233(2) of the Constitution.

ii. The construction given by Dheeraj Mor (supra) to the effect that a person has to be presently an advocate or a pleader makes the words "a person not already in the service of Union or State" totally superfluous and redundant which cannot be permitted.2

iii. A plain reading of Article 233(2) of the Constitution indicates that there are two sources/streams i.e., either a person has to be in service of the Union or State (which has been held to be judicial service3) or he has to be an advocate or pleader for seven years. Once the person is already in judicial service, no further eligibility is prescribed for being appointed as a district judge as held by this Court in the case of Rameshwar Dayal v. The State of Punjab and Others4.

iv. The interpretation excluding Civil Judges from being eligible to be appointed directly as district judges is unreasonable and against the interest of administration of justice. A person in judicial service would certainly be more experienced and more suitable for appointment. Any exclusion by the relevant rules would be violative of Articles 14 and 16 of the Constitution.

v. There is no requirement of any period of time or experience that a Civil Judge must possess to be eligible for direct recruitment as a district judge. Article 233 does not lay down any such requirement. In any case, if this Court deems it fit that there is such a requirement then seven years' experience as a Civil Judge or combined experience of seven years as an advocate and a Civil Judge would be sufficient. Reliance is also made in this respect on Explanation (aa) of Article 217(2) of the Constitution.

vi. The use of the words "has been" in Article 233(2) of the Constitution means a state of affairs which had existed in the past and need not to be continuing in the present. The words "has been" without being followed by participle of the verb is the present perfect tense of "to be" and cannot be the present perfect continuous tense.5 Further, a reading of the Hindi version of the Constitution would show that the expression used is "pleader raha hain" and not "pleader hain".

vii. All the petitioners in the case of Deepak Aggarwal v. Keshav Kaushik and Others6, had claimed themselves to be advocates on the date of their application for the post of district judge by way of direct recruitment and thus this Court in the said case was not dealing with the issue as to whether being an advocate on the date of application and appointment is a necessary criterion or not. In spite of this, this Court in Deepak Aggarwal (supra) held that one of the essential requirements of Article 233(2) is that the candidate must be continuing as an advocate on the date of application. This finding, therefore, is in the nature of an obiter dicta and not ratio decidendi.

8. The gist of the arguments advanced by the learned Senior Counsel/counsel appearing for the Respondents is that:

i. For the last 60 to 65 years, the interpretation of Article 233 of the Constitution has been uniform and has stood the test of time. What was held by the two Constitution Bench judgments of this Court in the cases of Rameshwar Dayal (supra) and Chandra Mohan (supra) has been further interpreted by several three-judge bench judgments of this Court. It is given that there are two sources/streams of recruitment to the post of district judges and that direct recruitment is only from the stream of practicing advocates. Reliance in this respect has been placed on the judgments of this Court in the cases of Mahesh Chandra Gupta v. Union of India and Others7 and Deepak Aggarwal (supra).

ii. Stare decisis et non quieta movere or to "stand by decisions and not to disturb what is settled", is a doctrine which clearly applies to the present reference. The questions raised by serving judicial officers in the present matter are covered by over six decades of stare decisis. The directions issued by this Court in paragraphs 27 and 28 of All India Judges' Association and Others v. Union of India and Others8, directing a quota of 75:25 for recruitment to the posts of district judges in all States, with 25% being exclusively reserved for eligible advocates, was entirely in tune with the decisions of this Court in 1960, 1965, 1985 and 1998.

iii. The term "service" has been held to mean judicial service in the case of Chandra Mohan (supra). The wording of Article 233(2) is unequivocal in distinguishing those who are already in service and placing them in a separate category. It is, therefore, evident that the said provision applies only to those who are not in judicial service either of the Union or of the State. Nowhere does it provide an eligibility condition for the appointment of in-service candidates merely because they had completed 7 years of practice as an advocate prior to their appointment.

iv. Once an individual joins the stream of service, he/she ceases to be an advocate. A person in judicial service cannot simultaneously also be a practicing

advocate and is, therefore, not eligible for being appointed as against the quota reserved for advocates. The requirement of having seven years of practice refers to a continuous state of affairs.

v. Clause (2) of Article 233 of the Constitution does not specifically provide for direct recruitment for those in service. If direct recruitment is to be contemplated, this Court would be reading into the clause what is not mentioned therein. It would result in an incongruous situation, wherein, while qualifications for one source of direct recruitment (i.e., practicing advocates) are prescribed, there is no qualification for those who are in service. If direct recruitment for in-service candidates is read into clause (2) of Article 233, it would mean that any Civil Judge (even with one day's experience) can seek appointment as district judge by way of direct recruitment.

vi. In the case of Rameshwar Dayal (supra) Harbans Singh and P.R. Sawhney (Respondents therein) did not cease to be advocates at any time after 15th August 1947 and continued to be advocates till they were appointed as judges. Further, they had a standing of seven years.

vii. With respect to the two sources of recruitment, those in service are appointed in "consultation" with the High Court and those from the bar are appointed on the "recommendation" of the High Court. The observations relied on by the Petitioners in the lower part of paragraph 89 of Chandra Mohan (supra) are only qua the question whether the Governor can appoint from services other than judicial services. It is in that context that two sources of recruitment being "indicated" in clause (2) is mentioned. This is so because when clause (2) speaks of those who are not in service, there is obviously a second source, i.e., of those who are in service.

C. ISSUE FOR CONSIDERATION

9. The present batch of matters arises for consideration in view of the interpretation given to Article 233 of the Constitution of India by a three-Judge Bench of this Court in the case of Dheeraj Mor (supra). It will be pertinent to reproduce the finding of the said three-Judge Bench, in paragraph 45, which reads thus:

"45. In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice

in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practising advocate having minimum 7 years' experience."

10. As such, what has been held by this Court, reads thus:

"Under Article 233 (2), an advocate...

(i) Should be in practice in the immediate past for seven years;

(ii) Must be in practice while applying on the cut-off date; and

(iii) Should be in practice as an advocate on the date of appointment."

11. We are, therefore, called upon to consider the correctness of the said finding.

D. PROVISION OF LAW AND PRECEDENTS

i. Text of Article 233 of the Constitution

12. Article 233 of the Constitution of India reads thus:

"233. Appointment of district judges.-

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

13. Applying the first principle of interpretation i.e., the rule of literal interpretation, we propose to analyse the provisions contained in Article 233 of the Constitution.

14. Clause (1) of Article 233 of the Constitution deals with the appointments of persons to be, and the posting and promotion of, district judges in any State. It can thus be seen that Article 233(1) of the Constitution is a provision providing for appointments of persons as district judges in a State so also for posting and promotions thereof. It further provides that such appointments shall be made by the Governor of the State concerned in consultation with the High Court exercising jurisdiction in relation to such State.

15. Article 233(2) of the Constitution deals with the eligibility of the persons for appointment to the post of district judge. A plain reading of clause (2) of Article 233 of the Constitution would reveal that for appointment of a person to the post of district judge, two streams are provided:

(i) a person not already in the service of the Union or of the State; and

(ii) an advocate or a pleader if he has been an advocate or a pleader for not less than seven years.

16. It can thus be seen that the words "a person not already in the service of the Union or of the State" is the first part of Article 233(2) of the Constitution. The second part is "shall only be eligible to be appointed if he has been for not less than seven years as an advocate or a pleader".

17. The first clause of Article 233 speaks of appointment, posting and promotion of district judges in a State which shall be made by the Government of the State in consultation with its High Court. Clause (2) of Article 233 does not restrict appointment of persons employed in the Union or the State to the post of district judges but enables, in addition advocates or pleaders who have seven years' practice, to be appointed as district judges.

The appointment or promotion and the consequential posting has to be made under Clause (1) of Article 233, while Clause (2) provides for two sources of appointment. The plain meaning coming out of the words employed does not provide any restriction to judicial officers from direct recruitment. On the other hand, it enables a judicial officer to be appointed as a district judge by direct recruitment even without the prescription of a period of practice.

18. As already discussed hereinabove, this Court in the case of Dheeraj Mor (supra) has held that clause (2) of Article 233 of the Constitution does not provide for a qualification of a person who is already in service of the Union or of the State. It provides qualifications only insofar as an advocate or a pleader is concerned. This Court, in the case of Dheeraj Mor (supra), held that for a person to be eligible to be appointed as district judge it is required that he has been for not less than seven years an advocate or a pleader. The requirement of recommendation of the High Court is common to both streams i.e., in-service candidates and an advocate or a pleader. With this analysis, we propose to deal with the judgments of this Court which are concerned with the issues raised in the present reference.

ii. Case Laws

a. Rameshwar Dayal v. The State of Punjab and Others

19. The issue with regard to interpretation of Article 233 of the Constitution came up for consideration before a Constitution Bench of this Court in the case of Rameshwar Dayal (supra).

20. In the said case, a petition came to be filed before the High Court of Punjab contending that five persons (Respondents No. 2 to 6 therein) were not qualified to be appointed as district judges under Article 233 of the Constitution at the time they were appointed by the State Government. The writ petitioner before the High Court had inter-alia sought for a writ of quo-warranto thereby seeking to oust them from their office and for restraining them from exercising the powers, duties and functions of the posts they were holding. The writ petition was summarily dismissed by the High Court on 21st September 1959. An application for a certificate of fitness was rejected by the High Court. The writ petitioner, therefore, prayed for a special leave from this Court which was granted on 19th August 1960.

21. The appointment of the three respondents was challenged on the ground that they did not have the requisite experience of seven years' practice in the High Court of Punjab and that their experience before the Lahore High Court, prior to partition, could not be taken into consideration for counting the total experience. Insofar as the other two respondents are concerned, it was contended that, one of them was working as a Chairman, Jullundur Improvement Trust and the other one was working as a Deputy Custodian, Evacuee Property on the date of their appointment as District & Sessions Judges and as such they were not qualified.

22. This Court recorded that the contentions raised on behalf of the appellant therein ranged over a wide field, however, the point for consideration is that whether clause (2) of Article 233 of the Constitution provides that a person not already in the service of the Union or of the State shall only be eligible to be appointed as a district judge if he (i) has been for not less than seven years an advocate or a pleader and (ii) is recommended by the High Court for appointment.

23. This Court further recorded the following arguments which were raised on behalf of the appellant therein:

(i) That the expression "advocate or pleader" is an expression of legal import and must be given its generally accepted meaning at the time the Constitution was adopted, and that the said expression means an advocate or pleader entitled to appear and plead for another in a Court in India but does not include an advocate or pleader of a foreign Court;

(ii) That the use of the present prefect tense "has been" in clause (2) of Article 233 of the Constitution require that the person eligible for appointment must not

only have been an advocate or pleader before but must be an advocate or pleader at the time he is appointed to the office of district judge;

(iii) That the period of seven years referred to in clause (2) of Article 233 must be counted as the standing of the advocate or pleader with reference to his right of practice in a court in the territory of India i.e., any right of practice in a court which was in India before the partition of the country in 1947 but which is not in India since partition, cannot be taken into consideration for the purpose of counting the period of seven years.

24. Answering the questions that arose for consideration before it, the Constitution Bench observed thus:

"12. Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in clause (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

25. It can thus be seen that this Court has held that Article 233 of the Constitution is a self-contained provision regarding the appointment of district judges. It has been held that for a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) of Article 233 of the Constitution, the Governor can appoint such a person as a district judge in consultation with the relevant High Court. It has also been held that for a person not already in service, qualifications are laid down in clause (2) of Article 233 of the Constitution and all that is required is that he/she should be an advocate or pleader of seven years' standing.

26. It is thus clear that the source of appointment for both an in-service candidate and a directly recruited candidate is provided in clause (1) of Article 233 of the Constitution. Clause (2) of Article 233 of the Constitution deals with the two aspects viz., (i) qualification of an advocate or a pleader and (ii) necessity of the recommendation by the High Court.

27. Insofar as the issue with regard to counting the experience of an advocate or a pleader in the Lahore High Court for counting the years of service as an advocate of High Court of Punjab is concerned, we may observe that the same is not relevant for adjudication of the present reference inasmuch as it is not an issue before us.

28. This Court in that respect, however, in Rameshwar Dayal (supra) made a reference to the consequences that would follow if the interpretation canvassed

on behalf of the appellant therein was to be accepted. The Court recorded that if the same is accepted, then for seven years beginning from 15th August 1947, no member of the Bar of the Punjab High Court would be eligible for appointment as a district judge.

29. It will be relevant to refer to the following observations of this Court:

"13. It is perhaps necessary to add that we must not be understood to have decided that the expression 'has been' must always mean what learned counsel for the appellant says it means according to the strict rules of grammar. It may be seriously questioned if an organic Constitution must be so narrowly interpreted, and the learned Additional Solicitor-General has drawn our attention to other Articles of the Constitution like Article 5(c) where in the context the expression has a different meaning.

Our attention has also been drawn to the decision of the Allahabad High Court in Mubarak Mazdoor v. K.K. Banerji [AIR 1958 All 323] where a different meaning was given to a similar expression occurring in the proviso to sub-section (3) of Section 86 of the Representation of the People Act, 1951. We consider it unnecessary to pursue this matter further because the respondents we are now considering continued to be advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed. They were clearly eligible for appointment under clause 2 of Article 233 of the Constitution."

30. It can thus be seen that with respect to the submission advanced on behalf of the learned counsel for the appellant therein, the Constitution Bench of this Court observed that it is necessary to add that they must not be understood to have decided that the expression "has been" must always mean what the learned counsel for the appellant says it to mean.

The Constitution Bench further observed that they may be seriously questioned if an organic constitution must be so narrowly interpreted. However, this Court did not find it necessary to pursue the matter in this regard since Respondents No. 2, 4 and 5 were considered to be continuing as advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed (which was inclusive of their practice as an advocate in the Lahore High Court).

31. This Court in Rameshwar Dayal (supra) thereafter considered the cases of Respondents No. 3 and 6 whose names were not on the roll of advocates at the time they were appointed as district judges. This Court observed thus:

"14. We now turn to the other two respondents (Harbans Singh and P.R. Sawhney) whose names were not factually on the roll of Advocates at the time

they were appointed as district judges. What is their position? We consider that they also fulfiled the requirements of Article 233 of the Constitution. Harbans Singh was in service of the State at the time of his appointment, and Mr Viswanantha Sastri appearing for him has submitted that clause (2) of Article 233 did not apply. We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of clause (2), we must hold that they fulfilled those requirements."

32. It is thus clear that in spite of the fact that Respondents No. 3 and 6 were factually not on the roll of advocates at the time of their appointment as district judges and they were in service of the State, they were considered eligible for appointment. This Court specifically observed that Harbans Singh (Respondent No. 3) and P.R. Sawhney (Respondent No. 6) were in service of the State at the time of his appointment.

33. No doubt that the learned Senior Counsel/counsel appearing for the Respondents before us in the present batch of matters are right in contending that the Constitution Bench in Rameshwar Dayal (supra) while interpreting Section 8(2)(a) of the Bar Councils Act, 1926 and Clause 6 of the High Courts (Punjab) Order, 1947 held that the concerned Respondents therein did not cease to be advocates at any time or stage after August 15, 1947 and they continued to be advocates of the Punjab High Court till they were appointed as district judges. However, the position is clear that both Respondents No. 3 and 6 therein were in service of the State at the time of their appointment. It is also not in dispute that on 6th May 1949, Respondent No. 6 therein had got his licence to practise as an advocate suspended.

b. Chandra Mohan v. State of Uttar Pradesh and Others

34. The next judgment of this Court which requires our consideration is that of Chandra Mohan (supra). Before we proceed to consider the observations of the Constitution Bench in the said case, a brief narration of the facts would be necessary.

35. In the said case, in the year 1961-62, the Registrar of the Allahabad High Court called for applications for recruitment to ten vacancies in the Uttar Pradesh Higher Judicial Service from Barristers, Advocates, Vakils and Pleaders of more than seven years' standing and from judicial officers.

36. It will be relevant to refer to Rule 14 of the U.P. Higher Judicial Service Rules which reads thus:

"Rule 14. Direct Recruitment.-

(1) Applications for direct recruitment to the service shall be called for by the High Court and shall be made in the prescribed form which may be obtained from the Registrar of the Court.

(2) The applications by barristers, advocates, vakils or pleaders, should be submitted through the District Judge concerned, and must be accompanied by certificates of age, character, nationality and domicile, standing as a legal practitioner, and such other documents as may be prescribed in this behalf by the Court. Applications from Judicial Officers should be submitted in accordance with the rules referred to in clause 2(b) of rule 5 of these Rules. The District Judge or other officer through whom the application is submitted shall send to the Court, along with the application, his own estimate of the applicant's character and fitness for appointment to the service."

37. The Selection Committee constituted under the U.P. Higher Judicial Service Rules, in accordance with the provisions of the said Rules, selected six candidates from the said applicants as suitable for appointment to the said service. Respondents No. 2, 3 and 4 therein were advocates and respondents No. 5, 6 and 7 therein were "judicial officers". Their appointments were challenged before the High Court on the ground that the said candidates were not the members of the judicial service.

There was difference of opinion between the judges of the Division Bench of the High Court. As such, the matter came to be referred to a third Judge. The third Judge agreed with the view that the recruitment from both the sources was good. As such, the writ petitions were dismissed. Pursuant to the certificate given by the High Court under Articles 132(1) and 133(1)(c) of the Constitution, the appeal came to be filed before this Court.

38. It is pertinent to note that the Constitution Bench of this Court in Chandra Mohan (supra) observed that the expression "judicial officers" is a euphemism for the members of the Executive department who discharge some revenue and magisterial duties.

39. Though several issues were raised for consideration before the Constitution Bench in the case of Chandra Mohan (supra), it would suffice to refer to the following contentions:

"(3) The Governor has no power to appoint district judges from judicial officers as they are not members of the judicial service.

(4) The exclusion of the members of the judicial service in the matter of direct recruitment offends Arts. 14 and 16 of the Constitution; or, alternatively, the exclusion of the members of the judicial service in the matter of direct

recruitment to the post of district judges while permitting "judicial officers" to be so recruited offends the said articles."

40. It will be relevant to specifically refer to the third point which has been considered by this Court in Chandra Mohan (supra), which reads thus:

"The third point raised is one of far-reaching importance. Can the Governor, after the Constitution, directly appoint persons from a service other than the judicial service as district judges in consultation with the High Court? Can he appoint "judicial officers" as district judges? The expression "judicial officers" is a misleading one. It is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions."

41. It can thus be seen that the main issue that fell for consideration before this Court in the said case was as to whether the judicial officers belonging to the executive branch of the Government could be appointed as district judges?

42. It will also be relevant to the following observations of this Court in the case of Chandra Mohan (supra): "Before construing the said provisions, it should be remembered that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, "if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

43. It can thus be seen that the Constitution Bench held that though the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act. However, if two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.

44. The Court in the said case thereafter examined the entire scheme of Articles 233 to 237 of the Constitution.

45. After examining the scheme, this Court observed thus:

"The gist of the said provisions may be stated thus : Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. There are two sources of recruitment, namely, (i)

service of the Union or of the State, and (ii) members of the Bar. The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations."

[Emphasis supplied]

46. It can thus be seen that this Court has held that the appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. This Court further held that there are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar. It has been held that the said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. This Court further held that in the case of appointments of persons to the judicial service other than as district judges, the same shall be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. It has been further held that the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations.

47. This Court held that under Article 236(b) of the Constitution, "judicial service" has been defined to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge. This Court thereafter observed thus:

"If this definition, instead of appearing in Art. 236, is placed as a clause before Art. 233(2), there cannot be any dispute that "the service" in Art. 233(2) can only mean the judicial service. The circumstance that the definition of "judicial service" finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. The fact that in Art. 233(2) the expression "the service" is used whereas in Arts. 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Art. 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service.

The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the judicial service consists of hierarchy of judicial officers starting from the lowest and ending with district judges. The expressions "exclusively" and "intended" emphasise the fact that the judicial service consists only of persons intended to fill up the posts of district judges and other civil

judicial posts and that is the exclusive service of judicial officers. Having defined "judicial service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the world (sic) Constitution not have conferred a blanket power on the Governor to appoint any person from any service as a district judge."

[Emphasis supplied]

48. This Court, therefore, after examining the scheme held that having defined "judicial service" in exclusive terms and having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the Constitution could not have conferred a blanket power on the Governor to appoint any person from any service as a district judge. Subsequently, after referring to the observations of this Court in the case of Rameshwar Dayal (supra), this Court in the case of Chandra Mohan (supra) observed thus:

"This passage is nothing more than a summary of the relevant provisions. The question whether "the service" in Art. 233(2) is any service of the Union or of the State did not arise for consideration in that case nor did the Court express any opinion thereon. We, therefore, construe the expression "the service" in d. (2) (sic) of Art. 233 as the judicial service."

49. It can thus be seen that the question whether "the service" in Article 233(2) of the Constitution "is any service of the Union or of the State" did not arise for consideration in Rameshwar Dayal (supra). This Court, therefore, in Chandra Mohan (supra) construed the expression "the service" in clause (2) of Article 233 of the Constitution as the judicial service.

50. This Court, in the result, held that the U.P. Higher Judicial Service Rules providing for the recruitment of district judges are constitutionally void and therefore the appointments made thereunder were illegal.

51. A perusal of both these Constitution Bench judgments would reveal that this Court does not hold that in case of direct recruitment, it is only the advocates having practice of seven years who could be appointed. Neither does either of the judgment prohibit the judicial officers to be considered for appointment by way of direct recruitment.

52. If we accept the construction as put forth by the Respondents, then the first part of clause (2) of Article 233 of the Constitution i.e., "a person not already in service of the Union or of the State" will be rendered redundant and superfluous.

53. It is, however, more than a settled position of law that it is presumed that the legislature has inserted each and every word with an intention to give the provision an effective meaning.

54. If the Constituent Assembly desired that when the recruitment is made directly, only the advocates having seven years of practice would be considered for appointment, it would not have put the words "a person not already in service of the Union or of the State" in the first part of clause (2) of Article 233 of the Constitution. It is, therefore, to be presumed that the Constituent Assembly has used the said words with a purpose.

55. As already discussed hereinabove, the source of appointment of district judges is clause (1) of Article 233 of the Constitution. Even if the selection of such a person is made through promotions or through the mode of direct recruitment, the appointment will have to be made by the Governor of the concerned State in consultation with the High Court. At the cost of repetition, we observe that the second part of clause (2) of Article 233 of the Constitution only enables and provides for qualifications for advocates or pleaders who are desirous of competing for the post of district judge.

c. State of Assam and Another v. Kuseswar Saikia and Others

56. Coming next to the case of State of Assam and Another v. Kuseswar Saikia and Others9.

57. In the said case, a writ petition was filed before the High Court of Assam by Respondents No.1 to 3 therein seeking the issuance of a writ of quo-warranto challenging the appointment of one Upendra Nath Rajkhowa, who was the District and Sessions Judge, Darrang at Tazpur. The Respondents No. 1 to 3 therein had been convicted by Rajkhowa in a Sessions Trial, as a result they had challenged their conviction inter-alia on the ground that Rajkhowa was not entitled to hold the post of District and Sessions Judge.

The High Court held that the "promotion" of Rajkhowa by the Governor as Additional District Judge by notification LJJ 74/66/65 dated 19th June 1967 purporting to act under Article 233 of the Constitution was void because he could only be promoted by the High Court acting under Article 235 of the Constitution. As a consequence, his further appointment as District Judge by the Governor was also declared by the High Court to be void. Aggrieved, the judgment of the High Court was challenged before this Court.

58. While deciding the appeal, this Court, after referring to clause (1) of Article 233 of the Constitution, observed thus:

"4. The language seems to have given trouble to the High Court. The High Court holds:

"(1) 'appointment to be' a District Judge is to be made by the Governor in consultation with the High Court vide Article 233; and

(2) 'promotion' of a District Judge and not promotion 'to be a District Judge' is also to be made by the Governor in consultation with the High Court vide Article 233."

The High Court gives the example of selection grade posts in the cadre of District Judges which according to it is a case of promotion of a District Judge."

59. It will also be apt to refer to the following observations of this Court in the case of Kuseswar Saikia (supra):

"6. It means that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression "District Judge" includes an Additional District Judge and an Additional Sessions Judge. It must be remembered that District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. The article is intended to take care of both. It concerns initial appointment and initial promotion of persons to be either District Judges or any of the categories included in it. Further, promotion of District Judges is a matter of control of the High Court.

What is said of District Judges here applies equally to additional District Judges and Additional Sessions Judges. Therefore when the Governor appointed Rajkhowa an Additional District Judge, it could either be an "appointment" or a promotion under Article 233. If it was an appointment it was clearly a matter under Article 233. If the notification be treated as "promotion" of Rajkhowa from the junior service to the senior service it was a "promotion" of a person to be a District Judge which expression, as shown above, includes an Additional District Judge. In our opinion, it was the latter.

Thus there is no doubt that the appointment of Rajkhowa as Additional District Judge by the Governor was a promotion and was made under Article 233. It could not be made under Article 235 which deals with posts subordinate to a District Judge including an Additional District Judge and an Additional Sessions Judge. The High Court was in error in holding that the appointment of Rajkhowa to the position of an Additional District Judge was invalid because the order was made by the Governor instead of the High Court. The appointment or promotion was perfectly valid and according to the Constitution."

[Emphasis supplied]

60. It is thus clear that this Court, in unequivocal terms, held that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression "District Judge" includes an Additional District Judge and an Additional Sessions Judge. This Court further observed that the District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. It has been observed that Article 233(1) is intended to take care of both i.e., it concerns with initial appointment as well as promotion of persons to be either District Judges or any of the categories included in it.

This Court further held that the promotion of District Judges is a matter under the control of the High Court. It has been held that when the Governor appointed Rajkhowa an Additional District Judge, it could either be an "appointment" or a "promotion" under Article 233 of the Constitution. It has been held that if it was an appointment, it was clearly a matter under Article 233 of the Constitution. This Court held that there is no doubt that the appointment of Rajkhowa as Additional District Judge by the Governor was a promotion and the same was made under Article 233 of the Constitution.

This Court, therefore, held that the promotion could not be made under Article 235 which deals with posts subordinate to a District Judge including an Additional District Judge and an Additional Sessions Judge and that the High Court was in error in holding that the appointment of Rajkhowa to the position of an Additional District Judge was invalid because the order was made by the Governor instead of the High Court.

d. A. Panduranga Rao v. State of Andhra Pradesh and Others

61. Next is the case of A. Panduranga Rao v. State of Andhra Pradesh and Others10, where the Government of Andhra Pradesh was requested by the High Court to take necessary steps for filling up six vacancies by notifying six posts of District & Sessions Judge, Grade-II for direct recruitment. The State Government informed the High Court vide D.O letter dated 14th September 1972 that six vacancies were being notified for direct recruitment and they were actually notified in the Gazette on the very same date. The advertisement was therefore published on 1st August 1972. Totally 381 applications were received. Out of 381, 26 applications were found to be not in order and were therefore rejected.

The remaining 355 candidates were called by the Selection Committee of the High Court for interview. The appellant therein, A. Panduranga Rao, was one of the candidates interviewed by the Selection Committee. After completion of selection procedure, the High Court made its recommendation in order of merit and Panduranga Rao was 5th out of the 6 names recommended. It, however, appears that the recommendations were leaked and the Bar Association City Civil

Court, Hyderabad and the High Court Bar Association passed certain resolutions/sent certain memoranda to the Government and made some adverse comments against some of the persons recommended by the High Court.

The State Government addressed a D.O. letter dated 24th July 1973 to the High Court expressing concern over the leakage of secret information but at the same time invited comments from the High Court. It appears that there was an exchange of communication and thereafter, the Government appointed two persons from the list of the candidates who were interviewed by the Selection Committee excluding the appellant therein. Several writ petitions were filed before the High Court challenging the said appointments. A writ petition was also filed by the appellant challenging the said appointments so also his non-selection. The writ petition filed by the appellant before the High Court was dismissed. In appeal, this Court, after considering the provisions of Article 233 of the Constitution and the judgment in the case of Chandra Mohan (supra), observed thus:

"8. A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word "recommended". But the literal meaning given in the Concise Oxford Dictionary is quite simple and apposite. It means "suggest as fit for employment". In case of appointment from the Bar it is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court."

62. Finally, this Court allowed the appeal and set aside the judgment of the High Court. It can thus clearly be seen that the question before the Court was as to whether the State Government was empowered to make appointment of a candidate not recommended by the High Court. This Court, in unequivocal terms, held that a candidate becomes eligible for appointment only on such recommendation under clause (2) of Article 233 of the Constitution. The writ petition filed by the appellant before the High Court succeeded only to the extent that the appointment of the candidates whose names were recommended by the High Court was quashed.

63. Relying on the said observations, it is sought to be submitted by the learned Senior Counsel/counsel appearing on behalf of the Respondents that direct recruitment is reserved for the members of the Bar.

64. It is, however, to be noted that in the said case of A. Panduranga Rao (supra), the question as to whether a candidate already in the judicial service of the Union

or the State was eligible for being considered for appointment as a district judge by way of direct recruitment did not fall for consideration.

e. Satya Narain Singh v. High Court of Judicature at Allahabad and Others

65. A heavy reliance is also placed by the Respondents on the judgment of this Court in the case of Satya Narain Singh v. High Court of Judicature at Allahabad and Others11 rendered by a Bench of three learned Judges.

66. In the said case, the appellants therein, who were members of the Uttar Pradesh Judicial Service, in response to an advertisement by the High Court of Allahabad, applied to be appointed by direct recruitment to the Uttar Pradesh Higher Judicial Service. They claimed that each of them had completed seven years of practice at the Bar even before their appointment to the Uttar Pradesh Judicial Service and as such, eligible to be appointed by direct recruitment to the Higher Judicial Service. The writ petitions filed by them before the High Court were dismissed. The Civil Appeal filed thereagainst and some of the writ petitions filed before this Court were dismissed on 11th October 1984. However, thereafter, three writ petitions were heard by a three-Judge Bench which came to be dismissed by this Court on 27th November 1984.

67. It will be relevant to refer to the arguments advanced by both the sides, which read thus:

"2. The submission of Shri Lal Narain Sinha and Shri K.K. Venugopal was that there was no constitutional inhibition against members of any Subordinate Judicial Service seeking to be appointed as District Judges by direct recruitment provided they had completed 7 years' practice at the bar. The submission of the learned counsel was that members of the Subordinate Judiciary, who had put in 7 years' practice at the bar before joining the Subordinate Judicial Service and who had gained experience as Judicial Officers by joining the Subordinate Judicial Service ought to be considered better fitted for appointment as District Judges because of the additional experience gained by them rather than be penalised for that reason.

The learned counsel submitted that a construction of Article 233 of the Constitution which would render a member of the Subordinate Judicial Service ineligible for appointment to the Higher Judicial Service because of the additional experience gained by him as a Judicial Officer would be both unjust and paradoxical. It was also suggested that it would be extremely anomalous if a member of the Uttar Pradesh Judicial Service who on the present construction of Article 233 is ineligible for appointment as a District Judge by direct recruitment, is nevertheless eligible to be appointed as a Judge of the High Court by reason of Article 217(2)(aa).

On the other hand Shri Gopal Subramanium, learned counsel for the respondent, urged that there was a clear demarcation in the Constitution between two sources of recruitment namely: (1) those who were in the service of a State or Union, and (2) those who were not in such service. He contended that the second clause of Article 233 was attracted only to the second source and in respect of candidates from that source the further qualification of 7 years as an advocate or a pleader was made obligatory for eligibility. According to Mr Gopal Subramanium, a plain reading of both the clauses of Article 233 showed that while the second clause of Article 233 was applicable only to those who were not already in service, the first clause was applicable to those who were already in service.

He urged that any other construction would lead to anomalous and absurd consequences such as a junior member of the Subordinate Judicial Service taking a leap, as it were, over senior members of the Judicial Service with long records of meritorious service. Both sides relied upon the decisions of this Court in Rameshwar Dayal v. State of Punjab [AIR 1961 SC 816 : (1961) 2 SCR 874 : (1961) 2 SCJ 285] and Chandra Mohan v. State of Uttar Pradesh [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412]"

68. Since a heavy reliance is placed on behalf of the Respondents on the said judgment, it will be relevant to refer to the entire reasoning as recorded in the said judgment, which reads thus:

"3. Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with "appointments of persons to be, and the posting and promotion of, District Judges in any State" while the second clause is confined in its application to persons "not already in the service of the Union or of the State". We may mention here that "service of the Union or of the State" has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge.

It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court.

A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously. The dichotomy is clearly brought out by S.K. Das, J. in Rameshwar Dayal v. State of Punjab [AIR 1961 SC 816 : (1961) 2 SCR 874 : (1961) 2 SCJ 285] where he observes:

"Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in clause (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

Again dealing with the cases of Harbans Singh and Sawhney it was observed:

"We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of clause (2), we must hold that they fulfilled those requirements."

Clearly the Court was expressing the view that it was in the case of recruitment from the Bar, as distinguished from Judicial Service that the requirements of clause (2) had to be fulfilled. We may also add here earlier the Court also expressed the view:

"we do not think that clause (2) of Article 233 can be interpreted in the light of Explanations added to Articles 124 and 217"

4. In Chandra Mohan v. State of Uttar Pradesh [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412] Subba Rao, C.J. after referring to Articles 233, 234, 235, 236 and 237 stated:

"The gist of the said provisions may be stated thus: Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar. The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the District Courts and courts subordinate thereto, subject to certain prescribed limitations."

(emphasis supplied)

Subba Rao, C.J. then proceeded to consider whether the Government could appoint as District Judges persons from services other than the Judicial Service. After pointing out that Article 233(1) was a declaration of the general power of the Governor in the matter of appointment of District Judges and he did not lay down the qualifications of the candidates to be appointed or denoted the sources from which the recruitment had to be made, he proceeded to state:

"But the sources of recruitment are indicated in clause (2) thereof. Under clause (2) of Article 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader."

5. Posing the question whether the expression "the service of the Union or of the State" meant any service of the Union or of the State or whether it meant the Judicial Service of the Union or of the State, the learned Chief Justice emphatically held that the expression "the service" in Article 233(2) could only mean the Judicial Service. But he did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as District Judges, overlooking the claims of all other seniors in the Subordinate Judiciary contrary to Article 14 and Article 16 of the Constitution.

6. Thus we see that the two decisions do not support the contention advanced on behalf of the petitioners but, to the extent that they go, they certainly advance the case of the respondents. We therefore, see no reason to depart from the view already taken by us and we accordingly dismiss the writ petitions."

69. With due respect, we may state that the said judgment does not lay down the correct position of law. The finding of this Court in the said case that the second clause of Article 233 is confined in its application to persons "not already in the service of the Union or of the State" is, in our view, erroneous. The finding that there is a clear distinction between the two sources of recruitment and the dichotomy is maintained, in our view, is not correct. Further, the finding that the two streams are separate until they come together by appointment and the "same ship cannot sail both the streams simultaneously" does not lay down the correct law.

70. No doubt that this Court in Satya Narain Singh (supra) correctly held that in Rameshwar Dayal (supra), this Court had expressed the view that it was in the case of recruitment from the Bar, as distinguished from judicial service, that the requirements of clause (2) of Article 233 of the Constitution of having seven years' practice had to be fulfilled. However, it is pertinent to note that though this Court notices that no such qualification is provided in the case of candidates who

are members of the judicial services, it is not clear from the judgment as to whether the Court finds that those who were appointed from the service in Rameshwar Dayal (supra) was wrong or not. However, from the judgment in Rameshwar Dayal (supra), it is obviously clear that the Court notices that Harbans Singh and P.R. Sawhney (Respondents therein) were appointed when they were in service of the State.

71. This Court, in Satya Narain Singh (supra), after referring to Chandra Mohan (supra), stated that in Chandra Mohan (supra), the Court observed that the expression "the service" in Article 233(2) of the Constitution could only mean the judicial service. However, it further held that this Court in Chandra Mohan (supra) did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as district judges, overlooking the claims of all other seniors in the Subordinate Judiciary contrary to Articles 14 and 16 of the Constitution.

72. We find that the abovesaid observations made in Satya Narain Singh (supra) that if a person who is already in service is appointed as a district judge on the recommendation of the High Court, thereby overlooking the claims of all other seniors in the subordinate judiciary, would violate Articles 14 and 16 of the Constitution is not correct.

On the contrary we find that it will enable the more meritorious candidates amongst the judicial officers to compete with the advocates and only if they are found to be more meritorious, will they be selected and appointed. Not only that but Articles 14 and 16 of the Constitution would require that an equal treatment be given to all eligible candidates. In fact, the observations which amount to creating a "quota" for advocates, having practice of seven years, in the matter of direct recruitment for the post of district judges would violate the provisions of Articles 14 and 16 of the Constitution.

73. We, therefore, find that barring a person, who is otherwise eligible but at the time of advertisement, is in judicial service of the Union or of the State and is prevented from competing with the candidates who are advocates having practice of seven years, for appointment(s) in the stream of direct recruitment would result in denial of an equal treatment. When the appointments are made solely on the basis of merit, then the claim of meritorious judicial officers cannot be overlooked. It is only merit and merit alone that shall matter.

f. Sushma Suri v. Govt. of National Capital Territory of Delhi and Another

74. The learned Senior Counsel/counsel appearing for the Respondents also placed reliance on the case of Sushma Suri v. Govt. of National Capital Territory of Delhi and Another12. In the said case, the appellant therein who was

appointed as Assistant Government Advocate and thereafter was promoted to the post of Additional Government Advocate in this Court, had applied, in response to the advertisement issued for recruitment to the Delhi Higher Judicial Service. When she was not called for the interview, she filed a writ petition before the High Court, which was dismissed. While considering the provision contained in Article 233 of the Constitution, this Court observed thus:

"3. Obviously, this Rule has been framed to be in conformity with Article 233 of the Constitution. Article 233(1) thereof provides for appointments of persons who are already in service while Article 233(2) provides that a person not already in service is eligible for appointment if he has been for not less than seven years an advocate or a pleader and is recommended for the purpose by the High Court. Referring to the expression "service" in Article 233(2) it has been held by this Court in Chandra Mohan v. State of U.P. [AIR 1966 SC 1987 : (1967) 1 LLJ 412] and Satya Narain Singh v. High Court of Judicature at Allahabad [(1985) 1 SCC 225 : 1985 SCC (L&S) 196 : AIR 1985 SC 308] that it means "judicial service".

However, it is not the contention either before the High Court or before us that the appellant is in judicial service. On the other hand the contention is that she has more than seven years' experience as an advocate and, therefore, is fully eligible to be appointed to the Higher Judicial Service and the High Court was not justified in not considering her case for appointment. Hence we have to examine the only question whether the appellant is an "advocate" for the purpose of Article 233(2) of the Constitution and "from the Bar" as envisaged in Rule 7 of the Rules."

75. For the reasons that are recorded by us hereinabove, we find that the finding in the case of Sushma Suri (supra) that Article 233(1) of the Constitution provides for appointments of persons who are already in service, while Article 233(2) of the Constitution provides that a person not already in service is eligible for appointment if he has been for not less than seven years an advocate or a pleader and is recommended for the purpose by the High Court, is again contrary to the provisions of Article 233 of the Constitution.

76. This Court, in the said case, observed thus:

"6. If a person on being enrolled as an advocate ceases to practise law and takes up an employment, such a person can by no stretch of imagination be termed as an advocate. However, if a person who is on the rolls of any Bar Council is engaged either by employment or otherwise of the Union or the State or any corporate body or person practises before a court as an advocate for and on behalf of such Government, corporation or authority or person, the question is whether

such a person also answers the description of an advocate under the Act. That is the precise question arising for our consideration in this case."

77. It can thus be seen that this Court in the case of Sushma Suri (supra) has held that if a person on being enrolled as an advocate ceases to practise law and takes up an employment, then such a person can by no stretch of imagination be termed as an "advocate". This Court further posed a question for its consideration that if a person who is on the roll of any Bar Council is engaged either by employment or otherwise of the Union or the State or a body corporate or person practises before a Court as an advocate for and on behalf of such Government, corporation or authority or person, whether such a person also answers the description of an advocate under the Act.

78. To answer the said question, this Court considered the provisions under the Advocates Act, 1961 and observed that for the purpose of the Advocates Act and the rules framed thereunder, the Law Officer (Public Prosecutor or Government Counsel) will continue to be an advocate. It was observed that the intention of the relevant rules is that a candidate eligible for appointment to Higher Judicial Service should be a person who regularly practices before the Court or tribunal, appearing for a client.

79. This Court, in the said case, thereafter observed thus:

"9. In Oma Shanker Sharma case [CWP No. 1961 of 1987] the Delhi High Court approached the matter in too pedantic a manner losing sight of the object of recruitment under Article 233(2) of the Constitution. Whenever any recruitment is conducted to fill up any post, the area of recruitment must be as broad-based as the Rules permit. To restrict it to advocates who are not engaged in the manner stated by us earlier in this order is too narrow a view, for the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. A Government Counsel may be a Public Prosecutor or Government Advocate or a Government Pleader.

He too gets experience in handling various types of cases apart from dealing with the officers of the Government. Experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental to selection to the posts of the Higher Judicial Service. The expression "members of the Bar" in the relevant Rule would only mean that particular class of persons who are actually practising in courts of law as pleaders or advocates. In a very general sense an advocate is a person who acts or pleads for another in a court and if a Public Prosecutor or a Government Counsel is on the rolls of the Bar Council and is entitled to practise under the Act, he answers the description of an advocate."

80. It can thus be seen that this Court has clearly held that the object of the recruitment under Article 233 of the Constitution should not be approached in a "pedantic manner". It has been observed that whenever a recruitment is conducted, the area of recruitment must be "as broad-based as the rules permit". It has been held that the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. This Court held that a Government Counsel may be a Public Prosecutor or Government Advocate or a Government Pleader who too gets experience in handling various types of cases apart from dealing with the officers of the Government.

It has been held that experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental in selection to the posts of the Higher Judicial Service. This Court observed that the expression "members of the Bar" in the relevant rule would only mean that particular class of persons who are actually practising in courts of law as pleaders or advocates. This Court held that if a Public Prosecutor or a Government Counsel is on the roll of the Bar Council and is entitled to practise under the Act, he answers the description of an advocate. This Court clearly held that an advocate employed by the Government or a body corporate as its law officer, even on terms of payment of salary would not cease to be an advocate in terms of Rule 49 of the Bar Council of India Rules.

81. It can thus be seen that the observations of this Court in Sushma Suri (supra) rather than fully supporting the contention of the Respondents, to some extent, support the contentions of the Petitioners. This Court in the said case has emphasized that the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. It has been observed that the Government Advocate gets experience in handling various types of cases apart from dealing with the officers of the Government. It has been held that the experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental to selection to the posts of the Higher Judicial Service.

g. Deepak Aggarwal v. Keshav Kaushik and Others

82. Again, in the case of Deepak Aggarwal (supra), relied upon by the learned Senior Counsel/Counsel for the Respondents, the five appellants therein who were working as Assistant District Attorney, Deputy Advocate General and Public Prosecutor, etc., were selected by direct recruitment to the post of Additional District & Sessions Judge in the Haryana Superior Judicial Service. The High Court had quashed their appointment on the ground that they did not have the requisite criteria to qualify for the recruitment as contemplated in Article 233 of the Constitution. This Court, after considering the Constitution Bench

judgments in the cases of Rameshwar Dayal (supra) and Chandra Mohan (supra) and other judgments dealing with the similar issue, observed thus:

"89. We do not think there is any doubt about the meaning of the expression "advocate or pleader" in Article 233(2) of the Constitution. This should bear the meaning it had in law preceding the Constitution and as the expression was generally understood. The expression "advocate or pleader" refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising law.

In other words, the expression "advocate or pleader" in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In Sushma Suri [(1999) 1 SCC 330 : 1999 SCC (L&S) 208], a three-Judge Bench of this Court construed the expression "members of the Bar" to mean class of persons who were actually practising in courts of law as pleaders or advocates. A Public Prosecutor or a Government Counsel on the rolls of the State Bar Council and entitled to practise under the 1961 Act was held to be covered by the expression "advocate" under Article 233(2). We respectfully agree."

83. It can thus be seen that the meaning given to the term "advocate or pleader" in the case of Sushma Suri (supra) has been affirmed by this Court in the case of Deepak Aggarwal (supra). This Court further observed thus:

"99. The factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the courts. If the answer is yes, then despite employment he continues to be an advocate. On the other hand, if the answer is in the negative, he ceases to be an advocate."

84. It can thus be seen that this Court has reiterated the position laid down in the case of Sushma Suri (supra) that the factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the courts. This Court held that despite employment he continues to be an advocate.

85. Therefore, the question that is required to be considered by us is if the purpose of recruitment is to get persons of necessary qualification, experience and knowledge of life, then as to whether the judicial officer who is in judicial service could be denied an opportunity to be recruited in the posts meant to be filled by way of direct recruitment. In that respect, we are of the considered view

that it cannot be denied that the experience a judicial officer gets by working as a judge can only work to the betterment of the district judiciary. The question that we would have to therefore consider in present case is as to whether such experienced persons having rich judicial experience can be permitted to participate in the process of direct recruitment for the post of district judge.

h. Vijay Kumar Mishra and Another v. High Court of Judicature at Patna

86. In Vijay Kumar Mishra and Another v. High Court of Judicature at Patna13, a case specifically relied upon by the learned Senior Counsel appearing on behalf of the Petitioners, the appellants therein had appeared in the recruitment for the Subordinate Judicial Service of Bihar as well as District Judge Entry Level (Direct from Bar). It will be relevant to note that in the said case the process for both the recruitments was held simultaneously. The writ petitioners before the Patna High Court appeared in the preliminary and mains examination of District Judge Entry Level (Direct from Bar).

In the meantime, they were declared qualified for the Subordinate Judicial Service in 28th Batch and accordingly joined the Subordinate Judicial Service of the State of Bihar in August 2015. Subsequently, the result of the Mains Examination of the District Judge Entry Level (Direct from Bar) was published in January 2016. Both the writ petitioners were declared qualified in the Mains Examination. The High Court had published schedule for interview and issued call letters to both of them. One of the conditions mentioned therein was furnishing of a 'No Objection Certificate of the Employer'.

Therefore, the writ petitioners filed a representation before the Registrar General, Patna High Court seeking to appear in the said interview. The request was declined on the ground that they were already in the State Judicial Subordinate Service. It was further informed to the writ petitioners that if they desire to appear in the interview, they may choose to resign before participating in the interview and that the said resignation, once tendered, would not be permitted to be withdrawn. The rejection of their representation was the subject matter of a challenge before the High Court. The High Court rejected the writ application. Hence, the writ petitioners came before this Court.

87. It will be gainful to refer to the following observations in the judgment delivered by Jasti Chelameshwar, J.:

"5. For any youngster, the choice must appear very cruel, to give up the existing employment for the uncertain possibility of securing a better employment. If the appellant accepted the advice of the High Court but eventually failed to get selected and appointed as a District Judge, he might have to regret his choice for the rest of his life. Unless providence comes to the help of the appellant to secure

better employment elsewhere or become a successful lawyer, if he chooses to practise thereafter, the choice is bound to ruin the appellant. The High Court we are sure did not intend any such unwholesome consequences. The advice emanated from the High Court's understanding of the purport of Article 233(2). Our assay is whether the High Court's understanding is right.

6. Article 233(1) stipulates that appointment of District Judges be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. However, Article 233(2) declares that only a person not already in the service of either the Union or of the State shall be eligible to be appointed as District Judge. The said Article is couched in negative language creating a bar for the appointment of certain class of persons described therein. It does not prescribe any qualification. It only prescribes a disqualification."

88. It can thus be seen that this Court once again went on to interpret Article 233(2) to mean that only a person not already in the service of either the Union or the State shall be eligible to be appointed as District Judge. The Court observed that the said Article is couched in "negative language" creating a bar for the appointment of certain class of persons described therein. It was further observed that it does not prescribe any qualification but only prescribes disqualification. With due respect, we may observe that the said observations of this Court are contrary to the law laid down by this Court in the Constitution Bench judgment of Chandra Mohan (supra).

89. The Court in the case of Vijay Kumar Mishra (supra) goes on the premise that there is a distinction between selection and appointment. It was held by this Court that every person who is successful in the selection process undertaken by the State for the purpose of filling up of certain posts under it, does not acquire any right to be appointed automatically. This Court noted that Article 233(2) only prohibits the appointment of a person who is already in the service of the Union or the State, but not the selection of such a person.

90. After referring to the judgments of this Court in the cases of Satya Narain Singh (supra) and Deepak Aggarwal (supra), the two-Judge Bench in the said case observed that the question as to at what stage the bar comes into operation was not an issue before the Court nor did it go into that question. The Court, therefore, allowed the appellants therein to participate in the selection process without insisting upon their resignation from their current employment. The Court further directed that if the appellants therein were found suitable, it was open to them to resign from the current employment and opt for the post of District Judge, if they so desire.

91. Abhay Manohar Sapre, J., in his separate concurring judgment in the case of Vijay Kumar Mishra (supra) observed thus:

"22. This submission though looks attractive, is not acceptable. Neither the text of Article and nor the words occurring in Article 233(2) suggest such interpretation. Indeed, if his argument is accepted, it would be against the spirit of Article 233(2). My learned Brother for rejecting this argument has narrated the consequences, which are likely to arise in the event of accepting such argument and I agree with what he has narrated.

23. In my view, there lies a subtle distinction between the words "selection" and "appointment" in service jurisprudence. (See Prafulla Kumar Swain v. Prakash Chandra Misra [Prafulla Kumar Swain v. Prakash Chandra Misra, 1993 Supp (3) SCC 181 : 1993 SCC (L&S) 960 : (1993) 25 ATC 242] .) When the Framers of the Constitution have used the word "appointed" in clause (2) of Article 233 for determining the eligibility of a person with reference to his service then it is not possible to read the word "selection" or "recruitment" in its place. In other words, the word "appointed" cannot be read to include the word "selection", "recruitment" or "recruitment process".

24. In my opinion, there is no bar for a person to apply for the post of District Judge, if he otherwise, satisfies the qualifications prescribed for the post while remaining in service of the Union/State. It is only at the time of his appointment (if occasion so arises) the question of his eligibility arises. Denying such person to apply for participating in selection process when he otherwise fulfils all conditions prescribed in the advertisement by taking recourse to clause (2) of Article 233 would, in my opinion, amount to violating his right guaranteed under Articles 14 and 16 of the Constitution of India.

25. It is a settled principle of rule of interpretation that one must have regard to subject and the object for which the Act is enacted. To interpret a statute in a reasonable manner, the Court must place itself in a chair of reasonable legislator/author. So done, the rules of purposive construction have to be resorted to so that the object of the Act is fulfilled. Similarly, it is also a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in the sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature. (See Interpretation of Statutes, 12th Edn., pp. 119 and 127 by G.P. Singh). The aforesaid principle, in my opinion, equally applies while interpreting the provisions of Article 233(2) of the Constitution."

i. Dheeraj Mor v. High Court of Delhi

92. That brings us to the decision of this Court in the case of Dheeraj Mor v. High Court of Delhi14 wherein a two-Judge Bench found that in view of the various decisions of this Court, the major issue that arises for its consideration is as to whether the eligibility for appointment as district judge is to be seen at the

time of appointment or at the time of application or both. The matter was, therefore, directed to be placed before the then Chief Justice of India so as to constitute a larger Bench of this Court. On reference, this Court decided the matter on 19th February 2020 in Dheeraj Mor (supra).

93. The learned three-Judge Bench in the said case, upon interpretation of Article 233 of the Constitution, held that the only mode provided for the appointment of in-service candidates to the post of district judge was by way of promotion. According to the three learned Judges, this interpretation has already been laid down by the Constitution Bench in the case of Chandra Mohan (supra).

94. It will be relevant to refer to paragraph 19 of Dheeraj Mor (supra) which reads thus:

"19. It is apparent from the decision in Chandra Mohan v. State of U.P. [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] that this Court has laid down that concerning District Judges recruited directly from the Bar, the Governor can appoint only advocates recommended by the High Court and Rule 14 which provided for judicial officers to be appointed as direct recruits was struck down by this Court to be ultra vires.

Thus, the decision is squarely against the submission espoused on behalf of in-service candidates. In the abovementioned para 11 of Chandra Mohan [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] , the position is made clear. In Chandra Mohan [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] the Court held that only advocates can be appointed as direct recruits, and inter alia Rule 14 providing for executive officers' recruitment was struck down. This Court has held that the expression "service of State or Union" means judicial service, it only refers to the source of recruitment. Dichotomy of two sources of recruitment/appointment has been culled out in the decision."

95. It can thus be seen that the three learned Judges held that in Chandra Mohan (supra), this Court has laid down that insofar as district judges recruited directly from the Bar are concerned, the Governor can appoint only advocates recommended by the High Court and Rule 14 therein which provided for the judicial officers to be appointed as direct recruits was struck down by this Court as ultra vires. The Court noted that the position was squarely against the submissions espoused on behalf of the in-service candidates. The Court further reiterated that it was only the advocates who could be appointed as district judges by way of direct recruitment. The three-Judge Bench also held that the law laid down in the case of Rameshwar Dayal (supra) was also against the submissions raised on behalf of the in-service candidates.

96. This Court in the said case, thereafter, referring to the judgments in Satya Narain Singh (supra), Deepak Aggarwal (supra) and Vijay Kumar Mishra (supra), held that an in-service candidate cannot apply against the posts reserved for advocates/pleaders as he has to be in continuous practice in the past and at the time when he has applied and is appointed. This Court, therefore, held that the law laid down in Vijay Kumar Mishra (supra) was not correct.

97. An argument was placed before this Court in Dheeraj Mor (supra) with regard to denial of equal opportunity. While rejecting the said argument, the Court observed thus:

"43. We find that there is no violation of equal opportunity. There is a wide search for talent for inducting in the judicial service as well as in direct recruitment from Bar, and the best candidates are identified and recruited. Persons from unusual places are also given the opportunity to stake their claim in pursuit of their choice. In State of Bihar v. Bal Mukund Sah [State of Bihar v. Bal Mukund Sah, (2000) 4 SCC 640 : 2000 SCC (L&S) 489] , this Court has observed that onerous duty is cast on the High Court under the constitutional scheme.

It has been given a prime and paramount position in the matter with the necessity of choosing the best available talent for manning the subordinate judiciary. Thus, we find that there is no violation of any principle of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights."

98. In conclusion, this Court observed thus:

"45. In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practising advocate having minimum 7 years' experience.

46. In view of the aforesaid interpretation of Article 233, we find that rules debarring judicial officers from staking their claim as against the posts reserved for direct recruitment from Bar are not ultra vires as rules are subservient to the provisions of the Constitution."

99. The answers to the reference in the main judgment of Arun Mishra, J. is as under:

"47. We answer the reference as under:

47.1. The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.

47.2. The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

47.3. Under Article 232(2) (sic), an Advocate or a pleader with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.

47.4. For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

47.5. The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

47.6. The decision in Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled."

100. Thereafter, in the judgment delivered by Arun Mishra, J. for himself and Vineet Saran, J., in paragraph 48, the Court held that wherever such in-service candidates have been appointed by way of direct recruitment against the posts reserved for Bar, they shall be discontinued and be reverted to their original post.

101. In his separate concurring judgment, S. Ravindra Bhat, J., after correctly narrating as to what was laid down by the Constitution Bench in Rameshwar Dayal (supra), distinguished it on the reasoning that this Court had no occasion to deal with any rules framed under Article 233/234 in relation to the appointment for the post of district judge.

102. Bhat, J., further correctly referred to the ratio of Chandra Mohan (supra) as under:

"67. Thereafter, the Court held that the expression "not already in the service" of the Union or any State meant that those holding civil posts, or members of civil services i.e. occupying non-judicial posts, were ineligible to compete for selection and appointment as District Judge; thus, only those in service as Judges, or members of judicial services could be considered for appointment."

103. It can thus be seen that Bhat, J., noticed that in Chandra Mohan (supra), the Constitution Bench held that only those in service as judges or members of judicial services could be considered for appointment. However, after noticing the same and noticing the judgments in the case of Satya Narain (supra) and Deepak Aggarwal (supra), he observed thus:

"71. It is clear that what this Court had to consider was whether Public Prosecutors and Government Advocates were barred from applying for direct recruitments (i.e. whether they could be considered to have been in practice) and whether-during their course of their employment, as Public Prosecutors, etc. they could be said to have "been for not less than seven years" practising as advocates. The Court quite clearly ruled that such Public Prosecutors/Government Counsel (as long as they continued to appear as advocates before the court) answered the description and were therefore eligible."

104. In conclusion, Bhat, J., considered Rameshwar Dayal (supra) and Chandra Mohan (supra) in the following words:

"75. It is thus evident, that Rameshwar Dayal [Rameshwar Dayal v. State of Punjab, (1961) 2 SCR 874 : AIR 1961 SC 816] was mainly concerned with the question whether practice as a pleader or advocate, in pre-Partition India could be reckoned, for the purpose of calculating the seven-year period, stipulated in Article 233(2). No doubt, there are some observations, with respect to appointments being referable to Article 233(1).

However, the important aspect which is to be kept in mind, is that no rules were discussed; the experience of the Advocates concerned, who were appointed as District Judges, was for a considerable period, in pre-Partition India, in the erstwhile undivided Punjab. Chandra Mohan [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] , on the other hand is a clear authority-and an important judgment, on the aspect that those in the service of or holding posts, under the Union or States,-if they are not in judicial service-are ineligible for appointment as District Judges, under Article 233(2) of the Constitution.

The corollary was that those holding judicial posts were not barred as holders of office or posts under the Union or the State. Significantly, this Court in Chandra

Mohan [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] , invalidated a rule which rendered both officers holding executive positions, under the State, and those holding judicial posts, eligible to apply for appointment under Article 233(2)."

105. Bhat J., with due respect, went wrong while holding that Chandra Mohan (supra) invalidated Rule 14 therein, rendering both executive officers under the State and persons holding judicial posts ineligible to apply under Article 233(2). In fact, Chandra Mohan (supra) only held the rules empowering recruitment of District Judges from "judicial officers" to be unconstitutional. "Judicial Officers" as noticed in the Rule was held in the decision itself to be misleading since: "it is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions" (sic). It was held in Chandra Mohan (supra):

"But Art. 233(1) is nothing more than a declaration of the general power of the Governor in the matter of appointment of district judges. It does not lay down the qualifications of the candidates to be appointed or denote the sources from which the recruitment has to be made. But the sources of recruitment are indicated in cl. (2) thereof. Under Cl. (2) of Art. 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader."

106. The reference is answered by Bhat, J., in the following terms:

"76. A close reading of Article 233, other provisions of the Constitution, and the judgments discussed would show the following:

76.1. That the Governor of a State has the authority to make "appointments of persons to be, and the posting and promotion of, District Judges in any State [Article 233(1)].

76.2. While so appointing the Governor is bound to consult the High Court [Article 233(1) : Chandra Mohan [Chandra Mohan v. State of U.P., (1967) 1 SCR 77 : AIR 1966 SC 1987] and Chandramouleshwar Prasad v. High Court of Patna [Chandramouleshwar Prasad v. High Court of Patna, (1969) 3 SCC 56 : (1970) 2 SCR 666.

76.3. Article 233(1) cannot be construed as a source of appointment; it merely delineates as to who is the appointing authority.

76.4. In matters relating to initial posting, initial appointment, and promotion of District Judges, the Governor has the authority to issue the order; thereafter it is up to the High Court, by virtue of Article 235, to exercise control and superintendence over the conditions of service of such District Judges. (See State

of Assam v. Ranga Mohd. [State of Assam v. Ranga Mohd., (1967) 1 SCR 454 : AIR 1967 SC 903],

76.5. Article 233(2) is concerned only with eligibility of those who can be considered for appointment as District Judge. The Constitution clearly states that one who has been for not less than seven years, "an advocate or pleader" and one who is "not already in the service of the Union or of the State" (in the sense that such person is not a holder of a civil or executive post, under the Union or of a State) can be considered for appointment, as a District Judge. Significantly, the eligibility-for both categories, is couched in negative terms. Clearly, all that the Constitution envisioned was that an advocate with not less than seven years' practice could be appointed as a District Judge, under Article 233(2).

76.6. Significantly, Article 233(2) ex facie does not exclude judicial officers from consideration for appointment to the post of District Judge. It, however, equally does not spell out any criteria for such category of candidates. This does not mean however, that if they or any of them, had seven years' practice in the past, can be considered eligible, because no one amongst them can be said to answer the description of a candidate who "has been for not less than seven years" "an advocate or a pleader" (per Deepak Agarwal i.e. that the applicant/candidate should be an advocate fulfilling the condition of practice on the date of the eligibility condition, or applying for the post). The sequitur clearly is that a judicial officer is not one who has been for not less than seven years, an advocate or pleader."

107. While rejecting the argument with regard to denial of equal opportunity to the in-service candidates, Bhat J., observed thus:

"82. In the opinion of this Court, there is an inherent flaw in the argument of the petitioners. The classification or distinction made-between advocates and judicial officers, per se is a constitutionally sanctioned one. This is clear from a plain reading of Article 233 itself. Firstly, Article 233(1) talks of both appointments and promotions. Secondly, the classification is evident from the description of the two categories in Article 233(2) : one "not already in the service of the Union or of the State" and the other "if he has been for not less than seven years as an advocate or a pleader".

Both categories are to be "recommended by the High Court for appointment". The intent here was that in both cases, there were clear exclusions i.e. advocates with less than seven years' practice (which meant, conversely that those with more than seven years' practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for promotion, could be so appointed by the

Governor. The conditions for their promotion were left exclusively to be framed by the High Courts.

83. In view of the above analysis, since the Constitution itself makes a distinction between advocates on the one hand, and judicial officers, on the other, the argument of discrimination is insubstantial. If one examines the scheme of appointment from both channels closely-as Mishra, J. has done-it is evident that a lion's share of posts are to be filled by those in the judicial service. For the past two decades, only a fourth (25%) of the posts in the cadre of District Judges (in every State) are earmarked for advocates; the balance 75% to be filled exclusively from amongst judicial officers. 50%, (out of 75%) is to be filled on the basis of seniority-cummerit, whereas 25% (of the 75%) is to be filled by departmental examination.

This examination is confined to members of the judicial service of the State concerned. The decision of this Court in All India Judges' Assn. v. Union of India [All India Judges Assn. v. Union of India, (2010) 15 SCC 170 : (2013) 1 SCC (L&S) 548] , reduced the limited departmental examination quota (out of turn promotion quota) from 25% to 10% which took effect from 1-1-2011. Thus, cumulatively, even today, judicial officers are entitled to be considered for appointment, by promotion, as District Judges, to the extent of 75% of the cadre relating to that post, in every State. It is therefore, held that the exclusion-by the rules, from consideration of judicial officers, to the post of District Judges, in the quota earmarked for Advocates with the requisite standing, or practice, conforms to the mandate of Articles 233-235, and the rules are valid."

108. Bhat, J., went to the extent of saying that if rules of any State permit judicial officers to compete against the advocates' quota for appointment as district judges, they are susceptible to challenge. He observed that enabling judicial officers to compete in the quota earmarked for advocates would potentially result in no one from the stream of advocates with seven or more years' practice being selected.

He held that this will be contrary to the mandate of Article 233(2). Bhat, J., therefore, held that Vijay Kumar Mishra (supra), to the extent that it is contrary to Ashok Kumar Sharma and Others v. Chander Shekhar and Another,15 as regards participation in the selection process of candidates who are members of the judicial service, for appointment to the post of district judge, from amongst the quota earmarked for advocates with seven years' practice, was wrongly decided and in the result overruled the same.

j. All India Judges Association and Others v. Union of India and Others

109. Reliance was also placed by the learned Senior Counsel/counsel appearing on behalf of the Respondents on the following observations made by three learned Judges of this Court in the case of All India Judges Association and Others v. Union of India and Others16.

"27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary.

While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges.

While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve.

In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority.

For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cumseniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment.

Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising.

The 40-point roster has been considered and approved by this Court in R.K. Sabharwal v. State of Punjab [R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548]. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal case [R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548] as early as possible.

We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003."

110. In addition to the reliance placed on the judgment of this Court in the case of All India Judges Association (supra), it is submitted by the learned Senior Counsel/counsel appearing on behalf of the Respondents that understanding the provisions of Article 233 of the Constitution in the correct perspective, the First National Judicial Pay Commission under the Chairmanship of Justice K. Jagannatha Shetty, a former Judge of this Court,17 itself recommended bringing out an amendment to Article 233(2) so as to permit in-service candidates to compete in the posts reserved for direct recruitment. On the contrary by also placing reliance on the Shetty Commission, the correctness of the aforesaid view in Dheeraj Mor (supra) is sought to be reconsidered by the learned Senior Counsel appearing on behalf of the Petitioners.

111. It is also the case of the Respondents that the judgments of the Constitution Bench of this Court in the cases of Rameshwsar Dayal (supra) and Chandra Mohan (supra) have been correctly considered by this Court in various subsequent decisions including in the cases of Satya Narain (supra), Deepak Aggarwal (supra) and Ashok Kumar Sharma (supra). It is further submitted that the law laid down in Dheeraj Mor (supra) only reiterates the earlier position as laid down in various judgments of this Court. It is, therefore, submitted that this position is in hold for decades together and no interference would be warranted for the same.

E. CONSIDERATION

112. We now propose to deal with the rival submissions.

i. Textual and Contextual Interpretation

113. We have already referred to the principles of plain and literal interpretation hereinabove.

114. We may also gainfully refer to the following observations of this Court in the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others18:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context.

With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasonsfor it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."

115. It can thus be seen that the interpretation which makes the textual interpretation match the contextual one has to be preferred. A statute is best interpreted when the reason and purpose for its enactment is ascertained. The statute must be read first as a whole, and then section by section, clause by clause, phrase by phrase and word by word.

It has been held that if the statute is looked at in the context of its enactment with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these "glasses" we must look at the Act as a whole and discover what each section, each clause, each phrase and each word means and what it is designed to

say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.

116. The law laid down by this Court in Peerless General Finance and Investment Co. Ltd. (supra) has been followed in a catena of judgments including in the Constitution Bench judgment of this Court in the case of Vivek Narayan Sharma and Others (Demonetisation Case - 5 J) v. Union of India and Others19, of which one of us (Gavai, J., as he then was) was a member.

ii. Scheme of Article 233 of the Constitution

117. In that view of the matter, we will have to examine the entire scheme of Article 233 of the Constitution. We will also have to give meaning to each and every word used in the said provision.

118. As already discussed hereinabove, all provisions relating to appointment of a person to be a district judge and the posting and promotion thereof are contained in clause (1) of Article 233 of the Constitution. Such appointments have to be made by the Governor in consultation with the High Court exercising jurisdiction in relation to such a State.

As such, the contention as sought to be placed on behalf of the Respondents that clause (1) of Article 233 of the Constitution deals with promotions and the only manner in which in-service candidates could be appointed as district judges is by way of promotion and further that the appointments made under clause (2) of Article 233 of the Constitution have to be restricted only to the advocates or a pleader having seven years' practice in our view, is not in consonance with the textual and contextual meaning of Article 233 of the Constitution.

119. As already discussed hereinabove, clause (1) of Article 233 of the Constitution deals with all the aspects regarding appointment to be made, promotion and posting to the post of district judge. Further, as held by the Constitution Bench of this Court in the case of Kuseswar Saikia (supra), even appointment on promotion of a subordinate judicial officer would be traceable to clause (1) of Article 233 of the Constitution.

120. Not only that but as held by this Court in the case of Rameshwar Dayal (supra), clause (2) of Article 233 of the Constitution deals with the qualification of a person to be appointed as district judge. However, it is held by this Court in the case of Rameshwar Dayal (supra), that clause (2) of Article 233 does not provide a qualification for a person who is already in service of the Union or of the State. As clarified in the case of Chandra Mohan (supra), such a service of the Union or the State has to be only judicial service.

121. Though clause (2) of Article 233 of the Constitution begins in a negative manner, if the interpretation as sought to be given in the judgments of this Court in the cases of Satya Narain Singh (supra) till Dheeraj Mor (supra) is to be accepted, it will render the first part of clause (2) of Article 233 of the Constitution redundant.

122. It will be relevant to refer to the following observations of Constitution Bench of this Court in the case of Union of India and Another v. Hansoli Devi and Others20:

"9. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose [(1952) 2 SCC 237: AIR 1952 SC 369 : 1953 SCR 1] had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry [AIR 1920 PC 181] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons."

123. We are of the considered view, and particularly in view of what has been held in the case of Rameshwar Dayal (supra), that clause (2) of Article 233 of the Constitution contains provisions with regard to qualification for appointment of district judge wherein it provides that for anyone who is not already in service of the Union or of the State, such a person will be eligible to be appointed as district judge only if he has been for not less than seven years an advocate or a pleader. However, if a person is already in judicial service of the Union or of the State, no such requirement is provided for.

124. We are also of the considered view that if clause (2) of Article 233 of the Constitution is not read in the aforesaid manner, then the words "a person not already in the service of the Union or of the State" will be rendered redundant and otiose. Such an interpretation of clause (2) of Article 233, in our view, would not be permissible in law.

125. We are further of the considered view that if the principle of textual and contextual interpretation is applied to the provisions of Article 233 of the Constitution, it would require that the first part of clause (2) of Article 233 of the Constitution be read as "other than a person already in the service of the Union or of the State" or "except the person already in the service of the Union or of the State" so as to avoid rendering the first part of clause (2) of Article 233 being rendered redundant and otiose. This interpretation of ours derives support from the judgment of this Court in the case of Rameshwar Dayal (supra) wherein the Constitution Bench clearly held that clause (2) of Article 233 provides

qualification for a candidate who is an advocate whereas it does not provide qualification for an in-service candidate.

126. A combined reading of clauses (1) and (2) of Article 233 of the Constitution would, therefore, reveal that the Constitution under clause (2) of Article 233 does not provide for qualification for an in-service candidate for direct recruitment.

127. Insofar as the reliance placed on the recommendations of the Shetty Commission and the directions issued in All India Judges' Association (supra) by the Respondents are concerned, it will be relevant to note that the recommendations were made by the Shetty Commission when the judgment of this Court in the case of Satya Narain (supra) was holding the field.

iii. Recommendations of the Shetty Commission

128. It will be relevant to refer to the following recommendations made in the Shetty Commission's report:

"11.50 We have given our anxious consideration to the views and comments expressed by the respondents to our Questions 8.3 and 8.4.

11.51 The majority of the High Courts and the Service Associations barring a couple of them are for giving an opportunity to the Service judges for direct recruitment as District Judges. Even, some of the Governments are in favour of such a move. The reasons given in support of the proposal are that it would promote efficiency, improve discipline in judicial service and make the officers to work more efficiently, diligently and sincerely.

11.52 We are highly impressed by the reasons given by the High Courts of Allahabad, Bombay, Punjab & Haryana and All India Judges' Association. If meritorious young blood should be introduced in the mixed cadre, there is no reason why merited serving judges should be excluded from consideration for direct recruitment. In such selection the High Court will have an opportunity to assess the merit of serving judges as against the merits of the competent advocates. The Bombay High Court has rightly observed that the High Court in such selection will have an added advantage of assessing the service judges on the basis of their work and confidential records.

11.53 We agree that if an opportunity is afforded, it would make the Officers to work more efficiently, diligently and sincerely.

11.54 We do not understand why such an opportunity should create indiscipline, heart-burn and jealousy amongst the judicial officers as the Karnataka High Court has stated. We are equally unable to appreciate that it may lead to

frustration amongst the Seniors who are not selected for direct recruitment as indicated by the Delhi High Court.

11.55 It may be noted that we are not recommending for accelerated promotion to Service judges. The accelerated promotion to a junior judge may lead to heart-burn and jealousy in the Service. Though we have formulated a question on that aspect and though some of the High Courts and Associations are in favour of introducing the system of accelerated promotion, we do not consider it desirable to have that system since it is likely to lead to bitterness and jealousy amongst the officers.

11.56 The Commission considers that if an opportunity for direct recruitment is afforded to in service judges, it would, to a great extent, remove the frustration which is presently dogging them. Such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

11.57 The contention urged by the directly recruited District Judges that those who have got the promotional channel should be allowed to make a move only through that channel does not sound to reason. In All India Administrative Service, there is no bar for any person in any service for applying, subject to the age prescribed. It is a common experience that many of the successful IAS and IPS candidates initially belonged to one or the other service.

11.58 The Commission, therefore, considers that it is reasonable and also necessary to provide eligibility for service judges for direct recruitment of District Judges."

129. It can thus clearly be seen that the Shetty Commission has recorded that a majority of the High Courts and the Service Associations were of the view that the service judges should be given an opportunity for direct recruitment as district judges. The reasoning given in support of the said recommendation by the Commission was to promote efficiency, improve discipline in judicial service and make the officers work more efficiently, diligently and sincerely. It has been observed that if meritorious young blood should be introduced in the mixed cadre, there is no reason as to why merited serving judges should be excluded from consideration for direct recruitment.

130. It has been further observed that, in such a selection, the High Court will have an opportunity to assess the merit of serving judges as against the merits of the competent advocates. The Shetty Commission also referred to the view of the Bombay High Court wherein it was stated that the High Court in such selection will have an added advantage of assessing the service judges on the basis of their work and confidential records.

131. The argument with regard to indiscipline, heartburn and jealousy amongst the judicial officers as put in by the Karnataka High Court has been specifically rejected by the Shetty Commission. The Commission further found that if such an opportunity is provided for direct recruitment to the in-service judges, it would, to a great extent, remove the frustration which is presently dogging them. It has been observed that such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

132. The Shetty Commission further observed that when there is no such restriction in All India Services, there is no reason as to why the service judges should be forced to enter to judicial service only through promotional channel and not be permitted to enter through the direct recruitment. It has been observed that it was common experience that many of the successful IAS and IPS candidates initially belonged to one or the other service. The Shetty Commission, therefore, recommended amending Article 233 of the Constitution by insertion of clause (3) in it. The Shetty Commission also recommended an age limit between 35 years and 45 years for advocates and the serving judges to apply for direct recruitment to the post of district judge.

133. It is to be noted that the recommendations for amendment of the Constitution as made by the Shetty Commission are on the basis of the interpretation of clause (2) of Article 233 of the Constitution in the judgment of this Court in the case of Satya Narain Singh (supra). We have already held that the interpretation as placed in the case of Satya Narain Singh (supra) and followed subsequently is not a correct interpretation.

134. We are, therefore, in full agreement with those observations made by the Shetty Commission, according to which in order to promote efficiency in the cadre of district judges, the young talented meritorious judicial officers should not be denied an opportunity.

iv. Experience of a Judicial Officer

135. As a matter of fact, some of the observations made in the subsequent three-Judge Bench judgments of this Court in the cases of Sushma Suri (supra) and Deepak Aggarwal (supra) would support the view that we have taken. In both the said cases, this Court held that merely because by virtue of being Government Advocates, the candidates who were in employment, their rich experience of working as a lawyer for the Government cannot be ignored. It has further been held that since they continue to appear for the Government either on the civil side or on the criminal side, their rich experience would benefit the judiciary.

136. Rule 49 of the Bar Council of India Rules as originally framed, reads as follows:

"An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment. Nothing in this rule shall apply to a law officer of the Central Government or of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee. Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer."

137. As already referred to hereinabove, in Sushma Suri (supra), the question arose as to whether the word "Advocate" in Article 233(2) includes a law officer of the Central or State Government, public corporation or of a body corporate, who is enrolled as an advocate under exception to Rule 49, who is practicing before Courts or Tribunal for his employer. A three- Judge Bench held positively, permitting a Public Prosecutor and Government Counsel who is on the rolls of the Bar Council, as entitled to practice under the Act, who would also answer the description of an Advocate under Article 233(2) of the Act.

138. The very same question arose in a different context in Satish Kumar Sharma v. Bar Council of H.P.21. The appellant therein was appointed as Assistant (Legal) by the Himachal Pradesh State Electricity Board, who later enrolled with the State Bar Council at the expense of the Board. After his appointment, the appellant therein continued in the Board as a regular employee, was given promotions with change in designations and was also appearing for the Board in the Courts.

The certificate of enrolment issued in the year 1984 was withdrawn by the Bar Council of the State in the year 1996 after due notice and opportunity of hearing. Looking at the nature of the duties of the appellant who was a full-time salaried employee, it was found that his work was not mainly or exclusively to act or plead in Courts and he had to attend to many more duties, which were quite substantial and predominant.

The appellant therein was also found to be amenable to disciplinary jurisdiction of his employer and mere occasional appearances in some Courts on behalf of the employer could not bring the employer within the meaning of "Law Officer" under paragraph 3 of Rule 49 was the finding. The decision in Sushma Suri (supra) was specifically noticed and distinguished on the ground that in that case the court was concerned with the definition of the word "Advocate" as appearing in Article 233(2), which was held to include a law officer of the Central or State

Government who is enrolled as an advocate falling under exception to Rule 49. It was found so in paragraph 20 of Satish Kumar Sharma (supra):

"20. As stated in the above para the test indicated is whether a person is engaged to act or plead in a court of law as an Advocate and not whether such person is engaged on terms of salary or payment by remuneration. The essence is as to what such Law Officer engaged by the Government does."

139. Satish Kumar Sharma, however, was found to be not coming within the exception under Rule 49 especially when there was no rule framed by the State Bar Council entitling law officers to enrol as an Advocate even if they were full time employees. The contention that after such a long time his certificate of enrolment could not have been cancelled was negated on the finding that even at the threshold, he was not entitled to be enrolled under Rule 49. On the same premise an alternative contention that he may be permitted to resign and retain his enrolment from the date on which the certificate was issued was also negated. Finding no reason to maintain his seniority on the rolls of the State Bar Council, on the basis of an enrolment certificate which at its very issuance was barred, the claim was rejected.

140. We have to specifically notice that both these decisions were taken based on Rule 49 as it existed then. The exceptions provided by paragraphs 2 and 3 have now been removed and have been substituted with the following:

"That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgment will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates.

The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf of their employers. That the Bar Council of India is of the view that if the said Officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

141. As of now, an employee cannot get enrolled in the rolls of the State Bar Council without giving up his employment. A law graduate who is enrolled as an Advocate on taking up regular employment as full time salaried employee is obliged to intimate the fact to the Bar Council in which he is enrolled and would then seize to practice as an Advocate so long as he continues such employment.

Failure to make such intimation can result in his name being struck off from the Rolls. Reading Sections 29, 30 and 33 of the Advocates Act, 1961 together with Rule 49 of the Bar Council of India Rules, an employee, even if he is in the Rolls of the State Bar Council, as long as he remains a fully salaried employee, on intimation of the regular employment would be prohibited from carrying on practice of law as an Advocate.

142. It is further to be noted that Bar Council of India Rules "Part VI - Rules Governing Advocates" came to be amended by the Bar Council of India by incorporating Chapter III "Conditions for Right to Practice" in 2010. In the said newly added Chapter III, Rule 5 deals with voluntarily suspension of practice as well as resumption of practice. Under this Rule, an advocate upon joining the judicial service is expected to intimate to the concerned State Bar Council that he has joined the judicial service as a result of which his right to practice stands voluntarily suspended. Therefore, an advocate who joins the judicial service on his resignation or retirement is entitled to resume his practice after the Enrolment Committee of the concerned State Bar Council orders the resumption of his practice and returns the certificate to him with the necessary endorsement.

143. It is thus clear that an advocate who joins the judicial service only suspends his right to practice and continues to be on the roll of the State Bar Council.

144. In the case of Rameshwar Dayal (supra), the Constitution Bench has found that Harbans Singh and P.R. Sawhney, Respondents No. 3 and 6 therein, were entitled to be appointed as district judges though they were in service of the State on the date of their appointment. Though, their names were not found on the roll of the Bar Council, it was held by the Constitution Bench while interpreting Section 8(2)(a) of the Bar Councils Act, 1926 and Clause 6 of the High Courts (Punjab) Order, 1947 that the said Respondents did not cease to be advocates at any time or stage after August 15, 1947 and they were deemed to be continued as advocates of the Punjab High Court till they were appointed as district judges.

145. At the cost of repetition, we may state that as per the provisions contained in the Bar Council of India Rules, an advocate even upon his selection and joining as a judicial officer, he/she continues to be on the roll of the Bar Council.

146. As already discussed hereinabove, the experience the judicial officers gain while working as judges is much greater than the one, a person gains while working as an advocate. Apart from that, before commencing their work as judicial officers, the judges are also required to undergo rigorous training of at least one year.

147. When Government pleaders and Assistant Public Prosecutor who were still practicing in courts were held to be competent to apply for direct recruitment to

the post of district judge, can the judicial officers before whom they practice, considered to be inferior. In fact, there is an anomaly insofar as an Assistant Public Prosecutor being entitled to participate in the direct recruitment of district judges, while the judicial officers before whom they argue case are disabled; as interpreted in Dheeraj Mor (supra).

148. We, therefore, see no reason to deny an opportunity to such young talented judicial officers to compete with the advocates/pleaders having seven years' practice in the matter of direct recruitment to the post of district judge.

149. We may also gainfully refer to the case of Leela Dhar v. State of Rajasthan and Others22, where a three-Judge Bench of this Court has observed thus:

"4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services."

150. It can thus be seen that the object of any process of selection for entry into a public service should be to secure the best and the most suitable person for the job.

151. The view taken in the case of Leela Dhar (supra) has been approved by the Constitution Bench in the case of Tej Prakash Pathak and Others v. Rajasthan High Court and Others23. This Court, in the said case, observed thus:

"49. The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. [Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159, para 4 : 1981 SCC (L&S) 588] It is now well settled that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities."

v. Interpretation of a Constitutional Provision cannot be pedantic

152. Insofar as the reliance placed by the Respondents on the judgment of this Court in the case of All India Judges' Association and Others (supra) is concerned, wherein this Court observed that the recruitment to the higher judicial service from amongst the advocates should be 25% and that the recruitment

should be by way of a competitive examination including both written examination and viva voce, we may again state that the said observations are in light of the view taken by this Court in the case of Satya Narain Singh (supra) and subsequent judgments relying on Satya Narain Singh (supra).

153. As observed by this Court in a catena of cases, the interpretation of the constitutional provisions cannot be pedantic. It has to be organic. A purposeful interpretation has to be adopted. If the appointment to the district judges cadre is to be made directly for the purpose of enhancing the efficiency of district judiciary, any interpretation which restricts the competition and prohibits the otherwise meritorious candidates from zone of consideration will have to be eschewed. The interpretation which advances the purpose of bringing in efficiency in the district judiciary and permitting a broad-based competition amongst all the eligible candidates will have to be accepted.

154. We are, therefore, of the considered view that the judgments of this Court right from Satya Narain Singh (supra) till Dheeraj Mor (supra) do not lay down a correct proposition of law.

vi. Eligibility of a Judicial Officer for Direct Recruitment

155. That leaves us with the question as to whether there should be no qualifications at all for a member of judicial service in the service of the State or the Union, for participating in the selection process for the post of district judge by direct recruitment.

156. As already discussed hereinabove, all matters pertaining to appointment of a person to the post of a district judge, his posting and promotion are covered under clause (1) of Article 233 of the Constitution. As held by the Constitution Bench in Kuseswar Saikia (supra), even the appointment as a district judge by promotion is covered by Article 233(1) of the Constitution. As such, the State Governments in consultation with the respective High Courts will have to frame rules providing eligibility for in-service candidates to apply for the post of district judge which would be filled by direct recruitment.

We are in full agreement with the view taken by this Court in the case of All India Judges' Association (supra) that the recruitment rules in all the States will have to be uniform as far as possible. Therefore, while maintaining the proportion of 50:25:25 for the posts of district judges as provided by the judgment of this Court in All India Judges' Association (supra) which was reiterated by this Court in the recent judgment in the case of All India Judges' Association and Others v. Union of India and Others24, we propose to issue directions to the State Governments for framing rules in consultation with the respective High Courts

providing the eligibility for candidates who are already in judicial service to apply for the post of district judge to be filled through direct recruitment process.

157. In that respect, we are of the considered view that for bringing the advocates and the in-service candidates at the same level, it will be appropriate that the rules provide that an in-service candidate should be eligible for recruitment to the post of district judge directly only if he has a combined experience of seven years as an advocate and a judicial officer.

Similarly, if an advocate is participating in the selection process and he was a member of judicial service in the past, then his experience as a judicial officer also cannot be ignored. His experience as an advocate prior to joining judicial service, his experience as a judicial officer and his experience as an advocate after leaving the judicial service will all have to be taken together. Such a candidate will be eligible only if he has a combined experience as an advocate and as a judicial officer for seven years.

158. We are also of the considered view that in order to make available a level playing field for all the candidates, whether from in-service or advocates/pleaders, the minimum age as on the date of application should be 35 years as recommended by the Shetty Commission.

159. Insofar as the contention regarding the heartburn amongst the judicial officers in a situation where a junior gets promoted before the senior is concerned, in our view, the said contention is without any merit. The in-service candidates, though junior, will have to compete before being selected with the advocates as also their seniors, who also will be qualified, and only meritorious candidates would be selected and appointed. If a person is meritorious and on account of merit and merit alone gets selected directly as a district judge, there can be no question of heartburn for those who are not as meritorious as persons selected.

160. Insofar as the contention that if the in-service candidates are permitted to participate in the recruitment process as direct recruit, then the advocates/pleaders would not be in a position to get selected is concerned, the same is also without any merit.

161. In the selection process, as observed by the Shetty Commission, the selection would be on the basis of competitive examination, including both written examination and viva voce, and the majority of the marks would be for the written examination. The advocates/pleaders as well as in-service candidates would compete together and only the best/most meritorious amongst them will be selected with no weightage being conferred on in-service candidates. If such a restriction is not applicable in All India Services, we see no reason to import such

an artificial restriction in the appointment of district judges by way of direct recruitment.

vii. Break in practice of a prospective candidate

162. Insofar as the contention advanced by the learned Senior Counsel on behalf of some of the Petitioners that even if there is a break in the number of years of practice of a candidate, such break should be ignored and such persons who are having a total of seven years of practice should be considered eligible for appointment insofar as the direct district judges is concerned, we are not inclined to accept the said contention.

163. We say so because say if a person has practised for five years and thereafter, he takes a break of ten years and thereafter practises for two years, there will be a disconnect with the legal profession. We are, therefore, inclined to hold that only such persons working either as an advocate/pleader including Government Pleaders and Public Prosecutors or as a judicial officer who, on the date of application, have a continuous experience of either an advocate/pleader or a judicial officer or a combination thereof shall only be eligible to be considered for appointment as district judges through the stream of direct recruitment.

viii. Quota for Advocates under Article 233(2)

164. We are also not inclined to accept the contention on behalf of the respondents that 25% quota of direct recruitment is reserved only for practising advocates. We are of the view that if the contention in this respect is accepted, it will amount to providing a "quota" for the advocates having seven years' practice. A plain and literal reading of Article 233(2) does not contemplate such a situation. Therefore, the contention as canvassed in that regard does not hold water.

ix. Doctrine of stare decisis

165. Before we proceed to answer the questions that are framed for our consideration, it will be necessary to consider the submission on behalf of the Respondents that in view of the doctrine of stare decisis, since the law laid down by this Court in Satya Narain Singh (supra) has been followed for a period of over 40 years, the same should not be disturbed.

166. We are, however, unable to accept the said contention. In this respect, we may gainfully refer to a recent judgment of this Court in the case of Property Owners Association and Others v. State of Maharashtra and Others25:

"107. We are not inclined to accept this submission. In Sita Soren v. Union of India (2024) 5 SCC 629, a Constitution Bench of this Court, speaking through

one of us (DY Chandrachud, J) had occasion to clarify that the doctrine of stare decisis is not an inflexible rule of law. This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the interests of the public or if "it is inconsistent with the legal philosophy of the Constitution". In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to the public interest and the polity. The period of time over which the case has held the field is not of primary consequence."

167. We are of the considered view that all the judgments right from Satya Narain Singh (supra) onwards till Dheeraj Mor (supra) have incorrectly applied the law laid down by the Constitution Benches of this Court in Rameshwar Dayal (supra) and Chandra Mohan (supra). As a result, by applying the law laid down by this line of judgments, injustice was meted out to the members of the judicial services, thereby depriving them from participating in the selection process for the post of district judges by way of direct recruitment.

168. The interpretation placed by the judgments right from Satya Narain Singh (supra) onwards till Dheeraj Mor (supra), in our view, is totally inconsistent with the provisions of clause (2) of Article 233 of the Constitution. Having thus found that the law laid down by this Court in the aforementioned cases does not correctly interpret the provisions of Article 233, if we fail to correct the legal position, we will be perpetuating the injustice that has been meted out for decades.

169. It is further to be noted that the judgments of this Court in Satya Narain Singh (supra) onwards have taken an incorrect view. Even after noticing the factual position in the case of Rameshwar Dayal (supra) that two of the persons selected and whose appointments were challenged were inservice candidates, the judgment in Satya Narain Singh (supra) and other judgments held that the post of district judge to be filled by direct recruitment are not available to in-service candidates and can be filled in only by the advocates having requisite number of years of practice. Even in the case of Chandra Mohan (supra), a rule that fell for consideration was dealing with the direct recruitment of district judges.

The said rule provided for applications for direct recruitment to be made by Barristers, Advocates, Vakils and Pleaders of more than seven years' standing, as well as judicial officers, who were admittedly from the executive branch of the State. We are, therefore, of the considered view that even after noticing these aspects in the Constitution Bench judgments of this Court, the subsequent judgments holding that filling the post of district judge by direct recruitment could be filled in only by advocates/pleaders, are not only inconsistent with the literal interpretation of Article 233 but also inconsistent with the factual position as it emanated for consideration of this Court in the cases of Rameshwar Dayal

(supra) and Chandra Mohan (supra). We, therefore, reject the argument on stare decisis as raised by the Respondents.

170. In any case, we clarify that what we have held in this judgment will be applicable only from the date of this judgment and in no case, any selection process completed, or any appointment made prior to this judgment would be affected, except in cases wherein any interim order(s) were passed by the High Courts or this Court. In such cases, the issue would now be governed by the orders to be passed by the Bench hearing the matters.

F. CONCLUSION AND DIRECTIONS

171. In view of the answer which we propose to give for Question No. 4, it may not be necessary to deal with the other questions, however, since the questions are framed by this Court, we propose to answer all the questions.

172. In the result, we answer the questions as under:

(i) Judicial Officers who have already completed seven years in Bar before they were recruited in the subordinate judicial service would be entitled for being appointed as a District Judge/Additional District Judge in the selection process for the post of District Judges in the direct recruitment process;

(ii) The eligibility for appointment as a District Judge/Additional District Judge is to be seen at the time of application;

(iii) Though there is no eligibility prescribed under Article 233(2) for a person already in judicial service of the Union or of the State for being appointed as District Judge, in order to provide a level playing field, we direct that a candidate applying as an in-service candidate should have seven years' combined experience as a Judicial Officer and an advocate;

(iv) A person who has been or who is in judicial service and has a combined experience of seven years or more as an advocate or a Judicial Officer would be eligible for being considered and appointed as a District Judge/Additional District Judge under Article 233 of the Constitution;

(v) In order to ensure level playing field, we further direct that the minimum age for being considered and appointed as a District Judge/Additional District Judge for both advocates and Judicial Officers would be 35 years of age as on the date of application.

(vi) It is held that the view taken in the judgments of this Court right from Satya Narain Singh (supra) till Dheeraj Mor (supra), which take a view contrary to what has been held hereinabove do not lay down the correct proposition of law.

173. The reference is answered accordingly.

174. Consequently, all such rules framed by the State Governments in consultation with the High Courts which are not in accordance with the aforesaid answers shall stand quashed and set aside. It is directed that all the State Governments in consultation with the High Courts shall frame/amend the rules in accordance with what has been held by us hereinabove, within a period of three months from today.

175. The Registry is directed to obtain the necessary orders from Hon'ble the Chief Justice of India, on the administrative side, to place the matters part of the present batch before an appropriate bench for deciding the same in the light of what has been held hereinabove.

176. Before we conclude, we place on record our sincere appreciation for all the learned Senior Counsel/counsel, so also their junior counsel, for assisting us in such meticulous manner. Our task was made easier by the assistance rendered by them. We also place on record our appreciation for all the learned counsel for strictly adhering to the time-limits, as a result of which this Court was able to complete the hearing in the prescribed time period. We would be remiss if we do not place on record our appreciation for the Nodal Counsel in collating all the material in an organized manner.

.....CJI. (B.R. Gavai)

.....J. (Aravind Kumar)

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

.....J. (K. Vinod Chandran)

New Delhi;

October 09, 2025.

1 (2020) 7 SCC 401

2 Union of India and Another v. Hansoli Devi and Others (2002) 7 SCC 273.

3 Chandra Mohan v. State of Uttar Pradesh and Others 1966 SCC OnLine SC 35.

4 1960 SCC OnLine SC 123

5 Mubarak Mazdoor v. Mr. K.K. Banerji 1957 SCC Online All 196, Harbhajan Singh v. Press Council of India and Others (2002) 3 SCC 722 and Surendra

Singh s/o Ram Shanker Singh and Another v. State of U.P. through Secretary Home and Another 2012 SCC Online All 37.

6 (2013) 5 SCC 277

7 (2009) 8 SCC 273

8 (2002) 4 SCC 247

9 (1969) 3 SCC 505

10 (1975) 4 SCC 709

11 (1985) 1 SCC 225

12 (1999) 1 SCC 330

13 (2016) 9 SCC 313

14 (2018) 4 SCC 619

15 (1997) 4 SCC 18

16 (2002) 4 SCC 247

17 Hereinafter, "Shetty Commission".

18 (1987) 1 SCC 424

19 (2023) 3 SCC 1

20 (2002) 7 SCC 273

21 (2001) 2 SCC 365

22 (1981) 4 SCC 159

23 (2025) 2 SCC 1

24 2025 SCC OnLine SC 1184

25 2024 SCC OnLine SC 3122

Rejanish K.V.

Vs.

K. Deepa and Ors.

[Civil Appeal No. 3947 of 2020]

Connected Matters

JUDGMENT

M. M. Sundresh, J.

1. I have gone through the detailed analysis made by Hon'ble the Chief Justice of India in rendering the judgment. While I am in absolute agreement with the reasoning and the ultimate conclusion arrived at, along with the directions issued therein, I would only add my views on the interpretation of Article 233 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution").

2. We are dealing with a situation where this Court, in its subsequent decisions in Satya Narain Singh v. High Court of Judicature at Allahabad and Others, (1985) 1 SCC 225 and Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401 has misconstrued the law as laid down by the larger benches of this Court in Rameshwar Dayal v. The State of Punjab and Others, 1960 SCC OnLine SC 123 and Chandra Mohan v. State of Uttar Pradesh and Others, 1966 SCC OnLine SC 35.

3. Chapter VI of the Constitution deals exclusively with appointment, recruitment and control qua the Subordinate Courts. It is rather significant to note that this Chapter starts from the top with the appointment of district judges, followed by recruitment of persons other than district judges to the judicial service, moves on to control over Subordinate Courts, defines the expression "district judge" and "judicial service" and thereafter ends with the application of provisions of this Chapter to certain classes of Magistrates.

CHAPTER VI
SUBORDINATE COURTS

Article 233 of the Constitution

"233. Appointment of district judges.- (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Article 233-A of the Constitution

"233-A. Validation of appointments of, and judgments, etc., delivered by, certain district judges.- Notwithstanding any judgment, decree or order of any court,-

(a)(i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions."

Article 234 of the Constitution

"234. Recruitment of persons other than district judges to the judicial service.- Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

Article 235 of the Constitution

"235. Control over subordinate courts.- The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any

post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

Article 236 of the Constitution

"236. Interpretation.-In this Chapter-

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge."

Article 237 of the Constitution

"237. Application of the provisions of this Chapter to certain class or classes of magistrates.- The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification."

4. As per Article 233 and Article 234 of the Constitution, while an appointment to the post of a district judge, and to posts in the judicial service other than that of a district judge shall be made by the Governor of the State, the consultation is only with the High Court for the former, while it additionally extends to the State Public Service Commission for the latter. The exclusion of the State Public Service Commission in the process of appointment to the post of a district judge shows that added importance is given to the said post.

5. Article 233 of the Constitution deals with two modes of appointment to the post of a district judge. Clause (1) of Article 233 of the Constitution speaks of appointments to be made to the post of a district judge. These appointments are to be made either by way of a promotion or through direct recruitment.

6. The procedure for appointment, posting and promotion to the post of a district judge, qua a person in the judicial service, is one and the same with respect to the appointing authority, namely, the Governor, and the same is to be done in

consultation with the High Court. Promotion is obviously meant only for a person in the judicial service. One has to be promoted first by the Governor, in consultation with the High Court, and thereafter appointed as a district judge. Therefore, promotion is a precursor to appointment as a district judge qua a person in the judicial service.

Such an appointment is nothing but a resultant consequence. To make this position clear, one has to read Article 233(1) of the Constitution with respect to appointments as "appointments of persons to be district judges". Similarly, for posting, it has to be read as "posting of district judges" and promotions of persons in the judicial service as "promotion and appointment as district judges." One cannot ignore the word "persons" which would only mean persons from two modes of appointment. Therefore, Article 233(1) of the Constitution deals with both, the modes and the sources of appointment.

7. Article 233(2) of the Constitution is a continuation of Article 233(1) of the Constitution. This provision, in fact, reiterates the fact that an appointment by way of direct recruitment can be done from two sources, namely, 'judicial service' and 'an advocate or a pleader'. While doing so, it declares the eligibility criteria only for the latter. Hence, it is made abundantly clear that no such eligibility criteria are fixed for a person in the judicial service. Clause (1) along with Clause (2) of Article 233 of the Constitution, is a complete code by itself, and therefore does not leave any room for interpretation otherwise.

DOCTRINE OF SEPARATION OF POWERS VIS-À-VIS INDEPENDENCE OF THE JUDICIARY

8. Montesquieu's words of wisdom in "63odThe Spirit of Laws' become relevant in this context:

"There can be no liberty there is no liberty if the powers of judging are not separated from the legislative and executive there would be an end to everything if the same man or the same body were to exercise those three powers."

(emphasis supplied)

9. Article 50 of the Constitution forms the basis for the applicability of the doctrine of separation of powers. It deals with the separation of the judiciary from the executive, and imposes an obligation on the State to take steps to separate the judiciary from the executive in the public services of the State.

Article 50 of the Constitution

"50. Separation of judiciary from executive.- The State shall take steps to separate the judiciary from the executive in the public services of the State."

Hence, the concept of 'independence of the judiciary' finds both, its genesis and sustenance, in the doctrine of separation of powers. Dr. Rajendra Prasad, President of the Constituent Assembly and later President of India, in his speech to the Constituent Assembly of India, preceding the motion to adopt the Constitution, in Constituent Assembly Debates, Volume XI (debate of 26-11-1949), stated thus:

"We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence."

(emphasis supplied)

It is such independence that allows each and every judge to make decisions, uninfluenced by any factor. Thus, the independence of the judiciary and the separation of powers between the three organs of the State, which form an integral part of the basic structure doctrine, ensure a vibrant and flourishing institution.

10. Under Article 233 of the Constitution, the primacy given to the High Courts, insofar as the mandate for its consultation in appointments to the post of a district judge, along with the control exercised by it over Subordinate Courts under Article 235 of the Constitution, is a classic exhibition of the doctrine of separation of powers.

11. Judging is an independent sovereign function. The function of the presiding officer of a Court is purely judicial, and not even quasijudicial. For instance, in a criminal case, the prosecuting agency would invariably be either the State, the Union or their instrumentalities, who become mere litigants before the Court, though the presiding officer's post may be connected to them only for administrative purposes. No employee can be an adjudicator of an employer. To say that such a judge is their employee, and therefore debarred from competing for the vacancies earmarked to be filled through direct recruitment, would be contrary to the principle of independence of the judiciary.

12. In the context of the aforesaid discussion, the views of M.P. Singh in his article titled, 'Securing the Independence of the Judiciary - The Indian Experience' published in the Indiana International & Comparative Law Review, IU Robert H. McKinney School of Law, gain significance:

"Although the nature of the Indian Constitution-whether it is federal or unitary-is doubtful, basically it provides for a federal structure of government consisting of the Union and the States. The Union and the States have their distinct powers and

organs of governance given in the constitution. While the Union and States have separate legislatures and executives, they do not have a separate judiciary. The judiciary has a single pyramidal structure with the lower or subordinate courts at the bottom, the High Courts in the middle, and the Supreme Court at the top.

For funding and some administrative purposes, the subordinate courts are subject to regulation by the respective States, but they are basically under the supervision of the High Courts. The unitary character of the judiciary is not an accident but rather a conscious and deliberate act of the constitution makers for whom a single integrated judiciary and uniformity of law were essential for the maintenance of the unity of the country and of uniform standards of judicial behavior and independence."

(emphasis supplied)

13. Judicial service is a distinct service by itself, owing allegiance to the judiciary alone. Therefore, it is kept away from the hands of the other two organs, except to a limited extent. Any attempt to dilute such judicial independence, by giving a rigid interpretation, would be against the constitutional ethos. The said view gets fortified by the judgment of this Court in the case of State of Bihar and Another v. Bal Mukund Sah and Others, (2000) 4 SCC 640

"32. It is true, as submitted by learned Senior Counsel, Shri Dwivedi for the appellant State that under Article 16(4) the State is enabled to provide for reservations in services. But so far as "Judicial Service" is concerned, such reservation can be made by the Governor, in exercise of his rulemaking power only after consultation with the High Court. The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to the District Judiciary and to the Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234.

It is not as if that the High Courts being constitutional functionaries may be oblivious of the need for a scheme of reservation if necessary in appropriate cases by resorting to the enabling provision under Article 16(4). The High Courts can get consulted by the Governor for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, the Legislature cannot, by an indirect method, completely bypassing the High Court and exercising its legislative power, circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution.

Such an exercise, apart from being totally forbidden by the constitutional scheme, will also fall foul on the concept relating to "separation of powers between the Legislature, the Executive and the Judiciary" as well as the fundamental concept of an "independent Judiciary". Both these concepts are now elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.

33. In the case of Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] a twelve-Member Constitution Bench of this Court had occasion to consider this question regarding the basic structure of the Constitution which, according to the Court, could not be tinkered with by Parliament in exercise of its amending power under Article 368 of the Constitution. Sikri, C.J., in para 247 of the Report referred with approval the decision of the Judicial Committee in Liyanage case [Liyanage v. R., (1967) 1 AC 259 : (1966) 1 All ER 650 : (1966) 2 WLR 682 (PC)] for culling out the implied limitations on the amending power of the competent Legislature like Parliament of Ceylon with which that case was concerned. The relevant observations are found in SCC paras 253 to 255 of the Report at pp. 357 and 358, which read as under:

"253. The case, however, furnishes another instance where implied limitations were inferred. After referring to the provisions dealing with 'Judicature' and the Judges, the Board observed:

'These provisions manifest an intention to secure in the Judiciary a freedom from political, legislative and executive control. They are wholly appropriate in a Constitution which intends that judicial power shall be vested only in the Judicature. They would be inappropriate in a Constitution by which it was intended that judicial power should be shared by the Executive or the Legislature. The Constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the Judicature. It is not consistent with any intention that henceforth it should pass to or be shared by, the Executive or the Legislature.'

254. The Judicial Committee was of the view that there 'exists a separate power in the Judicature which under the Constitution as it stands cannot be usurped or infringed by the Executive or the Legislature'. The Judicial Committee cut down the plain words of Section 29(1) thus:

'Section 29(1) of the Constitution says.- "Subject to the provisions of this Order Parliament shall have power to make laws for the peace, order and good government of the Island." These words have habitually been construed in their fullest scope. Section 29(4) provides that Parliament may amend the Constitution on a two-thirds majority with a certificate of the Speaker. Their Lordships however cannot read the words of Section 29(1) as entitling Parliament to pass

legislation which usurps the judicial power of the Judicature - e.g., by passing an Act of attainder against some person or instructing a Judge to bring in a verdict of guilty against someone who is being tried - if in law such usurpation would otherwise be contrary to the Constitution.' (p. 289)

255. In conclusion the Judicial Committee held that there was interference with the functions of the Judiciary and it was not only the likely but the intended effect of the impugned enactments, and that was fatal to their validity."

The ultimate conclusion to which Chief Justice Sikri reached are found in paras 292 to 294 at p. 366 of the Report which read as under:

"292. The learned Attorney General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

(1) Supremacy of the Constitution;

(2) Republican and democratic form of Government;

(3) Secular character of the Constitution;

(4) Separation of powers between the Legislature, the Executive and the Judiciary;

(5) Federal character of the Constitution.

293. The above structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

294. The above foundation and the above basic features are easily discernible not only from the Preamble but the whole scheme of the Constitution, which I have already discussed."

The other learned Judges constituting the Constitution Bench had nothing inconsistent to say in this connection. Thus separation of powers between the Legislature, the Executive and the Judiciary is the basic feature of the Constitution.

34. It has also to be kept in view that judicial independence is the very essence and basic structure of the Constitution. We may also usefully refer to the latest decision of the Constitution Bench of this Court in Registrar (Admn.), High Court of Orissa v. Sisir Kanta Satapathy [(1999) 7 SCC 725 : 1999 SCC (L&S) 1373] wherein K. Venkataswami, J., speaking for the Constitution Bench, made the following pertinent observations in the very first two paras regarding Articles 233 to 235 of the Constitution of India: (SCC Headnote)

"An independent Judiciary is one of the basic features of the Constitution of the Republic. Indian Constitution has zealously guarded independence of Judiciary. Independence of Judiciary is doubtless a basic structure of the Constitution but the said concept of independence has to be confined within the four corners of the Constitution and cannot go beyond the Constitution."

The Constitution Bench in the aforesaid decision also relied upon the observations of this Court in All India Judges' Assn. [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818 : AIR 1993 SC 2493] wherein on the topic of regulating the service conditions of the Judiciary as permitted by Article 235 read with Article 309, it had been observed as under: (SCC p. 297, para 10)

"[T]he mere fact that Article 309 gives power to the Executive and the Legislature to prescribe the service conditions of the Judiciary, does not mean that the Judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the Judiciary in that behalf, for theoretically it would not be impossible for the Executive or the Legislature to turn and twist the tail of the Judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the Judiciary."

In view of this settled legal position, therefore, even while operating in the permissible field of regulating other conditions of service of alreadyrecruited judicial officers by exercising power under Article 309, the authorities concerned have to keep in view the opinion of the High Court of the State concerned and the same cannot be whisked away.

35. In order to fructify this constitutional intention of preserving the independence of the Judiciary and for fructifying this basic requirement, the process of recruitment and appointment to the District Judiciary with which we are concerned in the present case, is insulated from outside legislative interference by the Constitutionmakers by enacting a complete code for that purpose, as laid down by Articles 233 and 234. Consultation with the High Court is, therefore, an inevitable essential feature of the exercise contemplated under these two articles. If any outside independent interference was envisaged by them, nothing prevented the Founding Fathers from making Articles 233 and 234

subject to the law enacted by the Legislature of States or Parliament as was done in the case of other articles, as seen earlier."

(emphasis supplied)

PRINCIPLE OF CONSTITUTIONAL SILENCE

14. While taking note of the doctrine of separation of powers and independence of the judiciary, coupled with the maintenance and enhancement of the quality of judging which forms part of the basic structure doctrine, a decision was consciously taken by the makers of the Constitution to fix the eligibility criteria only for the category of 'an advocate or a pleader.' At this juncture, the concept of 'constitutional silence' comes into play as the makers of the Constitution deliberately left certain areas open-ended, keeping in mind the evolving needs of the society. This concept is invoked to give effect to the essence of the Constitution. The spirit of this principle has been captured by Thomas Carlyle, a Scottish Philosopher and Historian, when he famously stated:

"Under all speech and writing that is good for anything, there lies a silence that is better."

(emphasis supplied)

This Court had the occasion to deal with the aforesaid principle in the case of Bhanumati and Others v. State of U.P. and Others, (2010) 12 SCC 1.

"49. Apart from the aforesaid reasons, the arguments by the appellants cannot be accepted in view of a very well-known constitutional doctrine, namely, the constitutional doctrine of silence. Michael Foley in his treatise on The Silence of Constitutions (Routledge, London and New York) has argued that in a Constitution "abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content or substance of their strictures". (P. 10)

50. The learned author elaborated this concept further by saying, "Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components." (P. 82)

51. Many issues in our constitutional jurisprudence evolved out of this doctrine of silence. The basic structure doctrine vis-à-vis Article 368 of the Constitution emerged out of this concept of silence in the Constitution. A Constitution which professes to be democratic and republican in character and which brings about a

revolutionary change by the Seventy-third Constitutional Amendment by making detailed provision for democratic decentralisation and selfgovernment on the principle of grass-root democracy cannot be interpreted to exclude the provision of no-confidence motion in respect of the office of the Chairperson of the panchayat just because of its silence on that aspect."

(emphasis supplied)

15. One must appreciate the constitutional silence on the eligibility criteria qua a person in the judicial service, which has accordingly been left to the discretion and wisdom of the High Court and the Governor of the State, as per Articles 233 and 235 of the Constitution. Therefore, such an omission was done consciously, as a person in the judicial service has already been recruited by way of an appointment by the orders of the Governor, in consultation with the High Court and the State Public Service Commission.

16. As discussed, Article 233 of the Constitution does not place any fetters on the power of the appointing authority qua the fixation of eligibility criteria for persons in the judicial service, as circumstances might evolve over time, and the wisdom of the Constitutional Courts would take care of it.

ELIGIBILITY VIS-À-VIS QUALIFICATION TO THE POST OF A DISTRICT JUDGE

17. Provisions in the Constitution use the words "qualification" and "eligibility" interchangeably. Examples of such provisions are Article 58 of the Constitution, which provides for the qualifications for election as President, Article 66 of the Constitution, which provides for election of Vice-President and Article 84 of the Constitution, which provides for qualification for membership of the Parliament.

18. The word "eligible" used in Article 233(2) of the Constitution must be read as "qualified." Thus, a person who has been an advocate or a pleader for not less than seven years, along with the recommendation of the High Court is one qualification, and a person in the judicial service is the other qualification. Both of these qualifications are nothing but mere gateways for being appointed to the post of a district judge, facilitating a threshold for entry. However, there is no bar on the High Court to fix the qualification, qua persons in the judicial service, with the approval of the Governor. These qualifications are meant only for consideration for appointment, subject to the successful completion of the recruitment process.

19. Accordingly, we are inclined to hold that there is no bar on persons in the judicial service from competing for the vacancies intended to be filled through direct recruitment. Any interpretation contrary to the aforesaid view, would amount to a reservation in favour of 'an advocate or a pleader,' which is not only

not contemplated under the Constitution, but also violates the very spirit enshrined thereunder.

20. Another lens through which the aforesaid proposition can be viewed is Article 233-A of the Constitution, which provides for the validation of appointments made at any time before the commencement of the Constitution (Twentieth Amendment Act), 1966. Clause (a)(i) of Article 233-A of the Constitution encompasses the validation of appointments from both sources, i.e., a person already in the judicial service and a person who has been an advocate or a pleader for 7 years or more.

The express reference to both the sources, within the same clause, indicates the constitutional intent to place the persons in the judicial service at par with those from the Bar and thus, they are fully entitled to participate in the direct recruitment process. The use of the phrase "any such person" in Clause (a)(ii) of Article 233-A of the Constitution, which deals with the validation of posting, promotion, or transfer, further strengthens their entitlement to such participation.

CONCLUSION

21. While interpreting a constitutional provision, a Court of law must be conscious not to violate the basic structure of the Constitution, and is duty-bound to give it a vibrant and organic interpretation. Article 14 of the Constitution forms an integral part of the basic structure. Though it provides for equality before the law, it allows for a reasonable classification, based upon an intelligible differentia, having a rational nexus to the object sought to be achieved.

Therefore, construing Article 233(2) of the Constitution to be a provision meant only for the category of 'an advocate or a pleader' would certainly be violative of Article 14 of the Constitution, for the purpose of its interpretation. In other words, a contra view would amount to creation of a quota for 'an advocate or a pleader.' An absolute bar on persons in the judicial service would certainly prevent meritorious candidates from competing for the vacancies earmarked for direct recruitment, which would be an affront to the constitutional spirit.

22. A vibrant and qualitative judiciary fosters greater trust in the institution. Thus, it is vital to build a strong foundation. Maintaining and enhancing the quality at the bottom of the judicial pyramid would strengthen the faith of the public in the subordinate judiciary, which in turn would reduce the filing of appeals before the High Courts and the Supreme Court, and therefore considerably reduce the overall pendency.

23. Building a strong foundation and ensuring that the base is of pristine quality is only possible when the best talent is attracted. Letting go of emerging talent, by not identifying and nurturing them at the earliest, would lead to mediocrity as

against excellence, which would weaken the foundation and undermine the entire judicial structure.

It is obvious that greater competition would result in better quality. Excluding a group of persons from competing for a post, which is meant to serve the public, would certainly be unconstitutional, especially when the Constitution itself facilitates such participation.

It is my fervent hope that our judgement empowers the institution to emerge stronger and maintain the highest standards of justice, as it is the interest of the institution that must prevail above all.

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

New Delhi;

October 09, 2025

IN THE SUPREME COURT OF INDIA

Hansraj
Vs.
State of Uttar Pradesh

[Writ Petition (Crl.) No. 340 of 2025]

HEADNOTE – Juvenile Justice Act 2000 applies retrospectively

JUDGMENT

Dipankar Datta, J.

1. This Court's extraordinary writ jurisdiction under Article 32 of the Constitution has been invoked by the petitioner, who is a murder convict. As per the custody certificate issued on 14th August, 2025, the petitioner is in custody for a period of 3 years 10 months 28 days. Relief that is claimed in this writ petition reads as follows:

"A. issue a Writ of Mandamus of any similar writ, order or direction thereby directing the respondent - State to immediate release the petitioner from Central Jail, Agra against the conviction order dated 16.08.1984 passed by the Ld. Additional Sessions Judge, Sultanpur in S.T. No. 08 of 1983, in view of the order dated 08.05.2009 passed by this Hon'ble Court in Criminal Appeal No. 276 of 2002 (Annexure P-3) wherein in paragraph - 13, the petitioner was held to a child/juvenile, aged about 16 years".

2. Incidents having a bearing on our decision are summarised hereunder:

a. The date of birth of the petitioner is 10th June, 1969.

b. It was alleged in a First Information Report1 registered under Sections 302/149, 147 and 148 of the Indian Penal Code, 18602, that the petitioner along with 5 others had assaulted the father3 of the first informant with knife and lathis, on 2nd November, 1981. The victim succumbed to his injuries on the following day.

c. In course of investigation of the FIR, the petitioner came to be arrested on 6th November, 1981. He was, however, released on bail on 8th December, 1981. As an undertrial, the petitioner was behind bars for 1 month 3 days.

d. Petitioner and the co-accused were tried by the Special Additional Sessions Judge, Sultanpur, in Sessions Trial No. 8 of 1983. A finding was returned in the

judgment of conviction dated 14th August, 1984, that the petitioner, along with the co-accused, were guilty of murder of the victim.

e. The order of sentence was passed on 16th August, 1984. The coaccused were sentenced to life in prison. The Sessions Court having noted that the petitioner was aged about 16 years, held that he was entitled to the benefit of the Childrens Act, 19604. Accordingly, instead of sending the petitioner to jail, he was directed to be kept in a children's home in accordance with the provisions of the 1960 Act to give him a chance to reform himself.

f. All the convicts, including the petitioner, challenged the conviction and sentence before the High Court of Judicature at Allahabad, Lucknow Bench, in an appeal5 under Section 374(2), Code of Criminal Procedure, 1973. Vide a judgment and order dated 7th April, 2000, the High Court acquitted the appellants and allowed the appeal.

g. State of Uttar Pradesh, aggrieved by the acquittal, appealed to this Court6. By a judgment and order dated 8th May, 2009, a coordinate bench of this Court reversed the order of acquittal and restored the conviction and sentence imposed by the Sessions Court. The concluding paragraph of the order also restored the order of the Sessions Court qua the petitioner.

h. The petitioner absconded. He could be arrested only on 19th May, 2022, and is still in custody, as noted above.

3. The question that we are tasked to decide is whether the petitioner is entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 20007, as amended by Act 33 of 2006 whereby Section 7-A was inserted with effect from 22nd August, 2006. Section 7-A reads as follows:

"7-A. Procedure to be followed when claim of juvenility is raised before any court.-

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

4. Mr. Parinav Gupta, learned counsel for the petitioner, contends that the petitioner has been behind bars for more than 3 years and 8 months despite being a juvenile who is entitled to the benefit of the JJ Act, 2000. According to him, the maximum period of detention of a juvenile is 3 years as per Section 15(1)(g) and detention in excess of such period of 3 years would amount to an illegal detention. This, being in clear breach of the petitioner's right to life protected by Article 21 of the Constitution of India, he ought to be immediately released from illegal detention. Reliance has been placed by Mr. Gupta on the decisions of this Court in Pratap Singh v. State of Jharkhand8, Satya Deo @ Bhoorey v. State of Uttar Pradesh9 and Vinod Katara v. State of Uttar Pradesh10.

5. Opposing the writ petition, Mr. Neeraj Shekar, learned counsel representing the respondent contends that the date of occurrence of crime is 2nd November, 1981; and, therefore, the provisions of the 1960 Act would be applicable and not the JJ Act, 2000, as contended on behalf of the petitioner. It is next contended that the petitioner was found guilty of a heinous offence and, therefore, he is not entitled to any mercy. Referring to the decision of this Court in Shilpa Mittal v. State (NCT of Delhi)11, the contention advanced is that the offence of murder providing for a minimum sentence of life imprisonment has to be regarded as a heinous offence.

He also invites our attention to the fact that despite this Court by its order dated 8th May, 2009 having reversed the acquittal recorded by the High Court, the petitioner did not surrender and evaded arrest by absconding. He could only be arrested on 19th May, 2022. Culpability being writ large, it is finally contended that this Court may refuse to exercise discretion in favour of the petitioner.

6. We have heard learned counsel for the parties and perused the decisions cited at the bar.

7. From the factual narrative, the undisputed fact is that the petitioner was 12 years 5 months old on the date of the incident. Even this Court has acknowledged such fact in its order dated 8th May, 2009. Having read the judgment of conviction rendered by the Sessions Court, which was ultimately upheld by this Court, it is clear that apart from one assailant who was armed with a knife, the other assailants had lathis in their hands which were used by them to beat the victim.

The victim died as a result of multiple injuries caused by user of knife as well as lathis. In the absence of any specific role played by the petitioner, the Sessions Court recorded conviction against the petitioner by taking aid of Section 149 of the IPC, i.e., he was member of an unlawful assembly which perpetrated an act in furtherance of a common object and, therefore, would be liable thereunder.

8. Be that as it may, the petitioner has suffered incarceration for more than the period permissible in law. Moreover, the purpose for which the Sessions Court directed the petitioner to be kept in a children's home is no longer feasible now. We have also not been shown by Mr. Shekar why provisions contained in Section 24 of the 1960 Act - prohibiting joint trial of a child with a person who is not a child - was observed in the breach.

9. In Pratap Singh (supra), a Constitution Bench of this Court after analysing the reasoning behind Sections 3 and 20 of the JJ Act, 2000 held that the JJ Act, 2000 would be applicable to any proceeding which is pending before any Court/Authority initiated under the 1986 Act and pending when the JJ Act, 2000 came into force.

10. After placing reliance on the Constitution Bench decision in Pratap Singh (supra), this Court in Lakhan Lal v. State of Bihar12, held as follows: 18. In the present case, when the inquiry has been initiated against the appellants herein, they were admittedly "juvenile" even under the provisions of the 1986 Act but this issue has been ignored by the trial court and as well as the appellate court. There is no dispute whatsoever that both the appellants have crossed the age of 18 years, yet both the appellants, for the purposes of hearing of this appeal continued as if they were to be "juvenile".

11. In Dharambir v. State (NCT of Delhi)13, this Court in no uncertain terms held that from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000 read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of commencement of the JJ Act, 2000 and were undergoing sentences upon being convicted. A profitable reference may also be made to the decision in Hari Ram v. State of Rajasthan14.

12. No provision in the 1960 Act has been brought to our notice that creates a legal impediment and, thus, limits our authority to grant relief to the petitioner. Incidentally, the developments in legislation in relation to juvenile justice introduced by the Parliament from time to time can hardly be overlooked. The proviso to sub-section (2) of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is the new avatar of Section 7-A of the JJ Act,

2000. Section 7-A of the JJ Act, 2000, relevant for the present case, permits raising of a plea of juvenility in any court at any stage and even after final disposal of a special leave petition under Article 136 of the Constitution.

On the plain terms of Section 7-A, the courts are under an obligation to consider the plea of juvenility and to grant appropriate relief if, at all, in an enquiry it is found that the convict was a juvenile on the date of offence. The object and purpose of the JJ Act, 2000 has been noticed in great detail by the coordinate Bench in Vinod Katara (supra). We share the view expressed therein.

Incidentally, in Vinod Katara (supra), the coordinate Bench, having regard to the facts and circumstances, had to direct the Sessions Court, Agra, to examine the claim of the writ applicant that he was a juvenile on the date of the offence. In the present case, no such determination is at all required since the petitioner stands on firmer footing. Petitioner's date of birth and his age as on date of the offence are not disputed by the respondent and, thus, no enquiry is needed to ascertain his age.

13. Since there is no quarrel with the fact that the petitioner was a child at the time of commission of the offence and the petitioner having been behind bars for more than 3 years, his liberty has been curtailed not in accordance with procedure established by law. Breach of the right guaranteed by Article 21 is writ large and, hence, the benefit of release from detention ought to be extended to the petitioner.

14. Accordingly, there shall be an order in terms of prayer (a) of the writ petition. The petitioner shall be immediately released, if not wanted in any other case.

15. The writ petition is, accordingly, allowed. No costs.

16. The Senior Superintendent, Central Jail, Varanasi, shall act on the basis of a downloaded copy of this judgment and order as and when produced, without insisting for a certified copy thereof.

.....J. (Dipankar Datta)

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

New Delhi;

October 09, 2025.

1 FIR

2 IPC

3 victim

4 the 1960 Act

5 Criminal Appeal No. 631 of 1984

6 Criminal Appeal No. 276 of 2002

7 the JJ Act, 2000

8 (2005) 3 SCC 551

9 (2020) 10 SCC 555

10 (2023) 15 SCC 210

11 (2020) 2 SCC 787

12 (2011) 2 SCC 251

13 (2010) 5 SCC 344

14 (2009) 13 SCC 211

IN THE SUPREME COURT OF INDIA

State of West Bengal and Ors.
Vs.
M/s. Santi Ceramics Pvt. Ltd. and Anr.

[Civil Appeal No._____ / 2025
arising out of SLP (C) No(s). 33701/2018]

HEADNOTE – Land Acquisition can't be challenged after accepting compensation

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. The instant appeal has been preferred by the State of West Bengal against the judgment dated 11.10.2018 passed by a Division Bench of the High Court of Calcutta (High Court) in MAT No. 1260/2017 (Impugned Judgment). By way of the Impugned Judgment, the High Court has upheld the order of the learned Single Judge in W.P. No. 29621/2016, directing the State to restore 28 Bighas of land (Subject Land), including all structures erected thereon, to M/s Santi Ceramics Private Limited (Respondent No.1).

3. The controversy arises in the aftermath of this Court's judgment in Kedar Nath Yadav v. State of West Bengal1, whereby the land acquisition proceedings for establishing the manufacturing plant of TATA Motors' then flagship car "NANO" were quashed. To explicate, in 2006, pursuant to TATA Motors' decision to establish this facility in Singur, Hooghly District, West Bengal, the Appellants had initiated acquisition spanning over 1000 acres (Singur Project). The acquisition encompassed agricultural lands and lands converted for non-agricultural purposes. The instant appeal concerns restoration of the Subject Land, which formed part of the acquisition. The High Court has accorded restoration in favour of Respondent No.1 on ground of parity with cultivators to whom such a relief was granted by this Court in Kedar Nath Yadav (supra).

A. FACTS

4. To appreciate the genesis of the dispute at hand, it is necessary to examine the factual matrix, which is set out below:

4.1. Respondent No.1 purchased the Subject Land in the year 2001- 2002 with the objective of establishing a manufacturing facility for the production of ceramic electrical insulators. The Subject Land at the time was statedly an

agricultural land. Upon application by Respondent No.1, the District Land and Land Reforms Officer, Hooghly, granted approval on 09.04.2003 for its conversion to industrial use, thereby enabling the formalization of commercial operations on the premises.

4.2. Following the approval, Respondent No.1 established a manufacturing unit, replete with necessary infrastructure, plant and machinery, and commenced industrial operations. This trajectory of events took a decisive turn on 21.07.2006 when the Land Acquisition Collector, Hooghly (LAC), issued notifications under Section 4 of the Land Acquisition Act, 1894 (1894 Act), initiating acquisition proceedings for the Singur Project.

4.3. In response, Respondent No.1 filed objections under Section 5- A(1) of the 1894 Act on 21.08.2006, seeking exclusion of its operational manufacturing unit from the acquisition. The objections were rejected by LAC, whereupon the Appellants issued a declaration under Section 6 of the 1894 Act on 30.08.2006. Pursuant to the declaration, the LAC passed the award for the Subject Land on 25.09.2006, quantifying total compensation at INR 14,54,75,744, comprising INR 5,46,75,744 for land value and INR 9,08,00,000 for structures. The said compensation was duly deposited, and the Appellants thereafter took possession of the acquired land, which was thereupon handed over to TATA Motors.

4.4. The Singur Project soon evolved into a matter of considerable public interest and legal controversy, generating widespread protests by affected farmers against displacement from their holdings. The acquisition, impacting fertile agricultural land, highlighted the tension between industrial development and farming communities.

Among the various affected parties, one Kedarnath Yadav approached the High Court through a Public Interest Litigation (PIL) in W.P. No. 23836 (W) of 2006, challenging the acquisition proceedings. Several similar writ petitions were filed by other affected parties, which were then clubbed together and dismissed by a common judgment dated 18.01.2008, rendered by a Division Bench of the High Court. The acquisition was upheld after holding that it was in public interest and for public purpose.

4.5. Subsequently, in 2010, TATA Motors abandoned the Singur Project and withdrew from the site, with the Appellants regaining possession of the acquired land. Parallelly, the dismissal of the petitions by the High Court was assailed before this Court, culminating in the judgment dated 31.08.2016 in Kedar Nath Yadav (supra). While both judges on the Bench delivered separate opinions with divergent reasoning, they concurred on quashing the acquisition proceedings on the following grounds:

i) Violation of Section 5-A procedures as the LAC mechanically rejected objections without proper consideration and failed to conduct an effective inquiry;

ii) Non-application of mind by the authorities as both the LAC and State Government failed to objectively consider the objections and recommendations as mandated under the 1894 Act;

iii) Procedural defects in compensation proceedings as awards were passed without following due process under Section 11 of the 1894 Act; and

iv) Disproportionate impact on agricultural communities as the acquisition affected fertile agricultural land and displaced poor agricultural workers who lacked the means to challenge governmental action.

4.6. Consequently, this Court directed restoration of land to the original landowners/cultivators by the State within a period of twelve weeks.

4.7. Respondent No.1 till then had no grievance and did not challenge the acquisition of the Subject Land before any forum. However, as soon as this Court delivered judgment in Kedar Nath Yadav (supra), Respondent No.1 also submitted a representation on 28.11.2016, to the Appellants stating that the Subject Land had not been returned within the prescribed period of twelve weeks as postulated by this Court in Kedar Nath Yadav (supra), and sought the handing over of the possession of the land, structures, and plant & machinery. The Appellants, however, did not restore the possession to Respondent No.1.

4.8. Aggrieved, Respondent No.1 filed Writ Petition No. 29621/2016 before the High Court, seeking restoration of possession of the Subject Land along with all structures and machinery. Respondent No.1 also claimed monthly compensation of INR 5,00,000 from December, 2016 onwards, alleging pecuniary loss on account of being deprived of the use of its industrial property.

4.9. The High Court allowed the petition vide judgment dated 24.04.2017 and reasoned that:

i) This Court's direction in Kedar Nath Yadav (supra) applied to all landowners without distinction between 'cultivators' and 'business entities', and Respondent No.1 could not be excluded merely for being a corporate house; and

ii) The intact structures should be returned with the Subject Land as 'land' under the 1894 Act included attached structures.

4.10. The High Court accordingly directed the District Magistrate, Hooghly to deliver possession within six weeks while declining the prayer seeking compensation for delay.

4.11. The appeal against the afore-cited decision was dismissed by the Division Bench vide the Impugned Judgment, holding that the expression "landowners/cultivators" in Kedar Nath Yadav (supra) ought to be construed widely to include all persons whose lands were acquired, whether they used it for industrial or cultivation purposes, with no separate class created while granting restoration.

4.12. Being aggrieved, the Appellants have preferred the instant appeal. It may be noted that this Court, vide order dated 04.02.2019, granted an interim stay on the operation of the Impugned Judgment, which continues to operate till date.

B. CONTENTIONS ON BEHALF OF APPELLANTS

5. Mr. Harin P Rawal and Mr. Ashok Kumar Panda, Learned Senior Counsel appearing for the Appellants, strenuously argued that the High Court committed a grave error in extending restoration to Respondent No.1. It was contended that this Court's decision in Kedar Nath Yadav (supra) was designed with specific protective intent for vulnerable agricultural communities who lacked resources to challenge governmental action. Respondent No.1, operating as an industrial manufacturing concern with substantial assets, fell entirely outside this protective framework and could not invoke the same judicial safeguards extended to disadvantaged segments of the society.

6. It was further highlighted that Respondent No.1 raised no grievance against the acquisition of Subject Land before or after the award had been passed by the LAC. Learned Senior Counsel pointed out that the acquisition attained finality in 2006 and was first questioned by Respondent No.1 only in 2016, after this Court's judgment in Kedar Nath Yadav (supra).

7. Our attention was also drawn to Respondent No.1's voluntary acceptance of INR 14,54,75,744 as compensation without demur, and it was contended that the same constitutes a clear acquiescence to the acquisition process. Learned Senior Counsel submitted that this conduct, combined with the principle of estoppel, precluded any afterthought claim for restoration of property for which full consideration had already been received and retained. It was emphasized that permitting such claims would open the floodgates for numerous commercial entities seeking similar relief, thereby transforming a narrowly tailored remedy into a general relief scheme with catastrophic fiscal implications for the Appellants.

C. CONTENTIONS ON BEHALF OF RESPONDENT NO.1

8. Per Contra, Mr. Sridhar Potaraju, Learned Senior Counsel appearing on behalf of Respondent No.1, vehemently opposed the instant appeal by challenging the Appellants' interpretation of Kedar Nath Yadav (supra). He asserted that the judgment contained no artificial distinction between different categories of landowners, with the terminology "landowners/cultivators" encompassing every person whose land was subjected to the procedurally flawed acquisition. Learned Senior Counsel emphasized that the original notifications under Section 4 of the 1894 Act addressed all affected persons uniformly as "owners of land," offering identical packages without regard to their agricultural or commercial status.

9. It was further contended that Respondent No.1 was a bona fide manufacturing enterprise that had proactively filed comprehensive objections under Section 5-A accompanied by detailed inventories of assets, which had been summarily rejected without proper consideration. Drawing reference to the compensation structure where INR 9,08,00,000 was specifically allocated for structures, it was argued that this demonstrated governmental recognition of structural entitlement. Learned Senior Counsel, thus, urged that the appeal represents an attempt to deny legitimate dues through selective application of binding precedent and accordingly, prayed for the dismissal of the instant appeal.

D. ANALYSIS

10. Having heard learned senior counsel for the parties and after perusal of the material on record, we are of the considered view that the short question that falls for our consideration is: whether this Court's ruling in Kedar Nath Yadav (supra), which directed restoration of acquired land to original landowners/cultivators, extends to Respondent No.1 as well?

11. That being said, our determination of this question necessitates the analysis on following counts:

i) The intended scope and beneficiaries of this Court's decision in Kedar Nath Yadav (supra) and whether Respondent No.1 also falls within that ambit;

ii) The procedural principles governing the applicability of judicial orders quashing acquisition proceedings to parties who did not participate in the original litigation; and

iii) The legal consequences of long delay in questioning the acquisition and acceptance of compensation without demur.

12. Turning to the first aspect, this Court's judgment in Kedar Nath Yadav (supra) arose from a contentious acquisition initiative that sparked widespread resistance and prolonged litigation challenging the State's exercise of its power. The Court's ultimate determination to quash the acquisition and direct restoration was

predicated upon systematic procedural failures under Section 5-A of the 1894 Act. However, its approach in fashioning this remedy was informed by considerations that extended beyond procedural compliance alone.

13. Crucially, the remedial framework in Kedar Nath Yadav (supra) was anchored in its recognition that the acquisition disproportionately affected vulnerable communities lacking financial resources and institutional access to challenge governmental action. This determination stemmed from an understanding that certain segments of society remain disadvantaged in asserting their rights against the State. In para 63, this Court specifically observed:

63. In this day and age of fast paced development, it is completely understandable for the state government to want to acquire lands to set up industrial units. What, however, cannot be lost sight of is the fact that when the brunt of this 'development' is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government, as is the case in the instant fact situation, it is the onerous duty of the state Government to ensure that the mandatory procedure laid down under the L.A. Act and the Rules framed there under are followed scrupulously otherwise the acquisition proceedings will be rendered void ab initio in law. Compliance with the provisions of the L.A. Act cannot be treated as an empty formality by the State Government, as that would be akin to handing over the eminent domain power of State to the executive, which cannot be permitted in a democratic country which is required to be governed by the rule of law."

[Emphasis Supplied]

14. This Court's identification of "poor agricultural workers" as the "weakest sections of society" established the jurisdictional boundary of relief. Subsistence farmers dependent entirely on inherited land face destitution when acquisition bypasses mandatory safeguards-they possess no alternative livelihood, lack resources to navigate administrative procedures or afford prolonged litigation. The remedy provided by this Court addressed this structural vulnerability.

15. Notably, the aforesaid classification carries decisive legal significance. By grounding relief in structural incapacity rather than extending automatic restoration to all affected parties, this Court prevented undermining finality in land acquisition proceedings while ensuring protection for the genuinely defenceless. Extraordinary judicial intervention is warranted when systemic barriers prevent certain classes from accessing ordinary remedies, not when parties possess adequate means to vindicate their rights. Relief conceived to prevent impoverishment among the disadvantaged cannot extend to commercial enterprises with financial capacity and institutional sophistication.

16. Against this backdrop, we have no hesitation in holding that Respondent No.1 falls squarely outside the protective framework envisaged by this Court. Unlike marginal farmers facing potential destitution from loss of their sole livelihood, Respondent No. 1 operated a 60,000 square feet manufacturing facility employing over 100 workers since 2003, having purchased and converted agricultural land for commercial purposes.

17. The origin of the litigation further reinforces this distinction, as the proceedings before the High Court commenced through a PIL specifically initiated to prevent poor farmers from losing their fertile agricultural land. The express objective of PIL was to safeguard cultivators whose livelihoods faced extinction through large-scale acquisition. Extending such relief to industrial entities like Respondent No.1 would thus defeat the remedy's foundational intent.

18. In view of the above analysis, we hold that the reasoning in Kedar Nath Yadav (supra) does not enure to the benefit of Respondent No.1. The restoration remedy was conceived for disadvantaged farming communities, not as general restitution for all affected parties.

19. Beyond this distinction, we are constrained to add that even the established procedural principles preclude Respondent No.1's claim. Orders quashing acquisition proceedings may operate either in personam or in rem. Where the Court quashes acquisition on grounds personal to individual objectors-such as vitiated consideration of their specific objections under Section 5-A-the relief operates in personam and benefits only those parties who contested the matter before judicial forums. On the other hand, where the Court declares the entire process void ab initio on grounds going to the root of acquisition-the relief operates in rem. It is thus clear that the benefits of quashing do not accrue to persons who were not parties unless the Court has struck down the entire acquisition on fundamental grounds applicable to all.2

20. It may be apposite to observe here that the objections under Section 5-A raise issues personal to each landowner. Upon rejection of such objections, the aggrieved party must approach judicial forums to challenge the same and mere filing of objections does not exhaust remedies available in law. To further simplify, claimants who do not file objections or pursue judicial challenge cannot contend that Section 5-A inquiry is vitiated, nor can they seek quashing of Section 6 declaration on that ground.3 It is trite law that in the event objections are not pursued through litigation, the notification becomes conclusive proof of waiver.

21. Applying these principles, the cause of cultivators and farmers affected by the Singur Project was espoused before the High Court, inter-alia, on grounds that it disproportionately affected vulnerable agricultural communities and fertile land,

with procedural violations including vitiated Section 5-A inquiry and non-application of mind by authorities. Respondent No.1 filed objections under Section 5-A on 21.08.2006, which were rejected.

Despite possessing financial resources and institutional access, it never pursued the appellate remedies available under the 1894 Act. It accepted the entire compensation amount of INR 14,54,75,744 without protest and remained passive while cultivators pursued litigation for years. Having chosen not to contest the acquisition through available statutory mechanisms, Respondent No.1 now seeks the same relief that was granted to disadvantaged communities through PIL-a classic free-rider problem that judicial remedies cannot encourage.

22. Turning to the third aspect, the acquisition attained finality qua Respondent No.1 through its own inaction. Respondent No.1 remained silent for an entire decade from 2006 to 2016, making no attempt to challenge the acquisition despite the award being passed on 25.09.2006. Once the proceedings conclude in the award and possession is taken without challenge, the Court would not entertain any belated grievance from the interested person.4 In stark contrast, affected farmers brought their plight before the High Court through PIL in November, 2006 itself- challenging procedural violations at the earliest opportunity. Hence, Respondent No.1 cannot now seek parity and question what had been conclusively settled.

23. Insofar as reference to the PIL jurisdiction in Kedar Nath Yadav (supra) is concerned, we are afraid the same may not be applicable to the facts of the instant case. We say so because PIL enables representation of similarly situated vulnerable persons who lack means to approach courts individually. When cultivators challenged the Singur acquisition through PIL, all farmers/cultivators across the acquisition were represented. Having failed to pursue legal remedies when available, Respondent No.1-a party possessing financial resources and institutional access to statutory remedies falls outside this representative framework designed for disadvantaged communities.

24. Additionally, the temporal dimension presents a further bar. Nearly two decades have elapsed since the acquisition. Following TATA Motors' withdrawal of the project in 2010, the acquired land vested back with the Appellants free from all encumbrances. Pursuant to the judgment in Kedar Nath Yadav (supra), extensive survey operations were undertaken to restore land to cultivators. Learned Senior Counsel for the Appellants have informed this Court that structures originally on the Subject Land were modified during these restoration efforts to enable demarcation and distribution of individual holdings to farmers. After nearly two decades and such modifications undertaken to restore land to farmers, the relief cannot be granted.

25. For the foregoing reasons, we hold that Respondent No.1 cannot claim the benefit of this Court's directions in Kedar Nath Yadav (supra). Having accepted monetary settlement without challenge and remained passive during litigation spanning several years, it cannot now seek benefits from relief secured by others. The confluence of its commercial status, nature of the relief, and the practical impossibility of restoration due to intervening modifications collectively defeats this claim.

E. CONCLUSION AND DIRECTIONS

26. Permitting industrial entities to claim restoration benefits from litigation they chose not to pursue would establish an undesirable precedent. Such an approach would incentivize strategic inaction, encouraging parties to remain dormant during protracted litigation only to emerge as claimants after favourable outcomes are secured by others. This would undermine both the targeted nature of remedial relief and the fundamental principle that legal benefits flow from active pursuit of remedies, not passive opportunism.

27. In view thereof, the instant appeal is allowed and the Impugned Judgment dated 11.10.2018 passed by the Division Bench as well as the judgment dated 24.04.2017 of the learned Single Judge of the High Court are hereby set aside. Consequently, the Writ Petition filed by Respondent No.1 insofar as it pertained to challenge to the acquisition of Subject Land is hereby dismissed. However, considering that Respondent No.1 has claimed to have had standing structures on the Subject Land at the time of acquisition, we issue the following directions:

i) Respondent No.1 is permitted to remove any remaining structures, plant, and machinery from the Subject Land within three months from the date of this judgment, in the presence of officials designated by the District Magistrate, Hooghly; or

ii) Alternatively, Respondent No.1 may request the Appellants to put the structures, machinery and other movable and immovable articles belonging to it for public auction. In such event, Respondent No.1 shall be entitled to the auction proceeds after deducting expenses incurred on the auction process. Respondent No.1 shall not then claim any compensation from Appellants.

iii) The LAC shall calculate the compensation for structures after deducting the salvage value of materials removed by Respondent No.1 from the compensation already paid for such structures. However, recovery of any excess payment made to Respondent No.1 shall not be effected by the Appellants.

iv) Since Respondent No.1 was granted possession of the Subject Land pursuant to the Impugned Judgment which has been set aside, the Appellants are directed to carry out fresh demarcation to identify the precise boundaries of the acquired

area. Thereafter, the Appellants shall resume possession of the Subject Land, subject to compliance with the other directions.

v) The assessment exercise under clauses (ii), (iii) & (iv) shall be completed within four months from the date of this judgment.

28. Ordered accordingly. Pending applications, if any, also stand disposed of in the above terms.

.....J. (Surya Kant)

.....J. (Joymalya Bagchi)

New Delhi;

October 13, 2025

1 AIR 2016 SC 4156.

2 Abhey Ram v. Union of India, (1997) 5 SCC 421, para 9-12.

3 Delhi Administration v. Gurdip Singh Uban, (2000) 7 SCC 296, para 42-47.

4 Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd., (1996) 11 SCC 501, para 19.

IN THE SUPREME COURT OF INDIA

Rahul Agarwal
Vs.
State of West Bengal & Anr.

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 5518 of 2025]

HEADNOTE – A Magistrate can direct the collection of voice samples not only from accused persons but also from witnesses. Such samples, whether voice, fingerprints, handwriting, or DNA, constitute material evidence rather than testimonial evidence, and therefore do not infringe the constitutional protection against self-incrimination under Article 20(3).

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. A purely academic question covered by a binding precedent of this Court, is agitated unnecessarily by the respondent herein and entertained egregiously by the High Court. The High Court has also refused to follow the binding precedent of this Court on the ground that there is a reference made to a Larger Bench. The reference, as pointed out by the appellant, has been closed unceremoniously, on default.

3. The records of the appeal reveal that a young married woman of 25 years of age died on 16.02.2021, which led to an allegation of harassment and torture at the matrimonial home and counter allegation that the deceased together with her parents misappropriated cash and jewellery belonging to the family of the husband. A cousin of the husband of the deceased filed a complaint before the police in which the deceased's father and mother were arrayed as accused.

Upon investigation the Investigating Officer (I.O) was informed that the 2nd respondent acted as the agent of the father of the deceased and threatened a witness who alleged that he was privy to the extortion demand made by the father through the 2nd respondent. The I.O hence required the 2nd respondent to be subjected to a voice sample test for which collection of the voice sample was sought before the jurisdictional Magistrate's Court. To this end, a petition, Annexure P11 was filed before the jurisdictional Magistrate which was allowed by Annexure P13 order.

4. The second respondent challenged the same before the High Court and the High Court by the impugned order set aside the order of the Magistrate finding that a similar question was referred to a Larger Bench. As has been rightly pointed out by the learned Senior Counsel for the appellant that the said reference has been closed as per Appendix B.

5. We have heard Mr. Dama Sheshadri Naidu, learned Senior Counsel appearing for the appellants-complainant and Mr. Ranjan Mukherjee, learned Counsel appearing for the 2nd respondent, whose voice sample is to be taken. The learned counsel for the respondent vehemently argued that the order was passed when the Criminal Procedure Code (Cr.P.C.) was in force and though Section 349 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 empowered the Magistrate to pass an order inter alia directing a person to provide a voice sample, the Cr.P.C. does not have any such provision. It is this issue which has been referred for consideration before the Larger Bench.

6. The reference, as we see from the questions extracted in the impugned order, was whether the direction of this Court enabling the Magistrate to pass an order directing the accused to provide a voice sample would apply in the case of a witness. In the present case, the question is raised especially on the ground that it would lead to infringement of the right of the witness under Article 20(3), which on comparison of the voice sample could result in arraigning the witness as an accused.

7. The question squarely arose in Ritesh Sinha v. State of Uttar Pradesh & Anr. (Crl. Appeal No.2003 of 2012)1 dated 02.08.2019 based on which the reference was made. This Court was concerned with a conversation between two accused who were alleged to have collected money from different people on the promise of jobs, which did not materialise. The specific question raised was with respect to the Magistrate not being empowered to pass an order directing furnishing of a voice sample. This Court referred to the judgment in State of Bombay v. Kathi Kalu Oghad2, wherein an identical plea of self-incrimination in providing specimen handwriting, signature or finger impression was considered in the following manner:

"(12) In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself.

A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous, because they are unchangeable; except,

in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'."

"(32). It has to be noticed that Article 20(3) of our Constitution does not say that an accused person shall not be compelled to be a witness. It says that such a person shall not be compelled to be a witness against himself. The question that arises therefore is: Is an accused person furnishing evidence against himself, when he gives his specimen handwriting, or impressions of his fingers, palm or foot? The answer to this must, in our opinion, be in the negative."

8. Following the aforesaid precedent, it was held in Ritesh Sinha1 that despite absence of explicit provisions in Cr.P.C., a Judicial Magistrate must be conceded the power to order a person, to give a sample of his voice for the purpose of investigation for a crime.

We specifically note that this Court had not spoken only of the accused and specifically employed the words 'a person', consciously because the Rule against selfincrimination applies equally to any person whether he be an accused or a witness. It was also directed that till explicit provisions are incorporated in the Cr.P.C., the Judicial Magistrate will be so empowered by virtue of the said judgment. The issue was also pending with the Government and with the advent of the BNSS, it has been specifically incorporated under Section 349.

9. We need not hence consider the question as to whether it is the Cr.P.C. or the BNSS which would be applicable to the present case. If it is the Cr.P.C., the three Judge Bench decision in Ritesh Sinha1 permits the same on the identical principle adopted by this Court in Kathi Kalu Oghad2 to permit furnishing of handwriting, signature and finger impressions. The said sampling is similar to voice sampling, as now possible by reason of the advancing technology.

If it is the BNSS that is applicable, then there is a specific provision enabling such sampling. The reasoning was also that mere furnishing of a sample of the fingerprint, signature or handwriting would not incriminate the person as such. It would have to be compared with the material discovered on investigation, which alone could incriminate the person giving the sample, which would not fall under a testimonial compulsion, thus not falling foul of the rule against self-incrimination.

10. We hence do not find any reason to uphold the impugned order and set it aside. The 2nd respondent shall act in accordance with the order passed by the Magistrate.

11. The appeal is hence allowed reversing the order of the High Court and restoring that of the Magistrate.

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

.....CJI. (B. R. Gavai)

.....J. (K. Vinod Chandran)

New Delhi;

October 13, 2025.

1 (2019) 8 SCC 1

2 AIR 1961 SC 1808

IN THE SUPREME COURT OF INDIA

Shivkumar @ Baleshwar Yadav
Vs.
State of Chhattisgarh

[Criminal Appeal No. 4502 of 2025
@ SLP (Criminal) No. 14625 of 2024]

HEADNOTE – Courts should not routinely or casually invoke their discretionary powers under Section 154 Evidence Act. (now Section 157 of the Bharatiya Sakshya Adhiniyam, 2023) to allow a party to cross-examine its own witness. Such discretion must be exercised only after carefully examining and weighing the surrounding circumstances. This should be done only in exceptional situations where the witness completely departs from the prosecution's case, gives false testimony, or shows clear hostility towards the party on whose behalf they are testifying.

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment dated 16.06.2023 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.9/2020. By the said judgment, the High Court confirmed the conviction and sentence as imposed on the appellant by the Special Judge (SC/ST Act), Surajpur, District Surajpur, Chhattisgarh in Session Case No.33/2018. The Trial Court, by its judgment dated 22.10.2019, convicted the appellant for offences punishable under Sections 363, 366, 506 and 376 of the Indian Penal Code, 1860 (for short the "IPC"), Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short the "POCSO") and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "SC/ST Act"), and sentenced him as under:-

Offence Under Section	Sentence
363 of IPC	R.I. for 1 year and fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.
366 of IPC	R.I. for 3 years and fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.
376 of IPC	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine amount, additional R.I. for 1 month.
506 of IPC	R.I. for 3 months and fine of Rs.100/-, in default of payment

	of fine amount, additional R.I. for 1 month.
4 of POCSO Act	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine amount, additional R.I. for 1 month
3(2)(v) of the SC/ST Act	Life imprisonment and fine of Rs. 1000/-, in default of payment of fine amount, additional R.I. for 1 month. All the sentences shall run concurrently

3. We have heard Mr. Kaushal Yadav, learned counsel for the appellant and Mr. Rishabh Sahu, learned Deputy Advocate General for the State. We have also perused the records, including the original Trial Court records.

THE CASE OF THE PROSECUTION:-

4. On 14.05.2018, PW-1, the father of the prosecutrix, lodged a report at Police Station Pratappur, District Surajpur, Chhattisgarh (Ext.P1), stating that his daughter "P", a minor, had on 10.05.2018 at 8.00 pm served food to everyone inside the house. Thereafter, she left the house saying that she will return. When she did not return, a search was carried out, but she could not be found. The father suspected that the appellant would have lured away "P". An offence under Section 363 of IPC was registered and investigation was carried out and "P" was recovered.

On questioning, it was found that the appellant had lured her away by promising marriage and after taking her forcibly subjected her to sexual intercourse. Offences under Sections 366, 376 and 506 IPC and Section 4 of the POCSO Act were added. Since the victim belonged to the Scheduled Caste, Section 3(2)(v) of the SC/ST Act was also added. Medical examination was carried out of "P". Statements of complainant and witnesses were recorded. The marksheet, caste certificate and the school admission register (Dakhil Kharij Register) were seized. Chargesheet was filed against the accused.

5. Charges were framed against the accused by order dated 05.09.2018 and with the accused pleading not guilty, the case was set down for trial. The prosecution examined 19 witnesses and marked exhibits.

6. The prosecution case mainly revolves around the evidence of PW-2 - the victim, PW-1 - the complainant, PW-9 - the school teacher, who made available the school records for proof of age, and PW-10 - the Doctor.

EVIDENCE OF VICTIM:-

7. PW-2 categorically deposed that she knew the appellant; that she had left the house to serve food to her grandfather who lived a little away from their house; that the appellant who was hiding near the Sendhwar tree, grabbed her, pressed her mouth and threatened to kill her when she tried to scream. The victim clearly

deposed that the appellant told her that she will be made his wife and after grabbing her took her to the forest. At the forest he undressed her and forcibly committed sexual intercourse.

The victim deposed that the appellant took her to the house of her maternal uncle in village Dumariya and left her there. That she stayed at the house of her maternal uncle and the appellant returned to take her, at which point the police met them and brought them to the Police Station Paratappur. She further deposed that she belonged to the Scheduled Caste (caste name disclosed by her is withheld in this judgment).

The victim deposed that she disclosed the incident to her aunt PW-3 - Dhankunwar. Though she was subjected to a searching cross-examination, nothing was elicited to dilute her testimony. It should also be noticed herein that on 25.05.2018 vide Ext.P8 her statement under Section 164 of the Code of Criminal Procedure, 1973 was recorded which is corroborated by her deposition in material particulars.

EVIDENCE OF FATHER - THE COMPLAINANT (PW-1) AND THE GRANDFATHER (PW-4):-

8. PW-1, the father of the victim, corroborates the prosecution story. He deposes that they were having dinner when the victim left to serve food to his father (victim's grandfather). The victim did not return and then he lodged the report and informed the police about his suspicion on the appellant. For some strange reason, the prosecutor treated the complainant as hostile and sought permission to put leading questions. In the cross-examination by the public prosecutor, PW-1 deposed as under:-

"It is correct to say that on the next day when I went to the house of accused Baleshwar in village Durati and asked about his whereabouts I come to know that Baleshwar was not present in my house. His mother-father were present in his house, they told that he had gone to work. While giving statement to the Police I had told that I did not met Baleshwar when I went to his house. Witness himself states that on that day I met Baleshwar in the evening. It is incorrect to say that on the next day in the evening I did not met Baleshwar. It is correct to say that I did not met Baleswhar and in suspicion while lodging report I told the name of accused Baleshwar in the report."

9. We are at a loss to understand as to why the witness was treated as hostile in the first place? We are frequently coming across cases where the prosecutor, for no ostensible reason, wants to treat the witnesses hostile and the Court indiscriminately grants permission. It is well settled, by judgments of this Court, that before a witness can be declared hostile and the party examining the

witnesses is allowed to cross-examine, there must be some material to show that the witnesses are not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing.

No doubt, the circumstances under which the Court will exercise the discretion under Section 154 of the Evidence Act, 1872 (Section 157 of the Bharatiya Sakshya Adhiniyam (BSA), 2023) and permit the party calling the witness to put any question which might be put in cross-examination by the adverse party will depend on the facts and circumstances of each case.

However, this Court has held that the contingency of cross-examining the witness by the party calling, is an extraordinary phenomenon and permission should be given only in special cases. Small or insignificant omissions cannot be the basis for treating the witnesses hostile and the Court before exercising its discretion must scan and weigh the circumstances properly and ought not to exercise its discretion in a casual or routine manner.

10. In Sri Rabindra Kumar Dey Vs. State of Orissa1, this Court held as under: -

"10. Before proceeding further we might like to state the law on the subject at this stage. Section 154 of the Evidence Act is the only provision under which a party calling its own witnesses may claim permission of the court to cross-examine them. The section runs thus:

"The Court may, in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party." The section confers a judicial discretion on the court to permit cross-examination and does not contain any conditions or principles which may govern the exercise of such discretion. It is, however, well-settled that the discretion must be judiciously and properly exercised in the interests of justice.

The law on the subject is well-settled that a party will not normally be allowed to cross-examine its own witness and declare the same hostile, unless the court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or where the court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth.

One of the glaring instances, in which this Court sustained the order of the court in allowing cross-examination was where the witness resiles from a very material statement regarding the manner in which the accused committed the offence. In Dahyabhai Chhaganbhai Thakker v. State of Gujarat [AIR 1964 SC 1563 : (1964) 7 SCR 361, 368, 369, 370 : (1964) 2 Cri LJ 472] this Court made the following observations:

"Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing Court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief.

If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. Broadly stated, the position in the present case is that the witnesses in their statements before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane and, therefore, he committed the murder."

A perusal of the above observations will clearly indicate that the permission to cross-examine was upheld by this Court because the witnesses had categorically stated before the police that the accused had committed the murder but resiled from that statement and made out a new case in evidence before the court that the accused was insane. Thus it is clear that before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing.

Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine its own witnesses cannot be allowed. In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth.

In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities. The court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.

11. It may be rather difficult to lay down a rule of universal application as to when and in what circumstances the court will be entitled to exercise its discretion under Section 154 of the Evidence Act and the matter will largely depend on the facts and circumstances of each case and on the satisfaction of the court on the basis of those circumstances. Broadly, however, this much is clear that the contingency of cross-examining the witness by the party calling him is an extraordinary phenomenon and permission should be given only in special cases.

It seems to us that before a court exercises discretion in declaring a witness hostile, there must be some material to show that the witness has gone back on his earlier statement or is not speaking the truth or has exhibited an element of hostility or has changed sides and transferred his loyalty to the adversary. Furthermore, it is not merely on the basis of a small or insignificant omission that the witness may have made before the earlier authorities that the party calling the witness can ask the court to exercise its discretion. The court, before permitting the party calling the witness to cross-examine him, must scan and weigh the circumstances properly and should not exercise its discretion in a casual or routine manner."

11. Similarly, in Gura Singh Vs. State of Rajasthan2, this Court held as under:-

"13. We deprecate the manner in which the prayer was made by the Public Prosecutor and permission granted by the trial court to cross-examine Jarnail Singh (PW 2) allegedly on the ground of his being hostile. On facts we find that the said witness was wrongly permitted to be cross-examined. It was only on a post-event detail that he did not concur with the suggestion made by the Public Prosecutor.

That single point, in our opinion, was too insufficient for the Public Prosecutor to proclaim that the witness made a volte-face and became totally hostile to the prosecution. Otherwise also, the permission granted and utilised for cross-examination was limited to the extent of the time of lodging the first information report (Exhibit P-2). There is no reason to disbelieve PW 2 who is closely related to the appellant and has no reason to falsely implicate, particularly when no inducement, threat or promise is allegedly given or assured."

12. It is also clear from the above judgments that merely because a witness is declared hostile does not make him unreliable. As held in Bhagwan Singh Vs. State of Haryana3.

"8. We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to

the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence.

We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 IPC. There is, therefore, clear abetment by the appellant of the offence under Section 161 IPC and the ingredients of Section 165-A IPC are established against him."

13. PW-4, the grandfather of the victim confirms the fact that the victim came to his house in the night along with food and after serving food left for her house. He deposed that the next morning, he came to know that the victim was missing. In cross, he states that the Sandhwar tree was near his house at a distance of 20 feet and that if anyone shouts near the tree, it will be heard in his house. He states that no one screamed in the night that day.

14. The panch witnesses - PW-5 and PW-6 did not support the prosecution story.

15. PWs - 3, 7 and 8 - aunts of the victim were examined. Since nothing turned out from their evidence, they are not discussed in detail.

PROOF OF AGE OF MINOR VICTIM:-

16. PW-9 is the material witness whose deposition is crucial to ascertain the age of the victim. He is the teacher at the Government Primary School, SarnaparaMarhatta P.S. Pratapppur, District Surajpur (C.G.). PW-9 deposes that on the demand of the DSP, who came to the school, he gave the admission register of the school. The admission register is 192 pages and admissions were mentioned in Sl. Nos. 1 to 281. The victim's name was mentioned at Sl. No. 209 and the date of birth was shown as 15.09.2004.

The admission register and the certificate given regarding the fact of the date of birth were seized under Ext.P-11. In court, the admission register was marked as Article B/C. In cross examination, PW-9 deposed that the father of the victim did not produce any document regarding the date of birth. First in cross, the witness deposed that the father of the victim has not mentioned the date of birth at the time of admission but immediately the witness himself stated that the father mentioned her age as six years on the date of the admission.

17. We have seen Ext.P-11 which attests to the factum of the seizure. We have also seen Article B/C marked by PW-9. The first entry is at Sl. No. 207 and the victim's entry occurs at 209. The admission register has 13 columns containing serial no., student's name, father or guardian's name and address, mother's name, caste or religion, local address, if parents or guardian is residing outside the city, student's date of birth, date of admission, class admitted, date of leaving the school, the class in which the student was when she left the school, reason for leaving the school and special details.

The entry at Serial No. 209 has the victim's name, the name of father and mother. They all tally. The date of birth is mentioned as 15.09.2004 (in both words and figures). The date of admission is 01.07.2011 and the victim was admitted that day in the first class. The victim left the school on 02.04.2016, after passing the fifth standard.

18. The evidence of the father PW-1, the evidence of the teacher PW-9 and the school admission register seized under Ext.P-11 and marked by PW-9, inspires confidence in us to hold that the victim as on the date of the incident, namely, 14.05.2018 was a minor. We have no reason to disbelieve the finding of the trial Court and the High Court having independently considered the evidence and perused the trial court records 19. In State of Chhattisgarh Vs. Lekhram4, this Court held as under: -

"12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13. The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws' place for some time and after the "gauna" ceremony, she came back. The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."

14. Only because PW 3 the father of the prosecutrix could not state about the date of birth of his other children, the same, by itself, would not mean that he had been deposing falsely. We have noticed hereinbefore, that he, in answer to the

queries made by the counsel for the parties, categorically stated about the year in which his other children were born. His statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. We, therefore, are of the opinion that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly.

MEDICAL EVIDENCE:-

20. Dr. Suchita Nirmala Kindo (PW-10) was examined on behalf of the prosecution. She examined the victim on 16.05.2018. She clearly deposes that there was a cut injury on hymen of victim at 6 O' clock position and fresh blood was coming. In her opinion, that would indicate that forceful intercourse was committed. She prepared two slides of vaginal discharge and handed them over to the constable. She also deposed that on the same day, the constable produced one green colour underwear and finding semen like strains, she handed over the underwear to the lady constable.

In cross-examination, she was asked about the time when the hymen injury was caused. In answer to that, she stated that repeated sexual intercourse was committed with the victim and hence the time of the hymen injury cannot be determined. She denied the suggestion that bleeding would stop if sexual intercourse is not committed with the victim for 4-5 days. She deposed that no external injury was found on the body of the victim. Vide Ext.P-14, the sealed packet containing the underwear and the slide were seized.

Vide Ext.P-20, the prosecution claimed that the underwear of skyblue colour owned by the accused with semen stains were seized. Under Ext.P-22, the Superintendent wrote a letter to the Joint Director, Regional Forensic Laboratory enclosing the slides, the green underwear of the prosecutrix and the skyblue underwear of the accused-appellant. The report Ex-P-24 of the Joint Director indicated presence of semen and human sperm in all the three seized material. We have also seen the evidence of PW-14, PW-15, PW-16, PW-17 and PW-18 and we are satisfied with regard to the chain of custody of the above-seized material.

APPLICABILITY OF SC/ST ACT:-

21. PW-13 clearly deposes to the effect that the victim belongs to Scheduled Caste and produced Ext.P-7 in proof of the caste certificate. PW-2, the victim has clearly deposed that she belongs to Scheduled Caste and the accused knew about her caste before the incident. The incident is of 14.05.2018, i.e. after the

amendment to Section 3(2)(v) on 26.01.2016. The amended Section 3(2)(v) reads as under:-

"3. (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe-

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

22. In Patan Jamal Vali vs. State of A.P.5, this Court noticed the amendment made to the Act and held that post the amendment, the threshold of proving that the crime was committed on the basis of the caste identity was decreased and mere knowledge of the caste of the victim was sufficient to sustain the conviction.

23. Further, Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 reads as under:-

"8. Presumption as to offences.-

In a prosecution for an offence under this Chapter, if it is proved that-

(a) the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved."

24. Section 8(c) of the SC/ST Act clearly indicates that the acquaintance of the accused with the family of the victim is enough to presume that the accused was aware of the caste and identity of the victim, unless proved otherwise. In the present case, the evidence on record clearly establishes that the accused was well acquainted with the victim and her family prior to the incident and was fully aware of their caste status.

PW-1 categorically stated that the accused was their neighbour and used to frequently visit their house, which initially made him suspicious that he might have been involved in the abduction of his daughter. PW-2 (Victim) further affirmed that the accused knew her caste even before the incident. Similarly, PW-4 (Grandfather) in cross-examination confirmed that the accused used to come to their village and work as a labourer.

These consistent statements of the prosecution witnesses collectively demonstrate that the accused had prior familiarity with the family and knowledge of their caste, which satisfies the requirement under Section 3(2)(v) of the SC/ST Act. Nothing has been brought on record to rebut the presumption and as such, we are fully convinced that even Section 3(2)(v) of the SC/ST Act is clearly attracted.

25. The above discussion clearly brings out the fact that the victim was kidnapped (Section 363 IPC), for the purpose of illicit intercourse (Section 366 IPC), was subjected to forcible intercourse (Section 376 of IPC and Section 4 of the POCSO), criminal intimidation (Section 506 IPC) and all this with the knowledge that the victim was a member of the Scheduled Caste (Section 3(2)(v), of the SC/ST Act).

26. In view of the above, we find no good reason to interfere with the concurrent judgments convicting the accused and sentencing him for the various offences, details of which have been set out hereinabove. The appeal is hence dismissed.

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

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

New Delhi;

October 14, 2025

1 (1976) 4 SCC 233

2 (2001) 2 SCC 205

3 (1976) 1 SCC 389

4 (2006) 5 SCC 736

5 (2021) 16 SCC 225

IN THE SUPREME COURT OF INDIA

Union of India & Ors.
Vs.
Subit Kumar Das
[Civil Appeal No._____ of 2025
arising out of SLP (Civil) No._____ of 2025
@ Diary No. 57192 of 2024]

HEADNOTE – Waitlist of candidates cannot operate indefinitely and ceases once all the posts are filled up via recruitment process.

JUDGMENT

Atul S. Chandurkar, J.

1. Delay condoned.

2. Leave granted.

3. The Union of India through the Secretary, Ministry of Information and Broadcasting and the All India Radio through its Director General are aggrieved by the direction issued by the Division Bench of the Calcutta High Court requiring them to absorb the services of the respondent on the post of Technician at the Eastern Zone of All India Radio under the Scheduled Castes (SC) category. According to the appellants, such direction to absorb the services of the respondent enlarges the right of a candidate placed in the Reserved Panel much after its expiry and runs counter to the Recruitment Rules. The respondent supports the said direction by contending that the appellants had committed to absorb the respondent in service as far back as on 15.01.1999 and the High Court rightly directed so.

4. Facts relevant for considering the challenge as raised to the aforesaid direction are that pursuant to a requisition made by the All India Radio, Eastern Zone for making appointment on the post of Technician, names of various candidates maintained by the Employment Exchange came to be forwarded. Three posts of Technician were reserved for candidates belonging to the SC category. The Selection Committee interviewed eleven candidates and finally selected three candidates in the order of merit against the existing vacancies.

The name of the respondent was placed at Serial No.1 in the Reserved Panel. It was stated that the candidates placed in the Reserved Panel would be appointed only in case any of the three selected candidates did not join the said post for any reason. The respondent being aggrieved by the decision of the Selection

Committee approached the Central Administrative Tribunal (for short, "the Tribunal") by filing Original Application No.989 of 1997 challenging its decision and seeking his appointment on the post of Technician.

On 25.08.1997, the Tribunal passed an interim order and directed that any appointment made of the selected candidates would abide by the result of the Original Application. In the said proceedings, the respondent moved an interim application praying that no further appointment be made on the post of Technician without considering his name pursuant to the earlier recruitment process. During the course of the hearing of the said application, a statement was made on behalf of the appellants which was recorded in the order dated 15.01.1999 as under:

"3. Mrs. Banerjee, Ld. Counsel for the respondents submits that till the filling up of post of technician from the reserved quota viz. 1 OBC and 1 ST is taken by the respondent authorities, the applicant's case would not be considered. She further submits as soon as vacancy would arise against the SC quota, the applicant would be absorbed."

On the basis of the said statement, no further orders were passed on the interim application.

5. Original Application No.989 of 1997 came to be decided by the Tribunal on 09.12.2004. The Tribunal recorded various findings, inter alia, holding that there did not appear to be any departure from the procedure and instructions that were required to be followed while undertaking selection. It further held that the allegation of bias as made by the respondent against the members of the Selection Committee was without any basis.

It also referred to the clear stipulation in the records of the Selection Committee that the right of the respondent to be appointed was only if any of the selected candidates did not join the post on which they were appointed. It also held that a candidate in the wait list had no vested right to be appointed except when the selected candidate did not join the post and the wait list was operative. All grounds of challenge raised by the respondent on merits were turned down.

However, in view of the statement made on behalf of the appellants as recorded on 15.01.1999 that the case of the respondent would not be considered till the reserved quota of candidates from the Other Backward Classes (OBC) category and Scheduled Tribes (ST) category were filled in, the appellants were directed to consider the case of the respondent in terms of the assurance given to the Tribunal and take steps to absorb him against the available vacancy in accordance with law within a period of three months from the date of communication of the order.

6. The appellants being aggrieved by the aforesaid directions issued by the Tribunal approached the High Court by filing WPCT No.276 of 2005. The Division Bench of the High Court by its order dated 23.02.2009 found that the various findings recorded by the Tribunal against the respondent as regards the right of a waitlisted candidate as well as the manner of conduct of the selection proceedings by the Selection Committee had not been challenged by him.

It, however, observed that the direction to consider the case of the respondent came to be made in view of the concession recorded in the order dated 15.01.1999. The High Court, without interfering with the said direction issued by the Tribunal, modified the said order to the extent that the outer limit of consideration of six months was not to be applicable, in case no vacancy arose within that period.

7. In the meanwhile, on 23.02.2013, a fresh notice of recruitment for various posts including that of Technician came to be published at the instance of Prasar Bharti. The respondent again approached the Tribunal by filing Original Application No.739 of 2013 seeking a direction that he be absorbed on the post of Technician in the SC category as per the advertisement dated 23.02.2013. By an interim order dated 19.07.2013, the appellants were directed to keep one post of Technician vacant under the SC category in the East Zone till the next date of the proceedings. The aforesaid Original Application came to be decided on 27.11.2015.

While referring to the right of a waitlisted candidate to seek appointment, the Tribunal noted that the appellants in the year 1999 had stated that the case of the respondent would be considered against any available vacancy in the SC category. The Original Application was disposed of with a direction to the appellants to act in accordance with the earlier orders. An appropriate order in that regard was directed to be passed within a period of three months. The Deputy Director General (P) passed a speaking order on 19.02.2016 stating therein that all the three vacancies that were to be filled up in 1997 had been so filled up as per the select list.

The respondent was at Serial No.4 and he could not be absorbed. The general assurance for absorption against future available vacancies was subject to fulfilment of conditions of the Recruitment Rules. In absence of any vacancy in the SC category, absorption was not possible. It was also noted that the respondent had crossed the maximum age limit prescribed under the Recruitment Rules and there was no direction to absorb him by relaxing the Recruitment Rules. It was, thus, stated that in absence of any vacant post being available, the respondent could not be absorbed against the vacancies notified in the advertisement dated 23.02.2013, more so, as he was not eligible for appointment as per the Recruitment Rules.

8. The respondent being aggrieved by the aforesaid speaking order again approached the Tribunal by filing Original Application No.436 of 2016. The Tribunal on 09.01.2020 observed that the earlier Original Application No.739 of 2013 was decided on 27.11.2015. The documents placed on record, however, indicated the vacancy position prior to that date. The Tribunal, therefore, directed the appellants to issue a fresh speaking order indicating the number of vacancies on the post of Technician that occurred after its earlier order dated 27.11.2015 and also indicate whether the respondent was entitled to be considered in accordance with the directions of the Tribunal.

The respondent, being aggrieved by the said order, preferred WPCT No.24 of 2021 before the High Court. Besides challenging the order of the Tribunal dated 09.01.2020, the respondent also sought a direction for being appointed on the post of Technician. The High Court passed interim orders on 21.06.2021 and 06.09.2021 directing that an affidavit to be filed indicating if any vacancy on the post of Technician had arisen from 2009 onwards.

The Deputy Director General (P), All India Radio filed an affidavit dated 09.09.2021 stating therein that there was no vacancy on the post of Technician at the All India Radio, Calcutta since 2009 till date. The Division Bench thereafter on 25.06.2024 decided the said writ petition. It was of the view that the appellants on 15.01.1999 had given an assurance before the Tribunal that the respondent would be considered in the next available vacancy. However, that statement was not honoured despite a vacancy being available.

It further held that the rejection of the respondent's claim on the ground that he was age barred was illegal. The Division Bench accordingly set-aside the order dated 09.01.2020 passed by the Tribunal and directed the appellants to absorb the respondent on the post of Technician in any vacancy under the SC category in the Eastern Zone within a period of four weeks. The respondent's absorption was directed to be given effect from 19.07.2013 onwards on a notional basis. Being aggrieved by this decision, the appellants have come up in appeal.

9. Ms. Madhusmita Bora, learned Advocate appearing for the appellants submitted that the High Court committed an error in directing the appellants to absorb the respondent on the post of Technician. The vacancy in question was of the year 1997 and admittedly the respondent was placed at Serial No.1 in the Reserved Panel. He was entitled to be considered for appointment only in the event any of the three selected candidates failed to join the post of Technician. Since all the three candidates had joined their posts, there was no occasion for the respondent to claim any entitlement to be appointed by virtue of his placement in the Reserved Panel.

The respondent was merely a waitlisted candidate and had no vested right to seek appointment. The direction issued by the High Court, if implemented, would result in a waitlisted candidate of the year 1997 being absorbed in service after more than twenty five years. In that regard, the learned counsel referred to the decision in Sri Sanjoy Bhattacharjee Vs. Union of India & Ors.1 It was then submitted that the only basis for the High Court to have issued the impugned direction was the statement made on behalf of the appellants on 15.01.1999 that the respondent would be considered against any vacancy in the SC category in future. The said statement amounted to a concession in law which was contrary to the statutory Rules of Recruitment.

The said statement, therefore, would not bind the appellants as the appellants would be required to disregard the Recruitment Rules for absorbing the services of the respondent. It was permissible for the appellants to place the correct position in law while not proceeding in accordance with such statement. To substantiate this contention, the learned counsel referred to the decisions in Director of Elementary Education, Odisha Vs. Pramod Kumar Sahoo2 and The Employees' State Insurance Corporation Vs. Union of India and others3. It was, thus, submitted that the impugned judgment of the High Court was liable to be set aside and the respondent was not entitled to any relief whatsoever.

10. On the other hand, Mr. Rakesh Kumar learned Advocate appearing for the respondent supported the impugned direction issued by the High Court. He submitted that it was not permissible for the appellants to disregard the statement made on their behalf on 15.01.1999 before the Tribunal. As such statement was made on behalf of the appellants, no further relief was granted to the respondent by the Tribunal. Despite availability of various vacancies since then, the appellants failed to absorb the respondent on the post of Technician. It was also not permissible for the appellants to now change their stand by stating that the respondent had crossed the age limit for being appointed.

In that regard, the learned counsel placed reliance on the decisions in Prem Prakash Vs. Union of India4, H.P. ST Employees Federation Vs. H.P.S.V.K.K.5 and Rameshwar Prasad Goyal, Advocate, In Re6. It was then submitted that the High Court had rightly found that on 19.07.2013, the respondent's right was crystalized as a vacancy had arisen and hence, the Tribunal had directed one post to be kept vacant. It was not in dispute that vacancies in the SC category were available and the respondent could not be deprived of the relief of absorption.

As a model employer, the Union of India ought to honour its assurance and it could not take a stand contrary to the statement as made. Denying relief to the respondent would result in the appellants taking advantage of their own wrong. The learned counsel referred to the decision in Union of India and others Vs. Hindustan Development Corporation and others7 in that regard. It was, thus,

submitted that the High Court having rightly found that as the respondent was being deprived of the benefit of absorption, no interference with the directions issued by it was called for. The appeal was, thus, liable to be dismissed.

11. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents on record. It is not in dispute between the parties that in the year 1997, three vacancies for the post of Technician from the SC category were sought to be filled in. The respondent along with ten other candidates came to be interviewed by the Selection Committee.

Three candidates were chosen and placed serially in the order of merit. The respondent was placed at Serial No.1 in the Reserved Panel by noting that if any of the three selected candidates did not join the post of Technician, the candidates placed in the Reserved Panel would be appointed. All the three selected candidates did join the post of Technician as a result of which the respondent remained at Serial No.1 in the Reserved Panel.

12. While considering the entitlement of the respondent to any relief on the basis of his placement in the Reserved Panel, it would be necessary to bear in mind the settled position that mere placement in the wait list does not create any vested right for being so appointed. The right to be considered for appointment would spring only in the contingency of a selected candidate not joining on his post. The wait list operates for a limited period. It cannot extend for an indefinite period and in any event after a fresh process of recruitment has commenced. This legal position is well settled and reference can be made to the decision of a three Judge Bench in Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and others8. In paragraph 9, it has been held as under:

"9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound.

This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as

and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

(emphasis supplied by us).

From the aforesaid, it is clear that any right that the respondent could claim as a waitlisted candidate extinguished when all the selected candidates joined on their respective posts.

13. The sole basis for the claim of the respondent of seeking appointment/absorption on the post of Technician is the statement made on behalf of the appellants as recorded in the order dated 15.01.1999. As per the said statement, on a vacancy arising against the SC quota, the respondent was to be absorbed. According to the appellants, such statement cannot bind them since its compliance would result in breach of the Recruitment Rules. The respondent, however, relies upon the said statement as it was given in all solemnity before the Tribunal. For considering the binding nature of such statement made before the Tribunal, certain factual aspects would have to be borne in mind.

Though the placement of the respondent was at Serial No.1 in the Reserved Panel, all the selected candidates had joined on the post of Technician and, thus, there was no occasion to operate the wait list is an admitted position. No vacancy from 1997 was carried forward and a vacancy, if any, that was to arise in the future would have been a fresh vacancy. The entitlement of the respondent, if any, was as a waitlisted candidate qua the select list of 1997. There was no vested right in favour of the respondent to urge that he was entitled to be considered and appointed on any fresh vacancy arising in the future.

Secondly, the statement as recorded on 15.01.1999 would have a limited operation to the extent that only if any of the selected candidates for the post of Technician in the SC category failed to join on the said post, the respondent could be appointed on such vacant post being the candidate at Serial No.1 in the Reserved Panel. The statement as recorded that the claim of the respondent, a waitlisted candidate, would be considered as and when any vacancy would arise against the SC quota cannot operate in eternity contrary to the Recruitment Rules. Thirdly, it is necessary to note that the respondent's challenge to his placement in the Reserved Panel and the selection of three other candidates on merit was not disturbed either by the Tribunal or by the High Court.

This is clear on a perusal of the judgment of the Tribunal dated 09.12.2004 in Original Application No.989 of 1997. The High Court in WPCT No.276 of 2005 decided on 23.02.2009 affirmed the findings of the Tribunal that a waitlisted

candidate did not have any legal right to claim appointment and noted that the said finding recorded by the Tribunal was not under challenge by the respondent. These material aspects would be relevant while considering the legal effect of the statement recorded on 15.01.1999 by the High Court.

14. It is, thus, clear that having failed to assail the success of the selected candidates, the only string for the respondent to cling on was the statement recorded on 15.01.1999. The effect of such statement cannot result in wiping out the adjudication of the respondent's claim on merits. In other words, the respondent cannot claim any higher right especially when it was found by the Tribunal and affirmed by the High Court that his placement in the Reserved Panel was correct and requiring no interference. The appellants are justified in contending that such statement as made on 15.01.1999 cannot have the effect of requiring them to act in violation of the Recruitment Rules.

15. At this stage, it would be necessary to refer to a few decisions of this Court on the binding effect of a concession made by counsel on a question of law in the field of service jurisprudence. In Uptron India Limited Vs. Shammi Bhan and another9, the issue pertained to the legality of a Standing Order permitting automatic termination of the services of a permanent employee on account of overstaying leave without permission for more than seven days. The employer sought to support the relevant Standing Order on the basis of the concession of the employee's counsel that the Standing Order was not invalid. In paragraphs 22 and 23, this Court observed as under:

"22. Learned counsel for the petitioner has placed strong reliance upon a decision of this Court in Civil Appeal No.3486 of 1992, Scooters India & Ors. vs. Vijay E.V. Eldred, decided on 03.10.1996, in support of his contention that any stipulation for automatic termination of Services made in the Standing Orders could not have been declared to be invalid. We have been referred to a stray sentence in that judgment, which is to the following effect:

"It is also extraordinary for the High Court to have held clause 9.3.12 of the standing orders as invalid."

This sentence in the judgment cannot be read in isolation and we must refer to the subsequent sentences which run as under:

"Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."

23. In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In

that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay.

Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order." This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj on this judgment, therefore, is wholly out of place."

16. In Central Council for Research in Ayurveda & Siddha & another Vs. Dr. K. Santhakumari10, the issue pertained to promotion on a selection post. Though the principle of merit-cumseniority was prescribed, the employer in its affidavit before the High Court stated that the principle of seniority-cum-merit was applicable. On that basis, the employee was held entitled to be promoted. Before this Court, the relevant rules indicating the principle of merit-cum-seniority were placed. In that context, it was held:

"In the instant case, the selection was made by Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter-se merit and ability of the candidates and prepared the select list on that basis. The respondent though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of "merit-cum-seniority" had been applied by the Departmental Promotion Committee. The respondent has no grievance that there was any malafides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fitness".

In the High Court, the appellants herein failed to point out that the promotion is in respect of a 'selection post' and the principle to be applied is "merit-cum-seniority". Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned Counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party. This Court in Uptron India Ltd. Vs. Shammi Bhan and

Another AIR 1998 SC 1681 pointed out that a wrong concession on question of law made by counsel is not binding on his client and such concession cannot constitute a just ground for a binding precedent.

Therefore, even if the appellants had mistakenly contended in the High Court that the principle of seniority-cum-fitness was to be followed for promotion to the post of Research Officer, the departmental rules clearly show that the promotion was in respect of a 'selection post' and the promotion was to be made on the basis of the inter-se merit of the eligible candidates. In that view of the matter, the respondent was not entitled to get promotion to the post of Research Officer on the strength of her seniority alone. The seniority list prepared by the Departmental Promotion Committee was not challenged by the respondent on other grounds and we also do not find any ground to assail that select list. Thus, the Writ Petition is liable to be dismissed by setting aside the orders made therein and in the writ appeal arising therefrom. Therefore, the appeal succeeds and is allowed, however, without costs."

Reliance placed on the decisions in Director of Elementary Education and The Employees' State Insurance Corporation (supra) by the learned counsel for the appellants is also apposite. The appellants are, thus, within their right in canvassing the correct position of law by urging that the absorption of the respondent at this stage would result in violation of the Recruitment Rules. In this factual and legal backdrop, the ratio of the decisions relied upon by the learned counsel for the respondent cannot further the case of the respondent.

17. It appears that the High Court was much impressed by the fact that the statement made on 15.01.1999 on behalf of the appellants was not being honoured. It is true that a statement made before the Court has its solemnity and the party making such statement is bound to comply with the same. At the same time, it has to be seen as to whether such statement in the form of a concession, if given effect to would result in violation of any statutory rules or regulations. If such consequence is likely to flow, it would be open for the affected party on whose behalf such concession in law was made to place before the Court the correct position of law and urge that it may not be compelled to give effect to an erroneous concession made on law.

In the present case, giving effect to such statement made on 15.01.1999 would result in a waitlisted candidate being given an appointment notwithstanding the fact that all selected candidates in the said recruitment process had duly joined their posts and there was no occasion to operate the wait list. It would amount to filling in one post in the subsequent recruitment on the basis of an exercise carried out in the previous recruitment. This would definitely cause prejudice to the candidates seeking recruitment in the subsequent process as the vacancies

would stand reduced. Moreover, it would also extend the life of the wait list though all vacancies stand filled in, which would be impermissible.

In these facts therefore, we find that the appellants are justified in contending that the statement dated 15.01.1999 cannot be acted upon as it would result in conferring benefit on a waitlisted candidate to which he otherwise in law is not entitled to. The same is also not shown to be permissible under the Recruitment Rules. It appears that the High Court glossed over these vital aspects while directing the appellants to absorb the services of the respondent. The available vacancies having been filled up in 1997 resulted in exhaustion of the wait list and the said process of recruitment had come to an end. The High Court has, therefore, erred in directing the absorption of the respondent.

18. For all these reasons, the judgment of the High Court dated 25.06.2024 in WPCT No.24 of 2021 is found to be unsustainable in law. It is accordingly set-aside and the writ petition preferred by the respondent stands dismissed. The civil appeal is allowed in the aforesaid terms with no order as to costs. Pending applications stand disposed of accordingly.

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

.....J. [Atul S. Chandurkar]

New Delhi,

October 15, 2025.

1 1997 INSC 250

2 2019 INSC 1092

3 2022 INSC 77

4 1984 INSC 150

5 [2013] 10 SCC 308

6 2013 INSC 550

7 1993 INSC 154

8 1994 INSC 199

9 1998 INSC 74

10 2001 INSC 259

IN THE SUPREME COURT OF INDIA

Karam Singh
Vs.
Amarjit Singh and Ors.

[Civil Appeal Nos._____ of 2025
arising out of SLP (C) Nos. 3560-3561/2023]

HEADNOTE – An application for rejection of the plaint under Order VII Rule 11 CPC shall be decided based on the averments made in the plaint, and does not consider the defendant's defence or any external evidence.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. These two appeals impugn two orders of the High Court of Punjab and Haryana at Chandigarh1. The first is dated 27.01.2022 passed in Civil Revision No.725/2020 whereas the second is dated 04.07.2022 by which application2 seeking recall of the order dated 27.01.2022 has been rejected.

3. The appellant along with Dilbag Singh (i.e., proforma respondent no. 9) instituted Suit No.424 of 2019 against Amarjit Singh (i.e., respondent no.1), Shamsher Singh (i.e., respondent no.2), Jagdish Singh (i.e., respondent no.3), Smt. Nachhattar Kaur (i.e., respondent no.4), Kuldeep Kaur (i.e., respondent no.5), Sukhdeep Kaur (i.e., respondent no.8), Sandeep Singh (i.e., respondent no.6) and Major Singh (i.e., respondent no.7) for:

(i) declaring:

(a) plaintiff(s) owners of suit land to the extent of their shares as specified in the plaint; and

(b) the certificate, registered at 277 on 12.01.1977, and mutation no.1377 as illegal, null and void;

(ii) possession of suit land to the extent of plaintiffs' share;

(iii) damages/ compensation/ mesne profits for use and occupation of suit land for the period starting from May 2016 to May 2019; and

(iv) permanent prohibitory injunction.

4. The plaint case in a nutshell was that the original owner of the suit land was Ronak Singh alias Ronaki who died intestate on 05.10.1924, leaving behind his widow Kartar Kaur. A dispute arose regarding succession to the estate of Ronak Singh between Kartar Kaur (i.e. Ronak Singh's widow) and Chinki and Nikki (i.e. sisters of Ronak Singh), predecessor-in interest of the plaintiffs. In between, Kartar Kaur allegedly gifted the suit land to one Harchand. Nikki and Chinki challenged the gift. On 22.03.1935, the civil court held the gift to be invalid as Kartar Kaur had a limited right. Later, Kartar Kaur herself challenged the gift. Ultimately, the gift was set aside by decree dated 11.09.1975 and Kartar Kaur was held owner in possession of the land. Consequent to the decree, on 13.05.1976 mutation was sanctioned and entered in favour of Kartar Kaur.

The mutation entry was contested by predecessor in-interest of the plaintiffs. During pendency of the proceedings relating to mutation, Kartar Kaur died on 28.12.1983. The defendants in the suit, namely, the contesting respondents herein, in the mutation proceedings, set up a will dated 15.12.1976, alleged to have been executed by Kartar Kaur, in their favour and claimed mutation on basis thereof. However, vide order dated 29.04.1984, mutation was ordered in favour of the legal representatives of Ronak Singh's sister based on natural succession and an appeal against the same, filed by the respondents, was dismissed by the Collector vide order dated 15.04.1985.

Subsequently, the mutation matter was taken up to higher courts. Finally, the litigation arising out of mutation ended against the plaintiffs on 20.07.2017. Thereafter, by claiming that the will set up by the defendants is null and void, an act of fraud, the plaintiffs claiming themselves to be natural heirs of Kartar Kaur, through sisters of Ronak Singh, instituted the suit for the aforesaid reliefs.

5. The defendants (i.e. the contesting respondents) filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 19083 for rejection of the plaint on the ground that the suit is hopelessly barred by time. In the application it was, inter alia, stated that the will was set up in the year 1983 after the death of Kartar Kaur; the mutation proceedings based on the will was contested and therefore, the plaintiffs including their predecessor in interest were fully aware of the existence of the will; hence, the relief for declaration qua the will, limitation of which is three years, was hopelessly barred by limitation.

It was also contended that the plaintiffs' stand that cause of action had arisen on 20.07.2017 is incorrect and wrong. In addition to above, it was stated that plaintiffs have concealed a material fact regarding filing of civil suit no.648/2012, which was filed by father of plaintiff no.1, wherein the order of mutation dated 28.05.2012 was challenged without challenging the will and, therefore, the plaint of the said suit was rejected under Order 7 Rule 11 of CPC

vide order dated 17.05.2013. It was thus claimed that the suit was also barred by Order 2 Rule 2 of C.P.C.

6. The trial court rejected the application under Order 7 Rule 11 of CPC, vide order dated 07.01.2020, holding that on a plain reading of the plaint it cannot be held that the suit is ex facie barred by limitation; moreover, the question of limitation is a mixed of question of law and fact therefore, it would not be appropriate to reject the plaint under Order 7 Rule 11 of CPC. As regards the plea of suit being barred by Order 2 Rule 2 of C.P.C., the trial court held that the same can be decided as an issue in the suit.

7. Aggrieved by rejection of their application under Order 7 Rule 11, the contesting respondents preferred revision before the High Court which came to be allowed by the impugned order dated 27.01.2022.

8. As the impugned order dated 27.01.2022 was passed ex parte in as much as none had appeared on behalf of the plaintiff in the revision, an application was filed for recall of the order dated 27.01.2022, which came to be dismissed by second impugned order dated 04.07.2022.

9. Aggrieved by the aforesaid two orders, these two appeals have been filed. 10. We have heard learned counsel for the parties and have also given liberty to the counsel for the parties to file written submissions.

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. The learned counsel for the appellant submitted that the High Court committed a grave error in holding that the suit was barred by time. In holding so, the High Court observed that the suit was instituted after almost 36 years since culmination of mutation proceedings, which is incorrect in as much as mutation proceedings culminated on 20.07.2017 and the suit was instituted on 31.05.2019 (i.e., within three years thereof). In addition to above, it was contended that the suit was for possession, based on title. Since the main relief was for possession, the limitation period would be 12 years from the date when the possession of defendants became hostile and adverse to the plaintiff. The High Court, however, failed to consider that aspect.

12. Besides above, notice of the revision before the High Court was not served on the respondents and therefore, the first impugned order, which is an ex parte order, ought to have been recalled. On the strength of above submissions, the learned counsel for the appellant contended that it is a fit case where the appeals should be allowed and the impugned order(s) set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

13. On behalf of the respondents, it was contended that predecessor in interest of the appellant had earlier instituted civil suit no. 648/2012 seeking permanent prohibitory injunction to restrain the answering respondents from alienating the suit property. The said suit was dismissed on 17.05.2013 on the ground that there could be no injunction against true owner. Since the present suit is based on the same cause of action, the same is liable to be dismissed as being nothing but abuse of the process of law. Moreover, the suit is barred by limitation as plaintiffs had knowledge of the registered will since 1983.

14. In support of his submissions, the learned counsel for the respondents placed reliance on the following decisions of this court:

(i) T. Arivandandam v. T.V. Satyapal4.

(ii) Rajendra Bajoria & Ors. v. Hemant Kumar Jalan5.

(iii) Ramisetty Venkatanna & Anr. v. Nasyam Jamal Saheb & Ors.6.

DISCUSSION/ANALYSIS

15. Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 117 of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). Clause (d) makes it clear that while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law. At this stage, the defense is not to be considered. Thus, whether the suit is barred by any law or not is to be determined on the basis of averments made in the plaint.

16. In the instant case, the plaintiff instituted the suit by claiming title through succession to the estate of late Kartar Kaur. On the other hand, the defendants had set up a will alleged to have been executed by Kartar Kaur in their favour. Neither the plaint nor any document brought on record indicated that the will was probated or its validity was tested and upheld in regular civil proceedings inter se parties. As far as mutation proceedings are concerned, it is well settled that mutation entries do not confer title. They serve a fiscal purpose, that is, to realize tax from the person whose name is recorded in the revenue records8. Besides above, the plaint averments indicated that the mutation proceedings culminated in the year 2017 and the suit in question was instituted within three years thereafter.

17. Apart from above, the suit was not for a mere declaration of the will being null and void but for possession as well. The plaintiff claimed title over the suit land by natural succession and sought possession based on title. Where a suit is for possession of immovable property or any interest therein, based on title, the

limitation period is 12 years when the possession of the defendants becomes adverse to the plaintiff (vide Article 65 of the Schedule to the Limitation Act).

18. In Indira v. Arumugam & Anr.9, this court held that when the suit is based on title for possession, once the title is established based on relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be nonsuited. Consequently, when a suit is instituted for possession, based on title, to defeat the suit on the ground of adverse possession, the burden is on the defendant to prove adverse possession for the prescriptive period.

This, therefore, in our view, cannot be an issue on which the plaint could be rejected at the threshold. Moreover, the plaintiffs herein, had clearly disclosed that they had been contesting the will in the mutation proceedings which culminated in the year 2017. The suit was instituted within three years thereafter to declare the mutation entry illegal. Thus, considering that mutation proceedings are summary in nature, the institution of the regular suit questioning the same is not ex facie barred by law10.

19. That apart, where several reliefs are sought in suit, if any one of the reliefs is within the period of limitation, the plaint cannot be rejected as barred by law by taking recourse to Order 7 Rule 11 (d) of CPC11.

20. Further, in "N. Thajudeen v. Tamil Nadu Khadi & Village Industries Board" 12 relying on earlier decision of this court in "C. Mohammad Yunus v. Syed Unnissa"13 it was held:

"23. in a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist".

24. Even otherwise, though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such the court of first instance could not have dismissed the entire suit as barred by time".

21. In our view, therefore, the plaint as it stood could not have been rejected on the ground that the suit as framed was barred by limitation. The view to the contrary taken by the High Court is erroneous in law.

22. Insofar as the suit being barred by Order 2 Rule 2 of CPC is concerned, the first suit instituted by the predecessor-in-interest of the appellant was not tried. In fact, the plaint of that suit was rejected under Order 7 Rule 11 of CPC as not being properly framed. In such circumstances, a fresh suit with appropriate relief cannot be, prima facie, barred by Rule 2 of Order 2 of CPC. Therefore, in our view, the trial court was justified in directing that the issue, whether the suit is barred by Order 2 Rule 2 of CPC, shall be considered and decided during trial.

23. At this stage, we may observe that the High Court while deciding the revision has failed to consider the plaint averments in its entirety and was swayed only by the fact that will set up was 36 years old. It overlooked that will operates only on the death of the testator and here, after the death of the testator, the validity of the will was throughout questioned in mutation proceedings which continued and, ultimately, settled in the year 2017.

In between, whether the defendants perfected their title by adverse possession would be a mixed question of law and fact and can appropriately be addressed only after evidence is led. The same cannot be made basis to reject the plaint at the threshold. In our view, therefore, the order passed by the High Court cannot be sustained and the same is liable to be set aside. The appeals are, therefore, allowed. The impugned judgment and order(s) of the High Court are set aside.

The order of the trial court rejecting the prayer to reject the plaint under Order 7 Rule 11 CPC is restored. The trial court shall proceed with the suit and bring the proceedings to its logical conclusion in accordance with law. It is made clear that any observation made by us shall not be taken as an opinion on the merit of the issues which may arise for consideration in the course of the suit proceedings. We clarify that we have addressed those issues only with a view to find out whether it was a fit case for rejection of the plaint under Order 7 Rule 11 of CPC.

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

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

.....J. (Manoj Misra)

New Delhi;

October 15, 2025.

1 The High Court.

2 Misc. Application No.7259/2022

3 CPC

4 (1977) 4 SCC 467

5 (2022) 12 SCC 641

6 2023 SCC Online SC 521

7
11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

8 See: Balwant Singh v. Daulat Singh, (1997) 7 SCC 137; Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186

9 (1998) 1 SCC 614

10 See: Jitendra Singh v. State of Madhya Pradesh and others, 2021 SCC OnLine SC 802; Faqruddin (Dead) through LRs v. Tajuddin (Dead) through LRs, (2008)

8 SCC 12; Rajinder Singh v. State of Jammu and Kashmir & others, (2008) 9 SCC 368

11 See: Vinod Infra Developers Ltd. v. Mahaveer Lunia, 2025 SCC OnLine SC 1208

12 2024 SCC Online SC 3037

13 AIR 1961 SC 808

IN THE SUPREME COURT OF INDIA

Zoharbee and Anr.
Vs.
Imam Khan (D) Thr. LRs. and Ors.

[Civil Appeal Nos. 4516-4517 of 2023]

HEADNOTE – A Muslim wife having no child, is entitled to receive only 1/4th share.

JUDGMENT

Sanjay Karol, J.

1. In these appeals, challenge is laid to final judgment and order dated 1st March 2012 in Second Appeal No.435 of 2011 with Civil Application No.10306 of 2011 passed by the High Court of Judicature at Bombay, Bench at Aurangabad whereby the appellants assailed the order of the First Appellate Court in RCA No.87 of 20051 dated 4th March 2005, overturning the findings of the Civil Court2, was rejected.

2. The short conspectus of facts is that the appellant's husband namely Chand Khan passed away and now this litigation pertains to the property he left behind, between his surviving spouse namely Zoharbee3 and his brother i.e. Respondent Imam Khan4. The plot of land which is germane to the dispute is land S.No.22/3 and 22/1 of Gut No. 107 and Gut No.126. It is the plaintiff's case that all the property left behind by the deceased Chand Khan is matruka property and since he died issueless, as per Mohammedan law the former would be entitled to 3/4th of the total property and only the remaining 1/4th would fall in the rights and entitlements of defendant no.1.

On the other hand, the case as per defendant no.1 is that the land bearing gut no.126 already stood transferred to the third party in the lifetime of Chand Khan by an Agreement to Sell dated November 1999 with defendant no.2 and 3 namely, Pandit Fakirrao Bodkhe and Bhausaheb Fakirrao Bodhke, and so the said property cannot be the point of contention in the instant proceedings.

In so far as the other piece of land is concerned, it is contended that the same stood transferred to the sole and exclusive ownership and possession of defendant no.1 many years prior to the death of Chand khan but in the challenging circumstances of the latter's continued illness, the same was sold to one Ayub Khan who is defendant no.4 and part consideration of such sale stood received in the life of Chand Khan and the remaining, subsequently after his death. Therefore, nothing remains to be partitioned in terms of matruka property.

3. The learned Civil Court agreed with the contentions of defendant no.1 and partly decreed the plaintiff's suit in so far as the property sold to defendant no.4 is concerned for the reason that he chose not to contest the suit in any way whatsoever and did not file a written statement. Regarding the remaining property, it was observed that the Agreement to Sell entered into between the parties in the lifetime of Chand Khan stood duly proved by way of examination of witnesses (defendant no.2 and 3) and, therefore, no property remained to be divided between the successors in interest of the deceased. It was acknowledged that the sale deed was executed by Zoharbee after Chand Khan had died however the said fact was not treated as material in view of the evidence presented.

4. The plaintiff, being aggrieved, filed the first appeal under Section 96 of the Code of Civil Procedure. The First Appellate Court vide judgment dated 30th June 2011 reversed the findings of the Civil Court and held that the plaintiff's suit was entirely maintainable. In other words, the plaintiff would be entitled to 3/4th of the total property in the name of the deceased. A further reason for arriving at such a finding was that an Agreement to Sell does not confer any right. The rights would stand vested with the third party only upon the execution of the sale deed which was done after his death. At the time of death therefor, the property was still vested in Chand Khan.

5. In Second Appeal, by way of the impugned judgment, it is recorded that no substantial question of law arises for consideration. The learned Single Judge thereafter proceeds to consider the contentions raised by either side which, for the defendant no.1 are the points that were raised before the learned Civil Court and on behalf of the plaintiff were those that were raised before the First Appellate Court.

Although we have some reservations with the fact that the learned Single Judge proceeded to examine the contentions on merit despite arriving at a finding that no substantial question arose for consideration, we proceed further. Suffice it only to say that when a Court is of the view that no substantial question arise it has no choice but to dismiss, in limine the appeal-but still has to give reasons therefor. [See: Surat Singh (dead) v. Siri Bhagwan 2018 (4) SCC 562 and Hasmat Ali v. Ameena Bibi & Ors. 2021 SCC Online SC 1142].

6. Two issues arise for consideration one, whether the agreement to sell in so far as one portion of the property would be sufficient to exclude the same from the scope and expands of matruka property to be partitioned at the time of his death and second whether the properties of deceased Chand Khan qualify as matruka properties within the meaning of Mohammedan law.

7. An agreement to sell does not confer any rights nor does it vest any interest into the party that agrees thereby to buy a particular property. This is a well

acknowledged position in law. In Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656, the law was clarified as follows:

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

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

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership. 37. that only on execution of conveyance, ownership passes from one party to another."

17. In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with

possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

(emphasis supplied)

Holding in Suraj Lamp (supra) was recently followed in RBANMS Educational Institution v. B. Gunashekar, 2025 SCC OnLine SC 793.

8. In view of the above, the view taken by the First Appellate Court and the High Court cannot be faulted with. The property agreed to be sold was, at the relevant time still the property of Chand Khan and therefore would be subject to division of property as per the applicable law. In other words, said property would form part of 'matruka' property which has been defined by the Courts as under: In Jamil Ahmad v. Vth ADJ, Moradabad, (2001) 8 SCC 599:

"11. The property (both movable as well as immovable) left by a deceased Muslim is called matruka. The scheme of distribution of matruka among the heirs of a deceased Muslim is that first that part of the matruka which is covered by a will of the deceased, if there is a valid will (subject to a maximum of 1/3rd of the total matruka provided it is not in favour of an heir) will be separated and given to the legatee.

The balance of matruka alone is distributable among the heirs and in the proportion ordained under the Mohammedan law. However, in regard to bhumiswami land the distribution of matruka will be governed by Sections 169 and 171 of the ZALR Act. Consequently the limitation placed under the Mohammedan law that the bequest should not exceed 1/3rd of the matruka of the deceased and it should not be in favour of an heir, will not apply; so also classification of heirs and the proportion in which they will inherit matruka under the Mohammedan law is replaced with the provisions of Section 171 of the ZALR Act in which a different order of succession is provided."

(emphasis supplied)

A judgment of fairly recent vintage also refers to the pronouncement above. In Trinity Infraventures Ltd. V. M.S. Murthy, 2023 SCC OnLine SC 738, it was observed:

"93. Before we proceed further, it may be necessary to decode certain words and expressions used in these proceedings from the beginning. If not, they will continue to haunt and frighten the reader. Therefore, a glossary is presented as under:

(i)	Matruka:	The property, both movable as well as immovable left by a deceased muslim is called Matruka6.

9. Reference may also be made to John T Platts' A Dictionary of Urdu, Classical Hindi and English'5 which defines 'matruka' as the estate of a deceased person. Also, as per the Rekhta Dictionary, 'matruka' is a word of Arabic origin and means "abandoned from his possession (property etc.)[,] left by immigrants (property etc.) [,] inherited wealth and property etc.6. It is clear from the above that matruka property simply refers to property left behind by deceased person and nothing more.

Regarding the devolution of matruka property, it has to be observed that the Will is the first document that is to be satisfied subject to the limits imposed by Muslim Law, namely, that it cannot exceed one-third of the estate and cannot ordinarily be made in favour of an heir without the consent of the other heirs, and then whatever remains hereafter, is to be distributed strictly as per the rules of intestate succession prescribed in Muslim Law.

10. Since the Agreement to Sell has no value in the eyes of law, all the property that vested in Chand khan would become matruka property. The next question then to be considered is as to how the division thereof would take place.

11. In Mohammedan Law, the division of property is well defined. The Holy Quran itself delineates how division of property is to take place. Chapter IV, Verse 12 reads as under:

"And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah , and Allah is Knowing and Forbearing."7

12. It would also be useful to, at this stage, refer to Mulla Principles of Mahomedan Law8 which in this regard says as follows:

"§51. Heritable property There is no distinction in the Mahomedan law of inheritance between movable and immovable property or between ancestral and self-acquired property.

A. THREE CLASSES OF HEIRS

§ 61. Classes of heirs- There are there classes of heirs, namely, (1) Sharers, (2) Residuaries, and (3) Distant Kindred:

(1) "Sharers" are those who are entitled to a prescribed share of the inheritance;

(2) "Residuaries" are those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied

(3) "Distant Kindred" are all those relations by blood who are neither Sharers nor Residuaries.

B. SHARERS

§ 63. Sharers- After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate, of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of sharers, and which again of these are entitles to a share of the inheritance, and, after this is done, to proceed to assign their respective shares to such of the sharers as are, under the circumstances of the case, entitled to succeed to a share. The first column in the accompanying table contains a list of sharers; the second column specifies the normal share of each sharer; the third column specifies the conditions which determine the right of each sharer to a share, and the fourth column sets out the shares as varied by special circumstances.

TABLE OF SHARES-SUNNI LAW

Sharers	**Normal Share**		**Condition under which the normal share is inherited**	**--**
	Of one	**Of two or more collectively**		
Wife	1/8	1/8	When there is a child or child of a son h.1.s	1/4 when no child or child of a son h.1.s"

13. The first and foremost thing to be accomplished with the estate of a deceased person is the payment for expenses, debts and legacies. Thereafter, comes allotment of shares to such relations who are entitled to a prescribed share. What follows is that if any part of the estate remains, the same is divided among the residuaries. Should there be a situation where there are no sharers, the residuaries will come into the entirety of the inheritance. It is further provided that if there are neither sharers nor residuaries, 'distant kindred' shall be entitled to the same.

14. A perusal of the above extracted principles of Muslim Law of inheritance depicts that the sharers are entitled to a prescribed share of the inheritance and wife being a sharer is entitled to 1/8th the share but where there is no child or child of a son how low so ever, the share to which the wife is entitled is 1/4th.

15. Since the rules governing inheritance are clear and there is no room for subjective analysis, the proportions assigned have to be necessarily followed. The property in question is unquestionably matruka property and so has to be distributed amongst the survivors of Chand Khan, as per the principles laid down in this regard.

The Civil Court, therefore, clearly fell in error taking into consideration an incomplete sale wherein the sale deed had not been executed and excluding the said property from the total that had to be divided. Additionally, we may also observe that the defendant no.1, in executing the sale deed had the right only to do so in respect of the 1/4th share that fell in her share and not the entire property for the maxim governing such transactions is nemo dat quod non habet which translates to no one can transfer a better title onto another than what they themselves have.

16. Consequent to the above discussion, it has to be held that the First Appellate Court and the High Court took the correct view in law. As such no interference is called for.

17. Before parting with the matter, we record our dissatisfaction with the manner in which the judgment of the learned Civil Court was translated into English. In matters of law, words are of indispensable importance. Each word, every comma has an impact on the overall understanding of the matter.

Due care has to be taken to ensure that the true meaning and spirit of the words in the original language are translated into English for the Courts in appeal to comprehend what had transpired below. Just recently, a Co-ordinate bench also highlighted similar concern vide order dated 18th March 2025 in Chairman Managing Committee & Anr v. Bhaveshkumar Manubhai Parakhia & Anr. We may only underscore the observations made therein.

18. Appeals are dismissed. No costs. Pending application(s), if any, stands disposed of.

.....J. (Sanjay Karol)

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

New Delhi;

October 16, 2025.

1 District Judge, Aurangabad

2 2nd Jt. Civil Judge (J.D.) Aurangabad in RCS No.310/99

3 Hereinafter Defendant No.1

4 Hereinafter Plaintiff

5 Digital Dictionaries of South Asia, University of Chicago, See: https://dsal.uchicago.edu/cgi-bin/app/platts_query.py?page=992

6 https://www.rekhtadictionary.com/meaning-of-matruuka

7 https://legacy.quran.com/4/12#:~:text=And%20for%20you%20is%20half,may%20have%5D%20made%20or%20debt.

8 22nd Edition

IN THE SUPREME COURT OF INDIA

Novenco Building and Industry A/S
Vs.
Xero Energy Engineering Solutions Pvt. Ltd. & Anr.

[Civil Appeal No._____ of 2025
@ out of SLP (C) No. 2753 of 2025]

HEADNOTE – When deciding a commercial suit involving a request for urgent interim relief in intellectual property infringement cases, the plaintiff's perspective must be duly considered, and courts may dispense with the mandatory pre-institution mediation requirement under Section 12A of the Commercial Courts Act, 2015

JUDGMENT

Alok Aradhe, J.

1. Leave granted.

2. The appeal calls for determination of the expression 'contemplates any urgent interim relief' in Section 12A of the Commercial Courts Act, 2015 (hereinafter, referred to as 'the Act') in its application to an action for infringement of intellectual property rights.

3. This appeal is directed against the judgment dated 13.11.2024 in Commercial Appeal No. 1 of 2024 passed by Division Bench of the High Court of Himachal Pradesh, by which it has dismissed the appeal of the appellant and has affirmed the order dated 28.08.2024 in Commercial Suit No. 13 of 2024 by a learned Single Judge, rejecting the plaint of the appellant for non-compliance with Section 12A of the Act.

FACTUAL MATRIX:-

4. Facts giving rise to filing of this appeal can be summarised as under :- The appellant is a Danish company incorporated under the laws of Denmark. The appellant is engaged in manufacture of highly efficient industrial fans, marketed under the Brand 'Novenco ZerAx'. According to the appellant, the said brand was developed after an investment of approximately 3.66 million euros between 2007 and 2015. The appellant secured several patents and design registrations to secure its innovation in India and abroad.

5. A dealership agreement was executed on 01.09.2017 between the appellant and respondent No.1, Xero Energy Engineering Solutions Pvt. Ltd., Hyderabad (hereinafter, referred to as 'Xero Energy'), for marketing and sale of Novenco

ZerAx fans across India. According to the appellant, Xero Energy's Director, in violation of distribution agreement, incorporated respondent No.2, Aeronaut Fans Industry Pvt. Ltd. (hereinafter, referred to as 'Aeronaut Fans'), for manufacture and sale of identical fans under deceptively similar name and appearance. The appellant discovered sometime in July, 2022 that Xero Energy started marketing competing products.

6. The appellant sent multiple communications to Xero Energy on 22.08.2022, 30.08.2022 and 14.10.2022 seeking clarification. However, no explanation was offered by Xero Energy. The appellant on 14.10.2022 terminated the dealership. Thereafter, it sent a cease-and-desist notice dated 23.12.2022 to Aeronaut Fans, who sent replies dated 01.02.2023 and 03.03.2023 to the notice. Aeronaut Fans filed a petition under Section 148A CPC before the Madras High Court and an email was sent on 15.05.2023 by counsel of Aeronaut Fans.

7. The technical expert of the appellant on 06.12.2023 inspected the fans installed by Aeronaut Fans at Cavendish Industries and Hero Moto Corp, Uttarakhand, and submitted his affidavit on 06.02.2024 confirming the infringement by Aeronaut Fans. The appellant thereafter obtained patent and design certificates in March-May, 2024.

8. The appellant on 04.06.2024 filed a commercial suit, namely, COMS No. 13 of 2024, before the High Court alleging infringement of its patent and design by the respondent. The appellant along with the plaint also filed an application under Order XXXIX Rules 1 and 2 seeking an ad interim injunction, and an application under Section 151 of the CPC seeking exemption from pre-institution mediation as mandated under Section 12A of the Act.

9. The respondents filed an application under Order VII Rule 10 of the CPC for return of the plaint and an application under Order VII Rule 11 for rejection of the plaint, inter alia, on the ground that no urgency was involved in the matter and non compliance with Section 12A of the Act was fatal to the suit. The respondents also filed a reply to the application seeking injunction.

VIEWS OF HIGH COURT:-

10. The learned Single Judge of the High Court passed two separate orders on 28.08.2024. By the first order, the learned Single Judge rejected the plea for return of plaint. However, by the second order, the learned Single Judge held that (i) there was a delay of six months between the inspection of fans installed by Aeronaut Fans, in December 2023 and the filing of the suit in June, 2024, (ii) the plea of the appellant about urgency was not substantiated as the appellant had issued cease-and-desist notice as early as December 2022 and had adequate time to approach for mediation, (iii) pre-institution mediation under Section 12A of

the Act is mandatory, unless urgent interim relief is sought bonafide, (iv) in the absence of genuine urgency, the plaint was liable to be rejected under Order VII Rule 11 of CPC. The learned Single Judge, therefore, allowed the application under Order VII Rule 11 of CPC and rejected the plaint.

11. The appellant preferred an appeal. A Division Bench of the High Court, by an order dated 13.11.2024, agreed with the reasons assigned by the learned Single Judge. The Division Bench, inter alia, held that delay between inspection of fans and filing of the commercial suit exhibits patent lack of urgency and exemption from requirement of compliance of the mandate contained in Section 12A of the Act cannot be claimed merely because interim reliefs were sought.

It was further held that mere continuous infringement of intellectual property rights could not override the statutory mediation requirements. The Division Bench, however, clarified that the order of rejection of the plaint would not bar the appellant in case it chooses to comply with Section 12A of the Act and subject to the outcome of the mediation proceeding and if the cause of action still survives, it may institute a suit. Accordingly, the Division Bench dismissed the appeal. In the aforesaid factual background, this appeal arises for our consideration.

12. A Bench of this Court, by an order dated 07.02.2025, while entertaining the Special Leave Petition, directed the appellant to move a letter before the mediation centre attached to High Court of Himachal Pradesh, seeking appointment of a mediator and the respondents were directed to participate. It is stated before us that, on 23.06.2025 the mediation between the parties has failed.

SUBMISSIONS:-

13. Learned senior counsel for the appellant submitted that the learned Single Judge and the Division Bench of the High Court erred in not applying the correct test in deciding whether the appellant would be entitled to an interim injunction based on urgency involved in the facts of the case. It is further submitted that it ought to have been appreciated that the urgent interim relief was not sought to bypass the statutory mandate of prelitigation mediation.

It is also submitted that the plaint along with the documents have to be read together to find out whether any urgent interim relief is correctly sought. It is contended that mere delay in filing the suit for infringement and injunction against continuing violation of intellectual property rights by itself is not a ground to decline the injunction against an infringer. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court in Midas Hygiene Industries Private Ltd. & Anr. v. Sudhir Bhatia & Ors.1 and Yamini Manohar v. T.K.D. Keerthi2.

14. On the other hand, learned senior Counsel for the respondents, while inviting the attention of this Court to the order dated 07.02.2025 passed in this appeal submitted that, it appears that the issue, which according to the court arises for consideration is whether the plaint, which did not contemplate urgent relief, should be rejected or be kept in abeyance. It is submitted that the learned Single Judge as well as the Division Bench have rightly found that the plaint does not make out any need for urgent relief. It is submitted that, in the plaint there is not a single word on the urgency.

It is contended that the appellant had issued a cease-and-desist notice on 23.12.2022 and thereafter had filed the suit after a delay of one and half years, in June, 2024. It is pointed out that the suit was filed after four months of the submission of expert opinion. Therefore, there was no urgency to deviate from the mandatory statutory requirement under Section 12A of the Act. It is urged that mere filing of an application for interim relief does not ipso-facto indicate urgency and there is no material on record to suggest that appellant's patent is being violated. It is, therefore, submitted that the appeal is liable to be dismissed.

STATUORY PROVISION:-

15. Before dealing with the rival submissions canvassed on either side, we must take note of relevant statutory provision. The Act has been enacted, inter alia, with an object for early resolution of commercial disputes so as to create a positive image amongst the investors about our strong and responsive legal system and to facilitate ease of doing business. The Act was amended in the year 2018 by Act No. 28 of 2018. By the aforesaid amending Act, Section 12A was also incorporated with an object to provide for compulsory mediation before initiation of a suit where no urgent interim relief is contemplated.

16. Section 12A of the Act reads as under:-

"12A. Pre-Institution Mediation and Settlement-

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2)

shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]" Thus, the aim and object of Section 12A is to ensure that, before a commercial dispute is filed before the court, the alternative means of resolution of the dispute are adopted, so that only the most trying cases come before the courts.

PRECEDENT:-

17. The scope and ambit of Section 12A of the Act which makes pre-institution mediation mandatory for commercial disputes, except where the suit 'contemplates any urgent interim reliefs', has been considered in three recent decisions of this Court. In Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.3, a two-Judge Bench of this Court dealt with a case where a suit for recovery of money was filed without adherence to Section 12A of the Act. It was held that Section 12A of the Act is mandatory and any suit instituted in violation of the mandate contained in Section 12A of the Act must be visited with rejection of the plaint.

18. In Yamini Manohar (supra), another two-Judge Bench of this Court laid down the criteria to judge whether the plaint contains a prayer for urgent interim relief, by taking into account the subject matter of the suit, the cause of action and the prayer for interim relief. It was further held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff and the prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Act. The scope and ambit of the words 'contemplate any urgent interim relief' in Section12A of the Act, with reference to the suit, were also considered and it was held that the plaint, documents, and facts should show and indicate the need for urgent interim relief. It was further held that this is the precise and limited exercise that the Commercial Courts will undertake.

19. In DHANBAD FUELS (P) LTD. v. UOI4, another two-Judge Bench of this Court held that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. It has been further held that the interim relief must not merely be an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the Act.

20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

(i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.

(ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

(iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

(iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.

(v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.

ANALYSIS

21. Thus, the question whether a suit 'contemplates any urgent interim relief' needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A of the Act, notwithstanding certain delay in its institution.

22. The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user5. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.

23. From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, is inherent in the nature of the wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.

24. The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.

25. The learned Single Judge as well as the Division Bench of the High Court erred in construing the test for urgent relief enumerated in Section 12A of the Act, in as much as the courts have proceeded to examine the entitlement of the appellant to urgent relief based on the merits of the case rather than looking at the urgency as is evident from the plaint and the documents annexed thereto from the standpoint of the plaintiff.

The High Court has proceeded on the premise that lapse of time between the appellant's discovery of infringement and filing of suit negated the element of urgency. Such an approach, in our considered view, is contrary to the principles

laid down by the decisions of this Court. The High Court has also failed to take into account that the present action is one of the continuous infringement of intellectual property.

CONCLUSION

26. For the reasons stated above, we hold that (i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception, (ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing.

27. For the aforementioned reasons, the impugned judgment dated 28.08.2024 of the learned Single Judge in Commercial Suit No. 13 of 2024 and the judgment dated 13.11.2024 of the Division Bench of the High Court in Commercial Appeal No.1 of 2024 are quashed and set aside. The Commercial Suit No. 13 of 2024 is restored to the file of the High Court to be proceeded with on merits in accordance with law.

28. The appeal is allowed.

.....J. [Sanjay Kumar]

.....J. [Alok Aradhe]

New Delhi,

October 27, 2025.

1 (2004) 3 SCC 90

2 (2024) 5 SCC 815

3 (2022) 10 SCC 1

4 (2025) SCC Online SC 1129

5 Midas Hygiene Industries Private Ltd. & Anr. (supra)

IN THE SUPREME COURT OF INDIA

State of Kerala
Vs.
Suni @ Sunil

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 6238 of 2024]

[Criminal Appeal Nos._____ of 2025
@ SLP (Crl.) Nos. 8223-8224 of 2025]

HEADNOTE – The offence of threatening a witness under Section 195A IPC is a cognizable offense, empowering the police to directly register an FIR and investigate, without waiting for a formal complaint from a court.

JUDGMENT

Sanjay Kumar, J.

1. Leave granted.

2. In Maktool Singh vs. State of Punjab1, this Court had observed that precision and brevity are generally the hallmarks of legislative draftsmanship. The cases on hand, however, bear testimony to how laxity in such draftsmanship can generate and be a source of litigation.

3. The issue presently is as to how the offence under Section 195A of the erstwhile Indian Penal Code, 1860 (IPC), has to be construed and dealt with. Section 195A IPC reads as follows:-

'**Section 195A - Threatening any person to give false evidence.-** Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.'

4. This offence was introduced in the IPC with effect from 16.04.2006, vide Act No. 2 of 2006. It found place in Chapter XI, titled 'Of false evidence and offences

against public justice'. Section 191 was the first provision in this chapter and was titled 'Giving false evidence'. It stated that, whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Section 192 IPC defined 'Fabricating false evidence' and Section 193 IPC provided the punishment therefor. It reads thus:

'193. Punishment for false evidence.-

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.'

5. The offences under paras 1 and 2 of Section 193 IPC were both non-cognizable, as reflected in the First Schedule to the erstwhile Code of Criminal Procedure, 1973 (CrPC). The offence under para 1 was triable by a Magistrate of First Class while the offence under para 2 thereof was triable by any Magistrate. Both the offences were bailable.

6. Section 194 IPC dealt with 'Giving or fabricating false evidence with intent to procure conviction of capital offence' and it reads as under:-

'194. Giving or fabricating false evidence with intent to procure conviction of capital offence.- Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; if innocent person be thereby convicted and executed.- and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.' The offences under para 1 and para 2 above were also non-cognizable and they were both triable by a Court of Sessions. Further, both offences were non-bailable.

7. Section 195 IPC dealt with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards. This offence was non-cognizable, non-bailable and was triable by a Court of Sessions.

8. Sections 196 to 200 IPC dealt with other facets of perjury, i.e., using evidence known to be false; issuing or signing a false certificate; using as true a certificate known to be false; false statement made in declaration which is by law receivable as evidence; and using as true such declaration knowing it to be false. All these offences were punishable in the same manner as if the person convicted therefor gave/fabricated false evidence. All these offences were also non-cognizable.

9. Parallelly, Section 195 CrPC was titled 'Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence'. For the purposes of these cases, Section 195(1)(b)(i) CrPC is of relevance. It reads thus:-

'195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance -

(a) ...

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), 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) ...

(iii) ... 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) .....'

10. Therefore, as per the scheme of Section 195(1)(b)(i) CrPC, an offence punishable under Sections 193 to 196 (both inclusive) could not be taken cognizance of by a Court, when such offence was alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court or by such officer of that Court, as may be authorized by that Court in writing in that behalf, or of some other Court to which that Court is subordinate.

11. The procedure to be followed in such cases was detailed in Section 340 CrPC. This provision reads as under:-

'340. Procedure in cases mentioned in section 195.-

(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-Section (1) of section 195, 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, such Court may, after such preliminary inquiry, if any, as it thinks necessary;-

a. record a finding to that effect;

b. make a complaint thereof in writing;

c. send it to a Magistrate of the first class having jurisdiction;

d. take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

e. bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

12. It is clear from a plain reading of the aforestated provision that if, upon receiving an application, any Court is of the opinion that an inquiry should be made into the offences referred to in Section 195(1)(b) CrPC, which appear to have been committed in, or in relation to, a proceeding in that Court or in respect of a document produced or given in evidence in a proceeding in that Court it may, after such preliminary inquiry, if any, as it thinks fit, record a finding to that effect and make a complaint thereof in writing to a jurisdictional Magistrate of First Class.

13. Now, a look at more general provisions which are also of relevance. The word 'Complaint' was defined by Section 2(d) CrPC to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the CrPC, that some person, whether known or unknown, has committed an offence, but did not include a police report. The Explanation appended thereto, however, clarified that a report made by a police officer in a case which disclosed, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report was made shall be deemed to be the complainant.

14. 'Cognizable offence', as defined by Section 2(c) CrPC, meant an offence for which, and 'cognizable case' meant a case in which, a police officer may, in accordance with the First Schedule thereto or under any other law for the time being in force, arrest without warrant. A 'non-cognizable offence', as defined by Section 2(l) CrPC, meant an offence for which, and 'non-cognizable case' meant a case in which, a police officer had no authority to arrest without warrant.

15. Section 154 CrPC dealt with information being given of the commission of a cognizable offence and how it was to be processed. Section 155 CrPC dealt with how information as to commission of a non-cognizable case was to be processed and investigated. Section 156 CrPC dealt with a police officer's power to investigate a cognizable case. These provisions, to the extent relevant, read as under:-

'154. Information in cognizable cases.-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Provided that ..... :

Provided further that -.....

(2) A copy of the information as recorded under Sub-Section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the

commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

155. Information as to non-cognizable cases and investigation of such cases.-

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.'

156. Police officer's power to investigate cognizable case.-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

16. The above provisions make it clear that the procedure to be followed apropos a cognizable offence is vastly different from the procedure relating to a non-cognizable offence - in the context of how information as to commission of such offence is to be dealt with and how it is to be investigated. When information as to commission of a non-cognizable offence is given to a jurisdictional police officer, he must record the same in the manner prescribed and refer the informant to a Magistrate.

Section 155(2) CrPC makes it clear that a non-cognizable case cannot even be investigated without the order of a Magistrate having power to try such case or commit it for trial. It is only after receipt of such order that a police officer can exercise the same powers in respect of investigation, except the power to arrest without warrant, as an officer in charge of a police station may exercise in relation to a cognizable case.

17. This being the scheme obtaining at the time that Section 195A IPC came to be inserted in the statute book, the issue is as to how the offence thereunder is to be dealt with. The conundrum arises due to the fact that Section 195(1)(b)(i) CrPC remained unchanged even after insertion of Section 195A IPC. As noted earlier, Section 195(1)(b)(i) CrPC stated that offences punishable under Sections 193 IPC to 196 IPC (both inclusive) could not be taken cognizance of until a complaint in writing was made by the Court concerned or by an officer authorized by that Court or by a superior Court. Section 195A IPC, introduced in 2006, obviously fell between Sections 193 IPC to 196 IPC but the issue is whether the same procedure would apply to the offence thereunder.

18. Notably, in Salib alias Shalu alias Salim vs. State of Uttar Pradesh and others2, this Court found, on facts, that the ingredients to constitute an offence under Section 195A IPC were not made out and, therefore, while noting that the said offence was a cognizable one whereby a police officer would have the power to investigate it, the question as to whether Section 195 CrPC would apply to that offence was left open.

19. Pertinent to note, when Section 195A IPC was inserted in the statute book in the year 2006, an amendment was also made in the First Schedule to the CrPC, inserting Section 195A IPC therein, specifically categorizing it as a 'cognizable offence', unlike the offences under Sections 193 IPC, 194 IPC, 195 IPC and 196 IPC, which were shown as non-cognizable offences. Significantly, an amendment was also made in Section 195(1) of the CrPC by the very same Act No. 2 of 2006, with effect from 16.04.2006, whereby the phrase 'or by such officer of the Court as that Court may authorise in writing in this behalf', came to be inserted in addition to the existing 'except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate'.

Unfortunately, while making this amendment in Section 195(1) CrPC, the lawmakers did not deem it necessary to clarify whether the offence under Section 195A IPC was to be treated as an exception to the procedure prescribed for the other offences, referred to in Section 195(1)(b)(i) CrPC, by excluding it specifically from the ambit thereof. However, in the year 2009, Section 195A CrPC was introduced in the statute with effect from 31.12.2009, vide Act No. 5 of 2009. This provision reads as under:-

'195A. Procedure for witnesses in case of threatening, etc.- A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).'

20. This provision made it clear that a witness or any other person could file a complaint about commission of an offence under Section 195A IPC. This procedure was demonstrably dichotomous with the procedure under Section 195(1)(b)(i) CrPC, as the offences enumerated thereunder required the complaint to be made only by the Court concerned or by an officer authorized by that Court or by a superior Court. In that scenario, there was no possibility of any other person making a complaint independently. Section 195A CrPC made it manifest that this was not the case with an offence under Section 195A IPC!

21. The ticklish issue of Section 195A IPC has troubled several High Courts resulting in contradictory and inconsistent views. In Rahul Yadav vs. State and another3, a learned Judge of the Delhi High Court observed that the offence under Section 195A IPC was a cognizable one and, therefore, it was within the power of the police officer concerned to register an FIR. The learned Judge observed that Section 195A CrPC only provided an additional remedy of filing a complaint in relation to the offence punishable under Section 195A IPC but it did not declare the offence under Section 195A IPC to be a non-cognizable offence.

22. In Abdul Razzak vs. State of M.P. and another4, a learned Judge of the Madhya Pradesh High Court affirmed and followed the view taken in Rahul Yadav (supra). On similar lines, in Homnath Niroula vs. State of West Bengal5, a learned Judge of the Calcutta High Court observed that the restriction imposed on procedure under Section 195(1)(b)(i) CrPC was not applicable to cases arising under Section 195A IPC.

Again, in Ramlal Dhakad and others vs. The State of Madhya Pradesh6, a learned Judge of the Madhya Pradesh High Court noted that the act of threatening a person with the intention of making him give false evidence constituted an offence under Section 195A IPC and actual false evidence being given in Court, pursuant to such threat, is not the requirement. The action of the police officer in registering an FIR in relation to the offence under Section 195A IPC was, accordingly, held to be lawful and valid.

23. On the contrary, in Neput Rajiyung @ Action Dimasa @ Miput Rajiyung vs. State of Assam and another7, a learned Judge of the Gauhati High Court opined that a separate procedure is laid down in Sections 195 CrPC, 340 CrPC and 195A CrPC for launching prosecution in relation to certain cognizable offences, including the offence of witness threatening under Section 195A IPC. The learned Judge concluded that prosecution under Section 195A IPC can be launched by a witness or any other person only by way of a complaint before a

Magistrate and not by way of an FIR before a police officer. This view was followed by a learned Judge of the Madhya Pradesh High Court in Sazid vs. State of Madhya Pradesh8.

24. In the cases on hand also, the High Courts of Kerala and Karnataka proceeded under the assumption that the procedure under Section 195(1)(b)(i) CrPC was required to be followed in the context of an offence committed under Section 195A IPC. In the appeal arising out of SLP (Crl.) No. 6238 of 2024, the officer-in-charge of Koratty Police Station, Thrissur Rural, registered FIR No. 1062 dated 05.12.2022 under Section 195A IPC read with Section 120(o) of the Kerala Police Act, 2011. The offence alleged was that the de facto complainant, who had turned approver in a murder case, was threatened with dire consequences if he failed to give false evidence.

The accused in that FIR applied for bail on the ground that due procedure was not followed in connection with the registration of the offence. A learned Judge of the Kerala High Court held that the procedure under Section 195(1)(b)(i) CrPC had to be followed and granted him bail, by order dated 04.04.2023. Aggrieved thereby, the State of Kerala is before us. The appeals arising out of SLP (Crl.) Nos. 8223-8224 of 2025 assail separate orders dated 22.01.2025 passed by a learned Judge of the Karnataka High Court in Criminal Petition No. 11719 of 2023 and Criminal Revision Petition No.123 of 2023 respectively. Crime No. 135 of 2016 was registered on 15.06.2016 in relation to the killing of one Yogesh Goudar.

This case was entrusted by the Government of Karnataka to the Central Bureau of Investigation (CBI). During the course of investigation, the CBI found that the charge-sheeted accused were not the ones who had executed Yogesh Goudar and submitted its own chargesheet naming different accused. Thereafter, the CBI found that some witnesses were intimidated by those accused prior to examination before the Court and, as a result, they had turned hostile. The CBI then brought the same to the notice of the learned Principal Civil Judge & Principal Judicial Magistrate (First Class), Dharwad, which was treated as a complaint under Section 195A CrPC, and cognizance was taken, vide order dated 04.12.2020.

Assailing the said order, one of the accused approached the High Court under Section 482 CrPC in Criminal Petition No. 11719 of 2023 complaining of procedural irregularity. Another accused in that FIR filed a discharge petition under Section 227 CrPC but the same was dismissed by the learned LXXXI Additional City Civil and Sessions Judge, Bengaluru, vide order dated 14.07.2022. Aggrieved thereby, the said accused filed a revision petition in Criminal Revision Petition No.123 of 2023.

By separate orders dated 22.01.2025 passed in the two cases, a learned Judge of the Karnataka High Court set aside the orders dated 04.12.2020 and 14.07.2022 on the ground that the procedure under Section 195(1)(b)(i) CrPC was not followed. The cognizance order dated 04.12.2020 was set aside along with the order dated 14.07.2022 and the petitioner in Criminal Revision Petition No.123 of 2023 was discharged from the array of accused. Hence, these appeals by the CBI.

25. The learned senior counsel appearing for the accused sought to rely upon the decision of this Court in Union of India vs. Ashok Kumar Sharma and others9. We find such reliance to be misconceived, as that was a case arising in a different statutory milieu under the Drugs and Cosmetics Act, 1940. Section 32 thereof dealt with cognizance of offences under Chapter IV and stated that such prosecution could be initiated only by the persons/entities named therein. In that context, this Court held that a police officer could not register an FIR under Section 154 CrPC in relation to offences under Chapter IV, as only the persons mentioned in Section 32 could initiate prosecution for such offences. The scheme of that statute being entirely different, this decision has no relevance.

26. The further argument of the learned senior counsel is that the offence under Section 195A IPC should be split up into two. His argument requires the provision to be interpreted in such a manner as to create two categories of offences, that is, if the offence under Section 195A IPC is committed in or in relation to a proceeding before the Court, then the complaint would have to be made by the Court under Section 195(1)(b)(i) CrPC duly following the procedure under Section 340 CrPC.

However, if the offence under Section 195A IPC is committed not in, or in relation to, a proceeding before the Court, then Section 195(1)(b)(i) CrPC would not be applicable so the Court cannot make a complaint in relation thereto and it is for the victim of such offence to then file a complaint under Section 195A CrPC. We find no merit in this argument as it practically requires us to rewrite the provision contrary to how it actually reads.

27. We may note, at this stage, that the shortfalls and lack of lucidity in the statute do not constitute casus omissus, i.e., 'a case of omission'. It is well settled that it is not permissible for the Court to apply the doctrine of casus omissus where the language of a statute is clear and unambiguous as the words used by the statue speak for themselves and it is not the function of the Court to add words or expressions merely to suit what the Court thinks is the intent of the legislature [See S.R. Bommai vs. Union of India10]. As pointed out by a Constitution Bench in Nathi Devi vs. Radha Devi Gupta11, while interpreting a statute, effort should be made to give effect to each and every word used by the legislature and a construction which attributes redundancy to the legislature

should not be accepted except for compelling reasons, such as obvious drafting errors.

However, in a situation where it is not an instance of casus omissus by the draftsman of the legislation and there are ample means to gather the clear intention of the lawmakers, the statutory provisions which are seemingly lacking in clarity, but are actually not so, can be synchronized so as to give effect to the legislation as intended, without the Court venturing into the realm of legislative drafting. Such an exercise would only require harmonious construction of the provisions so as to give full effect to the legislation.

28. From the statutory scheme, as set out supra, it is clear that Section 195A IPC was conceptualized as an offence distinct and different from those under Sections 193 IPC, 194 IPC, 195 IPC and 196 IPC. Those offences require a complaint to be made only by those named in Section 195(1)(b)(i) CrPC and they were all non-cognizable offences. However, an offence under Section 195A IPC was a cognizable offence and pertained to inducing a person to give false evidence by intimidating him/her with threat of injury either to his/her person or reputation or property or to the person or reputation of anyone in whom that person is interested. The threat to a witness may be given long before he comes to the Court though the giving of false evidence, under such threat, is in connection with a proceeding before that Court.

That is, perhaps, the reason why this offence was made cognizable so that the threatened witness or other person may take immediate steps by either giving oral information of the commission of this cognizable offence to the concerned police officer, under Section 154 CrPC, or by making a complaint to a jurisdictional Magistrate, under Section 195A CrPC, so as to set the process of criminal law in motion. Requiring that person to go before the Court concerned, i.e., the Court in which the proceeding is pending in relation to which false evidence is to be given, and inform it about the threat received, thereby necessitating a complaint under Section 195(1)(b)(i) along with an inquiry under Section 340 CrPC, would only cripple and hamper the process.

29. Section 195A CrPC, therefore, aimed at bringing clarity to the issue. The threatened witness or other person could approach the police or file a complaint in relation to an offence under Section 195A IPC so that the process relating to cognizable offences could commence immediately. The use of the word 'may' in Section 195A CrPC indicates that it is not compulsory for a threatened witness or other person to only approach the Magistrate concerned to complain of the offence under Section 195A IPC. Given the scheme and structure of both the statutes, i.e., the IPC and the CrPC, in the context of the offence under Section 195A IPC, we are not persuaded by the argument that the word 'may' in Section 195A CrPC should be read as 'shall'.

The undeniable fact remains that the offence under Section 195A IPC is a cognizable offence and once that is so, the power of the police to take action in relation thereto under Sections 154 CrPC and 156 CrPC cannot be doubted. As the said offence is classified as a cognizable offence, the process of criminal law can as well be set in motion by giving information of the commission of such offence to the concerned police officer under Section 154 CrPC.

It is only by way of an additional remedy that Section 195A CrPC permits the threatened witness or any other person acting on his behalf to file a complaint before the jurisdictional Magistrate to set the process of criminal law in motion. This aspect has already been touched upon by this Court, though in the passing, in Salib (supra). This, in our considered opinion, is the proper and correct method of construing and giving effect to the relevant provisions in relation to an offence under Section 195A IPC.

30. In the result, the interpretation placed upon such provisions by the learned Judges of the Kerala and Karnataka High Courts is held to be erroneous and unsustainable. In consequence, the order dated 04.04.2023 passed by the Kerala High Court in B.A. No. 556 of 2023 is set aside and the bail granted to the accused, Suni @ Sunil, is set aside. He shall surrender before the Trial Court within two weeks.

However, as bail was granted to him only on the limited ground of the procedure under Section 195(1)(b)(i) CrPC not being followed, which we have held to be incorrect, this order shall not preclude him from seeking bail afresh on other grounds, if warranted.

The orders dated 22.01.2025 passed by the Karnataka High Court in Criminal Petition No. 11719 of 2023 and Criminal Revision Petition No. 123 of 2023 respectively are set aside. In consequence, the cognizance order dated 04.12.2020 passed by the learned Principal Civil Judge & Principal Judicial Magistrate (First Class), Dharwad, shall stand restored.

Further, the dismissal of the discharge application filed by the petitioner in Criminal Revision Petition No. 123 of 2023, Sri Basayya Thirakaya Hiremath, by the learned LXXXI Additional City Civil and Sessions Judge, Bengaluru, vide order dated 14.07.2022, shall also stand restored.

The appeals are, accordingly, allowed.

.....J. [Sanjay Kumar]

.....J. [Alok Aradhe]

New Delhi;

1 (1999) 3 SCC 321

2 (2023) 20 SCC 194

3 2018 SCC OnLine Del 8271

4 2023 SCC OnLine MP 7152 = ILR 2024 MP 1067

5 2024 SCC OnLine Cal 7323

6 MCRC No. 31316 of 2020, decided on 22.01.2024

7 (2023) 6 Gauhati Law Reports 302

8 2022 SCC OnLine MP 4583

9 (2021) 12 SCC 674

10 (1994) 3 SCC 1

11 (2005) 2 SCC 271

IN THE SUPREME COURT OF INDIA

Haribhau @ Bhausaheb Dinkar Kharuse & Anr.
Vs.
State of Maharashtra

[Criminal Appeal No. 1755 of 2011]
[Criminal Appeal No(s). 150-151 of 2013]

HEADNOTE – It is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object.

JUDGMENT

Vipul M. Pancholi, J.

1. Criminal Appeal No. 1755 of 2011 is an appeal filed under Section 379 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the CrPC") and Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (hereinafter referred to as "the Supreme Court Act"), by Haribhau @ Bhausaheb Dinkar Kharuse (accused no. 3/appellant no. 1) and Raju @ Rajendra Bhiwrao Shirwale (accused no. 4/appellant no. 2), challenging the final judgment dated 02.02.2011 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 626 of 2001, whereby the High Court partly allowed the said appeal and reversed the order of acquittal for the offence punishable under Sections 302 and 307 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"), vide the judgment dated 18.05.2001 passed by the VIII Additional Sessions Judge, Pune, in Sessions Case No. 72 of 2000.

2. Criminal Appeal No. 150-151 of 2013 is an appeal filed under Section 379 of the CrPC and Section 2(a) of the Supreme Court Act, by Subhash Raghunath Pawar (accused no. 6/appellant), challenging the final judgment dated 02.02.2011 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 517 of 2001, whereby the High Court dismissed the said appeal and confirmed the order of conviction for the offence punishable under Section 307 read with Section 149 of the IPC. The High Court also reversed the order of acquittal for the offence punishable under Sections 302 read with Section 149 of the IPC vide the judgment dated 18.05.2001 passed by the VIII Additional Sessions Judge, Pune, in Sessions Case No. 72 of 2000.

FACTUAL MATRIX

3. The brief facts of the present case as per the appellants is that from 25.04.1999 to 27.04.1999, several wedding ceremonies were held in different branches of the Gholap family at village Kari, Pune District. On 26.04.1999, during a wedding procession, Ankush Gholap was assaulted on his head by Vitthal Deoba Gholap, brother of Pandharinath Devba Gholap (accused no. 1). Ankush subsequently registered a police complaint that same night with Bhor Police Station.

4. On 27.04.1999, Ankush, along with Dnyanoba Ravba Gholap, Rajendra Gholap (PW-7) and Shivaji Sanas (PW-9), travelled to Bhor in a jeep driven by Sopan Dagadu Gholap (PW-1). While returning, near Navi Ali, they stopped. At this point, accused no. 1 and Maruti Ramchandra Gholap (accused no. 2) arrived on a motorbike driven by accused no. 3. The accused no. 4 drove another motorbike with two pillion riders, namely, Vitthal Baburao Shinde (accused no. 5) and accused no. 6. The accused no. 3 removed the jeep's keys and punched PW-1. Meanwhile, the other accused persons dragged Ankush, PW-7 and PW-9 from the jeep. The accused no. 1 and 2 attacked Ankush with sharp weapons, causing his death on the spot while PW-7 and PW-9 sustained serious injuries and PW-1 managed to escape and later reported the incident to police.

5. The postmortem examination of Ankush (deceased) was conducted by Dr. Praveen Chaudhary (PW-16), confirming death due to haemorrhagic shock from multiple injuries caused by sharp weapons. PW-7 and PW-9 were treated for grievous injuries at local hospitals. The accused persons were arrested and the charge sheet was filed.

6. The Sessions Court framed charges against the accused persons for committing offences punishable under Sections 147, 148, 149, 302, 307 of the IPC and alternatively under Sections 302, 307 read with Section 34 of the IPC. During the trial, 27 witnesses were examined. The defence presented one alibi witness, Balasaheb Gholap (DW-1), for accused no. 1 and 2.

7. The trial court, on 18.05.2001, convicted accused No. 1 and 2 for committing offences punishable under Sections 302 and 307 of the IPC, sentencing them to life imprisonment and rigorous imprisonment for a period of seven years, respectively. The accused no. 6 was also convicted for committing an offence punishable under Section 307 of the IPC and sentenced to imprisonment for a period of seven years and was acquitted for the offence punishable under Section 302 read with Section 149 of IPC. The accused no. 3, 4 and 5 were acquitted due to insufficient evidence.

8. Before the High Court, accused no. 1, 2 and 6 filed appeals challenging their convictions, while the State appealed the acquittal of accused no. 3, 4 and 5. Vide

the impugned judgment, the High Court partly allowed the State's appeal, reversing the acquittal of accused no. 3 and 4. The High Court dismissed the appeals filed by accused no. 1, 2 and 6, confirming their convictions. The High Court further reversed the acquittal of accused no. 6 under Section 302 read with Section 149 of the IPC.

9. Vide the impugned judgment, accused no. 1, 2, 3, 4 and 6 were held guilty for the offences punishable under Sections 147, 148, 149 and Sections 302 and 307 read with Section 149 of the IPC and were sentenced with rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the IPC and with rigorous imprisonment for ten years for the offence punishable under Section 307 read with Section 149 of the IPC.

10. Aggrieved by the impugned judgment, accused no. 3 and 4 (appellant no. 1 and 2) and accused no. 6 (appellant) have filed the present appeals.

SUBMISSIONS ON BEHALF OF APPELLANT NO. 1 & 2

11. Learned counsel for the appellant no. 1 and 2 contended that the High Court erred in reversing a well-reasoned acquittal by the Trial Court and raised the following grounds: A. Ingredients of Section 149 of the IPC were not made out; B. High Court overstepped its jurisdiction by interfering with a plausible view of acquittal; C. Contradictions among eyewitnesses of the incident in question; and D. No recovery or evidence against accused no. 3/appellant no. 1.

12. First, it was argued that Section 149 of the IPC requires proof of a common object among at least five or more persons. The prosecution's own witnesses gave contradictory statements about whether accused no. 3/appellant no. 1 possessed a knife.PW-1 made inconsistent claims and admitted omissions in his earlier statements. No weapon was recovered from accused no. 3/appellant no. 1 and there was no evidence that he shared the intention to kill.

13. Since accused no. 5 remained acquitted and accused no. 3/appellant no. 1 was not proven guilty, only four persons could be said to have participated, which is below the minimum threshold of five members required under Section 141 of the IPC for constituting an unlawful assembly. Moreover, there were no specific allegations of assault by accused no. 4/appellant no. 2, further weakening the prosecution's case.

14. Reliance was placed on Daya Kishan v. State of Haryana, (2010) 5 SCC 81 and Naresh v. State of Haryana, (2023) 10 SCC 134, where this Court held that mere presence in an unlawful assembly without participation or intent cannot attract liability under Section 149 of the IPC.

15. Secondly, learned counsel for the appellant no. 1 and 2 argued that the High Court exceeded its jurisdiction by overturning a plausible and well-reasoned acquittal. Relying upon Murugesan v. State, (2012) 10 SCC 383 (paras 32-34) and Siju Kurian v. State of Karnataka, (2023) 14 SCC 63 (para 21), it was submitted that a High Court can only reverse an acquittal when the Trial Court's view is perverse or unreasonable. Since the Trial Court's conclusions were based on a detailed assessment of contradictions and witness credibility, the High Court's interference was unwarranted.

16. Thirdly, it was submitted that the defence highlighted material discrepancies between the statements of PW-1 and PW-7 regarding the weapons used and the role of the accused persons. PW-7, one of the injured eyewitnesses, was in critical condition when his statement was recorded. The Trial Court observed that PW-7 was not medically fit to give a coherent account at that time, undermining the reliability of his testimony. Thus, these inconsistencies should have prevented the High Court from relying on these witnesses.

17. Lastly, it was submitted that the Trial Court had categorically held that there was no recovery from accused no. 3/appellant no. 1 and no evidence that he had assaulted anyone or even possessed a weapon. It found that the allegation that accused no. 3/appellant no. 1 held the deceased while others attacked was unsupported by evidence.

18. Thus, learned counsel for the appellant no. 1 and 2 contended that the Trial Court's acquittal was based on a sound appreciation of evidence and contradictions in witness statements. The High Court ignored these crucial findings and erred in convicting appellant no. 1 and 2 without establishing their participation, intent or the existence of an unlawful assembly. Therefore, the impugned judgment is liable to be set aside and appellant no. 1 and 2 to be acquitted of all charges.

SUBMISSIONS ON BEHALF OF APPELLANT (ACCUSED NO. 6)

19. Learned counsel for the appellant (accused no. 6) submitted that the evidence on record does not establish that appellant was a member of an unlawful assembly sharing a common object under Section 149 of the IPC to commit murder. The prosecution itself admitted that appellant did not inflict any injury upon the deceased and the only allegation against him is of causing hurt to PW-7. Consequently, the finding of guilt under Section 302 read with Section 149 of the IPC is unsustainable and the High Court erred in reversing the wellreasoned acquittal by the Sessions Court. The evidence, at best, may indicate participation in an incident resulting in hurt, but not in a premeditated murder committed in furtherance of a common object.

20. It is further submitted that the incident in question occurred suddenly and without premeditation. The Sessions Court, after examining the evidence, particularly the testimony of PW-1, found material omissions and contradictions regarding the alleged possession of knives and the role of appellant. These omissions in the FIR and the witness's admission that certain facts were not recorded clearly indicate that the alleged assault was a sudden incident, concluding within a short time. Such circumstances negate any inference of a shared common object to commit murder.

21. Moreover, appellant was not named in the FIR, which merely referred to unidentified pillion riders accompanying another accused on a motorcycle. The arrest and seizure proceedings are also doubtful, as the panch witness turned hostile and the search of appellant's house was conducted even before his formal arrest, contrary to the procedure established under the CrPC. These irregularities severely undermine the credibility of the investigation and the prosecution's case.

22. Further, the identification parade was conducted after an inordinate delay of 52 days and was procedurally flawed, as two accused persons were shown together in the same parade. The Sessions Court rightly found such identification unreliable. Reliance is placed on the principles laid down in Shivaji Sahabrao Bobde v. State of Maharashtra, (1973) 2 SCC 793, where this Court held that an accused must be proved guilty beyond all reasonable doubt and mere suspicion cannot form the basis of conviction.

23. Learned counsel for the appellant also relied on Chellappa v. State, (2020) 5 SCC 160 (paras 10 and 11), wherein it was held that when there exists doubt as to whether the accused shared the common intention to commit murder, the benefit of such doubt must go to the accused. Similarly, in M.C. Ali & Anr. v. State of Kerala, (2010) 4 SCC 573, this Court emphasized that if two views are reasonably possible, the appellate court should not interfere with the acquittal recorded by the trial court.

24. Thus, it is submitted that the impugned judgment is liable to be set aside and the judgment passed by the Sessions Court is to be restored.

SUBMISSIONS ON BEHALF OF RESPONDENT

25. Learned counsel for the respondent submitted that the conviction of the appellants was based on the consistent and credible ocular evidence of injured witnesses, duly corroborated by medical evidence and recoveries made at the instance of the accused persons. The High Court also relied on Section 149 of the IPC, holding that the prosecution had proved beyond reasonable doubt the presence, knowledge and participation of the appellants in the crime committed on 27.04.1999, resulting in the death of the deceased.

26. Section 149 of the IPC embodies the principle of vicarious liability, holding every member of an unlawful assembly responsible for offences committed in prosecution of its common object or for acts they knew were likely to be committed. Reliance was placed on Masalti v. State of U.P., AIR 1965 SC 202 and Lalji & Ors. v. State of U.P., (1989) 1 SCC 437, which clarifies that once it is established that an unlawful assembly existed and an offence was committed in pursuant of its common object, every member is equally culpable, irrespective of who inflicted the fatal act.

27. Applying this principle, learned counsel for the respondent contended that the appellants, by riding the motorbikes carrying coaccused persons armed with weapons to the crime scene, facilitated the commission of murder and thus shared the requisite knowledge and common object. The evidence on record, therefore, fully established that the appellants were members of the unlawful assembly at the relevant time and were rightly held guilty under Sections 302 and 307 read with Section 149 of the IPC.

28. Thus, learned counsel for the respondent submitted that in light of the evidence and settled legal principles, the present appeals are liable to be dismissed as they are devoid of merit.

ANALYSIS AND FINDINGS

29. We have heard learned counsel for the parties and perused the material available on record. At the outset, it is well settled that interference with an order of acquittal must be exercised with great caution. However, such interference is justified where the findings of the Trial Court are manifestly perverse, unreasonable or contrary to the evidence on record. In Chandrappa v. State of Karnataka, (2007) 4 SCC 415 (para 42), this Court held that an appellate court possesses full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded and to reach its own conclusions if the view taken by the trial court is not reasonably sustainable.

30. Applying these principles to the present case, it is evident that the acquittal recorded by the Trial Court suffered from a fundamental misappreciation of evidence. The Trial Court overlooked the consistent and corroborated testimony of injured eyewitnesses and failed to appreciate the legal effect of the active participation of the appellants as members of an unlawful assembly. The High Court, in reversing the acquittal, has given cogent and well-reasoned findings based on a proper appraisal of the record.

Evidence on Record

31. The prosecution examined PW-1, PW-7 and PW-9 as eyewitnesses, of whom PW-1 is the complainant, while PW-7 and PW-9 are injured witnesses.

32. The relevant paragraph of the deposition of PW-1 reads as under:

"4. On 27.4.1999 Bhausaheb Dinkar Kharuse came on his motor-cycle and Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on the motorcycle. The Rajendra Shira wale came on Bullet motor-cycle. Behind him two unknown persons were sitting on the said Bullet motor-cycle. I was knowing all these persons. The persons are present today in the Court. I can identify them in the Court. (The witness had gone near the dock of the accused where they are sitting.) He pointed his finger towards accd. No.1 and told that his name is Pandharinath Deoba Gholap. (I verified the same. He has identified correctly.)

The witness pointed out the accused sitting at the second place from the accused No.1, and told that his name is Maruti Ramchandra Gholap. (I verified the same and found that he had correctly identified accused No.2.) the witness pointed the accused sitting at the third place and told his name as Bhausaheb Dinkar Kharuse. (I verified and found that he is accused No.3.) (The witness pointed out the finger to the accused sitting at fourth place and told his name that he is Rajendra Shirawale. (I verified and found that he is accused No.4.) I can identify those unknown persons who came on the Bullet motor-cycle of Rajendra Shirawale. (The witness has pointed out the accused Nos.5 and 6.)

Both the motor-cycles were stopped on the left side of my jeep. All the accused persons got down from the motor-cycles. The accused persons removed weapons from the diccies of their motor-cycles. The accused No.2 Maruti was possessing Sattur, the accused No.1 Pandharinath and accused Nos.5 and 6 were possessing knives (Suri), accused Nos.3 Bhausaheb and accd. No.4 Rajendra were possessing the knives. Accused No.3 Bhausaheb came near my jeep and he took off the key of my jeep. He gave first blow on my mouth.

Thereafter, he immediately went behind the jeep. I saw black. All the accused were standing behind my jeep. They opened the rear side door of my jeep. They pulled Ankush Bhausaheb Gholap, Rajendra Maruti Gholap, Shivaji Sakharam Sanas and Gynaba Nagu Gholap on road from my jeep. The accused No.3 Bhausaheb was holding Ankush. Accused No.1 Pancharinath and No.2 Maruti assaulted Ankush on his stomach by Sattur and knife. Accused Nos.1 and 2 also assaulted Ankush on his head, stomach, back, hand. The intestine of the Ankush was came out of his stomach. He fall on ground.

The accused Nos.1 and 2 and his campanions, the campanions were accused No.3 and 4 and unknown persons i.e. accused Nos.5 and 6 went towards Rajendra Maruti Gholap and Shivaji Sakharam Sanas. They assaulted them with weapons. I was afraid and therefore, I got down from the jeep. The two unknown person came towards me. They are accused Nos. 5 and 6, before the Court. They came to

assault me. I ran towards market. Those persons who assaulted us i.e. the accd. before the Court stated their motor-cycles and went away I case near my jeep."

33. The relevant paragraph of the deposition of PW-7 reads as under:

"3. On 27.4.1999 ... Haribhau alias Bhausaheb Dinkar Kharuse came on his motor-cycle. Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on his motor-cycle. With the said motorcycle another motor-cycle came. Raju Shirawale was driving that motorcycle. Behind him Subhash Raghunath Pawar and one person wearing red colour shirt were sitting. I know all the persons whose named I have stated above. I can identify them. They are present in Court. (The witness went to the dock of the accused and pointed out one accused, and told his name as Pandharinath Deoba Gholap. The accused was asked to stand. I asked his name and he told his name as Pandharinath Deoba Gholap.

The witness pointed one of the accused and told his name as Maruti Ramchandra Gholap. I asked the name of the accused and he told his name as Maruti Ramchandra Gholap. He is accused No.2. The witness pointed one of the accused sitting in the dock and told his name as Haribhau alias Bhausaheb Dinkar Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting in the dock and told his name as Raju alias Rajendra Bhivrao Shirawale. I asked the name to the accd. and he told his name as Raju Bhivrao Shirawale. He is accused No.4.

Then witness pointed his finger to one of the accused sitting in the dock that he is the same per who worn the red colour shirt on that day. I asked him his name. He told his name as Vitthal Baburao Shinde. He is accused No.5. The witness pointed his finger towards one of the accd. sitting in the dock and told his name Subhash Raghunath Pawar. I asked his name. He told him name Subhash Raghunath Pawar. I asked his name. He told his name Subhash Raghunath Pawar. He is accused No.6. The motor-cycles were stopped on the left side of the jeep. All the accused down from the motor-cycles. The accused persons removed the weapons from the diccies of the motorcycles. The accused No.1 Maruti Gholap was holding Sattur in his hand.

The accused No.1 Pandharinath Gholap was holding knife (suri). (The accused No.4 Raju Shirwale, accd. No.5 Vitthal Shinde i.e. the person who worn the red shirt, accd. No.6 Subhash Pawar/were holding knives. (Accd. No.3 Bhausaheb went near Sopan. He removed the keys jeep and gave fist below on the fact of Sopan Dagadu Gholap. (By that time, accused No.1 Pandharinath, No.2- Maruti, accd. No.4 Rajendra, accused No.5 Vitthal i.e. the person wearing red shirt and accused No.6 Subhash came behind the jeep.

The accused No.3 Haribhau also came behind the jeep. They opened the backside door of the jeep. They dragged us out of the jeep. They dragged Ankush Gholap, Shivaji Sanas, and myself, out of the jeep. After dragging out of the jeep, accused No.3 Bhausaheb Kharuse caught hold Ankush. Thereafter, accused No.1 Pandharinath accused No.2 Maruti assaulted Ankush by Sattur and knife, Ankush was assaulted at his chest, stomack backside of the head and back. The intestine of the Ankush came out of the stomach and he fall, on ground.

Thereafter, the accused started assaulting Shivaji Sanas. Shivaji Sanas rescued himself from the hands of the accused and ran away. Accused No.4 Raju caught hold of me. The accused No.6 Subhash inflicted two blows on my chest. Accused No. 2 Maruti inflicted blows on my back. I fall in front of the shop of Mhasawade by haltering. The persons who had worn red shirt, accused No. 5 inflicted blows on my right hand."

34. The relevant paragraph of the deposition of PW-9 reads as under:

"3. On 27.4.1999 Bhausabeb Kharuse came on motorcycle, along with Pandharinath Deoba Gholap and Maruti Ramchandra Gholap. With them, Raju Shirawale, came on bullet motor-cycle with Subhash Pawar and one unknown person wearing red shirt. The above persons came on the motorcycles, are known to me. I can identify them, if shown to me. They are present in the court-hall. (The witness went to the dock where the accused persons are sitting. He touched one accused sitting amongst others, and told his name as Pandharinath Gholap. I verified the same.

The accused told his name as Pandharinath Gholap. He is accused told his name as Pandharinath Gholp. He is accused No.1. The witness pointed finger to one person of the accused sitting amongst others and told his name as Maruti Gholap. The accused told his name Maruti Gholap. He is accused No.2. The witness pointed one of the accused sitting sitting amongst the other and told his name as Bhausaheb Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting amongst the others and told his name as Raju Shirawale.

The accused stood up and told his name as Raju Shirawale. He is accused No.4. The witness pointed one of the accused sitting in the dock and told his name as Subhash Pawar. The accused stood and told his name as Subhash Raghunath Pawar. He is accused No.6. The witness pointed one of the accused sitting in the dock and told that he is unknown person who was wearing red shirt at that time. The accused stood and hold his name Vitthal Baburao Shinde. He is accused No. 5. The accused persons stopped their motorcycles by the side of our jeep. They got down from the motorcycles. They removed the weapons from the diccies of their motor-cycles.

The accused No.2 Maruti Gholap was holding Sattur in his hand. Accused No. 1 Pandharinath Gholap accused No. 3 Haribhau Kharuse, accused No.4 Raju Shirawale, accused No.5 who was wearing red shirt and accused No. 6 Subhash were holding knives in their hands. Accused No.3 Bhausaheb Kharuse then went to Sopan Gholap. All other accused came behind our jeep. They opened the back-door of the jeep and dragged us out of the jeep. Accused No.3 Bhausaheb Kharuse ought hold Ankush. The accused No.2 Maruti and accused No.1 Pandharinath assaulted Ankush by Sattur and knife. Ankush was assaulted on his stomach, chest, on both the hands, back his head, and on legs.

The intestine of the Ankush came out of the stomach, and he fall down on earth. Thereafter, the accused No.1 Pandharinath, accused No.2 Maruti, accused No.6 Subhash and accused No.5 unknown person wearing red shirt and accused No.4 Raju Shirawale came to me. The accused No.2 Maruti Gholap inflicted blow on backside of my head, accused No.6 Subhash Pawar inflicted blow on my hand, accused No.1 Pandharinath Gholap inflicted blow on my waist. I feel uneasy and I fell down on the earth. All the accused then went towards the Rajendra Gholap and assaulted him. In order to save myself I ran towards vegetable market."

35. On a careful perusal of the above depositions, it is revealed that the testimonies of the eyewitnesses are natural, coherent and mutually corroborative on all material particulars. They consistently deposed that on 27.04.1999, the accused persons, including the present appellants, arrived at the scene on two motorcycles armed with deadly weapons such as knives and sattur. The appellants actively facilitated the commission of the offence by accompanying the coaccused persons, ensuring the confinement of the victims and participating in the coordinated assault.

36. PW-1 and PW-7 categorically stated that appellant no. 1 and 2 (accused no. 3 and 4) were among those who surrounded the deceased and the injured witnesses, thereby preventing their escape and were fully aware that the co-accused persons were armed. The evidence further establishes that appellant (accused no.6) inflicted grievous injuries upon PW-7, demonstrating his direct participation in the attack. PW-9 corroborated these accounts and unambiguously identified all three appellants as members of the group acting in concert and sharing a common objective.

37. The consistent narrative of these eyewitnesses leaves no room for doubt that appellants no. 1 and 2 (accused no. 3 and 4), by transporting the armed assailants to the spot and facilitating the attack, and appellant (accused no. 6), by inflicting injuries during the assault, were integral participants in the execution of the unlawful design.

Medical Corroboration

38. The High Court also noted the medical evidence in the present case, which reads as under:

"

8. As noted earlier P.W.16- had conducted postmortem examination of the dead body of Ankush on 27th April, 1999 at about 2.30 p.m., and sent the postmortem report at Exhibit 70. As per Dr. Praveen Haribhau Chaudhary the deceased Ankush had sustained the following injuries:-

9. The Medical Officer further stated that the external as well as internal injuries could be caused by hard and sharp weapon like that of Sattur and knife, articles 7, 9 and 10 shown to him in the Court while he was in the witness box. He also stated that all the injuries were ante-mortem and fresh and they were sufficient to cause death in the ordinary course of nature. In his opinion the deceased died due to haemorrhagic shock due to multiple injuries to vital organs like heart, liver, kidney, intestinal vessels and brain.

10. P.W.9- Shivaji Sakharam Sanas was also examined by him on 27th April, 1999 when he was taken to the Rural Hospital, Bhor without a police yadi. He had prepared emergency case papers for the patient (accused No.69) and as per him the injuries were grievous in nature. The following external injuries were seen on the person of Shivaji Sakharam Sanas:-

He also stated that if the patient would not have got proper treatment immediately, he would have landed in haemorrhagic shock due to blood loss which would have possibly caused his death. Hence the patient was immediately referred to Sassoon Hospital at Pune for further treatment because the injuries required expert management. As per the evidence of P.W.19 Dr. P.K. Sancheti, P.W.9 - Shivaji Sakharam Sanas came to be admitted in the Sancheti Hospital at Pune on 27th April, 1999 at about 5.00 p.m., and apart from the injuries noted by P.W.16, Shivaji had sustained the following injuries on his person:-

P.W.19 stated before the Court that the injuries on the had was of grievous nature and they could be caused by sharp and hard object like that of Sattur and knife shown to him in the Court. The injury on the hand could be possible by the knife as was shown to him. He also stated that Shivaji was issued a certificate on 6th May, 1999 and came to be discharged on the same day. He had placed before the Court the medical papers at Exhibit 76. He also admitted that he had treated Shivaji on 27th April, 1999 between 5.30 p.m. to 6.00 p.m., and Shivaji had given the history of assault.

11. As per P.W.21- Dr. Yogesh Pralhad Chaudhary, P.W.7- Rajendra Maruti Gholap was admitted at the KEM Hospital on 27th April, 1999 at 3.00 p.m., and he was discharged on 18th May, 1999 and the medical history was recorded in

the case papers placed before the Court at Exhibit 79. He was operated on 28th April, 1999 and consequently on 13th May, 1999. When he had examined P.W.7- Rajendra Maruti Gholap on 27th April, 1999 the following injuries were noticed on his person:

12. As per Dr. Yogesh Pralhad Chaudhary all the injuries could have been caused within 5 to 6 hours and by sharp weapons like sattur and knife. Article 7, 10, 40, 41 and 42 were shown to him before the Court. The injuries on the back had caused the perforation of anterior and posterior wall of descending colon which had caused feacal leak and peritonitis. The injuries on the chest and back were sufficient to cause death in the ordinary course of nature individually and collectively. P.W. 7- Rajendra Maruti Gholap was treated by Dr. S.A. Patki and his team.

The history of the patient was recorded as it was told by the accompanying person i.e. Baburao Kothawale the father-in-law and the patient was brought from Goregaonkar Hospital at Bhor by him. The Doctor had noticed fracture on the 5th rib of the chest and was described as a serious injury. The said facture could have been caused by Article 7 if it was used by force. If the knifes were used by force from the sharp edge they would cause incised wound and if the blow is given by the sharp side, then the edges of the wound would be clean-cut. He denied the suggestion that the injury on the chest and corresponding internal injury were not sufficient to cause death in the ordinary course of nature."

39. The medical evidence provides strong corroboration to the prosecution's case and reinforces the credibility of the eyewitness testimonies. PW-16, the doctor who conducted the post-mortem on the deceased, noted multiple incised and penetrating wounds on vital organs, such as the heart, liver and brain, injuries sufficient in the ordinary course of nature to cause death due to haemorrhagic shock. Similarly, PW-7 and PW-9 sustained grievous injuries, including rib fractures and internal perforations, as confirmed by two doctors, PW- 19 and PW-21, both of whom testified that the injuries were caused by sharp and hard weapons like knives and sattur.

40. These medical findings align perfectly with the ocular evidence and highlight the brutal and coordinated nature of the attack. The timing, nature and multiplicity of injuries clearly indicate a deliberate and orchestrated assault executed in furtherance of a common unlawful object. The harmony between the medical and ocular evidence leaves no scope for doubt as to the active participation of the appellants in the premeditated attack.

Common Object and Vicarious Liability

41. The principal defence advanced on behalf of the appellants is that there was no common object to commit murder and, at best, the intention was only to cause hurt. This contention is untenable in light of the evidence on record. The prosecution has clearly established that all the accused persons, including the appellants, arrived together, armed with lethal weapons and jointly executed a deliberate and coordinated assault on the deceased and other victims. The nature of the weapons used, coupled with the ferocity and precision of the attack, unmistakably demonstrates that the common object of the assembly extended well beyond merely causing hurt and encompassed the commission of murder.

42. Section 149 of the IPC unequivocally provides that every member of an unlawful assembly is guilty of an offence committed in prosecution of the common object or of one which such members knew to be likely committed in furtherance thereof. In Masalti (supra) (para 17), this Court clarified that it is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object.

43. In the present case, the evidence conclusively establishes that all three appellants were members of an unlawful assembly that carried out a premeditated and violent attack resulting in the death of the deceased and grievous injuries to PW-7 and PW-9. The role of appellant (accused no. 6) in inflicting serious injuries upon PW-7 demonstrates his direct involvement and awareness of the collective design. The appellant no. 1 and 2 (accused no. 3 and 4), who transported the armed assailants to the scene, played an equally crucial role by facilitating the attack and ensuring its execution in furtherance of the common object.

44. The cumulative evidence clearly shows that the appellants were not passive spectators but active participants and facilitators in a deliberate and planned assault. Their conduct and presence at the scene, in concert with the armed co-accused persons, establish their common intention and vicarious liability under Sections 302 and 307 read with Section 149 of the IPC.

CONCLUSION

45. Upon a comprehensive appraisal of the entire record, this Court finds that the prosecution has proved beyond reasonable doubt that all three appellants were members of an unlawful assembly sharing the common object to commit murder and grievous assault. The ocular testimonies of PW-1, PW-7 and PW-9, being natural, cogent and corroborated by medical evidence, clearly establish the active participation of the appellants in a concerted and premeditated attack. The

appellants have failed to raise any reasonable doubt or to demonstrate any perversity in the findings of the High Court.

46. The High Court was correct in holding that the Trial Court's acquittal was unsustainable, as it failed to properly appreciate the material evidence and adopted an implausible view contrary to the record. The impugned judgment of the High Court reflects a careful and reasoned reappraisal of the evidence and cannot be said to suffer from any illegality, perversity or infirmity.

47. In view of the consistent and corroborated ocular and medical evidence, coupled with the established presence and active participation of accused no. 3, 4 and 6 (the appellants herein) in furtherance of the common object, this Court finds no error in the conviction recorded by the High Court. The ingredients of Section 149 of the IPC stand fully satisfied, rendering each appellant vicariously liable for the offences committed in prosecution of the unlawful object.

48. Accordingly, this Court finds no merit in the present appeals. The conviction and sentence imposed on accused no. 3, 4 and 6 (the appellants herein) by the High Court vide the impugned judgment dated 02.02.2011 are affirmed. The appeals are dismissed as devoid of merit.

.....J. [Prashant Kumar Mishra]

.....J. [Vipul M. Pancholi]

New Delhi,

October 29, 2025.

IN THE SUPREME COURT OF INDIA

Jemaben
Vs.
State of Gujarat

[Criminal Appeal No. 1934 of 2017]

HEADNOTE – Even when multiple dying declarations exist, the first declaration cannot be disregarded if it is reliable, consistent, and supported by corroborative evidence.

JUDGMENT

Vipul M. Pancholi, J.

1. The present appeal has been directed against the final order dated 21.07.2016 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 539 of 2006, by which the High Court has allowed the appeal filed by the State of Gujarat qua the present appellant/accused, and thereby, partly set aside the judgment dated 19.11.2005 rendered by the Additional Sessions Judge and Presiding Officer, 6th Fast Track Court, Banaskantha, at Deesa in Sessions Case Number 40 of 2005. Thus, the High Court convicted the appellant/accused for committing the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") and sentenced with imprisonment for life and a fine of ₹ 10,000/-, and in default to further undergo simple imprisonment of one month.

2. The brief facts of the present case are as under:-

(i) It is the case of the prosecution that the appellant/accused and the co-accused, Bherabhai Revaji Majirana, entered into criminal conspiracy in order to kill Leelaben and Ganesh, her son, and to execute the said conspiracy, on the date of the incident, i.e. the intervening night of 29.11.2004 and 30.11.2004, when Leelaben and her son were sleeping in their hut, the appellant/accused poured kerosene upon Leelaben and set her ablaze. As a result, Leelaben received severe burn injuries and she was taken to the Civil Hospital, Palanpur. On 04.12.2004, Leelaben succumbed to the injuries, and her son received burn injuries to the extent of 10 to 12%.

(ii) On 05.12.2004, the complaint was filed by PW-1, Geetaben (sister of Leelaben). On the basis of the complaint, the investigating officer carried out the investigation and during the course of the investigation, the statement of the witnesses were recorded, the evidence was collected and thereafter the chargesheet was filed against both the accused persons. The charges were framed

for offences punishable under Sections 302, 307, 436, 34, 120 (b) of the IPC and Section 135 of the Bombay Police Act,1951.

(iii) The Trial Court acquitted both the accused persons, mainly on the ground that there are discrepancies in three dying declarations given by Leelaben, the deceased.

(iv) The State of Gujarat challenged the order of acquittal by filing a Criminal Appeal before the High Court. The High Court vide the impugned order allowed the appeal qua the appellant/accused and thereby, set aside the order of acquittal passed by the concerned trial court. The High Court convicted the appellant/accused for committing the offence punishable under Section 302 of the IPC.

3. Against the impugned order passed by the High Court, the appellant/accused has preferred the present appeal.

4. Learned Counsel appearing for the appellant/accused mainly contended that the case of the prosecution rests primarily on the dying declaration given by the deceased. However, there are major discrepancies in the story put forward by the prosecution. In fact, version of the complainant (PW-1), Kalubhai Lakhuji (PW-4, husband of Leelaben), as well as other documentary evidence contain major discrepancies, inconsistencies and material contradictions.

Thus, the trial court has rightly acquitted the appellant/accused, despite which, the High Court has, substantially relied upon the deposition given by Dr. Shivrambhai Nagarbhai Patel, (PW-3, Incharge Medical Officer) as well as relied upon the Yadi given by the said Doctor to the Police, which mentioned the history given by the deceased before the said witness, and thereby recorded the order of conviction of the appellant/accused. Learned Counsel submitted that the High Court has committed grave error while relying upon the Medical Certificates of Leelaben and Ganesh (Exhibit 20 and 21, respectively).

5. It is further submitted that because there are major discrepancies in the three dying declarations given by the deceased, the trial court has acquitted the appellant/accused by giving benefit of doubt to the appellant/accused. Therefore, even if there are two views possible on the basis of the evidence led by the prosecution before the trial court, when the trial court has taken the one possible view, the High Court ought not to have interfered with the said view taken by the trial court. Learned Counsel for the appellant/accused, therefore, urged that the impugned order passed by the High Court be set aside and thereby, the appellant/accused be acquitted.

6. Per contra, learned counsel appearing for the respondentstate has vehemently opposed the present appeal. Learned Counsel for the State mainly submitted that,

in the case of multiple dying declarations, each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is submitted that in the present case, even though the dying declaration has not been recorded by the Executive Magistrate, it is clear from the medical certificate issued by PW-3, that the statement of the deceased, recorded first in point of time, reveals that the deceased was burnt by the appellant/accused, who was the aunt-in-law of the deceased, by pouring kerosene from the tin and setting the deceased on fire.

On the very same day, the deceased described the motive behind the incident that the appellant/accused was compelling the deceased to go with one, Mania Dabhawala, with whom the appellant/accused was acquainted and refusal by the deceased thereto, resulted into the incident in question. It is further submitted that from the postmortem report (Exhibit 25), and severe burn injuries sustained by the deceased almost all over the body and the manner in which the burn injuries were caused, would reveal that it was not the case of an accidental death.

7. Learned Counsel for the respondent-State further referred to the panchnama (Exhibit 12) and submitted that one empty kerosene container having smell of kerosene was found at the place of incident. Similarly, soil having smell of kerosene was also collected from the place of incident. At this stage, it is further submitted that even PW-3 deposed that the whole body and clothing of the deceased was having the smell of kerosene and she sustained 100% burn injuries.

8. Learned Counsel for the respondent-State, lastly, contended that the son of the deceased was sleeping beside the deceased. However, from the Medical Certificate issued by PW-3, it is revealed that the said boy, aged about 4 years, sustained 10-12% burn injuries. Learned Counsel for the respondent-State, therefore, contended that from the aforesaid evidence led by the prosecution, it can be said that the dying declaration given by the deceased before the independent witness, i.e. PW-3, is rightly relied upon by the High Court.

It is further submitted that there was only one possible view on the basis of the aforesaid evidence which was required to be taken by the trial court, and therefore, when the trial court has not properly appreciated the aforesaid important aspects/evidence in the present matter, the High Court has rightly set aside the order of acquittal passed by the trial court qua the appellant/accused. Learned Counsel, therefore, urged that no interference is required in the impugned order of the High Court and the present appeal is liable to be dismissed.

9. We have considered the submissions canvassed by the learned counsel for the parties. We have also perused the entire record and the evidence led by the prosecution.

10. It emerged from the record that when the deceased was brought to the hospital, she narrated the incident before the Doctor (PW-3) wherein she specifically stated that "my auntin- law, Jemaben poured kerosene on me and set ablaze." Further, when she was asked again by the doctor, she disclosed that "my aunt-in-law asked me to go with Mania Dabhawala, I refused for the same and, therefore, she burnt me alive". It is pertinent to note that the aforesaid documentary evidence was duly proved as per the testimony of PW-3.

Similarly, the Yadi given by the Doctor to Police Station, Palanpur city, further suggests that deceased specifically narrated that the appellant/accused, her aunt-inlaw, set her ablaze. It is also specifically stated by the Doctor in the said Yadi that the patient was conscious and she was in a position to speak. Therefore, the said police officer was asked to make arrangements for recording the dying declaration of the deceased. At this stage, it is also relevant to observe that the Medical Certificate of the deceased also states that the "whole body and clothing having kerosene smelling burns about 100%".

11. From the panchnama, it further transpires that investigating agency found "one empty container having kerosene smell" from the place of incident. Similarly, the soil of the surface of the hut (the place of incident) was having smell of kerosene. Thus, the aforesaid document also corroborates the version given by the deceased before the independent witness, i.e. PW-3, the Doctor.

At this stage, it is also relevant to observe that PW-3 deposed before the court that the son of the deceased, aged about 4 years, was brought before him by the relatives of the deceased and when inquired they told that the said boy sustained burn injuries along with his mother. It is further stated by the said witness that the said boy sustained 10-12% burn injuries on his lower legs and feet. Thus, from the aforesaid evidence led by the prosecution, it is revealed that the dying declaration given by the deceased before the Doctor is supported by other evidence led by the prosecution.

12. On perusal, it is clear that the deceased sustained 100% burn injuries and from the whole body and the clothes of the deceased, the smell of kerosene was found. However, the 4 years old son of the deceased was sleeping beside the deceased and he sustained only 10-12% burn injuries. Thus, the theory of accidental fire at the place of incident put forward by the appellant/accused cannot be believed.

13. We are of the view that merely because there are minor discrepancies in the version given by the prosecution witness with regard to the dying declaration and with regard to the manner of occurrence of the incident, the first dying declaration given by the deceased before the independent witness, i.e PW-3, cannot be ignored. The first dying declaration is supported by the independent

documentary evidence, and therefore, the High Court has rightly placed reliance upon the decision rendered by this Court in the case of Nallam Veera Stayanandam & Ors. v. Public Prosecutor, High Court of A.P., (2004) 10 SCC 769, and thereby, rightly set aside the order of acquittal rendered by the trial court qua the appellant/accused.

14. We are also of the view that on the basis of the aforesaid evidence as discussed hereinabove, only one view was possible, despite which, the trial court had acquitted the appellant/accused. Thus, the High Court has rightly set aside the order of the trial court.

15. In view of the aforesaid facts and circumstances of the present case set out in the detailed analysis above, we are of the view that no interference is required in the impugned judgment passed by the High Court in Criminal Appeal Number 539 of 2006. Accordingly, the present appeal stands dismissed.

.....J. [Rajesh Bindal]

.....J. [Vipul M. Pancholi]

New Delhi,

October 29, 2025

IN THE SUPREME COURT OF INDIA

Annamalai
Vs.
Vasanthi and Ors.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 26848-26849/2018]

HEADNOTE – 2018 amendment to the Specific Relief Act, 1963, which made the grant of specific performance of contracts a mandatory relief, has no retrospective effect and does not apply to suits or transactions that arose before its enforcement on October 1, 2018.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. These two appeal(s) arise from two suits, namely, O.S. No. 73 of 2010, which was instituted by the appellant (Annamalai) against Saraswathi (for short D-1), Dharmalingam (for short D-2) and Vasanthi (for short D-3), inter-alia, for specific performance of agreement for sale dated 08.01.2010, and O.S. No. 32 of 2011 (renumbered O.S. No. 60 of 2012), which was instituted by Vasanthi (first respondent) against the appellant (Annamalai) for declaration as well as injunction qua the property which was subject matter of the sale agreement. Trial court consolidated the two suits and decided them by a common judgment, whereby O.S. No. 73 of 2010 was dismissed and O.S. No. 60 of 2012 (old O.S. No. 32 of 2011) was decreed. Aggrieved therewith, the appellant filed two first appeal(s).

The first appellate court vide common judgment dated 14.11.2014 allowed the appeal(s) and thereby decreed O.S. No.73 of 2010 and dismissed O.S. No. 60 of 2012 (old O.S. No.32 of 2011). Against the first appellate court's judgment and decree(s), two second appeal(s), namely, S.A. No. 465 of 2015 and S.A. No. 466 of 2015, were filed by Vasanthi (i.e., the first respondent) before the High Court of Judicature at Madras1. Both the appeals were allowed vide impugned common judgment and order(s) dated 02.02.2018. As a result, the decree of specific performance of the agreement was set aside and defendant(s) were directed to refund the earnest money along with interest.

3. Being aggrieved by High Court's decision dated 02.02.2018, these appeal(s) have been filed with a prayer that the impugned judgment and decree(s) be set aside.

Suit No.73 of 2010

4. Appellant instituted O.S. No. 73 of 2010 alleging, inter alia, that the suit property originally belonged to Ponnusamy and his daughter Selvi; they executed registered power(s) of attorney (for short 'power') in favour of the appellant and Saraswathi (D- 1); 'power' for the first item of the suit schedule property was with D-1 whereas 'power' for the second item was with the appellant; based on that 'power', second item was sold to D-1 and his son Dhamalingam (D-2) vide sale deed dated 07.07.2009; thereafter, vide registered agreement for sale dated 08.01.2010, D-1, as 'power' holder of Ponnusamy and Selvi qua first item and as co-owner of second item, and D-2 agreed to sell both items to the appellant for Rs. 4,80,000; out of which, Rs. 4,70,000 was paid in advance and balance of Rs. 10,000 was to be paid within six months, though the possession of the property was handed over to the appellant on the date of the agreement; however, later, D-1 and D-2 demanded additional amount of Rs.2,00,000 against which, to buy peace, the appellant agreed to pay, and paid additional Rs.1,95,000 to D-1 and D-2 on 09.06.2010 and an endorsement to that effect was made by them on the back of the agreement; in consequence, the sale consideration increased from Rs.4,80,000 to Rs.6,75,000, out of which Rs.6,65,000 stood paid and Rs.10,000 remained to be paid on execution of sale deed; but, on 20.08.2010, D-1 and D-2 sent notice cancelling/ terminating the contract; to which, the appellant responded, vide notice dated 04.09.2010, by demanding execution of the sale deed, inter alia, claiming that the appellant had been throughout ready and willing to pay the balance amount of Rs. 10,000; later, it came to the knowledge of the appellant that D-1 and D-2 had already sold the first item of the suit schedule property to D-3 on 17.08.2010; whereafter, the defendants tried to trespass the suit property, as a result a complaint was lodged with police authorities; and, ultimately, the suit was instituted. 4.1. In the written statement filed in O.S. No. 73 of 2010, defendants, inter alia, resiled from the agreement dated 08.01.2010 and claimed that it was an instrument to secure a loan. They also denied the possession of the appellant over the suit property.

Suit No.32 of 2011 (New No. 60 of 2012)

5. In O. S. No. 32 of 2011 (New No. 60 of 2012) Vasanthi (i.e., plaintiff therein - D-3 in O.S. No.73 of 2010) claiming herself as owner in possession of the suit property, being a bona fide purchaser thereof, sought a declaration and injunction to protect her possession over the suit property.

5.1. The appellant, who was sole defendant in the suit instituted by Vasanthi, inter alia, claimed that Vasanthi is neither in possession nor a bona fide purchaser for value; she, being daughter of Saraswathi (D-1 in O.S. No.32 of 2011), was fully aware of the prior agreement and, therefore, the sale in her favour is nothing but sham.

Trial Court's Decision

6. The aforesaid two suits were consolidated and decided by a common judgment and decree(s) dated 15.02.2013. O.S. No. 73 of 2010 was dismissed, inter alia, holding that -

(a) the agreement for sale, dated 08.01.2010, was one to secure loan since it is unbelievable that after having paid Rs.4,70,000 out of a total consideration of Rs.4,80,000, a person would wait for six months for execution of sale deed;

(b) the plaintiff was not ready and willing to perform his part under the agreement since no notice to execute a deed of sale was served on D-1 and D-2 within six months;

(c) the endorsement regarding payment of extra consideration of Rs. 1,95,000 was prepared by using signature(s) of D-1 and D-2 obtained earlier;

(d) the possession of the suit property was not handed over to Annamalai (the appellant) as there is no recital in the agreement evidencing transfer of possession;

(e) even if the agreement dated 08.01.2010 is considered to be an agreement for sale, it was not acted upon within six months and time being the essence of the contract, it was justifiably terminated; hence, suit was liable to be dismissed.

6. 1. As regards O.S. No. 32 of 2011 (new no. 60 of 2012), it was held that Vasanthi is owner in possession of the suit property purchased by her. Consequently, O.S. No.32 of 2011 was decreed.

First Appellate Court's decision

7. Aggrieved by trial court's verdict, Annamalai (the appellant herein) went in appeal. The first appellate court held that the view of the trial court that the agreement dated 08.01.2010 was to secure a loan is perverse more so when notice dated 20.08.2010 (Exb. A-4), sent on behalf of D-1 and D-2, acknowledges existence of the agreement for sale as well as receipt of advance consideration of Rs. 4,70,000. The first appellate court also accepted the endorsement (Exb.A-2) on the back of the agreement (Exb.A-1) as an acknowledgment of receipt of additional Rs. 1,95,000 and found thus:

(a) the agreement dated 08.01.2010 is an agreement for sale;

(b) out of a total of Rs.4,80,000 payable towards consideration, Rs.4,70,000 was paid in advance, but D-1 and D-2 sought additional Rs. 2,00,000;

(c) plaintiff, however, agreed to pay Rs.1,95,000, which was paid to D-1 and D-2 who accepted the same and made an endorsement to that effect on the back of the agreement on 9.06.2010;

(d) in such circumstances, the plaintiff has established his readiness and willingness to perform its part under the contract; and

(e) D-3 (Vasanthi), being daughter of D-1, is not a bona fide purchaser for value more so when sale-deed was executed in her favour on 17.08.2010, that is, even before termination of the agreement dated 08.01.2010.

7.1. In consequence, the first appellate court reversed the decree passed by the trial court and decreed the suit of the appellant for specific performance; whereas, the suit of Vasanthi was dismissed.

High Court's decision

8. Against the judgment and decree(s) of the first appellate court, two second appeals were filed before the High Court, namely, (a) S. A. No. 465 of 2015 by Saraswathi (D-1), Dharmalingam (D-2) and Vasanthi (D-3) against Annamalai, emanating from O.S. No. 73 of 2010, and (b) S. A. No. 466 of 2015 by Vasanthi against Annamalai, emanating from O.S. No. 32 of 2011 (New No. 60 of 2012). High Court allowed both the appeals and directed refund of the advance consideration with interest. While allowing the second appeal(s), High Court, inter alia, found -

(i) there is no oral or documentary evidence to show that Annamalai came into possession of the suit property pursuant to the sale agreement;

(ii) Annamalai did not show any intention to execute the sale-deed within six months of the sale agreement, therefore, it could be taken that plaintiff was not ready and willing to perform its part under the contract; and

(iii) the receipt of Rs. 1,95,000 (Exb. A-2) appears to have been created after termination notice (Exb. A-4) was served. Based on those findings, the High Court held Annamalai (i.e., the appellant) not entitled to the relief of specific performance.

Consequently, the second appeal(s) were allowed, and the decree of specific performance was set aside with a direction to refund the earnest money.

9. We have heard learned counsel for the parties and have perused the record carefully.

Submissions on behalf of the appellant

10. On behalf of the appellant, it has been strenuously argued that findings of the first appellate court qua (i) execution of the agreement for sale; (ii) payment of advance consideration including additional amount of Rs. 1,95,000; and (iii) plaintiff being ready and willing to perform the terms and conditions of the contract, were based on appreciation of evidence on record and by no stretch of imagination could be considered perverse or illegal as to give rise to a substantial question of law warranting exercise of powers under Section 100 of the Code of Civil Procedure, 19082. Further, in a contract to sell immovable property, ordinarily, time is not the essence of the contract.

Moreover, when more than 90% of the agreed sale consideration was already paid and the defendant(s) had accepted additional Rs.1,95,000, the question of plaintiff not being ready and willing does not arise. Besides above, having accepted additional amount of Rs.1,95,000, after expiry of six months, there was no occasion to terminate the agreement for delayed /non-payment of Rs.10,000. In such circumstances, it was not a case where the court could have declined the relief of specific performance, that too, when conduct of the defendants was not bona fide. Accordingly, it was prayed that the impugned judgment and decree(s) of the High Court be set aside and that of the first appellate court be restored.

Submissions on behalf of respondent(s)

11. Per contra, learned counsel for the respondent submitted that the appellant is not entitled to discretionary relief of specific performance, inter alia, because,- (i) a false case was set up that the possession of the property was handed over to the plaintiff at the time of entering the contract; (ii) a fabricated document showing receipt of an additional sum of Rs. 1,95,000 was set up; (iii) the appellant took no steps within six months of the agreement to seek execution of sale deed, therefore, plaintiff cannot be said to be ready and willing to perform its part under the agreement; (iv) once the contract was terminated, suit for specific performance was not maintainable without seeking a declaration that termination of the agreement was invalid. Based on above, the respondent(s) prayed that the appeal(s) be dismissed.

Issues for consideration

12. Upon consideration of the rival submissions and having regard to the facts of the case, in our view, following issues arise for our consideration:

A. Whether the High Court was justified in interfering with the finding of the first appellate court qua payment of additional amount of Rs. 1,95,000 by the plaintiff-appellant? If receipt of additional payment by D-1 and D-2 is proved, as found by the first appellate court, whether it could be held that plaintiff was not ready and willing to perform its part under the contract?

B. Whether the suit for specific performance was maintainable without seeking a declaration that termination of the agreement was invalid in law?

C. Whether in the facts of the case the plaintiff was entitled to the discretionary relief of specific performance?

Discussion/ Analysis

13. Before we set out to address the aforesaid issues, it would be useful to notice the reasons recorded by the first appellate court to reverse trial court's finding that the agreement for sale was a document to secure a loan. Reasons are:

(a) agreement for sale is a registered document, therefore a presumption of correctness of the endorsement made by the Registrar regarding particulars entered therein would arise;

(b) there is no clear and cogent evidence to substantiate fraud or to dislodge the presumption; and

(c) notice dated 20.08.2010 (Exb. A-4) sent on behalf of Saraswathi (D-1) and Dharmalingam (D- 2) acknowledges the instrument dated 08.01.2010 as an agreement for sale.

13.1. Importantly, the finding of the first appellate court that instrument dated 08.01.2010 (Exb. A-1) was an agreement for sale of immovable property fixing consideration at Rs.4,80,000 and acknowledging receipt of Rs. 4,70,000 by way of advance, has not been disturbed by the High Court. Rather, the High Court itself directed for refund of the advance money.

Issue A

14. The High Court allowed the second appeal(s), inter alia, on the ground that, as per the agreement, the sale deed had to be executed within six months on payment of balance consideration, therefore time was of the essence of the contract, and since, within six months, neither balance amount was paid nor execution of sale deed demanded, the plaintiff (i.e., the appellant herein) cannot be considered ready and willing to perform its part under the agreement. While holding so, the High Court discarded the endorsement of receipt of Rs.1,95,000

(Exb. A-2) made on the back of the agreement (Exb. A-1) by observing that no evidence was led to prove the endorsement.

15. In our view, the High Court committed a mistake in discarding the endorsement (Exb.A-2). While discarding the same, it overlooked the finding of the first appellate court in paragraph 29 of its judgment which reflected that D-1 and D-2 had admitted their signature(s) on the page carrying the endorsement of receipt of Rs.1,95,000 by claiming that those were obtained on a blank paper. In our view, once existence of signature(s) on a document acknowledging receipt of money is admitted, a presumption would arise that it was endorsed for good consideration3. Therefore, a heavy burden lay on D-1 and D-2 to explain the circumstances in which their signatures or thumbmark, as the case may be, appeared there, particularly, when that endorsement was on the back of a registered document.

16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court.

In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A-2) were not disputed.

Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse.

Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2.

This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties4. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfil his obligation and accept performance when the time for performance arrives5.

19. In the instant case, the plaintiff was required to pay only Rs.10,000, out of a total of Rs.4,80,000, within six months from the date of the agreement (i.e., 8.01.2010). However, within that period, D-1 & D-2 demanded additional Rs.2,00,000. To buy peace, additional Rs.1,95,000 was paid by the plaintiff on 09.06.2010 regarding which endorsement was made by D-1 and D-2 on the back of the agreement. No doubt, balance of Rs.10,000 remained but, by accepting additional amount after expiry of six months, D-1 and D-2 treated the agreement as subsisting and thereby waived their right to forfeit the earnest money on non-payment of balance consideration within six months from the date of the agreement.

20. Generally, time is presumed not to be the essence of the contract relating to immovable property. Therefore, onus to plead and prove that time was the essence of the contract is on the person alleging it. In cases where notice is given treating time as the essence of the contract, it is duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case6.

Here, D-1 and D-2 accepted additional payment of Rs.1,95,000 after expiry of the period of six months stipulated for making payment of balance amount of Rs.10,000, and made endorsement to that effect on the back of the agreement, thereby signifying that they treat the agreement as subsisting by waiving their right to forfeit the earnest money on nonpayment of balance consideration within six months7. In such circumstances, in our view, non-issuance of notice by the plaintiff, requesting performance within six months, would not be fatal to the suit

for specific performance and, likewise, it would not be determinative of whether the plaintiff was ready and willing to perform its part under the contract.

Consequently, if the first appellate court held that the plaintiff was ready and willing to perform its part under the contract, no fault can be found with its view. In our view, the High Court exceeded its jurisdiction under Section 100 CPC by interfering with the finding(s) of the first appellate court regarding (a) payment of additional Rs.1,95,000 by plaintiff to D-1 and D-2 and (b) plaintiff being ready and willing to perform its part under the contract. Issue A is decided in the aforesaid terms.

Issue B

21. Regarding maintainability of the suit for specific performance without seeking a declaratory relief qua subsistence of the contract, at the outset, we may observe that no specific plea to that effect was raised in the written statement and no issue was struck in respect thereof. However, as the issue was raised during arguments, we shall address the same.

22. To appropriately address the said issue, we must recapitulate the facts. Agreement for sale was entered on 08.01.2010. Sale consideration was fixed at Rs.4,80,000. Rs.4,70,000 was paid in advance. Balance Rs.10,000 had to be paid within six months. Although the agreement, translated copy of which is placed on record, neither speaks of automatic termination of contract nor confers right on the vendors (i.e., D-1 and D-2) to unilaterally terminate the same for non-payment of balance consideration within the specified period of six months, stipulates that if balance consideration is not paid within six months, the vendee would lose its earnest money.

That is, it speaks of forfeiture of earnest money for non-deposit of balance consideration. Assuming that vendor(s) had a right to terminate the contract and forfeit the earnest money for non-payment of balance amount within six months, nothing of the kind was done by the vendor. Rather, as found above, the vendor(s) (i.e., D-1 and D-2) took additional amount of Rs.1,95,000 after expiry of six months and made an endorsement to that effect on the back of the agreement.

23. Section 55 of the Indian Contract Act, 1872 provides for effect of acceptance of performance at a time other than agreed upon. It says:

"If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time

agreed, unless, at the time of acceptance, he gives notice to the promiser of his intention to do so."

24. In the case on hand, there was no notice of the kind as envisaged by Section 55 (supra) issued by the vendor(s). In fact, the termination notice itself was issued on 20.08.2010 when D-1 and D-2 had already breached the contract by transferring part of the property agreed to be sold to D-3 on 17.08.2010. Moreover, in our view, by making an endorsement of receipt of Rs.1,95,000 at the back of the contract on 09.06.2010, the vendors not only acknowledged the subsistence of the contract but also waived their right to terminate the same or forfeit the advance payment of Rs.4,70,000 on non-payment of balance Rs.10,000 within six months from the date of the contract. In this context, we will have to consider whether the termination notice dated 20.08.2010 created a cloud on the right of the plaintiff that necessitated a declaratory relief. If it did, whether in absence of a declaration, a decree of specific performance could be passed.

When a declaratory relief is essential

25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff8. For example, a doubt as to plaintiff's title to a property may arise because of existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable qua him.

If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him.

However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession9. Rationale of the aforesaid principle is that a void instrument /transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.

26. A breach of a contract may be by nonperformance or by repudiation, or by both. In Anson's Law of Contract (29th Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:

"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory i.e., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. Ordinarily, for a breach of contract, a party aggrieved by the breach i.e., failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/ and, in certain cases, obtain specific performance by not recognizing the breach as termination of the contract10.

In a case where the contract between the parties confers a right on a party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt /cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract.

28. Now we shall consider few decisions of this Court where the question of grant of relief of specific performance of a contract in teeth of termination of the contract without seeking a declaration qua subsistence of the contract was considered. In I.S. Sikandar v. K. Subramani11, the agreement for sale stipulated sale within a stipulated time frame; on failure of the plaintiff to respond to the notice seeking execution of sale, the agreement was terminated. In that context, this Court held:

"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3- 1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985

37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit

filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of non-existing agreement of sale is wholly unsustainable in law."

29. In A. Kanthamani12 (supra), the decision in I.S. Sikandar (supra) was considered, and it was held:

"30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/ and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.

30.4. Fourth, the decision relied on by the learned counsel for the appellant in I.S. Sikandar turns on the facts involved therein and is thus distinguishable."

30. In R. Kandasamy (since dead) and others v. T.R.K. Sarawathy and another13, this Court considered both I.S. Sikandar (supra) and A. Kanthamani (supra), and clarified the law by observing as under:

"47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

31. From the aforesaid decisions what is clear is that though a plea regarding maintainability of the suit, even if not raised in written statement, may be raised in appeal, particularly when no new facts or evidence is required to address the same, the issue whether a declaratory relief is essential or not would have to be addressed on the facts of each case.

32. In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent

on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one of the parties, to terminate the contract on existence of certain conditions.

In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua validity of such termination.

Plaintiff-appellant was not required to seek a declaration

33. At the cost of repetition, we may observe that in the case on hand, by accepting Rs.1,95,000 after expiry of six months, D-1 and D-2, firstly, waived their right, as available to them under the contract, to forfeit the advance consideration/ earnest money, secondly, by such acceptance and endorsement on the back of the agreement they treated the contract as subsisting and, thirdly, by transferring part of the subject matter of the agreement in favour of D-3, even before serving a forfeiture notice, they committed a breach of the contract.

In such circumstances, in our view, the plaintiff had an option to treat the contract as subsisting and sue for specific performance more so when termination was a void act, no longer permissible under the varied contract. In our view, therefore, the suit for specific performance was maintainable even without seeking a declaration that termination of the contract was invalid in law. Issue B is answered accordingly.

Issue C

34. Prior to comprehensive amendments brought by Act 18 of 2018 to Sections 10, 14 and 20 of the Specific Relief Act, 1963 (for short the 1963 Act), with effect from 01.10.2018, Section 10 of the 1963 Act specified cases in which specific performance of contract is enforceable. In Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd.14, this Court held that 2018 Amendment to the 1963 Act is prospective and cannot apply to those transactions that took place prior to its coming into force.

No doubt, this decision was reviewed and recalled in Siddamsetty Infra Projects (P) Ltd. v. Katta Sujatha Reddy15 but in the review order/ judgment this Court did not specifically hold that the amended provisions would govern suits

instituted prior to the 2018 Amendment (see paragraph 32 of the review judgment). Rather, in review, this Court proceeded to decide the matter by assuming that the grant of specific performance continued to be discretionary to a suit instituted before the date of the amendment. Besides above, the judgment impugned in this appeal was passed on 02.02.2018 i.e., before the amendment came into effect. Therefore, we proceed to address issue C based on law that existed on the date when the impugned judgment was passed.

35. Section 10 of the 1963 Act as it existed prior to 2018 Amendment provided that the specific performance of any contract may, in the discretion of the court, be enforced, inter alia, when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done. Explanation to Section 10 clarified that unless the contrary is proved, the court shall, inter alia, presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money.

Section 14 of 1963 Act as it stood prior to the amendment specified following contracts which cannot be specifically enforced, namely, (a) a contract for the non-performance of which compensation in money is an adequate relief; (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms; (c) a contract which in its nature determinable; and (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

36. In the case on hand, the contract does not fall in category (a) (supra) in view of Explanation to Section 10 of the 1963 Act as it stood prior to the 2018 Amendment. It also does not fall in category (b) (supra), (c) (supra) and (d) (supra). While deciding issue B we have already seen that there was no clause in the contract conferring a right to terminate the agreement and insofar as the right of forfeiture was concerned that stood waived. Consequently, there was no bar of Section 14 operating against specific enforcement of the contract.

As far as personal bar to the relief of specific performance is concerned, while deciding issue A, we have already held that the finding of the first appellate court that the plaintiff was ready and willing to perform its part under the contract was not liable to be interfered with by the High Court in exercise of its power under Section 100 of CPC. Therefore, what now remains to be considered is whether the Court should decline the discretionary relief of specific performance in exercise of its discretionary power vested in it by Section 2016 of the 1963 Act, as it stood prior to the 2018 Amendment.

37. In the case on hand, the High Court declined discretionary relief of specific performance on two counts: (a) time was the essence of contract, no steps were taken by the plaintiff to get the sale deed executed within six months; and (b) the plaintiff could not prove payment of additional Rs.1,95,000 and had set up a false plea of being in possession of the suit property therefore, it had not approached the court with clean hands which disentitled the plaintiff/ appellant for a decree of specific performance.

38. In our view, both grounds to decline the relief of specific performance are not sustainable. Because, while deciding issue A (supra), we have already held that High Court erred in law by setting aside finding of fact returned by the first appellate court that D-1 and D-2 were paid additional Rs.1,95,000, which they acknowledged by making an endorsement on the back of the agreement.

In our view, acceptance of additional money not only signified waiver of the right to forfeit advance money /consideration but also acknowledged subsistence of the agreement. Hence, High Court's conclusion that plaintiff had set up a false case of additional payment is unsustainable and, therefore, cannot be a ground to decline discretionary relief of specific performance. Insofar as plaintiff's case of him being in possession of suit schedule property is concerned, the same was not accepted on the ground that there was no recital in the agreement regarding handing over of possession.

But that by itself would not be sufficient to hold that the plaintiff made a false claim of being in possession. A claim, if not proved, does not make it false. A statement is false when its maker knows the same is incorrect17. Otherwise also, the plaintiff stands to gain nothing substantial by claiming possession over the suit schedule property in a suit for specific performance in as much as a decree of specific performance would ultimately entitle him to possession18.

39. In the instant case, there is evidence on record that the Tehsildar had reported regarding possession of the plaintiff over the suit property though that report was subject to final adjudication in the suit. In such circumstances, merely because plaintiff's claim that property was in his possession was not accepted, the relief of specific performance cannot be declined, particularly, when the plaintiff had already paid over 90% of the agreed consideration and paid additional amount also as demanded by D-1 and D-2. Further, D-3 was a related party of D-1 and D-2 and, therefore, not a bona fide purchaser. We are, therefore, of the firm view that this was not a fit case where discretionary relief of specific performance should have been denied.

40. For the aforesaid reasons, we are of the considered view that the High Court erred in law by interfering with the decree of specific performance passed by the first appellate court. These appeals are therefore allowed. The judgment and

decree(s) of the High Court is/are set aside and that of the first appellate court is/are restored. As it is not clear from the record before us as to whether the plaintiff has deposited the balance amount of Rs.10,000 for execution of the sale deed, in terms of Order XX Rule 12 A of CPC, we deem it appropriate to direct that the plaintiff-appellant shall deposit the balance amount, if not deposited already, in the execution court, within a period of one month from today.

41. Parties to bear their own costs.

42. Pending applications, if any, shall stand disposed of.

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

.....J. (Manoj Misra)

New Delhi;

October 29, 2025

1 High Court

2 CPC

3 See: Section 114 of Indian Evidence Act, 1872 read with Illustration (c) thereto.

4 See: R.C. Chandiok and another v. Chuni Lal Sabharwal and others, (1970) 3 SCC 140, paragraph 6; followed in Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337, paragraph 13.

5 Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208 = 1928 SCC OnLine PC 43; followed in A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654

6 Swarnam Ramachandran (Smt.) and another v. Aravacode Chakungal Jayapalan, (2004) 8 SCC 689.

7 See: Section 55 of the Contract Act, 1872.

8 See: Anathula Sudhakar v. P. Buchi Reddy (dead) by L.R.s. and others, (2008) 4 SCC 594

9 See: Prem Singh v. Birbal, (2006) 5 SCC 353; followed in Shanti Devi (since deceased) through LRs v. Jagan Devi and others, 2025 SCC OnLine SC 1961

10 See: OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Pvt. Ltd and another, (2025) 2 SCC 417, paragraph 106.

11 (2013) 15 SCC 27

12 See: Footnote 5

13 (2025) 3 SCC 513

14 (2023) 1 SCC 355

15 2024 INSC 861 = 2024 SCC OnLine SC 3214, See paragraph 32

16 **Section 20. Discretion as to decreeing specific performance.-** (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2). The following are cases in which the court may properly exercise discretion not to decree specific performance:-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under the circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.- Mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause

(a) or hardship within the meaning of clause (b).

Explanation 2.- The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

17 Ravinder Singh v. Sukhbir Singh and Others, (2013) 9 SCC 245, see paragraphs 18 and 20

18 Babu Lal v. Hazari Lal Kishori Lal, (1982) 1 SCC 525

IN THE SUPREME COURT OF INDIA

Suo Motu Writ Petition (Criminal) No.2 of 2025

IN RE: Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues.
with
Writ Petition (Civil) No. 632 of 2025
and
Special Leave Petition (Criminal) No. 9334 of 2025

HEADNOTE – Issued directions to ensure that investigating agencies do not arbitrarily issue summons to advocates in criminal cases over the legal advice given by them to the accused.

1. Section 132 is a privilege conferred on the client, obliging an Advocate not to disclose any professional communications, made in confidence, which privilege, in the absence of the client can be invoked by the Advocate on behalf of the client.

1.1 The Investigating Officers in a criminal case or a Station House Officer conducting a preliminary inquiry in a cognizable offence shall not issue a summons to an Advocate who represents the accused to know the details of the case, unless it is covered under any of the exceptions under Section 132.

1.2 When a summons is so issued to an Advocate, under any of the exceptions, it shall explicitly specify the facts on which the exception is sought to be relied upon, which shall also be with the consent of the superior Officer not below the rank of a Superintendent of Police who shall record his satisfaction as to the exception in writing, before the summons is issued.

1.3 A summons so issued shall be subject to judicial review at the instance of the Advocate or the client under Section 528 of the BNSS.

1.4 The Advocate on whom there is an obligation of non-disclosure as per Section 132 of the BSA shall be one who is engaged in a litigation or in a non-litigious or a pre-litigation matter.

2. Production of documents in the possession of the Advocate or the client will not be covered under the privilege conferred by Section 132, either in a civil case or a criminal case.

2.1 In a criminal case, the production of a document directed by a Court or an Officer shall be complied with by production before the Court under Section 94 of the BNSS; being regulated also by Section 165 of the BSA.

2.2 In a civil case, the production of a document shall be regulated by Section 165 of BSA and Order XVI Rule 7 of the Civil Procedure Code.

2.3 On production of such document, it shall be upon the Court to decide on any objection filed with respect to the order to produce, and the admissibility of the document, after hearing the Advocate and the party whom the Advocate represents.

3. The production of a digital device under Section 94 of the BNSS if directed by an Investigating Officer, the direction shall only be to produce it before the Jurisdictional Court.

3.1 On production of the digital device by the Advocate before the Court; the Court shall issue notice to the party with respect to whom the details are sought to be discovered from the digital device and hear the party and the Advocate on any objection regarding the production of the digital device, discovery from it and the admissibility of that discovered.

3.2 If the objections are overruled by the Court, then the digital device shall be opened only in the presence of the party and the Advocate, who will be enabled due assistance of a person with expertise in digital technology, of their choice.

3.3 While examining the digital device, care shall be taken by the Court not to impair the confidentiality with respect to the other clients of the Advocate and the discovery shall be confined to that sought by the Investigating Officer, if it is found to be permissible and admissible.

4. In-house counsel will not be entitled to the privilege under Section 132 since they are not Advocates practicing in Courts as spoken of in the BSA.

4.1 The In-house counsel, however, would be entitled to the protection under Section 134 insofar as any communication made to the legal advisor of his employer, which however, cannot be claimed for the communications between the employer and the In-house counsel.

JUDGMENT

K. Vinod Chandran, J.

"The first thing we do, let's kill all the lawyers"

Henry VI pt. II scene 2 Act IV

Often spoken with a negative connotation, the context in which the above words were spoken in William Shakespeare's historical play indicates it to be otherwise. Dick the Butcher, who spoke these words in the play; henchman of Jack Cade who was chosen to foster revolt, described by the Bard of Avon himself as 'a demagogue pandering to the ignorant', was not championing liberty, free thought or independent choices. The scene itself ends with a law clerk being sentenced to

hang for being literate and informed in law. Emphasising the function of the lawyer as a guardian of freedom, especially in the context of the above statement '… being made by a rebel, not a friend of liberty'(sic) Stevens J. in his dissenting opinion in **Walter v. Nat. Assn. of Radiation Survivors1** observed that the above text will reveal that "Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government."

The Background:

2. The above matter arises out of a reference made by a Bench of two learned Judges of this Court in a Special Leave Petition filed against a notice issued against an Advocate under Section 179 of the Bharatiya Nagarik Suraksha Sanhita, 20232 . Pursuant to an agreement relating to a loan and its breach, an FIR was lodged at the Odhav Police Station, Ahmedabad, Gujarat under various provisions of the BNSS read with the provisions of the Gujarat Money-Lenders Act, 2011 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused was arrested, and the petitioner in SLP (Crl.) Diary No.33845 of 2025, an Advocate, filed a regular bail application for the accused before the learned Sessions Judge at Ahmedabad which was allowed. Subsequently, the impugned notice was issued, wherein after referring to the complaint and the accused arrayed, the Assistant Commissioner of Police, Ahmedabad, the Investigating Officer3 , directed the appearance of the Advocate within three days from the date of receipt of notice so as to 'know true details of the facts and circumstances after making your inquiry' (sic). The petitioner Advocate moved the High Court which rejected the application on the ground that the petitioner did not respond to the summons and his non-cooperation resulted in the investigation being stalled. It was opined that there was no violation of fundamental rights, since the summons was served under Section 179 of the BNSS in the capacity of a witness by an officer conferred with the power to investigate. The learned Judges of this Court who heard the S.L.P. against the order of the High Court were of the opinion that two questions arise of utmost public importance, as to under what circumstances an investigating agency can directly issue a summons to question a counsel who is appearing for a party in a given case, especially under the rigour of Section 132 of the Bhartiya Sakshya Adhiniyam, 20234 corresponding to Section 126 of the Indian Evidence Act, 1872.

3. The questions which among others, that arise, as emphasised in the reference order are as follows: -

(i) When an individual has the association with a case only as a lawyer advising the party, could the Investigating Agency/Prosecuting Agency/Police directly summon the lawyer for questioning?

(ii) Assuming that the Investigating Agency/ Prosecuting Agency/Police has a case that the role of the individual is not merely as a lawyer but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criterion of cases?

4. It was opined by the learned Judges that the above questions along with others that may arise, should be addressed in a comprehensive manner. The efficacy of the administration of justice itself was found to be at stake, since such interference with the capacity of the lawyers to conscientiously and fearlessly discharge their professional duties, directly impinges upon the administration of justice. It was prima facie observed that subjecting the counsel in a case to the beck and call of the investigating agency/prosecuting agency/police appears to be completely untenable.

5. Before us, various intervention applications were filed by individual Advocates & associations, especially by the Supreme Court Bar Association, the Supreme Court Advocates-On-Record Association and an Organisation of Inhouse Counsels as also the Bar Council of India. The intervention applications in one voice asserts that the subject notice issued is an unconscionable, outrageous interference with the right to practice, conferred on the Advocates under Article 19(1)(g) and Article 21 of the Constitution of India, coupled with the provisions of the Advocates Act, 1961. Further, any interference with the obligation of nondisclosure of facts and circumstances pertaining to an alleged crime, by an Advocate representing the accused, is against the statutory protection conferred on the client. Serious concerns were also raised on the backdrop of the Enforcement Directorate (ED) having issued summons against two Senior Advocates of this Court. When the Bar rose up in unison against such illegality, the ED withdrew and issued guidelines, specifically referring to the BNSS, mandating that any summons issued under the exceptions carved out in Section 132 shall be only issued with the prior approval of the Director, ED. Even though, the said issue, died down, there is prevalence of the police and investigating agencies under the special enactments, summoning Advocates who appear for the accused taking recourse to the provisions under the BNSS, which per se, is illegal, since any privileged communication under Section 132 cannot be disclosed without the consent of the client. In any event, the information, if supplied, without the express consent, not only is unworthy of use against the client by virtue also of judicial pronouncements, but the Advocate would also be exposed to professional misconduct for reason of disclosure and breach of confidence. A summons to an Advocate in the course of an investigation against a person, whom the Advocate defends; seriously interferes with the fundamental rights guaranteed under the Constitution to carry on a profession and cannot fall under any of the exceptions carved out, which again would be an infringement of the statutory obligations of nondisclosure without consent, urge the Bar.

6. We heard Mr. Vikas Singh, learned Senior Counsel & President, Supreme Court Bar Association, Mr. Atmaram N.S. Nadkarni, learned Senior Counsel instructed by Mr.Vipin Nair, President, SCAORA, learned Senior Counsel: Mr. Siddharth Luthra, Mr. Shoeb Alam and a host of Advocates who wanted to put in their mite in protection of the profession and the fraternity of lawyers. We also heard Mr. R. Venkataramani, learned Attorney General of India and Mr. Tushar Mehta, learned Solicitor General of India for the Union of India and the State of Gujarat.

The Bar Argues:

7. We have gone through the written submissions made, which emphasises the obligation under Section 132 to be a restriction on the Advocate, the breach of which would attract a charge of professional misconduct. The protection under Section 132 to every privileged communication between a client and a lawyer is a protection afforded to the client, seeking legal assistance, and there is no corresponding statutory scheme protecting the Advocate from being coerced into a disclosure, especially by an investigating agency duly conferred with the power to summon witnesses and interrogate suspects under the various enactments.

8. It is urged on the strength of the decision in Jacob Mathew v. State of Punjab5 that professionals such as lawyers and doctors are included in the category of persons professing some special skills which requires, any allegation of digression from ethical conduct or accusation of negligence, to be examined by a group or committee of persons having the same skills, akin to a peer review of the complained acts or omissions in the discharge of their professional duties. There is need for an independent body of such professionals, who is required to look into the aspect of existence of a liability, before any criminal proceeding is initiated, and arrest is made of the professional. In the context of the subject controversy, before even a summons is issued against a lawyer who has a statutory obligation of nondisclosure of privileged communications, the principle applies squarely.

9. Reference is also made to the guidelines issued in the case of Vishaka v. State of Rajasthan6 wherein this Court stepped in under Article 142 to provide comprehensive guidelines for dealing with allegations of sexual harassment in workplaces, the absence of which seriously infringed the fundamental rights of the victim. The violation of fundamental rights and the absence of a statutory scheme which prompted this Court to lay down comprehensive guidelines, only till the legislature brought out suitable statutory measures to curb, alleviate and adjudicate upon such allegations, would squarely be applicable in the present case. Here too the fundamental right to practice of another group of professionals is seriously infringed, with scant respect to the privilege statutorily conferred on the communications between a client and his Advocate. Not only does the illegal acts of the investigating agency interfere with the right of the accused to set up a defence, without prejudice, but also seriously impairs the carrying on of a

profession which is categorised as the noblest of all professions, jeopardising both the defence of the client and the professional integrity of the Advocate.

10. Section 132 obligates absolute confidentiality on the part of the Advocate by reason of the privilege conferred on the communications with the client, which privilege can be waived only when there is an express consent by the client or in a given case, if the exception carved out by the proviso to Section 132 applies. The provision essentially is in the nature of a protection of the client, an accused or a litigant, but it does not offer any protection to the Advocate who may have to resist coercion, especially in the circumstances that come forth in the present case, as in a notice from the I.O, which brings in the requirement of guidelines. This raises the question on the power of the Supreme Court to bring in such guidelines, especially in the context of violation of fundamental rights and the absence of a suitable legislation, which power definitely exists as seen from the decisions in Jacob Mathew5 and Vishaka6.

11. The next issue would be the nature of the guidelines, recommending a special procedure involving the Courts and a peer-group of professionals to determine as to whether the summons in a given case is within the scope and ambit of the exceptions carved out in the proviso to Section 132. It is opined that a mere reference to a superior officer as has been brought out by the ED would not suffice and before it is done, the legality of the summons should be examined by a Court of law or by a peer group constituted as a committee. On the constitution of such a committee, a suggestion is also made that it should be constituted at three levels, at the District, the State and the National level with the involvement respectively of the Principal District Judge, Chief Justice of the State and the Chief Justice of India. Put briefly, after consent is obtained from the superior officer, an application should be made before the concerned Magistrate with a further requirement of the consent being taken of a Committee, both of whom would have to be satisfied prima facie, on the basis of the materials produced by the I.O, on the issuance of such summons to an Advocate appearing for the accused/litigant in a case. It is also urged that the dominant purpose test should be applied on the standard of preponderance of probabilities to look into whether the summons referred to any privileged communication between the client and the Advocate, clearly falling within the teeth of Section 132.

The Caveat of the State:

12. On behalf of the State, both the Attorney General and the Solicitor General, very fairly, refused to take an adversarial stance since the issue affects the large body of Advocates in the Country whose voice is the voice of the victim, the accused, the marginalised and the downtrodden. While asserting that the attorney-client privilege is the fundamental principle of any legal system committed to protecting confidential communication between clients and their legal advisors, it is pointed out that there is no requirement for any guidelines since the matter is fully and squarely covered by the statutory provisions which

require no elaboration. A guideline brought in would only result in disrupting the well-crafted legislative provision which has withstood the test of time in this Country, right from the time of the Indian Evidence Act, 1872.

13. It is unequivocally agreed that no Advocate can be summoned for reason only of giving a legal opinion or appearing for a party in a case. But the immunity with respect to professional communications would not absolve the liability in the event of an Advocate participating in a crime which is beyond his professional duty. The scope and ambit of Sections 132, 133 and 134 of the BSA, according to the State and the Union, will have to be decided on a case-to-case basis and there can be no overreaching guidelines which would interfere with the statutory scheme. It is pointed out that the earlier instance of the summons issued by the ED against the two Senior Advocates was nipped at the bud. The mandate issued through the circular of the Director, prohibits any casual issuance of summons without reference to Section 132 and has brought in the mandate of an approval from the Director itself. The contours of the privilege accorded under Section 132 was elaborated on the strength of decisions which provided a protection to the Advocates, only within that provided under Section 126 of the Evidence Act and Section 132 of the BSA.

14. The communications made in furtherance of any illegal purpose are expressly excluded from the privilege whether the legal advisor was a party or ignorant of the illegal object, which is in the interest of public justice. The right of the investigating agency, as conferred by the statute to investigate into a cognizable offence cannot be curtailed by a guideline issued in purported protection of Advocates under Section 132 of the BSA. No right can be claimed by an Advocate beyond that permitted under the provisions of nondisclosure. The investigating agency would be well within its right to issue summons to an Advocate, as a suspect or witness and the restriction is only insofar as the summoning of an Advocate in his professional capacity or for inquiring into the discharge of his professional duties, with respect to a particular person or a specific crime, where the lawyer represents the person or defends the accused in an alleged crime. There cannot be claimed absolute immunity by an Advocate merely by reason of his status of a legal advisor when there is any act or omission under scrutiny which would constitute a cognizable offence as distinguished from legitimate professional conduct.

15. A separate procedure introduced by way of a guideline under Article 142, for Advocates would result in creation of a separate class which would be an artificial and unjustifiable classification, violating the mandate of Article 14. Merely for reason of a person being enrolled as an Advocate, he would not be insulated from ordinary legal process applicable to the other citizens. A professional privilege cannot be abused to obstruct the due process of law. It is vehemently asserted that there is no legislative vacuum to persuade this Court to

bring in guidelines for the protection of lawyers based on solitary instances of summoning of lawyers.

16. Any guidelines issued would, in fact, be counterproductive and would interfere with the powers conferred on the investigating agency to investigate into a crime. The vacuum which was sought to be filled by invocation of the powers under Article 142, as has been done in D.K. Basu v. State of West Bengal7 and Vishaka6, does not exist in the present case. The attorney-client privilege, as statutorily conferred has withstood the test of time and the Courts have zealously protected it, striking down any attempt to impinge upon those sacrosanct privileges which is inevitable in any justice delivery system. Once again, reiterating that there can be no interference to the attorney-client privilege which is recognised as a statutory right, it is asserted that the investigating agency also cannot be prohibited from summoning an Advocate when there is credible material available, suggesting his involvement in a criminal act.

The Role of an Advocate:

17. Decisions galore have been pointed out and the observations made therein, about the role of an Advocate and the duties discharged in protection of the rights of a client, its importance and the sanctity attached to it. Daniel Webster, a trial lawyer of repute, famously said that, "Justice is the greatest concern of man on earth" (sic). F. Raymond Marks in "The Practice of Law as a Public Utility-The Lawyer, The Public and Professional Responsibility", wrote that "… the central function that the legal profession must perform is nothing less than the administration of justice" (sic-quoted in Bar Council of Maharashtra v. M. V. Dabholkar Etc.8). It is this concern of mankind juxtaposed with the sublime function entrusted with the fraternity of lawyers, that makes the role of lawyers profound and relevant in every walk of life and life itself. There is no greater professional calling than to uphold the rule of law in society, to bring justice equally; to the downtrodden and the famous, the marginalised and the privileged, the rich and the poor. To ensure fair treatment of every gender, colour and creed, with the extending horizons of law, to every living being and to the very earth we inhabit. To push the frontiers of equity to make society all inclusive, protecting not only the citizen but also the refugee. Enabling a life with dignity to the old, the infirm, the orphaned, the destitute and even those accused and convicted of crimes.

Apt is the observation of Alexis de Tocqueville about the profession of law that, it "… is the only aristocratic element which can be amalgamated without violence with natural elements of democracy…I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people" (sic-quoted in M. V. Dabholkar Etc.8)

18. The role of lawyers in society and the discharge of their duties in prosecution or in defence, in establishing rights or defending against infringements, cannot at all be discounted. This is the reason why Section 126 in the Evidence Act was introduced and by Section 132, the said privilege, was retained in the BSA, protecting the communications between a lawyer and a client as sacrosanct, ensuring every opportunity as available in the legal firmament to the client the lawyer represents, and ensuring that no prejudice is caused to the accused he represents; a fundamental tenet of criminal jurisprudence. The sublime and profound role carried out by the Advocates in civil society cannot be disputed or discounted.

19. M.V. Dabholkar8 was a case in which the Bar Council of a State challenged the setting aside of an action it took against its own members, by the Bar Council of India, in an appeal. While upholding the right of the Bar Council of the State to file an appeal as an "aggrieved person" Justice V.R. Krishna Iyer observed that the "Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, a public institution committed to public justice and pro bono public service" (sic). The role of an Advocate vis-à-vis; the client, the Courts and the Society was also amplified in State of U.P. and Ors. v. U.P. State Law Officers Association & Ors.9, in the following extract: -

> "15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave his also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an advisor to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He was to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies."

20. U.P. Sales Tax Service Association v. Taxation Bar Association, Agra10 observed that "No doubt, an Advocate is an officer of the Court and enjoys a special status in the society" (sic). The said statement was made in deprecation of the tendency of the Advocates to "… strike work and boycott the Courts at the slightest provocation, overlooking the harm caused to the judicial system in general and the litigant public in particular and to themselves in the estimate of the general public" (sic).

21. All the above cases dealt with professional misconduct or a digression from the essential role. We cannot but express that the observations made therein, were to provide some material for introspection, to those who deviate from the righteous path of administration of justice. The occasional black sheep who tread the uneven, muddy lanes of deceit, in purported protection of the interest of the client, which though a minority, does, sadly exist in our system. We say 'our system' with emphasis since Judges cannot distance themselves from the fraternity of lawyers, to which they once belonged and to which they owe their present status. The provision providing protection to the privileged communications between the lawyer and the client is not to protect those deviants but to ensure that the vast majority, who are day in and day out, involved in the task of administration of justice are not victimised or bullied into making disclosures of their communications with their clients, merely for reason of having represented a client of questionable conduct or having some ill-repute or disrepute.

22. We cannot but notice, in this context, Rule 11 of Section 20 of Part VI of the Bar Council of India Rules, 1975, titled 'Standards of Professional Conduct and Etiquette' (herein after referred to as the Standards under the BCI Rules) framed under the Advocates Act, 1961 which reads as under:

> "An Advocate is bound to accept any brief in the Courts or Tribunals or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief."

23. We are quite conscious of the onerous responsibility cast on a lawyer who takes up an engagement to plead or defend, on behalf of a client. There is an obligation cast on him to provide his client the maximum protection as by law established, in furtherance of the client's cause. It is hence the codified obligation, while maintaining absolute sincerity to the cause of justice, ensuring strict and absolute confidentiality with the communications made by his client regarding the cause, for which he is engaged. Sections 132 to 134 is incorporated, not only in protection of the client but also to provide an immunity to the Advocate from making any such disclosure.

Guidelines, if Necessary:

24. A great deal of emphasis was placed on Jacob Mathew5 to bring in guidelines. Especially, since lawyers and doctors employ special skills in the discharge of their professional duties, the nuances of which would be alien to a common man or an I.O. That was a case in which two doctors, who attempted to revive a patient fighting for breath, failed, also by reason of non-availability of oxygen. Negligence was alleged resulting in a charge under Section 304-A read with Section 34 of the Indian Penal Code, 1860 (IPC). The doctors were before the Supreme Court; their prayer to quash the proceedings having failed before the

jurisdictional Magistrate and the High Court. The three Judge Bench was considering the issue on a reference made from a two Judge Bench decision in Suresh Gupta (Dr.) v. Govt. of NCT of Delhi11 wherein the act of medical negligence alleged was found to be not of a 'reckless' or 'gross' nature making the doctor criminally liable; while a tortious liability could be raised validly. The referring Bench was of the opinion that there is no requirement for the negligence or recklessness to be 'gross' which word will have to be read into Section 304-A of the IPC and that, there could be no different standards applied, insofar as negligence is concerned, to doctors and the others clothed with responsibilities; professional, civic or societal.

25. In Jacob Mathew5 the issue considered was of professional negligence resulting in a criminal liability. It was held that negligence is the breach of a duty caused by an act or omission of a professional discharging a professional duty, which would not be attempted or omitted by a reasonable man in the same profession, exercising due diligence expected of an ordinary practitioner. An act of negligence, attracting criminal liability was found to be neglect to use ordinary care or skill which constitute a breach of the essential duty enjoined upon such professional, resulting in a perceivable damage. Drawing a distinction insofar as negligence is concerned; as a tort and as a crime, the contention that jurisprudentially no distinction can be drawn under the civil law and the criminal law was negatived. It was held that the amount of damages incurred in tort, is determinative of the extent of liability, while in criminal law what is determinative of the liability is not the amount of damages, but the degree or gravity of negligence. The degree of negligence to fasten the liability under the criminal law was held to be higher than that required in civil law. The latter, being determined on a preponderance of probability, while the former requires a higher standard, of proof beyond reasonable doubt. The dictum in Dr. Suresh Gupta11 was affirmed finding that the negligence to be established by the prosecution to bring home a criminal liability must be 'culpable' or 'gross' and not a negligence merely based upon an error of judgment.

26. In determining professional negligence, it was held that every profession embraces a range of views. What is the standard of conduct and the competence of the one accused, is to be judged by the lowest standard that would be regarded as acceptable and not necessarily of a special skill or one of highest expertise. While in the given case, the doctors were found to have exercised due care and caution absolving them from the liability of negligence, certain guidelines were laid down especially noticing the increasing tendency to subject doctors to criminal prosecution, wherein the private complainant or the I.O would not be aware of the nuances of a therapeutic or surgical intervention made by a medical professional. It was hence stipulated that a private complaint would not be entertained unless the complainant has produced prima facie evidence of gross negligence in the form of a credible opinion given by another medical professional. Further, the I.O also was required to procure an independent and

competent medical opinion before a charge is laid of rashness or negligence against a medical practitioner leading to his arrest, which was not to be done in a routine manner.

27. The issue dealt with by this Court in Jacob Mathew5 was a combination or intermix of tortious liability with criminal liability, in which context such guidelines were issued. In the present case we are not concerned with a professional misconduct, and the controversy is only with respect to an Advocate summoned to speak about a crime or his client, when the communications pursuant to a legal engagement is conferred with a privilege of non-disclosure under Section 132 of the BSA. In fact, the argument against such summons issued is also that an Advocate if forced to make any disclosure regarding the privileged communication with his client, would expose him to a charge of professional misconduct under Section 132, which is a protection afforded to a client. We cannot find any parallel with Jacob Mathew5 or any aid by reason only of the Advocates and Doctors being categorised as professionals with special skills. That does not, even according to that decision, confer on the Doctors, merely for reason of the status of a medical professional, any blanket immunity from criminal prosecution, when rashness or negligence is proved beyond reasonable doubt.

28. Vishaka6 was in the nature of a class action focussing attention on the societal abrasion of sexual harassment of women in the workplace. This Court invoked Article 32, considering the prevailing climate in which such instances were not uncommon leading to violation of the rights under Articles 14, 15 and 21 of the Constitution of India as also under Article 19(1)(g). The increasing awareness and emphasis on gender justice and the focussed efforts to guard against such violence, especially on the realisation of the true concept of gender equality, juxtaposed with the right to 'life and liberty' was the imminent concern. The trigger for the petition under Article 32 was the gang rape of a social worker in a village which brought to fore the travails and hazards faced by working women and the depravity to which sexual harassment can degenerate. It is to bring in safeguards by a mechanism, in the absence of legislative measures, that this Court issued guidelines in that situation, when a writ of mandamus would not be effective without suitable guidelines for prevention of such recurring phenomena, which were also in violation of the fundamental rights of women in workplaces. The guidelines and norms were directed to be observed scrupulously in all workplaces until suitable legislation was enacted to occupy the field. There was hence a clear absence of legislation which prompted the guidelines to be brought, which were held to be binding and enforceable in law, for the protection of fundamental rights of women in workplaces and preservation of their dignity, till suitable legislation for that purpose is brought about.

29. Considering the context in which this Court issued guidelines in Jacob Mathew5 and Vishaka6, we are not convinced that the instant case brings forth a

comparable, similar or identical fact situation for which no legal remedy is available. As we noticed, at the risk of repetition, Jacob Mathew5 was a case which dealt with negligence as a criminal liability particularly on the aspect of medical negligence, where the professional negligence attributed to a person had to be found existing, prima facie, by another professional having the same or higher competence. The present case is not concerned with any aspect of professional negligence or professional misconduct.

30. Vishaka6 was in the nature of a class action, in the evolving social milieu of gender equality when women came out of their homes to the workplaces, wherein they faced overt and subtle sexual harassment from superiors, peers and even their subordinates; vintage hangover of a patriarchal society. Insofar as the treatment of women in workplaces, especially when there is an allegation of harassment confined to work spaces; which though could be addressed as a criminal liability, would not procure instant mitigation in a workplace. This was sought to be addressed by this Court in issuing the guidelines and norms, based on which legislation has also been brought out now, which is not in exclusion of the criminal liability fastened on the perpetrator of such harassment.

31. We do not think that the positive judicial activism that was prompted, treating the women in general and working women in particular as a class, to avoid any sought of sexual harassment in the workplaces would, with the same gravity, be applicable in the present case nor is there a judicial vacuum requiring us to step in. Jacob Mathew5 also is not applicable to the instant controversy which does not bring forth any issue of professional negligence.

Advocate-Client Privilege:

32. In this context, we extract the relevant provisions under the BSA which is in pari materia with the provisions of the Indian Evidence Act which has held the field for more than a century and a half:

132. Professional Communications (1) No Advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such Advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service:

Provided that nothing in this section shall protect from disclosure of –

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any Advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service.

(2) It is immaterial whether the attention of such Advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client.

Explanation. – The obligation stated in this section continues after the professional service has ceased.

Illustrations.

(a) A, a client, says to B, an Advocate – "I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an Advocate – "I wish to obtain possession of property by the use of a forged deed on which I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an Advocate, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional service. This being a fact observed by B in the course of his service, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

(3) The provisions of this section shall apply to interpreters, and the clerks or employees of Advocates.

133. Privilege not waived by volunteering evidence. – If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 132; and, if any party to a suit or proceeding calls any such Advocate, as a witness, he shall be deemed to have consented to such disclosure only if he questions such Advocate, on matters which, but for such question, he would not be at liberty to disclose.

134. Confidential communication with legal advisers. – No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

33. The illustrations though not exhaustive, is definitely indicative of the instances when the transactions between the client and his lawyer would not come within the privilege of professional communication as has been protected under Section 132. The proviso brings forth the exceptions which are sufficiently explained in the illustrations. There cannot be urged a lacuna or absence of

legislation, in protection of the lawyers' obligation of non-disclosure, which is statutorily prescribed. An Advocate cannot be coerced into revealing any information with respect to the client he represents or the cause he is engaged to prosecute or defend, which would be in violation of Section 132. The exceptions are clear and operates only where there is (i) waiver/consent of the client. (ii) furthering of an illegal purpose or (iii) observation of a crime or fraud committed in the course of his engagement; whether it be noticed at the instance of the client or otherwise. The privilege though is conferred on the client, there is an immunity enabled to the Advocate from making any disclosure of such privileged communication, which he can seek to invoke and exercise, even in the absence of his client, which would be primarily in protection of the interests of his client. The complicity to the crime even if admitted by the accused to his lawyer, it does not fall within the genre of an 'extra-judicial confession'.

The Common Law Jurisdictions:

34. Despite the request made not to refer to foreign decisions; considering the fact that the privilege we are concerned with is prevalent in all common law jurisdictions across the world, we do not find any reason to avoid altogether, intelligent expositions on the privilege, merely because it comes from shores, both distant and different. In Greenough12 , from the United Kingdom, in the interests of justice and to properly further the cause of administration of justice, it was held:

> "The foundation of this rule, is not difficult to discover. It is not (as has sometimes been said) on account of any particular importance which the law attributes to the business of legal professors, or any particular disposition to afford them protection. (Though certainly it may not be very easy to discover why a like privilege has been refused to others, and especially to medical advisers). But it is out of regard to the interests of justice, which cannot be upholden, and to the administration of justice, which cannot go on, without the aid of men skilled in jurisprudence, in the practice of the courts, and in those matters affecting rights and obligations, which form the subject of all judicial proceedings. <u>If the privilege did not exist at all, everyone would be thrown upon his own legal resources. Deprived of all professional assistance, a man would not venture to consult any skilful person, or would only dare to tell his counsellor half his case. If the privilege were confined to communications connected with suits begun, or intended, or expected, or apprehended, no one could safely adopt such precautions as might eventually render any proceedings successful, or all proceedings superfluous.</u> From the terms in which I have stated the proposition, it is manifest that several cases may arise, which, though apparently they are exceptions, yet do in reality come within it. Thus the witness, or the defendant treated as such, and called so to discover, must have learned the matter in question only as a solicitor or counsel, and in no

other way : if therefore, he were a party, and especially to a fraud (and the case may be put of his becoming informer after being engaged in a conspiracy), that is, if he were acting for himself, though he might also be employed for another, he would not be protected from disclosing; for in such a case his knowledge would not be acquired solely by his being employed professionally"(sic, pg.621).

[underlining by us for emphasis]

The above exposition succinctly puts in perspective the privilege as embodied in Section 132 of the BSA and the exceptions thereon. The privilege extends even to an Advocate-Client communication which does not necessarily arise from the engagement in a suit or prosecution; since often, in the present scenario, on legal issues, even without a pending suit or prosecution; individuals, corporates, firms and associations of all hues, conferred with a legal status, take legal opinion before acting or desisting from one, which engagement may at times be solitary, sporadic or otherwise on retainership.

35. The privilege is said to be one of the most enduring features in the legal profession of the United States. US v. Upjohn & Co.13 [reversed on other grounds in 449 US 383 (1981)] observed that "finding the truth and achieving justice in adversary system are best served by fully informed Advocates loyal to their clients' interests (sic-at 1226)." The Advocates unless fully apprised of the facts cannot effectively put forth the case of their client and assist the courts fully so as to ensure that the adjudicatory system functions properly. Despite the privilege having existed for over two centuries, there are criticisms based on public interest. Jeremy Bentham famously objected to the privilege as one benefitting only the guilty, since the innocent has nothing to hide and, therefore, nothing to fear from attorney disclosure. Jackson Teague, in his article "Two Rights Collide: Determining when attorney-client privilege should yield to a defendant's right to compulsory process or confrontation" published in the American Criminal Law Review juxtaposes the privilege with the Fifth Amendment (rule against selfincrimination) and the Sixth Amendment (right to the assistance of counsel) in the following words:

"In this context, however, the attorney-client privilege plays a stronger role in safeguarding the adversarial system. Recognizing that a layperson often has trouble navigating the adversarial system, the Framers ratified the Sixth Amendment to ensure that criminal defendants have a right to the assistance of counsel [See Jacob D. Briggs, GonzalezLopez and Its Bright-Line Rule: Result of Broad Judicial Philosophy or Context-Specific Principles?, 2007 BYU L. REV. 531, 571 (2007) (discussing the American adversarial system and need for similar resources as part of a right to counsel)]. The effectiveness of that right hinges on the client's ability to communicate freely with his attorney [See Monroe H. Freedman, Lawyer-Client Confidences and the Constitution, 90 YALE L.J. 1486, 1492 (1981)

(explaining that the attorney-client privilege is necessary to ensure the adversarial system functions properly, and is "rooted in the imperative need for confidence and trust" between lawyer and client]). But a client is unable to do so if he is placed in a worse position by providing his attorney with information than he would be by remaining silent [See Michael Jay Hartman, Yes, Martha Stewart Can Even Teach Us About the Constitution: Why Constitutional Considerations Warrant an Extension of the Attorney-Client Privilege in High-Profile Criminal Cases, 10 U. PA. J. CONST. L. 867, 876–77 (2008)]. If called to the stand, the client can assert the privilege against self-incrimination when asked about incriminating facts. If the attorney-client privilege is penetrable, however, and a client communicates with his attorney, the client's statements could be discovered by simply subpoenaing the attorney. The client would thus have "walked into his attorney's office unquestionably shielded with the [Fifth] Amendment's protection, and walked out with something less." [United States v. Judson, 322 F.2d 460, 466 (9th Cir. 1963)]. Before the right to counsel attaches, discovery of these statements removes all teeth from the privilege against self-incrimination. After the right to counsel attaches, it creates a constitutional dilemma [See United States v. White, 879 F.2d 1509, 1516 (7th Cir. 1989) (Will, J., concurring in part) ("Absent [the attorney-client privilege], a party is forced to choose between free communication with an attorney or complete silence based on the Fifth Amendment, a choice which one should not have to make and which the decided cases make clear one does not have to make."). For a detailed description of this dilemma, see supra Part I]."

36. The Supreme Court of Canada has recognised 'solicitorclient privilege' having evolved from, being treated as a mere evidentiary rule to being considered a rule of substance and now, a principle of fundamental justice. It has been held in Minister of National Revenue v. Duncan Thompson14 that ; '… the application of confidentiality that springs from the right to solicitor-client privilege is necessary for the preservation of a lawyer-client relationship that is based on trust, which in turn is indispensable to the continued existence and effective operation of Canda's legal system. It ensures that clients are represented effectively and that the legal information required for that purpose can be communicated in a full and frank manner [R. v. Gruenke, [1991] 3 S.C.R. 263]' (sic).

The Peer-review:

37. The privilege that emanates from Section 132 has thus engaged jurisdictions world over in its ramifications, considered imperative in an adversarial judicial system. Coming back to our own shores, D.P. Chadha v. Triyugi Narain Mishra15 , was a case in which the professional misconduct of a lawyer was punished by the Bar Council of the State and in appeal the punishment was

enhanced by the Bar Council of India. This Court extracted from the definition of "professional misconduct" given by Darling J. in Solicitor Ex-parte the law Society, Re', approved by the Privy Council in George Frier Grahame v. Attorney General, Fiji16 , "… if it is shown that a solicitor in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency then it is open to say that he is guilty of professional misconduct."

38. The question that arises is whether, "the professional brethren of good repute and competency" have to be associated in a summons issued to a lawyer by the Police under the BNSS in pursuance of the investigation of a crime. In resolving this vexed issue, we cannot but repeat that we are not concerned with a professional misconduct when considering the application of non-disclosure of confidential professional communications made by a client. On the contrary only the breach by an Advocate can lead to a charge of professional misconduct, with which we are not perturbed at the moment. We are herewith troubled with a coercion to make disclosure, by the investigating agencies. The contention also is that unless such attempts are thwarted, there would be breach of the privilege, resulting in an allegation of professional misconduct, which disclosure in any event cannot be used against the client, in evidence.

39. A professional misconduct of a medical professional is dealt with by the Medical Council of India, which now has been renamed as the National Medical Commission, a body of medical professionals. In Jacob Mathew5 , it was held by this Court that when such medical negligence involves criminal liability also, then a professional body should examine whether the negligence alleged, in addition to the tortious liability, can result in a criminal liability, leading to initiation of a criminal investigation or prosecution. Likewise, a professional misconduct of an Advocate is examined by a professional body, which is the Bar Council of India or the Bar Council of the States, regulated by a statutory procedure and providing hierarchy of authorities.

40. Not being disturbed with any aspect of professional misconduct resulting in criminal liability, we have to tackle the attempt of coercion on an Advocate to disclose the privileged communications he had with his client, which could jeopardise his client's interests, especially, without the consent of the client, which could in fact, lead to an allegation of professional misconduct. As we noticed from Section 132, the obligation of non-disclosure would not fetter the Advocate from disclosing any communication made in furtherance of any illegal purpose or any fact coming to the notice of the Advocate, in the course of his engagement, revealing a crime or fraud committed by his client after the commencement of the engagement. The exceptions are also very clear insofar as what would fall under the immunity of a privileged communication and what would fall outside it; delineated in the illustrations.

41. An Investigating Officer or an investigating agency is not oblivious of the law. The dichotomy insofar as a medical negligence resulting in criminal liability does not, as such arise in the case of an investigation carried on under the BNSS, which is carried on by a person informed in law and the provisions of the BSA. Ignorance or absence of domain knowledge does not squarely apply in a case where the I.O summons a lawyer, the powers of which are clearly fettered by the provisions of Section 132. Though distinct, it would also be an extension of the client's constitutional right against self-incrimination as found in Article 20(3) of the Constitution of India. When a person cannot incriminate himself, he cannot be prejudiced or incriminated by the statement of his counsel, only on the basis of the professional communications he had with his counsel, in confidence. This is why it has been said that a person cannot walk out of his counsel's office with a defaced privilege, which he had intact, when he walked into it. That too only by reason of the disclosures he made in his own interests, his defence and to further his chances in the adjudicatory process.

The Right to Legal Representation:

42. Moreover, when we look at the issue of a lawyer being summoned as a witness by the Investigating Officer or the Court, to speak about the transactions with his client, we have to also keep in mind the right of a person to legal representation, which is enshrined in the Constitution itself. The question arose as to whether a party in a suit could summon the counsel of the opposite party as a witness, before the Kerala High Court in N. Yovus v. Immanuel Jose17. The suit arising from a failed matrimonial proposal had reached the final stage when a petition was filed by one party seeking permission to cite the Advocate of the respondent as a witness. The Division Bench decision considering the issue, referred specifically to Rule 13 of Chapter 2 of Part VI of the Bar Council of India Rules, which requires an Advocate to decline a brief or not to appear in a case, in which he has reason to believe that he is a witness and if engaged it would be apparent that he is a witness on a material question of fact; who should not continue to appear as an Advocate, if he can retire without jeopardizing his clients interest. It was held that only if the Court after enquiry finds that examination of the Advocate as a witness is indispensable and the same would not jeopardise the interests of the party he represents, there could be summons issued which would result in disengagement of the Advocate. In that particular case, it was found that the summons was to prove a letter sent by the plaintiffs to the Advocate after the commencement of the proceedings and a compromise suggested by the Advocate. The summons was declined on the reasoning that even if something could be elicited from the exceptions contained in Section 126, it would be of little use in the case and the hardship caused to the client by depriving him of professional service of the counsel engaged by him would be far more.

43. Article 14 speaks of equality before law and equal protection of the laws and Article 21 guarantees protection of life and liberty; other than a fetter to such right being occasioned in accordance with a procedure established by law. M.H. Hoskot v. State of Maharashtra18 held that procedure established by law under Article 21 read with Article 19(1)(d) includes right of appeal and right to counsel when deprivation of life and liberty are in peril. The appellants right to be represented by a counsel, if necessary, by providing legal aid was reiterated in Rakesh v. State of Madhya Pradesh19 & Sheikh Mukhtar v. State of Andhra Pradesh20. The rights under Article 14 and 21 encompasses within it the right to a legal practitioner. In addition, Article 22(1) makes mandatory the provision of the right to consult and to be defended by the legal practitioner of a man's choice when he is arrested. Article 39-A of the Directive Principles puts obligations on the State to secure justice and equal opportunity by providing free legal aid especially in the case of citizens denied such representation by reason of economic or other disabilities; as declared in Hussainara Khatoon v. State of Bihar21. The said right has been stated to be one which enables provision of effective and adequate legal representation, which would be jeopardized while summoning a lawyer to be witness in a case. The privilege vis-à-vis the procedure under BNSS:

44. Be that as it may, we are not satisfied that this Court could frame a guideline insofar as the procedure to be adopted in summoning a lawyer, which would be in addition to and for all practical purposes may, in effect, be in derogation of the provisions of the BNSS. The power of the police officer to investigate a cognizable offence, as provided under Section 175, even without the order of a Magistrate, cannot be regulated by any guideline issued by us, especially when sufficient guideline is available, under Sections 132 to 134 of the BSA. A police officer issuing summons to an Advocate, under Section 179, would be cautioned by the provisions of Section 132 in not expecting any disclosure of a privileged communication. We are not in a position of absolutely no guideline being available; which prompted this Court under Article 142 to frame guidelines in Vishaka6 or in a situation of absence of expertise in corelating professional negligence with criminal liability, as existed in Jacob Mathew5. We are faced with a state of affairs where there is an absolute overreach in violation of the statutory mandate, which occurs by reason of deliberate design or abject ignorance, to correct which, there are Courts established, especially the Constitutional Courts.

45. We are also not persuaded to constitute a committee of legal professionals or enabling the summons to be issued through a Magistrate, which would be in derogation of the provisions of the BNSS. We agree that such a measure would be counter-productive insofar as the I.Os attempting to summon the Advocate appearing in a case, at the drop of the hat; if we may use that phrase, by resorting to the procedure of a duly constituted committee of legal experts or the Magistrate, in effect could frustrate the cause of justice and stifle the due

administration of rule of law. This would also put in jeopardy the right of a client/accused who is actually conferred with the protection against disclosure. A committee of legal experts or even a Magistrate taking a decision, without the junction of the client/accused, who would eventually be prejudiced if a decision is taken in favour of disclosure, would be wholly inappropriate and would run counter to the basic tenets of full and effective legal representation.

The Epilogue:

46. Before we sum up, we have to notice the summons issued, challenged in SLP (Crl.) Diary No.33845 of 2025 which has been extracted in the reference order. It mentions only the crime number, the names of the accused and the provisions under which it has been registered and abruptly summons the Advocate appearing for the accused to know the true details of the facts and circumstances of the case. The facts and circumstances of a crime committed, or an FIR registered, is not to be elicited from the Advocate who represents the accused, which again is a reflection of the abject failure of the investigating agency. It is for the investigator to obtain independent evidence of the culpability of the accused. The position of trust the Advocate occupies vis-à-vis his client cannot be put to test by an attempt to breach the professional confidence, conferred with a solemn privilege under Section 132; which has reflections of the constitutional protection against self-incrimination. Whether the summons issued falls under any of the exceptions as provided under Section 132 has to be explicitly stated if a summons is issued to the Advocate on any of the exceptions; which is not an empty formality and hence, when supported by reasons, amenable to judicial review.

47. Despite our conviction to the contrary, on the framing of guidelines and constituting a committee of professionals, we cannot but express our anguish in the investigating agencies summoning Advocates appearing in a case, in furtherance of the investigation of the said case. Though, the Magistrate is conferred with the power to monitor the investigation as has been held in Sakiri Vasu v. State of Uttar Pradesh22 reaffirmed in Vinubhai Haribhai Malaviya v. State of Gujarat23, it does not extend to interfering with the power conferred on a police officer to summon a witness under Section 179 of BNSS. However, the provisions of Section 528 of the BNSS provides sufficient safeguards to the Advocates against whom a summons is issued under the BNSS.

48. We find the summons issued in the instant case to be illegal and against the provisions of Section 132 insofar as the Advocate has been summoned to know the true details of the facts and circumstances of the case in which he appears for the accused. We are surprised that the High Court, being a Constitutional Court, exercising the jurisdiction under Section 528 of the BNSS refused to interfere with the same. We find the reasons stated; of the Advocate having not responded to the summons and the investigation being stalled, to dismiss the petition, to be flawed & erroneous. It is also in abdication of the inherent powers conferred on

the High Court, which the blatant breach of the rule against non-disclosure projects. The breach is not only of the evidentiary rule, which many jurisdictions accept as fundamental to the adversary adjudicatory scheme, but, in the Indian context, project infringement of fundamental rights; guaranteed against selfincrimination and effective representation of Counsel.

49. On a conspectus of the issues raised, as deliberated upon, we answer the first of the two questions referred to us by a Co-ordinate Bench of this Court, with an emphatic 'NO'. The investigating agency/prosecuting agency/the police cannot directly summon a lawyer appearing in a case to elicit the details of the case, unless there is something, the I.O has knowledge of, which falls under the exceptions, in which case it has to be specifically mentioned in the summons, which the lawyer summoned can challenge under Section 528 of the BNSS.

50. We also make it clear that any such summons issued as against a lawyer by an I.O has to be with the approval and satisfaction of the hierarchical Superior, not below the rank of a Superintendent of Police which satisfaction has to be recorded in writing and should mention the facts leading to the exception under Section 132, for which the summons is issued.

51. Answering question No.2, we are of the opinion that sufficient judicial oversight is prescribed under Section 528 of the BNSS. Oliver Wendell Holmes, J. in Panhandle Oil Company v. State of Mississippi24 referred to a quote of the Chief Justice John Marshall that .."the power to tax is the power to destroy25". Finding that the said proposition no more holds good, when it is recognised that distinction of law are distinction of degree, it was observed so, .."if the States had any power, it would assume that they have all power, and the necessary alternate was to deny it all together. But this Court which so often has defeated the attempt to tax in certain ways, can defeat an attempt to discriminate or otherwise go far without wholly abolishing the power to tax. The power to tax is not the power to destroy while this Court sits".

52. Drawing a corollary, the power to summon, conferred on an Investigating Officer under Section 179 read with Section 175 of the BNSS; when such summons is directed against an Advocate in a case where he is appearing for a party, is not an absolute or a blanket power to be exercised, without looking at the provisions of Section 132 of the BSA. We cannot deny the power altogether or place fetters on it by framing guidelines, especially when there are limits and exceptions to the privilege conferred on confidential professional communications between a Client and an Advocate. If there is an overreach, the Constitutional Courts could always be approached as has been done in the present case. Borrowing a phrase from the above extract, we cannot but say that the power to summon under Section 175 & 179 is not the power to interfere with the privileged communications between a lawyer and client, as long as the Constitutional Courts sit, in this Country. We know the inaction of a High Court has resulted in the Suo-Motu initiation, which we are sure is not the norm.

53. We have already noticed from Greenough12 that the confidentiality of the professional communications is not confined to transactions with an Advocate engaged in a case but also extends to legal advice taken, at a solitary instance, sporadically, on a periodic basis or even under a regular retainership. We fully agree with the above proposition, one of the earliest in time referred by us, which we respectfully accept as the correct exposition of the privilege, continued incessantly under the 1872 Act, probably inspired by and infused with the principle expounded in 1833, in Greenough12.

Production of Documents & Digital Devices:

54. One ancillary issue which has been agitated is the question of seizure of documents and in the present scenario of advancing technology; the seizure of digital equipment. Insofar as documents are concerned, the position may be slightly different, especially when the Court or the I.O has the power to summon it and direct production of the same from the client, if it were in his possession. The Court and the I.O are empowered to direct production of a document by Section 94 of Chapter VII of the BNSS. Section 94 empowers both the Court or an officer in-charge of a police station to issue summons or a written order in the physical form or in electronic form, requiring the production of the document or thing which is believed to be in the possession of a party to produce it at the time or place stated in the summons or order.

However, we have to specifically notice sub-section (3) of Section 94 which protects documents under Sections 129 and 130 of the BSA and the Bankers' Books Evidence Act, 189; but does not afford such protection to Section 132. 55. Gangaram v. Habib-Ullah26 is one of the earliest cases where this issue was raised before the High Court of Allahabad. Pursuant to a complaint, at the stage of evidence, the accused sought production of an earlier complaint by the Mukhtar, who was representing the complainant, who claimed the privilege of non-disclosure of confidential professional communications. It was held that the prayer made was not for disclosure of any communication made in the course of or for the purpose of his engagement as a legal adviser. The provision; Section 126, it was held, does not refer to production of documents in the custody of a legal adviser but prohibits any disclosure about the contents of the document, the legal adviser has become acquainted with in the course and for the purpose of his engagement. Nor was the Mukhtar called upon to reveal any legal advice he had given the client. Finding also that the prayer for production did not fall under any of the exceptions of Section 126 it was all the same held that the protection available under Section 126 does not apply to production of documents.

56. The production of documents was dealt with under Section 166 of the Evidence Act under which a person summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection; which objection to its production and the admissibility, being decided by the court. The provision also enables the court to inspect the document unless it

refers to matters of State, and take other evidence to enable determination of its admissibility. It was categorically held that in that case the Mukhtar was not at all justified in refusing to produce the document as it was a criminal case in which the procedure was governed by Section 94 of the Cr.P.C., 1973. Section 91 of the Cr.P.C, as it existed then, empowered the court to issue summons to produce a document if it was found necessary and sub-section (3) exempted only documents which were protected under Sections 123 and 124 of the Evidence Act, 1872. This is in pari materia with Section 94 of the BNSS. The principle applies in civil cases too and specifically Order XVI Rule 7 of the Civil Procedure Code, 1908, was noticed. When the client who has possession of a document cannot refuse to produce a document, subject only to his objection being decided by the court and cannot claim the privilege under Section 126, there is no question of a privilege being claimed by a lawyer who has been given possession of that document by the client. The Madras High Court followed Gangaram26 in The Public Prosecutor, Madras v. M.S. Menoki of Calicut27.

57. Later, Chandubhai Jethabhai Desai v. The State and Another28, considered a similar case and followed the same principle looking at Section 94 of the Cr. P.C. and Section 126 of the Evidence Act. The decision in Gangaram26 was also approved in 'Matter of Great Public Importance Touching upon the Independence of Judiciary' 29 by a three-Judge Bench of this Court.

58. Any summons issued by an officer in-charge of a Police Station to a lawyer to produce documents, relatable to his client, can only be for production before Court of the said document which shall be perused, for the purpose of deciding on the objections raised against the direction to produce and determine its admissibility, after hearing the witness who produces it and any objection raised by the client under Section 132 of the BSA, which decision shall be by the Court and not by the officer. In examining any digital equipment so produced, the Court shall ensure the presence of the lawyer and his client as also any person, the lawyer or client desires to accompany them, who is conversant in digital technology. We specifically bring in this requirement with regard to production of digital device in Court since the digital device so produced by a lawyer may contain not only the material required by the Court or the officer, but also other material in relation to his other clients.

The In-house Counsel:

59. Now we come to yet another ancillary issue as to whether an In-house counsel in the employment of a corporate entity would be covered under the privilege offered by Section 132 of BSA. A society called the General Counsels Association of India; members of which are the General Counsels and Legal Advisors of prominent companies, have filed an intervention application asserting their rights under Section 132 and 134. It is also claimed, based on Rule 49 of Chapter 2 Part VI of the Bar Council of India Rules, 'Standards of Professional Conduct and Etiquette' mandating the restriction in practising for

persons in the rolls of the Bar Council who are in a regular employment; that, but for pleading and appearing in Courts they carry on the very same duties as legal advisors. At first blush though the contention seems attractive we cannot but observe that the fact of their regular employment with full salaries takes them away from the definition of an Advocate as defined under the Advocates Act 1961, which has been incorporated in Section 132 of the BSA.

60. Section 126 as was available in the Indian Evidence Act referred to "barrister, attorney, pleader or vakil" as professionals who would be entitled to claim non-disclosure of professional communications, which is a privilege conferred on their client. Section 126 took into account the different categories of professionals who practice law and appear in Courts when the Indian Evidence Act was enacted in the year 1872. With the coming into force of the Advocates Act, 1961, specifically enacted to amend and consolidate the law relating to legal practitioners, an Advocate was defined under Section 2(a) as a person who is entered in any roll as provided under the provisions of that Act. Section 29 provides that there shall be only one class of persons entitled to practise law as a profession, i.e.: Advocates. Section 30 of the Act provides an Advocate whose name is entered in the State Roll, the right to practice throughout the territories of India in all Courts, before any Tribunal or any person legally authorised to take evidence or an authority. Section 33 is a restriction on any other person to practice law in Courts or before authorities unless he is enrolled as an Advocate under the Act.

61. The advent of the Advocates Act, 1961, the decisions on this aspect and the amendments brought into Rule 49 of the Bar Council of India Rules prescribing the 'Standards of Professional Conduct and Etiquette' for Advocates was elaborately considered by a Constitution Bench in Rejanish K.V. v. K. Deepa30:

> "…136. Rule 49 of the Bar Council of India Rules as originally framed, reads as follows:
>
> "An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment. Nothing in this rule shall apply to a law officer of the Central Government or of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee. Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer."

137. As already referred to hereinabove, in Sushma Suri[(1999) 1 SCC 330] , the question arose as to whether the word "Advocate" in Article 233(2) includes a law officer of the Central or State Government, public corporation or of a body corporate, who is enrolled as an advocate under exception to Rule 49, who is practicing before Courts or Tribunal for his employer. A three-Judge Bench held positively, permitting a Public Prosecutor and Government Counsel who is on the rolls of the Bar Council, as entitled to practice under the Act, who would also answer the description of an Advocate under Article 233(2) of the Act.

138. The very same question arose in a different context in Satish Kumar Sharma v. Bar Council of H.P.[(2001) 2 SCC 365]. The appellant therein was appointed as Assistant (Legal) by the Himachal Pradesh State Electricity Board, who later enrolled with the State Bar Council at the expense of the Board. After his appointment, the appellant therein continued in the Board as a regular employee, was given promotions with change in designations and was also appearing for the Board in the Courts. The certificate of enrolment issued in the year 1984 was withdrawn by the Bar Council of the State in the year 1996 after due notice and opportunity of hearing. Looking at the nature of the duties of the appellant who was a full-time salaried employee, it was found that his work was not mainly or exclusively to act or plead in Courts and he had to attend to many more duties, which were quite substantial and predominant. The appellant therein was also found to be amenable to disciplinary jurisdiction of his employer and mere occasional appearances in some Courts on behalf of the employer could not bring the employer within the meaning of "Law Officer" under paragraph 3 of Rule 49 was the finding. The decision in Sushma Suri (supra) was specifically noticed and distinguished on the ground that in that case the court was concerned with the definition of the word "Advocate" as appearing in Article 233(2), which was held to include a law officer of the Central or State Government who is enrolled as an advocate falling under exception to Rule 49. It was found so in paragraph 20 of Satish Kumar Sharma (supra):

"20. As stated in the above para the test indicated is whether a person is engaged to act or plead in a court of law as an Advocate and not whether such person is engaged on terms of salary or payment by remuneration. The essence is as to what such Law Officer engaged by the Government does."

139. Satish Kumar Sharma, however, was found to be not coming within the exception under Rule 49 especially when there was no rule framed by the State Bar Council entitling law officers to enrol as an Advocate even if they were full time employees. The contention that

after such a long time his certificate of enrolment could not have been cancelled was negated on the finding that even at the threshold, he was not entitled to be enrolled under Rule 49. On the same premise an alternative contention that he may be permitted to resign and retain his enrolment from the date on which the certificate was issued was also negated. Finding no reason to maintain his seniority on the rolls of the State Bar Council, on the basis of an enrolment certificate which at its very issuance was barred, the claim was rejected.

140. We have to specifically notice that both these decisions were taken based on Rule 49 as it existed then. The exceptions provided by paragraphs 2 and 3 have now been removed and have been substituted with the following: "That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgment will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf of their employers. That the Bar Council of India is of the view that if the said Officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

141. As of now, an employee cannot get enrolled in the rolls of the State Bar Council without giving up his employment. A law graduate who is enrolled as an Advocate on taking up regular employment as full time salaried employee is obliged to intimate the fact to the Bar Council in which he is enrolled and would then seize to practice as an Advocate so long as he continues such employment. Failure to make such intimation can result in his name being struck off from the Rolls. Reading Sections 29, 30 and 33 of the Advocates Act, 1961 together with Rule 49 of the Bar Council of India Rules, an employee, even if he is in the Rolls of the State Bar Council, as long as he remains a fully salaried employee, on intimation of the regular employment would be prohibited from carrying on practice of law as an Advocate."

62. Whether, in his employment, an In-house Counsel advises his employer on legal affairs would not bring an Inhouse counsel, a fully salaried employee, within the definition of an Advocate which would also not enable him to claim the privilege with respect to communications with his employer as available

under Section 126, but could definitely take up other pleas, which we are not required to look into at this stage.

63. In this context, we also have to notice the decision of this Court in Bar Council of India v. A.K. Balaji31, which considered the issue as to whether foreign law firms/companies or foreign lawyers were entitled to practice law in India. This court considered the decision of the Madras High Court in A.K. Balaji v. Union of India32 and that of the High Court of Bombay in Lawyers Collective v. Bar Council of India33. The High Court of Bombay held that foreign law firms are not entitled to carry on litigious and non-litigious practice in India, since both are covered under the ambit of Advocates Act, 1961. The Madras High Court while agreeing with the view, distinguished it as being applicable only to foreign law firms attempting to establish liaison offices in India to render legal assistance in any litigious and nonlitigious matters. However, it was held that a foreign lawyer or a firm who is visiting India for a temporary period on a "flyin and fly-out" basis will be entitled to carry on all ancillary legal work except practice in a Court of Law.

64. This Court upheld the view of the High Court of Bombay that practice of law includes litigation as well as work in nonlitigious matters including: giving of opinions, drafting, participation in conferences and involving in legal discussions. That the regulatory mechanism for conduct of Advocates applies to non-litigious work was declared unequivocally. Insofar as visit of a foreign lawyer on a 'fly-in and fly-out' basis, it was held that though a casual visit for giving advice may not be covered by the definition of practice, determination of whether it was a casual visit or not would depend upon the facts in a given situation; to regulate which the Bar Council of India or the Union of India would be at liberty to make appropriate rules.

65. We have to also notice the judgment of the European Court of Justice (Grand Chamber) in Akzo Noble Limited v. European Commission31. That was a case in which the officials of the European Commission tasked with the investigation at the applicant's premises took copies of considerable number of documents, upon which the representatives of the applicant raised the issue of protection of confidentiality of the communication between themselves and their lawyers. A joint examination of the documents was made, two of which were e-mails exchanged between the General Manager of the applicant and the Co-ordinator for Competition Law; the latter though enrolled as an Advocate of the Netherland's Bar, at the material time was a member of the applicant's legal department, employed on a permanent basis. The role of the Co-ordinator was akin to an In-house counsel and the Court found against the privilege claimed on the following points, which we extract hereunder with approval:

> "The benefit of legal professional privilege with respect to communications between lawyers and their clients is subject to two cumulative conditions. First, the exchange with the lawyers must be

connected to the client's rights of defence and, second, the exchange must emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment.

It follows that the requirement of independence means that there should exist no employment relationship between the lawyer and his client, so that legal professional privilege does not cover exchanges within a company or group with In-house lawyers.

The concept of the independence of lawyers is determined not only positively, that is by reference to professional ethical obligations, but also negatively, by the absence of an employment relationship.

An In-house lawyer, despite his enrolment with a Bar or Law Society and the professional ethical obligations to which he is, as a result, subject, does not enjoy the same degree of independence of his employer as a lawyer working in an external law firm does in relation to his client. Consequently, an In-house lawyer is less able to deal effectively with any conflicts between his professional obligations and the aims of his client. An In-house lawyer cannot, whatever guarantees he has in the exercise of his profession, be treated in the same way as an external lawyer, because he occupies the position of an employee which, by its very nature, does not allow him to ignore the commercial strategies pursued by his employer, and thereby affects his ability to exercise professional independence.

Furthermore, under the terms of his contract of employment, an In-house lawyer may be required to carry out other tasks which may have an effect on the commercial policy of the undertaking and which cannot but reinforce the close ties between the lawyer and his employer.

It follows that, because both of an In-house lawyer's economic dependence and of the close ties with his employer, he does not enjoy a level of professional independence comparable to that of an external lawyer.

In-house lawyers being in a fundamentally different position from that of external lawyers, so that their respective circumstances are not comparable, no breach of the principle of equal treatment results from the different treatment of those professionals with respect to legal professional privilege.

Even assuming that the consultation of Inhouse lawyers employed by the undertaking or group were to be covered by the right to obtain legal advice and representation, that would not exclude the application, where In-house lawyers are involved, of certain restrictions and rules

relating to the exercise of the profession without that being regarded as adversely affecting the rights of the defence.

Finally, the fact that, in the course of an investigation by the Commission, legal professional privilege is limited to exchanges with external lawyers in no way undermines the principle of legal certainty."

66. We are in respectful agreement with the above propositions, which squarely apply insofar as In-house counsel, who are taken away from the definition of an Advocate, practising law independently whether it be in litigation or non-litigious matters, as distinguished from a fulltime salaried employment. An In-house counsel though is engaged in the job of advising his employer on questions of law would even then be influenced by the commercial and business strategies pursued by his employer and would always be beholden to his employer and obliged to protect their interest.

The Way Forward;

67. On a broad conspectus of the Client-Advocate privilege as codified in Section 132 to 134 of the BSA; though we are not persuaded to lay down any guidelines, which we believe are sufficiently available on an interpretation of the provisions itself, which also restrains us from constituting a committee of legal professionals, we issue the following directions; to ensure that the privilege is not impinged upon by valiant investigators or overzealous parties to a litigation, purely on the basis of the interpretation of the evidentiary rules codified :

1. Section 132 is a privilege conferred on the client, obliging an Advocate not to disclose any professional communications, made in confidence, which privilege, in the absence of the client can be invoked by the Advocate on behalf of the client.

1.1 The Investigating Officers in a criminal case or a Station House Officer conducting a preliminary inquiry in a cognizable offence shall not issue a summons to an Advocate who represents the accused to know the details of the case, unless it is covered under any of the exceptions under Section 132.

1.2 When a summons is so issued to an Advocate, under any of the exceptions, it shall explicitly specify the facts on which the exception is sought to be relied upon, which shall also be with the consent of the superior Officer not below the rank of a Superintendent of Police who shall record his satisfaction as to the exception in writing, before the summons is issued.

1.3 A summons so issued shall be subject to judicial review at the instance of the Advocate or the client under Section 528 of the BNSS.

1.4 The Advocate on whom there is an obligation of non-disclosure as per Section 132 of the BSA shall be one who is engaged in a litigation or in a non-litigious or a pre-litigation matter.

2. Production of documents in the possession of the Advocate or the client will not be covered under the privilege conferred by Section 132, either in a civil case or a criminal case.

2.1 In a criminal case, the production of a document directed by a Court or an Officer shall be complied with by production before the Court under Section 94 of the BNSS; being regulated also by Section 165 of the BSA.

2.2 In a civil case, the production of a document shall be regulated by Section 165 of BSA and Order XVI Rule 7 of the Civil Procedure Code.

2.3 On production of such document, it shall be upon the Court to decide on any objection filed with respect to the order to produce, and the admissibility of the document, after hearing the Advocate and the party whom the Advocate represents.

3. The production of a digital device under Section 94 of the BNSS if directed by an Investigating Officer, the direction shall only be to produce it before the Jurisdictional Court.

3.1 On production of the digital device by the Advocate before the Court; the Court shall issue notice to the party with respect to whom the details are sought to be discovered from the digital device and hear the party and the Advocate on any objection regarding the production of the digital device, discovery from it and the admissibility of that discovered.

3.2 If the objections are overruled by the Court, then the digital device shall be opened only in the presence of the party and the Advocate, who will be enabled due assistance of a person with expertise in digital technology, of their choice.

3.3 While examining the digital device, care shall be taken by the Court not to impair the confidentiality with respect to the other clients of the Advocate and the discovery shall be confined to that sought by the Investigating Officer, if it is found to be permissible and admissible.

4. In-house counsel will not be entitled to the privilege under Section 132 since they are not Advocates practicing in Courts as spoken of in the BSA.

4.1 The In-house counsel, however, would be entitled to the protection under Section 134 insofar as any communication made to the legal advisor of his employer, which however, cannot be claimed for the communications between the employer and the In-house counsel.

68. With the above directions, we dispose of the Suo Motu case, setting aside the summons issued in the SLP (Crl.) No. 9334 of 2025 and

cautioning gallant Investigating Officers from transgressing impulsively, the privilege under Section 132, which could result in violating the statutory provision and more importantly result in the infringement of the fundamental rights guaranteed to the person whom the Advocate represents, by the Constitution of India.

……..CJI. (B. R. Gavai)

…….. J. (K. Vinod Chandran)

…….. J. (N.V. Anjaria)

New Delhi;

October 31, 2025

1 473 U.S. 305 (1985)

2 for short, the BNSS

3 hereafter, the 'I.O.'

4 for short, 'the BSA'

5 (2005) 6 SCC 1

6 AIR 1997 SC 3011

7 (1997) 1 SCC 416

8 (1975) 2 SCC 702

9 (1994) 2 SCC 204

10 (1995) 5 SCC 716

11 (2004) 6 SCC 422

12 39 E. R. 618 (1833)

13 600 F.2d 1223 (6th Cir. 1979)

14 2016 SCC OnLine Can SC 30

15 (2001) 2 SCC 221

16 AIR 1936 P.C. 224

17 1995 SCC Online Kerala 48

18 (1978) 3 SCC 544

19 (2011) 12 SCC 513

20 (2020) 19 SCC 178

21 (1980) 1 SCC 98 & 108

22 (2008) 2 SCC 409

23 (2019) SCC 1

24 (1928) 277 US 218

25 McCulloch v. Maryland, 17 U.S. 316 (1819)

26 1935 SCC OnLine All: 310

27 AIR 1939 Mad 914

28 AIR 1962 Guj 290

29 (2019) 19 SCC 405

30 2025 SCC OnLine SC 2196

31 (2018) 5 SCC 379

32 2012 SCC OnLine Mad 723

33 2009 SCC OnLine Bom 2028

4. Study Material-G.K.

TRIPARTITE STRUGGLE AND CHOLAS

New Kings and Kingdoms

- Many dynasties emerged during 7th century.
- By the 7th century there were big landlords or warrior chiefs in different regions of the subcontinent.
- Existing kings often acknowledged them as their subordinates or samantas. As these samantas gained power and wealth, they declared themselves to be maha-samanta, maha- mandaleshvara (the great lord of a "circle" or region) and so on.
- Sometimes they asserted their independence from their overlords.
- Rashtrakutas in the Deccan is one such instance. Initially they were subordinate to the Chalukyas of Karnataka. In the mid-eighth century, Dantidurga, a Rashtrakuta chief, overthrew his Chalukya overlord.
- In each states, resources were obtained from the producers, that is, peasants, cattle-keepers, artisans, who were often persuaded or compelled to surrender part of what they produced.
- Prashastis contain details that may not be literally true. But they tell us how rulers wanted to depict themselves – as valiant, victorious warriors, for example.
- However author named Kalhana composed Sanskrit poems in 12th century and he was critical about the rulers and their policies.
- Kanauj in the Ganga valley was a prized area. For centuries, rulers belonging to the Gurjara-Pratihara, Rashtrakuta and Pala dynasties fought for control over Kanauj. Historians often describe it as the "tripartite struggle".
- Rulers also tried to demonstrate their power and resources by building large temples.
- Sultan Mahmud of Ghazni, Afghanistan [ruled 997-1030] and extended control over Central Asia, Iran and north-west parts of subcontinent used to attack these temples including Somnath of Gujarat.
- Al-Biruni, Gazni's trusted scholar was made to write about to subcontinent he conquered. This arabic wrok Kitanb-al-Hind sought help from Sankrit scholars too.
- Chauhans /Chahamanas, who ruled over the region around Delhi and Ajmer.
- They attempted to expand their control to the west and the east, where they were opposed by the Chalukyas of Gujarat and the Gahadavalas of western Uttar Pradesh.

- The best-known Chahamana ruler was Prithviraja III (1168-1192), who defeated an Afghan ruler named Sultan Muhammad Ghori in 1191, but lost to him the very next year, in 1192.

THE CHOLAS

- Vijayalaya, who belonged to the ancient chiefly family of the Cholas from Uraiyur, captured the delta from the Muttaraiyar in the middle of the ninth century. He built the town of Thanjavur and a temple for goddess Nishumbhasudini there.
- The successors of Vijayalaya conquered neighbouring regions and the kingdom grew.
- Rajaraja I, considered the most powerful Chola ruler, became king in AD 985 and expanded the control.
- Rajaraja's son Rajendra I continued his policies and even raided the Ganga valley, Sri Lanka and countries of Southeast Asia, developing a navy for these expeditions.
- The big temples of Thanjavur and Gangaikonda- cholapuram, built by Rajaraja and Rajendra.
- Chola temples often became the nuclei of settlements which grew around them. And these temples were not only places of worship; they were the hub of economic, social and cultural life as well.
- Many of the achievements of the Cholas were made possible through new developments in agriculture.
- Settlements of peasants, known as *ur*, became prosperous with the spread of irrigation agriculture. Groups of such villages formed larger units called *nadu*.
- The village council and the nadu had several administrative functions including dispensing justice and collecting taxes.
- Rich peasants of the *Vellala* caste exercised considerable control over the affairs of the nadu under the supervision of the central Chola govt.

5. Study Material-Language

One Word Substitutions

Phrase	One Word
Printing using a stone or a metal plate with a completely smooth surface	Lithography
Mapping of earth and its formation	Geography
Art related to ornate, good handwriting	Calligraphy
Scientific study of bodily diseases	Pathology
Study of birds	Ornithology
Study of celestial bodies	Astronomy
Study of collection of coins, tokens, paper money etc.	Numismatics
Study of earth and rocks	Geology
Study of election trends	Psephology
Study of flying aero planes	Aviation
Study of handwriting	Graphology
Study of hereditary, genes and variation in living organisms	Genetics
Study of human development	Anthropology
Study of languages	Philology
Study of living things	Biology
Study of religion	Theology
Study of science of insects	Entomology
Study of sound and sound waves	Acoustics
Study of the influence of planets and stars on human events	Astrology
Study of the law of the flow of water and other liquids	Hydraulics
Study of the relation between the organism and their environment	Ecology
Study of various aspects of aging	Gerontology
The science of time order	Chronology
Study of religion	Theology
The science of human development	Anthropology
One with unlimited power	Autocrat
One who walks on ropes	Funambulist
An expert in writing by hand	Chirographer
The doctor who attends to child delivery	Obstetrician
The doctor who attends to corns in the feet and hands	Chiropodist
The doctor who deals with the female reproductive system	Gynecologist
The doctor who specializes in root canal and nerve treatment	Endodontist
The doctor who straightens teeth	Orthodontist
The doctor who treats bone problems	Orthopedician
The doctor who treats eye diseases	Ophthalmologist

The doctor who treats gums	Peridontist
The doctor who treats heart problems	Cardiologist
The doctor who treats skin diseases	Dermatologist
One who is all powerful	Omnipotent
One who is all knowing	Omniscient
One who is present all over	Omnipresent
One who can throw his voice	Ventriloquist
One who talks while sleeping	Somniloquist
One who takes part in dialogue or conversation	Interlocutor
One who walks in sleep	Somnambulist
One who walks at night	Noctambulist
One who is violently against established beliefs and traditions	Iconoclast
One who turns his thoughts inwards	Introvert
One who turns his thoughts outwards	Extrovert
One who is both inwards and outwards at times	Ambivert
One who demands strict conformity to rules	Martinet
One who believes in ruthless self-aggrandizement	Egoist
One who doesn't consume alcohol	Teetotaler
One who exhibits courage or fearlessness	Intrepid
One who easily believes others	Credulous
One who is capable of using both hands	Ambidextrous
One who knows a lot about good food and wine	Connoisseur
One who is beyond reform	Incorrigible
Well known for bad qualities	Notorious
Perfectly, highly skilled reached the zenith of art	Consummate
A shrewish loud-mouthed female	Virago
One who is extravagantly romantic, chivalrous and impractical	Quixotic
One who is a boot licker, flatterer	Sycophant
One who has keen interest in food and drinks	Gourmet
Love for mankind	Philanthropy
Someone who loves collecting books	Bibliophile
One who loves and admires the British	Anglophile
One who loves without seriousness	Philanderer
Fondness towards women	Philogyny
One who loves men	Androphile
One who loves wisdom (hence pursues it)	Philosopher
One who hates men	Misandrist
Madness or obsession with males	Andromania
One who hates women	Misogynist
One who hates mankind	Misanthropist
One who loves his country	Patriot

Excessive love for one's country	Super patriotism
One who hates marriage	Misogamist
One who loves to speak	Loquacious
Strong, deep dislike	Antipathy
Simultaneously affected by similar feelings	Sympathy
Mentally identifying oneself with other person or a thing	Empathy
Something or someone makes you feel deep sadness or pity	Pathetic
Related to marriage	Matrimony
One who believes in the presence of God	Theist
One who doesn't believe in the presence of God	Atheist
One who believes in the theory of only one God	Monotheist
One who believes in many Gods	Polytheist
One who believes that God is union of all forces of the universe	Pantheist
Religious madness	Theomania
Battle among the Gods	Theomachy
Practicing only one marriage (having only one wife)	Monogamy
Practicing two marriages (having two wives)	Bigamy
Practice of several marriages (having many wives)	Polygamy
Self-fertilization especially in plants	Autogamy
Marriage within one's own tribe	Endogamy
Marriage outside one's tribe	Exogamy
Having several husbands	Polyandry
People who have both male and female sexual organs	Hermaphrodite
An inheritance from father	Patrimony
A name framed after father's name	Patronymic
Fatherhood	Paternity
A father-like figure	Patriarch
Government by one person (royal)	Monarchy
Government by two agencies	Diarchy
Government by a few powerful people	Oligarchy
Government by military class	Stratocracy
Government by divine guidance	Theocracy
Government by departments of state	Bureaucracy
Government by nobility	Aristocracy
Government by wealthy	Plutocracy
Government by the people	Democracy
A system of governing a country suggesting a father-child relation	Paternalism
Government by one absolutely	Autocracy
Absence of government	Anarchy
A system ruled or controlled by men	Patriarchy

The rule or control of mother	Matriarchy
Self-rule or control	Autonomy
The killing of one's husband	Mariticide
The killing of parents	Parricide
The killing of a whole race	Genocide
The killing of a new born child	Infanticide
The killing of a king	Regicide
The killing of a human being	Homicide
The killing of oneself	Suicide
The killing of a father	Patricide
The killing of a mother	Matricide
The killing of one's brother	Fratricide
The killing of one's sister	Sororicide
The killing of one's wife	Uxoricide
Morbid compulsion to keep on consuming alcohol	Dipsomania
Morbid compulsion to steal	Kleptomania
Morbid compulsion to steal books	Bibliokleptomania
Morbid compulsion to start a fire	Pyromania
Morbid delusion of power, importance or godliness	Megalomania
Morbid, uncontrollable desire on the part of a woman	Nymphomania
Morbid, uncontrollable desire on the part of a man	Satyromania
Person with one-track mind	Monomania
Compulsion to tell lies	Mythomania
Madness with obsession with something	Mania
Book containing all the published work of an author	Omnibus
A written message from far off place	Telegraph
Informal, less grammatically rigid language	Colloquial
Talking around, a method of talking indirectly	Circumlocution
Generous, forgiving talk	Magniloquent
Expressive in the use of words	Eloquent
High sounding pompous speech or writing	Grandiloquent
A signature of a celebrity (signature of oneself)	Autograph
Walk before hand or an introductory statement	Preamble
Writing of one's life story	Biography
Writing of one's own life story	Autobiography
Written by light	Photograph
Few words packed with meaning, concise	Laconic
A speech to oneself, alone	Soliloquy
A place for sun to enter where one can sunbath	Solarium
A glass container in which fish and other water animals can be kept	Aquarium
A place for feet or speaker's platform	Podium

The part of a theatre where people who are watching and listening sit	Auditorium
An optical device for projecting various celestial images and effects	Planetarium
An establishment for the treatment of the chronically ill	Sanatorium
A place where objects are exhibited	Museum
Trees whose leaves fall every autumn	Deciduous
That which falls upon, befalls, happens	Incident
That which falls to someone or something	Accident
That which falls on the western countries	Occidental
The school or college one attends	Alma Mater
A self-moving vehicle	Automobile
A machine that functions by itself	Automatic
A baby carriage	Perambulator
A carriage for sick people	Ambulance
Living on all	Omnivorous
Living on fruits	Frugivorous
One who eat only fruits	Fruitarian
One who eats no animal flesh	Vegetarian
One who feeds on human flesh	Cannibal
One who enjoys food with a sensual pleasure	Gourmand
One whose eating habit is repulsive	Glutton
Living on flesh	Carnivorous
Living on grass	Herbivorous
Living on fish	Piscivorous
One who eats all kinds of food	Omnivorous
A backward look or a view into the past	Retrospect
A forward look or a view into future	Prospect
Examine one's motives or look inwards	Introspect
To examine carefully	Inspect
A doubtful look or examination of one's motives	Suspect
Careful, cautious watch on surroundings	Circumspect
To walk aimlessly	Amble
When two things befall together	Coincident
A thing occurring again and again for a long time	Chronic
Someone or something out of time	Anachronism
To send out of one's native country	Expatriate
To walk around a place especially in a ritual fashion	Circumambulate
A highly accurate timepiece	Chronometer
Make to happen at the same time	Synchronize
An instrument which records short intervals of time	Chronograph
Capable of moving in all directions	Omnidirectional

6. Current Affairs

OCOTBER 2025

1. Himachal Pradesh's Cold Desert Biosphere Reserve becomes India's 13th UNESCO-recognized reserve.
2. Bihar Governor Arif Mohammad Khan inaugurated the 'Unmesh' International Literature Festival in Patna, featuring 550+ artists from 16 countries.
3. India has announced its first-ever cross-border rail links with Bhutan to strengthen trade and connectivity.
4. UDAN Yatri Cafe inaugurated at Vijayawada International Airport to provide affordable refreshments for passengers.
5. The United States and Türkiye signed a strategic civil nuclear cooperation agreement to boost nuclear technology and energy collaboration.
6. ICC and UNICEF launched the 'Promise to Children' campaign during the 2025 Women's Cricket World Cup to promote children's rights through cricket.
7. 18-year-old armless Indian archer Sheetal Devi makes history by winning gold at the 2025 World Para Archery Championship.
8. AFSPA has been extended for six more months from October 1, 2025, in parts of Manipur, Nagaland, and Arunachal Pradesh.
9. According to CPCB, Delhi-NCR and Mumbai recorded the highest ground-level ozone pollution in 2023–24.
10. Mukhi, born in Kuno National Park, has become India's first cheetah born in the country to reach adulthood, a major success for Project Cheetah.
11. According to NCRB 2023, India recorded 6.24 million cognizable crimes, with Kerala having the highest crime rate against women.
12. Balod in Chhattisgarh becomes India's first district officially declared child marriage-free.
13. Vietnam faces severe destruction as Typhoon Bualoi claims 19 lives and causes massive flooding and landslides.
14. Jal Prahar 2025 was a successful biannual joint amphibious exercise by the Indian Navy and Army along India's eastern coast.
15. Indian Army plans to acquire the indigenously developed 'Anant Shastra' air defence missile system to strengthen border security.
16. Praveer Ranjan, a 1993-batch IPS officer, took charge as Director General of CISF on 30th September 2025.
17. Andhra Pradesh Tourism Department recently won the 2025 Global Tourism Award for its exceptional efforts in sustainable tourism and heritage promotion.

18. Telangana's Bathukamma Festival set two Guinness World Records for largest floral arrangement and most synchronized women's performance.
19. CSIR-AMPRI inaugurated its indigenous SODAR system at IMD Delhi to enhance weather forecasting and disaster preparedness.
20. International Day of Older Persons 2025 was observed on 1 October with the theme **"Older Persons Driving Local and Global Action."**
21. The 12th Sustainable Mountain Development Summit in Dehradun emphasizes nature-aligned, community-driven Himalayan development.
22. 'Gaj Rakshak' app launched in Bandhavgarh to protect elephants and prevent human-wildlife conflicts."
23. India Implements TEPA with EFTA, Boosting Trade, Investment, and Consumer Benefits.
24. India actively represented at Mondiacult 2025 in Barcelona, highlighting culture's role in sustainable development.
25. India launches "Mission for Aatmanirbharta in Pulses" to achieve self-reliance in pulse production by 2030-31.
26. The Government launched the MY Bharat Mobile App to empower youth with opportunities in volunteering, internships, skill-building and career development.
27. DPIIT and Thermo Fisher Scientific signed an MoU to support over 500 biotech startups in India.
28. Professor R. Arthur James awarded TANSA 2022 for outstanding contributions to environmental science.
29. Renowned classical vocalist Pandit Chhannulal Mishra, Padma Bhushan awardee, passed away on 2nd October 2025, leaving a lasting legacy in Indian classical music.
30. On 2nd October, Gandhi Jayanti and International Day of Non-Violence inspire global peace, unity, and harmony.
31. Over 1.73 lakh people died in road accidents in India in 2023, with two-wheelers being the most affected.
32. India emerges as the world's third-largest e-waste producer, raising serious health and environmental concerns.
33. National Conference on Land Administration and Disaster Management in Gandhinagar highlighted digitisation, citizen-centric governance, and disaster resilience.
34. India warns Pakistan of decisive action over the sensitive Sir Creek border dispute.
35. RBI forms a six-member Payments Regulatory Board to strengthen oversight of all payment systems in India.
36. Sumit Antil wins his third consecutive F64 javelin world championship gold with a new record of 71.37 meters.

37. Cabinet approves Phase III of BRCP to promote top-tier biomedical research and global collaborations.
38. Ashwini Vaishnaw launches NIELIT Digital University to expand high-quality digital education across India.
39. On October 4, 2025, World Animal Day 2025 was observed, calling for the protection of animals and action for a sustainable planet at a global level.
40. Himachal Pradesh's snow leopard population rises 62% in four years, highlighting successful community conservation.
41. India sets a new record by building the world's highest motorable road at Mig La Pass, Ladakh.
42. India's first cooperative multi-feed Compressed Biogas (CBG) plant inaugurated in Maharashtra, promoting green energy and rural development.
43. Poland to link its national fuel network with NATO's pipeline to boost defense and energy security.
44. 11th World Green Economy Summit 2025 kicks off in Dubai, focusing on renewable energy and sustainable technologies.
45. India and Singapore marked 60 years of diplomatic ties with the 'India-Singapore @60: Partnership for Growth and Engagement' session in Singapore.
46. Coal India's SECL launches its first all-women-operated Central Store Unit in Korba, promoting gender equality and women's leadership in the coal sector.
47. Finance Minister Nirmala Sitharaman launched the nationwide campaign 'Your Capital, Your Right' to help citizens claim unclaimed financial assets.
48. India wins ISSA Award 2025 for outstanding achievement in social security.
49. World Teachers' Day 2025 celebrated the vital role of teachers and emphasized collaboration to enhance education globally.
50. Cyclone Shakti turns severe in the Arabian Sea; IMD issues yellow alert for Maharashtra.
51. India launches the National Camel Sustainability Initiative to conserve camels and support desert livelihoods.
52. India is celebrating 150 years of the National Song Vande Mataram, honoring its legacy and patriotic significance.
53. Union Environment Minister Bhupender Yadav launched key species conservation projects during Wildlife Week 2025 celebrations in Dehradun, themed 'Human–Wildlife Coexistence.'
54. The Philippines has launched the world's first coral larvae cryobank to preserve genetic diversity and restore endangered reefs.
55. PM Modi launches ₹62,000 crore youth-focused initiatives to boost skilling, education, and entrepreneurship.

56. The Fourth Kautilya Economic Conclave (KEC 2025) in New Delhi focused on resilient and inclusive growth amid global uncertainty.
57. Exercise KONKAN-2025, conducted by India and the United Kingdom, strengthens maritime security and regional stability.
58. The 2025 Nobel Prize in Physiology or Medicine was awarded for discovering regulatory T cells, crucial for preventing autoimmune diseases and advancing medical therapies.
59. World Cotton Day, observed on October 7, celebrates cotton's vital role in rural livelihoods, trade, and sustainable development.
60. Rajasthan's first 'Namo Biodiversity Park' in Alwar aims to boost greenery, improve air quality, and promote environmental awareness.
61. Recently, Typhoon Matmo affected southern China.
62. ILO 2025 report shows progress in social justice, but global inequalities and trust deficits remain a challenge.
63. Global tobacco use is declining, but rising e-cigarette use among youth poses a new public health challenge.
64. India expanded UPI to retail stores in Qatar to enable secure and instant payments for expatriates.
65. India launches ₹1,500 crore scheme to boost recycling of critical minerals and promote self-reliance in green industries.
66. India creates history at the World Para Athletics Championships 2025 with a record 22 medals, showcasing its growing dominance in para sports.
67. President Droupadi Murmu presented the MY Bharat-NSS Awards 2022-23 to honor outstanding NSS units and volunteers for their community service.
68. John Martinis, Michel H. Devoret, and John Clarke win the 2025 Nobel Prize in Physics for proving that large systems can exhibit quantum behavior, paving the way for quantum computing.
69. India unveils logo for AI Summit 2026, symbolizing ethical innovation and inclusivity.
70. The Indian Air Force celebrated its 93rd Air Force Day with a grand parade, showcasing its strength, indigenous technology, and dedication to national service.
71. India joins regional powers to oppose foreign military presence in Afghanistan.
72. Cabinet approves four major multi-tracking railway projects across four states, boosting connectivity, reducing emissions, and supporting regional development.
73. India expands e-NAM by adding 9 new commodities, enhancing market access, transparency, and income for farmers.
74. DRDO launches IRSA 1.0, boosting India's self-reliance in military communication technology.

75. Group Captain Shubhanshu Shukla, India's first ISS astronaut, becomes the brand ambassador of Viksit Bharat Buildathon, inspiring students nationwide.
76. The 2025 Nobel Prize in Chemistry honored Susumu Kitagawa, Richard Robson, and Omar Yaghi for developing metal–organic frameworks that revolutionized molecular design and offer solutions for pollution and water scarcity.
77. Jyotiraditya Scindia inaugurated the SatCom Summit at India Mobile Congress 2025 to boost digital connectivity in remote villages through satellite communication.
78. CBI, in collaboration with global agencies, busted international cybercrime networks under Operation HAECHI-VI, arresting 8 and identifying 45 suspects.
79. International Abhidhamma Day celebrated the timeless wisdom and contemporary relevance of Buddhist philosophy.
80. PM Narendra Modi launches Mumbai One app, India's first unified public transport ticketing platform.
81. India's first commercial electric truck battery swapping-cum-charging station inaugurated by Nitin Gadkari in Sonipat.
82. EU launches new biometric Entry/Exit System for non-EU travelers to enhance border security and streamline travel.
83. Four Indian universities, led by IISc Bangalore, feature in Times Higher Education World University Rankings 2026.
84. US to supply Pakistan with advanced AIM-120 missiles, boosting its air combat capabilities.
85. Mukesh Ambani retains the top spot on Forbes India Rich List 2025 with a $105 billion fortune, remaining India's only centibillionaire.
86. NPCI and RBI launch biometric UPI, enabling secure, PIN-free payments via fingerprint or facial recognition.
87. Hungarian novelist László Krasznahorkai wins the 2025 Nobel Prize in Literature for his visionary and thought-provoking works.
88. NITI Aayog releases a landmark AI roadmap to empower India's 490 million informal workers and drive inclusive societal development.
89. National Post Day on October 10 celebrates the Indian postal service's 150+ years of connecting people across the country.
90. Tamil Nadu has allocated ₹1 crore for the conservation of four lesser-known endangered species to promote biodiversity and ecological balance.
91. Ministry of Labour & Employment seeks public feedback on draft Shram Shakti Niti 2025 to build a fair, inclusive, and future-ready workforce.
92. India launched the National Red List Roadmap 2025–2030 at IUCN World Conservation Congress to strengthen biodiversity conservation.

93. Ministry of Minority Affairs signs MoU with IIT Palakkad under PM VIKAS to skill 400 candidates from minority communities in Kerala.
94. HDFC Bank launches India's first 'My Business QR' powered by Vyaparify to digitally empower 63 million SMEs with a complete commerce identity.
95. 6th Global Fintech Fest 2025, conducted in Mumbai, showcased India's leadership as a global fintech hub with AI-driven innovations.
96. Indian Army strengthens battlefield security with the indigenous 'Saksham' counter-drone system."
97. India and Australia strengthen defence ties with key agreements to enhance cooperation and security in the Indo-Pacific.
98. Maria Corina Machado wins the 2025 Nobel Peace Prize for her courageous fight for democracy and human rights in Venezuela.
99. Sherry Singh's historic Mrs. Universe 2025 win celebrates beauty, intellect, leadership, and resilience, inspiring women across India and the world.
100. World Mental Health Day 2025, celebrated on 10 October, emphasizes timely support for mental health during emergencies.
101. Sugamya Bharat App launched at Purple Fest to empower persons with disabilities and promote inclusive access.
102. Union Minister Shri Sarbananda Sonowal, along with Assam Chief Minister Dr. Himanta Biswa Sarma, distributed capital assistance under the "Mukhyamantri Mahila Udyamita Abhiyan" in Dibrugarh.
103. China Imposes Stricter Controls on Rare-Earth Exports, Raising Global Tech and Security Concerns
104. India and the UK launch the Connectivity & Innovation Centre to advance secure, innovative telecom and digital inclusion.
105. Three major Indian ports:- Deendayal, V.O. Chidambaranar and Paradip designated as Green Hydrogen Hubs to boost India's clean energy transition.
106. Prime Minister Shri Narendra Modi inaugurated the "Pradhan Mantri Dhan-Dhanya Kisan Yojana" and "Dalhan Atmanirbhar Mission" in Pusa, Delhi.
107. Jasprit Bumrah becomes the first Indian fast bowler to play 50 matches across all three formats.
108. India inaugurates its first Semiconductor Innovation Museum in Hyderabad to showcase cutting-edge technology and promote innovation.
109. The International Union for Conservation of Nature (IUCN) has announced that the green sea turtle (Chelonia mydas) has improved its Red List status from Endangered to Least Concern
110. 'AI for Good – Impact India Summit 2025' showcased India's leadership in using Artificial Intelligence for sustainable development and ethical digital growth.

111. India will upgrade its Maitri research station in Antarctica with the next-generation Maitri II, featuring advanced, green, and automated facilities.
112. Alliance Air's 'Fair Se Fursat' scheme ensures fixed airfares for all, making flying simpler, transparent, and affordable.
113. India represented by Kirti Vardhan Singh at historic Sharm El-Sheikh Gaza Peace Summit, supporting ceasefire, reconstruction, and regional stability.
114. Palau hosted the world's first live underwater interview, raising global awareness about ocean conservation and the risks of rising sea levels.
115. NITI Aayog's 'India Blue Economy' report outlines a roadmap to boost deep-sea fisheries, sustainable management, and make India a global leader.
116. Recently, the PM GatiShakti Public portal was launched to provide easy access to geo-spatial data, boosting infrastructure planning and transparency.
117. Piyush Goyal launches 'LEAPS 2025' to boost excellence, innovation, and sustainability in India's logistics sector.
118. India and Australia launch 4th edition of joint military exercise AUSTRAHIND 2025 in Perth to boost defence cooperation and interoperability.
119. Recently, the IUCN published the Global Land Outlook report, highlighting that nearly one-third of Earth's land is altered by humans and urging ecological connectivity to restore ecosystems and protect biodiversity.
120. For the first time in India, the Araneus nox spider was recorded in Kerala's Idukki Wildlife Sanctuary, adding a new species to the country's arachnid diversity.
121. Archaeologists in Thirumalapuram, Tamil Nadu, discover one of South India's oldest Iron Age burial sites, revealing ancient craftsmanship and burial practices.
122. According to the Henley Passport Index 2025, Singapore tops the list with 193 visa-free destinations, while India ranks 85th with access to 59 countries.
123. India and Mongolia deepen cooperation with 10 MoUs covering aid, heritage, immigration, geology, cooperatives, and digital solutions.
124. According to the Labour and Employment Ministry and World Bank data, India's female workforce participation has risen from 23% to 42% (2017-18 to 2023-24), leading BRICS nations in growth.
125. The government has extended the tenure of the 16th Finance Commission till November 30, 2025, to allow more time for reviewing submissions from states and ministries.

126. Dr. Sonali Ghosh, Director of Kaziranga National Park, became the first Indian to win the IUCN's prestigious Kenton R. Miller Award for pioneering community-driven conservation.
127. On 14 October, the International Electrotechnical Commission (IEC), the International Organization for Standardization (ISO), and the International Telecommunication Union (ITU) celebrated World Standards Day, honoring global experts who create international standards.
128. According to the IUCN World Heritage Outlook 4 report, climate change, invasive species, and wildlife diseases are threatening natural World Heritage sites, with India's Manas, Sundarbans, and Western Ghats facing significant concern.
129. Defence Minister Rajnath Singh launched CDS General Anil Chauhan's book 'Ready, Relevant and Resurgent II: Shaping a Future Ready Force', showcasing a visionary roadmap for India's future-ready armed forces.
130. Uttar Pradesh launches Gomti River Rejuvenation Mission to restore the river's cleanliness, flow, and ecological health.
131. 16th IREE 2025 was held in New Delhi, showcasing innovations and modern technologies in railway and metro sectors.
132. Amid youth-led protests over power and water shortages, Madagascar's military seized control, highlighting the country's ongoing political instability.
133. Maldives becomes the first country to eliminate mother-to-child transmission of HIV, hepatitis B, and syphilis.
134. Hindustan Shipyard Limited (HSL) recently got Mini Ratna status, enhancing its financial strength and innovation in maritime defence.
135. Recently launched, EPFO's 'Vishwas Scheme' cuts PF penalties, simplifies litigation, and ensures members' retirement security.
136. Telangana tops India in per capita UPI transaction intensity, reflecting strong digital adoption and a shift towards a less-cash economy.
137. India hosted the 11th Asian Aquatics Championships 2025 in Ahmedabad, where Srihari Nataraj led India to win 13 medals.
138. The Defence Research and Development Organisation (DRDO) and the Solar Energy Corporation of India (SECI) signed a MoU to develop 300 Megawatt solar projects across DRDO campuses, aiming for Net-Zero defence establishments by 2027.
139. World Anaesthesia Day on October 16 honors painless surgery and the vital role of anaesthesiologists.
140. Assam's CM-FLIGHT program trains youth in Japanese to prepare 50,000 candidates for employment in Japan under the Specified Skilled Worker (SSW) visa by 2030.
141. PM Modi launches Rs. 13,430 crore development projects in Kurnool, boosting infrastructure, industry, and connectivity.

142. India's wild elephant population has declined to 22,446, according to the first DNA-based national census, highlighting conservation challenges like habitat loss and human-elephant conflicts.
143. Uruguay becomes the first Latin American country to legalize euthanasia, allowing terminally ill adults to choose a dignified death.
144. India elected unopposed to UN Human Rights Council for 2026–28, reaffirming its commitment to global human rights.
145. India and Kyrgyz Republic agreed to strengthen cooperation on counterterrorism and regional security, highlighting India's role as a reliable Central Asia partner.
146. Trump administration announces plan to double U.S. financial aid for Argentina to $40 billion to stabilize its economy.
147. Abhishek Sharma and Smriti Mandhana shine as ICC Players of the Month for September 2025 with record-breaking performances.
148. India and Indonesia are strengthening maritime ties through the 5th edition of the joint naval exercise 'Samudra Shakti – 2025' in Visakhapatnam.
149. Anant Goenka has been appointed as FICCI President-Elect for 2025–26.
150. On October 17, 2025, the International Day for the Eradication of Poverty highlights dignity, justice and effective support for families to end poverty worldwide.
151. The Ministry of Mines launched the State Mining Readiness Index (SMRI) to promote sustainable and competitive mining across India.
152. Ahmedabad has been recommended as the host city for the 2030 Commonwealth Games.
153. Amit Shah laid the foundation for NSG's training centre in Manesar, Haryana and announced a new hub in Ayodhya.
154. India offered its indigenous Akash missile system to Brazil to strengthen defence ties and promote collaboration.
155. India and South Korea began their first bilateral naval exercise IN–RoKN at Busan to enhance maritime cooperation.
156. Harsh Sanghavi appointed Deputy Chief Minister and Rivaba Jadeja joins as Education Minister, boosting youth, women, and regional representation ahead of the 2027 Gujarat elections.
157. Uttarakhand AI Impact Summit held in Dehradun to promote AI for social inclusion, innovation, and public service.
158. India supplied Prussian Blue capsules to Indonesia to counter Cesium-137 contamination, supporting regional radiation preparedness.
159. Six new dragonfly species were discovered in Kerala's Silent Valley National Park, raising biodiversity to 109 species.
160. According to the WMO, atmospheric CO_2 levels hit a record 424 ppm in 2024, intensifying global warming.

161. India ranks 9th globally in forest area and 3rd in annual forest gain due to successful afforestation and community conservation initiatives.
162. Tuvalu becomes 90th IUCN member, gaining global support for conservation, climate adaptation, and biodiversity protection.
163. India upgrades its Kabul mission to a full embassy to enhance development, aid, and strategic engagement while not recognizing Taliban.
164. US and Australia sign $8.5B deal to boost rare earths supply, reduce reliance on China, and secure critical minerals.
165. NITI Aayog and DP World launch 'We Rise' to mentor 100 women-led MSMEs and promote their global trade and exports.
166. Max Verstappen wins 2025 US Grand Prix from pole, narrowing Piastri's lead and keeping the F1 championship race alive.
167. Transgender activist Akkai Padmashali joins Supreme Court committee as first transgender member to draft national inclusion policy.
168. Sanae Takaichi becomes Japan's first female PM, implementing Abenomics-style reforms and conservative social and defense policies.
169. Bolivia elects center-right Rodrigo Paz as president, ending 20 years of socialist rule and promising economic reforms and decentralization.
170. Ayodhya's Deepotsav 2025 sets Guinness records with 26 lakh diyas and 2,128 priests performing synchronized Maha Aarti.
171. Saudi Arabia ends its 50-year-old Kafala system, granting migrant workers freedom and new rights.
172. India drops to 85th rank in the Henley Passport Index as China climbs to 64th; Indian passport now offers visa-free access to 57 countries.
173. IWAI hands over Haldia Multimodal Terminal to IRC Natural Resources under PPP model as part of the Jal Marg Vikas Project.
174. India-Japan Fund invests ₹500 crore in Eka Mobility to boost EV manufacturing and strengthen Indo-Japan climate cooperation.
175. India's gold reserves cross $100 billion for the first time as global bullion prices rise, making up 14.7% of total forex reserves.
176. Lxme launches 'LxmePay', India's first women-only UPI app that rewards transactions with digital gold to boost savings.
177. Zoravar Singh Sandhu wins bronze in men's trap at ISSF Shotgun World Championships 2025 in Athens, marking India's third world-level medal.
178. Jyothi Surekha Vennam becomes first Indian woman to win a medal at Archery World Cup Final, clinching bronze in Nanjing.
179. Veteran actor Govardhan Asrani, known for his comic roles in classics like Sholay and Chupke Chupke, passes away at 84.
180. CDSCO launches a digital monitoring system to track high-risk pharmaceutical solvents in real time, ensuring safer medicines for all.

181. In India, air pollution claimed nearly 2 million lives in 2023 and led to over 54,000 dementia-related deaths in 2024, underscoring a growing public health emergency.
182. Italy faces a historic decline in birth rates, intensifying its demographic and economic challenges.
183. Fiji becomes the 26th country globally to eliminate trachoma as a public health problem, showcasing its commitment to fighting neglected tropical diseases.
184. The Consumer Affairs Ministry has updated the Vegetable Oil Products Order, 2025, making it mandatory for all edible oil producers and suppliers to register and submit monthly reports to improve oversight and transparency.
185. DPIIT partnered with Primus Partners to strengthen India's startup ecosystem and promote innovation and entrepreneurship.
186. INS Sahyadri enhances India-Japan naval cooperation at JAIMEX-25 through advanced drills and cultural exchanges.
187. Belarusian and Georgian journalists Andrzej Poczobut and Mzia Amaglobeli receive the 2025 Sakharov Prize for defending human rights and democracy.
188. Several Indian Army and Air Force personnel, including Colonel Koshank Lamba and Group Captain Ranjeet Singh Sidhu, have been awarded the Vir Chakra for exceptional bravery during operations like Operation Sindoor.
189. Veteran ISRO scientist and pioneer of India's space programme Eknath Vasant Chitnis passed away at 100.
190. OpenAI launches ChatGPT Atlas, an AI-powered browser integrating ChatGPT into web navigation while offering personalized assistance and task automation.
191. East Timor (Timor-Leste) joins ASEAN as its 11th member on October 26, 2025.
192. India re-elected as the Asia-Pacific Vice-Chair of the COP10 Bureau on Anti-Doping, reaffirming its global commitment to clean and fair sport.
193. Madras High Court's 2025 ruling declares cryptocurrency as "property," ensuring legal protection for digital asset holders in India.
194. Odisha's 16-year-old Priteesmita Bhoi made India proud by winning gold and setting a world youth record at the Asian Youth Games 2025.
195. Lionel Messi wins his first MLS Golden Boot 2025 with 29 goals, leading Inter Miami to playoff glory.
196. India begins "Trishul 2025", a massive tri-service combat exercise showcasing joint military strength along the Pakistan border.
197. Indian-origin historian Sunil Amrith won the British Academy Book Prize 2025 for his book "The Burning Earth," highlighting the deep link between human civilization and environmental change.

198. India sets new BIS standards for NavIC receivers, boosting self-reliance in satellite navigation technology.
199. Observed on October 24, World Polio Day 2025 highlights global efforts to eradicate polio and protect every child through vaccination.
200. October 23 is observed as International Day of the Snow Leopard to raise awareness and strengthen global efforts to protect the 'ghost of the mountains.'
201. China's CR450 sets a new global speed record, becoming the world's fastest bullet train at 450 km/h.
202. Trump's Malaysia visit marks a new era of US-ASEAN cooperation with the signing of the historic KL Peace Accord.
203. 2026 to be celebrated as the "ASEAN-India Year of Maritime Cooperation," announced PM Modi.
204. India creates history as the first non-NATO nation to join Spain's Ocean Sky 2025 air combat exercise.
205. Justice Surya Kant to become the 53rd Chief Justice of India from November 24, 2025.
206. India honors scientific brilliance with the announcement of the National Science Awards 2025, celebrating excellence and innovation across diverse fields.
207. Observed on October 27, World Day for Audiovisual Heritage 2025 highlights the global effort to preserve humanity's cultural memories.
208. President Droupadi Murmu inaugurated Yashoda Medicity in Ghaziabad, emphasizing quality healthcare as key to building a healthy and developed India.
209. President Murmu inaugurates the 100th Mahasamadhi centenary of Sree Narayana Guru at Sivagiri Mutt, honoring his message of unity and equality.
210. Uttarakhand government to levy a "Green Tax" from December 2025 to protect the Himalayas and curb vehicular pollution.
211. ANRF, ICMR, and Gates Foundation launch Maha MedTech Mission to boost India's medical innovation and self-reliance in healthcare technology. ANRF,
212. Cyclone Montha intensifies into a severe storm, prompting high alerts and mass evacuations along the Andhra coast.
213. 72 countries unite under the UN's Hanoi Convention to fight cybercrime and strengthen global digital security.
214. IUCN's World Heritage Outlook 4 Report lists India's Western Ghats, Manas, and Sundarbans as sites of "Significant Concern," calling for urgent conservation action.
215. India and ASEAN strengthen partnership at the 22nd Summit in Kuala Lumpur, focusing on inclusivity, sustainability, and maritime cooperation.

216. Japan launches the world's first yen-pegged stablecoin, JPYC marking a new era in digital finance.
217. India charts course to become a global maritime leader as Amit Shah inaugurates India Maritime Week 2025 in Mumbai.
218. Olympic gold medallist Neeraj Chopra honoured as Honorary Lieutenant Colonel in the Indian Army's Territorial Force.
219. International Animation Day 2025 celebrates the magic of storytelling through art and imagination on October 28.
220. Rajasthan bans child labour under the Rajasthan Shops and Commercial Establishments (Amendment) Ordinance, 2025, ensuring safer and fairer workplaces.
221. Government inks MoUs with 17 institutions under the Gyan Bharatam Mission to preserve and digitize India's manuscript heritage.
222. US and Japan sign a landmark pact to boost cooperation on rare earth minerals and advanced nuclear power, reducing reliance on China.
223. A bronze bust of Rabindranath Tagore was unveiled at the Indian Embassy in Beijing, marking 100 years of his historic visit to China.
224. Hurricane Melissa, a rare Category 5 storm, devastates Jamaica with record winds and catastrophic flooding.
225. Union Agriculture Minister Shivraj Singh Chouhan inaugurated a high-tech seed processing plant at Beej Bhawan, New Delhi, to boost seed quality and farmers' access nationwide.
226. NITI Aayog unveils twin reports highlighting the service sector's 55% contribution to India's GVA and its pivotal role in achieving Vision 2047.
227. WaveX partners with T-Hub to shape the future of India's creative and media-tech startups.
228. Sri Lankan author Vajra Chandrasekera wins the 2025 Ursula K. Le Guin Prize for Fiction for his novel Rakesfall, celebrating hope through myth, politics, and faith.
229. ICGEB New Delhi hosted a global roundtable to strengthen India–Italy genomic collaboration for future pandemic preparedness.
230. Uttar Pradesh to form its 76th district, Kalyan Singh Nagar, in honor of former Chief Minister Kalyan Singh.
231. All of the world's top 40 most polluted cities are in India with Sri Ganganagar (Rajasthan) and Siwani (Haryana) topping the list with hazardous AQI levels.
232. HAL and Russia's UAC have joined forces to manufacture the SJ-100 passenger aircraft in India, marking a new era in indigenous civil aviation.
233. Chef Sanjeev Kapoor honoured among the world's Top Agri-Food Pioneers 2025 for promoting sustainable, healthy and locally sourced food.

234. Coal Minister G. Kishan Reddy launches the 14th commercial coal mine auction along with digital portals to boost transparency, innovation, and efficiency in India's coal sector.
235. Cameroon's 92-year-old President Paul Biya secures a disputed eighth term amid violence and fraud allegations.
236. South Korea honours Donald Trump with its highest civilian award, the Grand Order of Mugunghwa, for his role as a "peacemaker" on the Korean Peninsula.
237. United States tops the Global Firepower Index 2025, with India ranked 4th among the world's most powerful militaries.
238. James Anderson honoured with knighthood by Princess Anne for his legendary cricketing career.
239. Scientists discover Whiteia anniae, a 249-million-year-old ancient fish species, marking the first record of the genus Whiteia in Asia.
240. President Droupadi Murmu creates history as the first Indian President to fly in a Rafale fighter jet, showcasing India's advancing defence power.
241. Jemimah Rodrigues' Ton Helps India Beat Aus, Storm Into Final