As on 30.09.2025

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. 9 OF 2025

NEWSLETTER

September 2025

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Established in Sept. 2022

For Judicial Service Aspirants

IN THE SERVICE OF JUDICIAL FRATERNITY

V.S. DREAM COACHING

1. Medical Negligence and Right to Treatment

Introduction

Medical Negligence, the failure to care which results in preventable harm, continues to be a significant point of intersection between Private healthcare, State Responsibility, and Individual rights. Indian courts have ruled time and again that victims of careless medical treatment are entitled to remedies, including compensation, and that the right to health is derived from the fundamental right to life under Article 21.

Legal Base for Right to Health

- **Constitutional Right to Health**: The Supreme Court has continuously stated that the Right to Health is an integral part of the Right to Life mentioned in Article 21 of the Indian Constitution. This law is not for a specific sector, but both the Public and Private healthcare sectors are bound by it.
- **Civil and Consumer Remedies**: Since the landmark judgment of Indian Medical Association vs. V.P. Shantha (1995), every medical applicability (excluding the free governmental medical aid) is considered as "Services" according to the Consumer Protection Act. This gives the people the liberty to file a complaint and seek compensation if required.
- **Criminal Liability**: The Bharatiya Nyaya Sanhita (BNS) section 106 prevents doctors and medical practitioners from acting negligently in their duty. However, more than Civil liability, criminal liability demands more proof in courts.

Principles of Medical Negligence

The Indian courts have established 4 core principles in accordance with Medical Negligence, which are:

- **Duty of Care**: A doctor has a reasonable obligation to care for the patients
- **Breach of Duty**: When the doctor has neglected to provide reasonable care that he should have provided
- **Causation**: The negligent act must have directly caused harm
- **Damages**: The patient must have suffered a loss, disability, or injury

In 2025, the courts established the fact that not all adverse outcomes result in negligence; rather, records and proofs should show the deviation of the practitioner, which amounts to it.

Latest Precedents and Judicial Trends

- **Compensation as a remedy**: In a recent case in 2025, the Chattisgarh Govt. has compensated a family with Rs.16 Lakh for a patient who died due to a post-operative remedy. The court has also stated that compensation is not a full relief, but a substantive right of the victim and their family.
- **Poor Records of the Services amount to negligence**: The court stressed that the failure to maintain proper records also amounts to negligence. In a recent case, it was held that the hospitals that cannot disclose the treatment details were held liable, demanding transparency in the practice.
- **Balance between patient rights and doctors' protection**: In February 2025, the Supreme Court quashed a compensation claim as there was no evidence stating the breach of duty, noting "unfortunate outcomes are not in themselves proof of negligence." This protects the doctors who haven't acted in negligence and prevents the patients from claiming without reason.
- **Public Duty to Strengthen Healthcare**: In May 2025, the Supreme Court stated that the State must ensure accessible and quality healthcare facilities. Therefore, making the Right to Health a Constitutional guarantee.

Compensation Framework

The compensation will be calculated in reference to the following parameters:

- Medical expenses of the past and future treatments
- Loss of earning capacity (if death or disability)
- Pain, suffering, and other mental traumas of the patient or the family
- Loss of Consortium (fatal cases)

The court also has the discretion to award interest on compensation and litigation costs. In a recent case, the compensation increased as the hospital suppressed the record and gave an inconsistent explanation.

Practical suggestions

- **For Patients/Victims**: Preserve all bills, prescriptions, discharge summaries, and obtain early medical-legal evaluations. Documentary proof is critical to a successful claim.
- **For Advocates**: Practitioner testimony, evidence of the cause, and highlighting the record occurrence are essential for the proceedings

- **For Healthcare Providers:** Abide by the protocols, get consent, and record-keeping and indemnity insurance is mandatory to prove against negligence.

Conclusion

The courts have firmly started to protect the Right to Health, a constitutional guarantee in India. A meaningful compensation is awarded to the victims, and at the same time, doctors who act with diligence are also protected from unreasonable agony. This shows that the negligence law in India is moving towards providing justice to individuals and also demanding systematic accountability, ensuring Healthcare as a Constitutional right and not a commercial privilege.

2. Anticipatory Bail under Bharatiya Nagarika Suraksha Sanhita, 2023

Introduction

The criminal justice system in India witnessed a defining shift with the enactment of the Bharatiya Nagarika Suraksha Sanhita (BNSS), 2023, replacing the colonial-era Criminal Procedure Code (CrPC), 1973. Among the most impactful changes was the overhaul of provisions relating to anticipatory bail. Until recently, anticipatory bail, pre-arrest legal relief granted to individuals fearing arrest, was legislated in **Section 438** of the CrPC. But it was inconsistent across states, with a number of restrictive amendments. The BNSS section dealing with anticipatory bail (**Section 482**) has redefined this legal tool in 2025, creating new bail trends in both legal theory and courtroom practice.

From Section 438 CrPC to Section 482 BNSS

Anticipatory bail was accessible under Section 438 CrPC, but many states, including UP (Uttar Pradesh) and Uttarakhand, had amended this section to exclude its applicability in cases involving death or life imprisonment. This effectively denied anticipatory bail in several serious offences, regardless of the facts of the case. The introduction of BNSS Section 482 marks a deliberate shift in legislative policy. It does not include the restrictive language previously found in CrPC Section 438(6). This is seen as a move to harmonize anticipatory bail rights across the country, ensuring uniformity and upholding the constitutional value of personal liberty.

Allahabad High Court's Landmark Ruling in 2025

A major turning point in the bail trends 2025 was the July 3, 2025, ruling by the Allahabad High Court (HC), which addressed this very issue. In the case of **Abdul Hameed Vs. State of U.P.**, the court ruled that the BNSS section 482 does not contain any bar on anticipatory bail for offences punishable with death or life imprisonment.

The facts of the case were rooted in a 2011 murder charge where the accused had been denied anticipatory bail under CrPC due to the bar under Section 438(6). However, upon the repeal of the CrPC and implementation of BNSS, the applicant approached the court again. This time, the High Court acknowledged the changed statutory landscape and held that anticipatory bail under BNSS should be judged solely under Section 482, free of previous restrictions. "The procedural framework governing bail applications has undergone transformation

with BNSS, and the accused cannot be denied the benefit of these beneficial changes merely because the offence antedated the enactment of the new law…"

This decision signaled a pro-accused interpretation, aligning with the Constitution's guarantee of protection against arbitrary arrest. A critical element of the court's decision was its view that BNSS applies retrospectively. The Allahabad HC recognized that while the offence occurred before BNSS came into effect, the legal bar on anticipatory bail was removed after the new law's enforcement, which means the bail application must be considered under the new framework. This ruling set a clear precedent in the bail trends 2025, suggesting that accused persons in pending or ongoing cases could seek anticipatory bail under BNSS, even for serious offences, as long as the current legal provision permits it.

Expansion into NDPS Cases: BNSS Overrules State Amendments

Another major development reinforcing the new bail trends in 2025 was seen in NDPS (Narcotic Drugs and Psychotropic Substances Act) cases. In **Sudhir Kumar Chaurasia Vs. State of U.P.**, decided in June 2025, the Allahabad HC allowed an anticipatory bail application under BNSS section 482 even though the earlier CrPC framework, amended by the state, would have barred such relief. This clarified that once the CrPC is repealed and BNSS is in effect, any state-level amendments to the CrPC lose relevance, and BNSS becomes the sole governing law. The ruling emphasized the supremacy of central legislation in criminal procedure and reinforced the intent of Parliament to create uniform safeguards for accused persons.

Uttarakhand High Court's Referral

Not all High Courts have fully accepted the retrospective and overriding effect of BNSS. In August 2025, the Uttarakhand High Court raised an important legal question: Does BNSS override the state's prior restrictive amendment to CrPC? And does BNSS section 482 apply retrospectively to offences committed before its enactment?

The court did not immediately decide but referred the matter to a larger bench, noting that the question had far-reaching implications for both federalism and individual rights. This divergence suggests that while the bail trends in 2025 largely favor a broader application of anticipatory bail under BNSS, certain state-specific legal and constitutional issues may still lead to inconsistent outcomes, at least temporarily.

Comparison

1. Governing Section

CrPC: Section 438 CrPC

BNSS: Section 482 BNSS

2. Bar on serious Offences
CrPC: Yes—CrPC Section 438(6) barred anticipatory bail in death/life sentence cases
BNSS: No such bar under Section 482 BNSS

3. Retrospective Application
CrPC: CrPC bar is effective even for older offences
BNSS: Courts held BNSS applies retrospectively if the obstacle is now removed

4. NDPS cases
CrPC: Restrictive state amendments applied
BNSS: BNSS Section 482 allows anticipatory bail even under NDPS

5. State-level conflicts
CrPC: Allowed via amendments (e.g., UP, Uttarakhand)
BNSS: BNSS overrides previous CrPC amendments

Conclusion

The year 2025 has proven to be a watershed moment for anticipatory bail jurisprudence in India. The BNSS section 482 has radically transformed how courts interpret and grant anticipatory bail, fostering a shift in the bail trends 2025 towards greater protection of individual freedoms and procedural justice.

While judicial consensus is still evolving, especially in states like Uttarakhand, the overarching trend favors a liberal and uniform anticipatory bail regime, guided by the intent of the BNSS. For legal professionals, policymakers, and civil society, these developments represent both a challenge and an opportunity: to ensure that pre-arrest protections are not just available, but meaningfully accessible.

3. Important Supreme Court Cases

September 2025

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S.N.	Subject	Case Reference
1.	The title of the immovable property cannot be transferred without a registered sale deed. Agreement to sell or general power of attorney won't confer title in property.	Ramesh Chand (D) Thr. LRs. Vs. Suresh Chand and Anr., decided on 01.09.2025
2.	Grant of anticipatory bail is impermissible under the SC/ST Act unless is prima facie shown that no offence under the Act is made out.	Kiran Vs. Rajkumar Jivraj Jain and Anr., decided on 01.09.2025
3.	Laid down the steps to be considered by the High Court while hearing quashing petitions under Section 482 Cr.P.C. (now Section 528 BNSS).	Pradeep Kumar Kesarwani Vs. State of Uttar Pradesh and Anr., order dated 02.09.2025
4.	It is mandatory for the High Courts to record reasons while framing an additional question of law which was not originally raised in a second appeal in a civil case. Laid down the principles on framing an additional substantial question of law under the proviso to Section 100(5) CPC.	C.P. Francis Vs. C.P. Joseph and Ors., decided on 03.09.2025
5.	Review jurisdiction under Order 47 CPC is confined to correcting "errors apparent on the face of the record" and cannot be used as a disguised appeal.	Malleeswari Vs. K. Suguna and Anr., decided on 08.09.2025
6.	Reserved category candidates who avail age relaxation to apply under the reserved category cannot later be considered for selection against unreserved (general) category vacancies if the recruitment rules explicitly prohibit such migration.	Union of India and Ors. Vs. Sajib Roy, decided on 09.09.2025
7.	Neighborhood quarrels are common to community living and for the charge of abetment of suicide, instigation must rise to a level that left the victim with	Geeta Vs. State of Karnataka, decided on 09.09.2025

	no choice but to end their life.	
8.	Police is not required to go into the genuineness or credibility of a complaint at the stage of registering FIR; if the complaint prima facie discloses a cognizable offence, then the police is bound to register the FIR.	Vinod Kumar Pandey and Anr. Vs. Seesh Ram Saini & Ors. and connected cases, decided on 10.09.2025
9.	In order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.	Jupally Lakshmikantha Reddy Vs. State of Andhra Pradesh and Anr., decided on 10.09.2025
10.	High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves.	Anna Waman Bhalerao Vs. State of Maharashtra, decided on 12.09.2025
11.	A suit instituted seeking possession of immovable property on the ground that the defendant's sale deed is void is governed by the 12 years limitation period under Article 65 of the Limitation Act, 1963, rather than the shorter 3 years period under Article 59 of the Limitation Act.	Shanti Devi (Since Deceased) Through LRs. Goran Vs. Jagan Devi and Ors., decided on 12.09.2025
12.	For the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of “sufficient cause” for the entirety of the period from when the limitation began till the actual date of filing. If the period of limitation is 90 days, and the appeal is filed belatedly on the 100th day, then explanation has to be given	Shivamma (D) by LRS. Vs. Karnataka Housing Boardand Ors., decided on 12.09.2025

	for the entire 100 days.	
13.	The lapse of time between an injury and the victim's death does not, by itself, justify reducing a murder charge under Section 302 IPC to attempt to murder under Section 307 IPC, so long as the death is directly traceable to the injury. The correct test is whether the death was a natural, probable, or necessary consequence of the injury. If the complications leading to death are a likely or inevitable outcome of the original injury, the offence amounts to murder.	Maniklal Sahu Vs. State of Chhattisgarh, decided on 12.09.2025
14.	Defendant can't file counter-claim against co-defendant under Order 8 Rule 6A CPC.	Rajul Manoj Shah alias Rajeshwari Rasiklal Sheth Vs. Kiranbhai Shakrabhai Patel & Anr., decided on 12.09.2025
15.	A joint trial is permissible where multiple accused are involved in offences arising out of the same transaction and a separate trial would be warranted only if the acts attributed to each accused are distinct and severable under Section 223 Cr.P.C (now Section 243 BNSS).	Mamman Khan Vs. State of Haryana, decided on 12.09.2025
16.	Stayed certain provisions of the Waqf (Amendment) Act 2025, while observing that several other provisions did not require any interference at the interim stage. Stayed the condition that a person should be a practitioner of Islam for at least 5 years till rules are framed by State Governments to provide a mechanism to determine this question. Without such a mechanism, the provision can lead to arbitrariness	In Re The Waqf (Amendment) Act, 2025 (1), decided on 15.09.2025
17.	For a complaint under Section 138 of the Negotiable Instruments Act, 1881, to be maintainable, the statutory notice of demand must precisely mention the cheque amount. If the amount mentioned in the demand notice varies	Kaveri Plastics Vs. Mahdoom Bawa Bahruden Noorul, decided on 19.09.2025

	from the cheque amount, then the complaint is not maintainable.	
18.	For joint disclosure statements, made by multiple accused simultaneously, to become admissible under Section 27 of the Evidence Act, high scrutiny is needed to rule out the possibilities of tutoring of the accused. While simultaneous disclosure statements can be legally admissible, courts must exercise heightened caution, and the prosecution bears the burden of proving that the disclosures were genuine, independent, and corroborated by other evidence.	Nagamma @ Nagarathna & Ors. Vs. State of Karnataka, decided on 22.09.2025
19.	Summarised the legal principles on retrospective application of legislation.	M. Rajendran & Ors. Vs. M/s. KPK Oils and Protiens India Pvt. Ltd. & Ors., decided on 22.09.2025
20.	Criminal cases arising out of matrimonial disputes have to be scrutinised with great care, taking into account pragmatic realities. Courts have to be careful and cautious in dealing with complaints and must take pragmatic realities into consideration while dealing with matrimonial disputes where the allegations have to be scrutinized with great care and circumspection in order to prevent miscarriage of justice and abuse of process of law.	Shobhit Kumar Mittal Vs. State of Uttar Pradesh & Anr., decided on 24.09.2025
21.	The offence of criminal breach of trust and cheating cannot co-exist on the basis of same allegations. The offence of cheating (Sec. 420 IPC/Sec. 318 BNS) involves criminal intention from inception; however, for criminal breach of trust (Sec. 406 IPC/Sec. 316 BNS), there is lawful entrustment at the beginning, which is later misappropriated.	Arshad Neyaz Khan Vs. State of Jharkhand & Anr., decided on 24.09.2025
22.	An accused need not be heard at the	Sanjabij Tari Vs. Kishore S.

	pre-cognizance stage of complaints filed for dishonour of cheque as per Section 138 of the Negotiable Instruments Act. Accused persons convicted under Section 138 are entitled to the benefit of the Probation of Offenders Act, 1958.	Borcar and Anr., decided on 25.09.2025
23.	No defence would be allowed to come on record in a summary suit under Order 37 CPC without the leave of the court.	Executive Trading Company Pvt. Ltd. Vs. Grow Well Mercantile Pvt. Ltd., decided on 25.09.2025

IN THE SUPREME COURT OF INDIA

Ramesh Chand (D) through LRS.
Vs.
Suresh Chand and Anr.

[Civil Appeal No. 6377 of 2012]

HEADNOTE – The title of the immovable property cannot be transferred without a registered sale deed. Agreement to sell or general power of attorney won't confer title in property.

JUDGMENT

Aravind Kumar, J.

1. Heard.

2. The appellants are aggrieved by the judgment dated 9th April, 2012, passed by the Hon'ble High Court of Delhi whereby the Regular First Appeal No. 358/2000 filed by them against the judgment and decree dated 11th May, 2000 came to be dismissed and the judgment and decree passed in Suit No. 613/1997 by the Additional District Judge, Delhi decreeing the suit for possession, mesne profits, declaration, mandatory injunction filed by the Respondent No. 1, who was the plaintiff, came to be confirmed, by dismissing the counterclaim for declaration filed by the Appellant has been affirmed. For convenience, the parties are referred as per their rank before the Trial Court.

FACTUAL MATRIX:

3. Facts necessary for adjudication of the controversy on hand are as follows:

4. The suit property bearing No. 563, at Ambedkar Basti near Balmiki Gate, Delhi - 110053 was originally owned by Shri. Kundan Lal, father of the Appellant/Defendant No. 1 and Respondent No. 1/Plaintiff. The plaintiff claims that he had acquired title to the suit property from his father, Shri. Kundan Lal by virtue of a General Power of Attorney, Agreement to Sell, Affidavit, and a Receipt. He also claimed that his father had executed a registered Will dated 16.05.1996 bequeathing the suit schedule property in his favour.

He further claims that defendant No. 1 has been living in the suit property as a licensee and after purchase of the suit property by the plaintiff, the defendant No. 1 was residing in the suit property as a mere trespasser. He further claims that in order to gain wrongfully, the defendant No. 1 sold half the portion of the suit property to the defendant No. 2, who is the Respondent No. 2 before us.

Hence, the plaintiff filed a suit against the defendant No.1 and defendant No. 2 for the recovery of possession, mesne profits, declaration of title and mandatory injunction directing the defendant No. 1 to handover the original documents to him. In response to the said claim of the plaintiff, the defendant No. 1 filed a written statement and also raised a counter claim, contending that the suit property was orally transferred to him by the father in July 1973.

He further contended that the plaintiff had earlier filed OS No. 294/1996 wherein he admitted that the father, Shri Kundan Lal was the owner of the property. However, he withdrew the said suit on 06.06.1997. In the counter claim, defendant sought for declaration that the alleged documents i.e. Will, Agreement to Sell, GPA etc. in respect of the suit property by Lt. Sh. Kundan Lal, who expired on 10th April, 1997 was null and void and not binding on him.

5. The Ld. Addl. District Judge decreed the suit in favour of the plaintiff and dismissed the counter claim filed by the defendant No.1 on the ground that the property had been transferred by the Sh. Kundan Lal in favour of the plaintiff by upholding the validity of the documents.

The defendant No.1 assailed the same by filing Regular First Appeal No. 358 / 2000 before the High Court of Delhi, which came to be dismissed by the High Court by relying upon the judgment of Asha M. Jain v. Canara Bank and Others 1 which was later on overruled by this court in Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana and Another.2 Against the said dismissal, the defendant No.1 had filed Civil Appeal No. 9012/2011.

6. Vide the order 31.10.2011 aforesaid civil appeal came to be allowed in part and the matter was remanded back to the High Court for fresh disposal with an observation that the Agreement to Sell / General Power of Attorney / Will Transactions are not 'transfers' or 'sales' and such transactions cannot be treated as transfers or conveyances as contemplated under Transfer of Property Act, 1882. Hence, RFA No.358/2000 came to be restored to the file of High Court which has been heard afresh, and by the impugned order, it came to be dismissed on 09.04.2012. Aggrieved by the same, the defendant no.1 is in appeal before us.

SUBMISSIONS

7. Mr. S.Mahendran, Learned Counsel for the defendant No.1 made the following submissions:

- That there is no title of ownership conferred merely on the basis of Agreement to Sell, GPA, Affidavit, Receipt, Will etc. without there being any possession thereof.
- That the original title deeds of suit schedule property are in possession of the defendant No.1.

- That the Will has not been proved in accordance with law.
- Section 53A of the Transfer of Property Act is not attracted if the possession of the property is not delivered.
- That Will is not an instrument of sale under Section 54 of Transfer of Property Act. As per Section 54, immovable property can be sold by a registered instrument only.
- That the alleged Attesting Witnesses PW-3 and PW-4 could not prove the execution of the documents filed by the plaintiff such as GPA, Agreement to Sell, Receipt, Will as required by Section 3 of Transfer of Property Act, Section 68 of Indian Evidence Act and Section 63 of Indian Succession Act.
- That the Courts below have failed to appreciate that in the previous suit which is OS No. 294/1996 the plaintiff himself admitted in his replication filed on 12.10.1996 that the father, Shri Kundan Lal is owner of the suit property. On the other hand the present suit is filed by falsely alleging that he had purchased the suit property from the father on 16.05.1996 which is much prior to the date of filing of the replication.
- That the vital facts clearly reveal that the alleged documents pertaining to the suit property had been obtained by the plaintiff on misrepresentation.
- That ever since 1973, the defendant No.1 has been in continuous, uninterrupted possession and occupation of the suit property in his own right and during this period i.e. 1973 to 1997, the father Shri Kundan Lal neither filed any ejectment proceedings nor served any notice for his eviction during his lifetime, who died on 10.04.1997.

8. The Respondent No.1 / Plaintiff who was duly served has not entered appearance and is proceeded ex-parte.

9. Mrs. Rekha Pandey, Learned Counsel for Respondent No.2 / Defendant No. 2 has made the following submissions:

- That the defendant No. 2 has purchased 50% share of the suit property from the defendant No.1 / Ramesh Chand.
- That the High Court vide order dated 28.02.2011 in RFA No. 358/2000 as well as this Court vide interim order dated 26.08.2013 in present appeal has protected the right of the Respondent no. 2 as he was a bona fide purchaser of the property and is in possession of the property.
- That this Court must protect the rights of Respondent No. 2.

10. Upon hearing the Learned Counsels appearing for the parties and on perusal of the material available on record, the following points would arise for our consideration:

I. Whether the impugned documents, i.e., Agreement to Sell, General Power of Attorney, Receipt of Consideration and the registered Will, allegedly entered into by Mr. Kundan Lal in favour of the Plaintiff would confer a valid title over the suit property?

II. Whether the Plaintiff can claim any benefit under Section 53A of TP Act, which deals with Part Performance?

III. To what relief the parties would be entitled to?

FINDINGS:

RE: POINT NO.1

11. It is an undisputed factual position that plaintiff and defendant no. 1 are brothers, and the suit property belongs to their father Lt. Sh. Kundan Lal. The plaintiff claimed title to the suit property by placing reliance upon four documents, i.e., agreement to sell dated 16.05.1996, power of attorney dated 16.05.1996, affidavit dated 16.05.1996, receipt dated 16.05.1996, and a registered Will dated 16.05.1996. Admittedly, no sale deed was executed in favour of the plaintiff by his father. Hence, this court is called upon to see whether these documents confer a valid title on him. In order to ascertain the same, it is essential for us to expound on the position of law with respect to the same.

Agreement of Sale

12. The Transfer of immovable property inter vivos is governed by the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act"). Section 5 of the said TP Act defines "transfer of property" as follows:

"5. 'Transfer of property' defined.- In the following sections 'transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself or to himself and one or more other living persons and 'to transfer property' is to perform such act."

13. The TP Act envisages five different modes for transferring a property but for the purpose of the present appeal we are only concerned with one of the modes i.e., by way of "Sale" and the same is dealt under section 54 of the TP Act which defines "sale" and a "contract for sale" as follows:

"54. 'Sale' defined.- 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and partpromised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other

intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

14. Perusal of above said provisions lays down a specific mode of execution of sale deed with respect to immovable property for concluding the sale of a property. In sale for an immovable property the value of which exceeds Rs. 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Unless the sale deed is in writing, attested and registered, the transaction cannot be construed as sale, or in other words, the property will not be transferred.

15. There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property.

Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.

16. The scope of an agreement for sale has been highlighted by this court in the case of Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana and Another3, wherein this Court observed that

"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:

"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]). 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:

"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."

17. In the instant matter, undisputedly plaintiff claims that there is only an agreement to sell, and there is no sale deed executed in his favour by the father. As per the settled position of law, this document does not confer a valid title on the plaintiff as it is not a deed of conveyance as per Section 54 of the TP Act. At best, it only enables the plaintiff to seek for specific performance for the

execution of a sale deed and does not create an interest or charge on the suit property.

General Power of Attorney

18. A power of attorney is a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. A General Power of Attorney does not ipso facto constitute an instrument of transfer of an immovable property even where some clauses are introduced in it, holding it to be irrevocable or authorizing the attorney holder to effect sale of the immovable property on behalf of the grantor. It would not ipso facto change the character of the document transforming it into a conveyance deed.4

19. A power of attorney is not a sale. A sale involves transfer of all the rights in the property in favour of the transferee but a power of attorney simply authorises the grantee to do certain acts with respect to the property including if the grantor permits to do certain acts with respect to the property including an authority to sell the property.5

20. In the case of State of Rajasthan and Others v. Basant Nahata,6 it was held that:

"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

21. Further, the position of a power of attorney with respect to conferment of title was explained by this Court in the case of Suraj Lamp (supra), thus:

"20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."

22. Having discussed the position of law, it is essential to peruse the recitals of the General Power of Attorney, which is on record and pressed into service by plaintiff. The said GPA merely authorises the grantee to manage the affairs of the suit property, which includes the power to let out the property on rent, and create a mortgage of the same, etc. However, it is silent on the aspect of conveyance. Be that as it may.

The recitals of the power of attorney would indicate the intent of the grantor is to limit the powers of the grantee to only manage the suit property, and not to create any interest in his favour, which is in consonance with the settled position of law as discussed above that a power of attorney is an agency by which the agent derives the authority or the right to enter into transactions on behalf of the principal. Even if we accept the validity of the Power of Attorney in favour of the plaintiff, still it does not confer a valid title on him with respect to the suit property.

Will

23. The third document that the plaintiff has relied upon to claim his title over the property is a Registered Will dated 16.05.1996 said to have been executed by his father. The term "Will" has been defined under Section 2(h) of the Succession Act, 1925 as "the legal declaration of a testator with respect to his property which he desires to be carried into effect after his death". Its essentials have been further enumerated by this Court in the case of Mathai Samuel and Others v. Eapen Eapen (Dead) by Lrs. And Others7 thus:

"12. Will is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. It has three essentials:

(1) It must be a legal declaration of the testator's intention;

(2) That declaration must be with respect to his property; and

(3) The desire of the testator that the said declaration should be effectuated after his death.

13. The essential quality of a testamentary disposition is ambulatoriness of revocability during the executant's lifetime. Such a document is dependent upon the executant's death for its vigour and effect."

24. Will has also been expounded upon in the case of Suraj Lamp (supra), thus:

"22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. Registration of a will does not make it any more effective."

25. This Court on the issue of the proof of Wills in the case of H. Venkatachala Iyengar v. B.N. Thimmajamma and Others8 has succinctly defined the contours as under:

"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose.

Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law.

Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate

what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will.

This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills.

It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

26. Further, in the case of Meena Pradhan and Others v. Kamla Pradhan and Another9 following essentials to prove a Will were mentioned:

"10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence.

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

27. Considering the aforementioned cases, it is clear that in order to rely upon a Will, the same has to be proved in accordance with law. A Will has to be attested by two witnesses, and either of the two attesting witnesses have to be examined by the propounder of the will. In the present matter, we have carefully perused the Trial Court's judgment. There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld.

This is contrary to law. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will.

Mere fact that the Will was registered will not grant validity to the document. Besides that, the will propounded by plaintiff is surrounded with suspicious circumstances, in as much as the alleged propounder of the Will, Lt. Sh. Kundan Lal, had four children, including the plaintiff and the defendant No. 1. There is not even a whisper of reasoning as to why the propounder of the Will choose to exclude other three children from the bequest, and whether any other properties or assets were given to them.

It is highly unlikely that a father would grant his entire property to one of his children, at the cost of three others, without there being any evidence of estrangement between the father and the children. This suspicious circumstance surrounding the will has not been removed by the plaintiff either. Hence, for these cumulative reasons, the Will propounded by plaintiff though registered would not confer any valid title on the plaintiff either.

Receipt of Consideration / Affidavit

28. Apart from the aforementioned documents, there is also an affidavit dated 16.05.1996 said to have been executed by Sh. Kundan Lal in favour of the plaintiff, along with a receipt of consideration, wherein Sh. Kundan Lal is said to have acknowledged receipt of full consideration for the sale of suit property to the tune of Rs. 1,40,000/- from the Plaintiff. The said instruments do not confer a valid title upon the plaintiff because as per Section 54 of TP Act, only through a deed of conveyance can a title can be transferred, and none of the other documents and recitals in the said affidavit are not proved by examining any other independent witnesses.

- **RE: POINT NO.2**

29. The plaintiff also lays claim to the property by virtue of Section 53A of the TP Act. Section 53-A of the TP Act defines "part-performance" as follows:

"53-A. Part performance.- Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty: and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

30. According to Section 53A of the TP Act, where there is a contract to transfer any immovable property in writing and the transferee has in part performance of the contract taken the possession of the property or part thereof, then notwithstanding that the transfer has not been completed in the manner prescribed by law, the transferor will be debarred from taking the possession of the property. The essential conditions for invoking the doctrine of part-performance as envisaged u/s 53A of TP Act have been enunciated by this Court in the case of Nathulal v. Phoolchand10 thus:

"9. The conditions necessary for making out the defence of part performance to an action in ejectment by the owner are:

(1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) that the transferee, has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract;

(3) that the transferee has done some act in furtherance of the contract; and

(4) that the transferee has performed or is willing to perform his part of the contract.

If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract."

31. A perusal of Section 53A of TP Act, as well as the case law on point, it is forthcoming that one of the main ingredients for taking shelter under Section 53A is the factum of possession. Unless the transferee in the instrument of agreement to sale is able to prove that he has been in possession of the suit property, no benefit u/s 53A will be given. In the instant matter, the very fact that plaintiff has filed the present suit for possession, along with other reliefs, shows that on the date of filing of the suit, plaintiff was not in possession of the entire suit property. Since there was no possession with the plaintiff, he cannot derive any benefit under the doctrine of part-possession.

- **RE: POINT NO.3**

32. Thus, the aforestated discussion would indicate that the property was originally owned by Shri Kundan Lal namely the father of plaintiff and defendant No.1 and on his demise the succession has opened up. The will dated 16.05.1996 propounded by the plaintiff having been held not proved and as such class-I legal heirs of deceased Shri Kundan Lal would be entitled to the share in the suit schedule property.

33. In the instant case, the appellant herein has sold 50% of the suit property in favour of the second defendant. This Court by order dated 26.08.2013 had passed the following order:

"In view of the statement contained in para 11 of the impugned judgment as well as the operative portion thereof, interim order dated 05.09.2012 is modified and it is made clear that the same shall not prejudicially affect the rights of respondent No.2."

34. In the light of the said order passed, we are of the considered view that the right of the second defendant would stand protected to the extent of the share of the appellant only and except reiterating to this effect contentions of all parties are kept open, and no opinion is expressed and they are at liberty to work out their rights if so advised in accordance with law.

35. In the light of the aforementioned discussion, the impugned judgment is set aside, and appeal is allowed, and suit of the plaintiff stands dismissed subject to the observations made herein above. We make no order as to costs.

Pending application(s), if any, shall stand consigned to records.

.....J. [Aravind Kumar]

.....J. [Sandeep Mehta]

New Delhi;

September 01st, 2025.

1 (2001) SCC OnLine Del 1157

2 (2012) 1 SCC 656

3 (2012) 1 SCC 656

4 Dr. Poonam Pradhan Saxena, Property Law, Third Edition, 2017 (Lexis Nexis), p.66

5 Dr. Poonam Pradhan Saxena, Property Law, Third Edition, 2017 (Lexis Nexis), p.301

6 (2005) 12 SCC 77

7 (2012) 13 SCC 80

8 AIR 1959 SC 443

9 (2023) 9 SCC 734

10 (1969) 3 SCC 120

IN THE SUPREME COURT OF INDIA

Kiran
Vs.
Rajkumar Jivraj Jain & Anr.

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 8169 of 2025]

HEADNOTE – Grant of anticipatory bail is impermissible under the SC/ST Act unless is prima facie shown that no offence under the Act is made out.

JUDGMENT

N.V. Anjaria, J.

1. Leave granted.

1.1 With the consent of learned counsels for the parties and upon their joint request, the appeal was taken up for final hearing today.

2. By way of present appeal, what is called in question is judgment and order dated 29.04.2025 of the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Appeal No.201 of 2025, whereby the High Court allowed the pre-arrest bail to respondent No.1 under Section 438 of the Code of Criminal Procedure, 1973, which was refused by the Additional Sessions Judge, Paranda.

3. FIR No.255/2024 came to be registered by the appellant-complainant with the Paranda Police Station, District Dharashiv on 26.11.2024 against accused-respondent No.1 herein and others in respect of alleged commission of offenses punishable under Sections 118 (1), 115(1), 189(2), 189(4), 190, 191(2), 191(3), 333, 324(4), 76, 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(o), 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3.1 The relevant and material part of the contents of the said FIR is extracted below.

"Today on 25.11.2024 at around 11:00 AM, while I and my mother Mohini were at home, Bahubali Masalkar, a peon from the Gram Panchayat Office, Kapilapuri, came in front of my house and started abusing us, asking why we did not vote in yesterday's assembly elections as we had asked. At that time, I tried to tell him that voting was my only concern, but he abused me and then rushed at

me. At that time, we got into a fight. After that we got into a fight. After that he left from there.

Then at 11:20 in the morning, my village's known, namely Rajkumar Jain, Jaykumar Jain, Bharatesh Awani, Jayghosh Jain, Kishore Awani, Vaibhav Awani, Nabiraj Awani, Bahubali Masalkar, Jitendra Wasgadekar, Anil Wasgadekar, Ranjit Rajkumar Jain, Jagdish Jain, all residents of Kapilapuri (all Jains), came in front of our house. At that time, Rajkumar Jain said to me, "Mangtyano, you have become much arrogant", you are staying in the village and voting against me, so he hit me on the head and back with an iron rod."

At that time, I fell down. After that, Kishore Jain and Vaibhav Awani entered my house, pushed my mother Mohini and aunt Rekha, grabbed the saree of mother Mohini and pulled it, threatened that "Mangtyano, you have become arrogant, we will not let you stay in the village, we will burn your houses," beat them with an iron rod and even punched them giving internal injuries. In it, a one-tola gold mangalsutra from mother Mohini's fortune necklace fell somewhere in the scuffle.

The household utensils were damaged by the rioters, causing total damage to our household items. Seeing us being beaten up, my friend Yashwant Bodre from the village came to the house to resolve the dispute. Rajkurhar Jain also said to him that you Ramoshi have also become arrogant, that you voted for someone else in yesterday's assembly elections without listening to us; so he beat Yashwant on the left hand and back with an iron rod in his hand. At that time, some of them had petrol bottle in their hands and were shouting and threatening repeatedly that they would burn our houses and not let us stay in the village.

Due to the noise of this commotion, three of our villagers, Avinash Masgude, Appa Masgude, Omkar Mane, came to the house and rescued us from the clutches of these men. After that, when approached to the Paranda police station to file a complaint, the police immediately gave us a letter for medical treatment and sent us to the Paranda Sub-District Hospital for medical treatment.

On 25.11,2024 between 11:00 AM to 11.20 AM, the names of Rajkumar Jain, Jaykumar Jain, Bharatesh Awani, Jayghosh Jain, Kishore Awani, Vaibhav Awani, Nabiraj Awani, Bahubali Masalkar, Jitendra Wasgadekar, Anil Wasgadekar, Ranjeet Rajkumar Jain, Jagdish Jain, all residents of Kapilapuri, angry that I voted against them in yesterday's assembly elections, even though they knew that I and my family belongs to the Matang community, they abused us in caste terms, beat us with an iron rod and injured us, and they also entered my house and beat my mother and aunt abusing in filthy language, and they pulled my mother's saree and molested her, so I have a complaint against them. I

am giving my above statement with full of my consciousness and after reading it, I found it completely correct as per my narration."

3.2 What is narrated in the FIR disclosed certain manifest aspects. On 25.11.2024 in the morning, the respondent-accused along with others went to the house of the appellant and standing outside and in front of appellant's house stated to the appellant "Mangtyano, you have become much arrogant, you are staying in the village and voting against me". The appellant was attacked with an iron rod.

The mother and aunt of the appellant were addressed with the same set of words as above and that they all were beaten with the iron rod and were punched inflicting internal injuries, the Mangalsutra of the mother fell somewhere in the scuffle. The accused had in their hands petrol bottles and were repeatedly shouting and threatening that they would burn the house of the appellant. The injured appellant lodged the FIR from the hospital.

3.3 The evident reason for this incident was animosity generated in the mind of the accused in respect of appellant's act of not voting in favour of particular candidate in the assembly elections which had concluded on the previous day. The exhibition of enmity by the accused, their utterances as above and the conduct of beating the appellant and hurling castiest abuses and threats were in public view, outside the house of the appellant. The appellant belonged to the Scheduled Caste community whose caste was "Mang" or "Matang"; whereas the respondent accused was not the member of the Scheduled Caste or Scheduled Tribe community. He hailed from 'Jain' community.

3.4 While rejecting the prayer of respondent-accused for anticipatory bail, the Additional Sessions Judge, Paranda recorded findings in paragraph 8 of his order inter alia that there was a specific allegation against the accused and that the accused had abused the complainant by referring to his caste, that the caste certificate confirmed that the complainant-informant belonged to the Scheduled Caste community and further that the incident was witnessed by independent witnesses. On the basis of statements in the FIR and the material available, the court concluded that the ingredients of the offences punishable under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act") as alleged were made out.

3.5 When the order rejecting the anticipatory bail was challenged before the High Court by the accused, the High Court took the view to record that there were inconsistencies in the prosecution story as could be gathered from the account of eye-witnesses. According to the High Court, the entire prosecution case appeared to be exaggerated and false.

What weighed with the High Court was also the aspect that the incident took place immediately after the declaration of results of the assembly elections, therefore, it had political overtures. Resting on such considerations, the High Court concluded that the appellant was falsely implicated. Further referring to the nature of the injuries and allegations, the High Court granted anticipatory bail.

4. Mr. Amol Nirmalkumar Suryawanshi, learned counsel appearing for the appellant-herein assailed the judgment and order of the High Court to submit that the High Court not only misdirected itself in exercise of the discretion to grant bail to respondent No.1, but it plainly overlooked the provisions of Section 18 of the SC/ST Act. Highlighting the contents of and the allegations in the FIR, it was submitted that the accused used abusive language referring to caste and the appellant who was the member of the Scheduled Caste community was thereby subjected to derogation and insult.

The appellant was intimidated and his mother and aunt were also abused with castiest slur and were threatened. Learned counsel for the appellant further submitted that the castiest slur and the castiest abuse employed against the appellant clearly made out the offence under Section 3 of the SC/ST Act as alleged and since the offence was prima facie committed, the pre-arrest bail could not have been granted by the High Court in view of the provision of Section 18 of the Act.

4.1 Learned counsel for the appellant relied on the decision of Vilas Pandurang Pawar vs. State of Maharashtra1 to submit that at the stage of the consideration of grant of bail or otherwise, the High Court was not expected to conduct a mini trial. It was submitted that the reasoning of the High Court was not acceptable. Regarding bar created by virtue of Section 18 of the SC/ST Act, learned counsel pressed into service the decision of this Court in Prathvi Raj Chauhan vs. Union of India2.

4.2 On the other hand, learned counsel for respondent No.1 seeking to defend the order of the High Court, submitted that Section 18 of the SC/ST Act did not create an absolute bar to grant anticipatory bail. He proceeded to submit that in subsequent decision of this Court in Shajan Skaria vs. The State of Kerala & Anr.3, it was observed that the court needed to undertake an exercise to find out whether there was a prima facie substance in the allegations.

According to learned counsel for respondent No.1, the allegations in the FIR were made for the sake of making and were out of anger regarding casting of vote in the assembly elections. He tried to submit that it was wrong to give a castiest colour to the allegations to conclude that any offence under the SC/ST Act was committed by the accused.

4.3. The respondent-State of Maharashtra filed the counter affidavit and opposed the grant of pre-arrest bail to respondent No.1 accused by emphasising the operational ambit of Section 18 of the SC/ST Act. It was highlighted that when prima facie material existed in the form of allegations in the FIR and other attendant factual aspects, the respondent No.1 could not have been granted the anticipatory bail by the High Court.

5. Amongst the offences alleged in the FIR, included those under Sections 3(1)(o), 3(1)(r), 3(1)(s) and 3(1)(w)(i) of the SC/ST Act. The relevant extract of Section 3 of the SC/ST Act is as under.

"3. Punishments for offences atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(b) to (n) ... ...

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) ... ...

(q) ... ...

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) ... ...

(u) ... ...

(v) ... ...

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

5.1. Section 18 of the SC/ST Act is reproduced:

"18. Section 438 of the Code not to apply to persons committing an offence under the Act.- Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

5.1.1 Section 18A in its sub section (1) of the Act provides that for the registration of an FIR against any person, preliminary enquiry shall not be required. It is further stated that the investigating officer shall not be required to take approval for the arrest, if necessary, of any person against whom an accusation about the commission of an offence under this SC/ST Act has been made. Sub section (2) of Section 18A of the SC/ST Act mentions that the provisions of Section 438 of the Cr.PC shall not apply to a case under this Act notwithstanding any judgment or order or direction of any Court.

5.2 It is evident from the above provision of Section 18 that it expressly excludes the applicability of Section 438 of the Code of Criminal Procedure, 1973 ("hereinafter referred to as "the Cr.PC"). In another words, in relation to any case involving arrest of a person who is facing the accusation about committing offence under this Act, protection of Section 438, Cr.P.C. would not be available. The Legislature has taken away the benefit of anticipatory bail in respect of the arrest for the offences alleged under the SC/ST Act. The bar in Section 18 of the SC/ST Act would operate.

5.3. While upholding the Constitutional validity of Section 18 of the Act, this Court in State of M.P. & Anr. vs. Ram Krishna Balothia & Anr.4 observed as under, "The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its practice in any form. It also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'."

(Para 6)

5.3.1 The court proceeded to observe,

"The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the contest of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act. In these circumstances, if anticipatory bail is not made available to persons

who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences"

(para 6)

5.4 The aforesaid bar is held to be not violative of Article 21 of the Constitution. In Kartar Singh vs. State of Punjab5 it was stated that taking away the right of prearrest bail under Section 438 of the Cr.PC, under Section 18 of the SC/ST Act would not infringe the right to personal liberty.

5.5 In Vilas Pandurang Pawar vs. State of Maharashtra6, this Court explained the bar under Section 18 of the SC/ST Act against grant of anticipatory bail in the following words,

"Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail."

(Para 9)

5.5.1 It was further stated in Vilas Pandurang Pawar (supra),

"Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

(Para 10)

5.6 A three judge bench of this Court in Prathvi Raj Chauhan (supra) expressed itself thus,

"exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of

anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act."

(Para 6)

5.6.1 This Court emphasised in Prithvi Raj Chauhan (supra) that anticipatory bail cannot be granted as a matter of right. It was stated that bail is essentially a statutory right and cannot be said to be an essential ingredient of Article 21of the Constitution. It was further observed that if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

5.7 The aforesaid provision of Section 18 and the bar created thereunder has to be seen in the context of the object and purpose with which the Parliament enacted the SC/SC Act, 1989. This legislation was brought into force with an avowed object of implementing the measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, who have remained a vulnerable class in the society. The underlying idea is to ensure that the persons belonging to these classes are not denied their civil rights, are not subjected to indignities and are insulated from humiliation and harassment.

5.7.1 The provisions of Section 18 in its ultimate analysis, furthers the very object of the enactment. Seemingly a stricter provision, it underscores the Constitutional idea of availing social justice and to ensure the same pedestal for the Scheduled Caste and Scheduled Tribe community people with other classes in the society.

5.8 The decision of this Court in Shajan Skaria (supra) sought to be pressed into service on behalf of respondent No.1 take no different view. In that case, the Bench of two Judges of this Court elaborated the law in respect of grant of anticipatory bail, then highlighted and recognised the bar created under Section 18 of the SC/ST Act to observe that only in the cases where the offence could not be said to have been made out on a very prima facie consideration, the court may exercise the discretion to grant pre-arrest bail to the accused.

5.8.1 In Shajan Skaria (supra) case the appellantaccused who was an Editor of an Online news channel who had published a video on YouTube levelling certain allegations against the complainant who belonged to "Pulaya" community and who was a Member of Kerala State Legislative Assembly representing the constituency which seat was reserved for the member of Scheduled Caste and Scheduled Tribe community. An attentive reading of the broadcast made on YouTube which was a subject matter in that case, would go to indicate that there

was no reference therein to the caste name, which aspect becomes clear from the very translation itself, narrated in the judgment by the Court.

The caste word "Pulaya" was not even referred to in the complaint also, what was only stated by complainant the subject matter was on Scheduled Caste community. In the totality of the circumstances thereby this Court in Shajan Skaria (supra) took the view that the contents of the YouTube video displayed by the accused were not intended to denigrate the complainant as a member of the Scheduled Caste and that it could not be said to be with castiest slur.

5.9 In Hitesh Verma vs. State of Uttarakhand & Anr.7 as well as in Ramesh Chandra Vaish vs. State of U.P.8 this Court stated that intimidation or insult amounts to an offence under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should have been targeted intentionally to the member of the Scheduled Caste or Scheduled Tribe community and also because he is member of the Scheduled Caste or Scheduled Tribe community. In Swarn Singh (supra), it was stated that for making out the offence under Section 3(1)(r) of the SC/ST Act, 1989, it requires that the insult or intimidation should be at a place within public view.

6. In light of the parameters in relation to the applicability of Section 18 of the Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes, Act, 1989 with express language excludes the applicability of Section 438, Cr.PC, it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off.

6.1 The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

6.2 Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a prima facie offence is made out or not, it would not be permissible for the Court

to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial.

7. Reverting to the facts of the present case, the respondent-accused was not a member of Scheduled Caste or Scheduled Tribe community. The appellant belonged to scheduled caste community known as "Mang" or "Matang". The allegations made in the FIR lodged by the complainant was that he was addressed by the accused with abusive casteist utterance "Mangatyano, you are became very arrogant, you are staying in the village and voting against". The appellant was addressed as above by the accused outside the house of the appellant where others were present

7.1 The accused persons beat the complainant with iron rod and threatened to burn the house. The mother and aunt of the appellant-complainant were also meted out similar treatment with intimidation and were addressed with same casteist slur. The use of the word "Mangatyano" was with a clear intention to humiliate the complainant because he belonged to the said Scheduled Caste community. In the said abusive utterances and conduct by the accused, the caste nexus was established. The complainant was humiliated with casteist and abusive approach for the reason that he did not vote in favour of particular candidate one Bahubali-accused No.8 in the Assembly Election as desired by the respondent-accused.

7.2 The incident as above took place outside the house of the complainant, it was a place within public view. The term "any place within public view" was considered by this Court in Swarn Singh (supra) and Hitesh Verma (supra) was also subsequently referred to in the decision of this Court in Karuppudayar vs. State Rep. by the Deputy Superintendent of Police, Lalguid Trichy & Ors.9 wherein the Court drew distinction between "public place" and "any place within public view". It was held that if the offence is committed outside the building, for example in the lawn outside the house, and the lawn can be seen by someone from the road or lawn outside the boundary wall, then the lawn would certainly be a place within the public view.

8. In the present case, as noted above, the incident took place outside the house of the appellant which could be viewed by anybody. It was indeed a place within public view. There is no gainsaying that in the facts of the case all ingredients necessary to prima facie constitute offences under Section 3 of the Scheduled Caste and Scheduled Tribe Act, 1989 as alleged in the FIR stood satisfied. Furthermore, the occurrence of incident was fortified by recovery of clothes and weapons.

9. In the above view, there is no escape from the conclusion that offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is

made out from the bare reading of the FIR. The High Court in proceeding to evaluate the testimony of witnesses and to opine on that basis that there were certain discrepancies, no offence was made out, committed a manifest error. The anticipatory bail granted by overlooking of and disregarding the bar of Section 18 of the Act was a clear illegality and jurisdictional error committed by the High Court. The order of the High Court could not be sustained in the eye of law.

10. In the result, the judgement and order dated 29.04.2025 in Criminal Appeal No.201 of 2025 passed by the High Court of Judicature at Bombay, Bench at Aurangabad is hereby set aside. The Appeal is allowed. The anticipatory bail granted to respondent No. 1 stands cancelled.

10.1 It is clarified at this stage that the observations and findings recorded in this judgment are of prima facie nature, limited for the purpose of deciding the question of grant of anticipatory bail. The trial shall proceed independently on its own merits, uninfluenced by any observations herein.

In view of the disposal of the main appeal, all the interlocutory applications as may be pending stands disposed of.

.....CJI. [B.R. Gavai]

.....J. [K. Vinod Chandran]

.....J. [N.V. Anjaria]

New Delhi;

September 01, 2025.

1 (2012) 8 SCC 795
2 (2020) 4 SCC 727
3 2024 SCC OnLine SC 2249
4 (1995) 3 SCC 221
5 (1994) 3 SCC 569
6 (2012) 8 SCC 795
7 (2020) 10 SCC 710
8 2023 SCC OnLine SC 668
9 2025 SCC OnLine SC 2015

IN THE SUPREME COURT OF INDIA

Pradeep Kumar Kesarwani
Vs.
State of Uttar Pradesh & Anr.

Criminal Appeal No. 3831 of 2025
(@ Special Leave Petition (Crl.) No. 11642/2019)

HEADNOTE – Steps to be considered by the High Court while hearing quashing petitions under Section 482 Cr.P.C. (now Section 528 BNSS).
The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.: -
(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?
(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

ORDER

1. Leave granted.

2. It has been brought to our notice that the respondent no.2 declined to accept the notice issued by this Court. This is what the office report also indicates.

3. This appeal arises from the order passed by the High Court of Judicature at Allahabad dated 12.09.2019 in Application under Section 482 No.-12607 of 2016 by which the petition filed by the appellant herein seeking to quash the summoning order dated 25.08.2015 passed by the Additional Chief Judicial Magistrate, Court No.8, Allahabad came to be dismissed.

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

(I) The respondent no.2 herein-the original complainant/victim lodged a private complaint in the Court of Additional Chief Judicial Magistrate, Allahabad on 11.08.2014 for the offence alleged to have been committed sometime in 2010. The complaint came to be lodged for the offence punishable under Sections 323, 504, 376, 452, 377 and 120B of the Indian Penal Code, 1860 (for short, "the IPC") respectively and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Atrocities Act").

(II) At the time of filing of the complaint the same was was labelled as an application under Section 156(3) of the Criminal Procedure Code, 1973 (for short "the CrPC"). The complaint reads thus: -

> 1. That the applicant is a resident of above address and is a poor student of Scheduled Caste. The respondent No.1 Pradeep Kumar Kesharwani got the applicant enticed under a conspiracy with his influence and raped her and got a video clip made due to which he continued raping her.
>
> 2. That the applicant had been studying in the Allahabad University, Allahabad since 2010 and at the same time she was preparing for SSC from Krishna Coaching Institute. In the said Coaching Centre the respondent No.1 was also taking coaching, and he developed friendship with me. Thereafter he started coming to my room also and all of a sudden he tried to outrage my modesty one day and even on my objecting he did not stop and he tore my clothes and raped me. When I started weeping and said that I will lodge complaint in the police then he said by showing video clipping that if you will make complaint in the police then I will upload this nude photograph on internet and then whole of the world will see this.
>
> 3. That the applicant got very disturbed and could not understand what to do. Then he said that he will marry me and is accepting me as wife from today but I should not disclose about the incident to anyone.
>
> 4. That the applicant accepted the same with heavy heart and seeing no way, I thought that when the respondent no. 1 has raped me then why I should not marry him and then being compelled I started living with him as wife and the

crooked Pradeep continued raping and not only this he even committed rape in unnatural manner.

5. In the meantime I got pregnant in the Year 2011. Then I asked him that now you are going to become a father, so marry me otherwise I cannot show my face to the people. With this talk the respondent no.1 got annoyed and started me abusing filthily that I will not marry now. This is not time for marriage and even after my resistance he gave me medicine of abortion due to which my child got aborted.

6. That in the year 2011 the respondent no.1 Pradeep Kesharwani got a job in a private company N.J. Wealth Advisor Company in district Faridabad and he joined there and he used to come to me in a week or two. In the meantime my parents started searching a match for me for my marriage, then I got perplexed but with courage I told them the entire story then my parents got very annoyed with me and they started me rebuking but after considering the matter seriously, they consented for marriage with the respondent no. 1.

7. That when I asked the respondent no. 1 to get married with me he asked me to come to his office at Faridabad to talk on this issue. Then I along with my guardian went on 21.07.2010. But in a preplanned manner the respondent nos. 1 had already called respondent no. 2 & 3 and 2 and other unknown persons there. All these persons started abusing us filthily of our sisters and mothers with casteist remarks. They abused me that XXXXXXXXXXXXXXXXXXXXXXXXhamari jaati viradari se tumhari shaadi na ho sakti. Tum apni shaadi kahin aur kar lo'.

8. That the applicant dialed the police control room of District Faridabad on 100 number and sought assistance, then police reached there and saved us and they took both parties to the police station.

9. That hearing both sides at the police station, the SHO, Old Cantt District Faridabad and many other policemen present there said that if Kesharwani will not marry the applicant then it will be an offence and the respondent no. 2 & 3 will also be liable for the said offence/crime. After this the respondent no. 1 agreed for the marriage but later on he backed out from the said decision and now he does not want to marry me, which is against the justice.

10. That I made a complaint to the SHO Shivkuti and SSP Women Commission, U.P. as also to the Chairman, SC ST Commission, U.P. through registered letter on 28.07.2014 but no any action has been taken against the respondents. Therefore, it is in the interest of justice to register case against the respondents.

5. The Magistrate, instead of ordering police investigation under Section 156(3) of the CrPC as prayed for by the complainant thought fit to take cognizance upon the complaint, however, postponed the issuance of process as a magisterial inquiry was initiated under Section 202 of the CrPC. On completion of the magisterial inquiry the Magistrate proceeded to issue process for the offence of rape punishable under Section 376 of the IPC.

6. The order passed by the Additional Chief Judicial Magistrate in Criminal Case No. 655/2014 reads thus: -

"Respondent No. 1 Pradeep Kumar Kesarwani is summoned for trial under Section 376 IPC. Summons be issued against the accused. The records be produced for appearance on 12.10.2015. The complainant may pursue the case as required."

7. The appellant herein being dissatisfied with the order passed by the Additional Chief Judicial Magistrate, referred to above, challenged the same before the High Court invoking Section 482 of the CrPC. The High Court declined to interfere with the summoning order and accordingly rejected the Section 482 application filed by the appellant herein.

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

9. Mr. Rahul Kaushik, the learned senior counsel appearing for the appellant would submit that the complaint lodged by the respondent no.2 was nothing but a gross abuse of the process of law. He laid much stress on the fact that the complaint is bereft of material particulars.

10. According to him, very vague allegations have been levelled. He would submit that for something which happened in 2010, the complaint came to be lodged after a period of four years in 2014. He submitted that in fact the appellant was in a consensual relationship with the complainant. Something went wrong and they decided to part ways. However, the respondent no.2 ultimately thought of levelling false allegations of the offence punishable under Section 376 of the IPC.

11. In such circumstances, referred to above, the learned counsel appearing for the appellant would pray that there being merit in his appeal, the same may be allowed and the criminal proceedings be quashed.

12. On the other hand, the learned counsel appearing for the State would submit that since cognizance has been taken on a private complaint, the State has no role to play in the matter.

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the Additional Chief Judicial Magistrate committed an error in passing the summoning order. The High Court too overlooked the relevant aspects of the matter while rejecting the Section 482 application. It is very apparent on a plain reading of the complaint, more particularly, considering the nature of the allegations that the same doesn't inspire any confidence. There is no good explanation offered, why it took four years for the respondent no.2 to file a complaint.

14. Not only the appellant was dragged into the criminal proceedings but even the parents of the appellant were arrayed as accused. Various other offences have been alleged. This itself makes the entire case doubtful. None of the allegations levelled in the complaint are substantiated by any other independent evidence on record.

15. As stated above, the complaint fails to disclose the date of the incident including the place of the incident, etc.

16. It is by now well settled that summoning any person on the basis of a frivolous or vexatious complaint is something very serious. This would tarnish the image of the person against whom false, frivolous and vexatious allegations are levelled.

17. The duty of the court in cases where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance was delineated by this Court in Mohammad Wajid v. State of U.P., reported as 2023 SCC OnLine SC 951. We may refer to the following observations:

> "34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the

averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

(Emphasis supplied)

18. There is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls in the ambit of cheating or deception.

19. In the aforesaid context, we may refer to and relyupon the decision of this Court in the case of Deepak Gulati Vs. State of Haryana reported in 2013 Criminal Law Journal 2990. This Court made the following observations:

"18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within a ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accuse; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact, the fact must have an immediate relevance." Section 90, IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(Emphasis supplied)

20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial wouldresult in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising

therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar & Ors. v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]

21. The fact that the complainant thought fit not to even accept the notice issued by this Court is one additional ground that she was not at all serious right from day one i.e. since the time she decided to lodge the complaint.

22. We need not say anything further in the matter as we are of the view that continuation of the criminal proceedings against the appellant would be nothing but gross abuse of the process of law.

23. In such circumstances, the High Court should have exercised its inherent powers under Section 482 of the Code for quashing of the criminal proceedings.

24. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside. The proceedings of Criminal Case No.655/2014 pending in the Court of Additional Chief Judicial Magistrate are hereby quashed.

25. Pending application(s), if any, stands disposed of.

IN THE SUPREME COURT OF INDIA

C.P. Francis
Vs.
C.P. Joseph and Ors.

[Civil Appeal No._____ of 2025
@ SLP (C) No. 13348 of 2025]

HEADNOTE – It is mandatory for the High Courts to record reasons while framing an additional question of law which was not originally raised in a second appeal in a civil case.

Laid down the principles emanating from precedents on framing an additional substantial question of law under the proviso to Section 100(5) CPC as follows:
1. A substantial question of law must be grounded in the parties' pleadings and the findings of lower courts. Thus, it must be exercised if it is so fundamental that it goes to the very root of the matter.
2. The jurisdiction to frame a new question of law is exceptional and should not be exercised routinely unless there is a strong and convincing reason to do so.
3. The proviso allows the court to hear an appeal on "any other substantial question of law," which implies that at least one substantial question of law must have been formulated at the admission stage. The power to reformulate or add a question arises only if a substantial question of law has already been framed.
4. The High Court must be "satisfied" that the new question is a substantial question of law and not a mere legal plea.
5. The court is mandatorily required to record its reasons for framing an additional substantial question of law.
6. The opposite party (the respondent) must be given a fair and proper opportunity to contest the new question. Parties must be put on notice and be allowed to present their arguments on the newly framed question. Framing a question while dictating the judgment without hearing the parties would be improper.

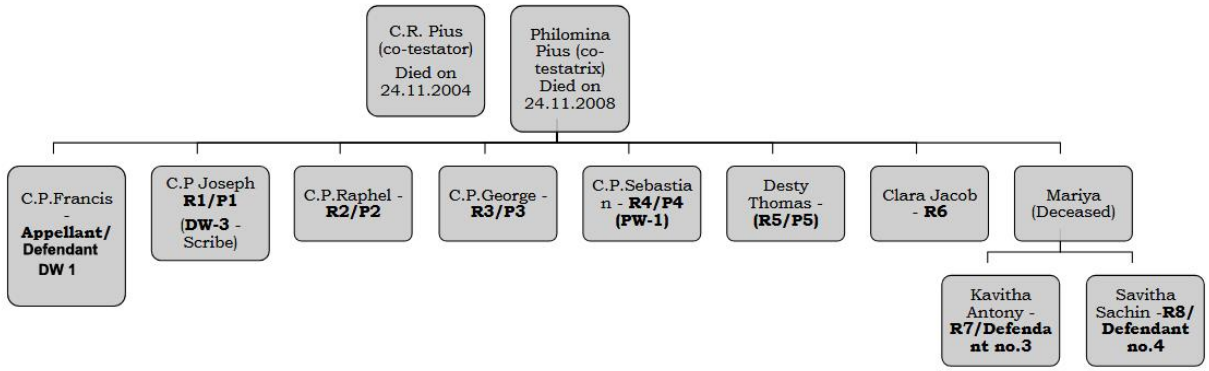
JUDGMENT

S.V.N. Bhatti, J.

1. Leave granted.

2. CR Pius and Philomina Pius possessed, as absolute owners, an extent of 7.875 cents of property in survey no. 60/6 of Elamkulam village and 3.233 cents in survey no. 60/6 of Elamkulam village, Kanyanoor Taluk, Ernakulam District, as described in plaint A and B schedules. On 24.11.2004, CR Pius died. On

27.11.2008, Philomina Pius died. The children/grandchildren of Pius and Philomina are the parties to the present litigation, and their genealogy is illustrated as follows:



3. On 15.12.1999, Philomina Pius executed a registered settlement deed in favour of CP Sebastian/Fourth Plaintiff, whereunder, she has settled an extent of 4 cents out of 7 cents in favour of the fourth plaintiff and retained 3.235 cents (Plaint B Schedule). Pius, admittedly, has been the absolute owner and possessor of Plaint A schedule property.

On 27.01.2003, CR Pius and Philomina Pius executed the registered joint will in favour of CP Francis/Appellant for the Plaint A and B schedule properties. Antony (DW6), husband of Kavitha Antony/Defendant No. 3, and Ponsy (DW5), wife of Appellant, have subscribed their signatures as attestors. The salient features of the will dated 27.01.2003 are noted as follows:

3.1 All three daughters have been given their share and married off. The fourth plaintiff was given 4 cents of the land as per the settlement deed dated 15.12.1999. Hence, they are not entitled to any right in the plaint schedule.

3.2 The properties in the plaint schedule A will be bequeathed to D1 after the death of one of the testators, and after the death of the second testator, properties in the plaint schedule B will be bequeathed to the Appellant.

3.3 That Appellant has to pay Rs.1,00,000/- to Maria, Rs. 50,000/- to daughter Thresia, Rs. 50,000/- to daughter Clara, Rs. 1,00,000/- to Son Joseph, Rs. 1,00,000/- to son Raphael, and Rs. 1,00,000/- to son George, within 5 years of death of both the parents. Reportedly, if the said amount is not paid to the respective children, they can have a charge on the schedule properties to recover the amounts.

4. Respondent Nos. 1 to 5 in the Civil Appeal filed OS No. 722/2009 before the Munsiff Court, Ernakulam, against the Appellant and three others for the reliefs of partition of the plaint schedule properties into eight equal shares by meets and

bounds and allotment of 1/8th share to each one of the children of Pius and Philomina. The plaint prays for the perpetual injunction restraining the Appellant from alienating the property or creating third-party interests.

5. OS No. 722/2009 was dismissed on 03.09.2011. Respondent Nos. 1 to 5 filed AS No. 6 of 2012, and the learned Additional District Judge vide the decree and judgment dated 26.08.2013 dismissed the appeal. Respondent Nos. 1 to 5 filed RSA No. 94/2014 before the High Court of Kerala at Ernakulam. Through the impugned judgment, the second appeal was allowed, and hence, the Civil Appeal was filed at the instance of the 1st defendant.

The impugned judgment placed reliance on Section 67 of the Indian Succession Act, 1925 ('the Act'). It allowed the appeal by recording a finding that one of the attesting witnesses/Ponsy (DW5) is the wife of the Appellant, and consequently, by operation of Section 67 of the Act, the testamentary succession in favour of Appellant, being void, fails as a testamentary succession.

6. We have heard Learned Senior Counsel, Mr. V. Chitambaresh and Mr. Mathai M. Paikaday, and the Learned Counsel Mr. Akshay Sahay for the Appellant and Respondents.

7. It is argued for the Appellant that the impugned judgment exceeded the jurisdictional limitation of Section 100 of the Civil Procedure Code, 1908 ('the CPC').

7.1 The second appeal was admitted on the substantial questions of law raised in the memorandum of appeal. However, the second appeal has been allowed on an additional question of law framed by the Court, which reads as follows:

"Whether Ext. A4/B3 Will is void under Section 67 of the Indian Succession Act in view of the attestation of the same, who is the first defendant, and, DW6, who is the husband of the third defendant, since benefits are reserved in the said Will in favour of those defendants?"

7.2 The impugned judgment refers to an opportunity of further hearing given to the counsel on the additional question of law framed by the Court. According to him, the same should not have been at the first instance framed or answered. To be precise, the additional question of law was framed without any basis in the pleadings or evidence, and was not even put as a suggestion to the witnesses. The parties to the litigation are brothers and sisters. Respondent Nos. 1 to 5 have chosen to regulate the succession to Plaint A and B schedule properties from testamentary to intestate succession.

The emphasis was on the capacity of late Pius and Philomina in executing a valid and binding will regulating the succession to the scheduled properties. Therefore,

the Appellant was invited to join issue on the proof of Exhibits B-2 and B- 3. The Appellant discharged the burden to claim testamentary succession to the suit properties. The findings of fact on valid execution and sound disposing state of testators are concurrent findings of fact by all three courts.

The High Court relied on Section 67 of the Act and declared Exhibit B-3 as a void bequest in favour of the Appellant. The High Court's findings grant a new prayer based on an entirely new reasoning. In this light, it is contended that Respondent Nos. 1 to 5 have chosen a plea, namely, that the testators were not having a sound disposing state of mind, and that the registered will dated 27.01.2003 is not out of their free will.

The impugned judgment, adverting to a new case, ought not to have ignored the validly executed and proved will. An argument has been advanced on the interpretation of Section 67, and also that the grounds available to challenge Section 67 of the Act as violative of equality of law and equal protection of law under Article 14 of the Constitution of India. The courts are under an obligation to give effect to the disposition contemplated by the testator once the execution of the will dated 27.01.2003 is proved in accordance with law. He prays for the setting aside of the impugned judgment.

8. Mr. Mathai M. Paikaday, appearing for Respondent Nos. 1 to 5, contends that though the impugned judgment refers to an additional question of law, it is, in fact, a substantial question of law framed by the High Court under Section 100(5) of the CPC. The impugned judgment records that further opportunity was afforded to the parties to address the Court on the additional question of law framed by the Court. There is substantial compliance with Section 100 of the CPC. He further argues, to sustain the findings recorded on the additional question of law, that the finding is not based on an incorrect plea or fact.

There is no gainsaying that DW5 is the wife of the Appellant, and pleadings and issues are absent on the applicability of Section 67 of the Act. A plain reading of Section 67 makes the bequest in favour of the Appellant void. Section 67 has been on the statute book for 100 years, and the effect of being void once the circumstances are satisfied has stood the test of time. The learned senior counsel argues that the points urged by the Appellant do not fall within the ambit of Article 136 of the Constitution of India, much as the succession to the suit schedule is guided by intestate succession and all the children of Pius and Philomina would be entitled to a 1/8th share.

Advocate Akshay Sahay, appearing for Respondents, adopts the argument of the Appellant and contends that the other attesting witness is also the son-in-law of the executants of the will. The wish and desire of the testators must be respected,

and the opening of intestate succession would defeat the last wish of late Pius and late Philomina.

9. We have taken note of the submissions and perused the record. Before we take up the submissions of the learned counsel, we preface the journey of the parties in the present litigation by setting out the pleadings and the resulting issues between the parties.

10. The plaint in OS No. 722 of 2009 is summarised by retaining the cause pleaded by Respondent Nos. 1 to 6:

10.1 The plaintiffs sought partition of the properties into eight equal shares, along with a permanent prohibitory injunction against alienation. The plaintiffs contend that, though the deed dated 15.12.1999 was styled as a settlement deed, it was expanded for the marriage of two sisters. The plaintiffs assert that their father, C.R. Pius, suffered from physical and mental ailments, including cerebral palsy, senile changes, and Parkinson's disease, from 1998 until his death, rendering him mentally incapable of making rational decisions. They, hence, state that the said will carries no legal validity, as the first defendant, his wife and the third defendant's husband misrepresented the mother.

10.2 They note that the joint will was falsely created and forged by the first defendant, his wife (DW5), and the husband of the third defendant (DW6) through misrepresentation and undue influence over their incapacitated father and elderly mother. They claimed the mother was too old to understand the document properly.

10.3 The plaintiffs asserted that their parents died intestate, and therefore, all children held joint ownership and possession of the plaint schedule properties. The defendants are trying to alienate the property on the basis of the alleged will, ignoring the plaintiffs' 1/8th share each in the plaint schedule properties. Furthermore, the plaintiffs are not interested in continuing with joint possession and therefore seek partition.

10.4 The plaintiffs alleged that the cause of action arose on 24.11.2004 (father's death) and 27.11.2008 (mother's death).

11. The first defendant, to resist the claim of intestate succession, has set up Exhibit B-2, a registered settlement deed. The pleadings in the written statement are summarised as follows:

11.1 The defendants refuted the claims of the plaintiffs and asserted that the plaintiffs have never obtained any ownership, co-ownership or are in joint possession of the plaint schedule property. The defendants asserted that the plaintiffs are only entitled to get the monetary claims as stipulated in the

registered will. If the claims are unfulfilled within the 5-year period after the will comes into force, the defendants can create a charge over the properties.

11.2 They state that the plaintiffs have admitted the execution of the settlement deed dated 15.12.1999, in which late Pius and the 1st defendant are the witnesses, and the executant is late Philomina. Hence, it is admitted that they were capable of executing the documents. The settlement deed was executed after Pius and Philomena decided to execute a joint will in respect of the remaining properties. Thus, their mental capacity to execute the joint will is admitted. They further contend that the plaintiffs cannot blow hot and cold at the same time, and are estopped in fact and law.

11.3 It is asserted that the 1st defendant took over the possession of the plaint schedule after the death of Pius on 24.11.2004, and Philomina did not have any objection regarding this possession. The only right created in favour of the plaintiffs is the monetary claims (mentioned in the will), and a substantial amount was also paid as the plaintiff's share during their marriage.

11.4 The defendants claim that the settlement deed was executed in favour of the fourth plaintiff for the construction of a residential building for the fourth plaintiff and not for the marriage of two sisters of the fourth plaintiff. The defendants further asserted that he looked after his father and mother until his death.

11.5 The defendants contend that after the execution of the will on 27.01.2003, the father was still alive for a period of one year and some months in good health. During this period after execution of the will, there was no objection by the plaintiffs or the testators.

12. The Trial Court framed the following issues:

"1) Whether the will bearing No. 22/2003 of S.R.O Ernakulam is valid and genuine?

2) Whether the plaint schedule property is partable? If so what is the share of each party? 3) Whether the plaintiffs are entitled for a decree of permanent prohibitory injunction as prayed for? 4) Relief and cost."

13. The categorical findings of the Trial Court are that:

13.1 The execution of the will was valid and genuine, and it also concluded that C.R. Pius was capable of making rational decisions at the time of the will's execution. He was not suffering from any mental disease. This was supported by the evidence of DW7 (Neurologist), who deposed that Pius was not suffering

from any ailment or from any kind of mental disease. In fact, Pius had witnessed the settlement deed executed in 1999, thereby proving his sound mental capacity.

13.2 No evidence was present that the execution of the will by Philomina Pius was vitiated by fraud or misrepresentation. It considered the evidence of DW1 to DW4 and concluded that the execution of Exhibit B-3 is not vitiated by fraud or misrepresentation.

13.3 DW5 (Appellant's wife) complied with Section 63(c) of the Act, testifying that she witnessed the testators' signatures and signed in their presence. Despite DW6's (Antony) non-compliance with Section 63(c) of the Act (animo attestandi), the combined evidence of DW3 (scribe), DW4 (Sub-Registrar), and DW5 sufficiently proved attestation of Exhibit B-3.

13.4 It held that the presence or active participation of the Appellant or his wife (DW5) as a witness did not raise doubt on the genuineness of the will or the testamentary capacity of the testators.

13.5 Based on the valid will, the plaint schedule properties were deemed not partible, and other legal heirs were only entitled to the specified monetary amounts.

13.6 Hence, it dismissed the suit for partition.

14. In AS No. 6 of 2012, the Appellate Court, on the competence, capacity, and the execution of Exhibit B-3 in a free and sound disposing state of mind, affirmed the findings of the Trial Court.

14.1 The Appellate Court affirmed that Pius was mentally and physically capable of making rational decisions, considering that no record of treatment between 14.09.2002 and 06.11.2004 for any ailment was placed. Thus, the plaintiffs' contention that he was in poor health is unfounded. The court stated that the argument that he was in a vegetative state was not established.

14.2 The court accepted DW5's (Appellant's wife) testimony regarding the will's execution and DW4's (Sub Registrar) testimony that the executants signed before attesting witnesses, substantiating proper attestation under Section 63 of the Act. DW6's testimony was not relied upon as he did not witness the executant's signature.

14.3 The fact that the will remained un-cancelled by the parents until their deaths (Pius died 1 year 10 months after execution, mother much later) was deemed to probabilise its voluntary execution without coercion. The court upheld the reason for excluding the 4th plaintiff (Sebastian) due to his prior receipt of land via the

settlement deed. It noted that specific monetary provisions for other children indicated the parents' due deliberation.

14.4 The first appellate Court concurred with the Trial Court that the will was genuine and free from suspicious circumstances.

15. The contentions canvassed by the respective counsel would present the following points for consideration.

Point 1: Whether the High Court, while invoking the Proviso to Section 100(5) of the CPC, was correct in referring to and applying Section 67 of the Act?

Point 2: Whether Section 67 of the Act is attracted to determine the succession to the suit schedule property or not?

16. The points for consideration are independent. The need and necessity to take up point no. 2 arises from the consideration and conclusion recorded on point no. 1.

POINT 1

17. The impugned judgment records that an additional substantial question of law (sic) was framed and opportunity was provided to the counsel to address the Court on the said question of law. Section 100 of the CPC reads as follows:

100. Second appeal.-

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other

substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

(Emphasis supplied)

18. In the above background, before we examine the procedure followed by the High Court, a few precedents on the point are noted. The principles emanating from precedents on Section 100(5) of the CPC can be summed up as follows:

18.1 A substantial question of law must be grounded in the parties' pleadings and the findings of lower courts. Thus, it must be exercised if it is so fundamental that it goes to the very root of the matter.1 18.2 The jurisdiction to frame a new question of law is exceptional and should not be exercised routinely unless there is a strong and convincing reason to do so.2

18.3 The proviso allows the court to hear an appeal on "any other substantial question of law," which implies that at least one substantial question of law must have been formulated at the admission stage. The power to reformulate or add a question arises only if a substantial question of law has already been framed.3

18.4 The High Court must be "satisfied" that the new question is a substantial question of law and not a mere legal plea.4

18.5 The court is mandatorily required to record its reasons for framing an additional substantial question of law.5

18.6 The opposite party (the respondent) must be given a fair and proper opportunity to contest the new question. Parties must be put on notice and be allowed to present their arguments on the newly framed question. Framing a question while dictating the judgment without hearing the parties would be improper.6

19. The ratio of the precedents is that the High Court is competent and endowed with discretionary jurisdiction to formulate a substantial question of law not stated when the second appeal was admitted. The High Court is entitled to formulate an additional substantial question of law for reasons to be recorded if the High Court is of the view that the case involves such a question of law. The proviso to sub-section 5 of Section 100 of the CPC comes into operation in exceptional cases, albeit for strong and convincing reasons to be specifically recorded by the High Court.

Respondent Nos. 1 to 5 have pleaded a lack of a sound disposing state of mind to late Pius. The pleadings refer to the line of treatment given to the late Pius. The plea needed for invoking Section 67 of the Act, either by choice or inadvertence, is not pleaded by Respondent Nos. 1 to 5. Issue No. 1 deals with whether Exhibit

B-3-will is valid and genuine. Mr Mathai does not dispute that the issue ought to have been different, and from the expressions used in the issue, consideration falls under Section 100(5) of the CPC.

20. We have perused the plaint, and the plaint refers to the will and the allegation that "[s]ince the will executed by fraud and misrepresentation upon the ailed mother and forced upon the ailed father, it carries no legal validity, and it is to be neglected." The plea under Section 67 of the Act can be an additional or alternative plea, which would have resulted into an additional issue, and an establishment of a relationship, where one of the attestors to the legatee of the will would have fallen for consideration.

Introducing Section 67 at the stage of Second Appeal does not merely raise a new legal argument; rather, it creates an entirely new case for the plaintiffs. The original case required the defendant to prove the testators' mental capacity and also the absence of suspicious circumstances in bringing into existence Exhibit B-3. A case under Section 67 of the Act would require the Appellant to meet a completely different legal challenge, one which is based on the identity of an attesting witness and the legal consequences arising from the said identity.

21. Section 141 of the Evidence Act, 1872 defines a 'leading question as any question that "suggests" the answer which the person questioning expects to receive.' We have perused the evidence of DW1 and DW5, and the suggestion which is otherwise available is not put to the witnesses. The importance of a suggestion in oral evidence of a party can crisply be summarised as follows:

21.1 In Browne v. Dunn,7 the English House of Lords established a rule of practice which dictates that if a cross-examiner intends to later adduce evidence or make submissions that contradict the testimony of a witness, they must first put the substance of the contradiction to the witness during cross-examination. The purpose is to afford the witness a fair opportunity and is rooted in the principle of Audi Alteram Partem. This principle has also been upheld in Indian decisions.8

21.2 In a 1954 decision of the Bombay High Court,9 it was noted that failing to suggest contrary points during cross-examination can weaken a party's position and can be interpreted as an implicit acceptance of the witness's testimony. While the case pertained to criminal defamation, this principle has also been applied in civil litigation. For instance, in Radha Kishan Aggarwal v. Network Ltd,10 the Delhi High Court held that since no suggestion was given to the plaintiffs' willingness to dispute the market rent, the witness's testimony on rent was accepted as true.

21.3 Absence of a suggestion to a witness may not be the deciding factor in determining the outcome of a plea. However, in the wheel of consideration of all facts in issue and their legal implication, the absence of suggestion constitutes an important cog in the wheel of consideration. We hasten to add that the timing, absence of suggestion, relevance and its impact are left to the experience, wisdom and discretion of the Judge appreciating a case.

22. We have perused the evidence of DW1, the propounder of Exhibit B-3, and DW5, an attesting witness to Exhibit B-3. The evidence is bereft of at least a suggestion that would be expected in a matter as serious as the present. The Court has power and jurisdiction to suit or non-suit a party on the adduced pleadings, issues and evidence, but not on a totally new and unexpected case, more particularly at the stage of Section 100.

The root of the matter is not an abstract legal issue floating freely, but it is fundamentally anchored to the specific cause of action and the factual matrix pleaded by the parties. From the beginning, the plaintiffs' case was built on a factual challenge; wherein, they contend that (i) the testators lacked a sound disposing state of mind, and (ii) the will was a product of forgery, misrepresentation, and undue influence. These two aspects have been successfully established by the Appellant, and the findings favour the Appellant.

23. Therefore, in fine, we record that in the circumstances of this case, the High Court fell in error by not recording reasons for framing the additional substantial question of law. The additional substantial question of law may be an abstract application of Section 67 without verifying the foundational facts and circumstances. The admission of a party must be in the manner known to law. An admission in pleading and evidence is certainly an admission.

By appreciating an admission, the Court is entitled to apply the consequence of law. In the analysis, we notice that the relationship of DW5 with DW1 is either assumed by the Court or not contested by the parties on any of the grounds available, namely, want of pleadings, etc., before the High Court. The above consideration leads to the irrefutable conclusion that an additional substantial question of law is framed without pleadings, issues and reasons and a finding is recorded.

The Court is now confronted with a will duly executed and proved, and not given effect to by applying Section 67 of the Act. It is axiomatic, but still referred to in often quoted decisions,11 that the wish of a testator as expressed through a duly proved will is upheld by the Court, but not open up succession contrary to the arrangement made by the testator. Thus, the point is answered in favour of the Appellant and consequently, the impugned judgment is set aside. For the above

reasons, point no. 2 is not, in the peculiar facts and circumstances of the case, examined and answered.

24. The conclusion to the above points does not give quietus to the obligations fastened on the Appellant by late Pius and late Philomina. Exhibit B-3 stipulated a few obligations for discharge by the Appellant. The parties have been agitating over whether testamentary or intestate succession is applicable to the plaint schedule. With the findings recorded by the present judgment, testamentary succession is again opened.

The Appellant has neither deposited nor paid the amount directed in Exhibit B-3 to any of the other beneficiaries. The parents made a contemporaneous arrangement in bequeathing the suit schedule to the Appellant. The testamentary succession finally opens through the present adjudication, and therefore, it is incumbent upon the Appellant to compensate the other legatees within three months from today as summarised in the following table:

PARTY NAME AND POSITION IN CIVIL APPEAL	AMOUNT STIPULATED IN THE WILL	COMPENSATION AWARDED BY THIS COURT
Maria (Deceased) [Represented by Kavitha Antony/R3 and Savitha Sachin/R8]	Rs. 1,00,000/-	Rs. 10,00,000/-
Desty Thomas/R5	Rs. 50,000/-	Rs. 5,00,000/-
Clara Jacob/R6	Rs. 50,000/-	Rs. 5,00,000/-
C.P. Joseph/R1	Rs. 1,00,000/-	Rs. 10,00,000/-
C.P. Raphael/R2	Rs. 1,00,000/-	Rs. 10,00,000/-
C.P. George/R4	Rs. 1,00,000/-	Rs. 10,00,000/-

25. In default of payment, the amount determined by this Court will carry an interest of 6% per annum, and also charge for realising the same will be on the plaint schedule.

26. We hasten to add that extraordinary care and caution have to be observed in the exercise of jurisdiction under Article 136 of the Constitution of India. It does not confer a right of appeal, but it vests with this Court a vast discretion, which is only to be exercised by considerations of justice, call of duty and the eradication of injustice. This overriding power is exercised only in exceptional cases where special circumstances exist.

27. For the above reasons, the appeal is allowed and there is no order as to costs.

.....J. [Ahsanuddin Amanullah]

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

New Delhi;

September 03, 2025.

1 Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179.

2 Mehboob-Ur-Rehman v. Ahsanul Ghani, (2019) 19 SCC 415.

3 Gian Dass v. Gram Panchayat, (2006) 6 SCC 271; Kirpa Ram v. Surendra Deo Gaur, (2021) 13 SCC 57.

4 Kshitish Chandra Purkait v. Santosh Kumar Purkait, (1997) 5 SCC 438.

5 R. Nagraj (Dead) through LRs. and Anr. v. Rajmani and Ors, (2025) INSC 478.

6 Suresh Lataruji Ramteke v. Sumanbai Pandurang Petkar, (2023) 17 SCC 624.

7 (1893) 6 R 67.

8 See, Laxmibai v. Bhagwantbuva, AIR 2013 SC1204

9 Yeshpal Jashbhai Parikh (Original Accused) v. Rasiklal Umedchand Parikh (Original Complainant, Opponent, 1955 AIR BOM 318.

10 2011 SCC OnLine DEL 3896; See also, JS Bhalla v. GJ Bhawnani, 23 (1983) DLT 125.

11 Gnanambal Ammal v. T. Raju Ayyar, 1950 SCC 978; 2. K.S. Palanisami v. Hindu Community in General & Citizens of Gobichettipalayam, (2017) 13 SCC 15.

IN THE SUPREME COURT OF INDIA

Malleeswari
Vs.
K. Suguna and Anr.

[Civil Appeal No._____ of 2025
@ SLP (C) No. 12787 of 2025]

HEADNOTE – Review jurisdiction under Order 47 CPC is confined to correcting "errors apparent on the face of the record" and cannot be used as a disguised appeal.

The grounds for Review are summed up as follows:
1. The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.
2. Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record. Such an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.
3. Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.

JUDGMENT

S.V.N. Bhatti, J.

1. Leave granted.

2. Subramani, the husband of the second Respondent, filed OS No. 192 of 2000 in the Court of the District Munsiff at Ponneri for partition of the suit schedule properties into two equal shares and allot one such share to him. The suit in question was filed against Munasamy Naidu, the father of the plaintiff.

3. The original plaintiff and the defendant, since no more, are being represented by the respective heirs and successors in interest. To appreciate the relationship of the present array of parties, the genealogy is stated hereunder:

4. The plaint avers that the suit schedule properties are ancestral properties and are available for partition between the first plaintiff and the first defendant, being members of the Hindu Undivided Family. To attribute the character of joint Hindu family property, the plaint refers to the registered partition deed dated 22.11.1991 executed between the deceased first defendant and his brother.

The suit was filed admittedly without impleading Malleeswari/Appellant in this civil appeal, who is the daughter of Munusamy Naidu and Muniammal. On 25.02.2003, the learned Trial Court passed the ex-parte preliminary decree as prayed for. The first defendant, post the preliminary decree, executed a registered sale deed dated 27.12.2004 in favour of K Suguna/first Respondent for item nos. 4 to 7 of the suit property, and also a settlement deed for item nos. 1 to 3, and 8 to 10 in favour of the Appellant.

5. On 24.01.2005, the second Respondent filed I.A no. 140 of 2006 to pass a final decree in terms of the preliminary decree dated 25.02.2003. The first defendant executed a will bequeathing his share to the Appellant. On 13.05.2011, the first defendant died, and the Appellant has been impleaded as the legal heir and successor to the first defendant.

6. The first Respondent, pursuant to final orders in IA nos. 130 and 135 of 2013, has been impleaded as one of the Respondents in the pending final decree proceedings. The subject matter of the appeal arises from the steps taken by the Appellant in I.A no. 1199 of 2018, praying for amending the preliminary decree in terms of her status as one of the co-parceners and entitling her to an equal share along with the father and the brother. The application for amendment of the preliminary decree was opposed by the first and second Respondents.

The Appellant's case is that the Hindu Succession (Amendment) Act, 2005 ('HSA 2005'), grants daughters equal coparcenary rights by birth. As a daughter of a living coparcener at the time the act came into force, she is entitled to a 1/3rd share. Thus, she claimed her father's 1/3rd share through the Will dated 23.04.2008, bringing the total to 2/3rd share. The Appellant further contended that the sale to the first Respondent on 27.12.2004 is invalid as it occurred after the amendment's cut-off date of 20.12.2004; thus, violating the court's injunction order.

7. In the objection to the reopening of the preliminary decree, it is contended by the Respondent that the application is barred by limitation, having been filed over 15 years after the preliminary decree and 7 years after the petitioner admittedly became aware of the suit. Further, the Appellant is estopped from challenging the sale to the first Respondent, as she was an attesting witness to the sale deed.

Moreover, the preliminary decree had already ascertained and finalized the shares in 2003, before the 2005 amendment came into force. Consequently, the sale was valid and based on prior agreements, and the petitioner's remedy was to appeal the preliminary decree and not to seek its amendment. Lastly, the settlement deed and Will favouring the Appellant are invalid as they were executed during the pendency of the suit, lis pendens, in violation of the injunction.

8. On 08.03.2019, the Trial Court dismissed IA no. 1199 of 2018 - a petition to amend the preliminary decree dated 25.02.2003.

8.1 It noted that the Appellant was impleaded only as the legal representative of her deceased father, and that she merely stepped into his shoes and was only entitled to the share as determined by the decree dated 25.02.2003.

8.2 It also held that the HSA 2005 was inapplicable, since it could not be applied retroactively.

8.3 Further, the Settlement Deed dated 27.12.2004 was void since the deed was created after the suit had been filed and a decree had been passed. The father was also under a court injunction not to transfer the property.

8.4 She was also barred by the principle of estoppel since her own signature was there on the sale deeds as a witness. This proves that she was aware of and had consented to the transactions.

8.5 Lastly, the Trial Court notes that a preliminary decree is a final determination of rights, and can only be amended for clerical errors, and not to change the outcome fundamentally. It also notes that the proper legal remedy was to file an appeal against the original decree.

9. The Appellant filed CRP No. 1439 of 2019 in the High Court of Judicature at Madras against the order dated 08.03.2019. The CRP was allowed on 23.09.2022, and the order dated 08.03.2019 was set aside. The first Respondent filed review application no. 227 of 2023 to review the order dated 23.09.2022. Through the impugned order dated 19.10.2024, the review application was allowed. The High Court remanded the matter to the Trial Court for fresh consideration. Hence, the civil appeal at the instance of the Appellant.

10. Mr. V Prabhakar, learned Senior Advocate, appearing for the Appellant, contends that the High Court fell into a grave and serious error in not appreciating the review jurisdiction conferred on the Courts by Section 114 and Order 47 Rule 1 of the Civil Procedure Code, 1908 ('CPC'). The consideration and conclusion in the impugned order are not available to a review court. The scope of judicial review of an interlocutory order under Article 227 of the

Constitution of India is extremely narrow and limited. The review of an order under Article 227 is further conditioned by very few and limited grounds.

The order impugned has recorded fresh findings on facts by overturning the earlier findings of fact recorded by the High Court. Though the matter is remitted to the Trial Court, the illegality of the order goes to the root of the matter and warrants the interference of this Court. The Appellant is entitled to a share both in terms of Section 29A of the Hindu Succession Act (Tamil Nadu Amendment Act), 1989 and also HSA 2005. The prayer in I.A 1199 of 2018 is to pass a preliminary decree answering the rights of all the eligible co-parceners.

11. Ms. Shobha Ramamoorthy contends that the order impugned does not transgress the review jurisdiction. The matter is remanded to the Trial Court. The consideration of a fact or reversing an earlier finding, if examined carefully by this Court, cannot be termed as in any manner exceeding the review jurisdiction. The Appellant has been a silent spectator and cannot reopen the preliminary decree to claim the settled share of late Munusamy Naidu or her 1/3rd share.

12. Dr. Sivabalamurugan argues that the order dated 23.09.2022 was patently illegal and erroneous. The Appellant cannot expand the preliminary decree and should have acted promptly during the pendency of OS No. 192 of 2000. He prays for the dismissal of the Civil Appeal.

13. Having heard the learned counsel and perusing the record, the civil appeal examines whether the order impugned conforms to the scope of review of an order under Section 114 and Order 47 of CPC. The exercise or excess of jurisdiction is determinative on the order under review and the review order. It is convenient to compare the consideration before the jurisdictional limitations of review are considered by this Court.

CIVIL REVISION PETITION	**REVIEW ORDER (IMPUGNED ORDER)**
The issue was whether the Appellant-daughter's right to claim a share as a coparcener following the HSA 2005.	The issue centred on whether the CRP order unfairly denied the Respondent, pendente lite-transferee, the right to defend her title against the Appellant's claim.
The court accepted her claim, stating that she was entitled to a 1/3rd share in ancestral properties based on Vineeta Sharma v. Rakesh Sharma.1	Acknowledged the claim but renamed it as a third-party claim. This was done in relation to the original suit structure, which warranted a fresh inquiry at the trial court level.
As a pendente lite transferee, Suguna could not have challenged the	The finding of the CRP would prevent Suguna from defending her title. Review

ancestral nature of the properties. She would have had to settle for whatever share her vendor (the Appellant's father) was allotted. Her rights were subordinate to the co-parceners' shares and flows from the vendor.	order affirms her right to raise possible defences in Trial. These defences may include challenging the ancestral nature of the property.
The plea that the properties were not ancestral is not a defence available to the Respondent-pendente lite. The Property is treated on the admission made by the original plaintiff.	The Review order notes that the ancestral nature of the property, while asserted by the plaintiff, was not contested by the defendant (deceased father). It held that an uncontested assertion should not bind the Purchaser in the face of the Appellant's new claim. Thus, this question is to be re-examined.
The order explicitly stated that Appellant's 1/3rd share would diminish Respondent's interest in the properties she purchased to the 1/3rd share belonging to her vendor, the deceased father.	Held that the Appellant's claim directly challenges the minimum interest Respondent had acquired. Moreover, the review order allows the Respondent to adjust equities.
CRP was allowed. The Trial Court order dismissing the Appellant's application was set aside. The Appellant was permitted to pay the required court fee for her 1/3rd share.	The Review Application was allowed. The CRP order was set aside. The entire matter was remanded to the trial court for a fresh enquiry, allowing the Respondent to raise all contentions to defend her purchase.

14. In summing up precedents on the point, the judgment may not be understood as though we are putting an old spin on a classic. The court notes that there is no infirmity or illegality in entertaining the review petition; however, the approach to the error pointed out warrants a review of the precedents on the point.

15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different from appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC.2

15.2 Review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.3

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.4

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power.5

15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered.6 Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.7

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.8 Such an error is a patent error and not a mere wrong decision.9 An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.10

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.11

18. Courts ought not mix up or overlap one jurisdiction with another jurisdiction. Having noted the appellate and review jurisdiction of the Court, we will apply these principles to the impugned order to determine whether the High Court was within its power of review jurisdiction or had exceeded it by reversing the findings, as if the High Court were sitting in appeal against the order dated 23.09.2022. We appreciate the above tabulated summary of the view taken in the impugned order while doing so.

19. The impugned order has not adverted to an error apparent on the face of the record, but has taken up an error on reappreciation of the case and counter case of the parties. The review order records a few findings extending far beyond the actual working out of prayers in a suit for partition. The order impugned has exceeded the jurisdiction of review by a court.

20. For the above reasons, the order impugned is set aside, and consequently, the order dated 23.09.2022 in CRP is restored. Civil Appeal allowed. No order as to costs.

20.1 The Trial Court is directed to expeditiously dispose of all the pending applications, preferably within three months from the date of receipt of this judgment.

.....J. [Ahsanuddin Amanullah]

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

New Delhi;

September 08, 2025.

1 (2020) 9 SCC 1.

2 Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170.

3 Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389.

4 Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715.

5 Lily Thomas v. Union of India, (2000) 6 SCC 224.

6 Inderchand Jain v. Motilal, (2009) 14 SCC 663.

7 Shivdev Singh v. State of Punjab, AIR (1963) SC 1909.

8 Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104.

9 T.C. Basappa v. T. Nagappa, AIR (1954) SC 440.

10 Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR (1960) SC 137.

11 Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 and approved in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, AIR (1954) SC 526.

IN THE SUPREME COURT OF INDIA

Union of India & Ors.
Vs.
Sajib Roy

[Civil Appeal Nos._____ /2025
@ SLP (C) Nos. 21392-21393/2019]

[Civil Appeal Nos._____ /2025
@ SLP (C) Nos. 21394-21395/2019]

[Civil Appeal Nos._____ /2025
@ SLP (C) Nos. 21926-21927/2019]

[Civil Appeal Nos._____ /2025
@ SLP (C) Nos. 22432-22433/2019]

HEADNOTE – Reserved category candidates who avail age relaxation to apply under the reserved category cannot later be considered for selection against unreserved (general) category vacancies if the recruitment rules explicitly prohibit such migration.

JUDGMENT

Joymalya Bagchi, J.

1. Leave granted.

2. Appellants have assailed common impugned judgment and order dated 12.10.20181 and order dated 26.02.20192 whereby the respondents-writ petitioners who had applied as reserved candidates in OBC category after having availed age relaxation for the post of Constable (GD) were directed to be considered for recruitment under unreserved category.

3. Facts in a short compass giving rise to the appeals are as follows - Staff Selection Commission3 published employment notification for recruitment of Constables (GD) in BSF, CRPF, ITBP, SSB, NIA and SSF and Rifleman in Assam Rifles comprising physical test, written examination and medical examination. As per the employment notification, the prescribed age limit for eligible candidates to participate in the recruitment process was 18 to 23 years as on 01.08.2015 and age relaxation was given to various reserved candidates4. For OBC candidates, i.e., the respondents-writ petitioners, age relaxation was 3 years5.

4. All the respondents-writ petitioners availed of such age relaxation for participation in the recruitment process. However, they were declared unsuccessful as they had scored marks lower than the last selected candidate in the OBC category for various departments. But their marks were higher than the last selected candidate in the unreserved category for those departments. Claiming that they ought to be permitted to migrate to the unreserved category, the respondents-writ petitioners approached the High Court. Union of India opposed the prayer on the ground that the respondentswrit petitioners had applied in the OBC category after availing age relaxation and under such circumstances cannot be considered eligible for appointment in unreserved category.

5. Relying on Jitendra Kumar Singh & Anr v. State of UP & Ors6, the High Court held that the refusal to permit respondents-writ petitioners to migrate to the unreserved category though they scored higher than the last candidate in such category runs counter to the principles of merit-based recruitment in public services and would be opposed to the principles of equality enshrined under Article 14 of the Constitution. The High Court further held that relaxations in fee and age for reserved candidates to participate in the selection process are concessions in aid of reservation and do not impair the 'level-playing field' in the open competition, i.e., written examination where such candidates have scored more than those selected under the unreserved category.

6. Subsequently, Union of India by way of a review petition placed on record an office memorandum no. 36011/1/98-Estt. (Res) dated 01.07.1998 which inter alia provided that SC/ST/OBC candidates who have availed relaxations in age limit, experience qualification or number of chances in written examinations would be deemed unavailable for consideration against the unreserved vacancies. Notwithstanding such office memorandum the High Court refused to review its judgment and the review petition came to be dismissed.

7. We have heard Mr. Shailesh Madiyal, learned senior counsel for the appellants and Dr. Nirmal Chopra and Ms. Manika Tripathy, learned counsel for the respondents-writ petitioners.

8. The moot issue which falls for consideration is did the High Court err in applying the ratio in Jitendra Kumar (supra) in the teeth of the office memorandum dated 01.07.1998 which put a clog on migration of reserved candidates who have availed concessions in the form of age relaxation for appointment in unreserved category?

9. In Jitendra Kumar (supra) this Court was called upon to decide whether availing relaxation in fees/upper age limit in the reserved category would disentitle such candidates from being considered for appointment in the unreserved seats. The Bench held such relaxations in fee or age were incidental

and ancillary provisions which made the core concept of reservation under Article 16(4) effective.

Such enlargement of zone of consideration by giving concession in fees/upper age limit were merely an 'aid to reservation' and enabled the reserved candidate to participate with others in an open competition on merit. These concessions did not affect the level-playing field in the recruitment process wherein both reserved and unreserved candidates competed against each other without handicap. The Bench elucidated as follows:-

"75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination.

With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

10. Having propounded the aforesaid general principles, the Bench proceeded to decide the case in light of the relevant recruitment rules:-

"65. In any event the entire issue in the present appeals need not be decided on the general principles of law laid down in various judgments as noticed above. In these matters, we are concerned with the interpretation of the 1994 Act, the Instructions dated 25-3-1994 and the G.O. dated 26-2-1999. The controversy herein centres around the limited issue as to whether an OBC who has applied exercising his option as a reserved category candidate, thus becoming eligible to be considered against a reserved vacancy, can also be considered against an unreserved vacancy if he/she secures more marks than the last candidate in the general category."

11. It is clear that the decision in Jitendra Kumar (supra) is not founded on the general principles but on the interpretation of the relevant statute7, government order8 and instructions9 regulating the selection process. It may not be out of

place to note Section 8 (1) of the 1994 Act empowered the State Government to grant concessions in respect of age limit, fees for reserved categories in any competitive examination or interview. The government instructions dated 25.03.1994 permitted reserved candidates availing such concessions to be adjusted against unreserved seats10.

12. In light of such government instructions the Bench held:-

"72. From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview."

13. The ratio in Jitendra Kumar (supra) is clearly distinguishable on facts. The recruitment process at hand is regulated by office memorandum dated 01.07.1998 which bars the migration of a reserved candidate. Office memorandum reads as follows:-

"No.36011/1/98-Estt. (Res)
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

New Delhi Dated 01.07.1998

OFFICE MEMORANDUM

Subject: Relaxations and concessions for SCs and STs clarification regarding.

The undersigned is directed to refer to this Department's O.M.No.36012/13/88-Estt. (SCT) dated May 22, 1989 and to clarify that the instructions contained in the C.M. apply in all types of direct recruitment whether by written test alone or written test followed by interview or by interview alone.

2. O.M. dated May 22, 1989 referred to above and the O.M. No. 36012/2/96-ESTT(RES) dated July 2, 1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates for example in the age limit, experience qualification, permitted number of chances in written examination,

extended zone of consideration larger then what is provided for general category candidates etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.

14. It may be apposite to bear in mind the respondents-writ petitioners have without demur participated in the selection process and had not called in question the constitutional validity of the aforementioned office memorandum.

15. Given this situation, the High Court erred in mechanically applying the ratio in Jitendra Kumar (supra) to the present case without appreciating the difference in the factual matrix of the present case with the cited authority. While in Jitendra Kumar (supra) the government instructions dated 25.03.1994 expressly permitted reserved candidates who have availed relaxation in fees/upper age limit etc. to be considered for appointment in unreserved category, office memorandum dated 01.07.1998 clearly barred such migration in the event the reserved candidates had availed relaxations in age, experience qualification, etc.

16. It is trite the ratio in a judgment must be read in the facts of a particular case and cannot have universal application. In Quinn v. Leathem11, Lord Halsbury remarked:-

"there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

17. In Haryana Financial Corporation & Anr v. Jagdamba Oil Mills & Anr12, the Court held:-

"21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR p. 688, para 19)

"19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the

entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

18. Whether the general observations in Jitendra Kumar (supra) could be treated as a binding precedent in respect of recruitment process where such migration is not permitted is no longer res integra.

19. In Deepa E. V. v. Union of India & Ors13, a two judge Bench of this Court taking note of self-same office memorandum applicable in the present case held the ratio in Jitendra Kumar (supra) pertained to interpretation of the 1994 Act and government instructions dated 25.03.1994 and general principles made therein were inapplicable to a recruitment process where such migration is not permitted. The Bench observed:-

"8. The learned counsel for the appellant mainly relied upon the judgment of this Court in Jitendra Kumar Singh v. State of U.P, which deals with the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and Government Order dated 25-3-1994. On a perusal of the above judgment, we find that there is no express bar in the said U.P. Act for the candidates of SC/ST/OBC being considered for the posts under general category. In such facts and circumstances of the said case, this Court has taken the view that the relaxation granted to the reserved category candidates will operate a level playing field. In the light of the express bar provided under the proceedings dated 1-7-1998 the principle laid down in Jitendra Kumar Singh cannot be applied to the case in hand.

10. Having regard to the observations in paras 65 and 72, in our view, the principles laid down in Jitendra Kumar Singh cannot be applied to the case in hand. As rightly pointed out by the High Court that the judgment in Jitendra Kumar Singh was based on the statutory interpretation of the U.P. Act, 1994 and Government Order dated 25-3-1994 which provides for entirely a different scheme."

20. Considering similar embargo14 in the recruitment process, another Coordinate Bench in Gaurav Pradhan & Ors v. State of Rajasthan & Ors15, held general observations in Jitendra Kumar (supra) shall not come in aid of reserved

candidates who have availed age relaxation to migrate to general category. The Bench observed as follows:-

"32. We are of the view that the judgment of this Court in Jitendra Kumar Singh which was based on statutory scheme and the Circular dated 25- 3-1994 has to be confined to scheme which was under consideration, statutory scheme and intention of the State Government as indicated from the said scheme cannot be extended to a State where the State circulars are to the contrary especially when there is no challenge before us to the converse scheme as delineated by the Circular dated 24-6-2008."

21. These views have been reiterated in Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission & Ors16 and affirmed by a three judge Bench in Government (NCT of Delhi) & Ors v. Pradeep Kumar & Ors17.

22. On the other hand, respondents-writ petitioners have relied on Vikas Sankhala & Ors v. Vikas Kumar Agarwal & Ors18, Saurav Yadav & Ors v. State of UP & Ors19, Ajithkumar P. & Ors. v. Remin K. R. & Ors20 and Sadhana Singh Dangi & Ors v. Pinki Asati & Ors21, to sustain the view of the High Court that the migration of the reserved candidate who has scored higher than the last selected unreserved candidate is permissible. Respondents-writ petitioners argue that a bar to migration would be in violation of the principles of equality under Article 14 and counter to maintenance of efficiency of administration enshrined under Article 335 of the Constitution.

23. In Vikas Sankhala (supra), the State government had relaxed the minimum pass marks in Teacher Eligibility Test22 by 10 percent to 20 percent for various reserved categories in the matter of recruitment of primary teachers. It was contended such relaxation was contrary to the extant reservation policy of the State and migration of such candidates who availed concession for recruitment to unreserved categories was illegal. Reserved candidates relied on a circular dated 11.05.2011 which permitted such migration. Holding that the said circular was issued after the recruitment process had commenced and migration was barred as per earlier circulars, the High Court held appointment of reserved candidates availing concession in qualifying marks in TET against unreserved seats was impermissible.

24. This Court analysed the concession given to reserved candidates with regard to qualifying marks in TET in the context of the recruitment rules which inter alia prescribed a uniform addition of 20 percent of TET marks to the final score of each candidate. Consequently, the reserved candidates who secured lesser marks in TET would not get any additional advantage vis-à-vis general candidates in computing the final scores irrespective of the lowering of the qualifying marks in TET. The Bench clarified this issue as follows:-

"80. One of the heads is "marks in TET". So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser marks in TET would naturally get less marks under this head. We would like to demonstrate it with an example : Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process.

Thus, on the basis of TET marks reserved category candidate has not got any advantage while considering his candidature for the post. On the contrary, "level-playing field" is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks. Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET."

25. In this backdrop, the Bench held irrespective of the applicability of circular dated 11.05.2011 relaxation in TET qualifying marks does not amount to a concession which would disentitle migration of reserved candidates against unreserved seats. The Bench opined:-

"81. Once this vital differentiation is understood, it would lead to the conclusion that no concession becomes available to the reserved category candidate by giving relaxation in pass marks in TET insofar as recruitment process is concerned. It only enables them to compete with others by allowing them to participate in the selection process. In this backdrop, irrespective of the Circular dated 11-5-2011, the reserved category candidates who secured more marks than marks obtained by the last candidate selected in general category, would be entitled to be considered against unreserved category vacancies. However, it would be subject to the condition that these candidates have not availed any other concession in terms of number of attempts, etc., except on fee and age."

It may also be apposite to note that the earlier circulars applicable to the selection process23 did not put a restriction on selection of the reserved candidate availing concession in TET marks for appointment in unreserved seats provided they scored higher than the last selected unreserved candidate.

26. In Ajithkumar (supra) the issue which fell for consideration was the power of the recruiting authority to conduct a preliminary examination in order to shortlist

candidates and not the right of a reserved candidate seeking relaxation to migrate to unreserved category.

27. In Saurav Yadav (supra) the issue which fell for decision was whether women OBC candidates could be adjusted against vacancies in the women general category. The case involved an interplay between vertical reservation and horizontal reservation for women. Lalit J., (as His Lordship then was) permitted the migration holding that the candidates in question had not availed of any special benefit which may disentitle them from being considered against general category seats:-

"42. We must also clarify at this stage that it is not disputed that Applicant 1 and other similarly situated candidates are otherwise entitled and eligible to be appointed in "Open/General Category" and that they have not taken or availed of any special benefit which may disentitle them from being considered against "Open/General Category" seat. The entire discussion and analysis in the present case is, therefore, from said perspective."

28. Supplementing this view, Ravindra Bhat J. held that:-

"65. it is too late in the day for the respondent State to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out of selection."

29. However, such observations were premised on the fact that there was no rule, or direction which prohibited the adjustment of socially reserved categories of women in the general category or open category24.

30. In Sadhana Singh Dangi (supra), the Court again looked into migration of women candidates availing horizontal reservation from reserved i.e. OBC category to unreserved category. The recruitment process permitted migration in vertical reservation but stated that the horizontal reservation for women is compartmentalised. Referring to the observations of Ravindra Bhat J. in Saurav Yadav (supra) the Bench reversed the decision of the High Court barring migration in horizontal category, observing as follows:-

"22. It is true that the leading judgment in Saurav Yadav [Saurav Yadav v. State of U.P., considered the matter from a general plane but the concurring judgment authored by S. Ravindra Bhat, J. did additionally consider the issue from the perspective of absence of any statutory rules in the field. It is also true that in the instant case, there are rules occupying the field and the case would be a fortiori,

but we need not enter into that arena as, in our view, the general propositions laid down in Saurav Yadav by themselves are sufficient to take care of the controversy which has arisen in the instant matters.

23. The law laid down in Saurav Yadav is very clear that even while applying horizontal reservation, the merit must be given precedence and that if the candidates who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates. These observations in Sadhana Singh Dangi (supra) must be read in the factual matrix of the case which permitted migration of candidates in vertical reservation unlike the present case.

31. In Bharat Sanchar Nigam Limited & Anr. v. Sandeep Chaudhary & Ors25, the cut off marks was reduced for both OBC and general candidates and no special concession was given to OBC candidates. Under these circumstances, the Court permitted the OBC candidates who had scored higher marks than the last selected candidate in the general category to avail unreserved seats.

32. On an analysis of the aforecited cases, we summarise as follows: Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case. That is to say, in the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats. However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.

33. Accordingly, we hold as the respondents-writ petitioners had availed concession of age for participating in the recruitment process, in the teeth of office memorandum dated 01.07.1998, the High Court was wrong in applying the ratio in Jitendra Kumar (supra) and permitting them to be considered for appointment in the unreserved category. Consequently, we set aside the common impugned judgment and order dated 12.10.2018 and order dated 26.02.2019 and allow the appeals.

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

.....J. (Surya Kant)

.....J. (Joymalya Bagchi)

New Delhi,

September 09, 2025.

1 In WP (C) No. 277/2017, WP (C) No. 279/2017, WP (C) No. 280/2017 and WP (C) No. 281/2017

2 In Review Application No. 3/2019, Review Application No. 4/2019, Review Application No. 5/2019 and Review Application No. 6/2019

3 SSC for short

4 Employment Notification no. F. No.3/1/2014-P&P-I (vol-II), Para 4A

5 Para 4B of the aforementioned notification

6 (2010) 3 SCC 119

7 The U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (1994 Act for short)

8 GO dated 26.02.1999

9 Instructions dated 25.03.1994

10
4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category.

11 [1901] AC 495 (HL)

12 (2002) 3 SCC 496

13 (2017) 12 SCC 680

14 Para 6.2 of circular dated 24.06.2008

15 (2018) 11 SCC 352

16 (2019) 7 SCC 383

17 (2019) 10 SCC 120

18 (2017) 1 SCC 350

19 (2021) 4 SCC 542

20 (2015) 16 SCC 778

21 (2022) 12 SCC 401

22 TET for short

23 See Para 73 and 74 in Vikas Sankhala (supra)

24 See Para 57 in Saurav Yadav (supra)

25 (2022) 11 SCC 779

IN THE SUPREME COURT OF INDIA

Geeta
Vs.
State of Karnataka

[Criminal Appeal No. 1044 of 2018]

HEADNOTE – Neighborhood quarrels are common to community living and for the charge of abetment of suicide, instigation must rise to a level that left the victim with no choice but to end their life.

JUDGMENT

K.V. Viswanathan, J.

1. The present appeal challenges the judgment of the High Court of Karnataka, Kalaburagi Bench, Kalaburagi dated 27.04.2018 in Criminal Appeal No.3658 of 2011. By the said judgment, the appellant's conviction under Section 306 of the Indian Penal Code (for short the "IPC"), as recorded by the Trial Court, was confirmed. However, the appellant was acquitted of the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "SC/ST Act"). Insofar as the sentence imposed for offence under Section 306 IPC was concerned, the High Court thought it fit to modify the sentence of five years, as imposed by the Trial Court, to that of three years imprisonment. However, the fine of Rs. 5000/-, as imposed by the Trial Court, was maintained, with a default sentence of six months for non-payment of fine.

2. The Trial Court had convicted the appellant for offence under Section 306 IPC as well as for offence under Section 3(2)(v) of the SC/ST Act. While the sentence of five years imprisonment was imposed for offence under Section 306, life imprisonment had been imposed along with a fine of Rs. 5,000/- for offence punishable under Section 3(2)(v) of the SC/ST Act.

3. We have heard Mr. Sharanagouda Patil, learned counsel for the appellant and Mr. D. L. Chidananda, learned counsel for the State. We have perused the records, including the Trial Court records.

4. The present matter pertains to an unfortunate incident that happened on 12.08.2008 when the deceased-Sarika, daughter of Peeraji Narayankar, set herself on fire around 10:00 p.m. in the night. She was taken to the Government Hospital, Bijapur for treatment. At the hospital, the deceased gave a statement before PW-16, Police Inspector Nagarjuna, which was exhibited as Ex. P-8. PW-

16 - Nagarjuna, deposed that he received MLC from Bijapur District Hospital stating that a person by name Sarika was admitted to the hospital with burn injuries. After getting confirmation from the doctor about fitness of Sarika to give statement, he recorded the statement and obtained her thumb impression.

PW-19 - Dr. Dileepa Ganjihala corroborated the statement to the effect that Sarika was conscious and was in a position to answer the questions. She had suffered about 58% burn injuries. Similarly, PW-20 - Dr. Shivanagowda Patil, also deposed that, on 13.08.2008, when PSI requested through a letter to give opinion as to whether Sarika was in a position to give a statement or not, he made an endorsement on the office copy that the injured was in a fit condition to give statement. The letter and the endorsement were marked as Ex. P-21 and Ex. P-21(a).

5. The statement marked as Ex. P-8, which formed the basis for the complaint and F.I.R., reads as under:

"My place is Vijaypur and I stay in above mentioned address. Geeta W/o. Raju Imdikar, they are staying in our Colony since 6 years, and since 6 months they have shifted to the house situated in front of my house which belongs to one Mahadev Pol. I have completed I.T.I and now studying in B.A III year. I take tuition classes to small children in my home. At the rented house of Geeta W/o Raju Indikar which is situated in front of our home, there used to come some other boys and make noise which troubled me as a result I told to Geeta Indikar Not to make noise as it disturbs me, for that she used to abuse me by saying "you bitch, what you advise me it's my house we do anything whatever we feel like" and " this dorr bitch is not married even after 25 years of age".

Like that she used to harass me when she saw me she used to hurt me talking to me indecently. My father Peeraji and my mother Renuka have advised Geeta Indikar many times but still Geeta has abused me and insulted since 6 months as a result I was very much hurt. On last Sunday dated: 10.08.2008 when I was watching TV with my brother Sanket in my home at the time Geeta Indikar came there and scolded me and my brother by saying "why did you scold our boy Rahul @ Vinayak what that little kid has done" with her sister 1. Mala 2. Meena 3. Suhasini they have also come and abused me in filthy language like bitch etc. On that day my brother and my parents had advised them and stoped the fight for which I didn't say anything.

Yesterday on 12.08.2008 at about 8 in the evening myself and my brother Sanket and my mother Renuka were present in front of home 1. Geeta W/o. Raju Indikar 2) Raju Indikar 3) Mala D/o. Narayan Sindagi 4) Meena D/o. Narayan Sindagi 5) Suhasini D/o. Narayan Sindagi, these five members came and stood in front of our home and abused me by saying "you Dorr bitch you are not married yet and

you argue with us" and also gave life threat all together assaulted my mother and me with hands and insulted and abused by saying "die you bitch" and all, that hurt me mentally so yesterday on 12.08.2008 at about 10 O'clock in the night I took 5 liter can of oil from our kitchen and poured it on myself and ignited myself with the matchstick.

When it started burn when my clothes were burnt and I started screaming at that time my mother Renuka and Pulabai w/o Yallappa, Sherkhan bibi from our colony came and extinguished the fire, by time my brother, my mother and Pulabai took me in an auto rickshaw to the Govt. Hospital Vijapur and admitted me for treatment, my face, chest, stomach, hands and legs, knees and thighs were burnt and the skin had peeled off.

The above mentioned 5 accused since 6 months have fought with me and abused me and insulted me by saying "this Dorr bitch is not married even after 25 years of age" and yesterday on 12.08.2008, 5 of them came to our home and assaulted me and my mother with their hands in front of my house as result I was mentally troubled, I myself poured kerosene oil and ignited fire on myself and tried to commit suicide in our kitchen and this complaint is against the above mentioned 5 persons and yesterday I suffered a lot but now I am feeling better. This I am stating before you to write it down."

6. It can be seen that the complainant had stated that she was taking tuition classes for small children in her house; that there was persistent noise coming from the house of the appellant and that she had repeatedly told the appellant to ensure that there was no noise as it disturbed her tuition. The deceased had stated that the appellant abused by calling her a bitch and telling her that they will do whatever they feel like. The appellant is alleged to have further stated that the deceased, though 25 years of age, was not married. Two days before the incident, on 10.08.2008, the deceased stated that when she was watching TV with her brother Sanket at home, the appellant came and scolded both of them by saying "why did you scold our boy Rahul @ Vinayak what that little kid has done".

According to the deceased, the appellant came with her sisters Mala, Meena and Suhasini and abused her by calling her a bitch. She stated that her brother and parents advised them, stopped the fight and she did not say anything. According to the deceased, on 12.08.2008, at about 8 pm in the evening when she and her brother-Sanket, and mother-Renuka, were present, Geeta W/o Raju Indikar, Raju Indikar, Mala D/o Narayan Sindagi, Meena D/o Narayan Sindagi and Suhasini D/o Narayan Sindagi came and stood in front of her house and abused her by saying "you Dorr bitch you are not married yet and you argue with us" and also gave life threat and assaulted her mother and herself with hands and insulted and abused by saying "die you bitch".

According to the deceased, all this hurt her mentally so she on 12.08.2008 at about 10 O'clock in the night took five litres can of oil from her kitchen and poured it on herself and ignited herself with a matchstick. She stated that her mother, Pulabai and Sherkhan Bibi extinguished the fire, and her brother, mother and Pulabai took her in autorickshaw to the Government Hospital. The deceased succumbed to her injuries on 02.09.2008 i.e., about three weeks after the incident.

7. The Investigating Officer filed chargesheet against all the five accused, namely,

1. Geeta W/o Raju Indikar - the appellant;

2. Raju S/o Sidram Indikar - since acquitted;

3. Mala D/o Narayan Sindagi - since acquitted;

4. Meena W/o Lokesh Agasar - since acquitted;

5 Suhasini D/o Narayan Sindagi - since acquitted;

for offences punishable under Sections 143, 147, 323, 504, 506 and 306 read with Section 149 IPC and Section 3(1)(xi) of the SC/ST Act. At the trial, after framing of charges, prosecution examined twenty witnesses and marked documents as Ex. P-1 to P-25 and Material Objects as MO-1 to MO-3. The statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973.

8. The Trial Court, after appreciating the evidence, held that the evidence does not reveal any specific overt act of accused Nos.3 to 5 insofar as the incident dated 10.08.2008 was concerned. It further found that no overt act of accused Nos.2 to 5 was noted insofar as the incident of 12.08.2008 was concerned in the complaint Ext.P-8. The Trial Court found the statement to be omnibus and in general and did not reveal that accused Nos. 2 to 5 have been actively assisting accused No. 1 Geeta (appellant) in irritating or annoying the deceased by words, deed and did not indicate that they had intention to provoke the deceased to commit suicide. The Trial Court found that there was no cogent evidence to establish that accused Nos. 2 to 5 were involved in the offence.

9. However, the Trial Court found that the statement Ex.P-8 read with the oral testimony of PWs-5, 6, 8, 9,10 and PW-16 lend credence to the prosecution theory that accused No.1 - appellant herein, has been irritating or annoying the deceased by words and deed to make the deceased to react. It was also found that the appellant had intention to provoke, incite, urge or encourage the deceased to commit suicide. The Trial Court also found that accused No.1, in view of the abuses attributed to the deceased was also liable for punishment under Section

3(2)(v) of the SC/ST Act. In the end analysis, the Trial Court acquitted A2 to A5 of all the offences.

10. Accused No.1 - appellant was acquitted of the offences punishable under Sections 143 (punishment for being a member of unlawful assembly), 147 (punishment for rioting), 323 (punishment for voluntarily causing hurt), 504 (punishment for intentional insult with intent to provoke breach of the peace), 506 (punishment for criminal intimidation) read with Section 149 (prosecution of common object). However, the Trial Court convicted the appellant for the offence punishable under Section 3(2)(v) of SC/ST Act and Section 306 of IPC (abetment of suicide). Sentences, as indicated hereinabove, were imposed on the appellant.

11. The appellant filed a Criminal Appeal before the High Court. The State accepted the Trial Court judgment insofar as the acquittals were concerned. The High Court acquitted the appellant for offence punishable under Section 3(2)(v) of the SC/ST Act, as the material available on record was insufficient, and set aside the conviction and the sentence of life imprisonment. It will be noticed that the High Court recorded the following crucial finding:-

"11. After hearing the learned counsel for the appellant as well as the learned Additional State Public Prosecutor and when the judgment impugned is looked into; what is seen is that a minor fight between the victim and the first accusedappellant which has spread over for more than six months prior to the incident has taken an ugly turn on the ill-fated day. The victim though an educated and accomplished women who was working as private teacher could not sustain constant harassment by the first accused in the form of fight has taken the extreme step to commit suicide.

Assuming for a moment, if the accused has really taken the caste name to insult the victim, most of the neighbours who are witnesses on behalf of prosecution being members of the same community would have definitely stood by the victim while giving evidence. In fact, it is only one eyewitness who is neighbour examined as P.W.6 supported the case of prosecution as against the evidence of P.W.7, 11 and 15 who are three immediate neighbours of the victim have not supported the case of prosecution with reference to accusation made by first accused taking the name of the victim's (sic).

12. Therefore, in this background what should be understood is that the victim is a sensitive person and, when she did not have any support in her fight against with the first accused; as against that first accused had the support of her family members who are accused Nos.2 to 5 made her feel thoroughly miserable and having felt that she lost the fight, has impulsively promoted her to take the extreme step of committing suicide, which is at the height of the depressed mood

which consequently resulted in her death. It is after the incident, the victim has stated in her complaint that she was ill-treated taking the name of her caste which is not supported oy most of her neighbours, except in all of them stating that the victim and first accused were being immediate neighbours were not in cordial terms and they always used to fight.

13. In this background, this Court find that the finding of the Court below in holding that the accusation against first accused is established so far as offence under Section 306 of IPC, appears to be just and proper. However, when it comes to the offence alleged under Section 3 (2) (v) of SC/ST (PA) Act, 1989 is concerned, the material available on record is not sufficient. In spite of that, the Court below has committed serious error in convicting the first accused for the aforesaid offence and consequently imposing the punishment of life imprisonment to her, which does not stand to reason in the fact situation. Both from the point averments in the complaint and as well as the evidence available on record in support thereof."

12. From the judgment of the High Court, it is clear that:-

A. A minor fight between the victim and the appellant which had spread over six months took an ugly turn on the ill-fated day. The victim, though was an educated and accomplished woman who was working as a private teacher, could not sustain the constant harassment by the first accused and had taken the extreme step of committing suicide. Most of the neighbours have not supported the case of the prosecution with respect to the first accused taking the name of the victim's caste.

B. It should be understood that the victim was a sensitive person and did not have any support in the fight against the first accused. As the first accused had support of her family, the victim felt miserable having felt that she lost the fight, which impulsively prompted her to take the extreme step of committing suicide, at the height of depressed mood consequently resulting in her death.

C. It is only after the incident, the victim has stated in her complaint that she was ill-treated by taking the name of her caste which is not supported by most of her neighbours, except that all of them stated that the victim and the first accused being immediate neighbours were not in cordial terms and always used to fight.

13. It is in this background that we have to analyse the evidence while appreciating the contention of the learned counsel for the parties. Though the victim alleged that caste abuses were used, evidence was found lacking resulting in acquittal of all the five accused on that score. The other four family members A2 to A5 have been acquitted of offence punishable under Section 306 also. The appellant herself has been acquitted of offences like being a member of the

unlawful assembly, rioting, causing hurt, criminal intimidation, and intentional insult with intent to provoke breach of the peace. Those acquittals have attained finality. Acquittal for offence under the SC/ST Act has also attained finality.

14. We are only to examine whether, taking the prosecution case at its highest, conviction of the appellant under Section 306 could be sustained. Is the evidence against the appellant of such nature that the overt acts attributed to her left the victim with no option except to commit suicide? We think not and we say so for the following reasons.

15. Though 'love thy neighbour' is the ideal scenario, neighbourhood quarrels are not unknown to societal living. They are as old as community living itself. The question is whether on facts there has been a case of abetment of suicide?

16. We have minutely scanned the evidence adduced by the prosecution. PW-5 Sanket, the brother of the deceased, testified broadly corroborating the version set out in the complaint. His narration about the events that transpired on 12.08.2008 are omnibus and general in nature. He also admits that they did not go to the Police Station to file a complaint. He even speaks of the fact that he was part of the group of persons who pacified the quarrel.

PW-6 Phulabai was a neighbour cited as an eye-witness to the incident. On being asked in cross-examination that she had not mentioned in her statement about the appellant having assaulted the mother of the victim and catching her hair, she deposed to the effect that she did not remember. PW-8 Sathyavva@Sakkubai, was a neighbour, and PW-9 Renuka, the mother of the Victim has also deposed on behalf of the prosecution. Their evidence is on the same lines as that of the complaint lodged by the victim.

17. For the purpose of examining whether the ingredients of Section 306 are attracted, we take the prosecution case as it is. Taken at its highest, there is definitely evidence on record to show that over a period of few months the neighbours were at loggerheads. While the victim felt that her tuition classes were being disturbed, the appellant's family have also had a grievance about the victim and her family scolding the children of the appellant's household.

There is no doubt that not only were there heated exchanges, but physical blows were also alleged to have been administered by the appellant's party. Insofar as delivering of physical blows are concerned, today the appellant stands acquitted for the offence punishable under Section 323. She stands acquitted even for the offences punishable under Section 504 and 506. The State has not preferred any appeal.

18. Even if we were to assume that physical blows were administered, will that per se constitute abetment to suicide? This Court in a case where the accused told

the deceased "go and die" and when thereafter, the deceased committed suicide, absolved the accused of the charge under Section 306 by holding as under:

"3. Those words are casual nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events."

[Swamy Prahaladdas Vs. State of M.P. and Another, (1995) Supp (3) SCC 438]

19. This Court in Madan Mohan Singh Vs. State of Gujarat and Another, (2010) 8 SCC 628, held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting Section 306.

20. In Amalendu Pal alias Jhantu Vs. State of West Bengal, (2010) 1 SCC 707, this Court held that the harassment meted out to the victim should have left the victim with no other alternative but to put an end to his/her life.

21. In M. Mohan Vs. State, (2011) 3 SCC 626, this Court followed the dictum in Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 SCC 618, wherein it was held as under:

"41. This Court in SCC para 20 of Ramesh Kumar has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn."

Thereafter, this Court in Mohan (supra) held:-

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

22. This Court in Mahendra Awase Vs. The State of Madhya Pradesh, 2025 INSC 76, after analyzing the long line of precedents held as under:-

"18. As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was left with no other option except to commit suicide. It was also held that a word uttered in a fit of anger and emotion without intending the consequences to actually follow cannot be said to be instigation."

23. Applying the tests laid down hereinabove, we are not able to persuade ourselves to hold that when the appellant's family and the victim's family had heated exchanges, there was any intention to abet or to cause any member of either family to take their own life. These quarrels occur in everyday life, and on facts we are not able to conclude that there was an instigation on the part of the appellant to such an extent that the victim was left with no other option but to commit suicide.

24. In view of what has been held above, we find that the appellant is not guilty of the offence under Section 306. We acquit her of the charge under Section 306. The net result is that, the appeal stands allowed and impugned judgment of the High Court of Karnataka, Kalaburagi Bench, Kalaburagi dated 27.04.2018 in Criminal Appeal No.3658 of 2011 is set aside. The appellant is on bail. Her bail bonds stand discharged.

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

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

New Delhi;

September 09, 2025

IN THE SUPREME COURT OF INDIA

Vinod Kumar Pandey & Anr.
Vs.
Seesh Ram Saini & Ors.
[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 7900 of 2019]

Vinod Kumar Pandey & Anr.
Vs.
Sheesh Ram Saini & Ors.
[Civil Appeal No._____ of 2025
arising out of SLP (C) No._____ of 2025
D.No. 10495 of 2019]

Vinod Kumar Pandey & Anr.
Vs.
Vijay Aggarwal & Anr.
[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 7897 of 2019]

Vinod Kumar Pandey & Anr.
Vs.
Vijay Aggarwal & Anr.
[Civil Appeal No._____ of 2025
arising out of SLP (C) No._____ of 2025
D. No. 10508 of 2019]

HEADNOTE – Police is not required to go into the genuineness or credibility of a complaint at the stage of registering FIR; if the complaint prima facie discloses a cognizable offence, then the police is bound to register the FIR.

JUDGMENT

Pankaj Mithal, J.

1. Delay condoned.

2. Leave granted.

3. Heard Mr. Ranjit Kumar, learned senior counsel, Mr. S. V. Raju, learned Additional Solicitor General and Mr. Dhruv Mehta, learned senior counsel for the parties.

4. The cases are quite simple but have a chequered history, involving the appellants, who are two officers of the Central Bureau of Investigation1. One is Vinod Kumar Pandey, the then Inspector of CBI, and the other is Neeraj Kumar, the then Joint Director of CBI.

5. The two petitions being Writ Petition (Crl.) No. 675 of 2001 and Writ Petition (Crl.) No.738 of 2001 under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure2, 1973 came to be filed by one Vijay Aggarwal and other by one Sheesh Ram Saini respectively, seeking directions for registration of First Information Report3 against the above two officers on deputation to the CBI, namely, Vinod Kumar Pandey and Neeraj Kumar for committing offences under Sections 506, 341, 342 and 166, and Sections 218, 463, 465, 469, 166 and 120-B of the Indian Penal Code4, 1860, as alleged in the writ petitions respectively.

6. The aforesaid two writ petitions were decided by the Single Judge of the High Court on 26.06.2006 but by separate order(s) passed in identical terms. Both the petitions were partly allowed and directions were issued to the Delhi Police to register a case on the basis of the allegations contained in the complaint dated 05.07.2001 lodged by Sheesh Ram Saini with PS Lodhi Colony and complaint dated 23.02.2004 addressed to Commissioner of Police, Delhi by Vijay Aggarwal respectively, and to get the matter investigated by the Special Cell of the Delhi Police by an Officer not below the rank of Assistant Commissioner of Police, uninfluenced by the findings and the observations contained in the Inquiry Report dated 26.04.2005 conducted by the Joint Director, CBI.

7. In short, the writ petitions were partly allowed with the direction to register the FIR with the finding that prima facie cognizable offences are made out for investigation against the appellant-officers.

8. Aggrieved by the aforesaid judgment(s) and order(s) of the High Court dated 26.06.2006, both the officers of the CBI preferred separate Letters Patent Appeal(s)5 before the Division Bench of the High Court. The said LPAs were dismissed on 13.03.2019 on the ground of maintainability.

9. Out of the present four appeals, two appeals [D.No.10495 of 2019 and D.No.10508 of 2019] are against the order(s) of the learned Single Judge dated 26.06.2006 partly allowing the petitions, and other two appeals [S.L.P.(C) No. 7900 of 2019 and S.L.P.(C) No. 7897 of 2019] are against the order of the Division Bench of the High Court dated 13.03.2019 dismissing the LPAs as not maintainable.

10. We had made it clear to the parties in the very beginning that we would not enter into the question of maintainability of the LPAs so as to adjudicate the

appeals arising out of their dismissal for the reason that we would consider the correctness of the judgment and order(s) dated 26.06.2006 on merits as would have been done in the LPAs by the Division Bench. The counsel for the parties agreed and proceeded to advance arguments accordingly on merits.

11. A preliminary objection was raised with regard to delay of more than 12 years in challenging the judgment and order(s) of the Single Judge dated 26.06.2006.

12. The said delay has been explained taking the ground that the appellants were bona fide pursuing their LPAs before the Division Bench of the High Court and once they realized that the LPAs are not maintainable and they have been dismissed as not maintainable, they decided to challenge the judgment and order(s) passed by the learned Single Judge before the Supreme Court.

13. In view of the above explanation, though technically, pursuing the LPAs and the time spent thereon may not be a very good cause to condone the delay but since there is no willful or deliberate delay or any default on part of the appellants in assailing the judgment and order(s) of the Single Judge dated 26.06.2006 rather they were all thoroughly vigilant of their rights, we have ignored the delay and have heard the parties on merits, more particularly, on the correctness of the judgment and order(s) of the Single Judge.

14. Mr. Ranjit Kumar, learned senior counsel for the appellants, argued that the information/complaint submitted by Sheesh Ram Saini and by Vijay Kumar Aggarwal does not make out a cognizable offence for enabling the Court to direct for the registration of the FIR. The High Court could not have directed for the registration of the FIR as the procedure laid down by the various decisions of this Court was not followed before approaching the High Court. Secondly, the High Court could not have recorded a finding of commission of a cognizable offence which leaves nothing for the Investigating Officer6 to opine on after the completion of the investigation, except to submit a chargesheet. He further argued that in the so-called preliminary inquiry conducted by the Joint Director, CBI, it has been reported that no cognizable offence is made out for the purpose of investigation, therefore, it was not open for the High Court to have substituted its own finding and to direct for the registration of the FIR.

15. He emphasized that even if for the sake of argument it is accepted that a case for investigation is made out against Vinod Kumar Pandey, there is no averment or iota of material to rope in Neeraj Kumar, the other officer.

16. A further submission has been made by Mr. Ranjit Kumar, learned senior counsel for the appellants, that the High Court manifestly erred in directing the investigation to be conducted by the Special Cell of the Delhi Police, which

ordinarily investigates the matters relating to terrorism. The High Court also committed an error in directing the exclusion of preliminary inquiry report dated 26.04.2005 of the Joint Director, CBI from consideration during the investigation.

17. Mr. S. V. Raju, learned Additional Solicitor General for the respondents, pressed an application for the impleadment of the CBI contending that as the preliminary inquiry was conducted by an officer of the CBI and the case involves allegations against the officers of the CBI, therefore, the CBI is a proper party so as to defend the inquiry report and its officers.

18. On merits, he submitted that the complaints do not make out any cognizable offence and are barred by Section 197 Cr.P.C., as whatever acts have been performed by the officers, they were in discharge of their official duties. The complaints are also hit by Section 140 of the Delhi Police Act, 1978 and are barred by limitation.

19. Admittedly, the CBI was a party in the writ petitions before the High Court and had not chosen to assail the impugned order(s), meaning thereby that the CBI never felt aggrieved by the said order(s). The CBI, even if impleaded, would be added as the respondent or a proforma respondent. It is well recognized in law that a respondent or a proforma respondent may support the judgment impugned but cannot assail the same in his capacity as a respondent. The CBI has not independently challenged the aforesaid order(s) of the High Court.

20. Moreover, the CBI is not the party actually aggrieved by the direction given by the High Court for the registration of the FIR against the two officers. It is the officers who are aggrieved in their personal capacity and not the institution to which they are on deputation. It is, therefore, for the officers to defend themselves by taking appropriate legal remedies and the CBI has nothing to do with it. This apart, the report of the CBI is not under challenge, therefore, the contention that CBI has to support the report of its officer is not appreciable. Accordingly, we do not deem it necessary to permit impleadment of the CBI and to consider any objections as raised by the learned Additional Solicitor General.

21. The plain reading of the impugned judgment and order(s) of the Single Judge of the High Court dated 26.06.2006 reveals that the officers of the CBI in the dock have committed irregularities, if not illegality in discharge of their official duties and are prima facie guilty of the commission of the offences as alleged. This is clearly reflected from the averments contained in the complaints and the petitions. Both the officers have acted in connivance, and it is alleged that one of the officers, Vinod Kumar Pandey, had acted at the behest of the Senior Officer, Neeraj Kumar. The question whether Vinod Kumar Pandey acted on the advice

or behest of Neeraj Kumar or whether they were in connivance, is a matter of fact which has to be investigated.

22. The Single Judge of the High Court in Writ Petition (Crl.) No. 738 of 2001, upon consideration of the material on record including the inquiry report dated 26.04.2005 of the Joint Director of CBI, found that cognizable offences were prima facie made out against the officers of the CBI i.e. the appellants. The allegation that the documents were seized on 26.04.2000 without preparation of the seizure memo stood substantiated even in the inquiry report, which recorded that the memo of seizure was prepared only on 27.04.2000 and not at the time of seizure on 26.04.2000.

The Court disagreed with the explanation that the documents were taken for scrutiny on 26.04.2000 noting that such a version was contrary both to the records and the findings of the inquiry itself. The Single Judge also refused to accept that it was a procedural irregularity and held that the preparation of seizure memo in the facts and circumstances of the case was not in accordance with the CBI Crime Manual and attracted penal provisions of Sections 218, 463, 465, 469, 166 and 120-B IPC.

23. The High Court in Writ Petition (Crl.) No.675 of 2001, preferred by Vijay Aggarwal, observed that V.K. Pandey had summoned Vijay Aggarwal on 07.06.2001 and 11.06.2001 in clear derogation of a bail order dated 27.11.2000 passed by the Special Judge, which prima facie indicated a mala fide and malicious exercise of authority.

24. The Court held that the allegations of abuse, intimidation, and threats, including use of vulgar language to coerce Vijay Aggarwal to ensure withdrawal of his brother's complaint against Neeraj Kumar, were serious and not unfounded. The Court observed that such conduct was grave in nature and prima facie disclosed the commission of cognizable offences under IPC.

25. The High Court rejected the conclusion reached by the CBI's enquiry officer that no offence was made out and that the allegations of abuse and coercion were unsubstantiated. It was observed that the correctness or veracity of the allegations could not have been gone into at the stage of a preliminary enquiry and that such allegations, being serious in nature, could not be brushed aside lightly. The Court clarified that Vijay Aggarwal's failure to file objections to the enquiry report could not amount to acceptance of its findings.

26. The Writ Court emphasized that CBI officers, being public servants, cannot claim immunity if they knowingly prepare false or incorrect records during the course of seizure or abuse their official position. Such acts on their part are

serious acts and are not capable of being ignored and therefore, investigation in the matter is necessary.

27. In Pradeep Nirankarnath Sharma v. State of Gujarat,7 this Court, in a very recent judgment held, that where the allegations pertain to the abuse of official position and corrupt practices while holding public office, such actions fall squarely within category of cognizable offences and therefore, they are to be inquired into, and holding of any preliminary inquiry before the registration of the FIR is not necessary. If the information provided to the police or the preliminary report discloses a commission of a cognizable offence, the police is duty bound under Section 154 Cr.P.C. to register an FIR without any delay.

28. The report of the CBI at best is a preliminary enquiry report submitted before the registration of the FIR. However, such an enquiry is not ordinarily contemplated in law before registration of FIR, and hence is not a conclusive report to be relied upon to oust the power of the Constitutional Court to record its own conclusion about commission of a cognizable offence, if any, on the material or the allegations in the complaints.

29. Undoubtedly, the High Court(s) should discourage writ petitions or petitions under Section 482 Cr.P.C. where alternative remedies are available. Nonetheless, as observed even in Sakiri Vasu v. State of U.P.,8 it is equally true that alternative remedy is not an absolute bar for invoking the extraordinary jurisdiction or the inherent jurisdiction of the High Court under Article 226 of the Constitution or Section 482 Cr.P.C.

30. In Ramesh Kumari v. State (NCT of Delhi)9, the Court denounced the dismissal of the petition seeking registration of the FIR, solely on the ground of alternative remedy, and held that ground of alternative remedy would not be a substitute in law for refusing to register a case when the complaint of the citizen makes it a cognizable offence.

31. In a recent landmark decision, Anurag Bhatnagar & Anr. v. State (NCT of Delhi) & Anr.10, this Court held that although the complainant approached the Court, in that case the Magistrate, without exhausting the alternative remedies available, it was a mere procedural irregularity and not illegality, as the Court was competent to order registration of the FIR. It was further observed that when information disclosing commission of cognizable offence is conveyed to the police, they cannot refuse to register the FIR.

32. Since, it is the duty of the police to register an FIR if a prima facie cognizable offence is made out, the police is not required to go into the genuineness and credibility of the said information. It has been so laid down very clearly in

Ramesh Kumari (Supra) that the genuineness or credibility of the information is not the condition precedent for registration of an FIR.

33. The complainants Sheesh Ram Saini and Vijay Kumar Aggarwal have approached the police authorities by means of complaints dated 05.07.2001 and 23.02.2004 to get the matter investigated, but as no action was purportedly taken thereof rather it is alleged that the police authorities expressed reluctance to entertain the complaints as it would not be proper on part of the police to investigate against the officers of the CBI, the complainants approached the Constitutional Court for necessary action.

34. Therefore, if the Constitutional Court has exercised its discretion in entertaining the petitions and directing for the registration of the FIR against the two officers, on being satisfied that the commission of a cognizable offence is prima facie made out against them, we see no good reason to interfere with such discretion. At best, as argued by Mr. Ranjit Kumar, learned senior counsel for the appellants, we can say that the opinion expressed by the High Court in regard to commission of the cognizable offences is only a prima facie opinion and has to be treated as such, so as not to affect the discretion of the I.O., subsequent to the investigation.

35. The registration of the FIR against the two officers is not likely to cause any prejudice to them. They will have the right to participate in the investigation to establish that they have not committed any offence, as alleged. Thereupon, the I.O. on consideration of the material collected during investigation, may submit a closure report or file the chargesheet. In the event, a closure report is filed and accepted by the Magistrate, the appellants will have no grievance. On the other hand, in the event, a charge sheet is submitted, the appellants will have an opportunity to assail the same before the appropriate forum.

36. It would however, not be a prudent exercise at this stage to scuttle the registration of the FIR or the investigation, when the High Court in exercise of its constitutional powers had opined that prima facie, a cognizable offence is made out against the two officers, that too upon elaborate consideration of the preliminary inquiry report of the Joint Director of CBI.

37. It is trite to point out that the offence is alleged to have been committed in the year 2000 and till date the matter had not been allowed to be investigated. It would be dichotomy of justice if such an offence is allowed to go uninvestigated particularly when there is involvement of the officers on deputation to CBI. It is cardinal in law that justice must not only be done, but must also be seen to be done. It is high time that sometimes those who investigate must also be investigated to keep alive the faith of the public at large in the system.

38. In view of the aforesaid facts and circumstances, we do not consider it appropriate to interfere with the impugned judgment and order(s) of the High Court in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India.

39. However, we make it clear that since the Special Cell of the Delhi Police is supposed to investigate the matters concerning terrorism, upon registration of the FIR in the case at hand, the investigation would be conducted by the Delhi Police itself but by an officer not below the rank of Assistant Commissioner of Police.

40. Secondly, in view of the law laid down in Lalita Kumari vs. Government of Uttar Pradesh and Ors.11, and reiterated thereafter to the effect that registration of FIR is mandatory under Section 154 Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry before FIR is permissible in such a situation; however, if the information received does not disclose a cognizable offence but indicates necessity of an inquiry being conducted, a preliminary inquiry may be conducted only to ascertain facts disclosing cognizable offence, if any.

Thus, treating the inquiry conducted by the Joint Director, CBI as a preliminary inquiry, we permit the same to be looked into, if necessary, by the I.O. during the investigation by him, but not to treat it as conclusive. The I.O. would conduct the investigation strictly in accordance with law without being influenced by any finding or observation made by the High Court in the impugned order(s) or by this Court hereinabove and shall conclude the same as expeditiously as possible, preferably within three months as the matter is quite old.

41. The appellants are directed to join the investigation and to cooperate with the I.O. by appearing before him, as and when called upon. In the event they join the investigation and appear before the I.O. regularly, no coercive steps shall be taken against them, including that of arrest, until and unless the I.O. records satisfaction that custodial interrogation at any stage is necessary.

42. The two appeals [S.L.P.(C) No. 7900 of 2019 and S.L.P.(C) No. 7897 of 2019] stand disposed of in the above terms and the two appeals [D.No.10495 of 2019 and D.No.10508 of 2019] are partly allowed by modifying the judgment and orders of the High Court dated 26.06.2006 as indicated above.

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

.....J. [Pankaj Mithal]

.....J. [Prasanna B. Varale]

New Delhi;

1 Hereinafter referred to as 'CBI'

2 Hereinafter referred to as'Cr.P.C.'

3 In short 'FIR'

4 In short 'IPC'

5 Hereinafter referred to as 'LPA'

6 In short 'I.O.'

7 (2025) 4 SCC 818

8 (2008) 2 SCC 409

9 (2006) 2 SCC 677

10 2025 INSC 895

11 (2014) 2 SCC 1

IN THE SUPREME COURT OF INDIA

Jupally Lakshmikantha Reddy
Vs.
State of Andhra Pradesh & Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 9744 of 2024]

HEADNOTE – In order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.

Discussed the ingredients of the offence of cheating as follows:
1) Deception of a person by making false representation which the maker knows or has reason to believe is false and thereby
2) (a) Fraudulently or dishonestly inducing such person:
(i) to deliver any property to any person, or
(ii) to consent that any person shall retain any property, or
(b) Intentionally induces that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

JUDGMENT

Joymalya Bagchi, J.

1. Leave granted.

2. The appeal is directed against judgment and order dated 18.04.2024 in Criminal Petition No. 2197/2021 passed by High Court of Andhra Pradesh whereby the High Court refused to quash proceedings in CC No. 303 of 2020 under Section 420 of the Indian Penal Code, 18601.

3. Appellant's society namely, JVRR Education Society is running a college since 2016 from a non-multi-storeyed building comprising ground - 03 upstairs, with a height of 14.20 metres. On 13.07.2018, one V. Sreenivasa Reddy, District Fire Officer, Kurnool, submitted a written complaint alleging that the college had obtained recognition certificate from the School Education Department to run the educational institution by submitting a forged no-objection certificate2 purportedly issued by Assistant District Fire Officer, Kurnool. The said complaint was registered as a First Information Report by Nandyal III Town PS

in Crime No. 99/2018 on 15.07.2018 under Sections 420, 465, 468, 471 IPC corresponding to CC No. 303/2020 on the file of Judicial Magistrate, Nandyal.

4. On conclusion of investigation, chargesheet was filed under Section 420 IPC. In the chargesheet, it was, inter alia, alleged that the Inspector of Police (LW 8) visited the District Fire Office and came to know the District Fire Officer had not issued the NOC, and only a xerox copy of the Fire NOC was submitted in the office of State Council of Educational Research and Training3 to obtain recognition and run the institution. In spite of efforts, the alleged fabricated document could not be recovered and chargesheet was filed alleging appellant had created a forged document, namely NOC, and used it as genuine to play fraud on the Education Department and District Fire Office, Kurnool, which is punishable under Section 420 IPC.

5. Admittedly, as per National Building Code of India, 2016,4 NOC from the officer concerned of the Fire Department was not necessary for educational buildings which were below 15 metres in height. Appellant's society was running the educational institution from a building having height of 14.20 metres. Given this situation, appellant's society and other educational institutions had instituted writ proceedings in WP No. 14542/2018 before the High Court and prayed for renewal of affiliation without insisting on fire NOC from the State Disaster Response and Fire Services Department.

6. By order dated 25.04.2018, the writ petition came to be allowed and directions were issued upon the Education Department to renew affiliation without insisting on furnishing fire NOC. Due to non-compliance of such direction vide letter dated 01.07.2019 contempt notice was issued upon Education as well as the Fire Department.

7. It is contended that as a counter-blast, the present criminal case came to be registered to intimidate and harass the appellant. In this backdrop, appellant approached the High Court to quash the said proceeding.

8. The High Court was of the view, the issue whether the appellant's society required a NOC from the Fire Department to run the educational institution cannot be considered at the preliminary stage and refused to quash the proceedings.

9. Heard Mr. Sridhar Potaraju, learned senior counsel for the appellant and Ms. Prerna Singh, learned counsel for the respondents.

10. The gist of the accusation in the impugned chargesheet is that the appellant had dishonestly used a fake NOC from the Fire Department to obtain recognition/renewal of affiliation to run the educational institution. It is evident from the order passed in the writ proceedings that NOC from the Fire Department

was not necessary for recognition/renewal of affiliation of educational institutions which are imparting education from the buildings having height below 15 metres.

11. Admittedly, the appellant's educational institution is in a building having height of 14.20 metres and no NOC affiliation from the Fire Department is necessary for obtaining recognition/renewal.

12. The ingredients of the offence of cheating are as follows:

1) Deception of a person by making false representation which the maker knows or has reason to believe is false and thereby

2) (a) Fraudulently or dishonestly inducing such person:

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property, or

(b) Intentionally induces that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

13. The words 'dishonestly' and 'fraudulently' are defined as follows:

"24. "Dishonestly"-

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently"-

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." Section 23 IPC defines wrongful loss/ wrongful gain:

""Wrongful gain": Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss": Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled."

Reading the ingredients in the backdrop of these definitions, it is evident in order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do

a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.

14. In Dr. Sharma's Nursing Home v. Delhi Admn. & Ors.,5 this Court held mere deception by itself would not constitute cheating unless the other essential ingredient, i.e., dishonest inducement is established. This Court held as follows:

"both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. "Dishonesty" has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed."

15. In Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.,6 this Court reiterated that Section 415 IPC contemplates two distinct situations; the first where a person is dishonestly induced to deliver property, and the second where a person is induced to do or omit an act which, but for the deception, he would not have done or omitted. In the former, the inducement must be fraudulent or dishonest, whereas in the latter it need only be intentional. Therefore, intention is the gist of the offence.

16. It is strenuously argued the appellant had used a fake NOC from the Fire Department and thereby held out a false representation that he possessed a valid NOC to obtain recognition/renewal of affiliation for his institution. Uncontroverted allegations in the charge sheet including the order in the writ proceedings, unequivocally show NOC from the Fire Department was not necessary for grant of such recognition/renewal of affiliation as the height of the appellant's building was below 15 metres.

Given this situation, the representation of the appellant that he possessed a valid NOC cannot be said to have induced the Education Department to grant recognition or renew the affiliation. To attract penal consequences, it must be shown that the false representation was of a material fact which had induced the victim to either part with property or act in a manner which they would not otherwise do but for such false representation. In the absence of such vital link between the alleged false representation and the issuance of recognition/renewal of affiliation, the essential ingredient of offence is not satisfied.

17. Ms. Prerna Singh has also argued that though the chargesheet has been filed under Section 420, the contours of the offence of forgery are evident as the appellant has knowingly used a fake document.

18. We are unable to accept her submission on this score too. There is nothing on record to show the appellant had manufactured the alleged fake document which is a sine qua non to attract Section 465 IPC.7 In fact, the original fabricated document had not been recovered.

19. In Sheila Sebastian v. R. Jawaharaj & Anr.,8 this Court held to attract Section 464 IPC,9 the prosecution must establish that the accused had made the fake document. No material connecting the appellant to the making of the fake document has been adduced in the impugned charge sheet.

20. Similarly, offences under Section 468 IPC10 and Section 471 IPC11 are not attracted, as the requisite mens rea, i.e., dishonest intention to cause wrongful loss to the Education Department and wrongful gain to himself has not been demonstrated as the issuance of the recognition was not dependent on the production of the alleged forged NOC.

21. The High Court failed to consider these relevant issues which clearly demonstrate that the uncontroverted allegations in the chargesheet, in the teeth of order dated 25.04.2018 in WP No. 14542/2018, do not disclose essential ingredients of cheating or forgery. Accordingly, we set aside the impugned order of the High Court, quash the proceedings in CC No. 303/2020 under Section 420 IPC and allow the appeal.

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

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

.....J. (Joymalya Bagchi)

New Delhi,

September 10, 2025

1 Hereinafter "IPC".

2 Hereinafter "NOC".

3 Hereinafter "SCERT".

4 Rule 4.6.1.4, National Building Code of India.

5 (1998) 8 SCC 745, para 3.

6 (2000) 4 SCC 168, paras 13-15.

7 Punishment for forgery.

8 (2018) 7 SCC 581, para 25.

9 Making a false document.

10 Forgery for purpose of cheating.

11 Using as genuine a forged document or electronic record.

IN THE SUPREME COURT OF INDIA

Anna Waman Bhalerao
Vs.
State of Maharashtra

[Criminal Appeal No. 4004 of 2025
arising out of SLP (Crl.) No. 11128 of 2025]

[Criminal Appeal No. 4005 of 2025
arising out of SLP (Crl.) No. 11108 of 2025]

HEADNOTE – High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves.

Supreme Court passed the following directions -
a) High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves.
b) High Courts shall issue necessary administrative directions to subordinate courts to prioritise matters involving personal liberty and to avoid indefinite adjournments.
c) Investigating agencies are expected to conclude investigations in long pending cases with promptitude so that neither the complainant nor the accused suffers prejudice on account of undue delay.
d) Being the highest constitutional fora in the States, High Courts must devise suitable mechanisms and procedures to avoid accumulation of pending bail / anticipatory bail applications and ensure that the liberty of citizens is not left in abeyance. In particular, bail and anticipatory bail applications shall not be kept pending for long durations without passing orders either way, as such pendency directly impinges upon the fundamental right to liberty.

JUDGMENT

R. Mahadevan, J.

1. Leave granted in both the SLPs.

2. Both these criminal appeals arise from a common judgment dated 04.07.2025 passed by the High Court of Judicature at Bombay1 in Anticipatory Bail

Application Nos.1790 of 2019 and 1844 of 2019, whereby the appellants' applications seeking pre-arrest bail in connection with F.I.R. No. 30/2019, came to be dismissed.

3. Based on a complaint lodged by one Vikas Narsingh Vartak, FIR No. 30/2019 was registered on 26.01.2019 at Arnala Sagari Police Station, District Palghar, Maharashtra against Mahesh Yashwant Bhoir and others, for offences punishable under Sections 420, 463, 464, 465, 467, 468, 471 and 474 read with Section 34 of the Indian Penal Code, 18602.

3.1. In the complaint, it was alleged that the complainant's father, Narsingh Govind Vartak died on 29.01.1978. Out of his five brothers, four had died, and one Harihar Govind Vartak was still alive. It was further alleged that the land bearing Survey No. 29, Hissa No. 1 (Old) and Survey No. 233, Hissa No.1(A) (New), admeasuring 1.46 hectares situated at Village Agashi, was jointly owned by Narsingh Govind Vartak, Hari Govind Vartak, Mahadev Govind Vartak, Parshuram Govind Vartak, Raghunandan Govind Vartak, Harihar Govind Vartak, along with Purushottam Manohardas Shah, Amrutlal Manohardas Shah, and Kantilal Manohardas Shah, and their names stood recorded in the revenue records.

3.2. On 13.05.1996, a Power of Attorney was purportedly executed in favour of Vijay Anant Patil (A2) by Narsingh Govind Vartak, and his brothers, and another Power of Attorney was executed in favour of Rajesh Kamat (A3) by the Shahs. On the strength of these Powers of Attorney, on 18.05.1996, a sale deed was executed by A2 and A3 in favour of Mahesh Yashwant Bhoir (A1) for a consideration of Rs.8 lakhs. Mutation Entry Nos. 15177 and 15180 were recorded in 1996 on the basis of this sale deed.

3.3. At the relevant point of time, the present appellants were serving as Circle Officer and Talathi respectively in the Revenue Department of the State of Maharashtra. Subsequently, a revision application was filed before the Sub-Divisional Officer, Bhiwandi seeking cancellation of the said mutation entries, and by order dated 30.09.1998, Mutation Entry Nos. 15177 and 15180 were accordingly cancelled.

4. The appellants were not initially named in the FIR. They were later arraigned as Accused Nos. 5 and 6 on allegations that, in their official capacity, they had certified the said mutation entries on the basis of forged documents, thereby facilitating the illegal transfer of ownership of the immovable property. Apprehending arrest, they preferred Anticipatory Bail Application Nos.561 and 562 of 2019 before the Court of the Additional Sessions Judge, Vasai3. By order dated 06.06.2019, the Sessions Court granted interim protection to them.

However, upon hearing both sides, the Sessions Court, by order dated 21.06.2019, rejected their applications. Aggrieved, the appellants approached the High Court by filing Anticipatory Bail Application Nos. 1790 and 1844 of 2019, in which, interim protection was granted from time to time. Finally, by the impugned judgment dated 04.07.2025, the High Court rejected the anticipatory bail applications, but granted interim protection for a period of four week, which expired on 01.08.2025. Thereafter, the appellants have preferred the present appeals before this Court.

5. The learned Senior Counsel appearing for the appellants submitted that the appellants were originally not named in the subject F.I.R and there is a prima facie case for grant of anticipatory bail in their favour. On 16.08.2019 and 22.08.2019, the High Court granted interim protection, which was periodically extended and lastly continued by the impugned order dated 04.07.2025 for a further period of four weeks, expiring on 01.08.2025.

5.1. It was contended that the appellants, who were serving as Circle Officer and Talathi respectively at the relevant time and have since retired, acted purely in their official capacity while certifying mutation entries on the basis of a registered sale deed presented before them. They had no role in the creation or execution of the alleged forged powers of attorney or sale deed, nor any direct link with the subsequent transfer in favour of A1. There is also no allegation of personal gain, dishonest intention, or conspiracy. The only act attributed to them is certification of mutation entries on the strength of facially valid documents.

5.2. It was urged that in the absence of material to show knowledge of forgery, dishonest inducement, or collusion, the essential ingredients of the offences under Sections 420, 463, 467, 468, and 471 IPC are not attracted. Mere administrative endorsement, without fraudulent intent, cannot amount to cheating or forgery. The appellants neither created nor used forged documents, nor induced any person to part with property. At best, the allegations, even if taken at face value, may constitute a procedural lapse in discharge of official duties, which does not give rise to criminal liability.

5.3. Learned Senior Counsel pointed out that the very mutation entries in question (Nos. 15177 and 15180) had been cancelled by the Sub-Divisional Officer as far back as 30.09.1998. Once annulled by a competent authority, those entries stood nullified ab initio, leaving no continuing illegality or consequence. Thus, no enduring wrongful gain or loss can be attributed to the appellants.

5.4. It was further submitted that the FIR was lodged after an unexplained delay of over 20 years from the alleged incident of 1996. The complainant, being aware of the cancellation in 1998, remained silent for two decades. Such extraordinary delay gravely prejudices the appellants' right to a fair investigation and defence,

particularly as the allegations relate to administrative acts performed in official capacity long ago. The delay undermines the credibility of the prosecution's case.

5.5. It was also urged that the entire case rests on documentary evidence already in existence. Custodial interrogation of the appellants, retired government officers with no criminal antecedents, is neither necessary nor justified. Furthermore, they are willing to cooperate with the investigation and furnish all documents as required.

5.6. In support, reliance was placed on Siddaram Satlingappa Mehtre v. State of Maharashtra4, wherein this Court emphasised that anticipatory bail is intended to protect personal liberty where there are reasonable grounds to believe that the accused will neither abscond nor misuse the concession of bail.

5.7. Accordingly, it was contended that the appellants have been falsely implicated, that no offence is made out on the basis of the FIR or the material on record, and that custodial arrest would serve no purpose. Without considering these factors, the High Court erred in rejecting the applications for anticipatory bail. Therefore, the impugned judgment deserves to be set aside and the appeals be allowed.

6. We have heard the submissions of the learned Senior Counsel appearing for the appellants and perused the record.

7. It appears that the original owners of the subject property, namely the Shahs and the Vartaks, had expired between 1969 and 1990. Nevertheless, powers of attorney were purportedly executed in the names of the deceased persons, on the basis of which a sale deed dated 18.05.1996 came to be executed in favour of Mahesh Yashwant Bhoir (A1). Relying on the said sale deed, the mutation entries were certified by the appellants (A5 and A6).

8. The FIR pertains to events of 1996-98 and the allegation against the appellants is that, on the strength of forged and fabricated documents, fraudulent entries were made in the mutation register, facilitating the illegal transfer of ownership. Initially, their names did not find place in the FIR, however, they were subsequently, arraigned as A5 and A5. At the relevant point of time, the appellants were serving as Circle Officer and Talathi, and they retired from service in 2013 and 2019 respectively.

The FIR itself was lodged after a delay of more than 20 years from the alleged incident, and no departmental proceedings were initiated against the appellants either during their service or after retirement. It is not in dispute that their anticipatory bail applications remained pending before the High Court from 2019, and were finally dismissed by the impugned judgment dated 04.07.2025, though they continued to enjoy interim protection until 01.08.2025. It is also

undisputed that the mutation entries certified by the appellants had already been cancelled by the Sub-Divisional Officer on 30.09.1998.

9. The principal contention advanced on behalf of the appellants is that the prosecution is vitiated by extraordinary and unexplained delay. The complainant, having knowledge of the cancellation as early as 1998, remained silent for two decades. By the time, FIR No. 30 of 2019 was lodged on 26.01.2019, the mutation entries stood annulled, leaving no subsisting illegality or wrongful gain. It was urged that the only role attributed to the appellants is certification of mutation entries in their official capacity, based on documents that appeared facially valid. They had no involvement in the creation or execution of the alleged forged powers of attorney or sale deed, nor did they derive any personal benefit or act in collusion with the co-accused. The appellants retired with unblemished records, and there are no criminal antecedents against them.

10. It was the contention of the State before the High Court that A1 was the direct beneficiary of the fraudulent transaction founded upon forged powers of attorney. The appellants (A5 and A6), instead of adhering to their statutory obligations under Section 15(2) of the Maharashtra Land Revenue Code, certified the mutation entries thereby facilitating the transfer of immovable property. It was further alleged that despite enjoying interim protection since 2019, the appellants failed to cooperate with the investigation and prolonged the proceedings.

11. We find that the High Court rightly noted that the alleged powers of attorney were executed in 1996 long after the death of the original owners and that the sale deed dated 18.05.1996 executed on the strength of such documents, is prima facie vitiated, with A1 appearing to be the direct beneficiary of such a transaction. The High Court further observed that the appellants, while serving in the Revenue Department, ignored their statutory duties and facilitated the mutation in favour of A1, and hence, their conduct cannot be brushed aside as a mere procedural lapse.

12. We are conscious of the fact that whether the appellants shared any criminal intent or abetted the acts of A1 is a matter for trial, and any conclusive finding at this stage would be inappropriate. However, while considering anticipatory bail, this Court must balance the liberty of individuals against the legitimate requirements of investigation.

13. The plea that the mutation entries were cancelled in 1998, though noted, does not efface the appellants' alleged role in certifying those entries in the first place - a matter that must be adjudicated at trial.

14. Although there has been a long delay in the initiation of proceedings, the gravity of the allegations, the alleged abuse of official position, and the prima

facie findings of the High Court that custodial interrogation is necessary, cannot be diluted merely on the ground of delay. Even in a case based largely on documentary evidence, custodial interrogation may be essential to trace the chain of transactions, ascertain complicity, and prevent further suppression or tampering of records. Moreover, the appellants, despite enjoying interim protection for nearly six years, did not extend due cooperation to the investigation. In these circumstances, we see no reason to interfere with the judgement under challenge.

15. Apart from the relief of anticipatory bail, a significant issue that arises for consideration herein is the inordinate delay in the disposal of the appellants' applications for anticipatory bail by the High Court. The record discloses that the applications remained pending for several years without any final adjudication, although interim protection was extended to the appellants from time to time, including even after the dismissal of the applications, until 01.08.2025. It is true that the appellants themselves did not suffer prejudice, having continued to enjoy interim protection.

Nevertheless, this Court has consistently underscored, in a long line of decisions, that applications affecting personal liberty - particularly bail and anticipatory bail - ought not to be kept pending indefinitely. The grant or refusal of bail, anticipatory or otherwise, is ordinarily a straightforward exercise, turning on the facts of each case. There is, therefore, no justification for deferring decision-making and allowing a sword of Damocles to hang over the applicant's head. In matters concerning liberty, bail courts must be sensitive and ensure that constitutional ethos is upheld. While docket explosion remains a chronic challenge, cases involving personal liberty deserve precedence.

16. In this context, we may refer to the following decisions of this Court. In Nikesh Tarachand Shah v. Union of India5, Justice R. F. Nariman while adverting to the Magna Carta in the context of pre-arrest bail, observed as under:

"15. The provision for bail goes back to Magna Carta itself. Clause 39, which was, at that time, written in Latin, is translated as follows:

"No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

It is well known that Magna Carta, which was wrung out of King John by the Barons on 15-6-1215, was annulled by Pope Innocent III in August of that very year. King John died one year later, leaving the throne to his 9 year old son, Henry III. It is in the reign of this pious King and his son, Edward I, that Magna

Carta was recognised by kingly authority. In fact, by the Statutes of Westminster of 1275, King Edward I repeated the injunction contained in Clause 39 of Magna Carta. However, when it came to the reign of the Stuarts, who believed that they were kings on earth as a matter of divine right, a struggle ensued between Parliament and King Charles I.

This led to another great milestone in the history of England called the Petition of Right of 1628. Moved by the hostility to the Duke of Buckingham, the House of Commons denied King Charles I the means to conduct military operations abroad. The King was unwilling to give up his military ambition and resorted to the expedient of a forced loan to finance it. A number of those subject to the imposition declined to pay, and some were imprisoned; among them were those who became famous as "the Five Knights". Each of them sought a writ of habeas corpus to secure his release. One of the Knights, Sir Thomas Darnel, gave up the fight, but the other four fought on.

The King's Bench, headed by the Chief Justice, made an order sending the Knights back to prison. The Chief Justice's order was, in fact, a provisional refusal of bail. Parliament being displeased with this, invoked Magna Carta and the Statutes of Westminster, and thus it came about that the Petition of Right was presented and adopted by the Lords and a reluctant King. Charles I reluctantly accepted this Petition of Right stating, "let right be done as is desired by the petition". Among other things, the petition had prayed that no free man should be imprisoned or detained, except by authority of law.

16. In Bushell's case [Bushell's case, 1670 Vaughan 135 : 124 ER 1006] , decided in 1670, Sir John Vaughan, C.J. was able to state that : (ER p. 1007)

"The writ of habeas corpus is now the most usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it."

Despite this statement of the law, one Jenkes was arrested and imprisoned for inciting persons to riot in a speech, asking that King Charles II be petitioned to call a new Parliament. Jenkes went from pillar to post in order to be admitted to bail. The Lord Chief Justice sent him to the Lord Chancellor, who, in turn, sent him to the Lord Treasurer, who sent him to the King himself, who, "immediately commanded that the laws should have their due course". (See Jenke's case [Jenke's case, (1676) 6 How St Tr 1189], How St Tr at pp. 1207 & 1208).

It is cases like these that led to the next great milestone of English history, namely, the Habeas Corpus Act, 1679. This Act recited that many of the King's subjects have been long detained in prison in cases where, by law, they should have been set free on bail. The Act provided for a habeas corpus procedure which

plugged legal loopholes and even made the King's Bench Judges subject to penalties for non-compliance.

17. The next great milestone in English history is the Bill of Rights, 1689, which was accepted by the only Dutch monarch that England ever had, King William III, who reigned jointly with his wife Queen Mary II. It is in this document that the expression "excessive bail ought not to be required..." first appears in Chapter 2 Clause 10.

18. What is important to learn from this history is that Clause 39 of the Magna Carta was subsequently extended to pre-trial imprisonment, so that persons could be enlarged on bail to secure their attendance for the ensuing trial. It may only be added that one century after the Bill of Rights, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution which expressly states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". We may only add that the Eighth Amendment has been read into Article 21 by a Division Bench of this Court in Rajesh Kumar v. State [Rajesh Kumar v. State, (2011) 13 SCC 706 : (2012) 2 SCC (Cri) 836] at paras 60 and 61."

16.1. In Rajesh Seth v State of Chhattisgarh6, the petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail, along with an I.A. seeking ex-parte ad-interim protection. On 17.01.2022, while admitting the application, the High Court directed it to be listed for final hearing 'in due course'. Aggrieved thereby, the petitioner approached this court contending that till date, the matter had neither been listed for hearing nor any order passed on the plea for interim protection during the pendency of the anticipatory bail application. This Court observed as under:

"When a person is before the Court and that too in a matter involving personal liberty, least what is expected is for such a person to be given the result one way or the other, based on the merit of his case and not push him to a position of uncertainty or be condemned without being heard, when it matters. When an application for anticipatory bail was listed before the learned Single Judge, which was also accompanied by an application for ad-interim relief, the learned Judge should have decided the same one way or the other, so far as the ad-interim prayer or should have taken up for consideration after giving some reasonable time to the State.

Even if admitted, the learned Judge should have listed the same for final disposal on a specific date, keeping in view the nature of relief sought in the matter. Not giving any specific date, particularly in a matter relating to anticipatory bail, is

not a procedure which can be countenanced. We are of the considered view that this type of indefinite adjournment in a matter relating to anticipatory bail, that too after admitting it, is detrimental to the valuable right of a person."

16.2. In Sanjay v. The State (NCT of Delhi) & another7, the application for bail was filed on 24.05.2022, but was posted to 31.08.2022 without granting any interim protection. Taking note of this circumstance, this Court held as under:

"We are of the considered view that in a matter involving personal liberty, the Court is expected to pass orders in one way or other taking into account the merits of the matter at the earliest."

"At any rate, posting an application for anticipatory bail after a couple of months cannot be appreciated."

16.3. In Rajanti Devi v. Union of India8, this Court noted that the Patna High Court had heard the anticipatory bail application and reserved judgment on 07.04.2022. However, the judgment came to be delivered only on 04.04.2023. Thus, the matter remained pending for nearly one year after the conclusion of arguments. This Court expressed strong displeasure that an anticipatory bail petition could be kept pending for such an inordinate period and underscored the importance of the expeditious disposal of bail and anticipatory bail applications. The following paragraphs are apposite in this regard:

"5. Though, we are very much alive about the magnitude of the bail applications being filed and heard by the Courts at all levels, we cannot be oblivious to the delay which takes place in the disposal of the Bail applications. This Court, time and again, has expressed great concern about the delay taking place in the disposal of the bail applications and has issued guidelines from time to time.

7. In a recent decision in the case of Satendra Kumar Antil Vs. Central Bureau of Investigation and Anr., (2022) 10 SCC 51, this Court has directed to dispose of the bail applications in two weeks. The said direction read as under:-

"100.11. Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application."

8. Despite the aforestated guidelines/directions having been issued by this Court from time to time, it appears that the cases like the present one, keep on happening and the bail applications are not being heard expeditiously and if heard, are not being decided within the stipulated time period. 9. In view of the

above, it is directed that all the courts shall scrupulously follow the directions/ guidelines issued by this Court in the aforestated decisions."

16.4. In Sumit Subhaschandra Gangwal & another v. the State of Maharashtra & another9, this Court while dealing with the issue relating to the inordinate delay in passing the order, observed as follows:

"6. This Court has consistently right from the case of Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others, (1980) 2 SCC 559, held that detailed elaboration of evidence has to be avoided at the stage of grant/rejection of bail/anticipatory bail. We do not appreciate such a lengthy elaboration of evidence at this stage.

7. Another factor that needs to be noted is that though the order was reserved on 25.01.2023, the learned Single Judge of the High Court has pronounced the order on 01.03.2023 i.e. after a period of one month and one week.

8. It is always said that in the matters pertaining to the liberty of citizens, the Court should act promptly. In our view, such an inordinate delay in passing an order pertaining to liberty of a citizen is not in tune with the constitutional mandate."

16.5. In Kavish Gupta v. State of Chhattisgarh10, this Court had occasion to consider the interim order passed by a Single Judge of the Chhattisgarh High Court on an application for anticipatory bail filed by the petitioner - accused in respect of offences under sections 420, 467, 468, 409, 471 and 34 IPC. By the said order, while the matter was taken up for consideration and the case diary was also called for, instead of fixing a specific date for further hearing, the Court directed that the case be listed "in its chronological order". The operative observation in the order reads as follows:

"1. This Court held and reiterated that decisions on anticipatory bail applications / bail applications, are concerned with the liberty and therefore, shall be taken up and disposed of, expeditiously. On 21.02.2022 in SLP (Crl) No.1247/2022, a Bench of three Judges of this Court reiterated the same view. Virtually, this Court deprecated the practice of admitting the bail applications and thereafter deferring decisions on it unduly. The case on hand reveals recurrence of such a situation despite the repeated pronouncements of this Court on very issue. In the case on hand, the petitioner who is accused No.1 in F.I.R. No.218/2023 of Police Station Vidhan Sabha, Raipur, Chhattisgarh registered under Section 420 read with Section 34 of the Indian Penal Code, 1860. Later, Sections 467, 468, 409 and 471, IPC were also added.

3. The aforestated order would reveal that on 06.12.2023, the matter was taken up for consideration and after hearing the petitioner, it was admitted and the case

Diary was called for. At the same time, its discernible from the order that the case was not specifically posted to any date. What was ordered was to list the matter in its chronological order. When the matter would be placed before the Court for further consideration, in such circumstances, is nothing but a matter of guess.

4. We have no hesitation to hold that such an order sans definiteness in the matter relating to anticipatory bail/regular bail, that too after admitting the matter, would definitely delay due consideration of the application and such an eventuality will be detrimental to the liberty of a person. It is taking into account such aspects that this Court held that such matters pertaining to personal liberty shall be taken up and decided at the earliest. It is a matter of concern that despite repeated orders, the same situation continues.

5. Hence, we request the learned Single Judge of the High Court to dispose of the pending anticipatory bail application, pending adjudication before him, on its own merits and in accordance with law, expeditiously and preferably within a period of four weeks from the receipt/production of this Order. Till such time, we grant interim protection from arrest to the petitioner."

16.6. In Mahatab Ali v. State of West Bengal & Anr.11, the petitioner therein, had been in custody for over one year and eleven months. The High Court noted that only eight out of 43 charge-sheeted witnesses had been examined, and that there was no likelihood of the trial concluding in the near future. The State opposed the bail application, citing the recovery of a gun and six rounds of ammunition from the petitioner, coupled with forensic evidence linking the ammunition to the bullet recovered from the body of the deceased. It was further urged that the petitioner's bail had been rejected on two earlier occasions. The High Court, however, held that prolonged incarceration without conclusion of trial amounted to a violation of the accused's fundamental right to speedy trial and personal liberty. This Court affirmed the said view, observed as follows:

"When there is a huge filing and pendency of the bail applications, we wonder why regular bail applications and anticipatory bail applications are being heard by the Division Bench of this High Court especially when in case of all other High Courts, the bail matters are being heard by the learned Single Judges. The question is whether two Hon'ble Judges of the High Court should be devoting time for dealing with regular bail applications. We, therefore, direct the Registrar (Judicial) of the High Court of Calcutta to place on record a report why regular bail applications/anticipatory bail applications are being heard by the Division Bench. He is directed to furnish the data of bail applications and anticipatory bail applications filed in 2024 and pendency of such applications as of today".

16.7. In Ashok Balwant Patil v. Mohan Madhukar Patil & Ors. Etc.12, the application for anticipatory bail remained undecided for a period of more than

four years. This Court, taking note of the inordinate delay in considering the application, held as follows:

"4. We are amazed with the speed in which the application for anticipatory bail is considered by the High Court of Bombay.

5. Initially, an ad interim anticipatory bail was granted to the respondent(s) accused on 10.04.2019. The matter came to be adjourned from time to time only observing that on account of paucity of time, the Court is not in a position to hear the matter. The only effective order that is passed is on 17.10.2022, on which day the time was given to the prosecution to place on record the material in support of their case.

6. No doubt, that the liberty of a citizen is a most important factor. However, at the same time, the consideration of an application for permanent bail on merits is also necessary. We, therefore, request the High Court to take up the matter expeditiously and decide the same finally within a period of one month from today."

16.8. In Amol Vitthal Vahile v. The State of Maharashtra13, the accused, having remained in custody for over seven years, preferred a bail application before the Bombay High Court. The High Court, however, without entering into the merits of the application, directed the applicant to approach the trial court for bail. Aggrieved thereby the accused preferred a criminal appeal before this Court. By a previous order dated 29.01.2024, this Court expressed concern over the failure of the High Court to exercise its jurisdiction to adjudicate the bail application on merits, and observed as follows:

"3. Needless to state that Article 21 of the Constitution of India is the soul of the Constitution as the liberty of a citizen is of paramount importance. Not deciding the matter pertaining to liberty of a citizen expeditiously and shunting away the matter on one or the other ground would deprive the party of their precious right guaranteed under Article 21 of the Constitution of India.

4. We have come across various matters from the High Court of Bombay where the bail/anticipatory bail applications are not being decided expeditiously.

6. We, therefore, request the Hon'ble the Chief Justice of the High Court of Bombay to convey our request to all the learned Judges exercising the criminal jurisdiction to decide the matter pertaining to bail/anticipatory bail as expeditiously as possible."

16.9. This Court in Dhanraj Aswani v. Amar S. Mulchandani14 emphasized that anticipatory bail under section 438 is, inter alia, a remedial provision

safeguarding personal liberty, and traced the evolution of the concept of anticipatory bail in the following paragraphs:

"D. Analysis

(i) Evolution of the concept of anticipatory bail

23. The Code of Criminal Procedure, 1898 (for short "the 1898 Code") did not contain any specific provision analogous to Section 438CrPC. In Amir Chand v. Crown [Amir Chand v. Crown, 1949 SCC OnLine Punj 20], the question before the Full Bench was whether Section 498 of the 1898 Code empowered the High Court or the Court of Session to grant bail to a person who had not been placed under restraint by arrest or otherwise. The Full Bench answered the reference as under: (SCC OnLine Punj)

"The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued. Section 498, Criminal Procedure Code, does not permit the High Court or the Court of Session to grant bail to anyone whose case is not covered by Sections 496 and 497, Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a court.

Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself. No bail can be allowed to a person at liberty for whose arrest no warrants have been issued. The petitioners in the present case are, therefore, not entitled to bail. The question referred to the Full Bench is, therefore, answered in the negative."

(emphasis supplied)

24. Under the 1898 Code, the concept of anticipatory or pre-arrest bail was absent and the need for introduction of a new provision in CrPC empowering the High Court and Court of Session to grant anticipatory bail was pointed out by the 41st Law Commission of India in its Report dated 24-9-1969. It observed thus in Para 39.9 of the said Report (Vol. I):

"Anticipatory bail

39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the

existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting detained in jail for some days.

In recent times, the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter. In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That Court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

(3) If any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.'

We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused."

(emphasis supplied)

25. The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced Clause 447 in the Draft Bill of the Code of Criminal Procedure, 1970 with a view to confer express power on the High Court and the Court of Session to grant anticipatory bail. The said clause of the Draft Bill was enacted with certain modifications and became Section 438CrPC.

26. The Law Commission, in Para 31 of its 48th Report (1972), made the following comments on the aforesaid clause:

"31. Point (vi)- Provision for grant of anticipatory bail.- The Bill [CrPC Bill, Cl. 447.] introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission [41st Report, Vol. 1, pp. 320-321, Para 39.9.]. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice. It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."

(emphasis supplied)

27. Section 438CrPC reads thus:

"438. Discretion for grant of bail to person apprehending arrest.-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court,

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a

bailable warrant in conformity with the direction of the court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860)."

28. The Statement of Objects and Reasons accompanying the Bill for introducing Section 438 in CrPC indicates that the legislature felt that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases. The purpose behind incorporating Section 438 in CrPC was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty of individuals by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court. [See: Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .]

29. In the context of anticipatory bail, this Court, in Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514], discussed the relevance and importance of personal liberty as under: (SCC pp. 718-19 & 721, paras 36-37, 43 & 49-50)

"36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilised existence.

37. Origin of "liberty" can be traced in the ancient Greek civilisation. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 BC, an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realise itself as fully as possible through the self-realisation of the individual by way of human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the State was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was

natural and necessary to man. Plato found his "republic" as the best source for the achievement of the selfrealisation of the people.

43. A distinguished former Attorney General for India, M.C. Setalvad in his treatise War and Civil Liberties observed that the French Convention stipulates common happiness as the end of the society, whereas Bentham postulates the greatest happiness of the greatest number as the end of law. Article 19 of the Indian Constitution averts to freedom and it enumerates certain rights regarding individual freedom. These rights are vital and most important freedoms which lie at the very root of liberty. He further observed that the concept of civil liberty is essentially rooted in the philosophy of individualism.

According to this doctrine, the highest development of the individual and the enrichment of his personality are the true function and end of the State. It is only when the individual has reached the highest state of perfection and evolved what is best in him that society and the State can reach their goal of perfection. In brief, according to this doctrine, the State exists mainly, if not solely, for the purpose of affording the individual freedom and assistance for the attainment of his growth and perfection. The State exists for the benefit of the individual.

49. An eminent English Judge, Lord Alfred Denning observed:

'By personal freedom I mean freedom of every law abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasion without hindrance from any person. It must be matched, of course, with social security by which I mean the peace and good order of the community in which we live.'

50. An eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol. 18 (1978), p. 133 observed that 'liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body.' "

30. In Kartar Singh [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899 : (1994) 2 SCR 375], a Constitution Bench of this Court held that there is no constitutional or fundamental right to seek anticipatory bail. In the said case, this Court was called upon to consider the constitutional validity of sub-section (7) of Section 20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. The Constitution Bench also looked into the validity of Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976 which deleted the operation of Section 438CrPC in the State of Uttar Pradesh with effect from 28-11-1975. In the aforesaid context, Ratnavel Pandian, J. speaking

for himself and on behalf of four other Judges observed as under : (SCC pp. 698-700, paras 326-27 & 329)

"326. The High Court of Punjab and Haryana in Bimal Kaur [Bimal Kaur Khalsa v. Union of India, 1987 SCC OnLine P&H 918 : AIR 1988 P&H 95 : PLR (1988) 93 P&H 189 : 1988 Cri LJ 869] has examined a similar challenge as to the vires of Section 20(7) of TADA Act, and held thus : (SCC OnLine P&H para 108)

'108. In my opinion Section 20(7) is intra vires the provision of Article 14 of the Constitution in that the persons charged with the commission of terrorist act fall in a category which is distinct from the class of persons charged with commission of offences under the Penal Code and the offences created by other statutes. The persons indulging in terrorist act form a member of well organised secret movement.

The enforcing agencies find it difficult to lay their hands on them. Unless the police is able to secure clue as to who are the persons behind this movement, how it is organised, who are its active members and how they operate, it cannot hope to put an end to this movement and restore public order. The police can secure this knowledge only from the arrested terrorists after effective interrogation. If the real offenders apprehending arrest are able to secure anticipatory bail then the police shall virtually be denied the said opportunity.'

327. It is needless to emphasise that both Parliament as well as the State Legislatures have got legislative competence to enact any law relating to the Code of Criminal Procedure. No provision relating to anticipatory bail was in the old Code and it was introduced for the first time in the present Code of 1973 on the suggestion made of the Forty-first Report of the Law Commission and the Joint Committee Report. It may be noted that this section is completely omitted in the State of Uttar Pradesh by Section 9 of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 (U.P. Act 16 of 1976) w.e.f. 28-11-1975.

In the State of West Bengal, proviso is inserted to Section 438(1) of the Code w.e.f. 24-12-1988 to the effect that no final order shall be made on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, without giving the State not less than seven days' notice to present its case. In the State of Orissa, by Section 2 of Orissa Act 11 of 1988 w.e.f. 28-6-1988, a proviso is added to Section 438 stating that no final order shall be made on an application for anticipatory bail without giving the State notice to present its case for offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years.

329. Further, at the risk of repetition, we may add that Section 438 is a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21. InGurbaksh Singh [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465 : (1980) 3 SCR 383] , there is no specific statement that the removal of Section 438 at any time will amount to violation of Article 21 of the Constitution."

(emphasis supplied)

31. The aforesaid decision was discussed in the course of the hearing of this case for the limited proposition that there is no constitutional or fundamental right to seek anticipatory bail. Section 438CrPC is just a statutory right. 32. In Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465 : (1980) 3 SCR 383] , a Constitution Bench of this Court (speaking through Justice Y.V. Chandrachud, C.J., as his Lordship then was) undertook an extensive analysis of the provision of anticipatory bail. This Constitution Bench decision can be termed as a profound and passionate essay on how personal liberty under the Constitution can be consistent with needs of investigations and why this Court should avoid any generalisation that would take away the discretion of the courts dealing with a new set of facts in each case. Y.V. Chandrachud, C.J. observed thus : (SCC pp. 575 & 579-81, paras 8, 12 & 14-15)

"8. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the 1973 Code.

12. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail.

That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide

discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in clauses (i) to (iv) of sub-section (2).

14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful.

There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.

15. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises."

17. In light of the foregoing discussion and the precedents cited, certain clear principles emerge. Applications concerning personal liberty cannot be kept pending for years while the applicants remain under a cloud of uncertainty. The consistent line of authority of this Court makes it abundantly clear that bail and anticipatory applications must be decided expeditiously on their own merits, without relegating the parties to a state of indefinite pendency. Prolonged delay in disposal not only frustrates the object of Code of Criminal Procedure, but also amounts to a denial of justice, contrary to the constitutional ethos reflected in Articles 14 and 21.

18. We accordingly issue the following directions:

a) High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves.

b) High Courts shall issue necessary administrative directions to subordinate courts to prioritise matters involving personal liberty and to avoid indefinite adjournments.

c) Investigating agencies are expected to conclude investigations in longpending cases with promptitude so that neither the complainant nor the accused suffers prejudice on account of undue delay.

d) Being the highest constitutional fora in the States, High Courts must devise suitable mechanisms and procedures to avoid accumulation of pending bail / anticipatory bail applications and ensure that the liberty of citizens is not left in abeyance. In particular, bail and anticipatory bail applications shall not be kept pending for long durations without passing orders either way, as such pendency directly impinges upon the fundamental right to liberty.

18.1. The Registrar (Judicial) of this Court shall circulate a copy of this judgment to all High Courts for immediate compliance and prompt administrative action.

19. In fine, both appeals fail, and the impugned judgment of the High Court rejecting the anticipatory bail applications is affirmed. However, we clarify that the appellants shall be at liberty to apply for regular bail before the competent court, and if such an application is made, it shall be considered on its own merits, uninfluenced by any observations made by the High Court or by this Court in these appeals.

20. With the aforesaid directions and observations, the Criminal Appeals are dismissed.

21. Connected Miscellaneous Application(s), if any, stand disposed of.

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

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

New Delhi;

September 12, 2025

1 Hereinafter referred to as "the High Court"

2 For short, "IPC"

3 For short, "the Sessions Court"

4 (2011) 1 SCC 694

5 (2018) 11 SCC 1

6 SLP (Crl) 1247/2022

7 SLP (Crl.) No. 5675 of 2022

8 2023 SCC OnLine SC 1595

9 SLP (Crl.) No. 3561/2023

10 SLP (Crl.) no. 16025/2023 with SLP (Crl.) No. 16047/2023

11 SLP (Criminal) Diary No. 60183/2024

12 SLP (Crl.) Diary No. 1540/2024 dated 25.01.2024

13 Criminal Appeal No. 545/2024

14 (2025) 1 SCC (Cri) 1 : 2024 SCC OnLine SC 2453 : 2024 INSC 669

IN THE SUPREME COURT OF INDIA

Shanti Devi since (D) through LRS. Goran
Vs.
Jagan Devi & Ors.

[Civil Appeal No. 11795 of 2025
@ SLP (C) No. 24821/2018]

HEADNOTE – A suit instituted seeking possession of immovable property on the ground that the defendant's sale deed is void is governed by the 12 years limitation period under Article 65 of the Limitation Act, 1963, rather than the shorter 3 years period under Article 59 of the Limitation Act.

JUDGMENT

J.B. Pardiwala, J.

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab & Haryana dated 22.02.2018 in the Regular Second Appeal No. 2930 of 1996 by which the second appeal filed by the appellant-herein (original defendant) against the judgment and decree dated 07.10.1996 arising from Civil Appeal No. 149 of 1991 passed by the First Appellate court, came to be dismissed.

FACTUAL MATRIX

3. The facts giving rise to this appeal may be summarized as under.

4. For the sake of convenience, the appellant-herein shall be referred to as the original defendant and the respondents-herein shall be referred to as the original plaintiffs.

5. The plaintiffs instituted Civil Suit No. 782 of 1984 in the court of Senior Sub Judge, Gurgaon for permanent injunction restraining the defendant from interfering with their peaceful possession to the extent of one-third share in the agricultural land admeasuring 31 kanals 4 marlas situated within the revenue estate of village Bisar Akbarpur, Tehsil Nuh, District Gurgaon. In the alternative, the plaintiffs prayed that they be put in joint possession along with the defendant and the sale deed dated 14.06.1973 purported to have been executed by Ram Saran s/o Bhambar and the plaintiff in favor of the defendant be declared as

fraudulent, concocted and thereby, void insofar as the share of the plaintiff is concerned.

6. The plaint of Civil Suit No. 782 of 1984 reads thus:

"1. That the plaintiff is the lawful owner and in possession to the extent of 1/3rd share in agricultural land bearing Rect. No.40 Killa No. 1/2 (2-0), 9/2 (2-12), 10 (8-0), 11 (8-0), 12/1 (2-12) 20 (8-0), total measuring 31 Kanals 4 marlas, besides other lands situated in the revenue estate of Village Bisar Akbarpur Tehsil Nuh, Distt. Gurgaon. The fard jamabandi for the years 1973-74 and 1978-79 are attached herein.

2. That the defendant wrongly claims herself to be the purchaser of the suit land referred to above from one Ram Saran s/o Bhambar on the basis of a fraudulent and concocted sale deed alleged to have been executed on 14.06.1973. The alleged sale deed dated 14.6.73 is total fraudulent, illegal and void and cannot defeat the legal rights and share of the plaintiff in the suit land on the following grounds:-

(a) That the plaintiff never executed on registered sale deed dated 14.6. 73 or of any other date in favor of the defendant and she is still the co-owner in possession to the extent of her share in the land.

(b) That it seems that the defendant must have got executed and registered the alleged sale deed in her favor by making some impersonation in collusion with the other vendor and witnesses and must have played a fraud on the Sub-Registrar to derive wrongful gain for her personal benefit.

(c) That the plaintiff never got any sale consideration of the alleged sale deed and she came to know about this fraudulent transaction only when he came to the village mourn the death of Ram Saran and heard that her land is going to be sold by the defendant without any right in it.

(d) That the alleged sale deed if made by any other person by making impersonation or otherwise, the same does not effect the rights of the plaintiff in the land in suit.

3. That the plaintiff is owner in possession her 1/3rd share in the land and is entitled to file suit for permanent injunction against the defendant restraining her from interfering with the possession and ownership of the plaintiff in the suit land in any manner. In the alternative, if it is found and held that that defendant is in possession of the whole land then the plaintiff is entitled to a decree for joint possession to the extent of 1/3rd share in the land in suit.

4. That the cause of action for the suit arose on or about 4.2.1984 when the plaintiff came to know about the fraudulent transaction and the defendant attempted to sell away to the property of the plaintiff and denied to admit the claim of the plaintiff. Hence this suit.

5. That the suit property is situated within the territorial jurisdiction of this Hon'ble Court, hence this Hon'ble Court has got jurisdiction to try this suit.

6. That the value of the suit for the purpose of court fees and jurisdiction is assessed at Rs.200/- and for relief of possession is also Rs. 100/-. A court fees of Rs.25/- is paid.

7. That the plaintiff, therefore, prays that a decree for permanent injunction be passed in favor of the plaintiff and against the defendant to the effect that the plaintiff is co-owner in possession to the extent of 1/2 share (sic) (1/3 rd share) in the land in suit described in para no.1 of the plaint restraining the defendant from interfering or dealing with it in any manner. In the alternative a decree for joint possession be passed in favor of the plaintiff and against the defendant in respect of suit land mentioned in para 1 of the plaint declaring the alleged sale deed dated 14.6.73 to be fraudulent and void qua the share of the plaintiff. The costs of the suit be also awarded. Any such other relief which the Ld. Court may deem just and proper be also granted to the plaintiff."

(Emphasis supplied)

7. The written statement filed on behalf of the defendant reads thus:

"Pre Objections

1. That the suit is not maintainable in the present form. The plaintiff has got no right, interest or title in the land in dispute or any part of it.

2. That the plaintiff has got no locus standi nor any cause of action to file the present suit.

3. That the suit for permanent injunction in the alternative for joint possession is not maintainable. It is mandatory to seek declaration

4. That the plaintiff is estopped from filing the present suit by acts, conduct, omission, acquiescence, latches and admission.

5. That the suit is barred by time.

On Merits

1. That Para no.1 of the plaint is wrong and denied. It is wrong and denied that the plaintiff is owner or in possession of the suit land to the extent of 1/3rd share or she has got any right, interest or title in the land in dispute or any part of it.

2. That para no.2 of the plaint alongwith its sub-paras 2(a.) to (d) are wrong and denied. The plaintiff alongwith the brother Ram Saran sold the land in dispute in favour of the defendant vide sale deed dated 14.6.1973 for sale consideration of Rs.15000/-. The contents of the sale deed were read over and explained to the plaintiff. She had appeared before the Sub Registrar and had admitted and acknowledged the contents of the sale deed. She was identified by Sehdev Sarpanch of village Kawari. It is wrong and denied that the sale deed dated 14.6.1973 is totally fraudulent, illegal and ineffective, the rights of the plaintiff in the suit land on the grounds mentioned in subpara 2(a) to 2(d) of the plaint or on another grounds.

2(a) Para 2(a) of the plaint is wrong and denied. It is wrong and denied that the sale deed dated 14.6.1973 was not executed by the plaintiff in favour of the defendant. It is wrong and denied that she is still owner of the land in dispute or any part of it. Mutation on the basis of sale deed dated 14.6.1973 was also got sanctioned by the plaintiff in favour of the defendant.

2(b) Para 2(b) of the plaint is wrong and denied. It is wrong and denied that the sale deed was got registered by false impersonation in collusion with Ram Saran, brother of the plaintiff or any other person. It is wrong and denied that any fraud was played on the Sub Registrar to derive wrongful gain for personal benefit. All these allegations are false to the positive knowledge of the plaintiff.

2(c) Para no.2(c) of the plaint is wrong and denied. It is wrong and denied that the plaintiff did not execute the sale deed or she did not receive the sale consideration. It is further wrong and denied that the sale deed was fraudulent transaction or she came to know about the same on the death of Ram Saran. All these allegations are false. It is unthinkable that her brother Ram Saran did not know the plaintiff.

2(d) Para no.2(d) of the plaint is wrong and denied. It is wrong and denied that the sale deed was not executed by the plaintiff or somebody else falsely impersonated in her place. It is wrong and denied that the plaintiff is owner or in possession of the land in dispute as alleged.

3. That para no.3 of the plaint is wrong and denied. It is wrong and denied that the plaintiff has got any right, interest or title in the suit land or she is owner or in possession of the same or any part of it. It is further wrong and denied that she is entitled to sue for possession in the alternative.

4. That para no.4 of the plaint is wrong and denied. No cause of action ever accrued to the plaintiff. Cause of action if any is bogus, fictitious and imaginary one. 5&6. Paras no.5 and 6 of the plaint are legal.

7. That para no.7 of the plaint is wrong and denied. It is, therefore, humbly prayed that the suit of the plaintiff may kindly be dismissed with costs. Since the suit of the plaint is false, frivolous and vexatious, therefore, the plaintiff be burdened with special costs U/s 35-A C.P.C."

8. The Trial Court framed the following issues:

"1. Whether the sale deed dated 14.6.1973 is illegal, fraudulent and ineffective on the grounds mentioned in the para no.2 of the plaint? OPP

2. Whether the plaintiff is in joint possession of the suit property? OPP.

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff has no locus standi and cause of action to file the suit? OPD

5. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.

6. Whether the suit is time barred? OPD 7. Relief."

9. All the above referred issues framed by the Trial Court came to be answered against the plaintiffs. The suit ultimately came to be dismissed vide the judgement and decree dated 14.10.1991.

10. The plaintiffs being dissatisfied with the judgment and decree passed by the Trial Court preferred First Appeal before the district court. The First Appeal came to be registered as Civil Appeal No. 149 of 1991. The First Appeal came to be allowed. The suit of the plaintiffs came to be decreed. On the question of limitation, the First Appellate Court observed as thus:

"Lastly the question of limitation has been raised in the present proceedings. As per the defendant the present suit should have been filed within three years of the sanction of mutation. He mainly reliance on 1996 (1) PLR 482 The State of Punjab Vs. Babu Singh which lays down that illegal or void order have to be got set aside from the court of competent jurisdiction and limitation for the same is three years from the date of passing of the order.

On the other hand, the counsel for plaintiff-appellant has relied upon Article 65 in order to assert that the period of limitation shall be 12 years for getting the relief

of possession from the date when the possession of the defendant would be deemed to be adverse to that of the plaintiff. Accordingly he argued that even if it is presumed that the defendant came into adverse possession from the date of execution of the present sale deed even then the plaintiff was entitled to get the relief of possession within the period of 12 years and the suit was filed within that period. Merely because it was filed after about 11 years cannot deprive the plaintiff of the relief.

The said arguments of the plaintiff appellant is convincing. She has claimed relief of joint possession. It has already been held that the transaction in question was void and Risali had never executed the sale deed in question. So under these circumstances the plaintiff could have maintained action to obtain possession of the property within the period of 12 years from the date of knowledge. So even if the knowledge party is ignored still the suit has been filed within 12 years from the date of sale and the same is maintainable."

(Emphasis supplied)

11. The defendants being dissatisfied with the judgment and decree passed by the First Appellate court preferred Second Appeal No. 2930 of 1996 in the High Court.

12. The High Court vide its impugned judgment and order dismissed the appeal thereby affirming the judgment and order passed by the First Appellate court decreeing the suit in favour of the plaintiffs. However, insofar as the issue of limitation was concerned, the High Court differed with the First Appellate Court and came to the conclusion that it is Article 59 of the Limitation Act, 1963 and not Article 63 that would be applicable to the facts of the matter.

13. The High court while dismissing the Second Appeal held as under:

"I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Keshav Pratap Singh. In my view, limitation would not come in the way of the plaintiff-respondents, for, the suit can be filed from the date of the knowledge as per the provisions of Article 59 of the Limitation Act, which reads thus:-

59.	To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.

The defendant for the best known reasons has not examined any expert in his evidence to counter and rebut the testimony of PW4. Appellant-defendant Shanti Devi (since deceased) represented through legal representatives made a statement that she was present at the time of execution and registration of the sale deed and one Rasali was also present to whom she knew very well. Rasali had also put her thumb impressions on the sale deed in her presence but in cross-examination, she stated that she was not in a position to identify Rasali Devi.

If at all, Rasali was known to Shanti Devi, she could have been very bold to identify Rasali. Endorsement made by Sub-Registrar showed that her husband Bagdawat had appeared on her behalf before the Sub Registrar and the aforementioned document did not carry the thumb impression/signatures of Shanti Devi. The other witness to the sale deed, i.e., Budhu, an attesting witness of the document was none else but the real brother of Shanti Devi, obviously he was expected to make a favourable deposition. He also admitted that sale deed was thumb marked by Shanti Devi, whereas, as noticed above, it was not Bagdawat, husband of Shanti Devi, for the reasons best known had not stepped into witness box.

The second witness, Sahdev, Sarpanch had died before the statement of Budhu could be recorded. Shanti Devi admitted that Sahdev was well acquainted with his brother Budhu. Thus, defendant failed to prove that there was any impartial witness. Things do not end here. The plaintiffs had moved an application for directing the defendant to produce the original sale deed and answer was that the original had been misplaced. Defendant had admitted that prior to sale deed, there was an agreement to sell but the same has also not seen the light of day.

On the contrary, expert compared the disputed thumb impressions found on the Special Power of Attorney Ex.P2 and thumb impressions put by Rasali on her statement recorded by the Court on 20.03.1984. Special Power of Attorney Ex.P2 had been proved through the testimony of PW3, who stated that executant had put her thumb impressions on the said document after it was read over and explained. The defendant failed to put any cross-examination to the aforementioned witness. It is settled law that in case, statement made in examination-in-chief is not subjected to cross-examination, the same would be admitted.

The defendant in the evidence did not dispute that Rasali had not appeared before the Court on 20.03.1984. The handwriting expert also compared the thumb impressions on two affidavits executed by Rasali, i.e., on 27.02.1984 and 28.02.1984. Both the affidavits were duly attested by Oath Commissioner and identified by K.S. Jain, Advocate. The expert also examined the thumb impressions on the plaint and vakalantnama to form an opinion that they were not

of the same person, therefore, there was no occasion for the Lower Appellate Court to discard the report of expert.

In my view, evidence brought on record by the plaintiffs un-clinchly proved that Rasali had never executed disputed sale deed. There is another aspect of the matter, mutation Ex.DE was affected on the basis of the sale deed which also carried a presumption of truth under Section 44 of Punjab Land Revenue Act, unless the same is rebutted. No evidence has been led to rebut the same. Even from perusal of Ex.D3, it was not proved that Rasali at the time of attestation and sanction was there. Defendant miserably failed to prove that document actually executed by Rasali.

There is no force in the submission of Mr. Keshav Pratap Singh that improvement made by the defendant was in the knowledge of the plaintiffs, and therefore, suit was barred by law of limitation but fact of the matter is that no such improvement had been proved, therefore, the pleading was beyond evidence. The suit could not be said to be barred by law of limitation as relief of declaration qua joint possession was sought as every owner is owner of each and every inch of land until the same is partitioned.

As an upshot of my findings, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised. Resultantly, the appeal stands dismissed."

(Emphasis supplied)

14. In such circumstances referred to above, the legal heirs of the original defendant are here before us with the present appeal.

15. Upon a perusal of the facts of the case in hand, this Court vide order dated 03.02.2025, confined itself to the question whether the plaintiff's suit was time-barred or not.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ ORIGINAL DEFENDANT

16. The learned counsel appearing for the appellant vehemently submitted that the High court committed a serious error in dismissing the second appeal thereby affirming the judgment and decree passed by the First Appellate court in favor of the plaintiffs. The counsel would submit that the suit itself was barred by limitation as the same had been filed on 28.02.1984 i.e., after a delay of more than 11 years from the date of the execution of the sale deed dated 14.06.1973.

17. It was argued that the Trial Court rightly dismissed the suit being barred by limitation. The First Appellate court wrongly invoked Article 65 of the Limitation Act, 1963 to bring the suit within the period of limitation. According to the learned counsel, it is Article 56 of the Limitation Act, 1963 that governs the period of limitation in the present case. It was also argued that the original plaintiff, namely, Rasali failed to enter the witness box in the presence of the defendant. Moreover, Sibba s/o Lal Singh, in whose favour the plaintiff had executed a power of attorney to pursue the case, never entered the witness box.

18. In the last, the learned counsel appearing for the defendant submitted that heavy burden of proof is cast upon a person impugning the transaction to show that the same is sham or fraudulent one. According to the learned counsel a distinction should be borne in mind in regard to the nominal nature of the transaction which is no transaction in the eye of law at all and the nature and character of a transaction as reflected in a deed of conveyance.

In other words, according to the learned counsel appearing for the defendant, the initial burden of proving the transaction as bogus or sham was on the plaintiffs and they could be said to have miserably failed to lead any evidence in that regard. In such circumstances, the onus could not be said to have shifted upon the defendant to establish or prove the valid execution of the sale deed. The registered document and the registration of the sale deed reinforced the valid execution of the sale deed. He would submit that a registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to rebut such presumption.

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

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/ORIGINAL PLAINTIFFS

20. On the other hand, the learned counsel appearing for the respondents-herein 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. It was argued that there are concurrent findings recorded by the First Appellate court and the High Court respectively that the plaintiff was not a party to the sale deed of 1973 i.e., the sale deed in question. In other words, the plaintiff had not put her thumb impression on the sale deed.

21. It was argued that it is settled law that when an instrument of sale of an immovable property is not executed by the owner, then such a sale deed is void

ab initio and is considered a nullity qua the owner. In such a case, the owner is not required to seek cancellation of such an instrument or seek a declaration that such an instrument is void. This is the reason why the plaintiff had not sought the cancellation of the sale deed dated 14.06.1973 in the present case and therefore, there arises no question of application of Article 59 of the Schedule to the Limitation Act, 1963. The counsel has placed reliance on several decisions to emphasize that when the instrument is void/void ab initio and not voidable, it would be Article 65 which would apply to a suit for possession based on title filed by the plaintiffs.

22. In the last, it was argued that since the alleged possession of the defendant over the suit property can at best be considered to have been adverse to the plaintiff from the date of execution of the sale deed dated 14.06.1973, the suit having been filed on 28.02.1984, i.e., within 12 years of the execution of the impugned sale deed, cannot be said to be barred by limitation as per Article 65.

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

ANALYSIS

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

25. The crux of the issue seems to be whether it is Article 65 or Article 59 of the Schedule to the Limitation Act, 1963, which would apply to the present facts in hand. The aforesaid Articles are reproduced as under:

59.	To cancel or set aside an instrument or decree or for the recission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
65.	For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

26. The counsel for the plaintiff would submit that it is Article 65 which must be applied to the present suit for possession since the sale deed dated 14.06.1973 was found to be fraudulent and therefore, void. Insofar as the question whether the aforesaid sale deed was void, the First Appellate Court observed as thus:

"In my view, the evidence led by the plaintiff leaves no room for doubt that Smt. Rasali never executed the disputed sale deed. According the finding on issue no. 1 given by the trial court was incorrect and is reversed. But here, the said mutation was based on void transaction, as Smt. Risali had never executed the sale deed in question. So the question of estoppels against the plaintiff does not arise in the present proceedings."

27. The High Court has also expressed its agreement with the aforesaid finding of the First Appellate Court and observed that:

"In my view, evidence brought on record by the plaintiffs unclinchly proved that Rasali had never executed the disputed sale deed."

28. In State of Maharashtra v. Pravin Jethalal Kamdar reported in 2000 SCC OnLine SC 522, this Court held that as far as void and non-est documents are concerned, it would be enough for the plaintiff to file a simpliciter suit for possession to which Article 65 of the Limitation Act, 1963 would apply. Therein, Section 27(1) of the Urban Land (Ceiling and Regulation) Act, 1976 which came into force w.e.f. 17.02.1976 imposed a restriction on the transfer of any urban or urbanisable land with a building or part of such building, which was within the ceiling limit.

In other words, Section 27(1) sought to affect the right of a person to dispose of his urban property within the ceiling limit. Under the Act, the competent authority of the State of Maharashtra had to grant permission if such a person wanted to sell the property to a prospective purchaser. However, when such a permission was asked for in the facts of the aforesaid case, the same was denied by the competent authority and it instead exercised the option to buy the same on behalf of the State vide its order dated 26.05.1976.

Pursuant to such order, a sale deed dated 23.08.1976 was executed between the plaintiff and the State for the same sale consideration that would have been paid by the prospective purchaser. Subsequently, the decision of this Court in Bhim Singhji v. Union of India reported in (1981) 1 SCC 186 held Section 27(1), insofar as the restriction it placed as mentioned above, to be invalid. In this background, it was opined as follows:

i. First, the contention of the State that it is Article 58 of the Limitation Act, 1963 that would apply, was rejected. It was held that the suit is primarily one for possession of property based upon title. It was observed that owing to the decision in Bhim Singhji (supra), the order dated 26.05.1976 along with the sale deed dated 23.08.1976 became void ab intio and without jurisdiction. Therefore, it was not necessary for the plaintiff to claim any separate declaration that they are void. The plea about their invalidity could be raised in the course of any

proceedings. Therefore, it is Article 65, which deals with a suit for possession based on title, that would apply from the date on the which the possession of the defendant State became adverse to the plaintiff.

ii. Secondly, though the plaintiff sought a declaration that the order dated 26.05.1976 and the sale deed dated 23.08.1976 were void, yet it was held that the same would be of no consequence insofar as the question of limitation is concerned. The fact would still remain that the possession of the property was taken by the defendants via void documents. Therefore, such documents could be ignored and a suit for possession simpliciter for which the period of limitation prescribed under Article 65, i.e., 12 years, could be filed. In the course of such proceedings, it could be contended by the plaintiff that the documents are a nullity. The relevant observations are reproduced hereinbelow:

"4. Article 58 of the Limitation Act, 1963, prescribes limitation of three years from the date when the right to sue first accrues to obtain a declaration. Under Article 65, the period of limitation prescribed for filing a suit for possession of immovable property or any interest therein based on title is 12 years from the date when possession of the defendants becomes adverse to the plaintiff. The contention urged on behalf of the State Government was that Article 58 of the Limitation Act was applicable as the plaintiff had sought declaration about the invalidity of the order dated 26-5-1976 and sale deed dated 23-8-1976 and that the period of limitation of three years had to be computed from 26- 5-1976 and, therefore, the suit filed on 22-8-1988 was hopelessly barred by time.

This contention was rejected by the High Court as also by the trial court. The contention urged on behalf of the plaintiff and which has been accepted is that the suit is basically for possession of the property based upon title and the sale deed dated 23-8-1976 and the order dated 26-5- 1976 being void ab initio and without jurisdiction, a plea about its invalidity can be raised in any proceedings and it is not necessary to claim any declaration and thus Article 65 which deals with suit for possession based on title would be applicable from the date, the possession of the defendant becomes adverse to the plaintiff.

The High Court held that in view of the order and the sale deed being null and void and without jurisdiction, the same have no existence in the eye of the law and the plea about invalidity of these documents can be raised in any proceedings and no separate declaration is necessary to be sought. It held that the suit for possession would be governed by Article 65 of the Limitation Act, 1963. It was further held that the suit is within time even from the date when the possession of the suit property was taken on the execution of the sale deed on 23-8- 1976.

5. As already noticed, in Bhim Singhji case [(1981) 1 SCC 166] Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land

with a building or a portion of such building, which is within the ceiling area, has been held to be invalid. Thus, it has not been and cannot be disputed that the order dated 26-5-1976, was without jurisdiction and a nullity. Consequently, the sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed. The fact of the plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years.

When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are a nullity. In Ajudh Raj v. Moti [(1991) 3 SCC 136] this Court said that if the order has been passed without jurisdiction, the same can be ignored as a nullity, that is, non-existent in the eye of the law and it is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time-barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act."

(Emphasis supplied)

29. This Court in Prem Singh v. Birbal reported in (2006) 5 SCC 353, discussed the position of law as to when Article 59 of the Limitation Act, 1963 would apply and opined as follows:

i. First, that Article 59 of the Limitation Act, 1963 would only encompass within its fold fraudulent transactions which are 'voidable' transactions and not those that are 'void'. In other words, Article 59 would apply only where an instrument is prima facie valid and not to those instruments which are presumptively invalid.

ii. Secondly, that when the document in question is void ab initio/or void, a decree for setting aside the same would not be necessary since such a transaction would be non-est in the eyes of law, owing to it being a nullity.

iii. Thirdly, a fine distinction was drawn between fraudulent misrepresentation as regards the 'character of the document' and fraudulent misrepresentation as regards the 'contents of a document'. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable. To put it simply, Article 59 would not govern the period of limitation in respect of a void transaction.

iv. Lastly, that if a deed was executed by the plaintiff when he was a minor and it was thereby void, he had two options to file a suit to get the property conveyed

thereunder i.e., he could either file the suit within 12 years of the deed or within 3 years of attaining majority. The relevant observations are reproduced as under:

"13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See Unni v. Kunchi Amma [ILR (1891) 14 Mad 26] and Sheo Shankar Gir v. Ram Shewak Chowdhri [ILR (1897) 24 Cal 77].)

21. Respondent 1 has not alleged that fraudulent misrepresentation was made to him as regards the character of the document. According to him, there had been a fraudulent misrepresentation as regards its contents.

22. In Ningawwa v. Byrappa [(1968) 2 SCR 797 : AIR 1968 SC 956] this Court held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable stating: (SCR p. 801 C-D)

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable."

In that case, a fraud was found to have been played and it was held that as the suit was instituted within a few days after the appellant therein came to know of the fraud practised on her, the same was void. It was, however, held: (SCR p. 803 B-E)

"Article 91 of the Limitation Act provides that a suit to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be subject to a three years' limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ext. 45 the appellant knew that her husband prevailed upon her to convey Surveys Plots Nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding of the trial court is based upon the admission of the appellant herself in the course of her evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 of Tadavalga village are concerned."

28. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court."

(Emphasis supplied)

30. In the decision of this Court in Hussain Ahmed Choudhury v. Habibur Rahman reported in 2025 SCC OnLine SC 892, where one of us, J.B. Pardiwala J., was a member of the Bench, it was reiterated that a person who is not a party to an instrument would not be obliged in law to seek its cancellation. The reason being that such an instrument would neither be likely to affect his title nor be binding on him. However, such a plaintiff must at least seek a declaration that the said instrument is not binding on him or that is invalid insofar as he is concerned. The relevant observations are reproduced hereinbelow:

"30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject.

31. In Unni v. Kunchi Amma reported in 1890 SCC OnLine Mad 5, the legal position has been thus explained:

"If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against

them. They may treat it as nonexistent and sue for their right as if it did not exist."

(Emphasis supplied in original)

32. The same principle has been distinctly laid down by the Privy Council in Bijoy Gopal Mukerji v. Krishna Mahishi Debi, reported in 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 was fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:

"A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property.

There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint for a declaration that the ijara was inoperative as against them, as leading up to their prayer for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property were not in fact voidable, but were binding on the reversionary heirs."

33. In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. This is clearly explained by Wadsworth, J., in the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, reported in 1939 SCC OnLine Mad 149, thus:

"When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void 'in toto', and his suit is in

substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration.

But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he Is not in a position to get that decree or that deed cancelled 'in toto'. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed."

(Emphasis supplied in original)

34. Therefore, filing a suit for cancellation of a sale deed and seeking a declaration that a particular document is inoperative as against the plaintiff are two distinct, separate suits. The plaintiff in the present case, not being the executant of the sale deed dated 05.05.1997 executed in favour of the respondent no. 1 (original defendant no. 14), was therefore, not obligated to sue for its cancellation under Section 31 of the Act, 1963."

(Emphasis supplied)

31. As per the dictum in Prem Singh (supra), this Court, in order to ascertain whether Article 65 of the Limitation Act, 1963 would apply to the present factual scenario, has to first determine whether the fraud was alleged as regards the contents of the sale deed dated 14.06.1973 or the character of such sale deed. Both the First Appellate Court as well as the High Court have arrived at the finding that the plaintiff had never executed the said sale deed in the first place as it was proved that it was not her thumb impression that was affixed therein.

Therefore, this finding goes to the character of the sale deed and thereby, renders it void/void ab initio. Hence, as per this decision, there remained no reason for the plaintiff to seek for its cancellation. The original sale deed also was not produced before the Trial Court by the defendants in order to rebut the doubt cast upon the veracity of the said sale deed. Consequently, Article 59 of the Limitation Act, 1963 would find no application to the case in hand.

32. In Hussain Ahmed Choudhury (supra), it was clearly opined that a plaintiff who is not a party to the instrument in question need not seek its cancellation. We are not oblivious to the fact that in a situation where the plaintiff was not a party to the instrument, the said decision laid down a requirement that a declaration must be sought to the effect that the said instrument was not binding on the plaintiff.

However, the said decision clarified that whether the plaintiff has sought such a declaration or not could be culled out from a holistic reading of the plaint along with the relief(s) sought. In cases where the character of the sale deed is assailed as being fraudulent, this requirement is implicitly satisfied since the very averment that the sale deed was fraudulent or a sham and bogus transaction by itself indicates that the plaintiff did not intend to be bound by it. Therefore, this requirement too, could be said to have been satisfied by the plaintiff in the present case.

33. Further, as per State of Maharashtra (supra), it would be of no consequence even the plaintiff in one of his prayers, seeks a declaration that the sale deed is a nullity or invalid insofar as he is concerned, since such an instrument would anyway be void owing to it being fraudulent. Therefore, the period of limitation for a suit for possession based on title would continue to be governed by Article 65. In other words, the addition of such a prayer would not influence the period of limitation within which such a suit must be filed.

34. We may look at the matter from one another angle. Apart from the aspect of fraud, the decision of this Court in Kewal Krishnan v. Rajesh Kumar and Others reported in (2022) 18 SCC 489, while looking into whether the defendants had paid any sale consideration to the plaintiff while purchasing the plaintiff's share in the property, held as follows:

i. First, that the sale of an immovable property would have to be for a price and such a payment of price is essential, even if it is payable in the future. If a sale deed is executed without the payment of price, it is not a sale at all in the eyes of law, specifically under Section 54 of the Transfer of Property Act, 1882. Such a sale without consideration would be void and would not affect the transfer of the immovable property.

ii. Secondly, that, in the said case, the defendants could not rebut the allegation of the plaintiff that no sale consideration was paid as no evidence was adduced to indicate - (a) the actual payment of the price mentioned in the sale deeds and, (b) that the defendants had any earning capacity at the time of the transaction such that the sale consideration could have been paid. As such the sale deed being void for want of valid consideration, could not be said to have affected the one-half share of the plaintiff in the suit properties nor have conferred any right of title on the defendants. In fact, it was held that the sale deeds were a sham and must be ignored.

iii. Lastly, it was reiterated that a document that is void need not be challenged by seeking a declaration as the said pleas can be set up and proved even in collateral proceedings. The relevant observations are thus:

"18. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:

"54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eye of the law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

19. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time, of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half-share of the appellant in the suit properties.

In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10-4-1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to

the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

20. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16-11-2021 have no relevance at all.

21. As no title was transferred under the said sale deeds, the appellant continues to have undivided half-share in the suit properties. That is how the District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting aside the impugned judgment and order [Rajesh Kumar v. Kewal Krishan, 2015 SCC OnLine P&H 20782] of the High Court, the decree passed by the District Court deserves to be restored."

(Emphasis supplied)

35. As far as the facts of the present matter are concerned, the plaintiff specifically averred that she never obtained any sale consideration from the defendant. On this aspect, the plaint reads as follows:

"(c) That the plaintiff never got any sale consideration of the alleged sale deed and she came to know about this fraudulent transaction only when she came to the village mourn the death of Ram Saran and heard that her land is going to be sold by the defendant without any right in it."

36. Admittedly, the sale consideration is Rs. 15,000/- as per the sale deed. The sale deed indicated that, out of the total sale consideration, the plaintiff and the other vendor i.e., Ram Saran, had already allegedly received Rs. 9000/- from the defendant and that the remaining amount of Rs. 6000/- would be received at the time of the execution of the sale deed, in front of the Registrar. The relevant portion of the sale deed reads thus:

"now we with our own sweet will have sold the above land measuring 31 kanal 4 marla, along with all the rights to Smt. Shanti wife of Bagdawat son of Harnath, resident of Akbarpur, for Rs. 15000/- . Possession has been delivered to the vendee. Out of the total sale consideration, we have already received Rs. 9000/- from the vendee and remaining amount of Rs. 6000/- will be received in front of the Sub Registrar. Expenses of the stamp papers have been borne by the vendee itself."

37. The endorsement made by the Sub Registrar at the time of the execution of the sale deed, reads thus:

"That the contents of the sale deed have been read over and understood to Ram Saran 2/3rd share, Risali 1/3rd share, and Bhadgawat husband of vendee. They have verified the same and the vendors have received Rs. 6000/- from the husband of the vendee in the presence of the subregistrar. Both the parties have been identified by Mahadev Singh Sarpanch, and witness no. 2 Budhu."

38. Concurrent findings of both the First Appellate Court and the High Court indicated that the husband of the defendant i.e., one Bagdawat, who had allegedly given the remaining sale consideration of Rs. 6,000/- during the time of execution of the sale deed, had not stepped into the witness box. Furthermore, one of the attesting witnesses to the execution of the sale deed i.e., the Sarpanch had also died before his deposition could be recorded. One Budhu, who was the second attesting witness, was the brother of the defendant and both the Courts had doubted his testimony as being partial to the defendant. All in all, there was no witness who could substantiate the case of the defendant that there was part-payment of the sale consideration, i.e., Rs. 6,000/- during the time of execution of the sale deed.

Furthermore, no evidence was adduced by the defendant to prove that even the initial amount of Rs. 9,000/- which was purportedly paid before the execution of the sale deed was actually received by the plaintiff. Therefore, the averment of the plaintiff in the plaint, that she had not received the sale consideration, had not been otherwise proven as false. In such circumstances as well, i.e., in the absence of the sale consideration being tendered, the sale deed would be void and the plaintiff would not be required to seek its cancellation. Therefore, Article 59 of the Limitation Act, 1963 could not be said to be applicable to the present facts.

39. The First Appellate Court had rightly observed that the plaintiff had claimed the relief of joint possession. It had also arrived at the finding that the transaction in question was void. To put it simply, in the eyes of the law, the plaintiff could not be said to have executed the sale deed.

Therefore, the plaintiff could indeed have maintained an action to obtain possession of the property on the basis of her title and filed the same within the period of 12 years from the date of knowledge that the possession of the defendant was adverse to that of the plaintiff. Even if the date of execution of the sale deed, i.e., 14.06.1973 is considered, the suit having been filed on 28.02.1984, i.e., almost 11 years later, could be said to be well within limitation as stipulated under Article 65.

40. In the overall view of the matter, we have reached the conclusion that the High Court could be said to have committed an error insofar as observing that it is Article 59 and not Article 65 of the Schedule to the Limitation Act, 1963, which would apply to the case in hand. However, irrespective of the question of

which Article of the Limitation Act, 1963 would be applicable to the suit instituted by the present plaintiff, the suit could be said to have been filed within limitation.

Therefore, apart from clarifying the correct position of law, we find no infirmity in the ultimate conclusion that the High Court arrived at as far as the maintainability of the suit on the aspect of limitation is concerned.

41. Therefore, this appeal fails and is hereby, dismissed.

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

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

New Delhi

September 12, 2025

IN THE SUPREME COURT OF INDIA

Shivamma (D) by LRS.
Vs.
Karnataka Housing Board & Ors.

[Civil Appeal No. 11794 of 2025
arising out of SLP (C) No. 10704 of 2019]

HEADNOTE – For the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of "sufficient cause" for the entirety of the period from when the limitation began till the actual date of filing. If the period of limitation is 90 days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100 days.

JUDGMENT

J.B. Pardiwala, J.

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Karnataka at Kalaburagi dated 21.03.2017 in I.A. No. 1 of 2017 filed in the Regular Second Appeal No. 200059 of 2017 (hereinafter the "Impugned Order"), by which the High Court condoned the delay of 3966 days in preferring the second appeal against the judgment and order passed by the First Appellate Court in Regular Appeal No. 405 of 2004 arising from the judgment and decree passed by the Trial Court in Original Suit No. 1100 of 1989.

I. BRIEF FACTUAL MATRIX

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

a. It appears from the materials on record that a parcel of land bearing Survey No. 56/A, admeasuring 9 acres 13 guntas was originally owned and possessed by the father of the appellant herein.

b. After the demise of the appellant's father, some disputes arose between inter-alia between the legal heirs of the original owner including the appellant herein and one Sri Gurulingappa C. Patil, which led to the institution of the partition suit being O.S. No. 74 of 1971.

c. During the pendency of the aforesaid suit, Sri Gurulingappa C. Patil purportedly "donated" 4 acres out of the aforesaid land which was the subject matter of the suit (hereinafter the "land in question") to the Government of Karnataka.

d. Pursuant to the aforesaid, the respondent housing corporation sometime in the year 1979 took over the possession of the land in question for the purpose of establishing a housing colony.

e. On 03.04.1989, a compromise decree was passed in the aforesaid partition suit by which the appellant herein became the absolute owner of the parcel of land bearing Survey No. 56/A including the 4 acres of land in question.

f. However, since the possession of the land in question was not reverted to the appellant herein, one another suit being O.S. No. 1100 of 1989 was instituted, this time against the respondent housing corporation, praying for the relief of declaration of title and possession of the land in question.

g. The said suit came to be dismissed by the Trial Court vide order dated 17.04.1997.

h. Aggrieved by the same, the appellant preferred the Regular Appeal No. 405 of 2004 (hereinafter the "first appeal") before the 3rd Addl. District Judge, Gulbargam (hereinafter the "First Appellate Court").

i. The First Appellate Court vide its judgment and order dated 03.01.2006 allowed the appeal and accordingly decreed the suit in favor of the appellant, granting the declaration as prayed for in the suit. However, the First Appellate Court declined to grant the relief of possession in view of the fact that substantial construction had already been undertaken on the land in question by the respondent housing corporation, and thus, instead directed the grant of compensation to the appellant herein.

j. Since no action was taken by the respondent no. 1 in accordance with the decree drawn by the First Appellate Court, the appellant herein initiated execution proceedings on 20.01.2011.

k. Remarkably, it was only on 14.02.2017, that the respondent no. 1 realized the seriousness of the situation and accordingly a second appeal came to be filed by it before the High Court along with an application for condonation of delay of 3966 days against the judgment and decree passed by the First Appellate Court vide its order dated 03.01.2006.

l. The High Court vide its impugned judgment and order dated 21.03.2017, allowed the aforesaid application under Section 5 of the Limitation Act, 1963 (for short, the "Limitation Act") read with Section 151 of the Code of Civil Procedure, 1908 (for short, the "CPC") by the respondent no. 1 herein, and thereby condoned the delay.

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

II. SUBMISSIONS OF THE PARTIES.

A. Submissions on behalf of the appellant.

5. Mr. Akshat Shirvastava, the learned Counsel appearing for the appellants in his written submissions has stated thus:-

"PREPOSTION / SUBMISSIONS ON BEHALF OF THE PETITIONER

A. That it is most respectfully submitted that the respondent no. l failed to demonstrate any sufficient cause and there is no explanation as to why the regular second appeal could not have been filed by the respondent no. l within the prescribed period of limitation.

B. That it is most respectfully submitted that from the perusal of the application filed by the respondent no. 1, the last entry in the file of Karnataka Housing Board dates back to 20.03.2008 and that there is no subsequent entry with regard to the movement of files.

C. That it is most respectfully submitted that the respondent no. 1 admits that due to the negligence of its officers the appeal could not have been filed within the prescribed period of limitation that there has been a pedantic approach on the part of the officials of the Housing Board and despite service of notice in the execution proceedings way back on 20.04.2011, no explanation is forthcoming as to what steps had been taken by the Board immediately thereafter in filing the appeal before the Hon'ble High Court.

D. That it is most respectfully submitted that this Hon'ble Court in a plethora of judgments has explained the expression "sufficient cause" u/s. 5 of the Limitation

Act, 1963 in Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157 in Para 24 & 25

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting he plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

E. Case laws relied by the Petitioner:-

1. Maniben Devraj Shah v. Municipal Corpn. ofBrihan Mumbai, (2012) SCC 157

2. Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351

3. Sheo Raj Singh v. Union of India, (2023) 10 SCC 531"

6. In such circumstances referred to above, it was prayed on behalf of the appellant that there being merit in his appeal, the same may be allowed. B. Submissions on behalf of the respondent State.

7. Ms. Kiran Suri, the learned Senior Counsel appearing for the respondents in her written submissions has stated thus:-

"SUBMISSIONS

I) The first submission is that Section 5 of the Llmitation Act provides for condonation of delay if "sufficient cause" is shown for "such period". While interpreting the word "such period" under Limitation Act, there is some conflict as to for which period sufficient cause is required to be shown.

a) The following judgments provide that the word "such period" would mean the explanation of delay from the last day prescribed for filing of an appeal till the date on which appeal is filed:-

i) AIR 1962 SC 361 (Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd). Para 8

ii) 1996 (3) sec 132 (State of Haryana v. Chandra Mani and Ors). Para 3

b) The following judgments provide that explanation of delay has to be shown for the period of limitation means if period of limitation is 90 days, then explanation as to why the petitioner was unable to institute the proceedings within 90 days and the events occurred after 91 st day till the last day is of no consequence.

iii) 2024 SCC online SC 3612:(State of Madhya Pradesh v. Ramkumar Choudhary) Para 7 iv) 1981 (1) SCC 495 (Ajit Singh Thakur Singh AndAnr. v. State of Gujarat) Para 6

II) That Second submission is that when the Hon'ble High Court has exercised its discretionary powers and condoned the delay holding that there is sufficient cause shown by the respondent No. 1 herein, Law is well settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below." It is further submitted that "an appellate Court interferes not when the order appealed is not right but only when it is clearly wrong."

i) 2023 (10) SCC 531 (Sheo Raj Singh(D) Tr. Lrs v. Union Of India). Para 33

ii) 2003 (10) SCC 390 (Manjunath Anandappa Urf. v. Tammanasa& Ors.) para 36 and 37

iii) 1980 (2) SCC 593 (Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Mazdoor Sabha) Para 73

In the present case, the Hon'ble High Court has exercised its discretionary power after considering the sufficient cause and the same cannot be said to be clearly wrong so as to require interference.

III) That third submission is that in case there have been deliberate lapses on the part of the public officials and public servants to defeat justice by causing delay, delay, however huge may be, should be condoned and the latter be decided on merits.

i) 2015 (3) SCC 569 (Executive Officer, Antiyur Town Panchayat v. G. Arumugam (D) By Lrs.) para 3 and 4

IV) That fourth submission is when substantial justice and technical considerations are pitted against each other, the former would_ prevail specially when public interest is involved. It is submitted that it is not the length of delay but sufficiency of cause, which is relevant.

i) 1987 (2) SCC 107 (Collector Land Acquisition, Anantnag &Anr. v. Mst. Katiji& Ors). para 3

ii) 2005 (3) SCC 752 (State of Nagaland v. Lipok Ao & Ors.) Para 8 & 9

iii) 2013 (12) SCC 649 (Esha Bhattaharyajeev. Raghunathpur Nafar Academy) Para 21

iv) 2019 (10) SCC 408 (The State of Manipur v. Koting Lamkang) Para 10

V) The fifth submission is that the Government cannot carry on business upon principle of distrust and men in responsible position are to be trusted. The deliberate inaction on the part of the officials and mala fide of the officers, cannot be imputed to the government or Government undertakings.

i) 1988 (2) SCC 142 (G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore) Para l5 to 17

VI) The sixth submission is that the discretion by the Hon'ble High Court is exercised in 2017 and judgments in "(2020) (10) SCC 654) (State of MP v. Beru Lal &(2020 (13) SCC 745 (University of Delhi v. Union of India & Ors." are subsequent. Therefore, the exercise of power is to be seen from the point of view of the cases of Katiji, Rameguda, Chandra Mani cases etc.

i) 2023 (10) SCC 531 (Sheo Raj Singh (D) by Lrs) v. Union of India &Anr.) Para 34

VII) The seventh submission is that if inordinate delay has occurred and it has not resulted in the litigant being benefitted by such delay, such belated approach must be construed by adopting justice oriented approach. In the present case, there had been negligence on the part of the officials, who were supposed to protect the interest of KHB and action has been taken against those officers by suspending them and initiating disciplinary proceedings.

VIII) That KHB has taken decision to file an appeal in the year 2006 itself and had appointed litigation conducting officer to engage advocate. KHB had again appointed litigation conducting officer in 2011 to engage advocate and appear in Execution petition. There was no reason for the KHB to dis rust its officer. It is only in 2017 when a letter was received from Deputy Commissioner to the Commissioner, KHB that the commissioner came to know about their non-representation and non filing of the appeal. Immediate action is taken thereafter.

IX) It is submitted that Sh. AD. Inamdar was authorised by the Commissioner to act as litigation conducting officer for filing appeal and also to appear in EP on 02.04.2011. SLAO sent letter dated 06.04.2011 to said AD Inamdar to engage

counsel and take appropriate action. The said Inamdar appointed AEE as special officer. Even though the Executive Engineer was authorized to engage the Advocate and contact the Advocate regularly, order sheet of Execution Petition reveals that neither the Executive Engineer nor the Assistant Executive Engineer have engaged Advocate in Execution Petition. KHB came to know the issue -of warrant of attachment of their movables from Deputy Commissioner only on 28.01.2017. Both the officers were suspended.

X) It is submitted that neither the land is purchased nor acquired by the KHB nor any allotment is made by KHB. The petitioner filed a suit for possession. The lower appellant court moulded the relief and directed payment of compensation. The payment of compensation without acquisition of land by Respondent-1 is against public interest and it also involves huge public money. Respondent-1 cannot be directed to pay compensation when they have not acquired the land. The persons in possession are illegal occupants and the KHB has nothing to do with that land or its occupants. It is relevant to note that petitioners filed WP No. 82306/2011 praying for mandamus direction R-1 and R-2 to acquire the land, which was withdrawn on 19.07.2011.

XI) KHB has no objection if decree is passed for possession against the persons in possession and not against the KHB. It is also relevant to Note that the petitioner has not made the persons in possession as party to the proceedings. The delay of 3966 days will not clothe the petitioner with any right in law when the petitioner is not entitled for any relief against Defendant-I and Defendant-2."

8. In such circumstances referred to above, it was prayed on behalf of the respondent that there being no merit in the present appeal, the same may be dismissed.

III. ISSUE FOR DETERMINATION

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-

I) What is the meaning and import of the expression "within such period" used in Section 5 of the Limitation Act?

II) When can the exercise of discretion in condoning the delay by a lower court be interfered with by a court in appeal?

III) Whether the High Court in the present case at hand was justified in condoning the delay?

IV. ANALYSIS

A. Section 5 of the Limitation Act.

10. Section 5 of the Limitation Act, reads as under:-

"5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

11. Section 5 of the Limitation Act, which corresponds to the erstwhile Section 5 of the now-repealed Limitation Act, 1908, confers upon the courts the discretionary power to admit any appeal or application (except that under Order XXI of the Code of Civil Procedure, 1908) if filed after the expiry of the prescribed period of limitation, provided the erring party is able to show to the court a sufficient cause for not filing the same within the stipulated period of limitation, and the court is satisfied with sufficiency of such cause.

It is only in cases, where such "sufficient cause" for the resultant delay in filing / presenting of the appeal or application is shown by the defaulting party, and the courts are satisfied with the explanation and sufficiency of such cause that the recourse to Section 5 of the Limitation Act may be taken by the courts, and in exercise of its discretion the delay be condoned and thereby admit the appeal or application.

i. Meaning and Scope of the expression "Within Such Period" used in Section 5 of the Limitation Act.

12. Ms. Suri, the learned Senior Counsel appearing for the respondents herein vociferously contended that although it is a well settled position of law that for the purpose of seeking condonation of delay by recourse to Section 5 of the Limitation Act, the delay in the filing of an appeal or application beyond the stipulated period of limitation has to be explained by demonstrating the existence of a "sufficient cause" yet there appears to be a divergence of opinion as to the precise period for which the "sufficient cause" must be demonstrated for seeking condonation.

13. It was submitted that, there is a cleavage of opinion expressed as regards the meaning of the expression "within such period" occurring in Section 5 of the Limitation Act, wherein the expression has been understood to mean the period

commencing from the last date on which the appeal or application, as the case may could have been filed i.e., the last day on which the period of limitation would have expired, up to the actual date on which such appeal or application is ultimately filed.

In other words, the delay that has to be explained is only for the interregnum period between the expiry of limitation and the actual date of filing, and the court concerned should be satisfied about the existence of a sufficient cause resulting in such delay for this period alone. In this regard, reliance was placed on the decisions of this Court in Ramlal, Motilal & Chhotelal v. Rewa Coalfields Ltd. reported in AIR 1962 SC 361 and State of Haryana v. Chandra Mani & Ors. reported in (1996) 3 SCC 132, respectively.

14. Whereas on the other hand, the same expression has been construed to mean that "sufficient cause" must be shown to have existed not merely during the period of delay post the expiry of limitation, but rather throughout the entire statutory period of limitation itself till the date of actual filing. According to this line of authority, "within such period" for the purpose of Section 5 of the Limitation Act, means the entire duration from the date when the cause of action accrued or the clock of limitation began to tick, until the date of actual filing.

To put it simply, if the party seeking condonation of delay has no good explanation to offer for demonstrating the existence of a "sufficient cause" during the period of limitation, which inhibited the timely filing of the appeal or application, then even if there existed a "sufficient cause" after the expiry of the limitation that contributed to the delay, the same would be inconsequential insofar as Section 5 of the Limitation Act is concerned. In this regard, reliance was placed on the decisions of Ajit Singh Thakur & Anr. v. State of Gujrat reported in (1981) 1 SCC 495 and State of Madhya Pradesh v. Ramkumar Choudhary reported in 2024 SCC OnLine SC 3612, respectively.

a. Contradictory Views on the subject.

15. The expression "within such period" occurring in Section 5 of the Limitation Act, first fell for the consideration of this Court in Rewa Coalfields (supra). This Court speaking through P.B. Gajendragadkar J. (as his Lordship, then was) held that the aforesaid expression means that existence of a sufficient cause for the delay in filing the appeal or application, as the case may be, has to be shown for the period from the last day of the limitation prescribed till the date of the actual filing of the appeal or application, as the case may be. In other words, if the period of limitation is, say, 90-days, delay has to be explained only for the 90th day till the day of actual filing of the appeal or application, as the case may be. The said decision is in three parts:-

(i) First, it held that in the context of Section 5 of the Limitation Act, the expression "within such period" used therein, means the period from the last day of the limitation that has been prescribed till the day on which the appeal or application is filed. Thus, it held that for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the party has to assign sufficient cause for why he was unable to file an appeal for the entire period covered from the last day of the limitation prescribed till the day on which such appeal or application came to be filed. The relevant observations read as under:-

"8. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed."

(Emphasis supplied)

(ii) Secondly, although, this Court acknowledged that the context in which the aforesaid expression has been employed, seems to suggest that it only means "within the period which ends with the last day of limitation prescribed" yet, it was reluctant to adopt the aforesaid interpretation, as it would be too unreasonable to expect or require a party to take necessary action on the very first day after the cause of action accrues. It observed if such an interpretation is adopted the same would result in the expression "within such period" being construed as "during such period", an understanding which is repugnant to both the bare text as-well as the context of Section 5 of the Limitation Act. The relevant observations read as under:-

"8. Now, what do the words "within such period" denote? It is possible that the expression "within such period" may sometimes mean during such period. But the question is: Does the context in which the expression occurs in Section 5 justify the said interpretation?. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. To hold that the expression "within such period" means during such period would, in our opinion, be repugnant in the context."

(Emphasis supplied)

(iii) Thirdly, it observed that since a party is entitled to take its time and file the appeal or application, as the case may be, on any day, during the prescribed

period of limitation, it would be unreasonable, where there has been any delay in preferring such appeal or application, to then call upon the party to explain its conduct during the whole of the said period. Accordingly, it rejected the contention that for the purpose of Section 5 of the Limitation Act, the delay in filing of the appeal or application, as the case may be, has to be explained for the entire period of the limitation prescribed. The relevant observations read as under:-

8. If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which Section 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so prima facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed.

(Emphasis supplied)

(iv) Lastly, it held that the thumb rule of general consideration of the diligence of parties in pursuing their legal remedies cannot be applied for the purpose of construing the import of the expression "within such period" employed in Section 5 of the Limitation Act. This is because, even after sufficient cause has been shown the court still has to enquire whether it, in its discretion, should condone the delay. As such the only place where such considerations of diligence and bona-fides of the party may be of relevance under Section 5 of the Limitation Act, is at the stage of deciding whether the discretionary power to condone the delay should be exercised by the court or not, after sufficient cause has been shown, to its satisfaction.

However, this Court cautioned, that considerations of bona fides or due diligence, which unlike in Section 14 of the Limitation Act, have not been expressly made material or relevant under Section 5, ought not be applied to the same extent or manner as under Section 14, so as to invite an enquiry into the reasons for the party's inaction during the entire prescribed period of limitation. The relevant observations read as under:-

"8. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of Section 5.

10. On the other hand, in Kedarnath v. Zumberlal the Judicial Commissioner at Nagpur has expressed the view that an appellant who wilfully leaves the preparation and presentation of his appeal to the last day of the period of limitation prescribed therefor is guilty of negligence and is not entitled to an extension of time if some unexpected or unforeseen contingency prevents him from filing the appeal within time. According to this decision, though the period covered between the last day of filing and the day of actual filing may be satisfactorily explained that would not be enough to condone delay because the appellant would nevertheless have to show why he waited until the last day.

In coming to this conclusion the Judicial Commissioner has relied substantially on what he regarded as general considerations. "This habit of leaving things to the last moment", says the learned Judge, "has its origin in laxity and negligence; and, in my opinion, having regard to the increasing pressure of business in the law Courts and the many facilities now available for the punctual filing of suits, appeals and applications therein, it is high time that litigants and their legal advisers were made to realise the dangers of the procrastination which defers the presentation of a suit, appeal or application to the last day of the limitation prescribed therefor".

There can be no difference of opinion on the point that litigants should act with due diligence and care; but we are disposed to think that such general consideration can have very little relevance in construing the provisions of Section 5. The decision of the Judicial Commissioner shows that he based his conclusion more on this a priori consideration and did not address himself as he should have to the construction of the section itself. Apparently this view has been consistently followed in Nagpur.

12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone.

If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona

fides or due diligence are always material and relevant when the court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the combined provisions of Sections 5 and

14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14."

(Emphasis supplied)

16. The ratio laid down in Rewa Coal Fields (supra) was followed by a three-Judge Bench of this Court in Chandra Mani (supra), wherein this Court reiterated that in showing sufficient cause to condone the delay, it is not necessary to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient for the purpose of Section 5 of the Limitation Act to only explain the delay caused during the period between the last of the dates of limitation and the date on which the appeal/application is actually filed. The relevant observations read as under: -

"3. Section 5 of the Limitation Act, 1963 (for short, the 'Act') extends prescribed period of limitation in filing an application or an appeal except under the provisions of Order 21 of Civil Procedure Code, 1908 (for short, the 'Code') and gives power to the court to admit the appeal or application after the prescribed period. The only condition is that the applicant/appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

In Ramlal v. Rewa Coalfields Ltd. it was laid down that in showing sufficient cause to condone the delay, it is not necessary that the applicant/appellant has to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient that the applicant/appellant would explain the delay caused in the period between the last of the dates of limitation and the date on which the appeal/application is actually filed."

(Emphasis supplied)

17. Thus, as per the decisions of this Court in Rewa Coal Fields (supra) and Chandra Mani (supra), respectively, the expression "within such period" used in Section 5 of the Limitation Act has been construed to mean the period commencing from the last date on which the prescribed period of limitation would have expired, and extending up to the actual date on which such appeal or application comes to be filed, and therefore, "sufficient cause" for the delay in

such filing has to be explained only for this circumscribed interval, rather than for the whole of the period of limitation prescribed.

18. On the other hand, in Ajit Singh Thakur (supra) a two-Judge Bench of this Court held that "sufficient cause" for the delay in filing of an appeal or application, as the case may be, has to be established by some event or circumstance that had arisen before the limitation expired. It observed that, although a party is entitled to wait until the last day of the prescribed period of limitation for filing an appeal or application, as the case may be, yet when it allows the limitation to expire and then pleads sufficient cause for not filing the same earlier, such a plea or explanation must be traced to a cause arising within the period of limitation. The relevant observations read as under:-

"6. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."

(Emphasis supplied)

19. It is pertinent to mention that the decision of this Court in Ajit Singh Thakur (supra) did not refer or take into consideration, the earlier decision of this Court in Rewa Coal Fields (supra).

20. Arguendo, it could be said that the observation made in Ajit Singh Thakur (supra), more particularly, that "the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time" could not be said to be in conflict with the observations made in Rewa Coal Fields (supra) that sufficient cause has to be established from the last day of the limitation prescribed till the day on which such appeal or application came to be filed, inasmuch as, the starting point from when "sufficient cause" includes the prescribed period of limitation i.e., the period before the limitation prescribed had expired as per Ajit Singh Thakur (supra) and the last day on which the limitation would have expired as per Rewa Coal Fields (supra), as the net effect of embracing both these perspectives, is one and the same, that "sufficient cause" is required to be established for the period within the prescribed limitation, which includes the last day on which the said

period would have expired, as clarified in Rewa Coal Fields (supra), till the date of actual filing of the appeal or application, as the case may be.

21. However, we do not think, that when this Court in Ajit Singh Thakur (supra) said that "no event or circumstance arising after the expiry of limitation can constitute such sufficient cause", what it had in its mind was that the sufficient cause must establish some event or circumstance, only for the last day of the prescribed period of limitation, as held in Rewa Coal Fields (supra). This is because, nowhere has this Court in Ajit Singh Thakur (supra) made any reference to the point of origin if a "sufficient cause" would suffice to mean only the last day of the prescribed period of limitation.

The ratio laid in Ajit Singh Thakur (supra) to our mind, must be understood as a whole, and in the context of two pertinent observations made by it; "that a party is entitled to wait until the last day of limitation for filing an appeal" juxtaposed with the observation "but when it allows limitation to expire", which can only mean one thing, that it is not sufficient to only explain the delay caused in the period between the last of the dates of limitation and the date on which the appeal/application is actually filed, and rather explanation must be offered for what the concerned party was doing for the entire period of the prescribed limitation till the date of actual filing. We shall discuss the same in a greater detail in the latter parts of this judgment.

22. In Basawaraj & Anr. v. Special Land Acquisition Officer reported in (2013) 14 SCC 81, a two-Judge Bench of this Court held that "sufficient cause" as used in Section 5 of the Limitation Act, connotes that the party who failed to file the appeal or application within the prescribed limitation period, must demonstrate that such failure was not due to negligence, lack of diligence or vigilance, nor the result of indolence or inactivity, and that it was not occasioned by any lack of bona fides. The relevant observations read as under: -

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive".

However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever

the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible."

(Emphasis supplied)

23. In Ramkumar Choudhary (supra), this very Bench had the occasion to examine the meaning of the expression "within such period" used in Section 5 of the Limitation Act. Placing reliance on the decisions of this Court in Ajit Singh Thakur (supra) and Basawaraj (supra), it was held that for the purpose of Section 5, the party seeking condonation of delay has to explain why it was unable to institute the proceedings within the prescribed period of limitation.

Events that occurred after the expiry of the period of limitation till the date of actual filing of the appeal or application, as the case may be, would be of no consequence insofar as condonation is concerned, if it is unable to explain what came in the way of the party that it was unable to file it. It reiterated that no event or circumstance arising after the expiry of limitation can constitute such sufficient cause, where the party allowed the limitation to expire unless it can trace such failure in allowing the limitation to expire to a cause arising within the period of limitation. The relevant observations read as under:-

"7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation.

What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the

limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time.

No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation."

(Emphasis supplied)

24. Thus, there appears to be a cleavage of opinion expressed as regard the meaning and interpretation of the expression "within such period" occurring in Section 5 of the Limitation Act.

b. Textual Import of the expressions "after the prescribed period" and "for not preferring the appeal or making the application within such period.

25. At the cost of repetition, we deem it necessary to once again quote the provision of Section 5 of the Limitation Act, for a better exposition. The same reads thus:-

"5. Extension of prescribed period in certain cases.-

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

26. The text of the provision stipulates that where an appeal or application, as the case may be, is not filed within the prescribed period of limitation, the same may be admitted if "sufficient cause" for such failure is shown. The court may, in its discretion, proceed to condone the delay, if it is satisfied, that the appellant or the applicant, as the case may be, had "sufficient cause" for not preferring the appeal or making the application, respectively, "within such period".

27. A plain yet careful reading of Section 5 of the Limitation Act, leaves very little to imagination insofar as how the import of the phrase "within such period"

should be construed for the purpose of the said provision. The aforesaid phrase cannot be singled out and construed devoid of the context provided by the other expressions used throughout the provision. The expression should be interpreted and understood in the precise context in which it has been employed in the bare text of the provision. The provision of Section 5, itself makes it amply clear how the phrase "within such period" ought to be understood by supplying the necessary context and interpretive key, through two significant phrases, namely; "after the prescribed period" and "for not preferring the appeal or making the application".

28. We say so because, the use of the word "such" in "within such period" signifies that it is alluding to something that the legislature has already alluded to within the provision, and thus, the significance of this phrase, has to be necessarily construed in reference to the expressions "after the prescribed period" and "for not preferring ... or making ... within such period".

29. The phrase "within such period" has been consciously prefaced by the legislature with the expression "for not preferring the appeal or making the application". This prefatory expression denotes that period of window within which the appeal or the application, as the case may be, was required or expected to be instituted under the law. It signifies the original period within which, the appeal or the application, should have been filed, if not for the delay. It refers to none other than that period within which, the appeal or application, could have been instituted in the first place, had there been no delay, or, to put it simply, the statutory period of limitation, within which, such an appeal or application, should have ordinarily been filed.

30. The negative terminology couched in "for not preferring or making" is suggestive of the lapse or default that the appellant or applicant, as the case may be, has committed in preferring the appeal or application, respectively, which is nothing but the failure to file it within the prescribed statutory period of limitation. This is further reinforced when one considers the meaning that would have been derived, if the negative language used in the provision is stripped away, or in other words, by understanding the opposite meaning of the aforesaid phrase, which the legislature has deliberately chosen not to provide by use of the negative language "for not".

31. By removing or inverting the said negative connotation from the phrase "for not preferring or making", the expression would then inevitably have connoted that point of time at which the appeal or application, as the case may be, ought to have been instituted or the period within which, the appellant or the applicant, as the case may be, was otherwise well within its right to prefer the appeal or make the application, respectively.

32. The aforesaid makes it crystal clear that the legislature, by employing the phrase "for not preferring the appeal or making the application", is unmistakably alluding to the original statutory period of limitation within which the appeal or application, as the case may be, was required to be instituted or simpliciter the prescribed period of limitation, for the purpose of construing the expression "within such period".

33. However, one must be mindful that the aforesaid is not the only time period that has been mentioned in the language of Section 5 of the Limitation Act. In other words, the meaning of the expression "within such period" does not refer to only the original period of limitation.

34. One another expression of significance that, the legislature has introduced, within the text of Section 5 of the Limitation Act, is "after the prescribed period". This expression refers to the point of time when the appeal or application, as the case may be, in question, has come to be instituted, which is, after the statutory period of limitation expired. It denotes the period after the prescribed limitation had run out till the actual date when the filing of the appeal or application, as the case may be, took place.

35. By use of the phrase "after the prescribed period", it is clear that the legislature, for the purpose of construing the expression "within such period", has contemplated to also include the time period after the expiry of the prescribed period of limitation till the actual date of filing of the appeal or application, as the case may be.

36. In Section 5 of the Limitation Act, the phrases "for not preferring the appeal or making the application" and "after the prescribed period" have been used by the legislature conjointly to assign meaning to the expression "within such period". As already discussed, the former refers to the period in which the appeal or the application was required by the law to be filed within, while the latter signifies the period within which such appeal or application, is being filed or in other words, the original prescribed period of limitation and the period after the expiry of limitation till the actual date of institution, respectively.

37. When one reads the phrase "within such period" together with the expressions "after the prescribed period" and "for not preferring the appeal or making the application", it becomes as clear as a noon day, that the said phrase i.e., "within such period" includes both the original period of limitation prescribed as-well as the period of delay leading up to the actual filing of the appeal or application, as the case may be. There can be no question of construing "within such period" as making a reference either to only the original period of limitation or to only the actual period of delay after the expiry of limitation.

38. It is a well settled rule of statutory interpretation that while construing a provision, a meaningful effect should be given to each and every word used by the legislature within the text of the provision. In interpreting a provision, a coherent meaning has to be culled out from the entire scheme of the Act and the provisions contained therein. The entire text of the provision must be read holistically with the entire Act, in toto, and harmoniously integrated with the other provisions to preserve internal consistency. Stray lines or words of a provision cannot be isolated or construed in fragments, detached from the remaining words and expressions of the provision as-well as the other provisions within the statute.

39. Thus, we have no hesitation in saying that both the expressions, by a necessary implication indicate that the phrase "within such period" signifies that the period covered therein extends to not only the original period within which, the appeal or the application, as the case may be, should have been filed, if not for the delay, but also the period taken in addition to the prescribed period of limitation for filing such appeal or application, as the case may be.

40. As such, under Section 5 of the Limitation Act, for the purpose of seeking condonation of delay in filing of an appeal or application, as the case may be, beyond the stipulated period of limitation, the delay in the filing has to be explained by demonstrating the existence of a "sufficient cause" that resulted in such delay for both the prescribed period of limitation as-well as the period after the expiry of limitation, up to actual date of filing of such appeal or application, as the case may be, or to put it simply, explanation has to be given for the entire duration from the date when the clock of limitation began to tick, up until the date of actual filing, for seeking condonation of delay by recourse to Section 5 of the Limitation Act.

c. The expression "within such period" cannot be conflated with "during such period" or "for such period".

41. We may now look into the decision of Rewa Coal Fields (supra), more particularly the observations "to hold that the expression "within such period" means during such period would, in our opinion, be repugnant in the context", made therein. Rewa Coal Fields (supra), in arriving at the conclusion, that the expression "within such period" refers to the period after the expiry of limitation, beginning from the last day of the limitation that has been prescribed till the day on which the appeal or application is filed, had held that, if the expression is interpreted to mean only the prescribed period of limitation ending with the last day of limitation, then the same would tantamount to reducing the expression "within such period" to "during such period", an understanding which is repugnant to the bare text as-well context of Section 5 of the Limitation Act.

42. With all humility at our command and with due deference if this is what was in the mind of the learned Judges then we are afraid that is not the correct position of law.

43. We shall discuss the context of Section 5 of the Limitation Act in detail, in the latter parts of this judgment. For now, we shall test the meaning of the expression "within such period" from the textual interpretation of the provision.

44. Insofar, as the apprehension that Rewa Coal Fields (supra) harboured as regards the expression "within such period" being conflated with "during such period" if Section 5 is construed to mean that delay has to be explained for the duration of the prescribed period of limitation, the same, to our minds does not appear to be a correct understanding of the bare text of the provision.

45. No doubt, in Section 5 of the Limitation Act, the legislature has not used the expression "during such period" and instead, has consciously employed the phrase, "within such period", and thus, the expression cannot be solely confined to mean only the prescribed period of limitation. To the extent of the aforesaid, we are in complete agreement with Rewa Coal Fields (supra).

46. However, to say that the expression "within such period" has to then necessarily be construed to mean only the period after the expiry of limitation, beginning from the last day of the prescribed limitation till the day on which the appeal or application is filed, is not a correct appreciation of the provision.

47. We must be mindful of the fact, that the legislature has consciously not employed the phrase "for such period" within the provision so as to convey that the period for which explanation has to be offered refers to only that period which is in actual delay i.e., the period after the expiry of limitation, beginning from the last day of the limitation that has been prescribed till the day on which the appeal or application is filed, as has been inadvertently understood by Rewa Coal Fields (supra).

48. If at all we are to go into the semantics of what has been used and what has not been used by the legislature within the bare text of the said provision, then we must also not ignore how the legislature refrained from employing the phrase "for such period". Merely because, the expression "during such period" has not been used in Section 5 of the Limitation Act, is by no stretch of imagination, a reason to construe that the phrase "within such period" would cover within its ambit only that period which is in actual delay or beyond the prescribed period of limitation. Had the intent of the legislature been so, then it would have used the phrase "for such period" instead.

49. What can be discerned from the above discussion is that the meaning of the expression, "within such period" cannot possibly be confined or restricted to

mean any one extreme i.e., it can neither be construed to mean only the prescribed period of limitation nor to denote only that period beyond the prescribed limitation, sans the use of the phrase "during such period" or "for such period", respectively, by the legislature.

50. Thus, the only natural corollary that could be supplied to the aforesaid is that, the phrase "within such period" must then necessarily be construed to refer and encompass both; the original prescribed period of limitation as-well as the period subsequent to its expiry, extending up to actual date of filing of the appeal or application, as the case may be, i.e., the entire continuum commencing from the point at which the limitation period first began to run, until the eventual filing of the appeal or application, as the case may be. An interpretation, which is also naturally apparent and forthcoming, when the phrase "within such period" is read and understood in conjunction with the expressions "after the prescribed period" and "for not preferring the appeal or making the application", as contained in the said provision.

51. We shall now look into the context of Section 5 of the Limitation Act, more particularly the manner and the circumstances in which the court condones the delay in filing of an appeal or application, as the case may be.

d. The contextual import of the expression "within such period" with the Canons of Law of Limitation.

52. This Court in Rewa Coal Fields (supra) observed that since a party is entitled to take its time and file the appeal or application, as the case may be, on any day, during the prescribed period of limitation, it would be "unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed".

Although, it said that such consideration may be of relevance for the purpose of deciding whether a particular case is one fit for the court to exercise its discretion to condone the delay, yet the same would be a question to be answered, only after sufficient cause is shown, as otherwise it is of no significance, for the purpose of construing the period for which delay has to be explained under Section 5 of the Limitation Act. It further elaborated that the general considerations of diligence of parties in pursuing their legal remedies "have very little relevance in construing the provisions of Section 5" and that there cannot be any "enquiry as to why the party was sitting idle during all the time available to it".

53. It is for this reason, that this Court in Rewa Coal Fields (supra), hesitated in accepting the contention, that the period for which explanation has to be given by demonstrating sufficient cause is the duration from the last day of expiry of

limitation leading up to the actual date of filing of the appeal or application, as the case may be.

54. We find ourselves, yet again, unable to agree to the aforesaid reasoning assigned by this Court in Rewa Coal Fields (supra) for the reasons that we shall assign hereinafter.

55. First, we must try to understand what was in the mind of this Court in Rewa Coal Fields (supra) when it made the aforementioned observations as regards examining into the diligence of parties for the purpose of condonation of delay. What has been conveyed in so many words, by Rewa Coal Fields (supra) is that Section 5 of the Limitation Act, does not expressly lay down parameters of bona-fides or diligence of the litigant, as opposed to Section 14 of the self-same Act, where the legislature has specifically employed the words "good faith".

56. What Rewa Coal Fields (supra) is trying to convey is that, if such parameters which otherwise cannot be culled out from the text of the provision, can only be read into "sufficient cause" that too for the limited purpose of deciding whether the discretion to condone the delay be exercised or not, then such parameters will be of no significance insofar as interpreting "within such period" is concerned, for it is confined only to the "sufficient cause", and if that be the case, then the inaction of party for the entire prescribed period of limitation, will too, be of no significance.

57. Thus, the party would effectively be required to only come and explain the delay in filing of the appeal or application, as the case may be, only from the last day on which the limitation would have expired, till the actual date of filing of such appeal or application.

58. The law of limitation is founded on public policy. The object of limitation is to put a quietus on stale and dead disputes. A person ought not to be allowed to agitate his claim after a long delay.

59. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered.

Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The idea is that every legal remedy must be kept alive for

a legislatively fixed period of time. The law of limitation is thus founded on public policy. [See: N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123]

60. The bedrock of law on limitation flows from two age-old Latin maxims; interest reipublicae up sit finis litium and vigilantibus non dormientibus jura subveniunt, which mean; "it is in the interest of the State that there be an end to litigation" and "the law assists those who are vigilant, and not those who sleep over their rights", respectively. The former emphasizes that protracted litigation puts a strain on the judicial system and undermines the law's role in dispute resolution, and so the public interest requires that disputes be resolved in some final form rather than continuing indefinitely to drain the resources of courts and the parties. While the later connotes that a person who has slept on his rights may be denied enforcement of the same when the resulting delay would cause an unfair prejudice.

61. What flows from the aforesaid is that the dominant objective underlying the law of limitation is that any lis cannot be kept in a state of flux or uncertainty, doubt or suspense. Public interest demands that at some point finality be put to the litigation. It is in this context that the Limitation Act, prescribes the specific points of time from which the period of limitation begins to run for the institution of actions or recourse to litigation. On expiry of such period, no action can be initiated save and except where the court condones the delay for a sufficient cause. A party who is insensible to the value of civil remedies, and who does not assert his claim with promptitude is denied the ability to enforce even an otherwise rightful claim. [See: DDA v. Tejpal & Ors., (2024) 7 SCC 433]

62. At this stage, it would be apposite to refer to Section 3 of the Limitation Act, which reads as under:-

"3. Bar of limitation.-

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,-

(a) a suit is instituted,-

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

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

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

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

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

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

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

63. Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in the absence of such plea by the defendant, respondent or opponent, as the case may be, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation. Limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits. [See: Noharlal Verma v. Distt. Coop. Central Bank Ltd., (2008) 14 SCC 445]

64. Section 3 sub-section (1) of the Limitation Act makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Section(s) 4 to 24 of the Limitation Act. It mandates that it would be the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation. [See: V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao, (2005) 4 SCC 613]

65. The above exposited fundamental pillars of the law on limitation, namely, (i) that the sword of prosecution ought not to be hanging over an individual for an indeterminate period and (ii) those who have been lethargic in safeguarding their interests should not expect the law to come to their rescue, are reflected in Section 3 of the Limitation Act, more particularly sub-section (1) inasmuch as it enjoins a duty upon the courts to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or

not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed.

66. Thus, the Limitation Act is an embodiment of a clear legislative policy that litigation must be commenced, prosecuted, and concluded within a definite timeframe. Section 3 of the Limitation Act gives effect to this mandate in categorical terms by obligating courts to dismiss every suit, appeal, or application instituted beyond the prescribed period, irrespective of whether limitation is raised as a defence. This provision is not a matter of discretion but of duty, for it reflects the underlying public interest in ensuring certainty, finality, and repose in legal disputes.

67. Section(s) 4 to 24 of the Limitation Act is only an exception to the aforesaid unexceptionable rule. Likewise, Section 5 of the Limitation Act is no different. It cannot be construed in isolation from Section 3 or from the overarching rationale behind the said provision. When we say, that Section(s) 4 to 24 of the Limitation Act, which includes Section 5, is only an exception, we do not for a moment say that it is an exception to the core axioms of 'interest reipublicae up sit finis litium' and 'vigilantibus non dormientibus jura subveniunt' that underline the Limitation Act. The aforesaid form the very jurisprudential underpinnings on why we even have prescribed periods of limitation, and are the very basis for the existence of statutes on limitation in every civilized country that has ever existed.

68. Section(s) 4 to 24 of the Limitation Act are only an exception insofar as the mandate enshrined under Section 3 is concerned, which enjoins a duty upon the courts to dismiss any suit instituted, appeal preferred, or application made after the prescribed period of limitation. They as a matter of exception, enable the courts to entertain a suit, appeal or application, filed even after the prescribed period of limitation where the delay was owed to factors beyond the reasonable control of the litigant. But this does not mean, that delays occasioned or accompanied to some extent by negligence, inaction, or a lack of care or vigilance of the litigant would also be liable to be excused, or at the very least ignored by the court even if the delay in question happens to formulaically fulfil the statutorily prescribed parameters for excusing the same.

69. To say otherwise, that Section(s) 4 to 24 of the Limitation Act and by extension Section 5 of the Limitation Act, is an exception to the rule requiring litigants to be vigilant and diligent in their endeavours for pursuing legal remedies, or that the negligence or inaction of a litigant during the prescribed period of limitation have no place, insofar as Section(s) 4 to 24 are concerned, would have a chilling effect of eradicating every basic tenet for which a prescribed period of limitation exists and could result in manifest injustice to those prejudiced by such laches or delays, if condoned.

It would tantamount to reducing Section(s) 4 to 24 of the Limitation Act to tools for subverting rather than effectuating the legislative intent to not excuse negligence, inaction, or lack of diligence on the part of a litigant except where the delay is occasioned by factors that lie beyond its reasonable control, and thereby create a very skewed and distorted understanding of the Limitation Act, where despite the aforesaid legislative intent being imbued in every other provision of the Limitation Act, permeating across the scheme thereof, the same would be discarded for a select set of provisions i.e., Section(s) 4 to 24, while being scrupulously enforced for all other provisions.

70. Thus, Section(s) 4 to 24 of the Limitation Act, including Section 5, must be understood in the broader framework of the law of limitation. They cannot be construed as a gateway to overlook or overcome the sound principles of 'interest reipublicae up sit finis litium' and 'vigilantibus non dormientibus jura subveniunt' that are the elementary constituents of the Limitation Act and all its ideals. It is in the same breath that we say, that the provision of Section 5 of the Limitation Act, cannot be read in a manner which is either derogatory to, or tends to dilute the aforesaid fundamental edifice of the law of limitation to a mere ad-lib.

71. In this regard we may refer to the decision of this Court in Hameed Joharan (Dead) & Ors. v. Abdul Salam (Dead) by LRs & Ors., reported in (2001) 7 SCC 573, wherein it was observed that the general policy of the law of limitation encapsulated in the Limitation Act is to favour the use of legal diligence. Expounding the maxim of 'vigilantibus et non dormientibus jura subveniunt' it was held that a court of law never tolerates an indolent litigant since delay defeats equity. It further held that lapse of time is a species for forfeiture of right. The relevant observations read as under:-

"14. Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply, however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper - this is opposed to the fundamental principle on which the statutes of limitation are founded. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in Manby v. Bewicke (K&J at p. 352) stated: (ER p. 1144)

"The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain.""

(Emphasis supplied)

72. As aptly noted in Hameed Joharan (supra), lapse of time is a specie for forfeiture of right, which is why where a litigant allows the limitation to expire for any right or remedy, due to its own volition, be it in the form of, inaction, lethargy, negligence or mistake, which could have been avoided, no indulgence should ordinarily be shown by the courts in entertaining or enforcing the assertion of such rights, de hors, the litigant otherwise demonstrating a cause for such delay, which may as well also fit within any of the parameters of the exceptions carved out within Section(s) 4 to 24 of the Limitation Act.

73. Thus, the reasoning of this Court in Rewa Coal Fields (supra) that the parameters of 'bona-fides', 'diligence' or 'inaction' of the litigant have no bearing on relevance for the purpose of construing Section 5 of the Limitation Act, in the absence of any express language in this regard being couched in the provision is flawed. These parameters flow directly from the maxim 'vigilantibus et non dormientibus jura subveniunt' enshrined in the Limitation Act, albeit to varying degrees depending upon the provision in question, but by no stretch are they excluded from application, wantonly or otherwise, in any provision thereof. Merely because the provision does not explicitly lay down any of the aforesaid parameters cannot be construed to mean that the legislative intent behind the provision also, was to not allude to the same.

74. The legislature always speaks through the statute it enacts, and its intention behind any provision or provisions thereof, is to be gathered from the language used in the provision along with the avowed objects with which the same came to be enacted. In construing or interpreting a provision, any deviation from the legislative intent that backs the particular statute containing the said provision cannot be done casually. Mere omission of few stray words, does not detract or take away the lofty intent behind enacting the statute and cannot always be interpreted to impute a contrary intent unless the same is apparent and supported by some other salutary object with which such omission may have been made.

75. In this regard, it could be argued that the legislature may have intentionally omitted the express mentioning of any of the aforesaid parameters pertaining to party diligence in Section 5 of the Limitation Act, to lay stress on two key

components of the law of limitation. First, that a party has a right to file an appeal or application, as the case may be on any day within the prescribed period of limitation and secondly, that the rules of limitation are not meant to destroy or extinguish rights of litigants but only to curb deliberate dilatory tactics.

76. If at all such was the intention behind the legislature, then the same is being adequately subserved by virtue of the discretion bestowed onto the the courts under Section 5 of the Limitation Act.

77. There was no need to exclude the applicability of these parameters from the expression "within such period" or the overall provision of Section 5 of the Limitation Act, if all that the legislature intended was to ensure that expiry of limitation should not result in extinguishment of rights of parties.

78. The legislature in its wisdom, has in order to lay emphasis that rights of a party ought not to be defeated or relinquished by the expiry of limitation, conferred the discretion to courts to condone the same, subject to showing sufficient cause.

79. But to read this entitlement to file the appeal or application, on any day of the limitation, as instrument to construe the import of "within such period", would run counter to the object of limitation, which is to enthuse a sense of responsibility and vigilance upon the litigants and avoid protraction of the lis. It would, in our opinion, invariably give the litigants, a 'free-pass' to resort to dilatory tactics for the substantial portion of the prescribed period of limitation, with little to no consequence.

80. For illustration, any person, who is able to demonstrate that he or she, began to take some steps towards preferring the appeal or making the application, on the very last day of limitation, whereafter, he or she, ran into some snags which otherwise, was a sufficient cause, for the subsequent delay, would be entitled to condonation of the same.

The courts in such a scenario, even after being satisfied about the existence of a 'sufficient cause' may nevertheless have the discretion to choose not to condone the same, but not for the reasons of prior inaction of such litigant during the remaining period of limitation if the dictum of Rewa Coal Fields (supra) is squarely followed. This is because, Rewa Coal Fields (supra) also deprecates "an enquiry as to why the party was sitting idle during all the time available to it" even after sufficient cause is shown to it, although not as a straitjacket formula, but still nevertheless very rigidly.

81. On the contrary, recognizing the flip side of the proposition that rules of limitation are not meant to destroy the rights of parties into the exercise of discretion by the courts to admit any assertion of the same, after the prescribed

period of limitation, provided there is no inaction or negligence, on the part of the litigant, rather than reading the same into "within such period" or "sufficient cause", to our minds, appears to be the least disruptive interpretation of Section 5 of the Limitation Act, that would balance the salutary object of any statute of limitation, in toto.

It would not only ensure that not even an ounce of dilatory tactics by a litigant is allowed to pollute the streams of justice, but also curb the seriously falling standards of diligence that the litigants today have towards assertion of their rights or availment of remedies, and a growing tendency to leave things for the last moment, at the cost of prejudice to other litigants, and without any modicum of respect for the courts and judicial resources. At the same time, it will also allow courts to save those rights and permit their enforcement or adjudication, by a judicious exercise of their discretion in justified instances of delays, that are not a byproduct or result of the litigant's own inaction or negligence.

82. Thus, to our minds, the fixation by Rewa Coal Fields (supra) that "within such period" covers only the period from the last day of limitation till the actual date of filing, does not appear to be supported either by the bare text of the provision or by the mere omission of an express contextual concomitant, in the form of any parameters to avert to any inaction, negligence or lack of diligence of a litigant under Section 5 of the Limitation Act, that could be suggestive of the legislative intent to avoid applicability of such parameters for the condonation of delay thereunder.

83. We need not dwell any further on this. We may only say, that even in the absence of any express mentioning of any of the aforesaid parameters, the legislature's intent is very limpid. The use of the prefix "sufficient" in Section 5 of the Limitation Act, itself for lack of a better word, sufficiently indicates that the legislature was conscious of its use and import, and inherently intends to convey the applicability of these parameters to these provisions. Once it is clear, that such parameters of diligence or lack of any inaction etc., can be read into "sufficient cause" it can be no one's case that, the same would also not include averting to any inaction of the party during the remaining period of limitation, and only to the last day of expiry of limitation, as Rewa Coal Fields (supra) has understood.

84. We say so, because both the expressions "sufficient cause" and "within such period" are inextricably linked together. We have already alluded how the expression "within such period" is to be construed. For the purpose of Section 5 of the Limitation Act, the foremost requirement is to demonstrate existence of a "sufficient cause" for the period covered by the expression "within such period", thereby meaning that, any inaction of the litigant during the remaining prescribed

period of limitation apart from the last day of the limitation would be equally relevant for determining sufficiency of cause or to be precise the lack thereof.

To put it simply, if the inaction of a party is relevant for the last day of the limitation to determine that there was no sufficient cause as per Rewa Coal Fields (supra), then it would also, invariably be relevant for the remaining period of the prescribed limitation, as-well as the period after the expiry of limitation leading up to the actual filing of the appeal, as the expression "within such period" used in Section 5, does not demarcate any difference between these intervals.

85. Rather, the expression "within such period" treats, 'the prescribed period of limitation', 'the last day of expiry of limitation' and 'the period after the expiry of limitation till the date of filing', as the same for the purpose of condonation of delay, which is to say that, as long as there was a "sufficient cause" continuing between all these three intervals, the court would have the discretion to condone the same, provided the sufficient cause is not the result of negligence, inaction or lack of diligence of the litigant.

86. One another good reason that fortifies our mind to hold the aforesaid is due to the very nature of the provision of Section 5 of the Limitation Act. The said provision, as evident from its text, is only applicable in respect of appeals or applications. Lis that arises from appeals or applications, more often than not, do not partake the character of original proceedings. The deliberations and contemplations that a party undertakes before availing the remedy of the courts, is much lesser in threshold in case of appeals or applications, than in proceedings of original nature.

87. The aforesaid unique distinction between the nature of original and appellate proceedings for the purpose of Section 5 of the Limitation Act, was recognized by this Court in University of Delhi v. Union of India & Ors. reported in (2020) 13 SCC 745, with the following relevant observations: -

"25. The entire explanation for the inordinate delay of 916 days is twofold i.e. the non-availability of the Vice-Chancellor due to retirement and subsequent appointment of new Vice-Chancellor, also that the matter was placed before the Executive Council and a decision was taken to file the appeal and the said process had caused the delay. The reasons as stated do not appear very convincing since the situation was of availing the appellate remedy and not the original proceedings requiring such deliberation when it was a mere continuation of the proceedings which had already been filed on behalf of the appellant herein, after due deliberation."

(Emphasis supplied)

88. It follows, that such appeals or applications, are generally preferred as continuation of proceedings already instituted or within proceedings already ongoing before a forum. In such instances, the degree of vigilance that is expected is much higher, a party is required be prompt in making all possible endeavours to take the next step by filing the appeal or application.

The inaction or laxity of the party in making such endeavours is all the more significant for deciding if delay should be condoned or not, as, by the time the stage of preferring the appeal or application, arises, it already has the necessary knowledge to act upon quickly, by virtue of the prior or ongoing proceedings. If despite it, a party chooses to wait till the very last date, it may in all probability be the result of a deliberate action to dilate the proceedings or the lack of any modicum of respect for the prescribed period of limitation.

89. Thus, the notion that a party who failed to timely avail its remedies, by way of appeal or application, despite having sufficient awareness of the original proceedings should be shown due deference in condonation of delay, and is entitled to wait, without being questioned, till the last day of limitation, is preposterous.

e. Decisions which Rewa Coal Fields (supra) failed to take into consideration.

90. There are a conspectus of decisions, by this Court, which lay down that general considerations of lack of diligence or vigilance, indolence or inactivity are of relevance for the purpose of Section 5 of the Limitation Act, more particularly for both the expressions "sufficient cause" and "within such period". We need not discuss, all the decisions, and rather intend to only refer and rely upon a handful of them.

91. In Dinabandhu Sahu v. Jadumoni Mangaraj, reported in (1954) 1 SCC 800, a five-Judge Bench of this Court was inter-alia called upon to examine Section 85 of the Representation of People's Act, 1951, which is materially similar to Section 5 of the erstwhile Limitation Act, 1908, which is pari materia to its counterpart provision under the present Limitation Act. In the said decision, this Court approvingly referred to a Full Bench decision of the Madras High Court in Krishna v. Chathappan reported in 1889 SCC OnLine Mad 1, to hold that the words "sufficient cause" in Section 5 of the Limitation Act should receive "a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable" (emphasis). The relevant observations read as under:-

"Even if the matter had to be judged under Section 5 of the Limitation Act, it would have been a proper exercise of the power under that section to have

excused the delay. As was observed in the Full Bench decision in Krishna v. Chathappan in a passage which has become classic, the words "sufficient cause" should receive "a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant". We have, therefore, no hesitation in holding that the order dated 2-7-1952 is on the facts a proper one to pass under the proviso to Section 85."

(Emphasis supplied)

92. Thus, as per the dictum laid by a five Judge Bench all the way back in 1954 in Dinabandhu Sahu (supra), considerations of negligence, inaction or want of bon-fides, are relevant under Section 5 of the Limitation Act, more particularly for determining "sufficient cause". Rewa Coal Fields (supra), whilst making the observations that "it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of Section 5. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay.

This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it" failed to take into account the earlier larger bench decision of this Court in Dinabandhu Sahu (supra).

93. It would be apposite to refer to one another decision of this Court in Sitaram Ramcharan Etc. v. M.N. Nagarshana & Ors. reported in 1959 SCC OnLine SC 89, which was, remarkably, rendered by the very same Bench that later rendered the decision of Rewa Coal Fields (supra). In the said case, the appellants therein had filed applications for claim of overtime wages, that they were entitled to receive on the strength of one decision of the Small Causes Court delivered on May 2nd 1952.

However, since the applications for claim of overtime wages, had been filed after expiry of the prescribed period of limitation, an additional prayer for condonation of delay was made under the second proviso to Section 15 sub-section (2) of the Payment of Wages Act, 1936, which empowered the concerned authority to inter-alia condone the delay was due to sufficient cause. The prayer for condonation fo delay was rejected by the concerned authority and thereafter by the High Court as-well. In appeal, this Court placed reliance on Section 5 of the Limitation Act, to construe the import of the term "sufficient cause".

Although, this Court ambiguously observed that "in dealing with the question of condonation of delay" the "party has to satisfy the court that he had sufficient cause" and "this has always been understood to mean that the explanation has to cover the whole of the period of delay", yet it never explained or elaborated what duration of period would be covered. It did not allude whether the same would include only the period from the last day of expiry of limitation, till the date of actual filing, or only the prescribed period of limitation, or both, nor does the decision relied upon by it shed any light on the same.

However, a closer look at the decision would reveal that, what was in the mind of this Court was that explanation has to cover both the aforesaid periods i.e., the entire duration from when the limitation period started till the actual date of filing. Moreover, it also appears to have applied the general considerations of inaction and lack of diligence of the parties for construing "sufficient cause".

We say, so, because this Court held that the appellants therein had failed to establish "sufficient cause" as they could not explain their inaction between May 2nd 1952 (which we may clarify, was the date when the limitation period began to run) till the respective dates on which they filed their applications, and thus, would be fatal to their prayer for condonation of delay, and by extension the ultimate fate of their applications. The relevant observations read as under: -

"4. On May 2, 1952, the appellate decision delivered by the Chief Judge of the Court of Small Causes, in the case of Ruby Mills, however, construed Section 70 of the Bombay Shops and Establishments Act and held that the employees falling under the provisions of the said section were entitled to claim overtime wages under Section 59 of the Factories Act. In other words, this decision for the first time properly construed Section 70 of the Bombay Act and held that the said section in substance extended the provisions of Section 59 of the Factories Act to the employees covered by Section 70.

14. As we have already noticed the authority has held against the appellants on two grounds, one that ignorance of law cannot be a sufficient cause, and second that, even if it was, in fact the appellants had not explained the delay made by them in making the present applications after they knew of the decision in the case of Ruby Mills on May 2, 1952. This latter conclusion is a finding on a question of fact and its propriety or validity could not have been challenged before the High Court and cannot be questioned before us in the present appeals. Unfortunately it appears that the attention of the learned judges of the High Court was not drawn to this finding; otherwise they would have considered this aspect of the matter before they proceeded to deal with the interesting question of law raised before them.

15. Mr Phadke fairly conceded that he could not effectively challenge the finding of the authority that no satisfactory explanations had been given for the delay in question. He, however, argued that the said finding would not effect the final decision because, according to him, once it is held that ignorance of law can be a sufficient cause, then the period until May 2, 1952, would be covered by the appellants' ignorance about the true scope and effect of the provisions of Section 70 of the Bombay Shops and Establishments Act.

This position may be conceded. It is true that the true effect of the said section was not appreciated by either the workmen and Their union or the employers or the authorities under the Factories Act, or even by the industrial courts. But the question still remains whether the appellants are not required to explain the delay made by them after May 2, 1952. Mr Phadke says that it is not necessary for his clients to explain this delay.

His argument is that what the relevant proviso really means is that if sufficient cause has been shown for not making the application within the prescribed period of six months then the application can be made any time thereafter. The statutory bar created by the prescribed limitation is removed once it is shown that there was sufficient cause for not making the application within the said period; and once that bar is removed, there is no further question of limitation and the applicant cannot be called upon to explain the subsequent delay. That is the effect of the argument urged by Mr Phadke on the relevant proviso.

19. The proviso with which we are concerned has prescribed the limitation of six months for the institution of the application itself, and so the principle laid down in Lingley case can have no application to the question which we have to decide. Indeed, the present proviso is in substance similar to the provision in Section 5 of the Limitation Act and Mr Phadke has fairly conceded that there is consensus of judicial opinion on the question of the construction of Section 5.

It cannot be disputed that in dealing which the question of condoning delay under Section 5 of the Limitation Act the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay (vide Ram Narain Joshi v. Parameswar Narain Mehta. Therefore the finding recorded by the authority that the appellants have failed to establish sufficient cause for their inaction between May 2, 1952, and the respective dates on which they filed their present applications is fatal to their claim. That is why we think it unnecessary to consider the larger question of law which Mr Phadke sought to raise before us.

(Emphasis supplied)

94. From the above, it is manifest that in Sitaram Ramcharan (supra) this Court has in so many words, held that "sufficient cause" for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, would entail explaining the existence of such "sufficient cause" within the prescribed period of limitation till the actual date of filing of appeal or application, as the case may be. It is also manifest that the general considerations of negligence or inaction of the litigant during the prescribed period of limitation would be equally relevant for the purpose of determining "sufficient cause". Thus, it appears that the very Bench which rendered Rewa Coal Fields (supra) failed to refer to its own earlier decision in Sitaram Ramcharan (supra).

f. Condonation of Delay entails Extension of Limitation and not Exclusion.

95. Even otherwise, one another reason why we find ourselves unable to agree with Rewa Coal Fields (supra) insofar as its observations as regards the context of Section 5 of the Limitation Act is concerned, may be understood from one another angle.

96. The marginal note appended to Section 5 of the Limitation Act is titled "Extension of prescribed period in certain cases". The provision provides that where an appeal or application, as the case may be, is not filed within the prescribed period of limitation, the same may be admitted if "sufficient cause" for such failure is shown. The court may, in its discretion, proceed to condone the delay, if it is satisfied about the existence of such sufficient cause that resulted in the delay. In doing so, the court condones the delay in such filing by 'extending' the prescribed period of limitation in order to bring the application or appeal, as the case may be, in the eyes of law, within the limitation period, to then admit the same.

97. What is pertinent to take note of is that the condonation of delay does not result in exclusion of the period during which the sufficient cause persisted, it instead talks about extension of the period from the date when the prescribed period of limitation expired till the actual date of filing of the appeal or application. This gives the very first clue, that the expression "within such period" includes the prescribed period of limitation as-well.

We say so, because, when the court condones the delay, it only extends that amount of period that would be required to bring the appeal or application, as the case may be, in the eyes of law, within the limitation period. Even if the "sufficient cause" occasioned on the very first day when the clock of limitation began to tick, the court would effectively only extend for that period, which was consumed after the expiry of limitation. Thus, the neither the expression "after the prescribed period of limitation" nor the period which is being extended by the

court in condoning the delay, could be said to be the sole constituent of the expression "within such period".

98. It is no more res-integra, that for the purpose of Section 5 of the Limitation Act, "sufficient cause" must have occasioned during the prescribed period of limitation, and even Rewa Coal Fields (supra) concurs with the aforesaid, although to the limited extent that, only the sufficient cause on the last day of expiry of limitation is material.

99. This Court in Shakuntala Devi Jain v. Kuntal Kumari reported in 1968 SCC OnLine SC 139 held that Section 5 of the Limitation Act gives the courts a discretion, where even if sufficient cause for the delay is made out, the court may refuse to condone the delay. The relevant observations read as under:-

"7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in Krishna v. Chathappan "Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

(Emphasis supplied)

100. In Indian Oil Corpn. Ltd. v. Subrata Borah Chowlek, reported in (2010) 14 SCC 419 this Court reiterated that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause. The relevant observations read as under:-

"6. Having heard the learned counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed to the party.

(Emphasis supplied)

101. From the above discussion, it is clear that the period which is being effectively extended is only ancillary to the "sufficient cause" that would have occasioned. Even the bare text of Section 5 of the Limitation Act, makes it

abundantly clear that while "sufficient cause" has to be shown for the duration covered by the expression "within such period", nowhere does the provision allude that the "period" which would be effectively extended by the court, in exercise of its discretion for condoning the delay under Section 5 of the Limitation Act would be the period for which "sufficient cause" is demonstrated.

Rather, the expression "may be admitted after the prescribed period" clearly indicates that it is only that period, which has been subsumed after the expiry of limitation, as a result of the "sufficient cause" persisting, which would be effectively getting extended by way of condonation. Thus, while the expression "sufficient cause" and "within such period" are itself inextricably linked together, both these expressions have nothing to do with the manner in which the court proceeds to condone the delay i.e., the period which the court extends in exercise of its discretion under Section 5 of the Limitation Act.

102. If the contention is accepted that "sufficient cause" has to be demonstrated only for that length of the period that is required to be extended, in order to admit the appeal or application, as the case may be, then it would result in "extension" being conflated with "exclusion". Although semantically both may appear to be one and the same, and even the end-result that would ensue if "extension" is read as "exclusion" would in substance be the same, as ultimately it would be that period after the expiry of limitation till the actual filing that would be extended or excluded to admit the appeal, yet there is very fine but discernible difference between the two, which if not appreciated, would completely warp the mechanism of Section 5 of the Limitation Act, as envisaged by the legislature.

103. If the court in condoning the delay in exercise of its powers under Section 5 of the Limitation Act is construed as excluding that period which was consumed after the expiry of limitation, in order to bring it within the "prescribed period of limitation", for the limited purpose of admitting the appeal or application, as the case may be, then this would bring one significant change in how sufficient cause is to be demonstrated.

104. The net-effect of the aforesaid would be that, a litigant for seeking condonation of delay, would only be required to demonstrate that "sufficient cause" only for that amount of period which is necessary to be excluded so that it is able to bring its appeal or application, as the case may be, within the prescribed period of limitation. For illustration, say, the prescribed period of limitation was 90-days, and the actual date of filing took additional 10-days. Now, in such a scenario, if we read "extension" as "exclusion", then "sufficient cause" only has to be shown for the 10-days so that, once it is excluded, his filing would be deemed as if it was filed on the 90th day.

105. Although the aforesaid, may not, on the surface seem like a drastic consequence if "extension" is read as "exclusion", yet, it would have an underlying effect which would be contrary to the provision of Section 5 of the Limitation Act, which we shall now explain. If "extension" is read as "exclusion" and a party is required to demonstrate "sufficient cause" only for that duration necessary to be excluded, for the appeal or application, to once again fall within the prescribed period of limitation, for it to be admitted, then the entire exercise contemplated under Section 5, would in simple terms involve showing "sufficient cause" such that after the exclusion, the litigant is once again put back into the "prescribed period of limitation".

106. In other words, if the above interpretation is adopted then the litigant would only have to show "sufficient cause" for that period, which after excluding would at the very least put him back into the outermost date on which he could have filed the appeal or application i.e., the last day on which the limitation would have expired.

107. However, the power that the court exercises in condoning the delay, is not for the purpose of putting the litigant back into the position he would have enjoyed during the prescribed period of limitation. This is because, during the prescribed period of limitation, the litigant is entitled, as a matter of right, to file the appeal or application, as the case may be, and the courts cannot object or refuse to admit the same.

108. However, Section 5 of the Limitation Act, does not say that, once "sufficient cause" is established and the court is also satisfied about the same, then the appeal or application, has to be mandatorily be admitted. On the contrary, the provision, by use of the word "may" lays emphasis that even after the court is satisfied about the existence of a "sufficient cause", it has the discretion to decide, whether to admit the appeal or application, as the case may be, or not. A catena of decisions of this Court including Rewa Coal Fields (supra) hold that "even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right if sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay".

109. If at all, what is contemplated under Section 5 of the Limitation Act, is exclusion of the period consumed after the expiry of limitation for the filling of appeal or application, such that the litigant is put into the same position, he enjoyed on the last day of limitation, or any other day within the prescribed limitation, then where is the question of the courts still being able exercise discretion for deciding to admit or not admit such appeal or application.

110. Section 5 of the Limitation Act, also does not speak that the discretion conferred to the courts is limited only for determining if sufficient cause exists or

not, and where it has in its discretion decided that such "sufficient cause" existed, it has to then mandatorily condone the delay. As succinctly put in Rewa Coal Fields (supra), even "if sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay".

111. The discretion that the courts have been conferred under Section 5 of the Limitation Act, is two-fold, for determining if "sufficient cause" existed and where the former is answered in the affirmative, then whether the case is a fit one for it to condone the delay, to admit the appeal or application as the case may be. Which is why, the legislature consciously used the word "extension" rather than "exclusion" in marginal note to Section 5 of the Limitation Act.

112. To say, that the purpose for demonstrating "sufficient cause" is to exclude only that extent of period which would once again put the litigant back into the last day on which, he could have filed the appeal or application, would, in our opinion, gravely misconstrue the entire mechanism of Section 5 of the Limitation Act. Thus, the expression "within such period" for this reason also cannot be possibly construed to mean the period from the last day of expiry of the limitation, till the actual date of filing of appeal or the application, as understood by Rewa Coal Fields (supra). The phrase "extension" used in Section 5 of the Limitation Act is not a misnomer.

113. It is for this reason that the decisions of this Court in Ajit Singh Thakur (supra) and Ramkumar Choudhary (supra) held that "sufficient cause" for the delay in filing of an appeal or application, as the case may be, has to be established by some event or circumstance that had arisen before the limitation expired and that the party seeking condonation has to explain the delay the entire continuum commencing from the point at which the limitation period first began to run, until the eventual filing of the appeal or application, as the case may be.

114. We may, with a view to obviate any confusion, clarify that the observations made by this Court in Ramkumar Choudhary (supra), particularly that "what events occurred after the 91st day till the last is of no consequence" should not be construed devoid of its context. When this Court in Ramkumar Choudhary (supra) said that events after the expiry of limitation till the date of actual filing would be of no consequence, the same was made in view of the well-established rule that "sufficient cause must be establish that because of some event or circumstance arising before the limitation expired". The aforesaid observations of "what events occurred after the 91st day till the last is of no consequence" in Ramkumar Choudhary (supra) were made in the peculiar facts of that case, where the appellant had failed to assign any "sufficient cause" occasioning during the period of limitation, which rendered the events occurring after the expiry of limitation as irrelevant.

115. However, as is manifest from the entire discussion above, for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of "sufficient cause" for the entirety of the period from when the limitation began till the actual date of filing. In other words, if the period of limitation is 90-days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100-days.

B. What is to be understood by "sufficient cause" in Section 5 of the Limitation.

116. As already discussed in the foregoing parts, for the purpose of seeking condonation of delay under Section 5 of the Limitation Act, the party has to demonstrate the existence of a "sufficient cause" "within the prescribed period" to the satisfaction of the court. Thus, establishment of "sufficient cause" is the first ingredient for the purpose of condonation of delay. Insofar, as what is meant by the phrase "sufficient cause", neither Section 5 nor the Limitation Act itself provide any guidance on what its constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.

117. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant. Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor.

118. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritised over technicalities, as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary, despite it appearing liberal or magnanimous. The expression "sufficient cause" should be given liberal construction so as to advance substantial justice.

119. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. Despite the liberal approach being adopted in such matters, which was termed justifiable, this Court lamented that the message had not percolated down to all the other courts in the hierarchy and, accordingly,

emphasis was laid on the courts adopting a liberal and justiceoriented approach. [See: Sheo Raj Singh v. Union of India, (2023) 10 SCC 531]

120. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something.

It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. [See: Sheo Raj Singh v. Union of India, (2023) 10 SCC 531]

121. This Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors, reported in (2013) 12 SCC 649, after examining a plethora of decisions on what is meant by "sufficient cause", summarized its principles as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

122. The exceptional provision of condonation of delay on grounds of "sufficient cause" is couched as a manifestation of substantive justice. This Court in Pathapati Subba Reddy (Died) by L.Rs. v. Special Deputy Collector (LA), reported in 2024 SCC OnLine SC 513, summarized the principles governing the exceptions imagined under "sufficient cause" vis-à-vis substantive justice as under:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

(Emphasis supplied)

123. From above, it is manifest that that the phrase "sufficient cause" in Section 5 of the Limitation Act is an expression of elastic import, incapable of precise definition, yet not without boundaries. Its purpose is to empower courts to advance the cause of justice by preventing genuine litigants from being shut out on account of unavoidable delays. At the same time, it is equally clear that the phrase is not a charter for indolence or a device to revive stale claims that the law of limitation otherwise extinguishes.

124. The burden to establish sufficient cause lies upon the party seeking condonation, and the court must be satisfied that the cause is real, bona fide, and free of negligence. Sufficiency of cause is to be determined contextually, on the totality of circumstances, with due regard to the conduct of the applicant and the prejudice caused to the opposite party. The inquiry is not mechanical but principled, resting on the dual pillars of bona fides and diligence.

125. The expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. The expression is to be construed with justice-oriented flexibility so as not to punish innocent litigants for circumstances beyond their control.

126. Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim interest reipublicae ut sit finis litium and destabilise the certainty that limitation law seeks to secure.

127. The expression "sufficient cause" must be construed in a manner that advances substantial justice while preserving the discipline of limitation. The courts are not to be swayed by sympathy or technical rigidity, but rather by a judicious appraisal of whether the applicant acted with reasonable diligence in pursuing the remedy. Where explanation is bona fide, plausible, and consistent with ordinary human conduct, courts have leaned towards condonation. Where negligence, want of good faith, or a casual approach is discernible, condonation has been refused.

i. Length of the delay may be instructive but not determinative.

128. When it comes to condonation of delay, the length of delay is immaterial, and what matters is the acceptability of the explanation. A short delay may still warrant dismissal if unsupported by sufficient cause, whereas even a long delay may be condoned if justified by circumstances demonstrating bona fides.

129. Delay by itself is not inherently indicative of negligence. In certain cases, unavoidable circumstances such as illness, fraud, miscommunication, or bona fide mistake may stretch over long periods, yet remain excusable if they are explained with candour and supported by material. Conversely, an unexplained delay of even a few days may reveal inaction or deliberate disregard of statutory timelines, and therefore disentitle the party to indulgence.

130. The quantum of delay has no direct nexus in law with sufficiency of the cause. The law are independent and diverse factors. Hence the extent of delay should not determine whether the cause is sufficient or not. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the criterion. The criterion for condoning the delay is sufficiency of reason and not the length of the delay.

131. The decisive factor is the adequacy of the cause shown, not the length of delay. What is critical is whether the party seeking condonation acted with reasonable diligence during the prescribed period and whether the reasons advanced demonstrate a genuine inability to file within time. Thus, the test is qualitative rather than quantitative.

132. This is not to say that the length of delay is irrelevant. A long delay naturally casts a heavier burden on the applicant to furnish cogent, credible, and convincing explanations. The proof required becomes stricter in proportion to the delay. The longer the time elapsed, the stronger the justification that must be put forth. Hence, length is instructive in determining the degree of scrutiny, but it is not determinative of the outcome.

133. The length of the delay functions as a contextual indicator but not a determinative factor. It alerts the court to the degree of rigour required in examining the explanation, yet the ultimate focus remains on whether "sufficient cause" has been shown. The doctrine thereby preserves both the integrity of statutory timelines and the imperative of doing justice in deserving cases.

134. Thus, in exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter

case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.

ii. Technical Considerations vis-à-vis Substantive Justice.

135. In construing "sufficient cause" it must be borne in mind that rules of procedure are handmaids of justice. Procedural rigidity should not become an instrument of injustice. In the context of Section 5 of the Limitation Act, this balance assumes special significance. Courts have repeatedly underscored that while limitation provisions are founded on sound principles of finality and certainty, their application cannot be divorced from the overarching objective of ensuring that litigants are not shut out from the doors of justice merely on account of technicalities.

136. When technical considerations of limitation conflict with the imperative of substantial justice, the latter should ordinarily prevail. Rules of limitation are not designed to destroy the rights of parties but to prevent inordinate delay in seeking remedies. Thus, the interpretation of "sufficient cause" must be liberal and purposive, aimed at advancing the cause of justice rather than defeating it. This is why the courts, while construing applications for condonation of delay, emphasize the bona fides of the applicant over the sheer arithmetical length of the delay.

137. Where strict adherence to these rules results in injustice, the Court is dutybound to apply a liberal interpretation of "sufficient cause" so as to balance technical requirements with the demands of justice. A litigant does not stand to benefit by lodging an appeal late, and therefore, a pragmatic and justice-oriented approach must inform the judicial discretion under Section 5. This decision continues to be the most frequently cited authority for the proposition that the judiciary should incline towards justice rather than technicality. Therefore, when courts interpret "sufficient cause," they are expected to exercise discretion in a manner that fosters justice, fairness, and equity, keeping in mind the realities of litigation.

138. When a Court of Law deals with an application to condone the delay filed under Section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. Section 5 of the Limitation Act must be liberally construed and applied so as to advance substantial justice. It is undoubtedly true that a justice oriented approach is necessary while deciding application under Section 5 of Limitation. However, it cannot be said that in every case delay must necessarily be condoned. It is a

condition precedent for Section 5 of the Limitation Act that there must be a sufficient reason for condoning the delay.

139. However, while substantial justice must be advanced, the law of limitation is equally binding, and "sufficient cause" must be shown in substance, not in empty form. This ensures that the balance between justice and certainty is not skewed in favour of unmerited litigants.

140. However, at the same time, the courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the court, the inquiry is confined to whether "sufficient cause" has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly extraneous to this inquiry. If courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay.

141. Test of "sufficient cause" cannot be substituted by an examination of the merits of the case. Condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain.

142. Another practical reason why merits must not be considered at the stage of delay condonation is that it risks prejudicing the mind of the court against one party even before the matter is substantively heard. By glancing into merits prematurely, the court may inadvertently form a view that colours the fairness of the subsequent adjudication. The judicial discipline required at this stage demands that only the cause for delay be scrutinized, and nothing more. This ensures that the ultimate adjudication of rights occurs in a neutral and unprejudiced setting.

143. The law of limitation is meant to apply uniformly across cases, regardless of the intrinsic strength or weakness of the claims involved. To import merits into condonation proceedings would effectively dilute this uniformity.

C. In what circumstances can the exercise of discretion to condone the delay be interfered with?

144. One another submission that was canvassed on behalf of the respondents herein is that, where the court of first instance was satisfied as to the existence of "sufficient cause" for not filing the appeal or application, as the case may be, during the prescribed period of time and, on that basis, exercised its discretion in condoning the delay, then, in such cases, a court siting in appeal ought not to ordinarily interfere with the subjective view and prerogative of the court below in condoning the delay.

145. Ms. Suri, learned Senior Counsel appearing for the respondents, submitted that, in the present case, the High Court, whilst passing the impugned judgment and order, was satisfied with the explanation given by the respondents herein as to the existence of a sufficient cause which had prevented them from filing the appeal within the period of limitation, and that it was only after due consideration of all the material on record that the High Court proceeded to exercise its discretion to condone the delay in the filing thereof. She would submit that once the High Court, in its wisdom had, found the case at hand to be a fit one for the exercise of its discretion in condoning the delay, and had accordingly passed such an order, then this Court ought to refrain from interfering with the subjective view taken by the High Court.

146. In this regard, the learned Senior Counsel drew are attention to three decisions of this Court in Sheo Raj Singh (D) Tr. Lrs. v. Union of India, reported in (2023) 10 SCC 531, Manjunath Anandappa urf. Shivappa Hanasi v. Tammanasa & Ors. reported in (2003) 10 SCC 390 and Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha reported in (1980) 2 SCC 593.

147. The expression "may be admitted" vests in the court a discretion, the exercise of which is pre-conditioned to the proof of a "sufficient cause" for the failure to file the appeal or application, as the case may be, within the prescribed period of limitation. It enables a court to either admit or reject any appeal or application, for being barred by limitation, even if "sufficient cause" is shown to its satisfaction. The idea behind vesting the courts with such discretion is to ensure that the power to condone any delay in the filing of an appeal or application, as the case may be, is exercised only to advance substantial justice, where no prejudice or injustice would meted from such delay being condoned. Condonation of delay is not a matter of right but a discretion of the court.

148. The recourse to Section 5 of the Limitation Act for condonation of delay is not an inter-parte proceeding. Condonation of delay essentially is a question that the court has to decide on the basis of the material on records and the relevant law. The role of the parties is only confined to brining on record the relevant material to assist the court in exercising its discretion. Unlike adversarial proceedings in a lis where competing claims and counterclaims of parties are adjudicated, the adjudication under Section 5 is primarily inquisitorial in nature,

with the court being called upon to assess, on an objective consideration of facts and circumstances, whether the explanation offered is sufficient and reasonable so as to warrant an extension of time, from the material it has relied upon for furnishing such explanation.

149. The Privy Council in Krishnasami Panikondar v. S.R.M.A.R. Ramasami Chettiar reported in 1917 SCC OnLine PC 70 held that an order of a court excusing the delay is not final or precluded from being questioned, and that it is always open to reconsideration at the instance of the party so affected by it. The relevant observations read as under:-

"It has been argued that the admission of the appeal by Sankaran Nair, J., was final, and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramasami Chettiar, the contesting Respondent, but without notice to him. And yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to reconsideration at the instance of the party affected; and this view is sanctioned by the practice of the Courts in India."

(Emphasis supplied)

150. The aforesaid observations came to be endorsed by a Five judge-Bench of this Court in Dinabandhu Sahu (supra). The relevant observations read as under:-

8. In this respect, the position under the proviso to Section 85 is materially different from that under Section 5 of the Limitation Act, under which an order excusing delay is not final, and is liable to be questioned by the respondent at a later stage. (Vide the decision of the Privy Council in Krishnasami Pandikondar v. Ramasami Chettiar.)

151. In Shanti Prasad Gupta v. Dy. Director of Consolidation reported in 1981 Supp SCC 73, this Court held since the issue, whether there is a sufficient cause or not is a question of fact, where an order has been made under Section 5 of the Limitation Act by the lower court in the exercise of its discretion allowing or refusing an application to extend time, it cannot be interfered with in revision, unless the lower court has acted with material irregularity or contrary to law or has come to that conclusion on no evidence. The relevant observations read as under:-

"3. We find that Contention (1) is not correct. The order against which Gian Chand Bansari went in revision before the Director did not fall within the

purview of Section 9-A of the U.P. Consolidation of Holdings Act and, as such, was not appealable under Section 11 of that Act. We however find a good deal of force in the second contention of the appellant. Whether or not there is sufficient cause for condonation of delay, is a question of fact dependent upon the facts and circumstances of a particular case, and the proposition is well-settled that when order has been made under Section 5 of the Limitation Act by the lower court in the exercise of its discretion allowing or refusing an application to extend time, it cannot be interfered with in revision, unless the lower court has acted with material irregularity or contrary to law or has come to that conclusion on no evidence."

(Emphasis supplied)

152. This Court in N. Balakrishnan (supra) held that once the court below accepts the explanation of delay as sufficient, the superior court should not disturb such finding unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. However, where the first court refuses to condone the delay, there the superior court would be free to consider the cause shown for the delay afresh to come to its own finding de hors the conclusion of the court below. The relevant observations read as under:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.""

(Emphasis supplied)

153. In Mithailal Dalsangar Singh v. Annabai Devram Kini reported in (2003) 10 SCC 691 this Court held that the finding of the court below on the question of availability of "sufficient cause" ought to be given weight and should not normally be interfered with in superior jurisdiction. The relevant observations read as under:-

"9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of "sufficient cause" within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

(Emphasis supplied)

154. A coordinate Bench of this Court in a recent decision of Sheo Raj Singh (supra) speaking through Hon'ble Justice Dipankar Datta, held that there exists a fine distinction between when a court is hearing application for condonation of delay and when it is sitting in appeal over the exercise of discretion granting condonation of delay. In the former, the only material question is whether the delay be condoned or not, whereas in the latter the question is confined to if there has been proper exercise of discretion in favour of grant of such prayer. It further cautioned that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below. The relevant observations read as under:-

"33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question.

Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that: "an appellate power interferes not when the order appealed is not right but only when it is clearly wrong"."

(Emphasis supplied)

155. In Manjunath Anandappa (supra) this Court reiterated that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below. The relevant observations read as under:-

"36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.

37. In U.P. Coop. Federation Ltd. v. Sunder Bros., the law is stated in the following terms:

"8. It is well established that where the discretion vested in the court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well established; but, as has been observed by Viscount Simon, L.C., in Charles Osenton & Co. v. Johnston 'The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.'"

(Emphasis supplied)

156. In Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha reported in (1980) 2 SCC 593, this Court speaking through the inimitable V.R. Krishna Iyer J. (as his Lordship then was), observed that "an appellate power interferes when the order appealed is not right but only when it is clearly wrong". The erudite observations read as under:-

"73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional

restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action.

The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

(Emphasis supplied)

157. However, the aforesaid observations must not be viewed in isolation from the immediately preceding paragraph. The observations therein are significant, for a holistic understanding. This Court in Gujarat Steel Tubes (supra) whilst holding the aforesaid, elaborated on when a court in appellate jurisdiction may be compelled to interfere with the order of a court below. It observed that where such order was vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure, and any other defects of like nature, the appellate court would be justified to intervene. The relevant observations read as under:-

"72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like."

(Emphasis supplied)

158. Deciding whether there was any proper and judicious exercise of discretion to condone the delay or not, is a slippery slope. Despite lengthy cautionary tales from this Court of judicial restraint in wantonly interfering with the subjective view of a court below, having been preached for time immemorial, it is plausible for an appellate court to falter in adhering to the same.

159. We are in complete agreement with the decision of this Court in Sheo Raj Singh (supra) as regards the significance of the distinction in scope when a court is hearing application for condonation of delay and when it is sitting in appeal over the exercise of discretion granting condonation of delay.

160. It is no more res integra that where a court below refused to condone the delay, then the court sitting in appeal would be entitled to consider if delay should be condoned or not afresh, notwithstanding the decision of the lower court. However, some weight and importance would have to be given to the reasons which swayed the court below from refusing to exercise its discretion. Because refusal to condone the delay is also, nevertheless an exercise of discretion to not exercise discretion. However, the scope, available to the appellate court to substitute its findings in such scenarios would enjoy a considerable degree of play in its joints.

161. However, where a court is sitting in appeal over the exercise of discretion granting condonation of delay, it is only required to see if there was a proper exercise of discretion by the courts below and if the same was for advancing the cause of justice. But the question that we ask ourselves is, what is meant by "proper exercise of discretion"? What does the enquiry into the propriety of discretion encompass?

162. Proper exercise of discretion in condoning the delay connotes that the such exercise was not improper or unwarranted. This as a naturally corollary would open up an inquiry into the fundamental constituents or ingredients necessary for the exercise of power to condone delay. As such it would require the appellate court to see if the sufficient cause had occasioned during the prescribed period of limitation, if the explanation offered inspires confidence, if the court below in construing "sufficient cause" had ventured into extraneous considerations. Likewise, where a lower court's decision in accepting the "sufficient cause" is either contrary to the law or suffers from any material irregularity or is vulnerable for lack of evidence, then such an order condoning the delay would be a fit one to be interfered with by the appellate court.

163. Thus, a two pronged inquiry is required by the appellate court; first, into the existence of a "sufficient cause" and secondly, into the exercise of discretion itself, where the first test is satisfied.

164. This would necessarily entail the appellate court to look into the material on record, the contents of the explanation that had swayed the mind of the court below. However, the extent to which the court sitting in appeal is to look into the same is confined to ascertaining whether the view taken by the court below is forthcoming and plausible or not. The observations "but if it appears to the appellate court that in exercising its discretion the trial court has acted

unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion" made in Manjunath Anandappa (supra) bolster this view.

Thus, the appellate court must see if the material on record inspires confidence for accepting the plea of "sufficient cause" and the explanation offered in that regard for the entirety of the period from when the limitation began till the actual date of filing. If the lower court had accepted the explanation capriciously or without proper legal material to support its decision, then the same may be interfered with.

165. However, we again at the cost of repetition, make it clear, that the entire purpose this enquiry is only to see if the view that was arrived at by the court below could have been taken by it, from the material on record, had it been in seisin of the matter as a court of first instance, or had the court below refused the prayer for condonation of delay. Once the appellate court is of the opinion that the view arrived at by the court of below is plausible and not contrary to the law, it would not be open for it to interfere with the same, merely because another view is also equally plausible.

166. The role of the appellate court is limited to assessing the material on record, and to satisfy itself that the order passed by the court below is not vitiated due to any material irregularity, want of evidence, extraneous considerations, failure to take into consideration any relevant fact, or being contrary to the law of the land, which inevitably includes if the ingredients of Section 5 of the Limitation Act were met or not. It is to ensure that a plea of "sufficient cause" is not accepted superficially merely because some explanation was offered by looking into the material that constituted such sufficient cause.

167. Once, the material on record lend support to the view arrived at by the court below, the enquiry of the appellate court into the material on record ends. Thereafter, what remains to be seen is only the exercise of discretion by the court below, which warrants a careful and delicate approach from the appellate court. This is because acceptance of the explanation as a sufficient cause is the result of a positive exercise of discretion and normally the appellate court should not disturb such exercise of discretion, unless the exercise of discretion was on wholly waterable grounds or arbitrary or perverse.

168. In this regard, what the appellate court has to see is that the discretion that was exercised by the court below, was not done in a mechanical or routine manner and without any application of mind as to whether such an exercise would advance the cause of justice or lead to miscarriage of justice. The exercise of discretion must have been in a reasonable manner, and should not have resulted in any grave prejudice to the other side.

The test is to is if the exercise of discretion was patently wrong or not, and ordinarily the appellate court will be slow and circumspect to substitute its own opinion on the exercise of discretion, once it is satisfied that the view of the court below in accepting the plea of sufficient cause was plausible. If it is found that in exercising the discretion to condone the delay, the court below had lost sight of a general rule or misdirected itself as to the applicability of the rule, then it will be deemed to have misdirected itself as to the law applicable to the case, and the appellate court will interfere and remit the case or itself exercise the discretion.

169. To sum up, the appellate court cannot embark upon an inquiry to enter a finding based on its likes or dislikes. The true test is to see, if it had been up to the appellate court, could the delay have been plausibly condoned for the same reason that was assigned by the court below, by looking into the material on record to see if the ingredients of Section 5 of the Limitation Act were fulfilled or not. If the ingredients of the provision is found to not have been fulfilled, the appellate court can and ought to interfere with the order of the court below.

170. However, if the aforesaid is answered in an affirmative, all that remains to be seen is that the discretion that was exercised in condoning the delay was not done mechanically, arbitrarily or capriciously, and was exercised for the purpose of advancing the cause of justice. Only where the exercise of discretion was clearly wrong, would the court sitting in appeal, interfere with the same.

D. There is no room for largesse for State lethargy and leisure under Section 5 of the Limitation Act.

171. The next submission that was advanced on behalf of the respondents herein is that, in matters pertaining to condonation of delay, a certain degree of leeway ought to be accorded to the Government and Public Authorities owing to the innate complexities in the way the State apparatus functions. The argument is that due to the inherent bureaucracy and involvement of various departments of different hierarchy which are endemic to the functioning of the State and its instrumentalities, unavoidable delays tend to crop up even without any deliberate intention, and thus, the courts ought to be pragmatic and liberal where the State or any of its instrumentalities is seeking condonation of delay in the filing of the appeal or application, as the case may be. In this regard, reliance was placed on the decision of this Court in G. Ramegowda, Major & Ors. v. Special Land Acquisition Officer, Bangalore reported in (1988) 2 SCC 142.

i. View on the subject of Condonation of Delay prior to the decision of Postmaster General.

172. Prior to the landmark decision of this Court in Postmaster General v. Living Media India Ltd., reported in (2012) 3 SCC 563, the practice that was in place

consistently leaned in favour of affording a degree of latitude to the State and its instrumentalities in matters of condonation of delay. The rationale underlying such an approach was the recognition of the peculiarities of governmental functioning, which, unlike private litigants, is impersonal, heavily layered, and subject to multiple levels of procedural clearances before culminating into a decision.

173. As early as in Special Tehsildar, Land Acquisition v. K.V. Ayisumma, reported in (1996) 10 SCC 634, a two-Judge Bench of this Court emphasized that since the State represents the collective cause of the public, any delay on its part ought not to be viewed through the same lens as that of a private party. It observed that adoption of a strict standard of proof in respect of the State or its instrumentalities, where no one takes personal responsibility in processing the matters expeditiously, would lead to grave miscarriage of public justice. Thus, it held that in such circumstances, the correct approach to be adopted is to be pragmatic and condone the delay without insisting upon explaining every day's delay. The relevant observations read as under:-

"2. It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances.

It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

(Emphasis supplied)

174. Likewise, in State of Haryana v. Chandra Mani, reported in (1996) 3 SCC 132, this Court reiterated that some latitude must be shown to the State and its instrumentalities in matters of condonation of delay. It observed that "the State

represents the collective cause of the community" and so a pragmatic view ought to be adopted while dealing with applications for condonation of delay filed by public authorities. It further emphasised that technicalities of limitation should not result in grave injustice to the public interest, especially where the delay was not tainted by mala fides. The relevant observations read as under:-

"11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner.

When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine.

Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justiceoriented process.

The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement.

In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally

responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.

(Emphasis supplied)

175. The above view came to be affirmed in the decision of State of Nagaland v. Lipok AO, reported in (2005) 3 SCC 752, wherein this Court acknowledged the bureaucratic realities that often account for delay in governmental decision-making. It held that deference must be shown to the fact that governmental actions are "conducted by officers who cannot act on their own but must obtain approvals at different levels," and thus, the element of delay is almost "inbuilt in the governmental decision-making process." Accordingly, it held that factors which are peculiar to and characteristic of the functioning of the governmental conditions requires adoption of pragmatic and justice-oriented approach by the courts in matters pertaining to condonation of delay. The relevant observations read as under:-

"13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the notemaking, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause.

Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Prabha v. Ram Parkash Kalra [1987 Supp SCC 339] this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

14. In G. Ramegowda v. Spl. Land Acquisition Officer [(1988) 2 SCC 142] it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal

construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest.

The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible.

It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.

The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause.

The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in State of Haryana v. Chandra Mani [(1996) 3 SCC 132] and Special Tehsildar, Land Acquisition v. K.V. Ayisumma [(1996) 10 SCC 634]. It was noted that adoption of strict standard of proof sometimes fails to protract (sic) public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

17. When the factual background is considered in the light of legal principles as noted above, the inevitable conclusion is that the delay of 57 days deserved condonation. Therefore, the order of the High Court refusing to condone the delay is set aside."

(Emphasis supplied)

176. In Indian Oil Corpn. (supra) this Court held that although Section 5 of the Limitation Act makes no distinction between the State and a private litigant insofar as the explanation of delay to the satisfaction of the court is concerned, yet adoption of a strict standard of proof in case of the Government, which is dependent on the actions of its officials, who often have no personal interest in its cause, may lead to grave miscarriage of justice and thus, certain amount of latitude may be permitted to them. The relevant observations read as under:-

"9. In State (NCT of Delhi) v. Ahmed Jaan [(2008) 14 SCC 582 : (2009) 2 SCC (Cri) 864] while observing that although no special indulgence can be shown to the Government which, in similar circumstances is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels, highlighted the following observations of this Court in State of Nagaland v. Lipok Ao [(2005) 3 SCC 752 : 2005 SCC (Cri) 906] : (Ahmed Jaan case [(2008) 14 SCC 582 : (2009) 2 SCC (Cri) 864] , SCC p. 588, para 11)

"11. '15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.

The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process.' [As observed in State of Nagaland v. Lipok Ao, (2005) 3 SCC 752, p. 760, para 15.]"

(See also Tehsildar, Land Acquisition v. K.V. Ayisumma [(1996) 10 SCC 634], State of Haryana v. Chandra Mani [(1996) 3 SCC 132] .)

10. It is manifest that though Section 5 of the Limitation Act, 1963 envisages the explanation of delay to the satisfaction of the court, and makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependent on the actions of its officials, who often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases."

(Emphasis supplied)

177. In G. Ramegowda, Major (supra), this Court observed that public interest suffers if appeals brought by the Government are thrown out due to the lapse of the limitation period. Accordingly, it held that a certain amount of latitude towards the Government is, therefore, not impermissible, for the purpose of condonation of delay. The relevant observations made therein read as under:-

"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffeed owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making.

A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters."

(Emphasis supplied)

178. What can be discerned from the aforesaid is that, the position of law, as it originally stood, was that there existed a marked difference in a case where the delay was attributable to a private litigant and a case where the delay was occasioned on part of the State or its instrumentalities. This distinction was founded on the impersonal character of public authorities, where no one public officer has any vested individual interest in diligently espousing the State's cause. This resultantly rendered the actions of the State and its instrumentalities qualitatively different from those of private individuals who are motivated to act in their own cause.

179. Unlike a private litigant, where the State or any of its instrumentalities happens to be the litigant in a lis, the decision to prefer an appeal or file an

application is seldom the result of a singular will; rather, it emerges from a collective exercise involving procedural compliance, legal opinion, administrative authorisation and responsible officers bound by rigid protocols and established hierarchies. Consequently, it was an accepted norm that unavoidable delays would inevitably arise in its litigation, not out of any want of diligence or mala fides, but as a by-product of the bureaucratic processes.

180. One another reason why this distinction assumed significances was for the reason that, if the cause espoused by the Government is non-suited merely on the ground of delay, the ultimate prejudice is not restricted just to the Government as a litigant. The real brunt of such dismissal falls upon the public at large, for it is the public exchequer and, consequently, public interest that stand to suffer. Unlike in the case of private parties, where the consequences of dismissal may remain confined to the litigants themselves, the dismissal of a proceeding initiated by the State has a cascading effect, as it directly impacts the community whose interests the State represents. Adoption of a rigid and uncompromising standard towards the State in matters of condonation of delay, would, in substance, punish the public for delays that are occasioned by systemic and institutional constraints rather than by deliberate inaction or negligence.

181. It is in light of the aforesaid, the understanding which prevailed was that, for the purpose of Section 5 of the Limitation Act, in cases where condonation of delay is sought by the State or any of its instrumentalities, there the courts should not apply the standard of strict scrutiny that is ordinarily applied to private parties. Instead, a pragmatic approach must be adopted that acknowledges the practical realities of governmental functioning and accords some latitude to the State, consistent with the maxim; 'lex non cogit ad impossibilia' i.e., the law does not compel the impossible. The courts ought to remain mindful of the proverbially slow pace at which governmental decisions often move, weighed down by procedural encumbrances and institutional delays. A certain degree of latitude, therefore, must be extended to the State and its instrumentalities in matters concerning the condonation of delay, lest the rigidity of limitation operate to the detriment of public interest.

182. The ultimate test that was evolved whether substantial justice would suffer if condonation were denied. Thus, the balance was tilted in favour of condonation when the litigant was the State, as denial could prejudice public interest, frustrate legitimate claims, or impact the public exchequer. The jurisprudence therefore evolved to give primacy to public interest over procedural rigidity.

183. However, the aforesaid understanding was never intended to be accepted as an immutable proposition or treated as gospel truth. This is particularly evident from a catena of other decisions of this Court that were rendered around the same time.

184. Long before the decision of K.V. Ayisumma (supra) this Court in State of W.B. v. Administrator, Howrah Municipality reported in (1972) 1 SCC 366 had observed that irrespective of whether the litigant is a Government entity or a private person, the provisions of law applicable are the same and as such same consideration that is shown by courts to a private party when he claims the protection of Section 5 of the Limitation Act should also be adopted towards the State. The expression "sufficient cause" cannot be construed too liberally, merely because the party is the Government and the courts are not bound to accept readily whatever has been stated on behalf of the State to explain the delay. The relevant observations read as under: -

"26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken.

Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasise that courts have to use their judicial discretion in the matter soundly in the interest of justice.

27. Mr D. Mukherji, learned Counsel for the first respondent, is certainly well-founded in his contention that the expression "sufficient cause" cannot be construed too liberally, merely because the party is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of Section 5 of the Limitation Act should also be available to the State.

28. In the case before us, it must be stated in fairness to the learned Solicitor General that he has not contended that the State must be treated differently. On the other hand, his contention is that the reasons given by the appellant, which, according to him will establish "sufficient cause" have not at all been adverted to, much less, considered by the High Court. In our opinion, the contention of the learned Solicitor General is perfectly justified in the circumstances of this case. The High Court, certainly, was not bound to accept readily whatever has been stated on behalf of the State to explain the delay. But, it was the duty of the High

Court to have scrutinised the reasons given by the State and considered the same on merits and expressed an opinion, one way or the other. That, unfortunately, is lacking in this case."

(Emphasis supplied)

185. Similarly in Lanka Venkateswarlu v. State of A.P. reported in 2011 SCC OnLine SC 403 this Court deprecated the High Court in condoning the delay in filing of the appeal therein, that was occasioned not by any unavoidable circumstance, but by the sheer inefficiency and ineptitude of the Government Pleaders concerned, merely because the party seeking condonation happened to be the State. In doing so, this Court observed that concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation, particularly in cases where the court concludes that there is no justification for the delay. The relevant observations read as under: -

"26. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay. This is especially so in view of the remarks made by the High Court about the delay being caused by the inefficiency and ineptitude of the Government Pleaders.

27. The displeasure of the Court is patently apparent from the impugned order itself. In the opening paragraph of the impugned order the High Court has, rather sarcastically, dubbed the Government Pleaders as without merit and ability. Such an insinuation is clearly discernable from the observation that, "This is a classic case, how the learned Government Pleaders appointed on the basis of merit and ability (emphasis supplied) are discharging their function protecting the interest of their clients."

Having said so, the High Court, graphically narrated the clear dereliction of duty by the Government Pleaders concerned in not pursuing the appeal before the High Court diligently. The High Court has set out the different stages at which the Government Pleaders had exhibited almost culpable negligence in performance of their duties. The High Court found the justification given by the Government Pleaders to be unacceptable. Twice in the impugned order, it was recorded that in the normal course, the applications would have been thrown out without having a second thought in the matter. Having recorded such conclusions, inexplicably, the High Court proceeds to condone the unconscionable delay.

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms."

(Emphasis supplied)

186. It is also not out of place to mention that the observations made by this Court in the decisions of Chandra Mani (supra) and Lipok AO (supra) as regards the distinction between the State or any of its instrumentalities visà- vis a private individual, for the purpose of Section 5 of the Limitation Act, should be understood in its proper context and true spirit.

187. This Court in Chandra Mani (supra) and Lipok AO (supra) explicitly held that the State or any of its instrumentalities cannot be put on the same footing as a private party for the purposes of condonation of delay under Section 5 of the Limitation Act. It observed that an individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants, bound by bureaucratic methodology. Thus, it held that although equality before law is sacrosanct, equality does not mandate a refusal to recognise institutional realities.

188. However, what is equally significant to note is that the aforesaid observations of this Court in Chandra Mani (supra) and Lipok AO (supra) were accompanied by a clear message to the State and all its instrumentalities, that a leisurely and lethargic approach cannot continue for all times to come. It had urged the State and all public authorities to constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts, if not then then endeavour should be made towards arriving at a settlement instead, rather than reagitating the belated causes before the courts. It further observed that where the case requires an appeal or application to be filed, despite the delay, then prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any.

189. This was followed by Indian Oil Corpn (supra) wherein this Court sowed the seeds for the shift in approach of the courts in matters where condonation of delay was sought by the State or its instrumentalities, inasmuch as it held that the

Government and its various functionaries cannot be placed on a pedestal higher than any ordinary litigants, and held that the pragmatic and justice-oriented approach of the courts should be confined only to cases where there was no gross negligence or deliberate inaction on part of the State.

190. From the aforesaid, it is manifest that prior to the decision of this Court in Postmaster General (supra), the approach was characterised by judicial sympathy towards the State and its instrumentalities in matters of condonation of delay, owing to the peculiar nature of their functioning. At the same time, there also existed contrary views such as Administrator, Howrah Municipality (supra) and Lanka Venkateswarlu (supra) which held that, irrespective of whether the litigant is a Government entity or a private individual, the provisions of limitation would apply uniformly, and any leeway shown by the courts would also remain the same.

191. Even in the decisions of Chandra Mani (supra) and Lipok AO (supra) where this Court recognized the necessity for drawing a demarcation between a State or any of its instrumentalities, on the one hand and a private individual, on the other, for the purpose of Section 5 of the Limitation Act, this Court simultaneously observed that such differential treatment cannot continue for all times to come.

We say so, because this Court, in the latter parts of the aforesaid decisions, conveyed an emphatic message to all the States and its instrumentalities to constitute legal cells for the timely scrutiny of its cases, to explore the possibility of settlement instead of pursuing belated claims, wherever possible and to ensure that filing of appeals or application as the case may be, is undertaken expeditiously, and the officer responsible for pursuing such action is made personally liable for lapses, if any.

ii. Shift in jurisprudence on Condonation of Delay after the decision of Postmaster General.

192. However, despite the aforementioned exhortations of this Court in Chandra Mani (supra) and Lipok AO (supra), the same largely remained unheeded as the State and its instrumentalities continued to approach the courts after significant delays under Section 5 of the Limitation Act as though it were a license for indolence and institutional lethargy.

193. It was in this backdrop, particularly, the persistent disregard to the laws of limitation by the States and its instrumentalities that compelled this Court in Postmaster General (supra) to deviate from the earlier practice of extending unwarranted leniency governmental agencies, and to emphasise that the law of limitation binds the State no less than the ordinary litigant. The said decision is in three parts:-

(i) First, This Court held that claims of the Government and its functionaries being an impersonal machinery and inherited with bureaucratic methodology can no longer be accepted to excuse delays under Section 5 of the Limitation Act, in view of the modern technologies being used and available. The relevant observations read as under: -

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government."

(Emphasis supplied)

(ii) Secondly, this Court in Postmaster General (supra) held that it was high time that the practice of condoning delay merely because the litigant is a government entity was done away with, and that delay should be condoned only where there is a reasonable and acceptable explanation for such delay and was accompanied by a bona fide effort. It further observed that the usual explanation of bureaucratic inefficiency and of procedural red tapism can no longer be accepted. The relevant observations read as under:-

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process."

(Emphasis supplied)

(iii) Lastly, as regards the earlier line of thought that if meritorious causes advanced by the State or any of its instrumentalities are dismissed on the ground of delay, the resultant hardship would ultimately fall upon the public exchequer

and thereby the public at large, was emphatically rejected by this Court. It held that condonation of delay is a matter of exception and cannot be treated as an anticipated privilege accruing to governmental bodies by reason of their hierarchical structure or bureaucratic methodology.

The law shelters everyone under the same light and should not be swirled for the benefit of a few. Thus, the plea of public interest cannot by any stretch be used as a carte blanche for official inaction. It observed that Government departments, far from being entitled to presumptive indulgence, are in fact under a higher obligation to discharge their functions with diligence, vigilance, and scrupulous regard to limitation. The relevant observations read as under: -

"29. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

(Emphasis supplied)

194. In Amalendu Kumar Bera v. State of West Bengal reported in (2013) 4 SCC 52 this Court held that although a liberal approach is to be adopted in matters of condonation of delay, such indulgence cannot be extended in cases where the delay is attributable to serious laches or negligence on the part of the State. Delays as a result of the official business of the government requires its pedantic approach from public justice perspective. It held that delay should not be condoned mechanically in the absence of "sufficient cause" merely because the party happens to be the State. The relevant observations read as under: -

"9. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent State. There is no dispute that the expression "sufficient cause" should be considered with pragmatism in justice oriented approach rather than the technical detection of "sufficient cause" for explaining every day's delay. However, it is equally well settled that the courts albeit liberally considered the prayer for condonation of delay but in some cases the court may refuse to condone the delay inasmuch as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion.

The delay in official business requires its pedantic approach from public justice perspective. In a recent decision in Union of India v. Nripen Sarma [(2013) 4 SCC 57 : AIR 2011 SC 1237] the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant Union of India. The High Court refused to condone the delay on the ground that the

appellant Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The High Court also expressed its anguish and distress with the way the State conducts the cases regularly in filing the appeal after the same became operational and barred by limitation.

10. In the instant case as noticed above, admittedly earlier objection filed by the respondent State under Section 47 of the Code was dismissed on 17-8-2010. Instead of challenging the said order the respondent State after about one year filed another objection on 15-9-2011 under Section 47 of the Code which was finally rejected by the executing court. It was only after a writ of attachment was issued by the executing court that the respondent preferred a civil revision against the first order dated 17-8-2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been shown which would entitle the respondent to get a favourable order for condonation of delay.

True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree-holder puts the decree in execution. As noticed above, the decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the respondent State from interfering with the possession of the suit property of the appellant-plaintiff.

It is evident that when the State tried to interfere with possession the decree-holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. In our opinion their delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. This aspect of the matter has not been considered by the High Court while deciding the petition for condoning the delay. Merely because the respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of "sufficient cause" delay shall not be condoned."

(Emphasis supplied)

195. The view taken in the decision of Postmaster General (supra) also came to be endorsed and followed by this Court in State of U.P. v. Amar Nath Yadav reported in (2014) 2 SCC 422.

196. In State of Madhya Pradesh & Ors. v. Bherulal reported in (2020) 10 SCC 654 this Court expressed its deep anguish over the routine manner in which the State and its instrumentalities continue to seek condonation of delay on the pretext of bureaucratic inefficiencies. It held that the earlier decisions that had afforded a degree of leeway for such inefficiencies no longer reflects the correct position of law insofar as condonation of delay is concerned. This Court held that in view of the decision of Postmaster General (supra), any delay as a result of unavailability of the documents or the process of arranging for them through bureaucratic process works is no longer an acceptable reason or excuse to condone such delay. The relevant observations read as under:-

"2. We are constrained to pen down a detailed order as it appears that all our counselling to the Government and government authorities has fallen on deaf ears i.e. the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the legislature to expand the time period for filing limitation for government authorities because of their gross incompetence. That is not so. Till the statute subsists, the appeals/petitions have to be filed as per the statutes prescribed.

3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji]. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd.

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "due to unavailability of the documents and the process of arranging the documents". In para 4, a reference has been made to "bureaucratic process works, it is inadvertent that delay occurs".

6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement.

The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action

is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

(Emphasis supplied)

197. This Court in Bherulal (supra) further cautioned that where any public authority persists in approaching the courts for condonation of delay on such feeble and untenable grounds would not only be denied the indulgence of condonation but would also be imposed with costs for wastage of judicial time. The relevant observations read as under:-

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

(Emphasis supplied)

198. This Court in University of Delhi v. Union of India, reported in (2020) 13 SCC 745 held that consideration for condonation of delay under Section 5 of the Limitation Act does not and cannot vary depending on the identity or status of the party, whether it be the Government, a public body, or a private litigant, so as to apply a different yardstick. The ultimate consideration should be to render even-handed justice to the parties, irrespective of their status. Furthermore, any explanation which betrays a casual or indifferent approach on the part of the Government or its instrumentalities, demonstrating a lack of regard for the mandate of limitation, cannot be excused or condoned merely by invoking the impersonal character of bureaucratic decision-making. The relevant observations read as under: -

"23. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties.

Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the

backdrop of each case and will have to be weighed carefully by the courts based on the fact situation.

In Katiji [LAO v. Katiji, (1987) 2 SCC 107] the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight of is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800%.

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal.

In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified."

(Emphasis supplied)

199. A similar view was iterated in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Pvt. Ltd. reported in (2021) 6 SCC 460 wherein this Court placing reliance on Postmaster General (supra) held that a different yardstick for condonation of delay cannot be laid down merely because the Government is involved. The relevant observations read as under: -

"59. Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in Postmaster General v. Living Media (India) Ltd."

200. In State of Odisha & Ors. v. Sunanda Mahakuda reported in (2021) 11 SCC 560 this Court held that the leeway which was earlier enjoyed by the State and its instrumentalities on account of bureaucratic inefficiencies in matters of condonation of delay is no longer available in view of the technological advancement and the shift in jurisprudence as elucidated in Postmaster General

(supra). It observed that no case under Section 5 of the Limitation Act could be said to be made out where there is no reason or excuse given in respect of the period for which condonation is sought. The relevant observations read as under: -

"3. A reading of the aforesaid shows that there is no reason much less sufficient and cogent reason assigned to explain the delay and the application has also been preferred in a very casual manner. We may notice that there are number of orders of this State Government alone which we have come across where repeatedly matters are being filed beyond the period of limitation prescribed. We have been repeatedly discouraging such endeavours where the Governments seem to think that they can walk in to the Supreme Court any time they feel without any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them.

4. There is no doubt that these are cases including the present one where the Government machinery has acted in an inefficient manner or it is a deliberate endeavour. In either of the two situations, this Court ought not to come to the rescue of the petitioner. No doubt, some leeway is given for Government inefficiency but with the technological advancement now the judicial view prevalent earlier when such facilities were not available has been over taken by the elucidation of the legal principles in the judgment of this Court in Postmaster General v. Living Media (India) Ltd. We have discussed these aspects in State of M.P. v. Bherulal and thus, see no reason to repeat the same again.

5. In the present case, the State Government has not even taken the trouble of citing any reason or excuse nor any dates given in respect of the period for which condonation is sought. The objective of such an exercise has also been elucidated by us in the aforesaid judgment where we have categorised such cases as "certificate cases".

6. The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the State Government feels that they have suffered losses, then it must fix responsibility on officers concerned for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits.

7. Looking to the period of delay and the casual manner in which the application has been worded, we consider it appropriate to impose costs of Rs 25,000 to be deposited with the Supreme Court Advocates-on-Record Welfare Fund. The

amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing both the writ appeal and the special leave petition and a certificate of recovery be also filed in this Court within the same period of time."

(Emphasis supplied)

201. Similarly, in State of U.P. v. Sabha Narain, reported in (2022) 9 SCC 266, this Court once again deprecated the tendency of State and its instrumentalities to proceed on the assumption that they may approach the courts at their own convenience and sweet will, disregarding the period of limitation prescribed by statute, as though the Limitation statute does not apply to them. It held that the leeway which was at one point extended to the Government/public authorities on account of innate functional inefficiencies is no more the norm, particularly in the wake of the decision of Postmaster General (supra). The relevant observations read as under: -

"3. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (L&S) 84] and State of Odisha v. Sunanda Mahakuda [State of Odisha v. Sunanda Mahakuda, (2021) 11 SCC 560 : (2022) 1 SCC (Cri) 300 : (2022) 2 SCC (L&S) 393].

The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Postmaster General v. Living Media India Ltd. [Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] Despite this, there seems to be little change in the approach of the Government and public authorities.

4. We have also categorised such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is

time when officers concerned responsible for the same, bear the consequences. The irony, emphasised by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

5. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner(s) of Rs 25,000 for wastage of judicial time which has its own value and the same be deposited with the Supreme Court Advocates-on-Record Welfare Fund within four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the same period of time."

(Emphasis supplied)

202. In Union of India v. Jahangir Byramji Jeejeebhoy reported in 2024 SCC OnLine SC 489, this Court speaking through one of us (J.B. Pardiwala J.) held that it hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning a gross delay in filing of an appeal or application, as the case may be. It held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The relevant observations read as under: -

"25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

30. In Postmaster General v. Living Media India Limited, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an

exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted.

(Emphasis supplied)

203. This Court in Jahangir Byramji Jeejeebhoy (supra) further held that when it comes to Section 5 of the Limitation Act, delay should not be excused as a matter of generosity. Rendering substantial justice is not a free-pass to cause prejudice to the opposite party. The vital test for condoning the delay is for the party that is praying for such condonation to prove that it was reasonably diligent in prosecuting the matter. The relevant observations read as under: -

"35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case."

(Emphasis supplied)

iii. The ratio of the decision of Postmaster General.

204. We are conscious of a few decisions of this Court, particularly, Inder Singh v. State of M.P. reported in 2025 SCC OnLine SC 600, Sheo Raj Singh v. Union of India, reported in (2023) 10 SCC 531 and State of Manipur v. Koting Lamkang reported in (2019) 10 SCC 408 wherein the decision of Postmaster General (supra) was distinguished or not followed, and the delay on account of the government entity therein was condoned. We shall briefly take a look at these decisions.

205. In Koting Lamkang (supra) there was a delay of 312-days in preferring the regular first appeal by the State Government therein. Both the courts below had declined to condone the delay on the ground that there was no explanation for a certain period of time. This Court whilst setting aside the impugned order and condoning the delay in filing of the appeal, held that interest of justice would be better served, if the delay is condoned and the matter is allowed to be heard on merits, as otherwise it would be the public interest which would likely suffer if the State is non-suited on the ground of delay.

We have gone through the decision multiple times. Nowhere has this Court in Koting Lamkang (supra) referred to or taken note of the change in position of law

by the decision of Postmaster General (supra). Thus, in our considered opinion, this decision falls smack of and is in teeth of the ratio laid in Postmaster General (supra) that has been consistently followed.

206. In Inder Singh (supra) there was a delay of 1537-days in filing of the Second Appeal by the respondent state therein. While the First Appellate Court refused to condone the delay for want of sufficient cause, the High Court on the other hand, condoned the delay. In appeal, this Court whilst affirming the condonation of delay by the High Court observed that the respondent state therein had demonstrated "sufficient cause" for the delay by virtue of having pursed a Review Petition, which itself had been delayed, and further delay on account of COVID-19.

Although, the decision of Postmaster General (supra) was not alluded to, yet a closer reading of the decision reveals that the explanation offered by the respondent state was not the typical departmental delays or bureaucratic inefficiency, and rather had assigned detailed, plausible account of delay, which is why the delay was condoned. Even otherwise, what is of importance, is that, nowhere has this Court in Inder Singh (supra) accorded any special treatment in condonation of delay, by virtue of the party being a State, thus, we need not dwell on this decision any further.

207. The decision of Sheo Raj Singh (supra) is of particular significance, and may be the most instructive in understanding the decision of Postmaster General (supra). In the said case, there was a delay of 479-days in preferring the appeal. The explanation put forth by the respondent state for the delay were of the nature of lamentable institutional inefficiency and the deplorable bureaucratic inertia, which ultimately found favour with the High Court, and accordingly the delay was condoned. In appeal, the decision of the High Court was assailed on the touchstone of the decisions of Postmaster General (supra) and a catena of other decisions that had held that such an explanation of bureaucratic lethargy cannot be accepted.

208. This Court in Sheo Raj Singh (supra) exhaustively examined all the decisions of this Court, prior to and after the decision of Postmaster General (supra). It observed that although, the subsequent decisions of this Court have not accepted governmental lethargy, tardiness and indolence in presenting appeals as sufficient cause for condonation of delay, yet, because the High Court had condoned the delay by accepting such explanation before the decision of Postmaster General (supra) was rendered, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach as expounded in the decisions which earlier occupied the field. It was in light of the aforesaid that this Court, refused to interfere with the exercise of discretion by the High Court therein. The relevant observations read as under: -

"33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that:

"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong"."

34. The order under challenge in this appeal is dated 21-12- 2011. It was rendered at a point of time when the decisions in Katiji, Ramegowda, Chandra Mani, K.V. Ayisumma and Lipok AO were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [State of M.P. v. Bherulal16 is one such decision apart from University of Delhi which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above.

41. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision1 to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the courts, where certain leeway could be provided to the State.

The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

(Emphasis supplied)

209. At this juncture, it would be apposite to refer to the decision of this Court in State of Rajasthan & Anr. v. Bal Kishan Mathur (Dead) through Legal Representatives & Ors. reported in (2014) 1 SCC 592, wherein this Court explained the ratio of the decision in Postmaster General (supra). This Court explained that as per Postmaster General (supra) there cannot be any preferential treatment towards the State or any of its instrumentality, when it comes to condonation of delay.

It further explained that as long as there is no gross negligence or deliberate inaction or lack of bona fides, a broad and liberal approach should be adopted when dealing with an application for seeking condonation of delay. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third-party rights had become embedded during the interregnum the courts should lean in favour of condonation. The relevant observations read as under:-

"8. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation the State cannot claim any preferential or special treatment. However, in a situation where there has been no gross negligence or deliberate inaction or lack of bona fides this Court has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation.

Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third-party rights had become embedded during the interregnum the courts should lean in favour of condonation. Our observations in Postmaster General v. Living Media India Ltd. and Amalendu Kumar Bera v. State of W.B. do not strike any discordant note and have to be understood in the context of facts of the respective cases."

(Emphasis supplied)

210. What may be discerned from the aforesaid is that the jurisprudence on condonation of delay under Section 5 of the Limitation Act, particularly where the State or any of its instrumentality is involved, has witnessed a significant shift. From a regime that once accorded preferential indulgence to the State, premised on its bureaucratic complexities and institutional inertia, the law has now evolved to insist upon parity between the government and private litigants. The rationale is that public interest is better served not by excusing governmental inefficiency, but by fostering accountability, diligence, and responsibility in the conduct of public litigation.

211. The earlier decisions of this Court, particularly in K.V. Ayisumma (supra), Chandra Mani (supra), Lipok AO (supra) and Indian Oil Corpn (supra) insofar as they favoured a liberal approach towards the State or any of its instrumentality in matters of condonation of delay, and showed indulgence in condoning the same on ground of impersonal and slow-moving nature of these entities, no longer reflects the correct position in law. No litigant, be it a private party or a State or any of its functionaries, is entitled to a broader margin of error, falling in the category of inaction, negligence or casualness, in matters of limitation.

212. The law as it presently stands, post the decision of Postmaster General (supra), is unambiguous and clear. Condonation of delay is to remain an exception, not the rule. Governmental litigants, no less than private parties, must demonstrate bona fide, sufficient, and cogent cause for delay. Absent such justification, delay cannot be condoned merely on the ground of the identity of the applicant.

213. From a combined reading of Bal Kishan Mathur (supra) and Sheo Raj Singh (supra) it is equally manifest that the ratio of Postmaster General (supra) is, in essence, twofold. First, that State or any of its instrumentalities cannot be accorded preferential treatment in matters concerning condonation of delay under Section 5 of the Limitation Act. The State must be judged by the same standards as any private litigant. To do otherwise would not only compromise the sanctity of limitation.

The earlier view, insofar as it favoured a liberal approach towards the State or any of its instrumentality is no more the correct position of law. Secondly, that the habitual reliance of Government departments on bureaucratic red tape, procedural bottlenecks, or administrative inefficiencies as grounds for seeking condonation of delay cannot always, invariably accepted as a "sufficient cause" for the purpose of Section 5 of the Limitation Act. If such reasons were to be accepted as a matter of course, the very discipline sought to be introduced by the law of limitation would be diluted, resulting in endless uncertainty in litigation.

214. What has been conveyed in so many words, by the decision of Postmaster General (supra) is that while excuses premised solely on bureaucratic lethargy cannot, by themselves, constitute sufficient cause, there may nonetheless be circumstances where the explanation offered, though involving bureaucratic procedures, reflects a genuine and bona fide cause for the delay. In such instances, the true test is whether the explanation demonstrates that the State acted with reasonable diligence and whether the delay occurred despite efforts to act within time. Where such bona fides are established, the Court retains the discretion to condone the delay.

215. In other words, Postmaster General (supra) does not shut the door on condonation of delay by the State in all cases involving bureaucratic processes. The real distinction lies between a case where delay is the result of gross negligence, inaction, or casual indifference on the part of the State, and a case where delay has occurred despite sincere efforts, owing to the inherent complexities of governmental decision-making. While the former category must necessarily be rejected to uphold the discipline of limitation, the latter can still attract judicial indulgence where public interest is at stake and the cause is shown to be reasonable.

216. In this regard, the vital test that has to be employed, wherever "sufficient cause" is sought to be demonstrated on the ground of bureaucratic inefficiencies is to distinguish between whether the same is an "explanation" or an "excuse". Although the two may appear to be one and the same, yet there exists a fine but pertinent distinction between an "excuse" and an "explanation".

217. As illustrated in Sheo Raj Singh (supra) an "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. An "explanation" on the other hand would demonstrate genuineness in actions and reasons assigned, and would other wise be devoid of any gross negligence, deliberate inaction or lack of bona fides, or indifference or casualness in conduct. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts.

218. However, equally important to note is that wherever, any explanation is sought to be given on account of bureaucratic lethargy and inherent complexities of governmental decision-making, the same more often than not would invariably always is an "excuse", as experience has shown us, depicted from a long line of decisions of this Court. It is at this stage, where the decision of Postmaster General (supra) assumes significance. It seeks to convey the messages, that court should not be agnostic, to how the State or its instrumentalities, often tend to take the recourse of condonation of delay in a casual manner.

219. Which is why, as per the ratio of Postmaster General (supra) and a plethora of other subsequent decision, the ordinary approach of the courts, in cases where delay is sought to be condoned by offering the explanation of bureaucratic lethargy or red-tapism, must be one of circumspection and reluctance. The courts ought to loathe in accepting such explanations as "sufficient cause". They should apply their minds carefully, be slow in condoning delays on such reasons, and exceptional instances, where the explanation is found to be genuine, reflective of reasonable vigilance and promptitude in conduct, and free from gross negligence,

deliberate inaction, lack of bona fides, or casual indifference, should such an explanation be accepted.

iv. Whether exercise of discretion in view of the earlier position of law may be interfered with?

220. Before we close this issue, we may address ourselves on one contention, vociferously canvassed on behalf of the respondents herein. It was submitted that since, in the present case the discretion to condone the delay was exercised by the High Court in 2017, and prior to the decisions of Bherulal (supra) and University of Delhi (supra), the High Court cannot be faulted with accepting the explanation offered by the respondents, tune with the decisions earlier occupying the field. Accordingly, it was urged that the exercise of discretion by the High Court must be tested on the anvil of the decisions that occupied the field when the delay was ultimately condoned. In this regard, reliance was placed on Sheo Raj Singh (supra).

221. As already discussed, in Sheo Raj Singh (supra) since the explanation of bureaucratic inefficiencies was accepted and delay had been condoned by the High Court by exercising its discretion before the decision of Postmaster General (supra) came to be rendered, this Court in Sheo Raj Singh (supra) held that the exercise of discretion by the High Court would then, invariably have to be tested on the anvil of the liberal and justice oriented approach as expounded in the decisions which earlier occupied the field. We may at the cost of repetition again reproduce the relevant observations of Sheo Raj Singh (supra) in this regard:-

"34. The order under challenge in this appeal is dated 21-12- 2011. It was rendered at a point of time when the decisions in Katiji, Ramegowda, Chandra Mani, K.V. Ayisumma and Lipok AO were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [State of M.P. v. Bherulal16 is one such decision apart from University of Delhi which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above."

(Emphasis supplied)

222. At the outset, we may reject this contention outrightly. We say so, because the decisions of this Court in Bherulal (supra) and University of Delhi (supra) have followed the ratio laid in Postmaster General (supra), which was rendered

all the way back in 2012 i.e., much prior to when the delay came to be condoned by the High Court in the case on hand.

223. Even if we assume, that the decision Postmaster General (supra) was not in existence, the contention of the respondent deserves to be rejected for the reasons we shall assign hereunder.

224. We have already elaborated in the earlier parts of this judgment on the twopronged inquiry that is required to be undertaken by the appellate court when sitting in appeal over a lower court's decision in condoning the delay, which involves, first, looking into the existence of a "sufficient cause" and secondly, into the exercise of discretion itself, where the first test is satisfied. This threshold test, involves ascertaining whether the order passed by the court below is not vitiated due to any material irregularity, want of evidence, extraneous considerations, failure to take into consideration any relevant fact, or being contrary to the law of the land (emphasis).

225. Where, however, the law, during the pendency of the appeal, has undergone a shift, there the court sitting in appeal, would not only be bound by the change in position of law, but would be well empowered to interfere with the lower courts decision, on that ground alone, notwithstanding the fact, that when the original decision was rendered, that was not the position of law. If any authority is required, in this regard, one may profitably refer to the decision of this Court in Directorate of Revenue Intelligence v. Raj Kumar Arora & Ors. reported in [2025 INSC 498] wherein one of us (J.B. Pardiwala J.) held that a decision of the court which either overrules or results in a change in position of law, generally operates retrospectively.

226. The question, whether interference on ground of change in law during pendency of proceedings, would really turn upon the context and nature of the discretion exercised. Ordinarily, such an interference would not only be justified but also warranted. But when it comes to condonation of delay, the considerations are slightly different, inasmuch as the court is required to prioritize a pragmatic and justice-oriented approach over technicalities.

Rules of limitation are not meant to destroy the rights of parties. Thus, in such situations, the court may be refuse to interfere with the exercise of discretion by the lower court in condoning the delay, as long as view that was arrived at by the court below could have been taken by it, from the material on record, keeping in mind the position of law that prevailed then. However, this would depend upon the peculiar facts and circumstances of each case, and the attending circumstances, and what inevitably follows is that, there may be situations, where the appellate court may interfere, keeping in mind the changed position of law. No hard and fast rule can be laid down in this regard.

227. We may, with a view to obviate any confusion, clarify that 'change in position of law' should not be conflated with the 'position of law' that existed at the time of exercise of discretion to condone delay. In the former, the courts may or may not, interfere with the condonation of delay, if the same is in contradiction to a subsequent change in law, but in the latter, the courts ought to interfere with condonation of delay, for such a view could not have been plausibly arrived at by the lower court, in view of the law that already existed at the time of condonation of delay.

v. Public Policy vis-à-vis Public Interest in matters of delay on part of the State or any of its instrumentalities.

228. Limitation laws are themselves grounded in public policy, as already discussed in the preceding paragraphs of this judgment, it is based on the maxim 'interest reipublicae ut sit finis litium' i.e., "it is for the general welfare that a period be put to litigation". Therefore, public interest is better served by timely governmental action than by condoning repeated lapses. State cannot simultaneously seek to represent the interest of the public and yet consistently fail to protect that very interest by allowing limitation periods to lapse.

229. Public interest is best served by ensuring efficiency and diligence in governmental functioning, rather than by condoning its lapses as a matter of course. Thus, a liberal inclination towards the State or any of its instrumentalities, in matters of condonation of delay, cannot be adopted, merely on the presumption that, if the delay is not condoned, public interest runs the risk of suffering, by a meritorious matter being thrown out. Public interest lies not in condoning governmental indifference, but in compelling efficiency, responsibility, and timely action.

230. To permit condonation of delay to become a matter of course for the Government would have the deleterious effect of institutionalising inefficiency. It would, in substance, incentivise indolence and foster a culture where accountability for delay is eroded. If the State is assured that its lapses will invariably be excused under the rubric of "public interest," there would remain little incentive for its officers to act with vigilance or for its instrumentalities to streamline procedures for timely action. The consequence would not be the advancement of public interest but rather its betrayal.

231. Public interest, therefore, does not lie in condoning governmental negligence, but in compelling efficiency, responsibility, and timely decision-making. This Court has time and again emphasised that liberal condonation of delay on behalf of the State, merely on the ground that refusal might cause the dismissal of a potentially meritorious matter, is a misplaced proposition. Public interest is not synonymous with the cause of the Government; it is, instead,

synonymous with the enforcement of rule of law, certainty in legal rights, and an administrative machinery that functions with diligence and accountability.

232. It must, therefore, be underscored that the guiding principle is not the protection of governmental indifference but the promotion of responsible governance. The State is under a higher duty to act in time, for in every matter it litigates, it does so not in its private capacity, but as the trustee of the people's interest. Hence, repeated indulgence in condoning delays on grounds of bureaucratic inefficiency would amount to eroding the very object of limitation statutes, which are enacted in every civilised jurisdiction for the sake of finality, certainty, and public order.

233. Any other view, would invariably defeat the sound public policy embodied in the Limitation Act and fail in enthusing efficiency in administration, and bring a balance between accountability and autonomy of action, It would result in giving immunity or carte blanche power to act as it pleases with the public at whim or vagary and inevitably spell doom all over the collective responsibility that the State and its instrumentalities are entrusted with.

Thus, we are of the considered opinion, that delay cannot be condoned, merely because not doing so would result in non-suiting the State and thereby run the ostensible risk of public interest suffering. Such by no stretch can be the sole consideration for the purpose of Section 5 of the Limitation Act, as to do so would be to ignore the provision of Section 3 and the overarching public policy of giving quietus to lis, that forms the bedrock of the Limitation Act.

234. Even otherwise, it is no more res-integra, that law of limitation has to be applied all but the same and with all its rigour, even if it may harshly affect a particular party. In Basawaraj (supra) this Court observed that a result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. Even if the statutory provision may cause hardship or inconvenience to a particular party the court has no choice but to give full effect to the same. It is based on the legal maxim dura lex sed lex i.e., "the law is hard but it is the law". The relevant observations read as under: -

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. 'A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.' The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it

is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale."

(Emphasis supplied)

235. An application seeking condonation of delay is to be decided only within the parameters laid down by this Court. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, on lofty ideals amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the statute.

E. Whether the High Court was justified in condoning the delay?

236. We heard Mr. Akshat Shrivastava, the learned counsel appearing for the appellant. He would argue that the respondent no. 1 failed to assign any "sufficient cause" for the gross delay, more particularly as to why the second appeal could not be filled within the prescribed period of limitation. He submitted that the High Court erred in allowing the application seeking condonation of delay in the absence of any sufficient cause thereof.

The learned counsel contended that the filing of the second appeal by the respondent housing corporation is nothing but gross abuse of process of law, more particularly when the officials of the respondent housing corporation did nothing for a period of almost 6-years, despite notice being served to them at the time of execution of the decree on 28.03.2011. He would submit that the condonation of such gross and inordinate delay by the High Court could be said to be ex-facie illegal and against the very fundamental cannons of the law of limitation and public policy.

237. Per contra, Ms. Kiran Suri, the learned Senior Counsel appearing for the respondent no. 1, would argue that the High Court no error not to speak of any error of law in condoning the delay and in accepting the sufficient cause assigned for the same. She would submit that, when substantial justice and technical considerations are pitted against each other, the latter must give way to the former, more particularly when public interest is involved. She further submitted that the delay was on account of the deliberate negligence on the part of the officers, and in such circumstances the interest of respondent no. 1, as an instrumentality of State, must not be put to a disadvantage. She further brought to

the notice of this Court that the respondent no. 1 had already taken disciplinary action against the erring delinquent officials.

238. The learned Senior Counsel also contended that the suit filed by the appellant was one for possession, however, the First Appellate Court proceeded to erroneously grant the relief of compensation, aggrieved by which the respondent no. 1 had to prefer second appeal before the High Court. She submitted that the persons who were found to be in unlawful possession of the suit property had nothing to do with the respondent no. 1, and that it would be very harsh to recover such compensation from the respondent no. 1, which functions on public exchequer.

239. Indisputably, there was a gross and inordinate delay of almost 11-years in filing the second appeal. The respondent no. 1 maintains that the delay was on account of five erring officials, including an Executive Engineer who was designated as the litigation conducting officer. It is the case of the respondent housing corporation that the day it came to learn about the decree passed by the First Appellate Court dated 15.04.2006, its legal department on 27.05.2006 advised the respondent to prefer a second appeal. However, due to the sheer negligence exhibited by the Executive Engineer in furnishing the requisite information and documents to the Special Land Acquisition Officer (hereinafter the "SLAO"), in spite of various correspondence requesting for the same on 01.06.2006, 09.06.2006 and 20.07.2006, respectively the second appeal could not be filed in time.

240. It further appears that the decision to file the second appeal was taken only on 17.10.2006, which was anyway beyond the limitation period. Despite the expiry of the limitation period, it is only after almost a year that the matter was assigned to an advocate, on whose complaints of no assistance from the Executive Engineer, the SLAO pursued the Executive Engineer again, vide letter dated 16.10.2007, requesting him to provide the necessary files and record of the case. It is the case of the respondent no. 1, that such correspondences were exchanged until 2008.

241. The execution proceedings came to be initiated by the appellant on 20.01.2011, pursuant to which the first notice was issued to the respondent no. 1 on 28.03.2011. Despite the callousness exhibited by the person holding the office of the Executive Engineer, the same officer was appointed to make representations for the respondent no. 1 in the proceedings. The Commissioner of the respondent no. 1 was informed about the aforesaid proceedings on 28.01.2017 when an order of attachment was passed by the Executing Court. Thereafter, a new officer was appointed to facilitate the respondent's litigation, and the second appeal was finally filed on 10.02.2017 before the High Court, along with an application under Section 5 of the 1963 Act read with Section 151 of the CPC.

242. To our utter shock and dismay, the High Court accepted the explanation of sufficient offered by the respondent no. 1. We are at our wits "end" to understand the aforesaid findings recorded by the High Court. It appears that the respondent no. 1 has tried to make the Executive Engineer a scapegoat, who undoubtedly acted in a most irresponsible and callous manner but did not have to take the entire blame to himself.

This is more apparent from the fact that the disciplinary proceedings against the concerned Executive Engineer allegedly responsible for the delay was initiated only on 10.03.2017, while the application for condonation of delay was filed exactly a month before i.e., on 10.02.2017. It appears to us that the respondent no. 1 took such coercive actions only to ingratiate itself before the High Court to demonstrate its bona fides and butter its cries of vigilance.

243. It was urged by the learned Senior Counsel appearing for the respondents herein that the deliberate inaction or mala fides on the part of the officials cannot be imputed to the State or its instrumentalities, since the Government cannot carry on business upon principle of distrust. In this regard, reliance was placed on the decision of this Court in G. Ramegowda, Major (supra).

244. In G. Ramegowda, Major (supra) this Court observed that due to the impersonal nature of the Government, it would be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Thus, where a government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it, then the conduct of such officers should not be imputed to the Government for refusing condonation of delay. The relevant observations read as under:-

"17. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in the In re National Bank of Wales Ltd. observed, though in a different context:

"Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them." In the opinion of the High Court, it took quite some time for the government to realise that the law officers failed that trust.

18. While a private person can take instant decision a "bureaucratic or democratic organ" it is said by a learned Judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, - unmindful of time and impersonally". Now at the end, should we interfere with the discretion exercised by the High Court? Shri Datar criticised that the delay on the part of Government even after January 20, 1971 for over a year cannot be said to be either bona fide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation.

The conduct of Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation. But as is implicit in the reasoning of the High Court, the unarticulated thought, perhaps was that in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without an examination of their merits. The High Court noticed that the Government Pleader who was in office till December 15, 1970 had applied for certified copies on July 20, 1970, but the application was allowed to be dismissed for default. In one case, however, he appears to have taken away the certified copy even after he ceased to be a Government Pleader."

(Emphasis supplied)

245. As already discussed in the earlier parts of this judgment, State or any of its instrumentalities cannot be accorded preferential treatment in matters concerning condonation of delay under Section 5 of the Limitation Act. G. Ramegowda, Major (supra) itself acknowledges that, ordinarily there is "no general principle saving the party from all mistakes of its counsel or agents". Even if "there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal". The relevant observations read as under:-

"14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.; Shakuntala Devi Jain v. Kuntal Kumari; Concord of India Insurance Co. Ltd. v. Nirmala Devi; Lala Mata Din v. A. Narayanan; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a timebarred appeal."

246. However, the reason why, this Court nonetheless, held that acts of fraud or bad faith on the part of its officers or agents should not be imputed to the Government atleast for condonation of delay was in view of the earlier position of law, whereby the State and its instrumentalities were not placed on the same pedestal as any ordinary private litigant, in view of the impersonal character of the Government as an entity.

247. But the position of law is no longer this. As per Postmaster General (supra) and the subsequent decisions of this Court, consideration for condonation of delay under Section 5 of the Limitation Act does not and cannot vary depending on the identity or status of the party, whether it be the Government, a public body, or a private litigant, so as to apply a different yardstick.

248. The subsequent decision of this Court in Tejpal (supra), after duly taking note of the change in position of law, specifically rejected the contention that acts of mala fides on the part of specific individuals should not be imputed to the State or its instrumentalities. It held that to accept such a proposition would amount to creating an artificial distinction between the private parties and the Government entities vis-à-vis the law of limitation. The relevant observations read as under:-

"54. It seems to us that acceding to the appellants' request on the aforesaid account would also have undesirable consequences. If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring demonstration of bona fides or an act of mala fides on the part of specific individuals, it would create an artificial distinction between the private parties and the Government entities vis-à-vis the law of limitation. This would not be in conformity with the spirit of equality before law as guaranteed under our Constitution. Allowing such latitude would further distort incentives for the Government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance."

(Emphasis supplied)

249. Once the State chooses to litigate, it must shoulder the same responsibilities and abide by the same limitations that bind every litigant. To permit the State to evade the consequences of delay on the ostensible plea that the fault lay with individual officers would amount to diluting the rigour of limitation statutes and undermining their very object. Such an approach would not only privilege the State unjustly over private parties but would also perpetuate a culture of indifference and irresponsibility within the administration.

250. As far back as 1996, this Court in Chandra Mani (supra) held that where the case requires an appeal or application to be filed, despite the delay, then prompt

action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Thus, even if for a moment, we accept that, mala-fide actions of few officers should not be imputed to the Government, the position still remains that, once the State or its instrumentality finds that, few of its officers were negligent, it should promptly take action to file the appeal or application, as the case may be, through its other officers and simultaneously take action against the delinquent officers.

251. As already observed, in the present case at hand, despite the callousness exhibited by the Executive Engineer, the respondent no. 1 herein took no steps towards mitigating the delays and ensuring that the appeal was preferring as soon as possible. On the contrary, the Executive Engineer was appointed to make representations for the respondent no. 1 in the proceedings. Even the disciplinary proceedings against the concerned Executive Engineer came to be initiated much later, to be precise exactly a month before the date on which the application for condonation of delay was filed. In such circumstances, even if we do not impute the deliberate inaction or mala fides on the part of the Executive Engineer to the respondent no. 1 herein, there is nothing to show that the respondent no. 1 acted in a reasonably diligent manner.

252. Even if the case put up by the respondent no. 1 is to be accepted at its face value, the respondent no. 1 could be said to have failed to assign any genuine sufficient cause to justify the delay from the date of receiving intimation about the order of the First Appellate Court, passed on 15.04.2006 till the expiry of the limitation period, which was sometime in July 2006, because it was only in the correspondence dated 17.10.2006 that the respondent no. 1, while acknowledging the advice tendered by its advocate, reflected that it would prefer a second appeal. We have little to no hesitation in saying that on 17.10.2006, it was already too late in the day to take any decision or make any forms of mind. Nonetheless, the second appeal was only filed on 10.02.2017, with a delay of almost 11 years.

253. As already noted in the foregoing parts of this judgment the respondent no. 1 could be said to have failed to explain the delay on its part from the date of the receipt of the order of the First Appellate Court till the expiry of the limitation period.

254. We say so because if such observations by the High Court, to condone delay in the interest of a State-machinery, were allowed to be sustained by us, it would allow the State-machineries a leeway to systematically orchestrate delays in the guise of laxity exhibited by their authorities. Given the majesty and colossality a State-machinery would hold against a private litigant, it would be grossly unfair to a litigant, who would be perpetually entangled in the clutches of litigation, if enormous delays, like that of almost 11 years in the present case, are permitted to

be condoned. This Court has never turned a blind eye to the gradients of substantive justice.

255. It hardly matters whether a litigant is a private party or a State when it comes to condoning the gross delay of more than 11-years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started in 1989. We are in 2025. Almost 36 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. The High Court has made a mockery of justice by condoning this delay of 3966 days and once again ask the appellant to undergo the rigmarole of the legal proceedings.

256. As far as the contention of the respondent no. 1 is concerned apropos to the merits of molding of relief by awarding of compensation by the First Appellate Court, the same is squarely answered by the principles encapsulated in Pathapati Subba Reddy (supra), wherein it is categorically maintained that the court considering a condonation of delay ought not go into the merits of the case at hand.

257. We also wish to highlight that the High Court applied the legal position incorrectly in the impugned order and performed an exercise of "merithunting". It gave a prima facie relevance to the argument of the respondent no. 1 on the grounds that the suit of the appellant was not at all maintainable in the first place. In paragraph 13 of the impugned order, the High Court recorded that a semblance of right in favour of respondent no. 1 swayed its mind to allow the condonation of delay, and it accepted the same as a "sufficient cause".

We hold such observations to be erroneous and ex facie bad in law. Similar contentions were rejected by this Court in State of Madhya Pradesh v. Bherulal, reported in (2020) 10 SCC 654, wherein the appellant-State was seeking a condonation of delay of 663 days. This Court sternly noted that it will not let the courts to be forums wherein the Government can walk-in, when it desires, entirely ignoring the period of limitation, and buttress reliance on cases of this Court wherein it allowed condonation, employing its discretionary powers, on merits or modalities of peculiarities of those cases. Relevant paragraphs are extracted below:

"3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement.

The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible."

(Emphasis supplied)

258. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations.

While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the

sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

259. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

260. From the above exposition of law, it is abundantly clear that the High Court has erroneously condoned a massive delay of 3966 days on account of certain lapses at the administrative levels and of there being no follow-ups in the proceedings, along with finding certain merits in the case of the respondent no. 1 against the maintainability of the suit of the appellant and that of the relief molded by the First Appellate Court.

We have no hesitation in stating that such grounds are nowhere near to being "sufficient cause" as per Section 5 of the 1963 Act. The High Court lost sight of the fact that the precedents and authorities it relied upon by it had delays of two-digits, or even that of single-digit, more particularly the delay in those cases was supported by sufficient cause. The present case, however, stands on a very different footing, owing to such an enormous delay. Hence, we are not inclined to accept the condonation of the delay by the High Court.

V. CONCLUSION

261. Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to establish that it acted with bona fides and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought

to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.

263. Limitation periods are prescribed to maintain a sweeping scope for the lis to attain for finality. More than the importance of judicial time, what worries us is the plight of a litigant with limited means, who is to contest against an enormous State, and its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold, because, say if a party litigating against the State, for whatever reason, is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the lis for another round of litigation, and leaves such litigant listless yet again. As courts of conscience, it is our obligation that we assure that a litigant is not sent from pillar to post to seek justice.

264. No litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law.

265. In the result, this appeal stands allowed. The impugned judgment and order of the High Court is hereby set aside. Apart from the costs of Rs 25,000/- imposed by the High Court, to be paid by the respondent no. 1 to the appellant, we impose an additional cost of Rs 25,000/- on the respondent no. 1, to be paid to the Karnataka State Legal Services Authority within a period of four weeks from today.

266. The Court of Principle Judge (Junior Division), Kalaburagi, is directed to proceed with the execution of the decree in favour of the appellant in E.P. No. 2 of 2011, and shall ensure that the proceedings conclude within a period of 2 months from the date of this judgment.

267. Pending applications, if any, also stand disposed of.

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

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

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

New Delhi;

September 12, 2025.

IN THE SUPREME COURT OF INDIA

Maniklal Sahu
Vs.
State of Chhattisgarh

[Criminal Appeal No. 5578 of 2024]

HEADNOTE – The lapse of time between an injury and the victim's death does not, by itself, justify reducing a murder charge under Section 302 IPC to attempt to murder under Section 307 IPC, so long as the death is directly traceable to the injury. The correct test is whether the death was a natural, probable, or necessary consequence of the injury. If the complications leading to death are a likely or inevitable outcome of the original injury, the offence amounts to murder.

Where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate.

The following propositions to be followed by the Courts while dealing with cases where there was a delay in death resulting from an injury:

(a) If it is proved that the injury was fatal and the intention was to cause death, though the death occurred after several days of septicaemia or other complications having supervened, yet it is undoubtedly a murder as it falls within the first limb of Section 300 of the IPC.

(b) If it is proved that the injuries by themselves were sufficient to cause death in the ordinary course of nature, and if it is established that those injuries were the intended injuries, though the death might have occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the third limb of Section 300 of the IPC and the accused is therefore liable to be punished under Section 302 of the IPC.

(c) If it is proved that the injuries were imminently dangerous to life, though the death had occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the fourth limb of Section 300 of the IPC, provided, the other requirements like knowledge on the part of the accused, etc. are satisfied and so the accused would be liable to be punished under Section 302 of the IPC. Here also, the primary cause of the death is the injuries and septicaemia.

(d) In judging whether the injuries inflicted were sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.

(e) If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries.

(f) Broadly speaking, the courts would have to undertake the exercise to distinguish between two types of cases; first, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. Secondly, where the complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty i.e., death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder under Section 302 and not merely of culpable homicide.

(g) Even when the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, yet it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. If none of the injuries alone were sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively, they may be sufficient in the ordinary course of nature to cause his death.

(h) What the courts must see is whether the injuries were sufficient in the ordinary course of nature to cause death, or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is

whether death was only a remote possibility, or is one which would have occurred in due course.

(i) To sum it up, where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate.

JUDGMENT

J.B. Pardiwala, J.

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

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A. FACTUAL MATRIX .....

B. SUBMISSIONS ON BEHALF OF THE APPELLANT .....

C. SUBMISSIONS ON BEHALF OF THE STATE .....

D. ANALYSIS .....

i. When is an offence said to be made under Section 307 of the IPC ....

ii. Application of Theory of Causation where death ensues after some delay .....

E. CONCLUSION .....

1. This appeal is at the instance of a convict accused and is directed against the judgment and order passed by the High Court of Chhattisgarh dated 30.07.2024 in Criminal Appeal No. 607 of 2023 (hereinafter referred to as "Impugned Judgment") by which the High Court partly allowed the Criminal Appeal filed by the appellant herein and altered the conviction of the appellant under Section 302 of the Indian Penal Code (for short, "the IPC") into one under Section 307 of the IPC.

2. It appears from the materials on record that four persons including the appellant herein were put to trial for the offence of murder of one Rekhchand Verma in the Sessions Case No. 21 of 2022 arising from the First Information Report bearing No. 0061 of 2022 dated 22.02.2022 registered with the Saja Police Station, District Bemetara, State of Chhattisgarh for the offence punishable under Sections 458, 294, 506(B) and 323 of the IPC respectively.

A. FACTUAL MATRIX

3. It is the case of the prosecution that on the fateful day of the incident the appellant herein along with three other co-accused trespassed into the house of the deceased and dragged him upto the terrace of the house and flung him down. After the deceased was thrown down from the terrace, the appellant and other coaccused assaulted him with sticks and fisticuffs. The injured was shifted to the hospital in a very critical condition. Dying declaration of the deceased was recorded vide Ex. P-22 in which he named the appellant herein and the other co-accused. The deceased also made oral dying declarations before the doctors who attended him medically in the hospital.

4. It appears that the injured Rekhchand Verma survived for about nine months from the date of the alleged incident. Ultimately, he died on 08.11.2022 on account of septicemia and pneumonia leading to cardiorespiratory arrest. In such circumstances, Section 302 of the IPC came to be added. The case was committed to the Court of Session. At the end of the trial, the appellant and the three co-accused came to be convicted of the offence of murder and were sentenced to life imprisonment.

5. The appellant herein along with co-accused, namely, Rupesh Kumar Sahu preferred Criminal Appeal No. 607 of 2023 in the High Court whereas the Criminal Appeal No. 866 of 2023 was preferred by Gulsan Sinha and Criminal Appeal No. 1151 of 2024 was preferred by one Chavendra Patel.

6. All the three criminal appeals referred to above were heard by the High Court and those were partly allowed vide the Impugned Judgment and order passed by the High Court. As stated above, the High Court altered the conviction of the appellant herein and the other co-accused from Section 302 of the IPC to one under Section 307 of the IPC and sentenced them to undergo 7 years of rigorous imprisonment and fine of Rs. 1,000/-.

7. In such circumstances referred to above, the appellant Maniklal Sahu is here before us with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

8. The learned counsel appearing on behalf of the appellant vehemently submitted that the High Court ought to have acquitted the appellant herein of all charges rather than altering the conviction from one under Section 302 IPC to Section 307 IPC. The principal contention canvassed on behalf of the appellant herein is that the cause of death has no nexus with the injuries suffered by the deceased at the time of the alleged assault on him.

In other words, the learned counsel laid much stress on the fact that the injured died after about nine months from the date of the incident. Second argument canvassed on behalf of the appellant is, that the eyewitnesses are not reliable witnesses. They are interested witnesses being PW-1 Satish Verma, brother of the deceased; PW-11 Vikas Verma, another brother of the deceased; and PW-12 Gautahiri Bai Verma, mother of the deceased. It was argued that they had no occasion to witness the alleged assault.

9. In such circumstances referred to above, the learned counsel appearing for the appellant would submit that there being merit in his appeal, the same may be allowed and the appellant may be acquitted of all the charges.

C. SUBMISSIONS ON BEHALF OF THE STATE

10. On the other hand, the learned counsel appearing for the State, while vehemently opposing this appeal, submitted that the High Court committed a serious error in altering the conviction under Section 302 of the IPC into one of attempt to commit murder punishable under Section 307 of the IPC.

11. However, the learned counsel fairly submitted that the State has not preferred any acquittal appeal in this regard. In such circumstances, he submitted that let the conviction of the appellant herein for the offence punishable under Section 307 of the IPC be maintained.

D. ANALYSIS

12. 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?

13. We do not propose to reappreciate the entire oral evidence on record. We have looked into the oral testimonies of PW-1 Satish Verma, brother of the deceased; PW-11 Vikas Verma, another brother of the deceased; and PW-12 Gautahiri Bai Verma, mother of the deceased respectively. They are all eyewitnesses to the incident. There is no good reason for us to disbelieve or discard their evidence.

14. We only propose to examine in the present appeal whether the High Court committed any error in bringing the case within the ambit of "attempt to commit murder" punishable under Section 307 IPC on the ground that the deceased Rekhchand Verma died after a period of nine months from the date of the incident. Unfortunately, the exercise which we propose to undertake is ultimately going to be academic as there is no acquittal appeal filed at the instance of the State. However, we should not ignore or overlook the gross error committed by the High Court. We must explain, why the High Court is wrong in its view.

15. We must start with the medical evidence on record. The prosecution examined PW-9 Dr. Sheetal Kaushal. Dr. Sheetal Kaushal in his examination-in-chief has deposed under:-

01- "I was posted as Medical Officer at Community Health Centre Saja from 22.06.2020 to 16.06.2022. 02- On 22.02.2022 at 11.14 pm, the injured Rekhachand Verma, son of Radheshyam Verma, age 19 years, resident of Boratra, Police Station Saja, was brought to me for examination by constable Indraman Nishad number 274 of Police Station Saja at Community Health Center Saja, in which, during his examination, I found that:

1. The said injured person said that he was pushed down from the roof and beaten up and the condition of the said injured person was serious and his blood pressure was very low. The said injured person was in a semiconscious state and the smell of alcohol was coming from his mouth.

2. The above injured person had a lacerated wound measuring 8 cm x 0.5 cm x 1 cm in the temporal parietal region of his head, which was bleeding profusely.

3. The above patient was having pain in his throat and was having difficulty in moving his throat. I had advised him to get an X-ray done and also advised him to get his head checked by a neurosurgeon.

4. The injury was very serious so the correct opinion about the nature of the injury could have been given only after examination by a neurosurgeon and a radiologist. The condition of the patient was so serious that I advised him to be immediately taken to a higher centre.

5. The above injuries sustained by the above victim can be caused by falling from the roof and hitting the head with a hard or blunt object and the nature of the said injury can be determined only after treatment by the NCCT head and neurosurgeon and radiologist. In this regard, the medical examination report prepared by me is Ex.P. 06, part of which is signed by me. 03- On 25.02.2022, I was informed by the police station in-charge Saja by sending a memorandum that the injured Rekhachand Verma was referred to a higher center for advanced treatment and NCCT Head, Neurosurgery, Cervical X-ray was advised, who was

admitted to Mekahara Raipur on 23.02.2022, then to DKS Hospital Raipur and on 24.02.2022 he was admitted from DKS Hospital to MMI Hospital Raipur, where the victim is admitted in ICU. Whose MRI scan has been done, the part below the waist of the injured has become numb, due to which there is a possibility of spinal cord fracture, so give opinion on the following two points-

1. What is the nature of the injury suffered by the victim?

2. Was it possible for the injured person to die due to the injury? I had written in reply to the above questions that,

1) "The nature of injury can only be determined by a Radiologist and Neurophysician and Neurosurgeon." and

2) "Yes, it was possible." The Curie report prepared by me in this regard is Ex.P. 07, which bears my signatures on parts A to A. 04- On 24,03,2022, the police station in-charge Saja sent a sealed stick along with a memorandum for testing and asked-

1. Could the injury sustained by Rekhachand Verma have been caused by the confiscated stick?

2. Are there blood stains on the said stick?

3. Any other opinions?

I had examined the sealed stick along with the above mentioned memorandum sent by the police station in-charge Saja, whose length and size I have mentioned by drawing its picture and after examining the said stick, my opinion is that 1) "Such injuries can be inflicted on the injured Rekhachand with this type of stick." and 2) "I did not find any blood stains on the stick." In this regard, the query report prepared by me is Ex.P. 08, which bears my signatures on parts A to A." There is practically no cross examination of Dr. Sheetal Kaushal.

16. We now look into the evidence of Dr. Twinkle Chandrakar, PW-24. Dr. Chandrakar in her examination-in-chief has deposed as under:-

"01- I am posted as Assistant Professor in Sri Sankaracharya Institute of Medical Science, Junwani Bhilai, District-Durg (CO) for the last two years.

02- On 21.10.2022 at 10:35 P.M. the injured/deceased Rekhchand Lodhi father Radheshyam Verma age 22 years resident Boratara Tehsil Saja District Bemetara was brought to me for treatment at Shankaracharya Institute of Medical Science, Junwani Bhilai Hospital. On examining him I found that-

01. The condition of the said injured was very serious and he had no movement and sensation in both his legs due to which he was unable to walk and he had trouble breathing and his blood pressure was very low, he was not urinating and he was suffering from vomiting and diarrhea and he also had fever. The said injured had movement in both his hands.

02. There was a wound in the hip of the injured person which was filled with pus.

03. The injured person had weakness in both his hands and legs. The injured person had anaemia and there was swelling in his body.

04. The said injured person was being given oxygen with the help of a ventilator and medicines were being given to maintain blood pressure and due to blood loss, blood was transfused and antibiotics were given and the wound on his hip was being treated.

05. The patient's condition was not satisfactory and the patient was becoming unstable.

03- I had admitted the said injured/ deceased on 22.10.2022 in Shankaracharya Hospital Junwani, who died during treatment on 08.11.2022 due to Septic shock with bilateral pneumonia with post traumatic spinal cord injury with paraplegia with infected bedsore with hepatic dysfunction. The entire treatment of the said deceased Rekhachand was done by the medicine unit of the hospital under my guidance and his discharge summary has been prepared by Junior Doctor Richa Sharma, which is , Ex.P. 28, on which my signature is on part A and my seal and seal are on parts B to B. Along with the said discharge certificate, the photocopy of the entire bedhead ticket related to the treatment of the said deceased in our hospital is of total 137 pages and a death certificate was issued by our hospital in relation to the death of the above deceased, the death certificate is Ex.P. 29, on which my signature is on part A to A and my seal and seal are on parts B to B.

04- On 29.11.2022, the police station in-charge of police station Saja sent letter no. / Th.Pr. / Saja / 702-A / 2022 regarding providing opinion by curating the discharge certificate and bedhead ticket of deceased Rekhachand Lodhi. In crime number 61/2022 of police station Saja and asked the following question-

1. On the night of 22.02.2022 at about 8 o'clock, the accused beat up Rekhachand Verma with sticks and fists and threw him from the roof onto the CC road with the intention of killing him, due to which his spine was fractured. The deceased died during treatment at Shankaracharya Hospital on 08.11.2022. Did the deceased die due to fracture in his spine?

2. If deceased Rekhachand died due to some other reason, please give your clear opinion?

05- In order to answer the said query, after examining the discharge certificate of deceased Rekhachand and the bed head ticket related to his treatment, I have given this statement that, 1) In the history of the said injured, on 22.02.2022, due to spinal cord injury, there was paraplegia and the said deceased had weakness in both hands and legs due to which the patient became bedridden and there was infection in the wound of his hip, due to which it is possible that the death of patient Rekhachand was due to spinal cord injury. 2) While answering the query question number 02 of the police station incharge, I have written such an opinion in my query report Ex. P. 30 which is the memorandum of the police station in-charge dated 29.11.2022 on the page that, A-Septic shock with Bilateral Pneumonia. B-Post traumatic Spinal Cord injury with Paraplegia infected bedsore hepatic dysfunction. That is, the patient Rekhachand died due to the same reason which I have mentioned in the answer to query question no. 01. My signature is on parts A to A of the query report Ex. P. 30."

Once again, there is practically no cross examination of Dr. Twinkle Chandrakar.

17. In the last, we should look into the oral evidence of Dr. Abhishek Shrivastava, PW-28. Dr. Abhishek Shrivastava in his examinationin- chief has deposed as under:-

"01- I am posted as Senior Medical Officer In Government Hospital, Supela Bhilai, District Durg from 01.01.2021 till date.

02- On 09.11.2022 at 12:30 PM, deceased Rekhchand Radheshyam Lodhi, age 22 years, resident of Boratara, District Bemetara, was presented from Shankaracharya Hospital, father late Junwani, District Durg, for post-mortem by constable number 484 Evan Baghel of Police Outpost Smriti Nagar Police Station Supela, to Government Hospital, Supela Bhilai, District Durg. The said body was identified by Satish Lodhi, Rajendra Yadu and constable Evan Baghel.

03- The postmortem of the said dead body was started by me on 09.11.2022 at 12:30 P.M. The said dead body was of a male, which was wrapped in a white cloth and was lying straight on the postmortem table. The body of the said deceased was stiff and cold. There was injury on the entire back portion of both the thighs of the said deceased and there was injury on his left ankle as well. There was bedsore on the entire lower back of the said deceased, the size of which was 4 x 3 cm.

04- The deceased was of normal height and his skull, cranium, vertebrae, brain and spinal cord were congested. There was fluid present in the right and left lungs of the deceased. There was a clot in the heart of the deceased. The diaphragm, intestine, mouth and esophagus and pharynx of the deceased were normal and his spleen, kidney were pale and urinary bladder was empty and

genitals were normal. There was half-digested food in the stomach of the deceased and halfdigested food and stool was also present in his small intestine and large intestine.

05- On the basis of the results and experience obtained from the postmortem of the said deceased Rekhachand, it is my opinion that the said deceased died of cardiorespiratory attack due to septic shock, which was caused by infection of the injuries in the body of the deceased. The time of death of the said deceased was between 18 to 36 hours and the injuries found on the body of the said deceased were before his death (antemortem). In this regard, the postmortem report prepared by me is Ex.P. 34, which bears my signatures on parts A to A, B to B and C to C. Cross-examination by Shri Balram Sahu, Advocate for accused Gulshan and Chavendra:-

06- On being asked whether septic shock can occur in the absence of treatment) the witness said that it is possible if necessary antibiotics are not given during treatment."

(Emphasis supplied)

There is practically no cross examination of Dr. Abhishek Shrivastava.

18. Thus, the injured was brought to the hospital on 22.02.2022 in a very critical condition. According to Dr. Kaushal (PW-9), the injured was in a semi-conscious state. He was bleeding profusely due to a very serious head injury.

19. What is discernable from the medical evidence on record, in the form of oral testimonies of the three doctors referred to above, and the documentary evidence in the form of postmortem report and the injury certificate Exhibit P-34 is that the deceased died due to complications from paraplegia following spinal cord injury which resulted in systemic infection and multi-organ failure. Exhibits P- 28, P-29 and P-34 respectively make it clear. It is ultimately the septic shock resulting from infected pressure sores which in turn arose from the spinal injury sustained in the incident that proved to be fatal.

20. The deceased also suffered from pneumonia. According to the medical experts, this pneumonia was the direct result of the long drawn medical treatment which was given to the deceased over a period of nine months.

21. All the three medical experts examined by the prosecution are clear in their oral testimony that the deceased died during treatment on 08.11.2022 due to septic shock with bilateral pneumonia, post traumatic spinal cord injury with paraplegia and infected bedsores leading to hepatic dysfunction. The ocular version of the eyewitnesses corroborates with medical evidence on record.

22. Keeping the aforesaid in mind, we now proceed to consider the understanding of the High Court while altering the conviction.

i. When is an offence said to be made under Section 307 of the IPC

23. The High Court while altering the conviction under Section 302 to one under Section 307 of the IPC recorded the following findings as contained in paragraph 35 of the Impugned Judgment. Para 35 reads thus:-

"35. No doubt, the injuries caused by the appellants to the deceased were grievous in nature. He died due to septic shock with bilateral pneumonia with post traumatic spinal cord injury with paraplegia with infected bedsore with hepatic dysfunction. Due to spinal cord injury, there was paraplegia and the deceased had weakness in both hands and legs, due to which the deceased became bedridden and there was infection in the wound of his hip. Due to which, it is probable that the death of deceased Rekhchand Verma was due to his spinal cord injury. Rekhchand Verma was firstly referred to the Community Health Center, Saja, the doctor there referred him to Mekahara Hospital, Raipur and from there he was shifted to DKS Hospital and thereafter he was again shifted to MMI Narayan Hospital, Raipur and finally he was shifted to Shankaracharya Hospital, Durg where he died.

As such, due to lack of proper treatment, he died after about 9 months of the incident. Therefore, the case of the appellants falls within the purview of Section 307 of the IPC and not under Section 302 of the IPC. Even otherwise, the trial Court has already convicted the appellants for offence under Section 307/34 of the IPC for the same offence, therefore, there is no necessity to convict them also for offence under Section 302/34 of the IPC."

24. We have noticed over a period of time that the courts get confused while determining the exact nature of offence, more particularly, when there is a long interval between the date the victim suffered injuries and the date of his death.

25. We must first look into the relevant provisions of the IPC. Sections 299, 300 and 302 of the IPC respectively read as under:-

"Section 299. Culpable homicide.-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

"Explanation 2.-Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented."

Section 300. Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Section 302. Punishment for murder.-Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine."

26. To come within the definition of Section 299 IPC, the act of the accused should cause death and it must be (a) with the intention of causing death, or (b) with the intention of causing such bodily injuries as is likely to cause death, or (c) with the knowledge that he is likely by such act to cause death. The question when a person could be said to have caused death by his act needs to be answered taking into consideration the Explanations 1 and 2 respectively to Section 299 of the IPC.

27. The simpler case is where death results directly and immediately from the act itself. Equally, when death ensues as a natural or necessary consequence flowing from that act, there can be no hesitation in holding that the act caused the death. For "Thirdly" of Section 300 to apply the requirement is, that the injury inflicted should be found sufficient in the ordinary course of nature to cause death, a high degree of probability, in the ordinary way of nature, that death would ensue on the injuries. The difficulty arises when there are recognisable contributory causes leading to death, and the Court is called upon to consider in such case the relative effect and strength of the different causes in bringing about the effect i.e., the death, and then to ascertain whether the responsibility of the death could be assigned to a particular act which is not as proximate, or immediate.

28. Section 307 of the IPC reads as under:-

"Section 307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

29. An offence under Section 307 IPC has the following essential ingredients:-

(i) The death of a human was attempted;

(ii) That the death was attempted to be caused, or caused in the consequence of the act of the accused; and

(iii) That the act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:

a. the accused knew to be likely to cause death; or

b. was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so dangerous that it must in all probability cause:

i. death, or

ii. such bodily injury as is likely to cause death.

30. Thus, from the above, the most important ingredient to constitute the offence of attempt to commit murder punishable under Section 307 of the IPC is the intention or knowledge. To bring home guilt against an accused under this provision, it is necessary for the prosecution to establish that the intention of the accused was one of the three kinds mentioned in Section 300 of the IPC. A person commits an offence under Section 307 of the IPC when he has the intention to commit murder and in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. The provision requires that the act must be done with such intention, or knowledge, or in such circumstances that if death be caused by that act, the offence of murder will emerge.

31. It is clear as noonday that causing an injury that would endanger life is not an essential condition for the applicability of Section 307 of the IPC. Even if the injuries inflicted are simple in nature, that by itself cannot be a ground for acquittal, if the offence otherwise falls under Section 307 of the IPC.

32. The word "intent" means design, or determination with which a person acts. It presupposes knowledge. It is the purpose to use particular means to effect certain result. The "act" referred in Section 307 of the IPC attempted to must be with the

"intention" of killing a human. Intention is a state of mind which cannot be proved by direct evidence as a fact; it can only ordinarily be inferred from proved facts. It may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, or on admission. We say so because it shows the presence of will in the act which consummates a crime. The relevant circumstances from which the intention can be gathered. We have supplied a suggestive, and not exhaustive list:-

1. the nature of the weapon used;

2. the manner in which the weapon was used;

3. the part of the body where the injuries were inflicted;

4. the nature of the injuries caused;

5. the opportunity available which the accused gets.

33. We may quote with profit one very erudite decision of the High Court of in the case of Sreedharan v. State of Kerala, reported in 1969 SCC OnLine Ker 46, wherein the Court illustrated the metrics by which intention and knowledge can be inferred. It was held that intention can be inferred from the circumstantial evidence of the case, such as the motive, the preparations made, the declarations of the offender, the weapon used, the persistent of the assault, and the nature of the injuries inflicted, and its position.

In the IPC, the word "intention" is understood in the context of the consequences of an act, and not in relation to the act. The Court lucidly elaborates that the presence of intention is gathered when an act is done deliberately or purposely, it is not contingent on the resultant effect. Most importantly, the inference lies in reading of the consequences from the eyes of a reasonable man. The relevant observations read thus:-

"16. Intention and knowledge are a man's state of mind; direct evidence thereof except through his own confession cannot be had; and apart from a confession they can be proved only by circumstantial evidence. In other words, they are matters for inference from all the circumstances of the case such as the motive, the preparations made, the declarations of the offender, and, in the case of homicide, the weapon used, the persistence of the assault, and the nature of the injuries actually inflicted as also their location.

In the case of what are generally described as unpremediated offences or as offences committed on the spur of the moment, intention may be contemporaneous with the physical act, at best of just an instant before, and is generally to be gathered from the nature and consequences of the act and the

attendant circumstances. It is here that the much criticised maxim that every man is presumed to intend the natural and probable consequences of his act comes into play.

17. Like most words, the word, "intention" is capable of different shades of meaning. In the Penal Code, 1860 it is used in relation to the consequences of an act, the effect caused thereby, not in relation to the act itself-the voluntariness required to constitute an act is implied by that very word. Thus, in the case of murder, the intention required is (omitting clause secondly of S. 300 which rarely comes into play) the intention of causing death or the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, more or less the malice aforethought of the English law, the former being generally described as specific intent or malice and the latter as implied malice or sometimes as constructive malice, though the use of the latter term seems open to criticism.

It seems to us clear from the illustrations to Ss. 88, 89 and 92, that the Code uses the word, "intention" in the sense that something is intentionally done if it is done deliberately or purposely, in other words, is a willed though not necessarily a desired result or a result which is the purpose of the deed. The surgeon of the illustrations certainly does not desire the harm that may be caused; nor is that his purpose. Nevertheless, the provisions of the sections show that he could have intended the harm, and is saved from being a criminal only by those provisions.

Likewise a man who shoots another in the heart and kills him in self-defence might not desire, on the contrary might very much dislike, causing the latter's death. His purpose is not to cause death but to save himself. Yet his case falls squarely within the first clause of S. 300-he has undoubtedly caused death by doing an act with the intention of causing death-and is saved from being a murderer only by S. 100. Lang v. Lang(1955) A.C. 402 rather than Rex v. Steane(1947) K.B. 997 at 1004 or Hosegood v. Hosegood66 The Times L.R. 738 illustrate the sense in which the word, "intention" is used in S. 300 of the Penal Code, 1860-of course none of these cases was construing that statute.

And, once you dispense with desire or purpose, it follows that foresight of the consequences of an act gains the upper hand in determining whether the consequences were intended or not. And, the foresight of a particular person is prima facie to be gauged by the foresight of an ordinary, reasonable man, in other words, by what is sometimes disparagingly referred to as the objective test or external standard-as if that were enough to condemn it-of the reasonable and probable consequences of the act."

(Emphasis supplied)

34. To justify a conviction under Section 307 IPC it is not essential that bodily injury capable of causing death should have been inflicted. Although, the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, yet such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to the actual wounds. The provision makes a distinction between an act of the accused and its result, if any.

Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under the provision. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the courts have to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the provision. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof.

35. An offence under Section 307 IPC is made out even though death does not ensue, more pertinently, even if no harm ensues. The phrase employed in the provision, "if he by the act caused death", imports that the act in question must possess the potential to cause death. An act intrinsically incapable of causing death cannot constitute the offence under this provision. We had the benefit of referring to Reg. v. Cassidy, reported in (1867) 4 Bom. H.C. (Cr. C.) 17, which emphasizes upon the same in the following words:-

"The first two heads are framed under S. 307. The words of that section are:- "Whoever does any act with such intention or knowledge, and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished, "& c. Now it appears to me, looking at the terms of this section, as well as at the illustrations to it, that it is necessary, in order to constitute an offence under it, that there must be an act done under such circumstances that death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, a prisoner cannot be convicted of an attempt to murder under this section".

(Emphasis supplied)

36. This decision was criticised by Beaumont, C.J. in Emperor v. Vasudeo Balwant Gogte reported in 1932 SCC OnLine Bom 1, but the learned Judge's conclusion expressed in the following words seems to us much the same:-

"But if you have an act done with a sufficiently guilty intention and knowledge and in circumstances which do not from their nature afford a defence to a charge of murder, and if the act is of such a nature as would have caused death in the usual course of events but for something beyond the accused's control which prevented that result, then it seems to me that the case falls within S. 337."

37. From the above exposition of law, there is no gainsaying that the assault shall be capable of causing death. In R. v. Whybrow (1951-35-Crl. Appl. 141) the accused by a device constructed by him administered electric shocks to his wife while she was in a bath. Parker, J. directed the jury that if he did so, intending to kill his wife or to do her grievous bodily harm he would be guilty of attempt at murder. The Court of Appeal held that this was a wrong direction. Observing that if the charge is one of attempt at murder, the intention to kill is the principal ingredient of the crime. Lord Goddard C.J., expressed himself thus:-

"Therefore, if one person attacks another, inflicting a wound in such a way that an ordinary, reasonable person must know that atleast grievous bodily harm will result and death results, there is the malice aforethought sufficient to support the charge of murder. But, if the charge is one of attempted murder, the intent becomes the principal ingredient of the crime.

It may be said that the law which is not always logical, is somewhat illogical in saying that, if one attacks a person intending to do grievous bodily harm and death results, that is murder; but if one attacks a person and only intends to do grievous bodily harm, and death does not result, it is not attempted murder, but wounding with intent to do grievous bodily harm. It is not really illogical because, in that particular case, the intent is the essence of the crime while, where the death of another is caused, the necessity is to prove malice aforethought, which is supplied in law by proving intent to do grievous bodily harm."

(Emphasis supplied)

38. In R v. Grimwood (1962-(3)-AER. 285), the accused had been convicted by the Central Criminal Court of attempt to strangle his wife with intent to murder her. No verdict was taken from the jury on two other counts, namely, attempt to suffocate his wife with intent to murder and assault occasioning her actual bodily harm. In the course of his direction to the jury the learned Judge, relying on Director of Public Prosecutions v. Smith (1961-AC. 290), observed:-

"He is put before you by his counsel as an ordinary normal minded man, and so you should take it in this case that he is an ordinary normal-minded man. The Law is that in the case of an ordinary normal man it does not matter what that man contemplates at the moment at all. The test is whether what he did was of a

kind where death might well have been the natural and probable result of what he did."

(Emphasis supplied)

39. On appeal from the above conviction, Lord Parker, C.J. delivering the judgment of the Court of Criminal Appeal observed that the Court was clearly of the opinion that nothing that was said in Smith (supra) had any application to the offence of attempted murder. Adverting in particular, to the direction to the jury extracted supra, the Lord Chief Justice observed:-

"One further matter should be mentioned, and that is that certainly in regard to the first passage which I have quoted in the summing up it might well have led the jury to suppose that, even if they were satisfied that all that the appellant intended to do was to cause grievous bodily harm, yet if death might well result from such grievous bodily harm an intent to murder had been proved. That again, if that impression was conveyed, was quite clearly a wrong direction. In R. v. Whybrow1951- 35-Crl. Appl. 141 Lord Goddard, C.J. dealt with that very point."

ii. Application of Theory of Causation where death ensues after some delay

40. The theory of causation should be kept within reasonable limits at both ends. The question when there are latter complications would be, whether such complications are the natural or likely consequences of the injury, the ordinary course it takes before death causes. That the consequences are labelled as a supervening condition or disease, given a name and shown as the immediate cause of death will not efface from the chain of events and causes the original injury, if death is its ultimate result. At the end, all death is brought about by coma, syncope or asphyxia, the synchronised and interdependent functioning of the brain; the heart and the lungs maintaining life.

Death may properly be attributed to coma, syncope and asphyxia, but the cause cannot stop there. The stoppage of one of them will be quickly followed by the stoppage of the action of others and by cessation of life. In Brintons Ltd. v. Turvey, 1905 AC 230, 233, the Earl of Halsbury L.C. while considering the phrase "accident causing injury" observing that "we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase, because the injury inflicted by accident sets up a condition of things which medical men describe as disease" stated:-

"An injury to the head has been known to set up septic pneumonia, and many years ago I remember when that incident had in fact occurred it was sought to excuse the person who inflicted the blow on the head from the consequences of his crime because his victim had died of pneumonia and not as it was contended, of the blow on the head. It does not appear to me that by calling the consequences

of an accidental injury a disease one alters the nature or the consequential results of the injury that has been inflicted."

41. In the same case at p. 234, Lord Mac-naghten observed:-

"The accidental character of the injury is not, I think, removed or displaced by the fact that, like many other accidental injuries, it set up a well known disease, which was immediately the cause of death, and would no doubt be certified as such in the usual death certificate."

42. However, for culpability, as stated in Mayne's Criminal Law of India, 4th Edn., at p. 477 "it is indispensable that death should be connected with the act of violence not merely by a chain of causes and effects but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances."

The learned commentator referring to R. v. Holland, (1841) 2 M and Rob 351; (1904) 1 Cri LJ 909, observed at page 476:-

"The real question was whether in the end the wound was the cause of death."

(Emphasis supplied)

43. He refers to Explanation 2 to Section 299 as substantially producing the rule enunciated in Male's Pleas of the Crown, Volume I, page 28, to the following effect:-

"If a man receives a wound, which is not in itself mortal, but either for want of helpful applications or neglect thereof it turns to a gangrene or a fever, and that gangrene or fever be the immediate cause of death, yet this is murder or manslaughter in him that gave the stroke or wound, though it were not the immediate cause of his death, yet if it were the immediate cause thereof, and the fever or gangrene was the immediate cause of his death, yet the wound was the cause of the gangrene or fever, and so consequently is causa causans."

(Emphasis supplied)

44. The learned author observes at p. 475:-

"Where an injury of a dangerous character has been inflicted, which might possibly not have been fatal, but the sufferer declines to follow proper treatment, or is injudiciously treated, or sinks under an operation which might possibly have been avoided, the person who inflicted the injury is considered in law to have caused the death which results."

(Emphasis supplied)

45. In R. v. Holland (supra), the deceased who had received a cut on the finger did not follow the advice of the surgeon to have it amputated. Subsequently, lock-jaw set in because of which he died. Evidence was let in that if he had submitted to an operation, his life would probably have been saved. But Maule, J. held that that was no defence.

46. In Russel on Crime, 12th Edn., Vol. 1 at page 28 it is stated:-

"There is however, the different, although allied, point that a particular man's conduct may not have been the sole cause of the actus reus, it may have been a contributory cause. In such circumstances, it would seem that a safeguard against injustice should take the form of a direction to the jury that they should not convict unless they are satisfied that actus reus would not have occurred but for the accused man's participation in the matter."

47. Proceeding it is observed:-

"The actus reus, on the above definition is an event, and any particular event may be found to have been produced by the combined effect of a number of factors any one of which may be regarded as a cause of the event provided that this event would not have taken place had that factor not existed. In such a situation a man may be held to have caused the actus reus of a crime if that actus would not have occurred without his participation in what led upto it."

(Emphasis supplied)

48. Referring to indirect causation, it was observed by the Madras High Court In re, Maragatham:-

"But how far can indirect causation to be recognised as operative, in criminal jurisprudence? A glimmer of light is thrown upon this problem in the case law relating to explanation 2 to Section 299, I. P. C. If, after the blow or act of injury impugned as homicidal, a distinct set of circumstances arises causing. a new mischief, then the new mischief will be regarded as the causa causans and not the original blow: R. v. Flynn. (1867) 16 WR 319 IR, cited in Ratan's Culpable homicide p. 8". But the question is hardly free from subtle difficulties."

(Emphasis supplied)

49. The difficulty of deciding between proximate and remote cause or for finding out causa causans was cut through by the rule of English common law that a man who had received injury from another was not considered to have been killed by him, unless death followed within a year and a day after the injury. But there is

no such rule in the Indian Penal Code. While referring to the theory of causation which provided the simple test of guilty in the early period of criminal law, in Russel on Crimes, 12th Edn., Volume 1, the learned author observes at page 28 that the drawing of a line between proximate causes and remote consequences is unscientific, but appeared to be the only way of avoiding decisions of a cruelty offensive to moral feelings before the doctrine of mens rea as a legally essentially ingredient in criminal liability appeared."

The learned author states at p. 40:-

"The new test (foresight of consequences) is found in the requirement that the accused person, when pursuing the line of active conduct (or passive) in cases where there is a legal duty to action which resulted in the harm for which he is charged (i.e., the actus reus) must have been aware that certain sped fled harmful consequences would or could follow. Such a test arises naturally from the adoption of the ethical approach to the problem of crime, since in many minds it is hard to see any moral blame, meriting the infliction of punishment, in a man who has pursued a line of conduct without appreciating that it would produce mischievous results."

(Emphasis supplied)

50. In the footnote at page 412, the learned author observes that the unscientific differentiation between proximate and remote consequences of a man's conduct was probably due to the lack of clear definition of mens rea which would have rendered innocuous a remote claim of causation; since the more remote the cause the less possible it would be to establish that the prisoner intended or realised the result.

51. The problem of supervening cause intervening arose for consideration In re, Periaswami, C.A. 166 of 1961 (Mad). In that case, the accused whipped out his knife and stabbed the deceased in his abdomen in the course of a sudden quarrel. The deceased had a tear in his stomach and an incised cut in the liver. He was under treatment for 17 days and was having a sinus through which he was discharging bile and some pus. Due to the constant discharge of bile and pus, the abdomen suddenly burst. The abdomen was sutured, but he did not recover. In the opinion of the doctor, the deceased would appear to have died of septic peritonitis as a result of the injuries to the stomach, liver and pancreas.

It was contended for the accused that the deceased died not as a result of the wounds inflicted by the accused, but on account of some other causes, which intervened, in the course of treatment. After examining the case law, it is observed that the accused inflicted the injury on the vital part of the body, and that there was no definite evidence that death was due to other independent

supervening causes. It was held that death was due to an injury which was sufficient in the ordinary course of nature to cause death, and that death was ultimately due to the supervening of septic peritonitis and the accused was directly responsible for causing death. It was found on the evidence, that, though there was culpable homicide, yet it was a case falling under Part II of Section 304 of the IPC.

52. The decision in Nga Moe v. The King, AIR 1941 Rang 141, is again illustrative:-

"The injury indicted by the accused on deceased's head was not such as to entail any serious consequences to a person in normal health. The wound had healed up to the end of seven days in the hospital but the deceased had temperature and on this account was advised to remain in hospital until temperature had subsided. Contrary to medical advice, the deceased left hospital. Subsequently as a result of the formation of an abscess on the brain the deceased died.

But no death would have resulted, if he had not insisted on leaving the hospital against medical advice. His death really ensued because of his weak physical condition due to his suffering from chronic malaria and because his powers of resistance to infection had been much lowered by that disease. No abscess would have formed on the brain if the deceased had been in normal state of health and he died from abscess and not from the injury which had only a remote connection with the abscess. The immediate cause of the deceased's death was his debilitated condition for which the injury was in no way responsible."

53. It was held in the circumstances that the accused was guilty of causing simple hurt punishable under Section 324 of the IPC. Dunkley, J. observed at P. 144:-

"Therefore, it cannot be held that the act of the appellant caused the death of the deceased. The only case in which the infliction of an injury of this nature under similar circumstances could be held to amount to culpable homicide or murder is a case falling within Clause 2 of Section 300, I. P. C. namely, if the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. If there had been evidence to show that the appellant was at the time aware of the state of the deceased's health and therefore knew that even a slight injury was likely to result in his death, his act might have been brought under this clause, but there is no such evidence."

(Emphasis supplied)

54. The following observations of Roberts, C.J. in the case are apposite in the circumstances of the present case. The learned Judge observed:-

"It really is plain common sense that, if a man strikes another such a blow as will not in the ordinary course of events cause more than simple hurt, he is answerable for causing simple hurt and, for no more. No doubt, the natural effect of some grave wounds, if not medically treated, is septic inflammation, if death proceeds from this in the ordinary course the offender is prima facie guilty of murder; if death is merely the likely result of such an injury, it is culpable homicide.

But here the dangerous condition which supervened was an unlikely consequence of a blow comparatively trivial in character although the weapon was a dangerous one. The fact that a dangerous weapon is used is often and may be indeed generally, a matter to be taken into account in deciding questions of intention; but circumstances after cases, and, having regard to the medical evidence here as to the wound itself it is impossible to say that there was an intention to cause death. The offence could not therefore amount even to culpable homicide."

(Emphasis supplied)

55. The leading old case is In re, Doraswami, reported in 1943 SCC OnLine Mad 208, where the principle is thus enunciated:-

"In my view, the test is whether the cause of death is to be directly associated with the act. Whether it be a deliberate act in criminal cases or an accident in cases of workmen's compensation it is, I think, well known that the ultimate cause of death in a large number of cases is pneumonia. It would be a strange position if a man who inflicts a wound causing almost immediate death should be guilty of murder, whilst a man who inflicts a very similar wound from which pneumonia supervenes should not.

On the facts of this case, it is clear to me that the deceased man, in spite of his physique which is said to have been exceptionally robust, died as a direct result of the injuries inflicted upon him by the appellant; and that the appellant intended his death is evident from the facts. The result was not as immediate as he intended and not perhaps quite in the manner that he intended. But in the process of nature, in spite of medical attention, one of the well known perils from a wound supervened, namely, blood poisoning, and the deceased died. The chain of causation is in my view direct."

(Emphasis supplied)

56. In Taylor's Principles and Practice of Medical Jurisprudence, 11th Edn. Vol. 1, at page 232, it is stated:-

"A wound may cause death either directly or Indirectly. A wound operates as a direct cause of death when the wounded person dies either immediately or very

soon after its infliction, and there is no other cause of death. In wounds which cause death indirectly the deceased survives for a certain period, and the wound is complicated by inflammation embolism, pneumonia, tetanus, or some other mortal disease which is a consequence of the injury. Cases which prove fatal by reason of surgical operation rendered imperatively necessary for the treatment of injuries presuming that these operations have been performed with ordinary skill and care, also fall into this category. It would be no answer to a charge of death from violence to say that there was disease in the body of the victim unless the disease was the sole cause of death."

(Emphasis supplied)

57. At page 238, the learned author observes:-

"Certain kinds of injuries are not immediately followed by various consequences: but an injured person may die after a long or shorter period and his death may be as much a consequence of the injury as if it had taken place on the spot. An aggressor is as responsible as if the deceased had been directly killed by his violence provided the fatal result can be traced to probable consequences of the injury Death may follow a wound, and be a consequence of that wound, at almost any period after its infliction. It is necessary however, in order to maintain a charge of homicide, that death should be strictly and clearly traceable to the injury. A doubt on this point must of course lead to an acquittal of the accused."

(Emphasis supplied)

58. Septicemia is described by the medical experts as the condition which results where the circulation becomes flooded with bacteria, either due to the failure of local defensive reactions at the site of infection or to delayed or inadequate treatment. According to the learned author, every penetrating wound except those inflicted by the surgeon is potentially infected, though a certain period elapsed before invading organisms actually establish themselves become embedded in the tissues to multiply and form toxins. [See: The Essentials of Modern Surgery by Handfield Jones and Pokitt, V Edn]

59. In one of the recent pronouncements of this Court in Prasad Pradhan & Anr. v. State of Chhattisgarh, reported in (2023) 11 SCC 320, this Court stated in paragraphs 30 and 31 respectively as under:-

"30. During the hearing, the appellants' counsel had urged that Vrindawan died 20 days after the attack, and the lapse of such a time shows that the injuries were not sufficient to cause death in the ordinary course of nature. On this aspect, there are several judgments, which emphasise that such a lapse of time, would not per se constitute a determinative factor as to diminish the offender's liability from the offence of murder to that of culpable homicide, not amounting to murder.

31. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is important is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the postmortem clearly deposed that death was caused due to cardiorespiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked."

(Emphasis supplied)

60. In the case of Sudershan Kumar v. State of Delhi, reported in (1975) 3 SCC 831, this Court dealt with the case of acid pouring. In the said case, this Court was called upon to consider the question as regards the nature of the offence committed by the appellant therein in causing death of one Maya Devi by pouring acid on her body. After 12 days from the date of incident the victim therein died.

It was argued on behalf of the appellant that death of Maya Devi was not the direct result of the injuries caused by the acid burns but was on account of some supervening circumstances not resulting from the injuries and, therefore, the appellant therein could not be held guilty of murder. This Court while negativizing such contention observed that the injuries caused by the appellant therein were sufficient in the ordinary course of nature to cause death and the appellant was accordingly held guilty of an offence punishable under Section 302 of the IPC.

61. In Patel Hiralal Joitaram v. State of Gujarat, reported in (2002) 1 SCC 22, the interval between the date of the incident when the deceased sustained burns and the date of her death was a fortnight. It was argued on behalf of the appellant therein that the death of the deceased had no direct nexus with the burn injuries as during the interregnum period some other complications cropped up as a result of which the victim succumbed. While negativizing such contention, this Court observed as under:-

"16. Harping on an answer given by PW 12 in cross-examination that death of the deceased had occurred due to "septic" learned Senior Counsel made out an argument that such septic condition could have developed on account of other causes. Mere possibility of other causes supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21-10-1988. The cause of death can be determined on broad probabilities. In this context we may refer to a passage from Modi's Medical Jurisprudence and Toxicology, dealing with death by burns:

"As already mentioned, death may occur within 24 to 48 hours, but usually the first week is the most fatal. In suppurative cases, death may occur after five or six weeks or even longer."

17. In Om Parkash v. State of Punjab [(1992) 4 SCC 212] the victim was set ablaze on 17-03-1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by this Court.

18. It is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicemia and died of that on 15-11- 1988. Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as a sequel to the burns sustained by her. Hence we repel the contention of the learned counsel on that score."

(Emphasis supplied)

62. In State of Haryana v. Pala & Ors., reported in (1996) 8 SCC 51, this Court had the occasion to explain the difference between the primary effect of the injuries and the secondary effect of the injuries. In the said case, the victim was hit on his head three times and after the victim had fallen the other accused had beaten him thrice on his chest and abdomen. The victim was taken to the hospital; he died several days later in the hospital. In the said case the doctor's opinion as regards the cause of death was as follows:-

"Cause of the death was due to Septicemia, which resulted as a result of the head injury and was sufficient to cause death in ordinary course of nature"

63. It was contended on behalf of the accused before this Court that the offence would not fall under any of the limbs of Section 300 of the IPC. This question was considered in the light of further information given by the doctors which is as follows:-

"Septicemia is the direct result of the head-injury. This is not a disease. In other words, head injury is the cause of death."

64. The trial court convicted the accused applying Clause 3 of Section 300 under Section 302 of the IPC. On appeal the High Court applied Exception 4 to Section 300 IPC and altered the offence of murder into culpable homicide not amounting to murder and convicted the accused under Section 304 Part II of the IPC. In appeal before this Court, in paragraphs 3 and 4 respectively, of the judgment the Court held as follows:-

"3. On the other hand he contended that when death was due to septicemia, it cannot be referable to the cause of the death in the ordinary course of nature due to ante-mortem injuries and that, therefore, the offence of murder has not been made out. In support thereof, he sought to place reliance on Lyon's Medical Jurisprudence for India (Tenth Edition) at page 222. It is stated therein that "Danger to life depends, primarily, on the amount of haemorrhage, on the organ wounded, and on the extent of shock; secondarily, on secondary haemorrhage, on the occurrence of septicemia, erysipelas, tetanus, or other complications.

In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicemia, later on, are not to be taken into consideration". Though the learned counsel had not read the latter part of the opinion, the medical evidence on record do clearly establish that septicemia is not the primary cause and the death was due to injuries caused to the deceased and they are sufficient to cause death in the ordinary course of nature. Septicemia would, therefore, not be taken into account.

4. Clause 3rdly of Section 300 IPC envisages that if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, it would be murder coming under Section 300 IPC and that, therefore, it would not be culpable homicide under Section 299 IPC. When the accused emerged from their house and beat with deadly weapon on the head and other parts of the body and death occurred as a result of the injuries, it must be inferred that the attack on vital parts of the body was intended to be caused with an intention to cause death. Intention is locked up in the heart of the assailant and the inference is to be drawn from acts and attending circumstances."

(Emphasis supplied)

65. In Jagtar Singh & Anr. v. State of Punjab, reported in (1999) 2 SCC 174, this Court was called upon to decide as to whether the offence would fall within the scope of Section 302 of the IPC when the death was due to septicemia. It was argued on behalf of the accused persons that septicemia had occurred because of the improper treatment given. It was further contended that if there had been proper treatment the deceased would not have died. This contention was negatived by the Court referring to Explanation 2 to Section 299 of IPC which reads as follows:-

"Explanation 2.-Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented."

66. In paragraph 7 of the judgment this Court held as follows:-

"7. Having given our anxious consideration to the first contention of Mr. Gujral, we do not find any substance in it. It is true that Naib Singh died 16 days after the incident due to septicemia, but Dr M.P. Singh (PW 1), who held the post-mortem examination, categorically stated that the septicemia was due to the head injury sustained by Naib Singh and that the injury was sufficient in the ordinary course of nature to cause death. From the impugned judgment, we find that the above contention was raised on behalf of the appellants and in rejecting the same, the High Court observed:

"It is well settled that culpable homicide is not murder when the case is brought within the five exceptions to Section 300 Penal Code, 1860. But even though none of the said five exceptions is pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses, firstly to fourthly, of Section 300 Penal Code, 1860, to sustain the charge of murder. Injury 1 was the fatal injury.

When this injury is judged objectively from the nature of it and other evidence including the medical opinion of Dr M.P. Singh (PW 1), we are of the considered view that the injury was intended to be caused with the intention of causing such a bodily injury by Harbans Singh, the appellant on the person of Naib Singh which was sufficient in the ordinary course of nature to cause death." On a perusal of the evidence of PW 1 in the light of Explanation 2 to Section 299 IPC, we are in complete agreement with the above-quoted observations of the High Court."

(Emphasis supplied)

67. In the present case, as per the oral testimony of the three doctors referred to above, the cause of death of deceased Rekhchand was cardiorespiratory failure. The injuries suffered by him at the time of assault lead to septic shock with bilateral pneumonia, post traumatic spinal cord injury with paraplegia and infected bedsore hepatic dysfunction. The injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death and would come under clause "Thirdly" of Section 300 of the IPC. The deceased ultimately died having not recovered from the injuries.

The presence of the supervening cause in the circumstances will not, in our view, alter the culpability. In the case in hand, there had been no such considerable change of circumstances as to snap the chain of causation. It would have been quite a different matter if the original injuries had healed meanwhile or ceased to be dangerous to life and the fatal complications had set in unexpectedly. If that

would have been so, the appellant herein would then at any rate be entitled to the benefit of doubt as to the cause of death.

68. We are taken by surprise as to on what basis the High Court has recorded a finding that the deceased succumbed to the injuries suffered by him due to lack of proper treatment. There is absolutely no evidence in this regard. Not a single suggestion in this regard was put by the defence counsel in the cross-examination of the doctors. Even otherwise this aspect is wholly irrelevant in view of Explanation 2 to Section 299 IPC.

In other words, according to the High Court, since, the deceased died after about nine months from the date of the incident due to lack of proper treatment the case is not one of murder. This finding in our opinion is erroneous. On one hand, the High Court believes that the cause of death was due to injuries suffered by the deceased, and on the other hand, takes the view that as he died after nine months due to lack of proper treatment the offence would fall within Section 307 of the IPC.

E. CONCLUSION

69. We may highlight few broad principles that the courts must keep in mind.

a. If it is proved that the injury was fatal and the intention was to cause death, though the death occurred after several days of septicaemia or other complications having supervened, yet it is undoubtedly a murder as it falls within the first limb of Section 300 of the IPC.

b. If it is proved that the injuries by themselves were sufficient to cause death in the ordinary course of nature, and if it is established that those injuries were the intended injuries, though the death might have occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the third limb of Section 300 of the IPC and the accused is therefore liable to be punished under Section 302 of the IPC.

c. If it is proved that the injuries were imminently dangerous to life, though the death had occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the fourth limb of Section 300 of the IPC, provided, the other requirements like knowledge on the part of the accused, etc. are satisfied and so the accused would be liable to be punished under Section 302 of the IPC. Here also, the primary cause of the death is the injuries and septicaemia.

d. In judging whether the injuries inflicted were sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.

e. If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries.

f. Broadly speaking, the courts would have to undertake the exercise to distinguish between two types of cases; first, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. Secondly, where the complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty i.e., death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder under Section 302 and not merely of culpable homicide.

g. Even when the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, yet it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. If none of the injuries alone were sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively, they may be sufficient in the ordinary course of nature to cause his death.

h. What the courts must see is whether the injuries were sufficient in the ordinary course of nature to cause death, or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is whether death was only a remote possibility, or is one which would have occurred in due course.

i. To sum it up, where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate.

70. In view of the aforesaid, all that we can say is that the High Court committed a serious error in bringing the case within the ambit of attempt to commit murder punishable under Section 307 of the IPC on the ground that the victim survived for almost nine months from the date of the incident, and died on account of pneumonia and other complications during the course of treatment and not due to the injuries suffered at the time of assault. We do not agree with the view expressed by the High Court in the Impugned Judgment and order.

71. In the circumstances referred to above, we reach the conclusion that there is no merit in the appeal and the same is accordingly dismissed.

72. Pending application, if any, also stands disposed of.

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

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

New Delhi;

September 12, 2025

IN THE SUPREME COURT OF INDIA

Rajul Manoj Shah alias Rajeshwari Rasiklal Sheth
Vs.
Kiranbhai Shakrabhai Patel & Anr.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 5635 of 2023]

HEADNOTE – Defendant can't file counter-claim against co-defendant under Order 8 Rule 6A CPC.

JUDGMENT

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. Present appeal is against the judgment and order of the High Court of Gujarat1 against the order passed by the City Civil Court, Ahmedabad dismissing the interlocutory application2 filed by respondent no.1/defendant no.2 for amending the written statement and for filing a counter claim in a suit for declaration and injunction filed by the appellant.

3. Facts: Short facts leading to the filing of the appeal are that the appellant, in 2012, instituted an original suit alleging that the property in question, a bungalow in a cooperative housing society situated near Stadium Char Rasta in Ahmedabad, belongs to her father and upon his demise, the said property came to be owned by her and by her brother jointly. However, upon the demise of her brother, the property was jointly owned by the appellant and her sister-in-law/defendant no. 1.

In January, 2012, when the appellant came to know that her sister-in-law has agreed to sell a portion of the undivided share of the joint family property in favour of respondent no.1 /defendant No.2, the appellant filed the suit for a declaration that her sister-in-law, defendant no.1 has no right to transfer or deal with the property without her consent and to declare the agreement to sell dated 21.10.2011 in favour of defendant no.2, as null and void.

4. On 12.10.2013, the original defendant no. 1 passed away pending disposal of the suit. Thereafter, on 23.07.2017, the appellant filed an application before the Trial Court declaring the factum of defendant no.1's death and praying for her deletion from array of parties. Trial Court vide order dated 24.10.2019 allowed appellant's application for deletion of defendant no.1. Meanwhile, on 10.10.2019, defendant no. 2 moved an application before the Trial Court praying for

substitution of the original defendant no. 1 with a court appointed officer under Order XXII Rule 4A of Code of Civil Procedure, 19083 which came to be dismissed vide order dated 15.11.2019.

5. Aggrieved against the orders dated 24.10.2019 and 15.11.2019, defendant no. 2 moved a Special Civil Application before the High Court. On 10.02.2020, the High Court passed an order based on consent of both the parties, thereby quashing orders dated 24.10.2019 and 15.11.2019. Consequently, High Court substituted and appointed the court official - Nazir of the City Civil Court - respondent no. 2 as defendant no.1. Thereafter, the appellant also filed an amended plaint on 04.03.2020.

6. Proceedings leading to the filing of the present appeal commenced when defendant no. 2, on 26.07.2021 moved an application seeking to amend the written statement by adding a counter-claim, praying for, a) to direct the Nazir/respondent no.2 to accept remaining consideration and execute a sale deed for the undivided share in furtherance of the agreement to sell dated 21.10.2011, and b) to partition the suit property as per Partition Act, 1893.

7. The Trial Court by its order dated 05.08.2021 dismissed the application by holding that defendant no. 2 has filed the application after a long time and that, it is abuse of the process to file such application after issues were framed, way back on 12.02.2019. Trial Court also observed that the defendant cannot seek specific performance of the agreement of sale dated 21.10.2011 against deceased defendant no. 1, as represented by a court officer, that too in a suit filed by the plaintiff. Following the decisions of this Court, the Trial Court held that a counter claim is not maintainable against the co-defendant. Respondent No. 1, defendant no. 2 challenged this order in Special Civil Application under Articles 226/227 and the High Court, by the order impugned before us allowed the petition.

8. The High Court allowed the application of defendant no. 2 and permitted him to file his counter-claim. The relevant portion of the order impugned is as follows;

"13.13. In view of this Court, considering the aforesaid facts, the prayers as prayed for by the petitioner herein are required to be granted and the prayers as prayed for in application below Exh. 107 /108 could have been prayed for by the petitioner herein, only after the Nazir of the City Civil Court as administrator of the property in question would have been appointed. The Nazir came to be appointed only by order dated 10.02.2020 by this Court in Special Civil Application No. 21979 of 2019 and soon thereafter, the applications below Exh.107/108 came to be filed by the petitioner herein. The cause of action can be said to have arisen after the Issues came to be framed, and therefore, in the facts

of the present case, the petitioner could not have been non-suited on the ground of delay.

13. 14. The trial Court has also come to the conclusion that the petitioner herein has chosen to file counter-claim against the codefendant and the same is held to be not maintainable. It appears that the reliefs have not been sought for by the petitioner herein against the co-defendant, the same have been sought for against the Nazir - court official of the City Civil Court, as also against the respondent no.2 - original plaintiff. The counter-claim is maintainable, in view of the fact that the same is filed after the administrator- Nazir came to be appointed by this Court vide order dated 10.02.2020, for the prayers as referred above.

14. This Court by exercising supervisory jurisdiction under Article 227 of the Constitution of India, is inclined to allow the said applications below Exh. 107 /108 preferred by the petitioner herein by quashing and setting aside the order dated 05.08.2021 passed below Exh.107/108 in Civil Suit No. 167 of 2012 by the City Civil Court, Ahmedabad.

15. In view of this Court, in the facts and circumstances of the present case, the present petition are required to be allowed and the same is allowed, accordingly, keeping it open for the respondent herein to lead the evidence on the ground of limitation and the same be decided by the Court below in accordance with law. It is also kept open for the respective parties to take all the contentions before the Court below, when the matter is taken-up for hearing and other issues that may be germane for adjudication of the dispute in question including the issue of limitation. The present petition stands allowed, accordingly."

(emphasis supplied)

9. Aggrieved, the appellant approached this Court by filing the present civil appeal. We have heard Mr. Ritin Rai, learned senior counsel assisted by others, on behalf of the appellant. We have also heard Mr. Pradhuman Gohil, learned counsel and others on behalf of the respondent.

10. The two submissions made by Mr. Ritin Rai, learned senior counsel are simple and straightforward. The first submission is that a counter claim cannot be entertained after the issues are formulated in the suit. For this purpose, he relied on the decision of this Court in Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri4. The second submission, as accepted by the Trial Court as well, is that a counter claim cannot be made against a codefendant and for this purpose the decision of this Court in Rohit Singh & Ors. v. State of Bihar5 is relied on.

11. Mr. Pradhuman Gohil, learned counsel appearing on behalf of respondent no. 1/defendant no. 2, articulated his arguments very well and interpreted Order VIII

Rule 6A of CPC innovatively and also relied on certain portions of the 27th Law Commission Report.

12. Analysis: Before we take up the issue relating to legality and propriety of entertaining an application for counter claim 9 years after filing of the suit, particularly when issues were framed 3 years before the said application and also the issue relating to the legality of institution of a counter claim against a co-defendant, we will touch upon the jurisdiction that the High Court was exercising.

13. The appellant did in fact raise the plea of the High Court entertaining a petition under Article 227 against the order passed by the Trial Court but the same was rejected by supplying the following reasoning after extracting the portion of the decision of this Court in Kishore Kumar Khaitan & Anr. v. Praveen Kumar Singh6 by observing that;

"13. 10. Considering the aforesaid ratio as laid down by the Hon'ble Supreme Court, as referred above, while this Court is conscious of the restriction while exercising the jurisdiction under Article 227 of the Constitution of India, looking to the facts of the present case, interference is called for, in view of the fact that cause of action for seeking amendment and counter-claim could be said to have arisen, after the issues came to be framed by the trial Court on 12.02.2019.

Undisputedly, the aforesaid prayers as prayed for by the petitioner herein, invoking Order-8 Rule-6(A) 1 and Order-6 Rule-17 of the Code of Civil Procedure 1908 seeking amendment in plaint and for counter-claim by the present petitioner, would normally be not granted, after the commencement of trial and considering the fact that, it would result in prolonging the suit proceedings, however, the same depends upon facts and circumstances of the case.

The provisions of Order-6 Rule-17 and Order-8 Rule-6(A)1 of the Code of Civil Procedure, also provide that same be allowed, if the same are germane for determining the real controversy between the parties. In facts of the present case, it cannot be said that the petitioner herein has placed on record the facts, which are new to the suit proceedings, and therefore, prayers as prayed for by the petitioner herein are required to be considered and required to be granted."

(emphasis supplied)

14. The above-referred para does not indicate how the jurisdictional error has arisen for consideration. In any event of the matter, the relevant portion of facts, as found by the trial court while rejecting the application for counter claim, which we are of the opinion are correct in law as well as on fact, are extracted as hereinbelow for ready reference;

"8. .....

Upon considering the aforesaid provision of C.P.C. Order-8, Rules-6, when cause arises for counter claim for the defendant, then counter-claim can be lodged by the defendant against the plaintiff. In the present case, as per the details of the counter-claim submitted by the defendant no.2, he has demanded counter-claim against defendant no. 1 and he has not prayed for any relief against the plaintiff. If the suit is filed by the plaintiff, the defendant cannot file counter-claim against the defendant in the said suit.

Further, upon conducting in depth study of the other details of the counter-claim, it is proved that the relief of specific performance sought by the defendant no.2 against the defendant no.1 in this counter-claim, is the agreement to sale which was executed by defendant no.1 in favor of defendant no.2 and no dispute is raised by the defendant no. 1 in that regard. However, the said agreement to sale was executed in the year 2011 ie. 21/10/2011. The said counter-claim for specific performance in that regard, was filed by the defendant no.2 in this suit in the year 2021.

In this regard, upon considering provisions of Article-54 of the Limitation Act, the relief of specific performance can be filed within three years from the date of execution of agreement and if any condition is fixed in the agreement, then three years from the date of the condition and if any condition is not fixed, then the date from which implementation of the agreement is denied or within three years from the date cause arises. This is a legal limitation. As per the provision of sub-rule-3 of Rule-6 of Order- 8 of C.P.C., the provisions applicable to claim are also applicable to counter-claim. Accordingly, all the provisions of Limitation Act can be applied to counter-claim.

As per Article- 54 of the Limitation Act, the agreement to sale submitted in this case and the representation made by Mr. Patel, Ld. Advocate of the defendant no.2 by citing condition no.3 of the agreement to sale and upon evaluating the same, duration of twelve months is fixed after receiving the title clear certificate in condition. 3 of the agreement to sale. However, defendant no.2 has stated that the said title clear certificate is not received. The agreement to sale was executed in the year 2011 and the present plaintiff filed the suit to declare the said agreement to sale as null and void, ie the plaintiff has challenged the agreement to sale.

Upon considering the said circumstances and the fact that defendant no.2 is also a party in this suit and the agreement to sale is challenged in the knowledge of defendant no.2, then in such circumstances, cause of the suit can be considered arisen as per provision of Article-54 of the Limitation Act. Moreover, the

responsibility to prove the provision of ready and willingness as per section- 16 (c) of the Specific Relief Act, falls on defendant no.2.

Since the agreement to sale was executed in favor of defendant no.2 in the year 2011, then it cannot be believed in general circumstances that he would have waited for title clear certificate even after suit was filed. Moreover, even after the said suit was filed, defendant no.2 did not initiate proceeding against defendant no. 1 for the implementation of the said agreement while he was alive and no such pleading is made in this revision application. The present counter-claim of defendant no.2 is completely barred by the provision of Limitation Act.

9. Moreover, considering the significant contention of this case, the defendant no.2 has already filed his reply vide Exhibit-35 against the plaint of the plaintiff. He has not submitted any counter claim with the said reply and presently, he has submitted application seeking permission to bring the said counter claim on the record. Considering the case records of the entire case as to whether such permission can be allowed after such long period or not, this court has framed issues vide Exhibit-83. Thereafter, the evidence affidavit has also been submitted by the plaintiff and presently, the matter is kept for the cross examination of the plaintiff witness by the defendant.

Regarding the counter claim of the defendant no.2 can be taken on the record or not after such long period, the Hon'ble Supreme Court has recently laid down clearly in the judgment of Ashok Kumar Kalra V/s. Wing CDR Surendra Agnihotri reported on (2020) 2 - SCC - 394 that no time limit has been prescribed in the Order-8, Rules-6 of CPC to submit counter claim. However, it does not mean that counter claim can be taken on record at any time after submitting the reply.

It is laid down in the para-17 of the aforesaid judgment that the court has to consider simultaneously the facts as to whether the counter claim is within the time-limit or not and whether it is barred by the Limitation Act or not. Whereas, it is clearly laid down in para-18 that the counter claim cannot be allowed to take on the record after framing of issues and it may affect the principle of speedy trial if such permission is granted. Citing the aforesaid facts, the Hon'ble Supreme Court has rejected the application seeking permission to take counter claim on the record after framing of issues and the said judgment can be made applicable to the case on hand in its entirety.

Thus, once it has been established by the Hon'ble Supreme Court that the permission to take counter claim on the record cannot be granted once the issues are framed and as discussed in the case on the hand, the issues have been framed vide Exhibit-83. Deposition of the plaintiff has also been recorded vide Exhibit-

84 and considering the same, the counter claim of the defendant no.2 cannot be taken on the records.

10. Thus, considering the entire facts, as discussed above, the issues have been framed in the present case, the proceedings of the suit have been initiated, the defendant no.2 has preferred present application after very long period and it is barred the provisions of the limitation. As per the judgment of the Hon'ble Supreme Court, permission to take counter claim on record cannot be granted once the issues have been framed and according to the provision of Order-8, Rules-6(A) of the CPC, the defendant is not entitled to seek counter claim against the defendant in the suit of the plaintiff, as the present application of the defendant no.2 cannot be granted, I pass following order rejecting this application."

(emphasis supplied)

15. The only justification supplied by the High Court can be seen in para 13.13 where the High Court has come to the conclusion that the cause of action for defendant no. 2 has arisen only after the High Court directed the appointment of a Nazir to represent the interest of defendant no. 1. There is no other reasoning in the decision of the High Court.

16. Now, we must consider the two issues raised by the appellant.

17. Re: Defendant no. 2's claim of specific relief not maintainable against appellant: Ld. Sr. Counsel for the appellant has argued that in terms of Order VIII Rule 6A of CPC, a counter-claim must be filed seeking relief against the plaintiff and cannot be filed against a co-defendant, for a counter-claim must necessarily deal with the defendant's cause of action against the plaintiff.

On the other hand, Ld. Counsel for the respondent submits that the counter-claim seeks two substantive reliefs, namely, partition and specific performance. Consequently, it is contended that the counter-claim is not directed solely against a co-defendant, for, in an independent suit seeking the very same reliefs, the appellant would necessarily have to be impleaded as a party. The ultimate relief sought by defendant no. 2 is a declaration of co-ownership of the deceased sister-in-law of plaintiff and a consequent decree of specific performance as against that ownership on the basis of the agreement of sale.

18. Order VIII, Rule 6A, CPC enables a defendant to set up a counter-claim. Said provision is extracted as below;

6A. Counter-claim by defendant.-

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

(emphasis supplied)

19. As per Rule 6-A(1), a defendant may assert any right or claim against the plaintiff before the filing of the written statement, even if such cause of action is unrelated to the plaintiff's suit. The only limitation is that the counter-claim must lie within the pecuniary jurisdiction of the court. Such a counter-claim is treated as a cross-suit and is governed by the rules applicable to plaints, including the obligation to disclose the cause of action and pay requisite court fees. The legislative intent is to avoid multiplicity of proceedings by allowing both the original suit and the counterclaim to be tried and disposed of in a single trial, thereby avoiding prolonged and protracted litigation as held in Jag Mohan Chawla v. Dera Radha Swami Satsang.7

20. Rule 6A provides that counter-claim shall be against the claim of the plaintiff and such right or claim shall be in respect of cause of action accruing to defendant against the plaintiff. This Court in Rohit Singh (supra) held;

"21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the codefendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit."

21. The above observations have been reiterated with approval in subsequent pronouncement in Damodhar Narayan Sawale v. Tejrao Bajirao Mhaske8, by observing as under;

"39. The decision of this Court in Rohit Singh v. State of Bihar also assumes relevance in the above context. This Court held that a defendant could not be permitted to raise counterclaim against co-defendant because by virtue of Order 8 Rule 6-A CPC, it could be raised by the defendant against the claim of the plaintiff."

22. In the present case, defendant no. 2 sought to raise a counter-claim primarily for the relief of specific performance of agreement dated 21.10.2011 executed in his favour by deceased original defendant no. 1 with respect to her undivided share in the suit property, by a direction to the Nazir, the substituted representative of defendant no. 1, to execute a sale deed in pursuance of the agreement to sell. The relief of specific performance as sought to be raised by defendant no. 2 cannot be set up by way of a counter-claim since the same is not directed against the appellant/plaintiff, but is instead directed solely against the co-defendant. In view of this, defendant no. 2 is held to be disentitled to raise prayer of specific performance by way of counter-claim. This is simply not permissible, and this position is no more res-integra in view of the decision of this Court in Rohit Singh (supra).

23. Defendant no. 2 however submits that he has not only claimed the relief of specific performance, but has also sought partition of suit property to separate the share he is entitled to under the agreement. Defendant must first establish a right of claim over the property, which is absent9 till he succeeds against the estate of defendant no. 1 and only thereafter that the question of setting up a counter claim against plaintiff may arise. Thus, the submission that there is also a claim for partition must fail for the same reason.

24. Re: Defendant no. 2 filed the counter-claim after issues were framed: It is true that issues were framed on 12.02.2019 and the application for counter claim was filed almost two years thereafter i.e., on 26.07.2021. For our purpose, it is sufficient to refer to the guiding principle for determining the time-frame for filing a counter claim, succinctly articulated in the judgment of this Court in Ashok Kumar Kalra (supra). The relevant portion of the decision is as under10;

"17. The time limitation for filing of the counterclaim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A.

Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the timebarred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A.

18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice.

At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts.

The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.

19. In this regard having clarified the law, we may note that Mahendra Kumar case [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] needs to be understood and restricted to the facts of that case. We may note that even if a counterclaim is filed within the limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counterclaim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counterclaim is limited by various considerations based on facts and circumstances of each case. We may

point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting a counterclaim.

20. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353]).

21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

(i) Period of delay.

(ii) Prescribed limitation period for the cause of action pleaded.

(iii) Reason for the delay.

(iv) Defendant's assertion of his right.

(v) Similarity of cause of action between the main suit and the counterclaim.

(vi) Cost of fresh litigation.

(vii) Injustice and abuse of process.

(viii) Prejudice to the opposite party.

(ix) And facts and circumstances of each case.

(x) In any case, not after framing of the issues."

25. It is also important to note that defendant no. 2 is seeking specific performance of an agreement dated 21.10.2011, which provided execution of the sale deed within twelve months. Defendant no. 2 did not take any action. In any event, the next course of action to seek execution of the sale deed arose immediately after January 2012 when the appellant/plaintiff instituted a suit seeking annulment of so-called agreement to sell. The defendant no. 2 did nothing. Only after the death of his vendor in October 2013 and after framing of the issues in February 2019 that the defendant no. 2 decided to file the application- only after nine years of the filing of the suit, which is again two years after framing of the issues.

26. Enquiry and trial arising out of a claim to enforce an agreement to sell is qualitatively different from the claim of a plaintiff seeking a declaratory decree against a defendant. The civil remedy that the appellant seeks, i.e., a declaration that his sisterin- law has no manner of right to alienate the property and therefore to annul the sale is very different from the attempted civil remedy through counter-claim for specific performance against a co-defendant.

27. In view of the above, we are of the opinion that the High Court committed an error in reversing the judgment of the Trial Court by permitting defendant no. 2 to file a counter-claim against defendant no.1 and not against the plaintiff. We, therefore, allow the appeal arising out of SLP (C) No. 5635 of 2023 and set aside the order and judgment passed by the High Court in SCA No. 12701 of 2021 dated 16.01.2023.

28. There shall be no order as to costs.

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

.....J. [Joymalya Bagchi]

New Delhi;

September 12, 2025

1 In Special Civil Application No. 12701 of 2021 dated 16.01.2023.

2 Exhibit-107/108 dated 05.08.2021 in O.S. No.167 of 2012.

3 Hereinafter, CPC.

4 (2020) 2 SCC 394.

5 (2006) 12 SCC 734. Hereinafter, "Rohit Singh".

6 AIR 2006 SC 1474

7 (1996) 4 SCC 699.

8 (2023) 19 SCC 175; also see Satyender v. Saroj, (2022) 17 SCC 154.

9 Munishamappa v. M. Rama Reddy, 2023 SCC OnLine SC 1701.

10 Ashok Kumar Kalra v. Wing CDR Surendra Agnihotri, (2020) 2 SCC 394

IN THE SUPREME COURT OF INDIA

Mamman Khan
Vs.
State of Haryana

[Criminal Appeal No. 4002 of 2025
arising out of SLP (Crl.) No. 1829 of 2025]

[Criminal Appeal No. 4003 of 2025
arising out of SLP (Crl.) No. 18089 of 2024]

HEADNOTE – A joint trial is permissible where multiple accused are involved in offences arising out of the same transaction and a separate trial would be warranted only if the acts attributed to each accused are distinct and severable under Section 223 Cr.P.C (now Section 243 BNSS)

The Court laid down the following propositions regarding the joint trial:-
(i) Separate trial is the rule under Section 218 Cr.P.C; a joint trial may be permissible where the offences form part of the same transaction or the conditions in Sections 219 – 223 Cr.P.C. are satisfied, but even then it is a matter of judicial discretion;
(ii) The decision to hold a joint or separate trial must ordinarily be taken at the outset of the proceedings and for cogent reasons;
(iii) The two paramount considerations in such decision making are whether a joint trial would cause prejudice to the accused, and whether it would occasion delay or wastage of judicial time;
(iv) Evidence recorded in one trial cannot be imported into another, which may give rise to serious procedural complications if the trial is bifurcated; and
(v) An order of conviction or acquittal cannot be set aside merely because a joint or separate trial was possible; interference is justified only where prejudice or miscarriage of justice is shown.

JUDGMENT

R. Mahadevan, J.

1. Leave granted in both the SLPs.

2. These appeals have been preferred against the common judgment and order dated 12.12.2024 passed by the High Court of Punjab and Haryana at Chandigarh1, whereby the High Court dismissed the appellant's petitions bearing CRM-M-Nos. 61515 and 61516 of 2024, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 of the Criminal

Procedure Code, 19732) seeking to quash the orders dated 02.09.2024 and 28.08.2024 passed by the Additional Sessions Judge, Nuh3. By the said orders, the trial Court directed the prosecution to file a separate charge sheet against the appellant and ordered segregation of his trial from that of the co-accused in respect of:

- FIR No.149 dated 01.08.2023 registered under sections 148, 149, 153A, 379A, 395, 397, 427, 436, 506, 201, 120B, 107 of the Indian Penal Code, 18604, and
- FIR No.150 dated 01.08.2023 registered under sections 148, 149, 153A, 379A, 395, 427, 436, 506, 201, 120B, 107 and 180 IPC, respectively, both registered at Police Station Nagina, District Nuh.

3. The factual matrix of the present cases is as follows:

3.1. The appellant is a sitting Member of the Legislative Assembly (MLA) from Ferozepur Jhirka Constituency in Haryana and has been arrayed as one of the accused in FIR Nos.149 and 150 both dated 01.08.2023 registered at Police Station Nagina, District Nuh, in connection with large-scale communal violence that took place in the Nuh District on 31.07.2023.

3.2. During the course of investigation, multiple individuals were named as accused, and joint proceedings commenced before the trial Court. However, by orders dated 28.08.2024 and 02.09.2024, the trial Court directed the concerned Station House Officer to file a separate charge-sheet against the appellant and consequently, segregated his trial from that of the co-accused.

3.3. Pursuant to the aforesaid directions, the police filed separate charge sheets against the appellant, charges were framed on 25.11.2024, and the prosecution commenced evidence, with some witnesses already examined.

3.4. Aggrieved by the segregation of his trial, the appellant filed CRM-M - Nos.61515 and 61516 of 2024 before the High Court for quashing the aforesaid orders. However, by a common judgment dated 12.12.2024, the High Court dismissed both petitions, and upheld the segregation.

3.5. Hence, the appellant has come forward with the present appeals before this Court.

4. Assailing the impugned judgment, the learned Senior Counsel for the appellant submitted that the appellant, a sitting MLA, has been falsely implicated in the FIRs concerning the communal violence in Nuh District on 31.07.2023. The investigation itself revealed that the appellant was not present at the location of the incident, and that there is no material evidence linking him to the alleged

offences. Nevertheless, the relief sought herein is confined only to setting aside the segregation of his trial from that of the co-accused.

4.1. It was contended that the trial Court directed segregation of the appellant's trial solely on the ground that he is a sitting MLA, which reasoning is arbitrary, legally untenable, and amounts to a miscarriage of justice. Section 223(d) Cr.P.C. provides that persons accused of the same offence committed in the course of the same transaction shall be tried jointly. Joint trials are the rule, and separate trials are permissible only in exceptional circumstances expressly contemplated by law. In the present case, the alleged offences, including rioting and conspiracy under Section 120B IPC, arise from the same issue; hence, it is impermissible to try the alleged conspirator separately from the principal perpetrators.

4.2. The learned Senior Counsel further submitted that the trial Court placed reliance on the directions issued by this Court in Ashwini Kumar Upadhyay v. Union of India5, to justify the segregation. However, those directions merely call for prioritization of trials involving MPs/MLAs for expeditious disposal and do not permit deviation from the statutory scheme, nor authorize separate chargesheets or trials solely on the basis of accused's political status.

4.3. Reference was made to the decisions in Nasib Singh v. State6, State of A.P. v. Cheemalapati Ganeswara Rao7, and R. Dinesh Kumar v. State8, which establish that when offences form part of the same transaction, a joint trial is mandatory, and that multiplicity of trials arising from the same incident must be avoided as it causes injustice, prejudice, and delay.

4.4. It was further urged that the trial Court exceeded its jurisdiction by directing the police to file a separate charge-sheet, as the discretion to file charge- sheets lies exclusively with the investigating agency. Even when separate chargesheets are filed, if the offences arise out of the same transaction, they must necessarily be tried jointly. Sections 218 - 223 Cr.P.C make it clear that "distinct" offences refer to unconnected or independent acts. In the present case, the alleged conspiracy links the appellant with the co-accused, making separate trials legally impermissible.

4.5. It was argued that segregation would enable the prosecution to tailor its evidence based on prior cross-examination, thereby causing serious prejudice to the appellant as well as the co-accused. It would also expose the appellant to multiple proceedings for the same transaction, in violation of Article 20(2) of the Constitution (protection against double jeopardy) and the fundamental right to a fair trial under Article 21.

4.6. Finally, it was submitted that neither delay in the appearance of co-accused nor the desire for expeditious trial provides lawful justification for segregation.

The Code of Criminal Procedure permits separate trials only in exceptional circumstances, such as the absconding of co-accused or the existence of distinct transactions - conditions that are absent in the present case.

4.7. On these grounds, it was prayed that the impugned orders of the trial Court and the High Court be set aside, and a direction be issued for a joint trial of the appellant along with the co-accused, in accordance with law.

5. Per contra, the learned counsel for the respondent opposed the appeals and submitted that the appellant challenges the legality of the orders dated 28.08.2024 and 02.09.2024 passed by the trial Court in Session Cases arising out of FIR Nos.150 and 149 of 2023, respectively. By these orders, the trial Court directed the Station House Officer to file a separate charge-sheet against the appellant, who is a sitting MLA, and accordingly, segregated his trial from that of the coaccused. In compliance, separate charge sheets were filed against the appellant, charges were framed on 25.11.2024, and the prosecution has already commenced evidence with several witnesses having been examined.

5.1. It was contended that the segregation of the appellant's trial was necessitated to ensure judicial efficiency, as the presence of 43 accused in FIR No.149 and 28 accused in FIR No.150 had rendered the conduct of a joint trial logistically and procedurally cumbersome. Repeated non-appearance of certain co-accused had already resulted in considerable delay.

5.2. Learned counsel submitted that the segregation was intended to prevent further delay in proceedings and, in fact, facilitates early disposal. The measure does not, in any manner, prejudice the appellant's rights.

5.3. It was further argued that under Section 218 Cr.P.C., the general rule is that each offence shall be tried separately. While Section 223 enables joint trials, it is couched in discretionary terms and must be applied only in appropriate cases depending on the circumstances.

5.4. Reliance was placed on Nasib Singh v. State (supra), where this Court held that the test for permitting a joint trial includes consideration of whether it would prejudice the accused or cause delay in the proceedings. In the present case, the appellant failed to establish any real or specific prejudice arising out of the separate trial.

5.5. Further reliance was placed on Ashwini Kumar Upadhyay wherein, this Court directed all courts to prioritize expeditious disposal of criminal cases involving elected public representatives. The action of the trial Court is in consonance with these directions and is aimed at ensuring speedy adjudication.

5.6. It was submitted that the right to a speedy trial is an essential facet of Article 21 of the Constitution. The segregation of the appellant's trial subserves this constitutional guarantee by enabling timely progress of the case.

5.7. On these premises, the learned counsel prayed for dismissal of the appeals and for upholding of the impugned orders directing segregation of the appellant's trial from that of the co-accused, submitting that the same are legally sound, procedurally proper, and constitutionally justified.

6. We have considered the submissions advanced by the learned senior counsel for the appellant and learned counsel for the respondent and have carefully perused the materials available on record.

6.1. On 19.12.2024, when SLP (Crl.) No. 18089 of 2024 was taken up for consideration, this Court granted an order of stay of further proceedings in S.C. No. 478 of 2024 pending before the Court of Additional Sessions Judge (Nuh), Haryana. Subsequently, by order dated 31.01.2025 in SLP (Crl.) Diary No. 58851 of 2024, this Court granted an order of stay of further proceedings in S.C. No. 485 / 2024.

7. The principal issue that arises for determination in these appeals is whether the orders of the trial Court, as affirmed by the High Court, directing segregation of the appellant's trial from that of the co-accused and requiring the filing of a separate charge sheet solely on the ground that the appellant is a sitting MLA, are legally sustainable.

8. Apparently, FIR Nos.149 and 150 of 2023, were registered in the aftermath of large-scale communal violence in the Nuh district of Haryana, which resulted in serious law and order disturbances, loss of lives, and extensive damage to both public and private property. These FIRs named several individuals, including the present appellant, and alleged the commission of offences such as rioting, dacoity, mischief by fire, and criminal intimidation.

9. The prosecution case proceeds on the basis of an overarching conspiracy said to involve all the accused persons. The charge sheet reflects a consolidated investigative approach, founded upon common evidence, such as call detail records, electronic communications, video footage, witness statements, and forensic reports. It is undisputed that the prosecution relies upon largely common witnesses and interlinked evidence against all the accused.

10. Despite the unified nature of the allegations, the trial Court ordered segregation of the appellant's trial on the premise that proceedings were being delayed due to the repeated non-appearance of certain co-accused. The court also noted that, since the appellant is a sitting MLA, his trial needed to be taken up on a day-to-day basis in view of the directions issued by this Court in Ashwini

Kumar Upadhyay v. Union of India (supra), concerning expeditious disposal of cases against legislators. Consequently, by orders dated 28.08.2024 and 02.09.2024, the trial Court directed the police to file a separate charge sheet against the appellant. Agrieved thereby, the appellant preferred Criminal Miscellaneous Petitions seeking quashing of the proceedings, which came to be dismissed by the High Court.

11. In the present appeals, the challenge has been confined to the segregation of the appellant's trial. The appellant submits that the offences alleged against him arise out of the same transaction as those involving the co-accused, and hence, by virtue of Section 223 Cr.P.C., a joint trial ought to have been conducted. It is not the prosecution's case that the acts attributed to the appellant are distinct or severable. According to the appellant, conducting a separate trial would result in serious prejudice to him and impair his right to a fair trial.

11.1. On the other hand, the respondent contends that segregation was necessitated by the mandate of this Court in Ashwini Kumar Upadhyay (supra), which requires expeditious disposal of criminal cases involving elected representatives. It is further stated that the direction was purely procedural and intended to obviate delay caused by the abscondence of certain co-accused, while ensuring that the trial of the appellant proceeds in a timely manner.

12. Before addressing the question of the legal permissibility of such segregation, it would be apposite to extract the relevant portions of the trial Court's orders dated 28.08.2024 and 02.09.2024, as affirmed by the High Court, which read as under:

Order dated 28.08.2024

"In the present case, one of the accused namely Sh. Mamman Khan is MLA of Haryana. The present case is not progressing on account of absence of one accused or the other. On the other hand, as per direction issued by Hon'ble Supreme Court, the cases of MPs/MLAs are to be decided on priority basis by taking up the case on day to day basis. The case has been identified for current action plan and therefore, in the interest of justice and fitness of things, case of accused Mamman Khan is to be tried separately. The concerned Ahlmad of this Court is directed to issue notice to SHO of Police Station Nagina today itself through Naib Court of this Court with direction to prepare and file a separate challan of accused Mamman Khan."

Order dated 02.09.2024

"One of the accused namely Mamman Khan is sitting MLA of Haryana and therefore, his case is to be taken up on day to day basis as per instructions issued by Hon'ble Supreme Court from time to time. The case is not proceeding further

as there are large number of accused and some of them are absent and other seek adjournment on one pretext or the other. Resultantly, notice be issued to SHO of Police Station Nagina to file separate challan of accused Mamman Khan on the next date of hearing."

12.1. A plain reading of the above orders makes it clear that the segregation was directed solely on account of the appellant's status as an MLA, so as to facilitate a day-to-day trial in purported compliance with the directions of this Court in Ashwini Kumar Upadhyay (supra). Significantly, the record discloses that no notice was issued to the appellant prior to passing of the segregation order, nor was there any application filed by the prosecution seeking such a course of action. The segregation was thus ordered suo motu, without affording the appellant an opportunity of hearing.

13. The statutory scheme under the Code of Criminal Procedure, 1973, is clear. Sections 218 to 223 lay down the framework governing the joinder and separation of charges and trials. Section 218 embodies the general rule that each distinct offence shall be tried separately. However, the Code carves out specific exceptions to this rule in Sections 219 to 223, where joint trials are permissible in the interests of justice.

13.1. In particular, Section 223(d) provides that persons accused of different offences committed in the course of the same transaction may be charged and tried together. The legislative intent underlying these provisions is three-fold: (i)to prevent multiplicity of proceedings, (ii) to avoid the risk of conflicting judgments on the same evidence, and (iii) to promote judicial economy while ensuring fairness to the accused. For ease of reference, the relevant provisions are set out below:

"218. Separate charges for distinct offences-

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

219. Three offences of same kind within year may be charged together -

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under Section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under Section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

220. Trial for more than one offence -

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).

221. Where it is doubtful what offence has been committed -

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

222. When offence proved included in offence charged -

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

223. What persons may be charged jointly -

The following persons may be charged and tried together, namely:

(a) Persons accused of the same offence committed in the course of the same transaction;

(b) Persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) Persons accused of more than one offence of the same kind, within the meaning of Section 219 committed by them jointly within the period of twelve months;

(d) Persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under Sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate [or Court of Session] may, if such persons by an application in writing, so desire, and if he [or it] is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

14. In the present case, there is no allegation that the acts attributed to the appellant arise from a distinct transaction, or that a joint trial would prejudice the prosecution. On the contrary, the prosecution's own case rests on an overarching conspiracy, and interlinked evidence. Segregation was ordered not on any legally recognized ground - such as distinct facts, severable evidence, or demonstrated prejudice - but solely on account of the appellant's political office, by misapplying the directions in Ashwini Kumar Upadhyay (supra).

15. At the outset, the reliance placed by the trial Court and the High Court on Ashwini Kumar Upadhyay (supra) appears to be misplaced. As already noticed earlier, the trial Court, while directing segregation, categorically recorded that in terms of this Court's directions, cases of MPs/MLAs are to be prioritised and taken up on a day-to-day basis. It is no doubt correct that the said judgment emphasises the need for expeditious disposal of criminal cases involving MPs / MLAs. However, it lays down that it is the responsibility of the Principal District Judge to allocate, as considered appropriate and effective, criminal cases involving MPs and MLAs to the designated courts. Further, they do not confer

any procedural disadvantage upon an accused legislator, nor do they authorise deviation from the mandatory legal norms governing joint trials.

16. The principles governing the conduct of joint or separate trials have been elaborately dealt with by this Court in Nasib Singh v. State of Punjab (supra), after a survey of earlier decisions. The relevant paragraphs are extracted below:

"B. Power to direct joint trial

35. Chapter 17 CrPC, 1973 deals with "the charge". Part A comprising of Sections 211 to 217 is titled "form of charges". Part B comprising of Sections 218 to 224 is titled "joinder of charges".

43. The Bench held that holding a separate trial is the rule and a joint trial is the exception. However, in case the accused persons commit different offences forming a part of the same transaction, a joint trial would be the rule unless it is proved that joint trial would cause difficulty: (Cheemalapati Ganeswara Rao case9, AIR pp. 1861-862, para 30)

"30. No doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come in, it would where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money.

No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves."

48. The Court in Chandra Bhal case10 observed that a separate trial on the charge of causing the homicidal death of one 'L' was not contrary to law even if a joint trial of this offence together with others was permissible. The Court also observed that this matter was required to be considered by the trial court at the beginning of the trial and is not to be determined on the basis of the result of the trial. The Court further observed that its attention was not drawn to any material on record suggesting that prejudice had been caused to the appellant as a result of a separate trial. It was finally held that the plea of self defence and the argument that both the offences were committed during the course of the same transaction

was rejected by both the courts below, and that the court would not interfere with concurrent findings of fact.

49. The judgment in Chandra Bhal case therefore lays down three significant principles on joint trials:

49.1. A separate trial is not contrary to law even if a joint trial for the offences along with other offences is permissible.

49.2. The possibility of a joint trial has to be decided at the beginning of the trial and not on the basis of the result of the trial.

49.3. The true test is whether any prejudice has been sustained as a result of a separate trial. In other words, a retrial with a direction of a joint trial would be ordered only if there is a failure of justice.

50. In Essar Teleholdings Ltd. v. CBI11, R.F. Nariman, J., speaking for a three-Judge Bench reiterated the principles which have been enunciated in Chandra Bhal. Further, it was held that even if the conditions stipulated in Section 223 CrPC to conduct a joint trial have been fulfilled, it may not be desirous to direct a joint trial if a joint trial would (i) prolong the trial; (ii) cause unnecessary wastage of judicial time; and (iii) confuse or cause prejudice to the accused, who had taken part only in some minor offence.

51. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:

51.1. Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219-221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.

51.2. While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

51.3. The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The appellate court may determine the validity of the argument that there ought to

have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.

51.4. Since the provisions which engraft an exception use the phrase "may" with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.

51.5. A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be."

From the above, the following propositions stand reiterated:

(i) Separate trial is the rule under Section 218 Cr.P.C; a joint trial may be permissible where the offences form part of the same transaction or the conditions in Sections 219 - 223 Cr.P.C. are satisfied, but even then it is a matter of judicial discretion;

(ii) The decision to hold a joint or separate trial must ordinarily be taken at the outset of the proceedings and for cogent reasons;

(iii) The two paramount considerations in such decision making are whether a joint trial would cause prejudice to the accused, and whether it would occasion delay or wastage of judicial time;

(iv) Evidence recorded in one trial cannot be imported into another, which may give rise to serious procedural complications if the trial is bifurcated; and

(v) An order of conviction or acquittal cannot be set aside merely because a joint or separate trial was possible; interference is justified only where prejudice or miscarriage of justice is shown.

16.1. Applying the aforesaid principles, we are of the considered view that the order of the trial Court directing segregation of the appellant's trial from that of the co-accused, cannot be sustained. The only ground recorded was the delay occasioned by the non-appearance of certain co-accused. The proper course in such a situation would have been to segregate the absconding or defaulting accused, not the appellant who was regularly before the court. By doing so, the trial court inverted the settled principle and thereby committed a manifest error. No finding was recorded that a joint trial would delay proceedings or cause prejudice to the appellant.

16.2. Reliance placed by the respondents on Nasib Singh case is misconceived. That case concerned consolidation of two distinct FIRs arising from unrelated acts; it does not support the arbitrary splitting of a joint trial. Indeed, it reinforces that joint trials are not only permissible but preferable where offences arise from the same transaction and evidence is common, provided no demonstrable prejudice is shown.

17. This Court has consistently held that a fair trial forms part of the guarantee under Article 21. Departure from established legal procedure - particularly without hearing the affected party - constitutes a serious constitutional infraction. The segregation order passed suo motu by the trial court falls short of these requirements. A unilateral order for a separate charge sheet and segregated trial, passed without notice or application, violates the basic principles of procedural fairness inherent in Article 21.

18. The contention that the segregation order was passed in the presence of the appellant's counsel is equally untenable. Mere physical presence of counsel cannot be equated with a meaningful opportunity of hearing. Natural justice requires that the party likely to be affected by an order must have prior notice and a fair opportunity to present objections. In the absence of any indication that segregation was under consideration, the requirement of a fair hearing was not satisfied.

19. It is true that pursuant to the segregation order, separate charge sheets were filed, charges framed against the appellant, and prosecution evidence has commenced. However, mere progress of proceedings cannot cure the inherent illegality in the manner in which segregation was ordered. Procedural fairness and statutory compliance cannot be sacrificed for administrative convenience or retrospective justification. Expediency must operate within the bounds of fairness.

20. We also find that the trial court exceeded its jurisdiction in directing the police to file a separate charge-sheet against the appellant. The discretion to file a charge-sheet lies solely with the investigating agency. Even where multiple charge-sheets are filed, if the offences arise out of the same transaction, they must be tried together.

21. Most importantly, the appellant's status as a sitting MLA cannot, by itself, justify a separate trial. All accused stand equal before the law, and preferential segregation militates against the equality principle enshrined in Article 14. While the right to speedy trial is an essential facet of Article 21, it cannot be secured at the cost of fairness. Ashwini Kumar Upadhyay (supra) emphasizes expedition, but nowhere intends that such expedition be achieved by compromising the fundamental rights of the accused.

22. In the present case, the evidence against the appellant is identical to that against the co-accused. Separate trials would necessarily involve recalling the same witnesses, resulting in duplication, delay, and the risk of inconsistent findings. The High Court, in affirming the segregation order, failed to appreciate these consequences and confined itself to the discretionary language of section 223 Cr.P.C without evaluating whether the factual circumstances justified such segregation. Therefore, we hold that the segregation of the appellant's trial, without any legally recognized justification, is unsustainable in law and violative of the appellant's right to a fair trial under Article 21.

23. At this juncture, we deem it necessary to reiterate the foundational constitutional principle enshrined in Article 14 of the Constitution, which guarantees that all persons are equal before the law and entitled to equal protection of the laws. This principle extends beyond mere formal equality and requires that legal procedures be applied fairly and uniformly, irrespective of an individual's public position or status. The right to equal access to justice is an essential facet of the rule of law, and no person - whether a sitting MLA or an ordinary citizen - can be subjected to procedural disadvantage or preferential treatment without express legal justification.

23.1. While expeditious disposal of cases involving legislators is undoubtedly desirable, such administrative prioritization cannot override the procedural safeguards guaranteed under the Cr.P.C. or the constitutional mandate of equality. Segregating the appellant's trial solely on account of his political office, in the absence of any legal or factual necessity, amounts to arbitrary classification and undermines the integrity of the criminal justice process.

24. In view of the foregoing, the impugned orders dated 28.08.2024 and 02.09.2024 passed by the trial Court, as affirmed by the High Court in its judgment dated 12.12.2024 are hereby set aside. The direction to file a separate charge sheet against the appellant and the consequential segregation of his trial from that of the co-accused are quashed.

25. The matter is remitted to the trial Court with a direction to conduct a joint trial of the appellant along with the co-accused, in accordance with law. The trial Court shall be at liberty to regulate the schedule of proceedings to ensure expeditious disposal, but shall do so, without compromising procedural safeguards and only after hearing all concerned parties.

26. Accordingly, both the criminal appeals are disposed of.

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

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

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

New Delhi

September 12, 2025.

1 Hereinafter referred to as "the High Court"

2 For short, "Cr.P.C"

3 For short, "the trial Court"

4 For short, "IPC"

5 (2024) 1 SCC 185

6 2021 OnLine SC 94

7 AIR 1963 SC 1850

8 (2015) 7 SCC 497

9 State of A.P. v. Cheemalapati Ganeswara Rao, AIR 1963 SC 1850 : (1963) 2 Cri LJ 671

10 Chandra Bhal v. State of U.P., (1971) 3 SCC 983 : 1972 SCC (Cri) 290

11 (2015) 10 SCC 562 : (2016) 1 SCC (Cri) 1

IN THE SUPREME COURT OF INDIA

In Re: The Waqf (Amendment) Act, 2025 (1)

[Writ Petition (Civil) No. 276 of 2025]
[Writ Petition (Civil) No. 814 of 2013]
[Writ Petition (Civil) No. 269 of 2025]
[Writ Petition (Civil) No. 284 of 2025]
[Writ Petition (Civil) No. 314 of 2025]
[Writ Petition (Civil) No. 331 of 2025]
[Writ Petition (Civil) No. 344 of 2025]
[Writ Petition (Civil) No. 353 of 2025]
[Writ Petition (Civil) No. 375 of 2025]
[Writ Petition (Civil) No. 381 of 2025]
[Writ Petition (Civil) No. 398 of 2025]
[Writ Petition (Civil) No. 415 of 2025]
[Writ Petition (Civil) No. 427 of 2025]
[Writ Petition (Civil) No. 431 of 2025]
[Writ Petition (Civil) No. 436 of 2025]
[Writ Petition (Civil) No. 439 of 2025]
[Writ Petition (Civil) No. 440 of 2025]
[Writ Petition (Civil) No. 445 of 2025]
[Writ Petition (Civil) No. 447 of 2025]
[Writ Petition (Civil) No. 450 of 2025
[Writ Petition (Civil) No._____ of 2025
Diary No. 19103 of 2025]

[Transfer Petition (Civil) No. 1316 of 2025]

HEADNOTE – Stayed certain provisions of the Waqf (Amendment) Act 2025, while observing that several other provisions did not require any interference at the interim stage.

The key points are as follows :
1. Stayed the condition that a person should be a practitioner of Islam for at least 5 years till rules are framed by State Governments to provide a mechanism to determine this question. Without such a mechanism, the provision can lead to arbitrariness.

2. Stayed the provisions allowing the Government to derecognise a Waqf land during the pendency of decision by the Government officer on the dispute of encroachment. Allowed the Collector to decide the dispute is against the separation of powers.

Till the question of title is decided by the Tribunal or the Court, the disputed Waqf land will not be affected. No third-party rights should be created on such lands till the dispute is decided.
3. Directed that in the Central Waqf Council, the non-Muslim members cannot exceed four. In State Waqf Boards, the non-Muslim members cannot exceed three.

4. Did not stay the provision allowing a non-Muslim to be the CEO of the State Waqf Board. However, the Court said that as far as possible, a Muslim person should be appointed.

5. Did not interfere with the condition of registration.

The Court did not interfere with the other major contentious provisions, such as the abolition of 'waqf-by-user', bar on creating waqfs over Scheduled Areas and protected monuments, condition that only Muslims can create Waqfs, application of the Limitation Act to the Waqf Act etc.

JUDGMENT

J.B. Pardiwala, J.

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

INTRODUCTION .....

SUBMISSIONS .....

i. On behalf of the Petitioners .....
ii. On behalf of the Respondents .....
iii. Rejoinder .....

DISCUSSION AND ANALYSIS.....

i. Scope of Grant of Interim Relief.....
ii. Legislative History of Waqf .....
    a. Mussalman Wakf Act, 1923 .....
    b. Bengal Wakf Act, 1934 .....
    c. Wakf Act, 1954 .....
    d. Wakf Enquiry Committee & Wakf (Amendment) Act, 1984 ....
    e. Waqf Act, 1995 .....

iii. Consideration of the provisions of the impugned Act .....

a. Section 4(ix)(a) of the impugned Act .....

b. Section 4(ix)(b) of the impugned Act .....

c. Section 5 of the impugned Act (Section 3C of the Amended Waqf Act) .....

d. Section 5 of the impugned Act (Section 3D of the Amended Waqf Act) .....

e. Section 5 of the impugned Act (Section 3E of the Amended Waqf Act) .....

f. Sections 10, 12 and 16 of the impugned Act .....

g. Section 21 of the impugned Act .....

h. Section 43 of the impugned Act .....

i. Section 44 of the impugned Act .....

j. Section 45 of the impugned Act .....

CONCLUSION .....

B.R. Gavai, CJI

INTRODUCTION

1. The first five writ petitions in this batch of matters being Writ Petition (Civil) Nos. 276, 314, 284, 331 and 269 of 2025 challenge the validity of several of the Sections of the Waqf (Amendment) Act, 2025,1 on the ground of they being ultra vires the Constitution of India being violative of Articles 14, 15, 19, 21, 25, 26, 29, 30 and 300A of the Constitution.

2. Though the petitioners seek to challenge the constitutionality of almost all the Sections of the impugned Act, from the tenor of the arguments advanced, it is apparent that the main challenge is to the amendments carried out in Section 3(r), 3C, 3D, 3E, 9, 14, 23, 36, 104, 107, 108, 108A of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 19952. It is, therefore, clear that the most contentious Sections of the impugned Act are Sections 4(ix)(a), 4(ix)(b), 5, 10, 12, 16, 21, 43, 44 and 45 which have amended the provisions of the Waqf Act, 19953.

3. At the outset, Shri Tushar Mehta, the learned Solicitor General, appearing on behalf of the respondent-Union of India submitted that at the hearing which took place on 16th April 2025 and 17th April 2025, this Court had identified the following three issues for consideration at the interim stage

(i) Challenge to Section 3(r) of the Amended Waqf Act, which de-recognises 'Waqf by user' prospectively;

(ii) Challenge to special provision for Government Properties under Section 3C of the Amended Waqf Act; and

(iii) Changes in the composition of the Central Waqf Council and State Waqf Board under Section 9 and 14 of the Amended Waqf Act, respectively.

4. This position was, however, disputed by Shri Kapil Sibal, the learned Senior Counsel appearing on behalf of one of the petitioners. It was submitted by the learned Senior Counsel that there is nothing on record to that effect. We, therefore, proceeded to consider all the issues raised by the parties on the question of interim relief.

5. It is also relevant to note that when the matter was heard by the previous Bench presided over by the then Chief Justice of India, Shri Sanjiv Khanna on 17th April 2025, on certain aspects, a statement of the learned Solicitor General to the following effect was recorded:

"He assures this Court that till the next date of hearing, no appointments would be made to the Central Waqf Council and the Waqf Boards in the States and the National Capital Territory of Delhi, under Sections 9 and 14 respectively of the principal Act, that is, the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, as amended by the Waqf (Amendment) Act, 2025. He further states that if the Government of any State or the National Capital Territory of Delhi makes any such appointment(s), the same may be declared void. It is also stated that till the next date of hearing, no Waqf, including a Waqf by user, whether declared by way of notification or by way of registration, shall be de-notified, nor will their character or status be changed."

SUBMISSIONS

6. We extensively heard Shri Kapil Sibal, Dr. Rajeev Dhavan, Dr. A.M. Singhvi, Shri C.U. Singh and Shri Huzefa Ahmadi, learned Senior Counsel appearing on behalf of the petitioners. We also heard at length Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the Union of India as well as Shri Rakesh Dwivedi, Shri Ranjit Kumar, Shri Gopal Sankaranarayanan and Shri Guru Krishna Kumar, learned Senior Counsel appearing on behalf of intervenors supporting the stand of the Union of India.

i. On behalf of the Petitioners

7. Shri Sibal, learned Senior Counsel submitted that though the impugned Act says that it has been enacted to "protect" Waqfs, but the real intention behind it is

to take away or expropriate the Waqf properties. It was submitted that till 2025, the registration of a Waqf was not mandatory inasmuch as though under the Mussalman Waqf Act, 1923, and later on in the Original Waqf Act which was continued till 2013, there was provision for registration of a Waqf, however, no consequences were provided for non-compliance except the removal of the Mutawalli.

8. He submitted that prior to 1954, registration of a "Waqf by User" was not necessary. He further submitted that by virtue of Sections 4(ix)(b) and 4(ix)(e) of the impugned Act, the provision of "Waqf by User" has been deleted and the proviso inserted in Section 3(r) now requires the existing "Waqf by User" to have registered on or before the commencement of the impugned Act.

9. Challenging the provision of Section 3D of the Amended Waqf Act, Shri Sibal would submit that under the various enactments in existence from 1904 to 1958, the right to religious practices, even in buildings which were ancient monuments, was preserved. It is submitted that, however by virtue of the newly added provision contained in Section 3D, on notification of any monument as a "protected monument", the declarations made under the Waqf Acts shall be void. He further submitted that the impugned Act infringes upon the rights of the citizens to continue with their religious practices which is violative of Article 14, 15, 25 and 26 of the Constitution.

10. Insofar as the amendment to Section 3(r) by virtue of Section 4(ix)(a) of the impugned Act is concerned, Shri Sibal submitted that the requirement that one has to "show or demonstrate" that he is practicing Islam for at least five years for the declaration of any movable or immovable property as Waqf is totally discriminatory and arbitrary. He further submitted that no such provision is there insofar as other religions are concerned. Shri Sibal, therefore, submitted that such a requirement is in clear violation of Articles 14, 15, 19, 21, 25 and 26 of the Constitution.

11. Further, Shri Sibal submitted that Section 3E of the Amended Waqf Act provides that no land belonging to members of Scheduled Tribes under the provisions of the Fifth and Sixth Schedule of the Constitution is permitted to be declared or deemed to be Waqf property. He submitted that such a restriction is a direct attack on the religious freedom of persons belonging to Scheduled Tribes who are practicing Islam and who desire to donate their properties for creation of a Waqf.

12. Shri Sibal submitted that the amendments to provisions contained in Sections 9, 14 and 23 of the Original Waqf Act have a direct impact on the Muslim community as majority of the members in the Waqf Council and Waqf Boards could be non-Muslims and they would be permitted to interfere in the affairs of

the Waqfs, thereby directly affecting the rights of the Muslims to independently manage the affairs of their religious practice.

13. He further submitted that under Section 9 of the Amended Waqf Act, which pertains to the establishment and constitution of Central Waqf Council, out of 22 members, 12 members could be non-Muslims, thereby leaving space only for 10 Muslims in the Council. Similarly, under Section 14 of the Amended Waqf Act which pertains to composition of the Board for a State and the National Capital Territory of Delhi, it is submitted that out of 11 members, 7 members could be non- Muslims, again enabling a majority of non-Muslims to manage the affairs of the Waqf.

14. It is further submitted that under Section 23 of the Amended Waqf Act, the Chief Executive Officer of the Board was earlier required to be a Muslim but by virtue of the impugned Act, he will now have to be a person not below the rank of Joint Secretary to the State Government and not necessarily be a Muslim. Not only that but it was also submitted that the mode of constituting the Board has now been changed from election to nomination by the Government.

15. Insofar as Section 3C of the Amended Waqf Act is concerned, Shri Sibal submitted that under sub-section (1) of Section 3C, any "Government property" identified or declared as Waqf property, before or after the commencement of the Act, will not be deemed to be a Waqf property. He submitted that subsection (2) of Section 3C is totally arbitrary inasmuch as if a question arises as to whether any property is a Waqf property, the State Government can nominate a designated officer, above the rank of Collector, to conduct an inquiry as per law and to determine whether the property in question is a Government property or not and submit a report to the State Government.

It is submitted that the term "Government property" as defined in Section 3(fb) of the Amended Waqf Act read with the definition of "Government Organization" in Section 3(fa) thereof allows even a tenuous/arbitrary connection with the State, to defeat the Waqf status of a property. It is further submitted that the words used in Section 3C of the Amended Waqf Act are "as per law" and no detailed guidelines as to in what manner the inquiry would be conducted by the designated officer have been provided making the provision totally arbitrary. It is further submitted that the proviso to sub-section (2) of Section 3C is also totally unconstitutional inasmuch as even before the report is submitted, the property in question will cease to be Waqf property.

16. Shri Sibal submitted that the only remedy available to a Waqf in such a case is to approach the Tribunal as provided under Section 83 of the Amended Waqf Act. However, it is submitted that even before the findings of the inquiry report can be challenged before the Tribunal, as per sub-sections (3) and (4) of Section

3C of the Amended Waqf Act, the status of the property in question would be automatically changed in the revenue records as Government property and the Waqf loses its possession. It is, therefore, submitted that on the unilateral decision of the designated officer, the property declared as a Waqf will cease to be the property of the Waqf and the Waqf will be left high and dry, knocking on the doors of the Waqf Tribunal.

17. Shri Sibal further submitted that Sections 3C and 3D of the Amended Waqf Act were not circulated in the original bill and as such there could not be any discussion on the same either in the Joint Parliamentary Committee4 or the Parliament and they were enacted unilaterally.

18. It was further submitted by the learned Senior Counsel that under the Original Waqf Act, sub-sections 1(A), 2 and 3 of Section 4 provided for an elaborate procedure for conducting a survey of the auqaf. However, by Section 6(c) of the impugned Act, the said provisions have been done away with.

19. Shri Sibal further submitted that in view of Section 36 of the Amended Waqf Act, the requirement of registration of every Waqf with the Board has been made mandatory. It has been further provided that on or after the commencement of the impugned Act, no Waqf shall be created without execution of the Waqf Deed. Shri Sibal submitted that the said provision is totally contrary to the tenets of Islamic law. It is submitted that under the Islamic law, a Waqf can be created even by an oral gift. It is, therefore, submitted that such a provision adversely affects the rights of practicing Muslims to create a Waqf by an oral gift.

20. Shri Sibal, thereafter, invited the attention of this Court to sub-sections (7) and (7A) of Section 36 of the Amended Waqf Act; as per which on receipt of an application for registration, the Board shall forward the application to the Collector to inquire into the genuineness and validity of the application and in case, the Collector, in his report, mentions that the property, wholly or in part, is "in dispute" or is a "Government property", the Waqf shall not be registered unless the dispute is decided by a competent court. It was, accordingly, submitted that in view of sub-sections (7) and (7A) of Section 36 read with sub-section (10) thereof, a Waqf which is not registered has been rendered remediless inasmuch as it bars any suit, appeal or other legal proceedings for enforcement of any right of the Waqf. It is, therefore, submitted that this is a "wholesale takeaway" of the entire community's rights.

21. Shri Sibal further submitted that Section 108 of the Original Waqf Act was a special provision in respect of the Waqf created out of evacuee properties. It is submitted that by the impugned Act, the said provision has totally been omitted, thereby prohibiting the Waqf from being created out of the evacuee properties.

22. Dr. Dhavan, learned Senior Counsel, submitted that earlier provision contained in Section 104 of the Original Waqf Act, which applied to the properties given and donated by persons not professing Islam for support of certain Waqfs, has been deleted by Section 43 of the impugned Act, thereby putting restriction on non-Muslims to donate their properties for the Waqf related activities. It is submitted that the same is violative of provisions of Part III of the Constitution.

23. Dr. Dhavan submitted that by insertion of the second proviso to Section 2 of the Original Waqf Act, there is now a restriction on the applicability of the Act to a "trust" created by a Muslim for carrying out activities similar to a Waqf. He submitted that prior to the said amendment, even a Muslim could have created a trust similar to Waqf for charitable purposes. However, that right has now been taken away by virtue of Section 3 of the impugned Act.

24. Dr. Dhavan further submitted that the impugned Act is a direct attack on the secular character of the Constitution inasmuch as it adversely affects the right to preserve culture under Article 25 of the Constitution.

25. Insofar as the deletion of provision qua "Waqf by User" is concerned, Dr. Dhavan has relied on paragraph 1,134 of the judgment of a Constitution Bench of this Court in M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das and Others5.

26. Dr. Abhishek Manu Singhvi, learned Senior Counsel submitted that the amendment to the provision contained in Section 3(r) of the Original Waqf Act, insofar as showing or demonstrating at least five years of practice of Islam is concerned, was done totally to infuse terror and give entire control in the hands of the State leading to endless visits to government offices and thereby harassing them. It is submitted that there is no such provision insofar as any other religion is concerned, which requires a person to show practice of a religion for five years before being able to enjoy their rights. It is, therefore, submitted that the amended provision is totally violative of Article 15 of the Constitution of India being discriminatory solely on the ground of religion.

27. Dr. Singhvi submitted that the impugned Act, specifically the Sections concerning amendment to Section 36 of the Original Waqf Act creates a Catch 22 situation. He submitted that on the one hand the concerned authorities can refuse to grant the registration as a Waqf on the ground of a dispute and on the other hand on non-registration of the property as a Waqf, the concerned parties would be remediless to file any proceedings in view of sub-section (10) of Section 36 of the Amended Waqf Act.

28. Dr. Singhvi submitted that provision of Section 3D of the Amended Waqf Act is again wholly discriminatory inasmuch as it is only Waqfs created by Muslims on which such a restriction has been imposed and there is no similar provision with respect to monuments which are being used by the people belonging to other religions. It is, therefore, submitted that the said provision is violative of Article 15 of the Constitution. Dr. Singhvi submitted that even the survey which is a prerequisite for giving effect to the provisions of the impugned Act has not been carried out and it would be clear from the pleadings of the respondent themselves that only in respect of 5 out of 28 States the survey has been conducted.

29. Shri C.U. Singh, learned Senior Counsel, submitted that under the provisions of the earlier Acts so also the Original Waqf Act, the effect of non-registration of a Waqf was a penalty affecting only the Mutawallis and it did not have any effect on the Waqf. Now, however, the effect of non-registration directly reaches the Waqf, thereby affecting the beneficiary of such a Waqf as defined in Section 3(a) of the Original Waqf Act.

30. Shri Ahmadi, learned Senior Counsel submitted that under the old Section 107, the provisions of the Limitation Act, 1963, were not applicable for any suit for possession of immovable property comprised in any Waqf or for possession of any interest in such property. However, by the impugned Act, specifically Section 44 thereof, the said provision has been changed thereby making provisions of the Limitation Act, 1963, applicable to such property. It is submitted that the combined effect of amendments to Sections 107 and 108 of the Original Waqf Act, the latter of which has been completely omitted, would be that if any proceedings in respect of any evacuee property is to be initiated, the same would be barred by limitation.

ii. On behalf of the Respondents

31. Shri Tushar Mehta learned Solicitor General of India, in reply submitted that the present proceedings are in the nature of a Public Interest Litigation. It is submitted that not even a single person who is said to be affected by the amendments in question has approached this Court, being aggrieved by any of the provisions of the impugned Act.

32. Shri Mehta submitted that insofar as the legislative competence of the Parliament to enact the impugned Act is concerned, the same is not disputed. He further submitted that the presumption of validity is always in favour of the legislation. It is submitted that the burden to prove unconstitutionality would be on the other side, and that a very heavy burden would lie on them to dislodge the presumption regarding the constitutionality of the statute in question.

He submitted that in any case, the Court should always be very slow in staying any provision of the statute unless they are found to be beyond legislative competence, violative of any of the Fundamental Rights or any other provision of the Constitution or manifestly arbitrary. It is submitted that in this regard the petitioners herein have utterly failed to make out a case for grant of any interim relief.

33. Learned Solicitor General submitted that the impugned amendments were carried out by Parliament after taking into consideration various factors. He submitted that as a matter of fact, State is bound to keep pace with the changing societal conditions and enact or amend existing laws to deal with challenges which arise on account of the changes in the society.

34. Learned Solicitor General submitted that the amendment to the provision with regard to "Waqf by User" is prospective in nature. He submitted that all such Waqfs which are registered as on 8th April 2025, shall stand protected except in those cases where the Waqf property, is in full or in part, in dispute or which is a Government property. He submitted that the purpose behind such provision not being made applicable to the Government property was that the Government holds a property for and on behalf of its citizens and that too as a trustee.

He submitted that as a natural corollary, the State is under an obligation to protect the Government properties. It is further submitted that many instances had come to notice where large chunks of properties owned by Governments were claimed to be property covered by "Waqf by User". He submitted that the case of State of Andhra Pradesh (Now State of Telangana) v. Andhra Pradesh State Wakf Board and Others6 is one such instance where the State Government was required to approach the High Court in exercise of writ jurisdiction against the action of the Andhra Pradesh Waqf Board to declare the land measuring 1,654 acres and 32 guntas as Waqf property.

It is submitted that in the said case, vast chunk of Government land was encroached upon and the Waqf Board had registered the same as "Waqf by User". Upon the dismissal of the Writ Petition filed by the then State of Andhra Pradesh (now State of Telangana), the question came up for consideration before this Court. The issues involved in the said case inter-alia were whether the State Government was entitled to file the writ petition before the High Court. He submitted that this Court in the said case held that the State Government is competent to invoke the writ jurisdiction as it is the right of the Government to protect the public property.

35. Learned Solicitor General submitted that in another instance, the Telangana State Waqf Board itself determined a hotel's property as not a Waqf property. However, in 2007, the said position was revisited by the concerned Board and the

hotel's property was declared to be a Waqf property. It is submitted that the aforesaid became the subject matter of a lis which culminated in the case of Viceroy Hotels Limited and Others v. Telangana State Waqf Board and Others7, whereby the High Court quashed the claims of the Telangana State Waqf Board and declared the hotel to be the lawful owner of the property.

36. Learned Solicitor General further submitted that there were several such instances where the provision of "Waqf by User" and the power of the Waqf Board to declare any land as Waqf property were noticed, which proved to be a safe haven for encroachment of Government properties and private properties. Accordingly, in view of such examples, it is submitted that the deletion of the provision of "Waqf by User" has been carried out by way of the impugned Act, so as to curb the practice of encroachment of Government properties on pretext of them being Waqf property.

37. Shri Mehta countered the submission that Section 3C of the Amended Waqf Act will be used to "grab" the property of the Waqf without following provisions of law. He submitted that such an argument is totally untenable. He submitted that taking into consideration the instances where Government properties were encroached upon and given a colour of "Waqf by User", the provision under Section 3C provides only a mechanism whereby the designated officer will conduct an inquiry after hearing the affected parties and submit his report.

He submitted that the only consequence of such an inquiry would be that the revenue records and the Board records would be corrected. He further submitted that in any case, on a mere declaration or submission of a report by the designated officer, no rights would be crystallized and unless a final determination with regard to the title is made by the Waqf Tribunal or by the further appellate forums being the High Court or this Court, the possession of the property cannot be taken away.

38. With respect to the argument qua inclusion of non- Muslims in the Waqf Council, the learned Solicitor General submitted that firstly, the Central Waqf Council, primarily, has an advisory role and cannot be treated as a religious interference. Secondly, he submitted that advising on "due administration" of Waqf would not be an interference with the religious activities of the Waqf, as it merely amounts to regulating economic, financial or other secular activities.

39. Learned Solicitor General further submitted that under sub-section (4) of Section 9 of the Amended Waqf Act, the Central Waqf Council is entitled to issue directive on the following aspects:

a. Financial performance;

b. Survey;

c. Maintenance of waqf deeds;

d. Revenue records;

e. Encroachment of waqf properties; and

f. Annual reports and audit reports.

He submitted that all such activities are secular activities which do not interfere with the religious practices of the Muslims.

40. He further submitted that in any case as per subsection (2) of Section 9 of the Amended Waqf Act, the Council, at the most, can consist of 4 non-Muslim members which is inclusive of clause (a) i.e., the Union Minister as in charge of Waqf - Chairperson, ex officio and clause (g) i.e., the Additional Secretary or Joint Secretary to the Government of India dealing with Waqf matters in the Union Ministry or department-member, ex officio. He submitted that insofar as clauses (b), (d), (e) and (f) are concerned, out of 10 Members to be appointed as per the said clauses, only 2 are required to be non-Muslims. It is, therefore, submitted that at any given point of time, the Council may consist, at the most, 4 non-Muslim members.

41. Insofar as the members of the Board to be appointed under Section 14 of the Amended Waqf Act are concerned, it is submitted that it is only 2 members, excluding ex-officio members, who could be non-Muslims. It is submitted that, if the Joint Secretary to the State Government dealing with the Waqf Property, who is an ex-officio member, is a non-Muslim, then at the most, at that given point of time, there would be only 3 non- Muslims in the Board out of a total of 11 members. It is, further submitted by the learned Solicitor General that the Waqf Board is declared as a "State" in the case of State of Andhra Pradesh v. Andhra Pradesh Waqf Board (supra) and therefore once a statutory body is a "State" within the meaning of Article 12 of the Constitution, the argument that the Members of the Board should be taken only from one particular religion is not sustainable in law.

42. It is further submitted by the learned Solicitor General that the Ministry concerned has specifically made a statement before the JPC to the following effect:

"9.6.6 Further explaining about the inclusion of non- Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under: the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members) and another category (12 members). Out

of this (second) category, two members will be non-Muslim. Remaining all will be Muslims."

43. It is further submitted by the learned Solicitor General that the JPC, after considering the suggestions of the stakeholders and justification given by the concerned Ministry, found that considering the statutory nature of the Central Waqf Council, inclusion of 2 non-Muslim members would make it more broad based and promote inclusivity and diversity in the Waqf property management.

44. The learned Solicitor General, with regard to the argument that the impugned Act is without remedy, submitted that the said contention is without any substance. He submitted that under sub-section (1) of Section 83 of the Amended Waqf Act, the jurisdiction of the Tribunal is wide enough, and it encompasses within its scope the determination of any dispute, question or other matters relating to Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property. It is submitted that perusal of the provisions contained in sub-sections (3), (4), (5), (6), (7), (8) and (9) of Section 83 would reveal that ample remedy is prescribed for deciding the disputes relating to Waqf or Waqf property.

Not only that, under sub-section (7) it is specifically provided that, the decision of the Tribunal is final and binding upon the parties to the application and it shall have the force of a decree made by a civil court. It is further submitted that subsection (8) thereof also provides for execution of any decision of the Tribunal by the civil court to which such decision is sent for execution. He further submitted that sub-section (9) thereof, which has been amended by Section 39(f) of the impugned Act, provides for the right to appeal to the High Court against the decision of the Tribunal to any person aggrieved.

45. Dealing with the amendment to sub-clause (i) of clause (r) of Section 3 of the Amended Waqf Act, the learned Solicitor General submitted that various instances which were noticed right from 1913 were taken into consideration while effecting the said amendment to make the requirement of registration mandatory. The learned Solicitor General further submitted that, on account of many instances of misuse of the endowments made for pious, religious or charitable purposes being noticed, the legislature has been enacting laws from 1923 to control such a misuse.

To illustrate, it is submitted that the Statement of Objects and Reasons of the Mussalman Waqf Act, 1923, itself shows that the legislature found it necessary to have a "system of compulsory registration". Accordingly, Section 3 of the said Act provided for compulsory registration, so also, Section 4 of the said Act provided for publication of particulars and requisition of further particulars. The said Act also provided penalties in Section 10 for non-registration of the Waqf. It

is submitted that necessity for registration was also reinforced by subsequent Acts like the Bengal Wakf Act, 1923, which for the first time introduced the term "Waqf by User".

46. Shri Mehta, submitted that post-independence, the Parliament enacted the Muslim Wakfs Act, 19548. It is submitted that a perusal of scheme of 1954 Act shows that it also provided for mandatory registration. The learned Solicitor General further submitted that noticing the menace of deliberate nonregistration by several Waqfs, the Wakf Enquiry Committee was appointed by the Central Government in the year 1969-70.

It is submitted that the said Committee consisted of three eminent persons from the Muslim community and it also considered the result of wilful non-registration of the Waqfs and recommended enactment of a provision prohibiting a suit to be filed on behalf of a Waqf unless the said Waqf was registered. Accordingly, Section 55E was added to the 1954 Act by Wakf (Amendment) Act, 1984. It is submitted that though the said 1984 Amendment was made to the 1954 Act, the same was never given effect to.

47. The learned Solicitor General further submitted that in order to further streamline the administration of the Waqfs, the Parliament enacted the Waqf Act, 1995. In the said Act also, Section 36, in detail, provided for registration and its procedure. Shri Mehta, therefore, submitted that the amendment by way of which the proviso to Section 3(r) has been added does not, in any way, fall foul of the object of the Original Waqf Act.

48. Shri Mehta further submitted that Sajjadanashin is different from Mutawalli. It is submitted that it is Sajjadanashin who undertakes religious activities concerned with the Waqf. However, Mutawallis are only concerned with the administrative activities of the Waqf, and their functions have no bearing on the religious activities. It is, therefore, submitted that the impugned amendments are not violative of any of the rights guaranteed under Article 25 and 26 of the Constitution.

49. Learned Solicitor General submitted that insofar as the contention regarding provisions for removal of Mutawallis is concerned, the said cannot be said to be discriminatory. Further, Solicitor General submitted that similar provisions can be found in various acts concerning removal of Mathadipatis. To illustrate, the learned Solicitor General refers to the provisions related to removal of Mathadipatis in the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, and the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987.

50. In reply to the challenge to Section 3D of the Amended Waqf Act, the learned Solicitor General submitted that the Archaeological Survey of India9 had made submissions before the JPC pointing out the difficulties with regard to protected monuments which are notified as Waqf properties. It was stated by the ASI that the Waqf Board restricted ASI from carrying out the survey activities in such properties. ASI had also stated that various instances where Waqf authorities had carried out several additions and alterations in the original structure of the protected monuments which adversely hampered the authenticity and integrity of the protected monuments.

It is, therefore, submitted that Ministry of Culture had proposed insertion of Section 3D. It is further stated that sub-section (6) of Section 5 and Section 16 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, itself protects the rights of the persons to use any of the protected monuments for customary religious observances. It is, therefore, submitted that the only restriction now is that by way of Section 3D of the Amended Waqf Act, the protected monuments cannot be used for any purposes inconsistent with the provisions of the 1958 Ancient Monuments Act.

51. Insofar as the challenge to Section 3E of the Amended Waqf Act is concerned, the learned Solicitor General has submitted that the Scheduled Tribes are recognized as a distinct class requiring special protection, especially with regard to land ownership. He submitted that there are various statutes which impose restrictions on the transfer of land belonging to Scheduled Tribes to non-tribals. He further submitted that the Fifth and Sixth Schedules of the Constitution are pre-existing constitutional classifications embedded in the Constitution itself.

52. The learned Solicitor General submitted that Article 29 of the Constitution puts an obligation on the State to protect the language, script and culture of citizens. It is submitted that the cultural and economic identity of the Scheduled Tribes is intrinsically tied to the land held by them and therefore, the State has a constitutional obligation to safeguard their property rights. The learned Solicitor General relied on the judgments of this Court in the cases of Amrendra Pratap Singh v. Tej Bahadur Prajapati and Others10, P. Rami Reddy and Others v. State of Andhra Pradesh and Others11, R. Chandevarappa and Others v. State of Karnataka and Others12 and Lingappa Pochanna Appelwar v. State of Maharashtra and Another13.

53. The learned Solicitor General submitted that the JPC, after considering peculiar cases of the citizens belonging to the Scheduled Tribes and particularly the constitutional protection granted to them under the Fifth and Sixth Schedules of the Constitution, recommended taking appropriate legislative measures to ensure protection of Scheduled Areas and Tribal Areas.

54. Insofar as deletion of Section 104 of the Original Waqf Act is concerned, the learned Solicitor General submitted that by virtue of the amendment in the definition of "Waqf" under Section 3(r) of the Original Waqf Act, only a person practicing Islam for at least five years and having ownership of such property can create a waqf. Since in view of the amendment to Section 3(r), non-Muslims cannot create a waqf, the provision under Section 104 of the Original Waqf Act enabling non- Muslims to create a waqf was deleted as a consequence in order to avoid conflicting provisions under the Act. It is further submitted that the said provision was also considered by the JPC in detail and the JPC concurred with the opinion of the Ministry of Minority Affairs finding it in congruence with the original legislative intent post-independence as well as in agreement with the proposed definition of waqf.

55. Insofar as the challenge to the amendment to Section 107 of the Original Waqf Act is concerned, Shri Mehta submitted that the amendment is prospective in nature and would not apply to the pending cases. It is submitted that the question of applicability of Section 107 of the Original Waqf Act to the pending cases was specifically considered by the JPC and the JPC recorded the assurance of the Ministry of Minority Affairs that the said provision would apply only with prospective effect.

The learned Solicitor General submitted that in order to address the concern of various stakeholders with regard to applicability of the Limitation Act, 1963, to pending cases, the JPC redrafted Section 107 of the Original Waqf Act to the present form. The learned Solicitor General further submitted that the applicability of the Limitation Act, 1963, aims to reduce litigation and simplify the process of recovering waqf properties.

56. Insofar as Section 108 of the Original Waqf Act is concerned, the learned Solicitor General submitted that the concept of evacuee property as it existed under the Administration of Evacuee Property Act, 1950, has been repealed.

57. Shri Rakesh Dwivedi, learned Senior Counsel appearing on behalf of the State of Rajasthan submitted that "Waqf by User" was initially introduced by Privy Council in the case of Court of Wards for the Property of Makhdum Hassan Bakhsh v. Ilahi Bakhsh and Others14. He submitted that, in the said case, the respondents therein had contended that even if no express dedication of the land could be proved the continuous use of the land for the purpose of burial showed that it had become "Waqf by User".

He submitted that Their Lordships of the Privy Council agreed with the respondents while dismissing the appeal that the land in suit forms part of a graveyard set apart for the Mussulman community, and that "by user" if not by dedication the land is waqf. He, therefore, submitted that "Waqf by User" was

only an application of adverse possession doctrine and not a concept rooted in Islamic theology.

58. Relying on Khazan Chand and Others v. State of Jammu and Kashmir and Others15, Shri Dwivedi submitted that the Constitution has a federal structure. He, therefore, submitted that there can be no comparison of a Parliamentary law with certain State laws on Hindu religious endowments.

59. Shri Ranjit Kumar learned Senior Counsel appearing on behalf of the State of Haryana and Adivasi Aadim Samajik Sanstha submitted that the freedom to manage religious affairs and to administer property in connection thereof has to be in accordance with law. It is submitted that such freedom will have to be exercised only in accordance with the provisions enacted under the statute. He, therefore, submitted that all the enactments governing waqf property, including the impugned Act, are in accordance with the provisions of Article 26(d) of the Constitution.

60. Shri Ranjit Kumar further submitted that a reading of paragraph 176 of the Treatise "Principles of Mahomedan Law (20th Edition)" by Mulla would show that only an "owner" of a property can create a waqf. It is submitted that a property encroached upon by a person cannot be declared as a waqf.

61. Shri Ranjit Kumar, thereafter, referring to Key Quranic Verses specifically by Surah Al-Baqarah, submitted that the very concept of creation of waqf is based on charity i.e., to spend one's own wealth in the way of Allah. He submitted that the principle behind the establishment of a waqf is redistribution of wealth by giving one's wealth to those in need, to those who ask and to those who are deprived. It is, therefore, submitted that it is clear that unless one owns a property, a waqf cannot be created and certainly never by encroachment.

62. Shri Ranjit Kumar further submitted that under the provisions of Section 40 of the Original Waqf Act, an inquiry with regard to the question as to whether the property is a waqf property or not was vested with the Board. However, taking into consideration that the said power was misused by the Board, Section 40 of the Original Waqf Act has been deleted by Section 23 of the impugned Act, and the power is now solely vested with the Tribunal which can conduct an inquiry under Section 83 of the Amended Waqf Act.

63. Shri Ranjit Kumar further submitted that till the year 2013, a waqf could be created only by a Muslim and not by a non-Muslim. It is submitted that the Wakf (Amendment) Act 2013, however, permitted a non-Muslim to create a waqf which has now been done away with by bringing an amendment to Section 3(r) of the Original Waqf Act. As a natural corollary, it is submitted that, by way of

the impugned Act, Section 104 of the Original Waqf Act has been deleted so as to bring the provisions of the Act in conformity with the amended Section 3(r).

64. Shri Gopal Sankaranarayanan, learned Senior Counsel submitted that in the State of Telangana itself, more than five thousand properties owned by the Government have been encroached upon on the premise of them being "Waqf by User".

65. Shri S. Guru Krishna Kumar, learned Senior Counsel submitted that the provisions of Sections 96 and 97 of the Original Waqf Act would reveal that the Act and any amendment thereto have been enacted with the purpose of only controlling the "secular activities" of auqaf and the Act in no way interferes with the religious activities to be carried out by the auqaf.

He submitted that a comparison between Section 23 and Section 38 of the Amended Waqf Act would reveal that whereas the Chief Executive Officer of the Board appointed under Section 23 of the Amended Waqf Act does not have direct control in the administration of waqf, it is the Executive Officer appointed by the Board under Section 38 of the Amended Waqf Act who has direct control over the waqf. It is submitted that a person to be appointed as an Executive Officer under Section 38 of the Amended Waqf Act is required to be a person professing Islam. It is, therefore, submitted that the contention of the petitioners that a person not professing Islam would be interfering with the management of a particular waqf is without substance.

iii. Rejoinder

66. In rejoinder, Shri Kapil Sibal, learned Senior Counsel, submitted that for considering the constitutional validity of the provisions of the statute, the provisions of the statute will have to be read as it is. It is submitted that neither the affidavit of the Central Government nor its submissions could be taken into consideration to add words in the text of the statute which are not there.

In that light, the learned Senior Counsel submitted that a plain reading of Section 3C of the Amended Waqf Act would show that it is ex-facie arbitrary inasmuch as no procedure is prescribed for determining the question as to whether the property in question is a Government property or not. He submitted that the failure by the State Governments in conducting surveys and not registering the waqfs as per Section 4 of the Original Waqf Act cannot be permitted to act to the prejudice of the waqfs by user.

He submitted that the concept of "Waqf by User" has been recognized by this Court in the case of Syed Mohd. Salie Labbai (Dead) By LRs and Others v. Mohd. Hanifa (Dead) By LRs and Others16. Shri Sibal reiterated that Sections 3D and 3E of the Amended Waqf Act were not part of the original bill but were

introduced for the first time in Parliament. He further submitted that Section 96 of the Amended Waqf Act permits the Central Government to directly interfere with the affairs of the auqaf. Shri Sibal, therefore, strenuously urged that this is a fit case where all the parameters for grant of interim relief are made out and the Court should interfere to stay the operation of the impugned Act.

67. Dr. Rajeev Dhavan, learned Senior Counsel submitted that charity is one of the five tenets of Islam. He submitted that though charity is one of the essential characteristics of Islam, it is not so with any other religion. He, therefore, submitted that the impugned Act which permits the State to interfere with the religious freedom of persons professing Islamic religion is not sustainable in law.

68. Dr. Singhvi submitted that the concept of "Waqf by User" has been recognized judicially since the 1912 judgment of the Privy Council in the case of Ilahi Bakhsh (supra) and even recently by a Constitution Bench judgment of this Court in the case of M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) (supra). He further submitted that Section 36 of the Amended Waqf Act which requires registration creates an anomalous situation.

He submitted that whereas under sub-section (1) of Section 36 of the Amended Waqf Act, all the waqfs are required to be registered, sub-section (7A) thereof provides that when the Collector in his report mentions that the property is wholly or in part, either in dispute or is a Government property, the waqf in relation to such part of property cannot be registered. He, therefore, submitted that the Collector is empowered to stop the registration of a waqf by exercising powers vested in him. He further submitted sub-section (10) of Section 36 of the Amended Waqf Act bars any remedy in respect of unregistered waqf thereby creating an anomalous situation.

69. Dr. Singhvi lastly submitted that four High Courts have held that the lack of registration does not affect the original character of the waqf. To buttress his submission the learned Senior Counsel relied on the judgments in the cases of Khudawand Haiyul Qaiyum v. State of U.P. and Others17, Mohammed Ghouse v. Karnataka Board of Wakfs18, Muneerul Islam Sangham and Others v. Valiya Peedikakkal Kunhamu and Another19 and S. Manikya Reddy v. The A.P. State Wakf Board, Rep. by its Chief Executive Officer, Hyderabad and Another20.

70. Shri Huzefa Ahmadi, learned Senior Counsel submitted that Section 3E of the Amended Waqf Act does not only affect dedication of any land in Scheduled or Tribal areas in future but also affects the dedications made in past. He submitted that the said Section having retrospective application is violative of the fundamental rights of the persons professing Islam as provided under Articles 25 and 26 of the Constitution. It is further submitted that the said provision is

enacted only insofar as Muslims are concerned and therefore, it is directly hit by Article 15(1) of the Constitution.

71. The learned Senior Counsel reiterated that the three prongs for grant of interim relief i.e., prima facie case, balance of convenience and irreparable injury having been satisfied a clear case for stay of the impugned Act is made out.

DISCUSSION AND ANALYSIS

72. Having heard the parties on the question as to whether the amended provisions, as enacted by the impugned Act, should be stayed or not pending the final hearing of the present batch of matters, we proceed to firstly analyze the extant position of law on the subject.

i. Scope of Grant of Interim Relief

73. By now, it is a settled principle of law that the courts should be very slow in granting interim relief by way of staying the provisions of an enactment. Interim relief of such a nature can be granted in rare and exceptional cases; where parties are in a position to point out that either the legislature which enacted the law lacks legislative competence or the provisions are ex-facie in violation of any of the provisions in Part III of the Constitution or constitutional principles or is manifestly arbitrary. Reference in this respect can be made to the following landmark judgments of this Court.

74. Right from the 1950 Constitution Bench judgment of this Court in the case of Charanjit Lal Chowdhury v. Union of India and Others21, the courts have accepted the legal position that presumption is always in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It is an established position that it must be presumed that legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.

75. Thereafter, a Constitution Bench of this Court in the case of The State of Bombay and Another v. F.N. Balsara22, after referring to the judgment in the case of Charanjit Lal Chowdhury (supra), has laid down the principles in the following terms:

"49. .....

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems

made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a welldefined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

76. Again, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Others23, a Constitution Bench of this Court reiterated the position as under:

"11. The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish-

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems

made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

77. Another Constitution Bench of this Court, thereafter, in the case of Mohd. Hanif Quareshi and Others v. The State of Bihar24, has observed thus:

"15. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

78. In the case of Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others25, after referring to three earlier judgments in the cases of The Bengal Immunity Company Limited v. The State of Bihar and Others26, R.M.D. Chamarbaugwalla and Another v. Union of India and Another27 and Mahant Moti Das and Others v. S.P. Sahi, The Special Officer In

Charge of Hindu Religious Trust and Others28, a Constitution Bench of this Court observed that while considering the constitutionality of an enactment, it is necessary to consider its true nature and character i.e., its subject matter, the area in which it is intended to operate, its purport and the intent.

It has further been held that in order to do so, it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy.

79. This legal position has been consistently reiterated by this Court in a catena of judgments. Recently also, a Three-Judge Bench of this Court in the case of Dr. Jaya Thakur v. Union of India and Others29, to which one of us (Gavai, J. as he then was) was a Member, has observed thus:

"70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, on the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

75. In the present case, it is nobody's case that Parliament did not have power to enact on the subject on which the aforesaid Amendments have been enacted. As such, the said ground is not available to the petitioners."

[emphasis supplied]

80. In the background of this categorical position, we will have to consider as to whether the petitioners have made out a strong case to show that the amendments brought into the Old Waqf Act by the impugned Act are beyond the legislative competence of the Parliament or ex-facie point out violation of any of the provisions in Part III of the Constitution or constitutional principles or is manifestly arbitrary.

ii. Legislative History of Waqf Enactments

81. For appreciating the provisions of the impugned Act, we will have to consider the legislative history of various enactments regulating and governing the creation of waqfs.

a. Mussalman Wakf Act, 1923

82. The first of such enactments was Mussalman Wakf Act, 1923. It will be relevant to refer to the Statement of Objects and Reasons of the said Act, which reads thus:

"Statement of Objects and Reasons - The object of the present Bill is sufficiently indicated by the Preamble to the Bill. For several years passed, there has been a

growing feeling amongst the Mahomedan community, throughout the country that the numerous endowments which have been or are being made daily by pious and publicspirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time. Instances of such misuse of trust property are unfortunately so very common that a wakf endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty.

In some case, the mutawallis are persons who are utterly unfit to carry on the administration of wakf and who, by their moral delinquencies bring discredit not merely on the endowment but on the community itself. It is believed that the feeling is unanimous that some step should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement, and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated. In some cases, difficulties have arisen in finding out whether any particular properties are really subject to wakf or not.

There are numerous wakf properties all over the country unknown to the public which the mutawallis are treating their own private property and dealing with in any way they think fit or necessary. It, therefore, seems that there should be a system of compulsory registration requiring a mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the mutawalli, but also the nature and extent and other incidents of the endowment.

Further, even where a wakf is well-known and mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus of opinion amongst the Mahomedans throughout the country that there should be some responsible officer, who may go about and find for himself whether the various wakf properties scattered throughout the country are being properly managed or not.

It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has, therefore, been made in the Bill authorizing the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the mutawallis for the purpose of meeting the cost on entertaining such an officer and his staff."

[emphasis supplied]

83. It can thus be seen that since the menace of mismanagement of the wakf properties was noticed by legislature, an enactment was found to be necessary as early as in the year 1923. It was noticed that the endowments made by pious and public-spirited Mahomedans were being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time.

84. It was also noticed that the wakf endowment came to be regarded by the public as a "clever device" to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. A system of compulsory registration not merely about the fact of the waqf but also the nature, extent and other incidents of the wakf was found to be necessary even at that point of time. It was also found, at that time, that it was necessary to appoint a responsible officer, who may go about and find out for himself whether the various wakf properties scattered throughout the country were being properly managed or not.

85. A perusal of the 1923 Act would show that various provisions were made in the said Act qua obligation to furnish particulars relating to wakf30, publication of particulars and requisition of further particulars31, statement of accounts32, audit of account33 and verification34. Not only that, a penalty was also provided in Section 10 of the 1923 Act for a person who failed to comply with the statutory requirements of the Act.

b. Bengal Wakf Act, 1934

86. It is to be noted that Section 6(10) of the Bengal Wakf Act, 1934 recognized the concept of "Waqf by User". It will be appropriate to reproduce the same:

"6. .....

(10). "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;"

c. Wakf Act, 1954

87. Post independence, the Parliament enacted the Wakf Act, 1954. The concept of "Waqf by User" was statutorily recognized by Section 3(l)(i) of the 1954 Act. Under Section 4 of the 1954 Act, the State Government was required to appoint a Commissioner of Wakfs who was required to conduct an inquiry and submit a report in respect of wakfs existing at the date of the commencement of the said Act, giving the particulars as prescribed under the provisions of the said Act. The State Government under sub-section (6) of Section 4 of the 1954 Act was also

empowered to direct the Commissioner to make a second or subsequent survey of wakf properties in the State.

88. Under Section 5 of the 1954 Act, on receipt of a report from the Commissioner, the State Government was required to forward the same to the Board. Thereafter, the Board was required to examine the report and publish in the Official Gazette, a list of wakfs in the State and containing such particulars as were prescribed.

89. Sub-section (1) of Section 6 of the 1954 Act provided for determination of disputes regarding waqfs by a civil court of the competent jurisdiction. Under sub-section (4) of Section 6 of the said Act, the list of wakfs published under sub-section (2) of Section 5 thereof, shall unless it was modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

90. Section 25 of the 1954 Act also provided for registration of every waqf at the office of the Wakf Commissioner. A detailed procedure for making an application for registration and the inquiry to be conducted by the Wakf Commissioner in respect of genuineness and validity of the application, giving notice of the application to the person administering the wakf property, was prescribed under the said provision. Sub-section (8) of Section 25 of the 1954 Act mandated making of the application for registration of the wakfs created before the commencement of the said Act within a period of 3 months from the date of commencement of the said Act. Insofar as wakfs created after the commencement of the said Act are concerned, a period of 3 months was prescribed from the date of creation of the wakfs.

91. Under Section 26 of the 1954 Act, a register of wakfs was required to be maintained by the Wakf Commissioner.

92. Under Section 27 of the 1954 Act, the Board was required to collect information regarding any property which it has reason to believe to be wakf property. It was also empowered to hold inquiry where it had reason to believe that any property or any trust or any society registered in pursuance of the Indian Trusts Act, 1882, or under the Societies Registration Act, 1860, or under any other Act, was a wakf property. It was further provided that, if after an inquiry, it was found that such a property is wakf property, it was empowered to call upon the trust or the society, either to register such property under the said Act as wakf property or show cause why such property should not be so registered.

93. Section 28 of the 1954 Act empowered the Wakf Commissioner to direct a Mutawalli to apply for the registration of a wakf or to supply any information regarding a wakf, or to himself cause the wakf to be registered and at any time amend the register of waqfs.

94. Section 41 of the 1954 Act provided penalties for noncompliance by a Mutawalli with regard to the provisions of the said Act.

d. Wakf Enquiry Committee & Wakf (Amendment) Act, 1984

95. It is further to be noted that though the 1954 Act provided for mandatory registration of all Waqfs, several waqfs had not registered themselves. As a result, the Central Government having taken note of the same, appointed a Wakf Enquiry Committee consisting of the following three eminent persons:

(i) Sayeed Ahmad - Chairman

(ii) M.H. Mohsin - Member

(iii) Ishaq

Later Mr. Zulfikar Alik Khan replaced M.H. Mohsin.

96. The final report of the Wakf Enquiry Committee was submitted in the year 1976. It will be relevant to refer to the following observations of the report submitted by the Wakf Enquiry Committee:

"Bar to hear or decide suits

(i) Deliberate concealing of wakfs and wilful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure. We consider that a carrot-and-stick policy is also required in the matter; dangling the carrot wherever possible and using the stick whenever it becomes necessary.

We consider that, in the implementation of this policy, we have a very salutary provision under Section 31 of the Bombay Public Trusts Act 29 of 1950, which bars the hearing of any suits in respect of a public trust which has not been registered under the Act. We consider that a similar provision is necessary in the Central Wakf Act of 1954, and no Mutawalli who has failed to have wakfs registered as required under the Central Wakf Act of 1954 should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. We, therefore, recommend that a fresh Section 55A may be added to the Central Wakf Act of 1954 on the following lines:

"(a) 55(1) No suit to enforce a right on behalf of a wakf which has not been registered under this Act shall be heard or decided in any court of law or tribunal."

"(2) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such wakf.""

[emphasis supplied]

97. It can thus be seen that the said Committee noticed that there were instances of deliberate concealing of wakfs and wilful failure to have them registered. It was observed that such a malady, which was deeply prevalent, was affecting the administration of wakfs. The Committee, therefore, recommended imprisonment as a punitive measure for such noncompliances. The Committee noticed that under the Bombay Public Trusts Act, 1950, there was a provision which barred the hearing of any suits in respect of a public trust which had not been registered under the said Act. The Committee was of the opinion that such a salutary provision was also necessary in the 1954 Act. As a matter of fact, in order to give effect to the said recommendations of the Wakf Enquiry Committee, the 1954 Act was sought to be amended by Wakf (Amendment) Act, 1984, by inserting Section 55E, which reads thus:

"55E. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

98. However, it is to be noted that the Wakf (Amendment) Act, 1984, was not brought into effect.

99. Thereafter, the Parliament noticed that the actual working of the 1954 Act had brought out many deficiencies in it as also in the setup of Waqf Boards. From the introduction of the Original Waqf Act, it can be seen that to remove the deficiencies, the 1954 Act was amended in 1959, 1964, 1969 and thereafter comprehensive amendments were made in 1984 based on the recommendations

of the Wakf Enquiry Committee. It can be seen that a large number of persons from the Muslim community had strongly opposed various provisions of the Wakf (Amendment) Act, 1984 including Section 55E (as discussed previously).

Therefore, only after carefully considering the objections to various provisions of the Wakf (Amendment) Act, 1984, and after holding wide ranging discussions with the leaders of the Muslim community, it was decided to bring in a new comprehensive Bill on waqf matters incorporating the features of the 1954 Act and such provisions of the Wakf (Amendment) Act, 1984, in respect of which there was a near consensus. The cumulative result of the process was the enactment of the 1995 Waqf Act, which we have been referring to as the Original Waqf Act.

e. Waqf Act, 1995

100. A perusal of the Statement of Objects and Reasons of the Original Waqf Act would also show that there were instances of misuse of waqf properties either with or without the connivance of the Mutawallis. It was, therefore, proposed to incorporate in the Bill a provision so that the alienation of Waqf properties would not be easy. It will be relevant to refer to Section 3(r) of the Original Waqf Act as it stood before the Wakf (Amendment) Act, 2013:

"3. Definitions.-

(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes -

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ulkhidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and;

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, and "wakif" means any person making such dedication;"

101. It can thus be seen that the definition of "wakf" also included a "Wakf by User". It can further be seen that such a waqf would not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser.

102. Section 4 of the Original Waqf Act provided for preliminary survey of auqaf. 103. Section 5 of the Original Waqf Act provided for publication of the list of auqaf. It also provided that the revenue authorities shall include the list of

auqaf referred to in subsection (2) thereof, while updating the land record and taking into consideration the list of auqaf referred to in sub-section (2) thereof, while deciding mutation in the land records.

104. Section 6 of the Original Waqf Act provided that if any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or Mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and that the decision of the Tribunal in respect of such matter shall be final.

105. Section 7 of the Original Waqf Act provided for the power of Tribunal to determine disputes regarding auqaf.

106. Section 36 of the Original Waqf Act provided for registration of a waqf. It also provided for the procedure to be followed for registration of the waqf. It will be relevant to note that certain amendments were also carried out to the provisions of Section 36 of the Original Waqf Act by way of the Wakf (Amendment) Act, 2013. However, it is to be noted that even under the Original Waqf Act, it was provided that an application for registration shall be made along with a description of the waqf properties sufficient for the identification thereof amongst other particulars.

107. Further, a perusal of sub-section (4) of Section 36 of the Original Waqf Act would reveal that every application for registration was required to be accompanied by a copy of the waqf deed or if no such deed had been executed or a copy thereof could not be obtained; the application was required to contain full particulars, as far as they are known to the applicant, about the origin, nature and objects of the waqf. It can thus be seen that even in case of a "Waqf by User", an application could have been made for registration even if no waqf deed was executed by giving the details, which were known to the applicant, about the origin, nature and objects of the waqf.

108. Under sub-section (7) of Section 36 of the Original Waqf Act, on receipt of an application for registration, the Board was required to make an inquiry as it deemed fit with regard to the genuineness and validity of the application and correctness of any particulars therein. It was further provided that when the application was made by any person other than the person administering the waqf property, the Board, before registering the waqf, was required to give notice of the application to the person administering the waqf property and was further required to give him a hearing if he desired to be heard.

109. It is to be noted that under sub-section (8) of Section 36 of the Original Waqf Act, every application for registration, in the case of auqaf created before

the commencement of the said Act, was required to be made within 3 months from the date of commencement and in case of auqaf created after such commencement, within 3 months from the date of the creation of the waqf. The proviso thereto enabled an application to be made within a period of 3 months from the date of establishment of the Board where there was no Board at the time of creation of the waqf.

110. Under Section 32 of the Original Waqf Act, which provided for the powers and functions of the Board, the Board was inter-alia required to maintain a record containing information relating to origin, income, object and beneficiaries for which a waqf was created.

111. Under Section 40 of the Original Waqf Act, the Board was empowered to collect information regarding any property which it had reason to believe to be a waqf property and if any question arises as to whether a particular property was a waqf property or not, the said question could be decided by the Board after making such inquiry as it deemed fit. It was further provided that the decision of the Board subject to modification, if any, by the Tribunal was to be final.

112. A provision similar to that made in sub-section (3) of Section 27 of the 1954 Act with regard to a property of any trust or society registered under the Indian Trusts Act, 1882, or under the Societies Registration Act, 1860, or under any other Act, was also made under sub-section (3) of Section 40 of the Original Waqf Act. Further, a provision similar to Section 28 of the 1954 Act can be found in Section 41 of the Original Waqf Act with a change that the Waqf Commissioner has been replaced with the Board.

113. Section 61 of the Original Waqf Act provided for penalties. It will be relevant to note that sub-section (2) of Section 61 of the Original Waqf Act provided for imprisonment of a Mutawalli if he omitted or failed to, with a view to concealing the existence of a waqf, apply for registration under the said Act in the specified period or furnished any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect was liable to be punished with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees. This provision is in tune with the report of the Wakf Enquiry Committee referred to hereinabove, which recommended bringing a similar provision as existed in the Bombay Public Trusts Act, 1950.

114. It is relevant to note that the Original Waqf Act also had a provision by virtue of Section 87 which provided a bar on the institution of any suit, appeal or other legal proceedings on behalf of any waqf which had not been registered in accordance with the provisions of the said Act. Again, this provision was on the lines recommended by the Wakf Enquiry Committee and on the basis of which

Section 55E was sought to be brought into the statute by Wakf (Amendment) Act, 1984. However, it is to be noted that by way of Wakf (Amendment) Act, 2013, Section 87 of the Original Waqf Act came to be deleted.

iii. Consideration of the provisions of the impugned Act

115. In this historical perspective, we will have to consider the question as to whether the impugned Act deserves to be stayed or not.

116. The scope of grant of interim stay of a statute or any of its provision(s) has been crystalized in the Constitution Bench judgments which we have already referred to hereinabove.

117. It has consistently been held that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It is quite well settled that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination is based on adequate grounds.

Equally, it is settled that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest. It has also been held that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

118. It has also been held that a statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. In doing so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared invalid. It has also been held that in order to declare a law unconstitutional, the Court has to come to a conclusion that the violation of any of the provisions of the Constitution is so evident that it leaves no manner of doubt.

119. The grounds on which a legislation can be declared invalid is with regard to the legislative competence of legislature or that such a legislation is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution or that it is manifestly arbitrary.

120. In the light of this legal position, we will have to examine as to whether the petitioners have made out a strong prima facie case to stay the entire statute i.e., the impugned Act.

121. For doing so, we will be required to consider the legislative history right from 1923 up to the enactment of the statute under challenge.

122. A perusal of the Statement of Objects and Reasons of the Mussalman Wakf Act, 1923 would reveal that, for several years passed, there had been a growing feeling amongst the Mahomedan community, throughout the country, that the numerous endowments which have been or are being made daily by pious and public-spirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time.

123. As early as in 1923, it was noticed that instances of such misuse of trust property were unfortunately so very common that a wakf endowment had now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. The legislature found that some steps should be taken in order that incompetent and unscrupulous Mutawallis may be checked in their career of waste and mismanagement.

Furter, as early as 1923, the legislature found that it was necessary to have a system of compulsory registration requiring a Mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the Mutawalli, but also the nature and extent and other incidents of the endowment. It was also noticed that even where a wakf is well-known and Mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post because of the cumbrous procedure laid down in the Code of Civil Procedure.

124. It can further be seen that the provisions with regard to compulsory requirement of registration of every waqf also continued under the 1954 Act.

125. Finding that even the 1954 Act had not served the purpose, the Central Government appointed a Wakf Enquiry Committee consisting of three eminent persons and that too from Muslim community. The said Committee found that a provision similar to the one provided in Section 31 of the Bombay Public Trusts Act, 1950 was required to be incorporated in the 1954 Act. It recommended the insertion of a provision to the effect that no Mutawalli who has failed to have wakfs registered as required under the 1954 Act should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. It, therefore, recommended insertion of Section 55A in the 1954 Act.

126. It is further to be noted that in order to give effect to the recommendations of the Waqf Enquiry Committee, the 1954 Act was sought to be amended by Wakf (Amendment) Act, 1984 by inserting Section 55E, but, for various reasons, it could not be brought into effect.

127. It is further to be noted that though the 1954 Act was further amended in 1959, 1964, 1969 and comprehensive amendments were made thereafter in 1984 based on the recommendations of the said Committee, however, a large number of persons from the Muslim community opposed various amendments sought to be brought by the Wakf (Amendment) Act, 1984 including the one by which Section 55E was brought into the statute.

128. Coming next to the Original Waqf Act. Section 36 thereof provided for registration of a waqf. A perusal of subsection (4) of Section 36 of the Original Waqf Act would reveal that every application for registration was required to be accompanied by a copy of the waqf deed or if no such deed had been executed or a copy thereof could not be obtained, then the application was required to contain full particulars, as far as they are known to the applicant, about the origin, nature and objects of the waqf. It can thus be seen that even in case of a "Waqf by User", an application could have been made for registration even if no waqf deed was executed by giving the details, which were known to the applicant, about the origin, nature and objects of the waqf.

129. It can further be seen that under sub-section (7) of Section 36 of the Original Waqf Act, on receipt of an application for registration, the Board was required to make an inquiry as it deemed fit with regard to the genuineness and validity of the application and correctness of any particulars therein.

130. It can further be seen that under sub-section (8) of Section 36 of the Original Waqf Act, every application for registration, in the case of auqaf created before the commencement of the said Act, was required to be made within 3 months from the date of commencement and in case of auqaf created after such commencement, within 3 months from the date of the creation of the waqf. Insofar as the auqaf which were already in existence, in view of the proviso thereto, an application could have been made within a period of 3 months from the date of establishment of the Board where there was no Board at the time of creation of the waqf.

131. It is further to be noted that though the Original Waqf Act provided a detailed procedure for registration, it also provided under Section 87 a bar on the enforcement of rights on behalf of unregistered waqfs. Though this provision, which provides a bar on the rights on behalf of the unregistered trusts, was in existence from 1995 till 2013, it was removed with effect from 1st November 2013.

a. Section 4(ix)(a) of the impugned Act

132. One of the sections which is sought to be challenged by the petitioners is amendment to Section 3(r) of the Original Waqf Act by virtue of Section 4(ix)(a) of the impugned Act. It would be appropriate to refer to Section 3(r) of the Amended Waqf Act, which reads thus:

"3. Definitions:

In this Act, unless the context otherwise requires,-

(r) "waqf" means the permanent dedication by any person showing or demonstrating that he is practising Islam for at least five years, of any movable or immovable property, having ownership of such property and that there is no contrivance involved in the dedication of such property, for any purpose recognised by the Muslim law as pious, religious or charitable and includes."

133. It is contended by the petitioners that the condition which requires that a waqf can be created only by a person showing or demonstrating that he is practicing Islam for at least 5 years is totally discriminatory and arbitrary. It is further contended that the restriction which provides that only property owned by such a person can be donated is also arbitrary. It is lastly contended that the bar on dedication of any property which is not owned by such a person is arbitrary.

134. We will first deal with the first part of the provision that requires a person dedicating a property to show or demonstrate that he is practicing Islam for at least 5 years.

135. Prima facie, we are of the view that such a provision cannot be said to be arbitrary or discriminatory.

136. As discussed by us hereinabove that as early as in 1923, the legislature had noticed that it was common that a waqf endowment had come to be regarded by the public as only a "clever device" to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. Therefore, the possibility of any person not belonging to Muslim community, converting to the Islamic religion only in order to take benefit of the protection of Waqf Act so as to defeat creditors and evade the law under the cloak of a plausible dedication cannot be ruled out.

137. As has been observed by us hereinabove, the Constitution Bench of this Court in the case of Shri Ram Krishna Dalmia (supra), while considering the challenge to the validity of a statutory provision, held that the Court is entitled to take into consideration the matters of common knowledge, matters of common report and the history of the times.

138. It will, therefore, not be out of place to mention that many persons, who, under the relevant personal laws, are not entitled to marry with a second woman during the subsistence of their first marriage and who are liable to be prosecuted for the offence of bigamy in such a case, in order to avoid the rigour of criminal offence, convert themselves into Islamic religion.

139. A perusal of the Statement of Objects and Reasons of the Mussalman Wakf Act, 1923 would reveal that as early as in 1923, the misuse of the trust property was found to be so common that a waqf endowment had come to be regarded by the public as only a "clever device" to tie up the property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. As such, the provision which has been enacted with a view to ensure that only persons who are genuinely professing Islamic religion and have not converted themselves to Islam only in order to evade the clutches of law cannot be said to be arbitrary.

140. We are, therefore, prima facie of the view that such a provision which requires a person practicing Islam for 5 years for creating a waqf cannot be said to be arbitrary. As already discussed hereinabove, it cannot be said that it has no nexus with the object sought to be achieved. However, we are of the considered view that since no mechanism or procedure has been provided as of now for ascertaining as to whether a person has been practicing Islam for at least 5 years or not, such a provision cannot be given effect to immediately.

We are, therefore, of the considered view that unless the rules are made by the Central Government by exercising its rule-making power under Section 109 of the Amended Waqf Act, the provision of Section 3(r) of the Amended Waqf Act requiring a person to show or demonstrate practice of Islam for at least 5 years in order to dedicate a movable or immovable property for the purpose of creating a waqf cannot be given effect to.

141. The second question is with regard to the validity of that part of the provision which requires that the property which is to be permanently dedicated as a waqf should only be a property which is owned by the person dedicating it.

142. It is to be noted that paragraph 176 of the Treatise "Principles of Mahomedan Law (20th Edition)" by Mulla would show that only an "owner" of a property can create a waqf. Further, from the Key Quranic Verses specifically by Surah Al- Baqarah, it can be seen that the very concept of creation of waqf is based on charity i.e., to spend one's own wealth in the way of Allah. In any case, to do charity a person will have to do charity of his own property or the money owned by him. A charity cannot be done by a person of a property or money owned by a third person or a property owned by the Government. In that view of

the matter, we are of the prima facie view that such a requirement cannot be held to be arbitrary.

b. Section 4(ix)(b) of the impugned Act

143. The next challenge is with regard to the deletion of the clause concerning "Waqf by User" i.e., clause (i) of Section 3(r) of the Original Waqf Act.

144. It would be appropriate to refer to Section 3(r)(i) of the Original Waqf Act as it existed prior to amendment, which reads thus:

"3. Definitions.-

(r) "waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes -

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser; and "waqif" means any person making such dedication;"

145. It is contended by the petitioners that "Waqf by User" is a concept which is recognized under the Muslim law and the deletion of the said provision is arbitrary. Per contra, it has been contended by the learned Solicitor General that the amendment to Section 3(r)(i) of the Original Waqf Act would only have a prospective effect.

146. It can be seen that Section 36 of the Original Waqf Act required every waqf created before or after the commencement of the said Act to be registered.

147. As has also been observed by us hereinabove, right from 1923, in all the enactments we have referred to, there was a requirement of registration of waqfs. We are, therefore, of the view that if Mutawallis for a period of 102 years could not get the waqf registered, as required under the earlier provisions, they cannot claim that they be allowed to continue with the waqf even if they are not registered.

148. It is sought to be contended by the learned Senior Counsel for the petitioners that in many cases there would be no waqf deeds available. However, it is to be noted that under the Original Waqf Act, for filing an application for registration, the accompaniment of a copy of the waqf deed was not mandatory. Under the Original Waqf Act, it was provided that if no such deed has been executed or a copy thereof cannot be obtained, the application could have been made by giving full particulars as far as they are known to the applicant with regard to the origin, nature and objects of the waqf.

149. We are, therefore, of the view that if for 30 long years, the Mutawallis had chosen not to make an application for registration, they cannot be heard to say that the provision which now requires the application to be accompanied by a copy of the waqf deed is arbitrary. Further, if the legislature, on noticing misuse of the waqf properties, finds that after the enactment of the impugned Act all such applications should be accompanied by a copy of the waqf deed, the same cannot be said to be arbitrary.

150. Not only that, but we are also of the view that if the legislature, in 2025, finds that on account of the concept of "Waqf by User", huge government properties have been encroached upon and to stop the said menace, it takes steps for deletion of the said provision, the said amendment, prima facie, cannot be said to be arbitrary.

151. It may not be out of place to mention that noticing that the Andhra Pradesh Waqf Board had notified thousands of acres of land belonging to the Government as waqf property, the State of Andhra Pradesh was required to move the High Court of Judicature at Andhra Pradesh challenging the said notification. The said High Court had dismissed the said petition. Challenging the same, the State of Andhra Pradesh had filed an appeal by way of special leave before this Court which came to be decided by judgment and order in the case of State of Andhra Pradesh v. Andhra Pradesh Waqf Board (supra). The appeal filed by the State was allowed. While setting aside the judgment and order of the High Court, this Court quashed and set aside the notification under challenge and held that the lands in question vest with the State and/or Corporation.

152. After noticing such instances of misuse, if the legislature finds that the concept of "Waqf by User" has to be abolished and that too prospectively, in our view, the same cannot prima facie be said to be arbitrary. In any case, as submitted by the learned Solicitor General, the deletion of clause (i) of Section 3(r) of the Original Waqf Act would come into effect from the date on which the impugned Act has come into effect. The said provision would, therefore, not apply retrospectively. Therefore, the contention of the petitioners that the lands vested in the waqfs would be grabbed by the Government prima facie holds no water.

c. Section 5 of the impugned Act (Section 3C of the Amended Waqf Act)

153. Another provision which is sought to be challenged is Section 3C of the Amended Waqf Act, which reads thus:

"3C. Wrongful declaration of waqf.-

(1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property.

(2) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate on Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:

Provided that such property shall not be treated as waqf property till the designated officer submits his report.

(3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

(4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."

154. What has been provided under sub-section (1) of Section 3C of the Amended Waqf Act is that any Government property identified or declared as waqf property, before or after the commencement of the Act, shall not be deemed to be a waqf property.

155. It cannot be gainsaid that the property of the Government is a property of the public i.e., the citizens of India. The Government holds the property in trust for its citizens. Any person who has wrongful possession of such property cannot be permitted to claim the same as his own property.

156. Under sub-section (2) of Section 3C of the Amended Waqf Act, what has been provided is that if any question arises as to whether any such property is a Government property, the State Government may, by notification, designate an Officer above the rank of Collector, who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government. Further, as per the proviso to sub-section (2) of Section 3C of the Amended Waqf Act, such property shall not be treated as waqf property till the designated officer submits his report in that regard.

157. As already observed by us hereinabove, a Government property is a property of the citizens of India which the Government holds in trust for its citizens. Accordingly, we are of the considered view that a provision to determine the question as to whether any property is a Government property or not by designating a Senior Officer above the rank of Collector, who shall submit his report to the State Government on the same, prima facie cannot be held to be arbitrary. However, at the same time, we are of the considered view that the proviso to sub-section (2) thereof, is, at least, prima facie not sustainable in law.

158. We are of the view that a provision, by way of which even before an inquiry is conducted by the designated officer as to whether any property is a Government property or not and even before the designated officer submits his report to the State Government, providing that such a property cannot be treated as waqf property in the interregnum, is, at least, prima facie arbitrary. If a property is already identified as a waqf property or is declared as waqf property, then without determination of the question as to whether such a property is a Government property or not and treating the said property not as a waqf property, in our prima facie view, is arbitrary.

159. We will now consider sub-sections (3) and (4) of Section 3C of the Amended Waqf Act.

160. Sub-section (3) of Section 3C provides that in case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government. Subsection (4) thereof provides that the State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate corrections in the records.

161. Though we have prima facie upheld the provisions of Section 3C(1) and 3C(2) of the Amended Waqf Act, we find that the question with regard to determination of title of a property being entrusted to a revenue officer would not be in tune with the principle of separation of powers enshrined in our Constitution. The question of determination of the title of a property will have to, in our considered opinion, be resolved by a judicial or quasijudicial authority.

162. At this stage, it would be appropriate to refer to Section 83 of the Amended Waqf Act, which reads thus:

"83. Constitution of Tribunals, etc.-

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals:

Provided that any other Tribunal may, by notification, be declared as the Tribunal for the purposes of this Act.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified,

within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf:

Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of three members-

(a) one person, who is or has been a District Judge, who shall be the Chairman;

(b) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government- member;

(c) one person having knowledge of Muslim law and jurisprudence-member:

Provided that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed:

Provided that tenure of the Chairman and the member shall be five years from the date of appointment or until they attain the age of sixty-five years, whichever is earlier.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) Any person aggrieved by the order of the Tribunal, may appeal to the High Court within a period of ninety days from the date of receipt of the order of the Tribunal."

163. Under sub-section (1) of Section 83 of the Amended Waqf Act, the State Government is required to constitute as many Tribunals for the determination of any dispute, question or other matter relating to a waqf or waqf property. It can further be seen that the jurisdiction of a Tribunal, so constituted, is wide enough to decide the issues even with regard to eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property.

It can also be seen from sub-section (4) of Section 83 of the Amended Waqf Act that the Tribunal is a body consisting of three Members. One of them is a person who is or has been a District Judge, who shall be the Chairman. The second one is a person who is or has been an officer equivalent in the rank of Joint Secretary to the State Government, who shall be a Member. The third one is a person having knowledge of Muslim law and jurisprudence, who shall also be a Member.

164. It is further to be seen from sub-section (9) of Section 83 of the Amended Waqf Act that any person, aggrieved by the order of the Tribunal, may appeal to the High Court within a period of 90 days from the date of receipt of the order of the Tribunal. It is, therefore, clear that the issue with regard to determination of the title of the property, as a Government property or not, can be finally decided by the Tribunal and any person aggrieved by the order of the Tribunal may file an appeal to the jurisdictional High Court.

165. We are, therefore, of the considered view that the provision in sub-section (3) of Section 3C of the Amended Waqf Act which provides that after the designated officer, on an inquiry in terms of sub-section (2) of Section 3C of the Amended Waqf Act, determines the property to be Government property, necessary corrections in revenue records be made and a report be submitted in that regard to the State Government and the provision in sub-section (4) of Section 3C of the Amended Waqf Act mandating the State Government, on receipt of the report of the designated officer, to direct the Board to make appropriate correction in the records is prima facie arbitrary.

166. As already discussed hereinabove, the revenue officer cannot be entrusted with the work of determination of the title of a property keeping in view the principle of separation of powers.

167. We are, therefore, of the considered view that the provision which permits the necessary corrections to be made in the revenue records after conclusion of the inquiry and the provision enabling the State Government to direct the Board to make appropriate corrections in the revenue records on receipt of the report are prima facie arbitrary and liable to be stayed. However, to balance the equities and to protect the valuable Government properties, it is also imperative that pending such a determination by the Tribunal, the Mutawallis of such of the waqfs do not create any third-party rights in respect of such properties for which the proceedings in accordance with Section 3C of the Amended Waqf Act are initiated, until the final adjudication by the Tribunal is made.

d. Section 5 of the impugned Act (Section 3D of the Amended Waqf Act)

168. The next issue is with regard to the validity of Section 3D of the Amended Waqf Act, which reads thus:

"3D. Declaration of protected monument or protected area as waqf to be void.- Any declaration or notification issued under this Act or under any previous Act in respect of waqf properties shall be void, if such property was a protected monument or protected area under the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), at the time of such declaration or notification."

169. In this respect, it is pertinent to note that the Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (collectively referred to as "Ancient Monuments Acts") have been enacted for the avowed purpose of protection of ancient monuments. Such monuments are a vital part of the cultural heritage of our country and therefore they need to be protected.

170. It is further to be noted that Section 3D of the Amended Waqf Act has been enacted since the ASI appeared before the JPC and pointed out that on account of declaration of monuments as waqfs, they were facing many difficulties. It was stated by them that Mutawallis are not permitting the ASI officials to take steps for the protection and preservation of these monuments. It was also stated that, on account of notification(s) issued under the Ancient Monuments Acts and the notification(s) issued under the various Waqf Acts, the ASI was finding it difficult to carry out its function inasmuch as the Mutawallis were parallelly running the affairs.

171. The argument advanced before us on behalf of the petitioners was that on account of Section 3D of the Amended Waqf Act, the persons practicing Islamic religion would be deprived of performing their religious practices. We, however, are of the considered view that the said argument does not hold water.

172. The fallacy in the argument sought to be advanced by the petitioners can be seen from the provision contained in Section 5(6) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Sub-section (6) of Section 5 of the said Act permits the citizens to continue with their customary religious practices even if such an area is a protected monument. In that view of the matter, we do not find that any case is made out to stay the said provision.

e. Section 5 of the impugned Act (Section 3E of the Amended Waqf Act)

173. The next challenge is with regard to Section 3E of the Amended Waqf Act, which reads thus:

"3E. Bar of declaration of any land in Scheduled or Tribal area as waqf.- Notwithstanding anything contained in this Act or any other law for the time being in force, no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property."

174. It can be seen that the said provision, which begins with a non-obstante clause, provides that no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property.

175. It is to be noted that the Scheduled Tribes in general and, more particularly, those residing in north-eastern areas of the country, to which the Fifth and Sixth Schedules to the Constitution are made applicable, are one of the most marginalized and vulnerable sections of society and they can be easily exploited. The Fifth Schedule itself empowers the Governor to make regulations including regulations of prohibition or restriction on transfer of land from amongst people of Scheduled Tribes in such areas.

176. Not only that but various statutes like Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956, Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and Karnataka Scheduled Castes and Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978 have been enacted in order to protect the rights of Scheduled Tribes and the Scheduled Castes. The provisions of such statutes have been upheld by this Court in a catena of judgments including judgments in the cases of Amrendra Pratap Singh (supra), P. Rami Reddy (supra), R. Chandevarappa (supra), and Lingappa Pochanna Appelwar (supra).

177. It is further to be noted that the JPC noticed that there were numerous cases wherein the declarations as waqf property of the lands in tribal areas falling under Fifth and Sixth Schedules to the Constitution were made. It was further noticed that a declaration of a waqf in these areas was creating a serious threat to the existence of these cultural minorities, whose religious practices are distinct and who do not follow religious practices prescribed under Islamic religion. The JPC, therefore, observed that the protections envisioned by the founding fathers of the Constitution should be upheld at all costs.

178. Accordingly, we are of the considered view that a provision such as Section 3D of the Amended Waqf Act, which has been enacted with the avowed object of safeguarding the interest of one of the most marginalized and vulnerable sections of our country, i.e., the Scheduled Tribes cannot be said to have no nexus with the object sought to be achieved. Such a provision cannot, therefore, be said to be prima facie arbitrary so as to stay the same.

f. Sections 10, 12 and 16 of the impugned Act

179. One of the main challenges raised on behalf of the petitioners is with respect to the provisions contained in Sections 9 and 14 of the Amended Waqf Act, which read thus:

"9. Establishment and constitution of Central Waqf Council.-

(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).

(2) The Council shall consist of-

(a) the Union Minister in charge of waqf- Chairperson, ex officio;

(b) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(c) the following members to be appointed by the Central Government from amongst Muslims, namely:-

(i) three persons to represent Muslim organisations having all India character and national importance;

(ii) Chairpersons of three Boards by rotation;

(iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;

(iv) three persons who are eminent scholars in Muslim law;

(d) two persons who have been Judges of the Supreme Court or a High Court;

(e) one Advocate of national eminence;

(f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;

(g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department- member, ex officio:

Provided that two of the members appointed under clause (c) shall be women: Provided further that two members appointed under this sub-section, excluding ex officio members, shall be non-Muslim.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the

Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.

14. Composition of Board.-

(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,-

(a) a Chairperson; (b)(i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) one Member of the State Legislature;

(c) the following members belonging to Muslim community, namely:-

(i) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(ii) one eminent scholar of Islamic theology;

(iii) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in sub-clauses (i) to (iii), additional members from category in subclause (iii) may be nominated;

(d) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;

(e) Joint Secretary to the State Government dealing with the waqf matters, ex officio;

(f) one Member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (c) shall be women:

Provided further that two of total members of the Board appointed under this sub-section, excluding ex officio members, shall be non-Muslim: Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act, 2025 shall continue to hold office as such until the expiry of their term of office.

(2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.

(3) In case of a Union territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under sub-section (1).

(6) In determining the number of members belonging to Shia, Sunni, Bohra, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

180. It is the contention of the petitioners that the provisions of Section 9 of the Original Waqf Act have been amended in such a manner that it now permits the constitution of the Central Waqf Council where non-Muslim members will be in majority. On the same lines, it is contended that the provisions of Section 14 of the Amended Waqf Act, which pertains to the composition of a Board for a State and the National Capital Territory of Delhi, now permits the majority of members to be non-Muslims. It is, therefore, argued by the petitioners that this would amount to direct interference by non-Muslims in the religious affairs of the waqfs.

181. Per contra it is the contention of the learned Solicitor General appearing on behalf of Union of India that the number of non-Muslim members insofar as the Central Waqf Council is concerned cannot exceed 4 and insofar as the Board is concerned, cannot exceed 3. It is also contended by the learned Solicitor General

that the functions being exercised by the Council and the Board are largely secular in nature. It is further contended that their powers and duties are not related to day-today functioning of the waqfs but only with regard to laying down general policy on non-religious/secular activities. It is, therefore, contended that the provisions of the impugned Act amending Sections 9 and 14 of the Original Waqf Act will not amount to any interference in religious practices.

182. Though the learned Solicitor General has contended that the non-Muslim members in the Council would not exceed 4, upon a plain reading of Section 9 of the Amended Waqf Act, it, prima facie, appears that insofar as the Council is concerned, 12 out of 22 members can be non-Muslims. It can be seen that insofar as categories covered under clauses (a), (b), (d), (e), (f) and (g) of sub-section (2) of Section 9 of the Amended Waqf Act are concerned, they do not provide that the members from these categories should be from amongst Muslims. It will only be under the category covered in clause (c) of sub-section (2) of Section 9 of the Amended Waqf Act, where it is required that the members would be from amongst the Muslims.

183. Similarly, insofar as the Board under Section 14 of the Amended Waqf Act is concerned, prima facie, it appears that 7 out of 11 members can be non-Muslims. It can be seen that insofar as categories covered under clauses (a), (b), (d), (e) and (f) of sub-section (1) of Section 14 of the Amended Waqf Act are concerned, there is no requirement that the members have to be from amongst the Muslim community. It is only the category covered under clause (c) of sub-section (1) of Section 14 of the Amended Waqf Act, where it is required that a member has to be from the Muslim community.

184. We, however, do not wish to go into the question qua inclusion of non-Muslim members amounting to interference in religious practices, at this stage, inasmuch as the learned Solicitor General has made a categorical statement that the number of non-Muslim members in the Council as provided under Section 9 of the Amended Waqf Act would not exceed 4 and they will not exceed 3 in the Board as provided under Section 14 of the Amended Waqf Act.

185. However, in order to avoid any ambiguity, we propose to issue a direction that the Central Waqf Council should not have non-Muslim members exceeding 4 in number and 3 non- Muslim members insofar as Board is concerned.

186. The next challenge is with regard to Section 23 of the Amended Waqf Act, which reads thus:

"23. Appointment of Chief Executive Officer and his term of office and other conditions of service.-

(1) There shall be a full-time Chief Executive Officer of the Board to be appointed by the State Government and who shall be not below the rank of Joint Secretary to the State Government.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board."

187. Section 23 of the Amended Waqf Act provides for appointment of Chief Executive Officer and his term of office and other conditions of service. Sub-section (1) thereof provides that there shall be a full-time Chief Executive Officer of the Board to be appointed by the State Government and who shall not be below the rank of Joint Secretary to the State Government. Subsection (3) of Section 23 of the Amended Waqf Act provides that the Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board.

188. In this respect, it is contended by the petitioners that a person who is a non-Muslim could also be appointed as the Chief Executive Officer of the Board. It is further contended that permitting a non-Muslim to be the Chief Executive Officer would be permitting him to directly interfere with the religious affairs of the minority community.

189. A perusal of clause (e) of sub-section (1) of Section 14 of the Amended Waqf Act would reveal that one of the ex-officio Members of the Board, has to be a Joint Secretary to the State Government dealing with the waqf matters. It can further be seen that the Chief Executive Officer of the Board, who shall also be the ex officio Secretary of the Board, would be an officer of the State Government and he would also hold the office of the Joint Secretary to the State Government dealing with the waqf matters.

Ordinarily, the person occupying the post of the Chief Executive Officer would normally be a person belonging to the Muslim community. In any case, as we have already proposed to direct that in the Board, consisting of 11 Members, only 3 non-Muslim members may be permitted; we are of the view that, even if, the ex officio Secretary is a non-Muslim, it would not have any effect on the functioning of the Board inasmuch as the Chief Executive Officer will be discharging his functions and duties under the overall control of the Board.

The Board, out of 11 members, would have 8 or more members belonging to the Muslim community. As such, more than 2/3rd members of the Board i.e., majority of the Board will comprise of Muslim members. We, therefore, do not find that a prima facie case is made out for staying the said provision. However,

there was an opinion that as soon as possible an endeavour should be made to appoint a Chief Executive Officer who belongs to Muslim community.

g. Section 21 of the impugned Act

190. The next challenge is with regard to the registration of every waqf which is required to be done under Section 36 of the Amended Waqf Act, which reads thus:

"36. Registration.-

(1) Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(1A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the waqf or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.

(3) An application for registration shall be made to the Board through the portal and database and shall contain following particulars:-

(a) a description of the waqf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;

(e) the amount set apart under the waqf for-

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars as may be prescribed by the Central Government.

(4) Every such application shall be accompanied by a copy of the waqf deed.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board shall forward the application to the Collector having jurisdiction to inquire the genuineness and validity of the application and correctness of any particulars therein and submit a report to the Board:

Provided that if the application is made by any person other than the person administering the waqf, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf and shall hear him if he desires to be heard.

(7A) Where the Collector in his report mentions that the property, wholly or in part, is in dispute or is a Government property, the waqf in relation to such part of property shall not be registered, unless the dispute is decided by a competent court.

(8) In the case of auqaf created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqaf created after such commencement, within three months from the date of the creation of the waqf:

(9) The Board, on registering a waqf, shall issue the certificate of registration to the waqf through the portal and database.

(10) No suit, appeal or other legal proceeding for the enforcement of any right on behalf of any waqf which have not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after expiry of a period of six months from the commencement of the Waqf (Amendment) Act, 2025:

Provided that an application may be entertained by the court in respect of such suit, appeal or other legal proceedings after the period of six months specified under this sub-section, if the applicant satisfies the court that he has sufficient cause for not making the application within such period."

191. As already discussed hereinabove, the requirement of registration has not come for the first time in 2025. Right from 1923, the said requirement has been consistently found in all the enactments concerning the waqf properties. Now, however, the requirement of registration has been sought to be challenged on account of insertion of sub-section (10) of Section 36 of the Amended Waqf Act.

192. Insofar as the challenge to sub-section (10) of Section 36 of the Amended Waqf Act is concerned, it is to be noted that the Statement of Objects and Reasons of the 1923 Act itself shows how the provisions of the Waqf Acts were being misused so as to deny the claim of creditors and to avoid legal proceedings. Not only that, but the Waqf Enquiry Committee appointed by the Central Government in 1969-70 had also recommended bringing in a provision similar to Section 55E of the Bombay Public Trusts Act, 1950 so as to prevent the Mutawallis from running away from law.

It is further to be seen that a similar provision was sought to be enacted in the 1954 Act by way of the Waqf (Amendment) Act, 1984, however, for various reasons, it could not be brought into effect. We, therefore, find that such a provision, rather than being discriminatory, on the contrary, brings parity with regard to suits etc., instituted for the enforcement of rights of waqf on par with other trusts governed by other similar statutes. It is worthwhile to be noted that such a provision (Section 87 of the Original Waqf Act) was in existence from 1995 to 2013. However, by the Wakf (Amendment) Act, 2013, it was deleted.

In any case, sub-section (10) of Section 36 of the Amended Waqf Act itself provides a period of 6 months from the commencement of the impugned Act. As such, we are of the considered view that an ample amount of time has been given for the waqfs which are not registered to get themselves registered. Apart from that, the proviso to sub-section (10) of Section 36 of the Amended Waqf Act provides that an application may be entertained by the court by way of such a suit etc., after the period of 6 months specified under the said sub-section if the applicant specifies sufficient cause. We are, therefore, of the prima facie view that such a provision cannot be held to be arbitrary or discriminatory.

h. Section 43 of the impugned Act

193. Another challenge is with regard to amendment to Section 104 of the Original Waqf Act by which the provisions of Section 104, which were brought into effect by amendment dated 29th October 2013 w.e.f. 1st November 2013, stands deleted.

194. It would be appropriate to refer to Section 104 of the Original Waqf Act, which reads thus:

"104. Application of Act to properties given or donated by persons not professing Islam for support of certain waqf.-

Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a waqf being -

(a) A mosque, idgah, imambara, dargah, khanqah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or musafirkhana, then such property shall be deemed to be comprised in that waqf and be dealt in the same manner as the waqf in which it is so comprised."

195. It is submitted by the petitioners that any person, not professing Islam and belonging to any other religion was also entitled to create a waqf by giving or donating his property for the support of a waqf for various purposes. It is submitted that on such property being given or donated, the property was deemed to be comprised in that waqf and be dealt with in the same manner as the waqf in which it is so comprised. It is, therefore, submitted that the deletion of the provision which permits a person not professing Islam to create a trust is arbitrary.

196. In our view, the arguments advanced by the petitioners in this regard are self-contradictory.

197. On one hand, it is the contention of the petitioners that waqf is specific to Islamic religion. If that be so, then the deletion of the provision which permitted the person not professing Islam to give or donate his property for the purpose of waqf cannot be said to be arbitrary inasmuch as even according to petitioners waqf is specific to Islamic religion.

In any case, if such a person desires to donate his property, he can do so by giving or donating it to a trust or creating a trust for any of the purposes which were included in Section 104 of the Original Waqf Act. Further, it appears that the said amendment has been brought to make it consistent with the definition of waqf under Section 3(r) of the Amended Waqf Act, which provides that waqf can be created only by a person showing or demonstrating that he is practicing Islam for at least five years. We, therefore, prima facie do not find the deletion of Section 104 of the Original Waqf Act to be arbitrary.

i. Section 44 of the impugned Act

198. The next grievance is with regard to Section 107 of the Amended Waqf Act, which reads thus:

"107. Application of Act 36 of 1963.-

On and from the commencement of the Waqf (Amendment) Act, 2025, the Limitation Act, 1963 shall apply to any proceedings in relation to any claim or interest pertaining to immovable property comprised in a waqf."

199. Section 107 of the Amended Waqf Act provides that on and from the commencement of the impugned Act, the Limitation Act, 1963 shall apply to any proceedings in relation to any claim or interest pertaining to immovable property comprised in a waqf.

200. It is the contention of the petitioners that prior to the said provision being amended by the impugned Act, the provisions of the Limitation Act, 1963 were not made applicable to any suit for possession of any immovable property comprised in a waqf or for possession of any interest in such property. It is, therefore, contended on behalf of the petitioners that such a provision which puts restrictions by way of the Limitation Act, 1963 being made applicable on institution of any claim or interest pertaining to immovable property comprised in a waqf is violative of Article 14 of the Constitution on account of it being arbitrary.

201. We, however, fail to understand as to how the Limitation Act, 1963, which is otherwise applicable to any other proceedings with regard to any claim or interest pertaining to immovable property, and which is now being made applicable to the claim or interest pertaining to immovable property comprised in a waqf can be said to be arbitrary. On the contrary, we are of the considered view that it, in fact, removes discrimination which was earlier provided in the unamended Act.

202. In that view of the matter, no prima facie case of stay has been made out by the petitioners in respect of the said provision.

j. Section 45 of the impugned Act

203. The next challenge is with regard to amendment to Section 108 of the Original Waqf Act, vide which a special provision as to evacuee waqf properties was made, which now stands deleted.

204. It would be appropriate to refer to Section 108 of the Original Waqf Act, which reads thus:

"108. Special provision as to evacuee waqf properties.- The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950), which immediately before it became such evacuee property within the said meaning was property comprised in any waqf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to-

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the waqf concerned for so long as it might deem necessary."

205. It can be seen that the said provision was inserted when the Administration of Evacuee Property Act, 1950 was in existence. However, now the said Act itself has been repealed. In that view of the matter, Section 45 of the impugned Act deletes Section 108 from the Original Waqf Act inasmuch as after the repeal of the Administration of Evacuee Property Act, 1950, the said provision is rendered redundant.

206. The next contention is with regard to omission of the provisions of Section 108A of the Original Waqf Act. It would be appropriate to refer to the said provision, which reads thus:

"108-A. Act to have overriding effect.- The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

207. As per Section 108A of the Original Waqf Act, prior to the coming into force of the impugned Act, the provisions of the Original Waqf Act were to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Original Waqf Act. It can also be seen that the said provision was inserted for the first time by the amendment dated 29th October 2013 which was brought into effect from 1st November 2013.

208. It can thus be seen that in the Original Waqf Act, Section 108A was not in the statute book. It had only been brought in the statute book for the first time by Act 27 of 2013 with effect from 1st November 2013. It can thus be seen that the provisions of Section 108A were in existence only for a short period of around 11 years. In the Original Waqf Act, the said provision did not exist from 1995 till 2013. As the legislature is competent to bring any provision in the statute book, it is also competent to delete the said provision from the statute book. We, therefore, prima facie do not find any substance in the challenge in that regard.

CONCLUSION

209. In the totality of the circumstances, we do not find that any case is made out to stay the provisions of the entire statute. The prayer for stay of the impugned Act is, therefore, rejected. However, while doing so, in order to protect the interest of all the parties and balance the equities during pendency of this batch of matters, we issue the following directions:

(i) The following part of clause (r) of Section 3 of the Amended Waqf Act "any person showing or demonstrating that he is professing Islam for at least five years" shall stand stayed until the rules are framed by the State Government for providing a mechanism for determining the question as to whether a person has been practicing Islam for at least five years or not;

(ii) The proviso to sub-section (2) of Section 3C of the Amended Waqf Act, which reads thus:

"Provided that such property shall not be treated as waqf property till the designated officer submits his report." and the provisions of sub-sections (3) and (4) of Section 3C of the Amended Waqf Act, which read thus:

"(3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

(4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records." shall stand stayed;

(iii) It is directed that unless the issue with regard to title of the waqf property in terms of Section 3C of the Amended Waqf Act is not finally decided in the proceedings initiated under Section 83 of the Amended Waqf Act by the Tribunal and subject to further orders by the High Court, neither the waqfs will be dispossessed of the property nor the entry in the revenue record and the records of the Board shall be affected. However, upon commencement of an inquiry under Section 3C of the Amended Waqf Act till the final determination by the

Tribunal under Section 83 of the Amended Waqf Act, subject to further orders of the High Court in an appeal, no third-party rights would be created in respect of such properties;

(iv) It is directed that insofar as Central Waqf Council constituted under Section 9 of the Amended Waqf Act is concerned, it shall not consist of more than 4 non-Muslim members out of 22. Equally, insofar as the Board constituted under Section 14 of the Amended Waqf Act is concerned, it is directed that it shall not consist of more than 3 non-Muslim members out of 11;

(v) Though, we are not inclined to stay the provision of Section 23 of the Amended Waqf Act, we direct that as far as possible, an effort should be made to appoint the Chief Executive Officer of the Board who is the exofficio Secretary from amongst the Muslim community; and

(vi) We clarify that what has been observed by us hereinabove is upon our prima facie consideration for the purpose of examining as to whether an interim stay should be granted or not to the impugned Act or the provision(s) contained therein. The observations made hereinabove will not prevent the parties from making submissions with regard to the validity of the provisions contained in the Amended Waqf Act or any of the provision(s) therein.

210. We place on record our deep appreciation for Shri Kapil Sibal, Dr. Rajeev Dhavan, Dr. A.M. Singhvi, Shri C.U. Singh and Shri Huzefa Ahmadi, learned Senior Counsel appearing on behalf of the petitioners. We also place on record our deep appreciation for Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the Union of India as well as Shri Rakesh Dwivedi, Shri Ranjit Kumar, Shri Gopal Sankaranarayanan and Shri Guru Krishna Kumar, learned Senior Counsel appearing for the contesting parties. Most importantly, we place on record our appreciation for all the learned counsel for ably assisting the learned Senior Counsel in advancing their submissions.

.....CJI. (B.R. Gavai)

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

New Delhi;

September 15, 2025.

1 Hereinafter referred to as "impugned Act".

2 Hereinafter referred to as "Amended Waqf Act".

3 Hereinafter referred to as "Original Waqf Act".

4 Hereinafter referred to as "JPC".

5 (2020) 1 SCC 1

6 (2022) 20 SCC 383

7 2024 SCC OnLine TS 689

8 Hereinafter referred to as "1954 Act".

9 Hereinafter referred to as "ASI".

10 (2004) 10 SCC 65

11 (1988) 3 SCC 433

12 (1995) 6 SCC 309

13 (1985) 1 SCC 479

14 1912 SCC OnLine PC 45

15 (1984) 2 SCC 456

16 (1976) 4 SCC 780

17 2013 : AHC : 89349 (Second Appeal No.2471 of 1978)

18 1985 SCC OnLine Kar 144

19 2004 SCC OnLine Ker 54

20 2014 SCC OnLine AP 336

21 (1950) SCC 833

22 [1951] SCR 682

23 1958 SCC OnLine SC 6 : [1959] SCR 279

24 1957 SCC OnLine SC 17 : [1959] SCR 629

25 1959 SCC OnLine SC 38

26 1955 SCC OnLine SC 2

27 1957 SCC OnLine SC 11 : [1957] SCR 930

28 1959 SCC OnLine SC 66

29 (2023) 10 SCC 276

30 Section 3 of 1923 Act

31 Section 4 of 1923 Act

32 Section 5 of 1923 Act

33 Section 6 of 1923 Act

34 Section 8 of 1923 Act

IN THE SUPREME COURT OF INDIA

Kaveri Plastics
Vs.
Mahdoom Bawa Bahrudeen Noorul

[Criminal Appeal Nos._____ of 2025
@ SLP (Crl.) Nos. 11184-11185/2024]

HEADNOTE – For a complaint under Section 138 of the Negotiable Instruments Act, 1881, to be maintainable, the statutory notice of demand must precisely mention the cheque amount. If the amount mentioned in the demand notice varies from the cheque amount, then the complaint is not maintainable.

JUDGMENT

N.V. Anjaria, J.

1. Leave granted.

2. When the amount mentioned and demanded in the notice sent under Proviso (b) to Section 138 of the Negotiable Instruments Act, 1881, to the payee or the holder in due course of the cheque, is different from the amount for which the cheque was issued, whether the notice would stand valid in eye of law; whether a defence that such was a typographical error could be a ground which could be countenanced in law - are the questions falling for consideration in the present appeals.

2.1. The appeals arise out of the judgment and order dated 26.02.2024 in Crl. M.C. No.2164 of 2022 and Crl. M.A. No.9155 of 2022 passed by the High Court of Delhi whereby the High Court quashed the Criminal Complaint No.523804 of 2016 filed by the respondent herein under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'), on the ground that amount mentioned in the notice was not the same as per the cheque, which rendered the notice invalid.

3. Stated in brief, the facts in the background are inter alia that a complaint came to be filed by the appellant herein against the respondent-arraigned as accuse No.3, alleging that accused No.1-M/s. Nafto Gaz India Private Limited entered into Memorandum of Understanding with the appellant-complainant on 30.04.2012 relating to sale of land. A cheque bearing number 876229 dated 12.05.2012 drawn on the Indian Overseas Bank, R.K. Puram, Delhi for Rs.1,00,00,000/- was issued by the accused No.1 in favour of the appellant, which returned dishonoured on the ground 'funds insufficient'.

3.1 The appellant issued demand notice dated 08.06.2012. The relevant part of said notice is extracted hereunder.

"4. That in pursuance of the MoU, in terms of part liability towards my clients, you the noticees issued the following cheque:

CHEQUE NO.	DATE	BANK & BRANCH	AMOUNT
876229	30.04.2012	Indian Overseas Bank, B/o R.K. Puram	1 Crore 1,00,00,000/-

I, hereby call upon you to make the payments of the aforesaid cheques of 2,00,00,000/- (Rupees Two Crores) within the stipulated period of 15 days from the date of receipt of this legal notice failing which I have definite instructions from my client to initiate legal proceedings, against you which please note shall solely be at your risk and cost. Copy kept."

3.2 Another notice dated 14.09.2012 was issued to accused No.1- M/s. Nafto Gaz India Private Limited and its Directors through the advocates. Relevant portion thereof is extracted hereinbelow:

'Sub.: Legal Notice'

Under instructions and on behalf of my client Sh. Deepak Gupta, S/o Sh. Rameshwar Dass, R/o 3862, Gali No.1, Pahari Dheeraj, Sadar Bazar, Delhi - 110006 and on the basis of the documents provided, I serve upon you the following legal notice;

1. That my client is a law abiding citizen residing at the abovementioned address for the past many years.

2. That you the noticee no.1 is a company registered under the Indian Companies Act, 1956 having its office at the abovementioned address while the noticees no. 2-5 are Directors of the noticee no. 1 Company and are responsible for day to day working of the noticee no. 1 company and the noticee no. 6 is the authorised signatory of the noticee no.1 company and noticees No.2-6 are responsible for day to day activities of the noticee no.-1 company.

3. That you the notice no.1 entered into a Memorandum of Understanding with my client on 30.04.2012 pertaining sale of land bearing Khasra No. 75, Khewat No. 61, Khata No. 112 and Khatoni No. 61/14, Village - Humayunpur situated in Abadi of Arjun Nagar, New Delhi and also agreed to take on lease the property till the final sale deed is executed and issued certain cheques towards your liability for rent of leased property.

4. That in pursuance of the MoU, in terms of part liability towards my clients, you the notices issued the following cheque:

CHEQUE NO.	DATE	BANK & BRANCH	AMOUNT
876229	30.04.2012	Indian Overseas Bank, B/o R.K. Puram	1 Crore 1,00,00,000/-

5. That you the noticees assured my client that the aforesaid cheque shall be honoured on presentation.

6. That believing you assurance, my client presented the aforesaid cheque to his banker, but was astonished to see the fate of the cheque as the same returned dishonoured vide memos dated 29.08.2012 for reason "FUNDS INSUFFICIENT".

7. That you have defrauded my client by issuing cheque from account maintained by you towards discharge of your legal liability towards my client and then not ensuring that the same is dishonoured thereafter, attracting penal action u/s 138 of the Negotiable Instruments Act, 1881 and also under Section 420 of the Indian Penal Code. I, hereby call upon you to make the payments of the aforesaid cheque of ₹2,00,00,000/- (Rupees Two Crores) within the stipulated period of 15 days from the date of receipt of this legal notice failing which I have definite instructions from my client to initiate legal proceedings, against you which please note shall solely be at your risk and cost. Copy kept."

3.3 The fact situation is that the cheque in question was issued for Rs.1,00,00,000/- whereas in both the aforesaid notices sent to the accused - the drawer of the cheque upon bouncing of the cheque, the complainant asked for the payment of Rs.2,00,00,000/-. At that stage, the respondent accused filed an application seeking discharge contending that the notice of demand as aforementioned was not in terms of Proviso (b) to Section 138 of the NI Act, therefore, the complaint was not maintainable.

The plea for discharge was dismissed by the Metropolitan Magistrate on 06.10.2021. The respondent herein then filed a petition before the High Court, culminating into the impugned judgment and order whereby the High Court held that as the demand notice under Proviso (b) of Section 138 of the NI Act was at variance with the cheque amount, the same was invalid rendering the complaint liable to be quashed.

3.4 In the reply filed by the appellant to the discharge application the following defence was raised as found in paragraph 2. "That the notice dated 08.05,2012 is perfect and if contents of the entire notice be read as whole the said demands, the "aforesaid cheque" and the aforesaid cheque has been clearly described in para 4

of the notice, however, due to typographical inadvertent mistake Rs.2,00,00,000/- has been mention after the word "aforesaid cheque".

It is very relevant to mention herein that complainant has also issued other notices to the accused on the same day which consist the cheque for Rs.2,00,00,000/- and due to cut paste command inadvertently amount of Rs. 2,00,00,000/- could not change in the notice issued in the present case. It is very relevant to mention herein that contents of entire notice clearly speaks real facts and all the contents of the notice must be read in totality."

4. Learned Advocate for the appellant, Mr. Sanjay Kumar assailing the judgment of the High Court, contended that a too technical ground weighed with the High Court in quashing the complaint, as it viewed that since amount mentioned in the notice was Rs.2,00,00,000/-while the cheque issued was for Rs.1,00,00,000/-, the notice was invalid. It was sought to be submitted that there was a clear typographical error on the part of the complainant in mentioning in the notice the different amount. It was next submitted that other details of cheque were mentioned in the notice and that the court ought to have looked at the substance of the matter rather than becoming technical.

4.1 It was then submitted that the offence under Section 138 of the NI Act is essentially a civil wrong in the attire of criminal offence. In that view, it was submitted, the technicality should not be allowed to prevail. It was further submitted that purpose of Section 138 of the NI Act is to facilitate smooth business transactions. Learned counsel for the appellant submitted that the kind of view taken by the High Court, if allowed to be sustained, it would give a premium to the drawer of the cheque whose cheque is dishonoured and has remained unpaid.

4.2 It was submitted by relying on the decision of this Court in Suman Sethi vs. Ajay K. Churiwal & Anr.1 that the notice was required to be read as a whole. By pressing into service another decision also of this Court in Central Bank of India & Anr. vs. Saxons Farms & Ors.2 it was highlighted that the object of the notice under the Proviso (b) of Section 138 of the NI Act, was to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer.

4.3 On the other hand, learned advocate for the respondent Mr. Kush Chaturvedi submitted that in the notice under Proviso (b) of Section 138 of the NI Act issued by the respondent, he gave incorrect details demanding double the cheque amount. Learned advocate for the respondent highlighted that Rs.2,00,00,000/- was demanded in both the notices issued on 08.06.2012 and next on 14.09.2012. It was submitted with reference to the decisions of this Court as well as that of different High Courts that the issue is no longer res integra that the demand in

legal notice cannot be different than the cheque amount. He submitted that the complainant took a false and a stock plea of typographical error in the notice.

5. Having gathered the compass of the controversy and considered the rival submissions, the provision of Section 138 of the NI Act may be noticed at the outset. This Section deals with the dishonour of the cheque. It reads as under,

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

5.1 The aforesaid provision contemplates that where any cheque drawn by a person in the account maintained by him is returned dishonoured and unpaid, it amounts to a punishable offence. The ingredients of this penal provision are inter alia that the cheque should have been drawn by a person on an account maintained by him with a banker, for payment of any amount of money to another person from out of that account. Such cheque should be returned by the

bank for the reason of money in the credit of the account being insufficient, etc. In order to make out the offence under Section 138 of the NI Act complete, conditions stated in sub-clauses (a),(b) and (c) of the Proviso should stand complied with. In the present case, it is the condition (b) to the Proviso which is in focus.

5.1.1 In K.R. Indira vs. Dr. G. Adinarayana3, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

5.2 The purport of group of words 'makes a demand for the payment of said amount of money' occurring in Proviso (b) to Section 138 of the Act, and in particular the connotation 'the said amount of money' therein, hold key to the answer to the issue posed. The words 'said amount of money' figure in Proviso (b), Section 138. The effect and application of this phrase was dealt with by this Court in Suman Sethi vs. Ajay K. Churiwal & Anr.4

The context of facts was that the appellant in that case issued a cheque of Rs.20,00,000/- which was returned dishonoured. In the notice issued under the Proviso (b), the complainant called upon the drawer of the cheque to pay cheque amount of Rs.20,00,000/- along with incidental charges of Rs.1500/- spent on the cheque and also Rs.340/- as notice charges. It was stated that failing to pay would entail legal steps holding the drawer liable for all costs and consequences thereof. The contention was that since the incidental amount was demanded in the notice along with the cheque amount, the notice was rendered bad.

5.2.1 Pertinently, in the process, delineating on the meaning of the words 'said amount of money', the Court in Suman Sethi (supra) stated thus. "We have to ascertain the meaning of the words the "said amount of money" occurring in clauses (b) and (c) to the proviso to Section 138. Reading the section as a whole we have no hesitation to hold that the above expression refers to the words "payment of any amount of money" occurring in the main Section 138 i.e. the

cheque amount. So in a notice, under clause (b) to the proviso, demand has to be made for the cheque amount." (Para 6)

5.2.2. The Court proceeded to state further, "In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice." (Para 8)

5.2.3 The Court observed that the demand in the notice has to be made for the said amount which would be the 'cheque amount'. If no such demand is made the notice would fall short of its legal requirement. In the facts of that case, however, the Court held that since the cheque amount in the notice was correctly stated, merely because the respondent claimed in addition to the cheque amount, the incidental charges and notice charges, which were severable, notice could not be branded as bad in law.

5.2.4 It was further observed that however if in the notice an ambiguous demand is made without specifying the due amount under the dishonoured cheque, the notice would fail to meet the legal requirement. In other words, what was pinpointed was that the words 'said amount' in Proviso (b) has to be same amount of the cheque which is dishonoured. The object of the notice under Proviso (b) of Section 138 of the Act was explained by this Court in Central Bank of India vs. Saxons Farms & Ors.5, observing that the purpose of the notice is to give a chance to the drawer of the cheque to rectify his omission. Once the defaulter makes payment of the amount covered by the cheque as mentioned in the notice within stipulated 15 days, he would stand absolved from his liability.

5.3 This Court in K.R. Indira (supra), again held that specific demand for the payment of the sum covered by the dishonoured cheque is required to be made in the notice. In that case, there was a loan transaction in the backdrop and the cheques were issued towards that payment. In absence of specific demand for the cheque amounts, the notice was held to be invalid. In Rahul Builders vs. Arihant Fertilizers & Chemicals & Anr.6, the imperative character of the condition in the Proviso (b) to Section 138 of the Act was again highlighted. Amount of Rs.8,72,409 was due to the appellant thereof from respondent No.1. Respondent issued a cheque for Rs.1,00,000/- which was dishonoured. The appellant sent notice to the respondent asking him to remit Rs.8,72,409/-.

5.3.1 This Court in Rahul Builders (supra) stated that one of the conditions was service of a notice making 'demand of the payment of the amount of cheque' as is evident from the use of the phraseology 'payment of the said amount of money, "Service of a notice, it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the Proviso. When the Proviso applies, the main section would not. Unless a notice is served in conformity with proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. Parliament while enacting the said provision consciously imposed certain conditions." (Para 10)

5.4 In more recent decision of this Court in Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr.7 the dictum of law was reiterate in the following words, "The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138." (Para 34.5)

5.5 The different High Courts hold the view in unanimity. The High Court of Madhya Pradesh in Gokuldas vs. Atal Bihari & Anr.8 observed that offence under Section 138 of the NI Act is a technical offence therefore every technical formality as required under the Section must be complied with strictly. In that case, the complaint was filed on the ground that cheque of Rs.4,30,000/- was issued in lieu of repayment of loan of Rs.4,30,000/-. A notice under Proviso (b) to Section 138 of the NI Act was sent on the ground that cheque of Rs.43,000/- was given. It was held that the notice was not for 'said amount of money' to render it invalid.

5.5.1 In M/s. Yankay Drugs and Pharmaceuticals Ltd. Vs. CITI bank9, the High Court of Andhra Pradesh reiterated the proposition that while demanding payment by issuing notice under Section 138(b) of the NI Act, the payee or the holder in due course must demand payment of the amount covered by the cheque. It was stated that if the demand is for a lesser amount or a higher amount not covered by the cheque, which was dishonoured, then the prosecution must fail in as much as the statutory requirement of Section 138(b) is not fulfilled. In that case the amount of cheque which was dishonoured by the bank was Rs.9,972/-. But in the notice under Section 138(b) of the NI Act, the complainant failed to make any demand for payment of the said amount, instead it was stated in the notice that the cheque was issued for Rs.3,871/-. The High Court rightly stated that the notice fell short of the statutory requirement.

5.5.2 Before the High Court of Punjab and Haryana, in Chhabra Fabrics Private Limited vs. Bhagwan Dass10, it was a case where there was a discrepancy in mentioning the number of cheque which was claimed to be a typographical error.

The High Court observed that even if it was true that there was a typographical error in the legal notice while typing out the cheque number, such typographical error, if any, does not meet the compliance of the mandatory provisions of Section 138 of the NI Act.

5.5.3 The contention that the discrepancy in the amount mentioned in the notice under Proviso (b) of Section 138 of the NI Act was only a typographical error to be overlooked, was again negatived by the High Court of Karnataka in K. Gopal vs. Mr. T. Mukunda11. In that case, the accused issued two cheques of Rs.2,00,000/- each but in the legal notice the amount demanded was only Rs.10,000/-. The argument advanced by the learned counsel was that it was just a typographical error.

The High Court asserted that Section 138(b) of the NI Act contemplates issuance of notice demanding the amount covered under the cheque and in that view the notice has to be treated as defective in law. The Delhi High Court in Sunglo Engineering India Pvt. Ltd. Vs. The State & Ors.12 quashed the complaint where the amount demanded in the notice was double the amount of cheque which was issued for Rs.1,00,00,000/-, akin to the facts of the present case.

6. The interpretation of the words 'said amount' in Proviso (b) to Section 138 of the NI Act as above is based on the principle of statutory interpretation that penal statute would always be construed and applied strictly. This Court in M. Narayanan Nambiar vs. State of Kerala13, spoke on the rule of construction of a penal provision in its true perspective by quoting from the English decision in Dyke vs. Elliott14 which was again referred to in a more recent decision of this Court in Balaji Traders vs. State of U.P. & Anr.15

"A decision of the judicial Committee in Dyke v. Elliot, (1) cited by the learned counsel as an aid for construction neatly states the principle and therefore may be extracted:-

Lord justice James speaking (1)(1872) L. R. 4 P.C. 184, 191, for the Board observes at P.191:

"No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment.""

6.1 The Privy Council decision in Dyke vs. Elliott (supra) quoted by this Court with approval stated that the court must see that the thing charged as an offence is

within the plain meaning of the words used and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. It was thereafter observed that where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute.

6.2 The interpretative canon of strict construction of penal statute was highlighted also in the Craies Statute Law16 wherein the decision of U.S. v. Wiltberger17 was referred to observing.

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

6.3 Having noticed the above principle of construction of penal statute, this Court in Suman Sethi (supra) concluded.

"There is no ambiguity or doubt in the language of Section 138. Reading the entire section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in a notice under clause (b) to the proviso, the demand has to be made for the cheque amount." (Para 7)

6.4 The proposition that the penal provision has to be construed strictly was again asserted by this Court in K.K. Ahuja vs. V.K. Vora & Anr.18 In the context of provision of Sections 141 and 138 of the NI Act it was observed in para 17 of the judgment that penal statutes are to be construed strictly and that if conditions are scraped, the courts will insist upon strict literal compliance. It was stated that there is no question of inferential or implied compliance.

7. When the Proviso (b) to Section 138 stipulates the service of notice as one of the conditions for constituting the offence, and when the words 'said amount' is incorporated in the language of the provision, it is the amount which is specifically referable to the amount recoverable under the cheque in question. Reading Section 138 of the Act in a composite manner, the word 'said amount' occurring in the Proviso (b) is connectible with and operates in conjunction with

language in the parent part of the Section 'where any cheque drawn by a person of any amount of money'.

7.1 The words 'said amount' and the phrase 'any amount of money' have the same purport signifying the cheque amount. They operate hand-in-hand for the purpose of applicability of the Section. The nexus or linkage between the two is enacted by the Legislature with a purpose of making the two to be the same and inseparable components, the former describing the offence and the latter denoting the condition to be fulfilled for constituting the offence.

8. From the afore-stated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under Section 138 of the NI Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under Section 138 of the NI Act would fall flat as bad in law.

The notice to be issued under Proviso (b) to Section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1 A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

8.2 The condition of notice under Proviso (b) is required to be complied with meticulously. Even typographical error can be no defence. The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for, the so called mistake occurred and recurred in both the notices dated 08.06.2012 and 14.09.2012.

9. When the provision is penal and the offence is technical, there is no escape from holding that the 'said amount' in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the Proviso (b) to Section 138 of the NI Act, it is mandatory that 'said amount' to be mentioned therein is the very amount of cheque, and none other.

10. Reverting to recollect the facts of this case, the cheque which was drawn by the respondent was for Rs.1,00,000/- whereas in the notice issued under Proviso (b) to Section 138 of the NI Act against the respondent, appellant mentions the amount of Rs.2,00,000/-. The rigours of law on this score being strict, the defence would not hold good that the different amount mentioned in the notice was out of inadvertence. Even if the cheque number was mentioned in the notice, since the amount was different, it created an ambiguity and differentiation about the 'said amount'. The notice stood invalid and bad in law. The order of quashment of notice was eminently proper and legal.

11. No case is made out for interfering with the impugned order of the High Court. The appeals stand dismissed. In view of the disposal of the main appeals, all the interlocutory applications as may be pending stands disposed of.

.....CJI. [B.R. Gavai]

.....J. [N.V. Anjaria]

New Delhi;

September 19, 2025.

1 (2000) 2 SCC 380

2 (1999) 8 SCC 221

3 (2003) 8 SCC 300

4 (2000) 2 SCC 380

5 (1999) 8 SCC 221

6 (2008) 2 SCC 321

7 (2023) 1 SCC 578

8 MCRC 5458/2013

9 2001 DCR 609

10 Crl. Appeal No.1772-SB of 2002

11 Criminal Appeal No.1011 of 2010

12 MANU/DE/3805/2021

13 AIR 1963 SC 1116

14 (1872) 4 PC 184

15 2025 SCC OnLine SC 1314,

16 7th Edn. at p.529

17 18 US 76 (1820)

18 (2009) 10 SCC 48

IN THE SUPREME COURT OF INDIA

Nagamma @ Nagarathna & Ors.
Vs.
State of Karnataka

[Criminal Appeal No. 425 of 2014]

HEADNOTE – For joint disclosure statements, made by multiple accused simultaneously, to become admissible under Section 27 of the Evidence Act, high scrutiny is needed to rule out the possibilities of tutoring of the accused.

While simultaneous disclosure statements can be legally admissible, courts must exercise heightened caution, and the prosecution bears the burden of proving that the disclosures were genuine, independent, and corroborated by other evidence.

JUDGMENT

K. Vinod Chandran, J.

1. The default in repayment of a loan led to a crime, most foul, of murder, is the prosecution case. The allegation was that a police man, the 1st accused, took a loan from another police man, the deceased, who was killed by the wife, brother and brother-in-law of the former; at his instigation. The deceased, the driver of a Superintendent of Police made persistent demands for repayment of the loan. This led to A2, the wife of A1, calling the deceased to her home on the pretext of repaying the debt, on the night of 10.03.2006.

At around 2am on the next day the victim was made immobile by throwing chili powder on his face and hacked to death with two choppers wielded by the accused. A2 then, after sunrise, went directly to the police station and confessed to the SHO about the crime and apprised him of the presence of the dead body in her house. The SHO deputed a police constable to make enquiries and later an inquest was done by PW-24 at the house of A2, after which the body was taken to the hospital.

2. Before the trial court, the prosecution examined 24 witnesses and marked 33 documents as also 16 material objects. The first accused examined himself and during the examination of the prosecution witnesses marked Exs.D1 to D8. The trial court found, from the evidence of the prosecution witnesses, that the presence of the dead body in the house of A2 was proved, and the crime itself was confessed to by A2, who also pointed out the dead body which was lying in her house. A2 is said to have made extra judicial confessions to other persons, including the wife of the deceased.

3. A recovery was made of a chopper, and one chopper (sickle) was seized from the scene of occurrence itself. A1, who was arrayed for instigation, had a perfect alibi insofar as the night duty undertaken in another police station, deposed to by PW-14, who was also on duty. There was nothing to indicate an instigation, which led to the acquittal of A1. A2 to A4 were convicted under Section 302 read with Section 34 and was sentenced to life. The High Court affirmed the findings of the Trial Court in an appeal by A2 to A4, finding established; the motive and the culpability of the accused based on other circumstances, like extra judicial confessions, recovery of a chopper under Section 27, the crime scene being the house of A1&2 and the absence of explanation for the dead body being at the house of the accused, under Section 106.

4. Mr.C.B. Gururaj, learned counsel for the appellants would argue that since Section 302 is charged against four accused read with Section 34, when one of the accused is acquitted, it should inure to the benefit of the others also. Reliance was placed on State of West Bengal v. Vindu Lachmandas Sakhrani alias Deru1 and Suraj Pal v. State of Uttar Pradesh2. The depositions were read over to us and it was argued that the eye witnesses had turned hostile and there was no circumstance bringing out the culpability of the accused.

5. Mr.Nishanth Patil, learned AAG, however, sought to uphold the conviction on the ground that the dead body was found in the house of A2, which was pointed out by her and there was no explanation even under Section 313 questioning. The motive was proved, and the extra judicial confessions further established the crime. The recovery as against A4 also provided a link in the chain of circumstances, which chain is complete.

6. Undisputedly, this is a case of circumstantial evidence, especially since the eyewitnesses who were projected as tenants in the building in which the crime occurred, turned hostile. It is also pertinent that as per the allegation of the prosecution, a police man was killed by the wife of another police man, with the aid of her brother and brother-in-law. Upon the sad news being conveyed to the wife of the deceased, she allegedly went to the premises with her relatives and friends; the latter of whom were either police men or their spouses.

7. On the question of whether the death was a homicide, there can be no dispute raised, unequivocally established by the evidence of PW-23, the Doctor who conducted the post-mortem. Almost 13 wounds were noticed which were lacerated and chop wounds. According to the Doctor, death was caused due to the injuries sustained to the head; all the internal and external injuries being ante-mortem in nature. The chop wounds were found on the right side & middle of the forehead as also over the left parietal prominence and the eye, the nose and the lip on the left side.

There were wounds on the right cheek, over the right ear lobe, incised wound extending from the occipital area to the left ear, with comminuted fracture on the occipital area, at the right temporal bone extending to lower of left temporal bone, with brain tissue exposed. There were other lacerated and chop wounds on the left leg exposing the libia and fibula and on the left wrist a joint fracture in the second metacarpal bone. The injuries bring forth a case of a brutal frontal attack, which is opined, by PW-23, to be possible by the chopper recovered from the scene of occurrence and that recovered at the instance of A4.

8. The death, no doubt is homicidal in nature and now we turn to the culpability of the accused. The first argument of the learned counsel for the appellants, that, the appellants too have to be acquitted, considering their parity with A-1, cannot at all be countenanced. In Vindu Lachmandas Sakhrani alias Deru1 (supra), a husband and his wife were charged with the kidnapping and murder of a six-year-old child. While the husband was acquitted, the trial court convicted the wife, which conviction was overturned in appeal on the ground of parity. In that case, dependent solely on circumstantial evidence, it was held that the charge under Section 302 read with Section 34 IPC, based on the common intention of both, falls flat with the acquittal of the husband, especially when there was no simpliciter charge under Section 302 against the wife.

9. In Suraj Pal2 (supra), the charges were under Sections 147, 323, 307 and 302 read with Section 149 of the IPC. There was no independent charge against the sole accused convicted for the offence under Sections 307 and 302 IPC. In that circumstance when all the others were acquitted, one of the accused who was arrested for shooting the deceased, could not have been convicted under Sections 307 and 302 IPC, was the finding. In the present case, the charge against A1 was under Section 109, instigation, leading to a charge under Section 302 read with Section 34. The charge against the other accused was under Section 302 read with Section 34 IPC; quite distinguishable. There was no evidence to substantiate instigation and an independent charge under Section 302 would not stand against A2 by reason of the airtight alibi.

10. The motive alleged is of a loan of Rs.1 lakh taken from the deceased having not been repaid giving rise to persistent demands, resulting in ill will between the deceased and the accused, leading to frequent quarrels. The trial court and the High Court placed reliance on the evidence of PW-18, 11 &12, the wife, mother and brother of the accused and PW-7, to find motive.

11. In chief examination, PW-18 deposed that it was A2 who revealed to her that she owed a sum of Rs.1 lakh to the deceased which A2 had obtained at the time of construction of the house. The chief examination of PW-18 does not at all support the motive set up by the prosecution. In cross examination, it was categorically stated by PW-18 that in the domestic inquiry against A-1, she had

appeared before the inquiry officer; Dy. S.P. Arasikare, and deposed that her husband and accused were in cordial terms and there were no transactions between them. Very strangely, after the cross examination by the accused, the Special Public Prosecutor sought to treat the witness as hostile and attempted a cross examination. She categorically asserted that the statement made before the inquiry officer was not under coercion.

12. Yet another witness proffered by the prosecution to prove the motive was PW-7, a police constable and a neighbour of the deceased. In his chief examination, it was deposed that while occupying the police quarters, the deceased and the accused were on friendly terms. He also deposed that he had no information regarding any loan taken by A-1 from the deceased. The witness was treated hostile and cross examined by the prosecution, when it was brought out that in the statement under Section 161, Cr. PC, the witness had spoken about the loan of Rs.1 lakh taken by A-1 from the deceased, which alone would not prove the motive since it was not deposed in his chief examination.

13. PW-11 and PW-12, the mother and brother of the deceased, however spoke of a loan having been taken by A-1 from the deceased. The reliability of the said witnesses has to be tested on the totality of the circumstances as deposed to by the witnesses. PW-18 deposed that PWs- 11&12 were not on cordial terms with her husband; belying their knowledge of the loan availed, which even the wife of the deceased was not aware of. PW-18 asserted that she or her husband were not in the habit of discussing their problems with PWs-11&12 nor was there even exchange of pleasantries. There are further reasons to disbelieve the testimony of PWs-11&12, which we shall deal with a little later.

14. Absence of motive is not an imperative circumstance to arrive at a conviction, in a case where there is ocular evidence. The role of motive is not very significant even when circumstances otherwise form an unbreakable chain. Motive only provides another link, and the absence of motive is a factor that weighs in favour of the accused as held in Babu v. State of Kerala3. We cannot find a motive in this case; of the financial transaction having led to the crime. Further, the prosecution case is that the deceased was summoned over telephone, to the house of A2, on the pretext of repaying the loan. But even PW-18 has no case that the deceased left the house on such a mission, after a telephone call. There is also no clear evidence as to whether the deceased returned to his home in the evening of that day.

15. Even according to the prosecution, the police came to know about the death from A2 who surrendered before the Police Station and made a voluntary statement before PW- 15, the Station House Officer (SHO) in the presence of PW- 17, a Sentry on duty at the Police Station. PW-15, immediately called PW-21, a constable and directed him to proceed to the house of A2 to verify the

information given by A2. PW-22, with another constable, visited the house of A2 and having seen the dead body, intimated it to PW-15. PW-15 informed PW-18, who in turn informed her neighbours and her relatives.

16. The prosecution in addition to the official witnesses, sought to establish the presence of the dead body at the house of A1& A2, through the other witnesses including the wife, mother and brother of the deceased who were alleged to have come to the crime scene and witnessed the presence of the dead body thereat. PW-18, the wife of the deceased more than once deposed in her chief examination and cross examination, that she came to know of the death of her husband at '7 O'clock' on the morning of 11.03.2006 when the police came to her house with the information of the crime.

Though, she stated in her chief examination that she went to the house of A2 and saw the dead body, before the inquiry officer, Dy. S.P. Arasikare, she had stated that she saw the dead body first at the hospital; admitted in her testimony before Court. In cross examination by the Prosecutor, after she was declared hostile, it was categorically stated by PW-18 that she did not see the dead body of her husband at the house of A-1&2.

17. PW-6 and PW-8, the wives of two police constables who resided near to the house of the deceased stated before police that they saw the dead body at the house of A-1&2, but resiled from their statement before Court and both of them were declared hostile. PW-7, in his chief examination stated that he too saw the dead body first at the hospital but, in cross examination by the prosecution, sought to assert that he had seen the body of the deceased at the house of A- 1&2; which statement he had not made before the police.

18. The inquest report was drawn up by PW-24, allegedly at the house of A-1&2. PWs-1&4, the witnesses to the inquest report, did not corroborate and deposed that the report was drawn up and signed at the hospital. PW-11 and PW-12, the mother and brother of the deceased spoke of having seen the dead body at the alleged crime scene, the house of A- 1&2. It is pertinent that according to PW-18, the relatives including her mother-in-law and brother-in-law came to the hospital. The presence of the said witnesses in the alleged scene of crime, after the crime proper, is suspect.

19. PW-11, the mother of the deceased stated in her cross examination that PW-18 called her over phone at 4 am to inform her about the crime committed. It is also stated that she was informed by PW-18 through the phone of one Shankarappa, who was not examined before Court. PW-12, the brother of the accused stated in his cross examination that having been informed of the murder of his brother, by PW18, he came to Hassan at about 05:30 am in the morning. PW18 at the risk of repetition, asserted before Court more than once, that she was

first informed about the death of her husband at 7 am when the police came to her house with the said information.

20. Useful reference can be made to the decision of this Court in Santosh v. State (NCT of Delhi)4, wherein the dead body was recovered from an apartment occupied by the appellant/accused as a tenant. The Court categorically found that there was no serious dispute to the tenancy arrangement but even then, that was insufficient by itself, to hold the accused guilty. It was held:

"there is no general presumption against the owner/tenant of a property with regard to his/her guilt if a dead body with homicidal injuries is found in his/her property. No doubt if the prosecution succeeds in proving a chain of circumstances from which a reasonable inference can be drawn regarding one's guilt then, in absence of proper explanation, the court can always draw an appropriate conclusion with respect to his/her guilt with the aid of Section 106 of Evidence Act, 1872. But, if the chain of circumstances is not established, mere failure of the accused to offer an explanation is not sufficient to hold him guilty."

21. This Court also relied on Shivaji Chintappa Patil v. State of Maharashtra5 in which it was observed that Section 106 of Evidence Act 1872 does not directly operate against either the husband or the wife, staying under the same roof, even if he/she is the last person seen with the deceased. It does not absolve the prosecution of discharging its primary burden of proving a case beyond reasonable doubt. Unless there is evidence led to sustain a conviction or which makes out a prima facie case, the question does not arise of a burden of proof placed upon the accused to offer an explanation.

22. As we found, there is no cogent, credible evidence that the body was at the house of A-1&2. But, for the moment we will accept the said circumstance to have been proved on two grounds. One, PW-15, the SHO to whom A2 spoke of the crime, even if eschewed as a confession, recorded the statement, marked as Ext.P10(a) in the Station Diary produced as Ext.P10. PW-17 corroborated the statement, leading to the discovery of the body at the house of A2 by PW-21, the Constable deputed to verify. Even if these circumstances are accepted, going by the decisions cited, that alone cannot be conclusive proof to find A2 guilty, without other corroborating evidence.

23. One another circumstance, heavily relied upon by the trial court and the High Court are the extra judicial confessions made by A2 to various persons, but all inside the police station. The First Information Report was on the complaint made by PW-18, the wife of the deceased, though the information first supplied was by A2 in the morning, to PW-15, the SHO and PW-17, the Sentry. Both these extra judicial confessions have been made in the police station before the police officers, even according to the prosecution, on which no reliance can be

placed. PW-18, the wife of the deceased deposed that it was A2 who revealed to her the murder of her husband, at the police station, which was the testimony of PW-7 also. The extra judicial confessions and the context in which they were made, within the police station cannot at all be relied upon.

24. Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of any offence and Section 26 also restricts any confession by a person in the custody of a police officer from being proved against him unless it is made in the immediate presence of a Magistrate. In State of U.P. v. Deoman Upadhyaya6, this Court had considered the impact of Section 25 and 26, in paragraph 7, from which the relevant portion is extracted herein below:

"The expression, "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in Pakala Narayan Swami v. Emperor by the Judicial Committee of the Privy Council, "Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation".

The adjectival clause "accused of any offence" "is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides. "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 a person accused of any offence". By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate."

25. The extra judicial confessions, said to have been made by A2 in the present case, were all within the police station, where she is said to have voluntarily come, to confess about the murder. The confession made to the SHO, PW-15, overheard by PW-17, the Sentry of the police station, hence has to be completely eschewed under Section 25. The confession made to PW-18, the wife of the deceased and PW-7, though a police constable; who arrived at the police station in the status of the neighbour of the deceased, also has to be eschewed under Section 26. The other witnesses to whom the extra judicial confession was made, that too inside the police station, in any case turned hostile.

26. Yet another circumstance relied upon by the prosecution is the recovery of a chopper, MO-16 on the confession statement of A4 under Section 27. In this context, we have to look at the evidence of PW-24, the investigating officer (I.O) who deposed that A3 and A4 were taken into police custody on 15.03.2006 after

their voluntary surrender before Court on 13.03.2006. It is the categoric statement of the I.O that both A3 and A4 confessed in their voluntary statements that they would point out the chopper used for commission of offence by leading the police to the spot where they concealed it. A4 alone was taken to the spot, leading to the recovery of MO-16, is the case of the prosecution.

27. Disclosure statements taken from one or more persons in police custody do not go out of the purview of Section 27 altogether, as held in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru7 and reiterated in Kishore Bhadke v. State of Maharashtra8. While asserting that a joint or simultaneous disclosure would per se be not inadmissible under Section 27, it was observed that it is very difficult to place reliance on such an utterance in chorus; which was also held to be, in fact, a myth. Recognising that there would be practical difficulty in placing reliance on such evidence, it was declared that it is for the Courts to decide, on a proper evaluation of evidence, whether and to what extent such a simultaneous disclosure could be relied upon.

In Kishor Bhadke7, while affirming the above principles in Navjot Sandhu6, the facts revealed were noticed, wherein the information given by one, after the other, was without any break, almost simultaneously and such information was followed up by pointing out the material thing by both the accused, in which circumstance it was held that there is no reason to eschew such evidence.

28. With the above principles in mind when we look at the facts of the present case, the I.O though has stated about the disclosure statement of both A3 and A4, he does not specify whether it is simultaneous or one after the other. It is also not clear; if the disclosure is at different points of time, in which event, who made the first disclosure.

Deposition of PW-24 though does not speak of the exact location as stated by the accused in the confession statement; PW-24 speaks of having taken A4 to the bush of Rose Trees at the Helipad near Udayagiri Layout from where the chopper was produced. PW-2 and PW-3, the witnesses of recovery of MO- 16 turned hostile and they deposed that they affixed their signatures to the recovery mahazar at the police station. Further, it also has to be noticed that but for the recovery there is nothing to indicate the culpability of A3 and A4 through forensic evidence to link the recovered weapon to the crime proper.

29. Insofar as the recovery under Section 27, as has been reiterated in Mohd. Inayatullah v. State of Maharashtra9, the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused about the concealment. In the cited decision, which considered the offence of theft, the accused had made a statement of the place where the stolen drums were kept by him.

Finding the admissible portion of the statement to be only the location of the three drums, it was held that the information taken in conjunction with the facts discovered, was insufficient to draw the presumption that the accused was the thief or the receiver of the stolen property, with the knowledge that it was stolen. The drums in question were found in the compound or yard of a musafirkhana (rest place for travellers) and it was neither lying concealed nor was the compound under the lock and key of the accused.

In the present case, the I.O, PW-24, categorically deposed before Court that after A3 and A4 were taken into custody on 15.03.2006, pursuant to their surrender before Court on 13.03.2006, confessions were made by both the accused regarding the concealment of the chopper allegedly used for commission of offence; which statement of 'use in the commission of offence' has to be totally eschewed. The exact spot in which the concealment was made as stated in the disclosure statement has also not been deposed to by the I.O.

30. Manoj Kumar Soni v. State of M.P.10 was a case in which all the accused persons made disclosure statements to the IO whereupon recovery of various articles were effected. It was held that even when disclosure statements hold significance as a contributing factor in a case, it is not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt (sic, para 22).

31. The fact that confessions were made by both the accused and the recovery was made from one of the accused, A4, leading the police to the spot would restrain us from treating the recovery as an inculpating circumstance against A3 or A4, especially when the confession is taken simultaneously from both the accused. We are of the opinion that in the present case there can be no reliance placed on the recovery based on the sketchy evidence adduced.

32. Now, looking at the witness who supported the prosecution case, we find them to be totally unreliable. PW-7, whose evidence was relied upon for the purpose of motive and also the presence of the dead body at the house of A-1&2, we have already found, did not speak of either of these circumstances before the police under Section 161 or in the chief examination. As far as PW-11 and PW-12 are concerned, their presence at the scene of occurrence itself is doubtful. The motive sought to be proved through PW- 11&12 as also the presence of the dead body in the house of A-1&2, hence stands totally discredited. It is also relevant that PW-16, the brother-in-law of the deceased, categorically stated that he saw the dead body at the hospital and not at the house of A-1&2.

33. As we noticed at the outset, PW-20 and PW-22 eyewitnesses turned completely hostile. We are at a loss to understand how the High Court and the trial court made an observation that though they were declared hostile, there was

credible material in their evidence pointing to the culpability of the accused, which could be relied upon. We find no such material in the chief examination or the cross examination.

PW-20 and PW-22, who as per the prosecution were brothers staying in the house of A1 and A2 on rent. The witnesses admitted that they were bothers but they denied that they were tenants of A1 and A2. After PW-20 was declared hostile, the prosecutor had put forth P-12 to P-20 contradictions in the alleged statements under Section 161 recorded by the police, which were all denied by the said witness. Likewise, PW-22 also did not subscribe to the prosecution case and there was nothing in his evidence to find culpability of the accused.

34. The prosecution case itself was that the deceased was summoned to the house of A-1&2, for which there is no evidence adduced nor does PW-18, the wife speaks of the deceased having left the house on receiving such a call. Further it is the case of the prosecution that the deceased reached the house of the accused at around 10 pm while the death was confirmed as having occurred at 2 pm. What happened in the interregnum is not clear and together with what we noticed above, there is a suspicion as to the genesis and origin of the crime which compounds the reasonable doubt regarding the prosecution case.

35. Undisputably, the case is one of circumstantial evidence which is treated as proved only when there is a complete chain of circumstances, comprising cogent and reliable material, providing an unbreakable link, leading only to the culpability of the accused and bringing forth the hypothesis only of guilt and not leading to any reasonable doubt as to the guilt or otherwise of the accused.

The motive projected and the crime itself has not at all been proved and there is no circumstance leading to the culpability of the accused. The presence of the dead body in the house of the accused is also under a cloud and in any event, that, with the absence of a proper explanation cannot by itself bring home a conviction.

36. Considering the totality of the circumstances and the evidence led in the trial, we are of the considered opinion that the conviction cannot be sustained; which we set aside and acquit the accused. If the accused are in custody, they shall be released forthwith, if they are not wanted in any other case. However, if they are on bail, their bail bonds shall stand cancelled and revoked.

37. The criminal appeal stands allowed.

38. Pending applications, if any, shall stand disposed of.

.....J. (K. V. Viswanathan)

.....J. (K. Vinod Chandran)

New Delhi;

September 22, 2025.

1 AIR 1994 SC 772

2 AIR 1995 SC 419

3 (2010) 9 SCC 189

4 (2023) 19 SCC 321

5 (2021) 5 SCC 626

6 1960 SCC OnLine SC 8

7 (2005) 11 SCC 600

8 (2017) 3 SCC 760

9 (1976) 1 SCC 828

10 2023 SCC OnLine SC 984

IN THE SUPREME COURT OF INDIA

M. Rajendran & Ors.
Vs.
M/s. KPK Oils and Protiens India Pvt. Ltd. & Ors.

[Civil Appeal No. 12174 of 2025
arising out of SLP (Civil) No. 11068 of 2023]

[Civil Appeal No. 12175 of 2025
SLP (Civil) No. 14696 of 2023]

HEADNOTE – Summarised the principles on retrospective application of legislations. Summarised the principles as follows :
(i) Presumption against retrospectivity is not applicable to enactments which merely affect procedure or change forum or are declaratory;
(ii) Retroactive/retrospective operation can be implicit in a provision construed in the context where it occurs ;
(iii) Given the context, a provision can be held to apply to cause of action after such provision comes into force, even though the claim on which the action may be based may be of an anterior date ; and
(iv) A remedial statute applies to pending proceedings and such application may not be taken to be retrospective if application is to be in future with reference to a pending cause of action ;
(v) SARFAESI Act is a remedial statute intended to deal with problem of pre-existing loan transactions which need speedy recovery.

JUDGMENT

J.B. Pardiwala, J.

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

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1. Leave granted.

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

3. These appeals arise from the judgment and order passed by the High Court of Judicature at Madras dated 24.04.2023 in Writ Petition No. 1882 of 2023 with Writ Miscellaneous Petition Nos. 1987-1988 of 2023 respectively by which the High Court allowed the writ petition filed by the respondent Nos. 1 to 4 respectively herein and thereby the Sale Certificate issued by the respondent No. 5 in favour of the appellants (Auction Purchasers) dated 22.03.2021 came to be quashed and the respondent No. 5 Bank was directed to permit the respondent Nos. 1 to 4 herein to redeem the mortgage and close the loan account of the borrowers.

I. FACTUAL MATRIX

4. For the sake of convenience, the appellants herein shall be referred to as the Auction Purchasers. The respondent Nos. 1 to 4 respectively hereinafter referred to as the Original Borrowers and the respondent No. 5 shall hereinafter be referred to as the Bank.

5. The borrowers availed cash credit facilities on 06.01.2016 from the Bank to the tune of Rs. 5 crore and a term loan of Rs. 30 lakh respectively. The respondent Nos. 2 and 3 respectively herein stood as guarantors by creating equitable mortgage over various immovable properties including the "Subject Property" vide the Memorandum of Deposit of Title Deeds bearing Document No. 68 of 2016 dated 06.1.2016 with the Sub Registrar Office, Dharapuram for the purpose of securing the repayment of the credit facilities.

6. The description of the subject property is as under:-

"Vacant dry land to an extent of 1.92 acres in Old S.F. NO. 540, 541 and New S.F. No.476/2, Dharapuram Alangiyam Road, Chitraravuthanpalayam, Dharapuram Taluk, Triuppur District.
Boundaries:
On the South by: East West in RS No. 535
On the West by: 0.89 acres of land belonging to Nachimuthu Gounder in RSNo. 476/2
On the North by: Land belonging to Kuppusamy Gounder in RS No. 476/1.
On the East by: Land belonging to Palanisamy and Vallinayaki in RSNo. 475/3."

7. It may not be out of place to state at this stage that the respondent nos. 3 and 4 respectively herein are the son and daughter in law respectively of the respondent

No. 2 who had executed guarantees to secure repayment of the credit facilities availed by KPK Oils Limited i.e., Original Borrowers.

8. On 31.12.2019, the borrower's auction was classified as a Non- Performing Asset (NPA) by the Bank due to default in repayment of the outstanding dues.

9. On 12.02.2020, the Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "SARFAESI Act") for the outstanding dues of INR 3,96,15,672 payable as on 31.12.2019.

10. It is not in dispute that the respondent Nos. 1 to 4 respectively had not preferred any representation under Section 13(3A) of the SARFAESI Act.

11. On 28.10.2020, the Bank issued notice under Section 13(4) of the SARFAESI Act seeking to take over the possession of the secured asset for the debt amount of INR 4,39,82,862.20 due and payable as on 30.09.2020.

12. On 31.10.2020, the Bank published Possession Notice in two newspapers, namely, "New Indian Express" in English and "Dinamani" in vernacular language.

13. On 28.12.2020, the MD and Partner of the Borrower i.e., the respondent No. 4 herein filed S.A. No. 5 and 7 of 2020 respectively under Section 17 of the SARFAESI Act challenging the Possession Notice dated 28.10.2020 before the DRT, Coimbatore.

14. On 22.01.2021, the Bank issued an Auction Sale Notice accordance with Rule 8 read with Rule 9 of the Security Interest (Enforcement) Rules, 2002, (for short, the "SARFAESI Rules") for sale of the secured subject property for recovery of INR 4,55,64,590.20 due and payable as on 31.12.2020.

15. On 24.01.2021, the aforesaid Auction Sale Notice of the subject immovable property was also published in the "New Indian Express" and "Dinamani" newspapers respectively.

16. Sometime in February 2021, the borrowers along with Shri Palanisami filed S.A. No. 160 of 2021 under Section 17 of the SARFAESI Act challenging the aforesaid Auction Sale Notice before the DRT, Coimbatore.

17. On 26.02.2021, the appellants herein participated and successfully bid in Auction Sale for sale consideration of Rs. 1,25,60,000/-. On 20.03.2021, the appellants herein deposited the entire sale consideration of INR 1,25,60,000 with the Bank.

18. On 22.03.2021, upon payment of the entire sale consideration the Bank issued a Sale Certificate in favour of the appellants.

19. The sale consideration received by the Bank was appropriated towards the outstanding loan amount. In March 2021, after the sale came to be confirmed the borrowers paid a sum of Rs. 2,88,00,000 towards the outstanding dues under the loan. It is pertinent to note that at the relevant point of time an amount of INR 61,91,000 was still outstanding towards the loan amount.

A. Proceedings before the DRT.

20. After the completion of sale and issuance of the Sale Certificate, the DRT passed an order of status quo dated 26.03.2021. Since the appellants herein were not made party to the proceedings before the DRT, the DRT vide order dated 26.03.2021 proceeded to pass an order of status quo despite the fact that the appellants herein were not made party in the said proceedings. Later an application for impleadment was filed by the appellants in the proceedings before the DRT.

21. On 07.05.2021, the borrowers paid an amount of INR 62,74,123.74 towards the outstanding dues for releasing the other properties.

22. On 07.05.2021, the Bank closed the loan account of the borrowers after appropriating a sum of INR 1,25,60,000 received by it out of the sale consideration on auction of the secured assets as aforesaid.

23. On 14.07.2021, the application for impleadment filed by the appellant came to be allowed.

24. On 07.12.2021, 14.03.2021, 01.06.2022, 24.06.2022 and 11.07.2022 respectively, adjournments were sought in S.A. No. 160 of 2021 by the borrowers. Once again on 06.05.2022, 01.06.2022, 24.06.2022, and 11.07.2022 respectively, adjournments were sought in S.A. No. 517 of 2020. 25. On 19.01.2023, the DRT, Coimbatore dismissed the SA No. 517 of 2020 wherein the Possession Notice under Section 13(4) of the SARFAESI Act was under challenge. On the very same day and date the DRT by a separate judgment dismissed the S.A. No. 160 of 2021 wherein the Sale Notice dated 22.01.2021 was under challenge.

II. IMPUGNED ORDER

26. The borrowers without availing the alternative statutory remedy of preferring statutory appeal before the Appellate Tribunal went to the High Court and preferred Writ Petition No. 1882 of 2023, seeking to challenge the Sale Certificate dated 22.03.2021 for the first time.

27. The High Court vide order dated 24.01.2023 issued notice and directed that status quo be maintained as the borrowers were ready and willing to clear the outstanding dues by paying INR 50,00,000 by 25.01.2023 and the balance amount within a period of next seven working days.

28. On 24.01.2023, the borrowers deposited INR 50,00,000 with the Bank. Another demand draft of INR 92,01,158 dated 31.01.2023 was deposited by them with the Bank.

29. The High Court allowed the writ petition holding that the issue as regards the right to redemption under Section 13(8) of the SARFAESI Act was no long res integra in view of the decision of this Court in Mathew Varghese v. Amritha Kumar and Ors. reported in (2014) 5 SCC 610.

30. The High Court while allowing the writ petition filed by the borrowers held as under:

"10. Thus, in spite of the authoritative pronouncement of the Hon-ble Supreme Court of India, the DRT has been time and again holding that the right of redemption is lost on the fall of the hammer as per Section 13(8) which is legally unsustainable and therefore only in the extraordinary circumstances, as the question of law has to be made clear this writ petition is entertained by this Court and therefore, the objection on the ground of alternative remedy, though is a valid objection and is also followed by this Court generally in relegating the parties only to the DRT, in view of the above peculiar and extraordinary circumstance, and because the contention of the borrower / guarantors was not on air, but by paying the entire sum outstanding to the bank, as an exceptional case this writ petition is entertained by this Court and accordingly we over rule the said objection raised on behalf of the respondents.

11. It is the objection of the respondent bank that initially when the petitioners paid a sum of Rs.2,88,00,000/~ in the month of March 2021 and thereafter Rs.62,74,123.74/~ on 17.05.2021, by accepting the sale of the property and by closing the loan account is concerned, except for the bald averment in Para 5 of the counter affidavit, no material whatsoever is produced before this Court. If such is the case, there would have been written communications to that effect on either side. Besides, it could be seen that even in the interim order dated 26.03.2021 was passed by the DRT, the following has been stated; Learned counsel for the Respondent Bank submitted that the property is sold on the scheduled date of auction and the Sale Certificate is also issued.

However, the Sale Certificate is not registered as of now. The Applicant also paid substantial amount of dues of about 50% of the amount claimed. The Applicant having paid a substantial amount of about 50% of the claim amount, this Tribunal

is of the view that a status-quo order is required to be passed in the interest of justice. Hence, there shall be an order of status quo as of today. Meanwhile, the Applicant directed to initiate steps to implead the auction purchaser in this case.

12. Therefore, had the petitioner agreed for the same and remitted Rs.2,88,00,000/- in the month of March 2021, the same would have been brought to the notice of the DRT also and an order of status quo not to register the sale certificate would not have been granted. Therefore when the borrower, for some reasons, did not repay the loan promptly, but however manages to pay the entire amount as claimed by the respondent bank even at the last minute, the same cannot be rejected on technical reasons, as the very purpose of the law of mortgage is to create security for the loan and not to result in the ownership of the property being transferred.

13. While we overrule the objections on behalf of the respondents, we hold that the auction purchasers will be entitled for the return of the entire sum of Rs.1,25,60,000/- paid by them and they will also be entitled to interest at the rate of 9% per annum from the date of remitting the amounts till the date of repayment. It goes without saying that it is only the writ petitioners / borrowers who have to make good the said interest amount."

31. The High Court ultimately issued the following directions in para 14 which reads thus:

"14. In the result,

(a) The writ petition is allowed and the impugned sale certificate dated 22.03.2021 issued by the first respondent in favour of the respondents 3 to 11 stands quashed.

(b) The first respondent is directed to close the Loan A/c No.136700150950167 as the entire due amount is already paid;

(c) The first respondent shall also issue due receipt for the discharge of mortgage and the same shall be presented before the appropriate Sub Registrar;

(d)The first respondent bank is directed to refund the entire sum of Rs.1,25,60,000/~ to the respondents 3 to 11 within one week from the date of receipt of a copy of this order;

(e)The first respondent bank shall also calculate the interest at the rate of 9% per annum on the said amount paid by the auction purchasers from the date of the respective remittance of the amount till the date of repayment and intimate the same by writing to the petitioners within one week thereafter. (f)Upon receipt of the written communication from the first respondent bank, the entire interest

amount shall be remitted to the first respondent bank within one week therefrom by the writ petitioners and the first respondent bank shall pay out the same to the respondents 3 to 11; (g)It is made clear that if the writ petitioners default in the payment of interest as aforesaid within the aforesaid time the writ petition shall stand dismissed automatically without any further reference to this Court."

32. In such circumstances referred to above, the auction purchasers are here before this Court with the present appeal.

III. SUBMISSIONS OF THE PARTIES

A. Submissions on behalf of the appellants.

33. Mr. K.S. Mahadevan, the learned counsel appearing for the Auction Purchasers vehemently submitted that the High Court committed an egregious error in entertaining the writ petition and passing the impugned judgment and order. He would submit that the issues involved in the present appeal are now covered by a decision of this Court in Celir LLP v. Bafna Motors (Mumbai) Private Ltd. reported in (2024) 2 SCC 1.

34. In such circumstances referred to above, the learned counsel would submit that there being merit in his appeal the same may be allowed and the impugned judgment and order be quashed.

B. Submissions on behalf of the borrowers.

35. Mr. Huzefa Ahmedi, the learned counsel appearing for the borrowers while opposing this appeal vehemently submitted that the ratio or rather the principles enunciated in Bafna Motors (supra) are not applicable in the facts and circumstances of the present case. He would submit that in the case in hand the loan was obtained on 06.01.2016 whereas Section 13(8) came to be amended with effect from 01.09.2016. He would submit that the amended Section 13(8) of the SARFAESI Act would not have retrospective operation. He would submit that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

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

IV. ISSUE FOR DETERMINATION

37. 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?

V. ANALYSIS

A. Legislative History and Scheme of the SARFAESI Act.

i. The impetus behind enactment of the SARFAESI Act.

38. Till early 1990s, the civil suits were being filed for recovery of the dues of banks and financial institutions under the Act 1882 and the Code of Civil Procedure, 1908 ("CPC"). Due to various difficulties the banks and financial institutions had to face in recovering loans and enforcement of securities, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "RDBFI Act").

39. On account of lack of infrastructure and manpower, the regular civil courts were not in a position to cope up with the speed in the adjudication of recovery cases. In the light of recommendations of the Tiwari Committee the special tribunals came to be set up under the provisions of the RDBFI Act referred to above for the recovery of huge accumulated NPA of the Bank loans.

40. On the continuing rise in number of Non-Performing Assets (NPA) at banks and other financial institutions in India; a poor rate of loan recovery and the failure of the existing legislation in redressing the difficulties of recovery by banks; the Narasimham Committee I & II and Andyarujina Committee were constituted by the Government for examining and suggesting banking reforms in India.

These Committees in their reports observed that one out of every five borrower was a defaulter, and that due to the long and tedious process of existing frame work of law and the overburdening of existing forums including the specialised tribunals under the 1993 Act, any attempt of recovery with the assistance of court/tribunal often rendered the secured asset nearly worthless due to the long delays. In this background the Committees thus, proposed new laws for securitisation in order to permit banks and financial institutions to hold securities and sell them in a timely manner without the involvement of the courts.

41. On the recommendations of the Narasimham Committee and Andyarujina Committee, the SARFAESI Act was enacted to empower the banks and financial institutions to take possession of the securities and to sell them without intervention of the court.

42. The statement of objects and reasons for which the Act has been enacted reads as under:-

"STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them.

Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court.

Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for recovery or reconstruction."

43. This Court in Mardia Chemicals Ltd. & Ors. v. Union of India & Ors. reported in (2004) 4 SCC 311, examined the history and legislative backdrop that ultimately led to the enactment of the SARFAESI Act as under:-

"34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and

Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results.

Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present-day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act.

It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved.

36. In its Second Report, the Narasimham Committee observed that NPAs in 1992 were uncomfortably high for most of the public sector banks. In Chapter VIII of the Second Report the Narasimham Committee deals about legal and legislative framework and observed:

"8.1. A legal framework that clearly defines the rights and liabilities of parties to contracts and provides for speedy resolution of disputes is a sine qua non for efficient trade and commerce, especially for financial intermediation. In our system, the evolution of the legal framework has not kept pace with changing commercial practice and with the financial sector reforms. As a result, the economy has not been able to reap the full benefits of the reforms process. As an illustration, we could look at the scheme of mortgage in the Transfer of Property Act, which is critical to the work of financial intermediaries."

One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that

the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field.

In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr Andhyarujina for bringing about the needed steps within the legal framework.

We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."

44. In this regard, reference may also be made to the following observations of this Court in the case of United Bank of India v. Satyawati Tondon & Ors. reported in (2010) 8 SCC 110 which laid emphasis on the need for an expeditious mechanism for recovery of debts as the impetus for the enactment of the SARFAESI Act. The relevant observations read as under:-

"1. With a view to give impetus to the industrial development of the country, the Central and State Governments encouraged the banks and other financial institutions to formulate liberal policies for grant of loans and other financial facilities to those who wanted to set up new industrial units or expand the existing units. Many hundred thousand took advantage of easy financing by the banks and other financial institutions but a large number of them did not repay the amount of loan, etc.

Not only this, they instituted frivolous cases and succeeded in persuading the civil courts to pass orders of injunction against the steps taken by banks and financial institutions to recover their dues. Due to lack of adequate infrastructure and non-availability of manpower, the regular courts could not accomplish the task of expeditiously adjudicating the cases instituted by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in unproductive ventures.

2. In order to redeem the situation, the Government of India constituted a committee under the Chairmanship of Shri T. Tiwari to examine the legal and other difficulties faced by banks and financial institutions in the recovery of their dues and suggest remedial measures. The Tiwari Committee noted that the existing procedure for recovery was very cumbersome and suggested that special tribunals be set up for recovery of the dues of banks and financial institutions by following a summary procedure. The Tiwari Committee also prepared a draft of the proposed legislation which contained a provision for disposal of cases in three months and conferment of power upon the Recovery Officer for expeditious execution of orders made by adjudicating bodies."

ii. Relevant Statutory Provisions at Play.

45. Section 13 of the SARFAESI Act contains the provisions relating to the enforcement of the security interest and the manner in which the same may be done by the secured creditor without the intervention of the court or tribunal in accordance with its provisions. The said provision reads as under:-

"13. Enforcement of security interest.-

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that -

(i) the requirement of classification of secured debt as non performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent. in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.- For the purposes of this subsection,-

(a) "record date" means the date agreed upon by the secured creditors representing not less than sixty per cent. in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifies in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

46. Rules 8 and 9 respectively of the SARFAESI Rules prescribe the procedure and formalities to be followed for the sale of immovable secured asset as per Section 13 of the SARFAESI Act.

47. Rule 8 of the SARFAESI Rules stipulates the manner in which sale of an immovable secured asset may take place at the behest of the secured creditor, and reads as under:-

"8. Sale of immovable secured assets.-

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through eauction mode; or

(d) by private treaty. Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.

(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorised officer considers it necessary for a purchaser to know the nature and value of the property.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the secured creditors and the proposed purchaser in writing."

48. On the other hand, Rule 9 of the SARFAESI Rules provides when the immovable property may be sold by the secured creditor, or put it simply, the time of sale along with the formalities by which such sale would be concluded. The said rule reads as under:-

"9. Time of sale, issue of sale certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 8:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again; by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days, from date of finalisation of the sale.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

49. Section 35 of the SARFAESI Act contains the overriding clause and provides that the Act shall override any other law which is inconsistent with its provisions, and reads as under:-

"35. The provisions of this Act to override other laws.-

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

50. Section 37 of the SARFAESI Act provides that the provisions of the SARFAESI Act shall be in addition to the Acts mentioned in or and any other law for the time being in force and further that the other laws shall also be applicable alongside the SARFAESI Act. The said provision reads as under:-

"37. Application of other laws not barred.-

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

51. This Court in Madras Petrochem Ltd. & Anr. v. Board for Industrial and Financial Reconstruction & Ors. reported in (2016) 4 SCC 1, recapitulated the object behind the enactment of the SARFAESI Act and in that context examined the purpose of Sections 13, 35 and 37 respectively of the SARFAESI Act with the following observations given as under: -

"16. It is important at this stage to refer to the genesis of these three legislations. Each of them deals with different aspects of recovery of debts due to banks and financial institutions. Two of them refer to creditors' interests and how best to deal with recovery of outstanding loans and advances made by them on the one hand, whereas the Sick Industrial Companies (Special Provisions) Act, 1985, on the other hand, deals with certain debtors which are sick industrial companies [i.e. companies running industries named in the Schedule to the Industries

(Development and Regulation) Act, 1951] and whether such "debtors" having become "sick", are to be rehabilitated. The question, therefore, is whether the public interest in recovering debts due to banks and financial institutions is to give way to the public interest in rehabilitation of sick industrial companies, regard being had to the present economic scenario in the country, as reflected in parliamentary legislation.

19. While this Act had worked for a period of about 7 years, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force, pursuant to various committee reports.

20. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 took away the jurisdiction of the courts and vested this jurisdiction in tribunals established by the Act so as to ensure speedy recovery of debts due to the banks and financial institutions mentioned therein. This Act also included one appeal to the Appellate Tribunal, and transfer of all suits or other proceedings pending before any court to tribunals set up under the Act. The Act contained a non obstante clause in Section 34 stating that its provisions will have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any other law.

In the year 2000, this Act was amended so as to incorporate a new sub-section (2) in Section 34 together with a saving provision in sub-section (1). It is of some interest to note that this Act was to be in addition to and not in derogation of various Financial Corporation Acts and the Sick Industrial Companies (Special Provisions) Act, 1985. Clearly, therefore, the object of the 2000 Amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was to make the Sick Industrial Companies (Special Provisions) Act, 1985 prevail over it.

21. Regard being had to the poor working of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was brought into force in the year 2002.

22. This 2002 Act was brought into force as a result of two committee reports which opined that recovery of debts due to banks and financial institutions was not moving as speedily as expected, and that, therefore, certain other measures would have to be put in place in order that these banks and financial institutions would better be able to recover debts owing to them.

24. The "pivotal" provision, namely, Section 13 of the said Act makes it clear that banks and financial institutions would now no longer have to wait for a tribunal judgment under the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 to be able to recover debts owing to them. They could, by following the procedure laid down in Section 13, take direct action against the debtors by taking possession of secured assets and selling them; they could also take over the management of the business of the borrower. They could also appoint any person to manage the secured assets possession of which has been taken over by them, and could require, at any time by notice in writing to any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due from the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt.

25. In order to further the objects of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Act contains a non obstante clause in Section 35 and also contains various Acts in Section 37 which are to be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Three of these Acts, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, relate to securities generally, whereas the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 relates to recovery of debts due to banks and financial institutions. Significantly, under Section 41 of this Act, three Acts are, by the Schedule to this Act, amended. We are concerned with the third of such Acts, namely, the Sick Industrial Companies (Special Provisions) Act, 1985, in Section 15(1) of which two provisos have been added. It is the correct interpretation of the second of these provisos on which the fate of these appeals ultimately hangs."

(Emphasis supplied)

52. Furthermore, Madras Petrochem (supra) made one another pertinent observation that Section(s) 35 and 37 respectively of the SARFAESI Act form a unique scheme of overriding provisions, however the scope and ambit of Section 37 is restricted only to the securities law. The relevant portion is reproduced as under:-

"39. This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression "or any other law for the time being in force" in Section 37. If a literal meaning is given to the said expression, Section 35 will become completely otiose as all other laws will then

be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Obviously this could not have been the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37.

This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market."

(Emphasis supplied)

53. In interpreting the various provisions of the SARFAESI Act and the SARFAESI Rules framed thereunder, one must be mindful of the observations made by this Court in Mardia Chemical (supra), which are significant. This Court in Mardia Chemical (supra) observed that the provisions of the SARFAESI Act & SARFAESI Rules must be interpreted keeping in mind the economic object which is sought to be achieved by the legislature, the relevant observations read as under:-

"34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results.

Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues.

Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation.

It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved."

(Emphasis supplied)

B. Section 13(8) of the SARFAESI Act and the Decision of this Court in Bafna Motors.

54. In the present lis, we are concerned with sub-section 8 of Section 13 of the SARFAESI Act referred to above. At the cost of repetition, the relevant portion of the said provision is reproduced below for convenience:-

"13. Enforcement of security interest.-

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

(Emphasis supplied)

55. A plaint reading of Section 13 sub-section (8) of the SARFAESI Act reveals that the said provision is in two parts, being as under: -

(i) First, it enables the borrower to exercise his right of redemption upto a particular point of time by stipulating the time limit during which the borrower can tender all the dues with interest, costs and charges to the secured creditor;

(ii) Secondly, it enables the secured creditor to exercise its power to deal or dispose of the secured asset, by providing as to when the secured creditor can proceed to sell, auction, assign or lease the secured asset.

56. The entire impugned judgment of the High Court is based on the decision of this Court in Mathew Varghese (supra). Section 13(8) of the SARFAESI Act, prior to its amendment by Act 44 of 2016 (for short, the "2016 Amendment"), stipulated that, if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further steps shall be taken by him for transfer or sale of that secured asset.

57. In the said decision of this Court, while construing the scope of the pre-amended Section 13 sub-section (8) of the SARFAESI Act, it was observed that any sale or transfer of a secured asset cannot take place without duly informing the borrower of the time and date of such sale or transfer, in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses; the ersthilw provision of Section 13(8), as it stood prior to the 2016 Amendment, clearly stipulates that the borrower retains his full right to redeem the property by tendering all the dues to the secured creditor, at any time before the date fixed for sale or transfer; and the right of redemption, conferred under Section 13(8) of the SARFAESI Act, is to repay the entire debt due to the secured creditor.

58. The words "if the dues of the secured creditor", used in Section 13(8) of the SARFAESI Act, would only mean the dues in its entirety, and not the price fetched on the sale of one of the secured assets in a public auction. The words "that secured asset" in Section 13(8) is preceded by the words "transfer or sale", and even in case one of the secured assets is brought to sale, the borrower is obligated to repay the entire dues of the secured creditor together with costs,

charges and expenses before the date fixed for sale or transfer, to prevent the secured creditor from either selling or transferring, or from taking further steps for the transfer or sale of, that secured asset.

59. We may look into paragraphs 40 and 41 respectively of the judgment in Mathew Varghese (supra) which read as under:

"40. Reliance was also placed upon the decision in Mardia Chemicals Ltd. vs. Union of India. In para 54, while dealing with the contention raised on behalf of the secured creditor that the right of redemption would be available to the mortgagor only if the amount due according to the secured creditor is deposited, this Court held as under:

"54. Shri Sibal, however, submits that it is the amount due according to the secured creditor which shall have to be deposited to redeem the property. May be so, some difference regarding the amount due may be there but it cannot be said that right of redemption of property is completely lost. In cases where no such dispute is there, the right can be exercised and in other cases the question of difference in amount may be kept open and got decided before sale of property".

41. Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of."

(Emphasis supplied)

60. The afore referred are the two paragraphs on which strong reliance has been placed on behalf of the borrowers. According to learned counsel appearing for the borrowers, the aforesaid paragraphs indicate that it is open to the borrower to pay the auction amount and secure release of that particular asset which is brought to sale.

61. All that has been held, in the aforesaid paragraphs of the judgment in Mathew Varghese (supra), is that, if there is some difference between the amount tendered by the borrower while exercising his right to redeem under Section 13(8) of the SARFAESI Act, the question of difference in the amount must be kept open for a decision subsequently but, on that score, the right of redemption of the mortgagor cannot be frustrated.

The aforesaid observations of this Court only means that, if there is a minor dispute regarding the extent of dues payable to the secured creditor by the borrower, and if the borrower is ready and willing to redeem the entire amount due to the secured creditor, and pay the said sum as computed by them, then the differential amount can be permitted to be paid later under Section 13(8) of the SARFAESI Act. The law declared by this Court, in Mathew Varghese (supra), does not permit a borrower, after an auction is held, to come forward and tender payment of merely the auction amount for release of the auctioned secured asset.

62. We shall now look into the decision of this Court in Bafna Motors (supra) wherein one of us, J.B. Pardiwala, J. authored the judgment.

63. In Bafna Motors (supra) this Court held that a borrower only has a right to redeem the mortgage till the publication of Auction Notice under Section 13(8) of the SARFAESI Act. This Court analysed orders passed by various High Courts in interpreting the provisions of Section 13(8) of the SARFEASI Act, post the 2016 Amendment and the intent underlying the amendment.

i. Factual Scenario in Bafna Motors.

64. The Union Bank of India had sanctioned credit facility to Bafna Motors (Mumbai) Private Limited in 2017 for INR 100 crore against which a security in the form of a simple mortgage was created over a parcel of land situated in Thane, Maharashtra. The Borrower defaulted in repayment and accordingly its loan account was declared as a Non-Performing Asset (NPA). The Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act for repayment of the Loan amount, along with the interest, costs, etc, i.e. INR 123.83 crore. Due to failure to repay of the outstanding amount, the Bank proceeded to take possession of the Mortgaged Property.

65. The borrower challenged the Demand Notice before the DRT. The Bank attempted to auction the Mortgaged Property eight times during 2022-23. On June 14, 2023, the Bank auctioned the Mortgaged Property for a reserve price of INR 105 crore. Celir LLP participated in the auction and was declared as the successful bidder, and a sale confirmation letter was issued to the Purchaser by the Bank. The Purchaser also deposited 25% of the bid amount, which the Bank acknowledged.

66. The Borrower at this stage filed an interim application before the DRT for redemption of mortgage upon repayment of the Outstanding Amount. The IA was opposed by the Bank and the Purchaser. The Purchaser had deposited the balance amount towards the Mortgaged Property, and the Bank was in receipt of the said amount (total Rs 105 crore). Upon hearing the arguments, the DRT reserved the IA for orders.

67. Pending the order of the DRT, the Borrower approached the High Court of Bombay by way of a writ petition under Article 226 of the Constitution of India Act, 1950, to direct the Bank to permit it (Borrower) to redeem the Mortgaged Property. The High Court allowed the borrower to redeem the Mortgaged Property upon payment of INR 25 crore on the same day and the balance amount within two weeks. Upon failure of the Borrower to abide by the directions of the High Court, the Mortgaged Property would be sold in favour of the Purchaser. The order was challenged by the Purchaser by way of a special leave petition before this Court.

68. The Purchaser argued that the right of redemption of the mortgagor stood extinguished upon publication of Auction Notice as per amended Section 13(8) of the SARFAESI Act. Furthermore, once the sale is confirmed, the Bank is under a legal obligation to issue a sale certificate to the Purchaser.

69. Contrary to the above, the Borrower contended that Section 13(8) of the SARFAESI Act does not deal with the right of redemption of mortgagor and in such circumstances, Section 60 of the Transfer of Property Act, 1882 would be applicable. Section 60 of the Transfer of Property Act has been interpreted to reserve the right of the mortgagor to redeem the property till the sale deed has been executed in favour of the third party.

ii. Ratio of the Decision of Bafna Motors.

70. During the course of hearing, our attention was drawn to several decisions by different High Court, which, upon a reading of our judgment in Bafna Motors (supra) appear to not have fully appreciated the ratio that has been laid therein. A certain degree of ambiguity seems to persist as regards the precise point of time when the borrower's right of redemption under Section 13 sub-section (8) of the SARFAESI Act could be said to be extinguished, particularly in cases where the mode of transfer, sale etc. of the secured asset is by means other than a public auction.

71. Thus, with a view to obviate any confusion, it would apposite to once again look into Section 13 sub-section (8) of the SARFAESI Act threadbare, in order to better understand, what has been conveyed in so many words by this Court in Bafna Motors (supra).

a. Position of Law prevailing prior to the Amendment of Section 13(8) of the SARFAESI Act.

72. Prior to the amendment to Section 13(8) of SARFAESI Act, in the case of Mathew Varghese (supra) this Court had applied the principles pertaining to redemption of mortgage as enshrined in Section 60 of the Transfer of Property

Act, 1882 (for short, the "TP Act") for construing the pre-amendment provision of Section 13(8) of the SARFEASI Act.

73. Section 60 of the TP Act provides the general statutory right of the mortgagor to redeem the mortgage and reads as below:-

"60. Right of mortgagor to redeem.-

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgage, (b) where the mortgage is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgage has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption. Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgage shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.- Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgages than one, all such mortgages, has or have acquired, in whole or in part, the share of a mortgagor."

74. This Court in Narandas Karsondas v. S.A. Kamtam & Anr. reported in (1997) 3 SCC 247, upon examining Section 60 of the TP Act, held that the mortgagor's right to redeem will be extinguished only after completion of sale by a registered deed, and made the following relevant observations reproduced below: -

"28. The Rights and Liabilities of Mortgagor are dealt with in Section 60 of the Transfer of Property Act. It is that at any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged

property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.

There is a proviso that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court. The right conferred by Section 60 of the Transfer of Property Act is called a right to redeem. Therefore, the said Section 60 provides for a right of redemption provided that the right has not been extinguished by the act of parties.

33. In India, the word "transfer" is defined with reference to the word "convey". The word "transfer" in English law in its narrower and more usual sense refers to the transfer of an estate in land. Section 205 of the Law of Property Act in England defines:

"Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument. The word "conveys" in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

34. The right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Indian Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption.

In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the Court in a Mortgage Deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of

such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act."

(Emphasis supplied)

75. A similar view was taken by this Court in L.K. Trust v. EDC Limited & Ors. reported in (2011) 6 SCC 780 wherein it was held that in India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by a registered instrument that the mortgagor's right of redemption embodied in Section 60 of the TP Act will get extinguished. It further observed that the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption under the said provision. The relevant observations read as under: -

"53. On analysis of arguments advanced at the Bar, this Court finds that the proposition that in India it is only on execution of conveyance and the registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption stands extinguished is well settled. Further it is not the case of the appellant that a registered Sale Deed had been executed between the appellant-trust and the respondent No. 1 pursuant to the Resolution passed by the respondent No. 1 and, therefore, in terms of Section 54 of the Transfer of Property Act 1882 no title relating to the disputed property had passed to the appellant at all.

54. What is ruled in Narandas Karsandas (Supra) is that in India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. In this case, the respondent Housing Society, the mortgagor, had taken loan from the co-respondent Finance Society and mortgaged the property to it under an English mortgage.

On default, the mortgagee exercised its right under the mortgage to sell the property without intervention of Court and after notice, put the property to sale by public auction. The appellant auction purchaser paid the sums due. Before the

sale was completed by registration etc. the mortgagor sought to exercise his right of redemption by tendering the amount due. The appellant had based his case on the plea that in such a situation the mortgagee acts as agent of the mortgagor and hence binds him.

55. Rejecting the appeal, this Court has held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties or by decree of a court. What is held by this Court is that, in India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished but the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption. This Court in the said case further explained that the extinction of the right of redemption has to be subsequent to the deed conferring such power and the right to redemption is not extinguished at the expiry of the period. This Court emphasized in the said decision that the equity of redemption is not extinguished by mere contract for sale."

(Emphasis supplied)

76. The erstwhile provision of Section 13 sub-section (8) of the SARFAESI Act, as originally enacted, read as under:-

"13. Enforcement of security interest.-

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

77. This Court examined the right of redemption of mortgage under the TP Act vis-à-vis the SARFAESI Act for the first time in Mathew Varghese (supra).

78. As already discussed in the foregoing paragraphs of this judgment, this Court in Mathew Varghese (supra), placing reliance on Narandas Karsondas (supra) found no occasion for drawing any distinction between the principles enshrined in Section 60 of the TP Act in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. It observed that since Section 13 of the SARFAESI Act is nothing but a conferment of power upon the secured creditor to sell the security interest without the intervention of the court, the principles underlying Section 60 of the TP Act would be attracted, since the provision of Section 60 applies with full rigour even in respect of sale of

mortgage property without the intervention of court. The relevant observations read as under:-

"38. a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor.

The above proposition of law of course was laid down by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules.

We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed.

It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

39. When we apply the above principles stated with reference to Section 60 of the TP Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to

resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer.

Under sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the abovestated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

41. even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of."

(Emphasis supplied)

79. In Dwarika Prasad v. State of Uttar Pradesh reported in (2018) 5 SCC 491, this Court considered the unamended Section 13(8) of the SARFAESI Act, keeping in mind the decision in the case of Mathew Varghese (supra) and held that the right of redemption of mortgage is not lost until there is a transfer by a registered instrument. The relevant observations read as under:-

"8. These provisions have fallen for interpretation before this Court in Mathew Varghese. Dwelling on Section 60 of the Transfer of the Property Act, 1882 this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale."

80. In, yet one another decision of this Court in Allokam Peddabbayya & Anr. v. Allahabad Bank & Ors. reported in (2017) 8 SCC 272, a similar view was taken, that the right of redemption is lost once the property is put to auction and a sale certificate is issued in lieu thereof. The relevant observations made therein are as under: -

"23. The aforesaid discussion leads to the conclusion that the plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction-sale in a suit for foreclosure and sale certificate was issued in favour of Defendant 2. There remained no property mortgaged to be redeemed. The right to redemption could not be claimed in the abstract."

81. Prior to the amendment to Section 13 sub-section (8) of the SARFAESI Act, the position of law that prevailed, as per the decision of Mathew Varghese (supra), was that the principle underlying Section 60 of the TP Act was extended and applied to Section 13(8) of the SARFAESI Act to hold that the borrower has absolute right to redeem the property by repaying the debt before the sale of such property.

82. Thus, prior to the amendment of Section 13(8) of the SARFAESI Act, this Court consistently held, that the borrower shall continue to have a right of redemption of mortgage until the execution of the conveyance of the secured asset by way of a registered instrument.

83. The reason which impelled this Court in Mathew Varghese (supra), in holding so, was because it found no inconsistency between the unamended Section 13(8) of the SARFAESI Act and the general right of redemption under Section 60 of the Transfer of Property Act.

b. The 2016 Amendment to Section 13(8) of the SARFAESI Act and the Contradictory Views on the subject.

84. On 1st September, 2016, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016 was enacted, which inter-alia amended sub-section 8 of Section 13 of the SARFAESI Act, and substituted the words "any time before the date fixed for sale or transfer" of the original provision with "at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets". The amended provision of Section 13 sub-section (8) of the SARFAESI Act, now reads as under: -

"13. Enforcement of security interest.-

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

85. Over a period of time, many orders of different courts, inconsistent with each other had accumulated on the interpretation of the amended Section 13 sub-section (8) of the SARFAESI Act, that had made it very difficult to apply the correct principles of law as regards the right of redemption by the borrower under the SARFAESI Act.

86. The High Court of Andhra Pradesh in Sri. Sai Annadhatha Polymers & Anr. v. Canara Bank rep. by its Branch Manager, Mandanapalle reported in 2018 SCC OnLine Hyd 178 took the view that as per Mathew Varghese (supra), under the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. The court went on to say that the amended provisions of Section 13(8) of the SARFAESI Act, however brought in a radical change inasmuch as the right of the borrower to redeem the secured asset would now stand extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the SARFAESI Rules. The relevant observations made by the High Court are reproduced hereinbelow: -

"6. In terms of the amended provisions of Section 13(8) of the SARFAESI Act, the right of redemption given to the borrower would expire upon publication of such a notice. However, Rule 8(6) of the Rules of 2002, as interpreted by the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], stipulates that the thirty day notice period mentioned therein is for the purpose of enabling the borrower to redeem his property. Significantly, this provision remains unaltered. Therefore, this statutory notice period of thirty days is sacrosanct and deviation therefrom would curtail the statutory right of redemption available to the borrower. However, in terms of the amended Section 13(8) of the SARFAESI Act, once the notice under Rule 9 of the Rules of 2002 is published, the said right stands extinguished.

20. In the light of the aforestated changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in ITC LIMITED v. BLUE COAST HOTELS LIMITED also affirmed this legal position.

21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser.

23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002.

The judgment of the Supreme Court in CANARA BANK v. M. AMARENDER REDDY, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in MATHEW VARGHESE, stands extinguished upon publication of the sale notice under Rule 9(1)."

(Emphasis supplied)

87. The amended Section 13(8) of the SARFAESI Act was also looked into by the High Court of Telangana in the case of K.V.V. Prasad Rao Gupta v. State Bank of India reported in 2021 SCC OnLine TS 328 and relying on the aforesaid decision of the Andhra Pradesh High Court in the case of Sri. Sai Annadhatha Polymers (supra), the court held that the right of the borrower to redeem the property stands extinguished upon publication of sale notice after the expiry of thirty-days period of notice to the borrower. The relevant observations read as under: -

"21. Thus from the above judgments it is clear that under Rule 8(6) of the Rules of 2002, the petitioners are entitled for a thirty day notice period enabling them to clear the loan and to redeem the property as envisaged under Section 13(8) of the SARFAESI Act, and that if they fail to repay the amount within the stipulated period, after expiry of said period of 30 days, the secured creditor is entitled to issue publication of sale notice under Rule 9(1), and that on publication of such notice, the right of the borrower to redeem the property stands extinguished."

(Emphasis supplied)

88. However, in a conflicting judgement, one another Bench of the Telangana High Court in Concern Readymix v. Corporation Bank reported in 2018 SCC OnLine Hyd 783 relied upon Section 60 of the TP Act to hold that the borrower's right of redemption would continue to exist until the execution of the conveyance. It observed that the amended Section 13(8) of the SARFAESI Act merely restricts the right of the secured creditor to proceed further with the transfer or sale of the secured asset, but not the right of redemption enjoyed by the borrower. The relevant observations read as under: -

"10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty.

The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was made. Except these two distinctions, there is no other distinction.

13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms,

about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.

The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects.

But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11 2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned."

(Emphasis supplied)

89. The aforesaid decision of Concern Readymix (supra) was carried upto and challenged before this Court by way of Special Leave Petition (C) No. 20500 of 2019, which came to be dismissed by this Court in limine, being as follows: -

"ORDER

Delay condoned.
The Special Leave Petition is dismissed"

90. Additionally, this Court in Shakeena & Anr. v. Bank of India & Ors. reported in (2021) 12 SCC 761 while dealing with the unamended provision of Section 13(8) of the SARFAESI Act stated that as a result of the amended provision, a more stringent condition has been stipulated whereby the borrower, in order to redeem the mortgage, is now required to tender all dues to the secured creditor before the date of publication of notice for auction. The relevant observations read as under: -

"15. Be it noted that on 1-9-2016 amendment to Section 13(8) of the 2002 Act came into force as a result of which the dues of the secured creditor together with all costs, charges and expenses incurred by him are required to be tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.

30. A fortiorari, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, much less until the registration of the sale certificate on 18-9 2007. In that view of the matter no relief can be granted to the appellants, assuming that the appellants are right in contending that as per the applicable provision at the relevant time [unamended Section 13(8) of the 2002 Act], they could have exercised their right of redemption until the registration of the sale certificate - which, indisputably, has already happened on 18-9 2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process.

This is more so because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18-9 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1-9-2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets."

(Emphasis supplied)

91. However, in S. Karthik and Ors. v. N. Subhash Chand Jain and Ors. reported in (2022) 10 SCC 641 a three-Judge Bench of this Court placing reliance on

Mathew Varghese (supra) once again noted that under Section 13 sub-section (8) of the SARFAESI Act, the mortgagor, i.e. the borrower, retains full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. The relevant observations read as under:-

"53. It could thus be seen that this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] observed that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed.

This Court further observed that applying the principles stated with reference to Section 60 of the Transfer of Property Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. It has, however, been held that under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer.

54. This Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] further held that if the tender is made by the borrower at the last moment before the sale or transfer, the secured asset should not be sold or transferred by the secured creditor. This Court held that there was no reason as to why the general principle laid down by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] with reference to Section 60 of the Transfer of Property Act could not have application in respect of a secured interest in a secured asset created in favour of a secured creditor. It has been held that the said principles will apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

115. Even if viewed from another angle, the claim of the appellants is not sustainable. The two-Judge Bench of this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254], has heavily relied on the judgment of the three-Judge Bench of this Court in Narandas Karsondas. It has been held by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247], that the right of redemption, which is embodied in Section 60 of the Transfer of Property Act, is available to the mortgagor unless it has been extinguished by the act of parties. It has been held, that only on execution of the conveyance and registration of

transfer of the mortgagor's interest by registered instrument, that the mortgagor's right of redemption will be extinguished.

118. It is further relevant to note that this Court in Dwarika Prasad [Dwarika Prasad v. State of U.P., (2018) 5 SCC 491] and in Shakeena [Shakeena v. Bank of India, (2021) 12 SCC 761] held that the right to redemption stands extinguished on the sale certificate getting registered." (Emphasis supplied)

92. A similar view as Concern Readymix (supra) was taken by the Punjab & Haryana High Court in Pal Alloys and Metal India Private Limited & Ors. v. Allahabad Bank & Ors. reported in 2021 SCC OnLine P&H 2733. The court therein looked into the Report of the Joint Committee on the 2016 Amendment to arrive at the conclusion that under the amended Section 13(8) of the SARFAESI Act, the right of redemption of mortgage would continue till the execution of conveyance or issuance of sale certificate. It further observed that the decision in Shakeena (supra) was not applicable inasmuch as it did not examine the provision of Section 13(8) of the SARFAESI Act through the lens of Section 60 under the TP Act. The relevant observations read as under: -

"78. It is interesting to note that para 24 of the Report of the Joint Committee referred to above deals with the proposed amendment to Section 13(8) of the SARFAESI Act and gives a heading "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions-Amendment to Section 13(8) of the SARFAESI Act.

79. Thus the amendment was proposed w.r.t. when to stop the secured creditor from selling/transferring the secured asset. The words 'when to stop the exercise of right of redemption by the borrower/mortgagor' were not used.

80. In the said Report, at pg.12, Clause 11(ii) of the Bill which proposed to amend Section 13(8) of the SARFAESI Act is noted. After extracting the existing Section 13(8) of the Act which stands as under:-

"If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

81. The proposed modification to Section 13(8) is set out also at pg.12 as under:-

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be leased, assigned or sold by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets."

82. Strangely, on the next page at page 13, the following is stated:-

"The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

83. Nothing is mentioned as to why the proposal indicated in Page 12 was changed on page-13 differently.

84. Admittedly, what is stated in page-13 was passed in the Lok Sabha and the Rajya Sabha and then it became the Act 44 of 2016 and came into effect on 01.09.2016.

85. But the important thing to note is that this Report does not indicate that the Committee had even considered Section 60 of the Transfer of Property Act, 1882, which provides the general law of right to redeem a mortgaged asset of a mortgager vis-a-vis the provisions of the SARFAESI Act.

86. It no where says that there was an intention to bring about a change with regard to the time before which a mortgagor can exercise his right to redeem the mortgage.

87. Even the heading of Para 24 of the Report which says "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI Act" seems to suggest that the focus of the Committee was on the date when the secured creditor's right to lease or assignment or sale would stop.

88. In our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec.13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un amended Section 13(8) of the SARFAESI Act was in force. The amended Sec.13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

93. The view taken by the High Court for the State of Telangana and Andhra Pradesh in M/s. Concern Ready Mix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] commends itself to us and we accept and approve the same.

94. We shall now consider the judgment of Supreme Court in Shakeena [(2019) 5 RCR (Civil) 689 (SC)]cited by the counsel for 1st respondent. In that case, sale certificate had been issued in favour of the auction purchasers on 06.01.2006 and a Writ Petition was filed on 19.01.2006 challenging the auction and it was registered on 18.9.2007. The Court held that the appellants had failed to make a valid tender of amounts due or exercise their right of redemption in a manner known to law until the registration of the sale certificate on 18.09.2007 and that the right of redemption stood obliterated on 18.09.2007.

The statement therein in para 29 that as per the amended provision stringent conditions have been stipulated that the tender of dues to the secured creditor shall be at any time before the date of publication of notice for public auction does not, in our opinion, lead to an expression of opinion by the Supreme Court that the law of redemption as per Section 60 of the Transfer of Property Act would not apply in view of amendment to Section 13(8). We do not find any discussion in the decision in Shakeena [(2019) 5 RCR (Civil) 689 (SC)] about the decisions of the apex court dealing with the right of redemption under Sec.60 of the Transfer of Property Act, 1872. So reliance on the said decision does not help the 1st respondent.

96. Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in Mathew Varghese [(2014) 5 SCC 610] and (iii) the decision in M/s. Concern Readymix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we

hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amount mentioned in Section 13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee.

97. It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No. 2 and 3. Point (a) is answered accordingly in favor of the petitioners and against the respondents."

93. The decision of Concern Readymix (supra) was referred to and relied upon later by the Andhra Pradesh High Court in Amme Srisailam v. Union Bank of India, Regional Office, Guntur, rep. by its Region Head & Deputy General Manager, Andhra Pradesh & Ors. reported in 2022 SCC OnLine AP 3484. In the said decision it was held that a conjoint reading of Section(s) 35 and 37 of the SARFAESI does not appear to exclude the applicability of Section 60 of the TP Act.

It further noted, that although this Court in Shakeena (supra) had taken a contrary view, more particularly that the borrower's right of redemption stands curtailed by the 2016 Amendment, yet in the subsequent larger bench decision of this Court in S. Karthik (supra) it was held that such right of redemption would extinguish only on the sale certificate getting registered and not upon publication of the notice of auction. Consequently, it held that the right of redemption available to the borrower under Section 60 of the TP would not stand restricted only by virtue of the amended Section 13(8) of the SARFAESI Act. The relevant observations read as under: -

"38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor)

from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:

The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.

39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.

40. A three-Judge Bench of the Supreme Court in S.Karthik (supra) held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act, 1882 is available to the mortgagor unless it has been extinguished by the act of the parties. Only on execution of the conveyance and registration of transfer of mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. Referring to the previous decisions of the Supreme Court, it has been held that the right to redemption stands extinguished only on the sale certificate getting registered.

41. This position has been explained by the Punjab & Haryana High Court in Pal Alloys & Metal India Private Limited (supra), wherein it has been clarified that the amended Section 13(8) of the SARFAESI Act merely prohibits the secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale if the dues are paid before issuance of sale notice for public auction. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.

42. Let us now examine the decision of the Supreme Court in Shakeena (supra) relied upon by the petitioner. As opposed to S.Karthik (supra) which was rendered by a three-Judge Bench, Shakeena (supra) was delivered by a two-Judge Bench of the Supreme Court. That was a case which dealt with Section 13(8) of the SARFAESI Act prior to amendment. In this case, the appellants failed to exercise their right of redemption until registration of the sale certificate; therefore, relief was declined. While coming to the above conclusion, the Division Bench of the Supreme Court adverted to the amended Section 13(8) of the SARFAESI Act observing by way of obiter that tender of dues to the secured creditor with all costs, charges and expenses incurred by him shall be at any time before the date of publication of notice for public auction etc.

43. The decision in Shakeena (supra) was rendered by a two- Judge Bench of the Supreme Court on 20.08.2019. On the other hand, the decision in S.Karthik

(supra) was rendered by a three- Judge Bench of the Supreme Court much later i.e., on 23.09.2021. The decision in S.Karthik (supra) being a later judgment and by a larger bench therefore will be binding on us and this decision says that the right of redemption stands extinguished only on the sale certificate getting registered.

44. Before we revert back to the facts of the present case, we may also refer to Sections 35 and 37 of the SARFAESI Act. While Section 35 says that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, Section 37 clarifies that provisions of the SARFAESI Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force.

45. This brings us to Section 60 of the Transfer of Property Act, 1882. Section 60 says that at any time after the principal amount has become due, the mortgagor has a right, on payment or tender, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof back to the mortgagor, and (c) at the cost of the mortgagor either to re transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. As per the proviso, the right conferred under the aforesaid provision shall not be extinguished by any act of the parties or by decree of a Court.

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in Concern Readymix (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor."

(Emphasis supplied)

c. Effect of the 2016 Amendment on the Right of Redemption under Section 13(8) of the SARFAESI Act.

94. This Court in Bafna Motors (supra) considered the conflicting orders passed by various High Courts in interpreting the provisions of Section 13(8) in relation to the right of redemption by the borrower.

95. In the final analysis, this Court noted that under the pre-amended Section 13(8) of the SARFAESI Act, the borrower could repay the dues, along with the interest and charges at any time "before the date fixed for sale or transfer". However, post Amendment, redemption is available before the date of publication of notice for public auction.

96. However, under the amended Section 13(8) of the SARFAESI Act allows the right of redemption only till the date of publication of notice, which is a departure from the general right of redemption under the general law and therefore is inconsistent with Section 60 of Transfer of Property Act. In such a situation of inconsistency, the SARFAESI Act being a special one, would override the general law. This Court also took note of Section 35 and Section 37 respectively of the SARFEASI Act and held that Section 35 of the SARFEASI Act will have an overriding effect, notwithstanding anything which is inconsistent with any other law. Further, this Court held that the laws that are mentioned in Section 37 of SARFEASI Act i.e., laws which deal with securities or occupy the same field as the SARFAESI Act, would be applicable in addition to it and not in derogation to any other law.

97. The objects and reasons for the Amendment of the SARFEASI Act was to facilitate expeditious disposal of recovery applications. Taking the same into consideration, the Court noted that an interpretation which furthers the said object and reasons should be preferred and adopted. If the general law is allowed to govern, it will defeat the very object and purpose of the amended Section 13(8).

98. The Court concluded that the judgement delivered in Sri. Sai Annadhatha Polymers (supra), as well as in K.V.V. Prasad Rao Gupta (supra) stipulate the correct position of law and overruled the judgements of the High Courts in Amme Srisailam (supra), Concern Readymix (supra), and Pal Alloys (supra).

99. This Court in the last considered the sanctity of public auctions and noted that reading Section 13(8) in any other manner would lead to a worrisome situation as the successful bidder would continue to remain apprehensive till a valid sale certificate is issued.

100. The final conclusion drawn by this Court in Bafna Motors (supra) reads thus:-

"110. We summarise our final conclusion as under:-

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the Sarfaesi Act.

110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

110.3. In accordance with the unamended Section 13(8) of the Sarfaesi Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset.

However, the amended provisions of Section 13(8) of the Sarfaesi Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.

110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.

110.5. The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the Sarfaesi Act.

110.6. The two decisions of the Telangana High Court in Concern Readymix [Concern Readymix v. Corporation Bank, 2018 SCC OnLine Hyd 783 : (2019) 3 ALD 384] and Amme Srisailam [Amme Srisailam v. Union Bank of India, 2022 SCC OnLine AP 3484] do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in Pal Alloys [Pal Alloys & Metal India (P) Ltd. v. Allahabad Bank, 2021 SCC OnLine P&H 2733] also does not lay down the correction position of law.

110.7. The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers [Sri Sai Annadhatha Polymers v. Canara Bank, 2018 SCC OnLine Hyd 178] and the decision of the Telangana High Court in K.V.V. Prasad Rao Gupta [K.V.V. Prasad Rao Gupta v. SBI, 2021 SCC OnLine TS 328] lay down the

correct position of law while interpreting the amended Section 13(8) of the Sarfaesi Act."

(Emphasis supplied)

C. How the decision of this Court in Bafna Motors should be understood?

101. Before we proceed to delineate the true purport and effect of the amended Section 13 sub-section (8) of the SARFAESI Act, it would be apposite to first advert to a few decisions which referred to and applied the decision of this Court in Bafna Motors (supra), so as to ascertain how the said judgment has been understood for the purpose of construing Section 13(8).

102. What can be discerned from the conspectus of cases discussed above is that, predominantly, all the courts and tribunals, on a reading of the decision of this Court in Bafna Motors (supra), have construed the amended Section 13 sub-section (8) of the SARFAESI Act to mean that the right of redemption of the borrower stands extinguished on the date on which the notice of auction is published by the secured creditor. In other words, the effect of Section 13(8) has been understood to mean that the borrower would retain the right to redeem the mortgage only up to the date of publication of such auction notice, once such notice is published, the right of redemption would cease.

i. There cannot be any artificial distinction in the right of redemption under Section 13(8) of the SARFAESI Act for different modes of transfer.

a. Scheme for sale of Immovable Secured Asset under Section 13(8) of the SARFAESI Act read with Rule(s) 8 and 9 of the SARFAESI Rules.

103. Again, at the cost of repetition, the amended Section 13 sub-section (8) of the SARFAESI Act is reproduced hereunder:-

"13. Enforcement of security interest.-

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under

this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

104. A plain reading of the aforesaid provision indicates that where the borrower tenders the amount of dues along with all costs, charges and expenses to the secured creditor "before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets", then as per clause (i) the secured asset shall not be transferred by the secured creditor, and as per clause (ii) where any steps towards such transfer, by lease, assignment or sale, as the case may be, was already taken by the secured creditor, then no further steps shall be taken in this regard.

105. To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of due to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be.

106. A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.

107. Section 13 sub-section (8) of the SARFAESI Act must be read along with Rule(s) 8 and 9 of the SARFAESI Rules.

108. The four modes of transfer of secured asset, as envisaged under Section 13(8) of the SARFAESI Act, namely, 'public auction', 'inviting quotations', 'tender from public' and 'private treaty' have been set out and detailed in Rule 8(5) of the SARFAESI Rules. The said rule reads as under: -

"8. Sale of immovable secured assets.-

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve

price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through eauction mode; or

(d) by private treaty.

Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State."

109. Rule 8 sub-rule (5) of the SARFAESI Rules inter-alia provides the different modes and manner in which an immovable secured asset may be transferred by the secured creditor. The said rule provides that the secured creditor may transfer the whole or any part of such secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public

(c) by holding public auction including through eauction mode; or

(d) by private treaty

110. As per Rule 8 sub-rule (6) of the SARFAESI Rules, before the transfer / sale of the immovable secured asset by the secured creditor, by any of the methods enumerated in Rule 8(5), the secured creditor is required to serve to the borrower a notice of thirty-days of the intended sale of such secured asset through any one of the methods specified in Rule 8(5). The Proviso appended to Rule 8(6) further stipulates that where the proposed sale of the secured asset is either by 'inviting tenders from the public' or by 'holding a public auction', then the secured creditor shall cause a public notice in two leading newspapers, in the manner and form specified therein. Rule 8 subrule (6) reads as under:-

"8. Sale of immovable secured assets.-

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under subrule (5) Provided that if the sale of such secured asset is being effected by either inviting tenders from the public

or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality."

111. Rule 8(7) of the SARFAESI Rules mandates that every notice of sale shall be affixed on the conspicuous part of the immovable property, proposed to be sold in terms of Rule 8(5) and in addition, be uploaded on the website of the secured creditor, containing or setting out the detailed terms and conditions of the sale, as specified thereunder. Rule 8(7) of the SARFAESI Rules reads as under:-

"8. Sale of immovable secured assets.-

(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the website of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property."

112. The last provision relevant for our discussion is Rule 9(1) of the SARFAESI Rules. Rule 9(1) provides that no sale of immovable secured asset under these rules, more particularly Rule 8(5) shall take place before the expiry of thirty-days from the date on which the public notice of sale is published as referred to in the Proviso to Rule 8(6) or notice of sale is served to the borrower.

The Proviso to Rule 9(1) further stipulates that if the sale of the immovable secured asset under Rule 8(5) fails, then for conducting any subsequent sale, the secured creditor would be required to serve, affix and publish the subsequent notice of sale for a period of fifteen-days only. In other words, for the sale of immovable secured asset in the first instance, a notice period of thirty-days is required to be observed by the secured creditor till the date of actual sale / transfer, and if the first sale fails, then for all subsequent sales, only a notice

period fifteen-days is to be given, as opposed to thirty-days. The said rule reads as under:-

"9. Time of sale, Issue of Sale Certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale."

113. A perusal of the bare text of Section 13(8) of the SARFAESI Act suggests that the borrower can tender the entire dues of the creditor including all costs, charges and expenses "before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets". In other words, the textual reading of the provision appears to convey that the right of redemption of the borrower would be extinguished on the date on which the notice is published for auction, invitation of quotations, tender from public or private treaty.

114. This has also been the understanding that has been adopted by Cholamandalam Investment (supra), M. Raghu (supra), VST Constructions (supra), P.V. Sitarama Swamy (supra) and a catena of other decisions passed by the various courts and tribunals from a reading of Section 13(8) of the SARFAESI Act and the judgment of Bafna Motors (supra).

115. We first have to try and understand which notice is the expression "before the date of publication of notice" in sub-section (8) of Section 13 speaking of and what is meant by the word "publication" used thereunder.

116. Rule 8(6) of the SARFAESI Rules provides that before the sale of the immovable secured asset, by way of obtaining quotations, inviting tenders, holding auction or by private treaty, a notice of sale has to be served to the borrower. Proviso to Rule 8(6) provides that where the proposed sale is by way of either public auction or inviting tenders from public, the secured creditor shall cause a public notice in two leading newspapers.

117. Rule 9(1) of the SARFAESI Rules appears to hold significance in understanding the word "publication" employed in Section 13(8), and which notice, the said word appears to be referring to. Rule 9(1) inter-alia states that no sale of immovable secured asset shall take place before the expiry of thirty-days

from the "date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8".

118. From a conjoint reading of the Proviso to Rule 8(6) and Rule 9(1) of the SARFAESI Rules, the words "before the date of publication of notice" used in Section 13(8) of the SARFAESI Act, semantically appear to mean the publication of the notice of sale in the newspaper, as specified in Rule 8(6). This is particularly because Rule 9(1) while referring to the notice of sale of public auction / tender under the Proviso to Rule 8(6), specifically uses the word "published", thereby suggesting that term "publication" occurring in Section 13(8) is referring to nothing but the notice envisaged under the Proviso to Rule 8(6) or to put it simply, the notice of sale in the newspaper.

119. Thus, although it is entirely possible for an inference to be drawn from the word "published" in Rule 9(1) for construing the expression "before the date of publication of notice" used in Section 13(8), yet to our minds, this does not appear to be correct understanding of Section 13(8), for the reasons that we shall assign hereinafter.

120. We must not lose sight of the fact that Section 13(8) of the SARFAESI Act speaks of all four modes of sale / transfer, delineated under the SARFAESI Rules, more particularly, Rule 8(5). The provision also refers to each of the mode of sale uniformly and in the same manner. Section 13(8) stipulates that the borrower must tender the dues "before the date of publication of notice" for "public auction or inviting quotations or tender from public or private treaty" (emphasis).

121. The language couched in the provision of Section 13(8) of the SARFAESI Act, also makes no distinction between what mode or manner of sale is adopted by the secured creditor, insofar as the application of the rigours of the provision is concerned. We say so because, the expression "before the date of publication of notice of sale" has not been confined or restricted to only some modes of sale and not to others.

122. The entire expression reads "before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty". But if the expression "before the date of publication of notice of sale" is construed to be synonymous to the publication of notice of sale in the newspaper in terms of the Proviso to Rule 8(6) alone, then the same would result in an anomaly.

123. Section 13(8), more particularly the expression "before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty" would then effectively read to mean that a borrower can exercise its right of redemption of mortgage till the date of publication of notice

of sale in the newspaper for "auction" where such notice is required, "or inviting quotations" where no such notice is required, "or tender from public" where such publication of notice is required, "or private treaty", where again, no such notice is required to be published. The aforesaid may be better illustrated through the following diagram depicted hereunder:-

"Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

In the above illustration:-

- signifies that no notice of sale is required to be published in newspaper.
- signifies that notice of sale is required to be published in newspaper.

124. This inherent contradiction within the provision of Section 13(8) of the SARFAESI Act was taken notice of by the High Court of Telangana in M/s Venshiv Pharma Chem (P) Ltd. & Anr. v. State Bank of India & Ors. reported in 2018 SCC OnLine Hyd 39. In the said decision the High Court observed that the amended Section 13(8) attaches vital importance to the date of publication of the notice insofar as the right of redemption is concerned.

As such, it held that where the sale of the secured asset is by public auction or inviting tender from public, the date of publication of such sale notice under Rule 9(1) would clinch the right of the borrower to redeem the mortgage. It further observed that where the sale is by inviting quotations or private treaty, there the situation would be covered by clauses (i) and (ii) of the amended Section 13(8) instead. The relevant observations read as under:-

"52. Sri M. Narender Reddy, learned senior counsel, would argue that the unamended section 13(8) of the SARFAESI Act was similar in its wording to the amended version thereof, as regards the right of redemption being linked to the date fixed for sale or transfer of the secured asset. However, it may be noted that the amended version contains a new insertion to the effect that the tendering of the dues by the borrower to the secured creditor has to be at any time before the

date of publication of notice for public auction or inviting quotations, or tender from public or private treaty for transfer. The language of the unamended version did not contain such a bar and allowed the right of redemption to operate till the date fixed for "sale or transfer" of the secured asset.

53. Though Sri M. Narender Reddy, learned senior counsel, would point out that clause (i) in the amended section 13(8) would indicate that if the dues are tendered by the borrower to the secured creditor, the secured assets should not be transferred by way of lease, assignment or sale by the secured creditor and under clause (ii), in case any step has already been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets, before tendering of such amount under this subsection, no further step should be taken by the secured creditor and therefore, the right of redemption has to be construed accordingly.

However, it may be noticed that the amended section 13(8) attaches vital importance to the date of publication of the notice. In so far as the date of publication of the notice under rule 9(1) is concerned, be it for a public auction or for inviting tenders from the public, the secured creditor is bound to wait for 30 days from the date on which such publication is carried out before proceeding to the actual sale. Prior to this date, no steps could possibly be taken by the secured creditor for transfer of the secured asset.

Therefore, it is only in the other two situations, that is, where the secured creditor resorts to sale of the secured asset by inviting quotations under rule 8(5)(a) or by private treaty under rule 8(5)(d) of the Rules of 2002, that the possibility of a step being taken by the secured creditor for transfer would arise. The situation covered by clauses (i) and (ii) of amended section 13(8) therefore would not arise where the sale is through public auction by publication of a sale notice under rule 9(1).

54. Further, under the new section 13(8), the right of redemption available to the borrower stands drastically curtailed. Now, such right is available to the borrower only up to the date of publication of the notice for public auction or inviting quotations or tender from public for transfer by way of lease, assignment or sale of the secured asset. Thus, when the secured creditor resorts to sale through public auction under rule 8(5) of the Rules of 2002, the date of publication of such sale notice under rule 9(1) of the Rules of 2002 would effectively clinch the right of the borrower to redeem the secured asset. However, rule 8(6) of the Rules of 2002 remained unchanged, despite the amendments in November, 2016.

This rule continues to provide that the authorized officer should serve upon the borrower a notice of 30 days before sale of the immovable secured asset. Obviously, this notice is intimation to the borrower of the intention of the secured creditor to recover its dues by sale of such asset, thereby enabling him to exercise

his right of redemption under section 13(8) of the SARFAESI Act. Therefore, a clear 30 days would have to be maintained between the date of service of such notice under rule 8(6) of the Rules of 2002 and the expiry of the right of redemption under the amended section 13(8) of the SARFAESI Act."

(Emphasis supplied)

125. What has been conveyed in so many words in Venshiv Pharma Chem (supra) is that there are two distinct point of time, when the right of redemption of the borrower would stand extinguished under the amended Section 13(8) of the SARFAESI Act. In arriving at the aforesaid conclusion, the High Court appears to have partly agreed with the argument advanced before it, that the amended Section 13(8) is similar in its operation to its unamended counterpart, and the only significant change made is in respect of the clear restriction on the secured creditor to transfer or sell the secured asset once the dues are tendered by the borrower, and thus, there would be no material change in how the right of redemption is to be exercised.

The High Court seems to have accepted the contention that the right of redemption under the amended Section 13(8) would have to be construed in accordance with the restrictions engrafted in clauses (i) and (ii), but only in respect of where the sale is by way of inviting quotations or private treaty, and thereby proceeds to hold as under:-

(i) First, the High Court proceeds to construe the purport of Section 13(8) to give to the borrower a definite and sufficient period of time for redeeming the secured asset, by ensuring that during this period, the secured creditor does not take any step towards the sale or transfer of the secured asset.

(ii) Secondly, in view of the significance given to the date of publication of auction notice under the amended Section 13(8), it rejects the contention that the right of redemption would have to be construed in accordance with the restrictions encapsulated under clauses (i) and (ii) of the provision, insofar as public auctions or tenders is concerned. According to the High Court where the sale is through either public auction or tender, there the right of redemption would extinguish on the date of publication of the auction notice itself.

As before the publication of such auction notice, there exists no possibility for the secured creditor to take steps towards the sale or transfer of the secured asset, in view of the clear mandate requiring the secured creditor to wait for thirty-days before it can publish the notice for auction or tender, as the case may be. Thus, there is no occasion for clauses (i) and (ii) of Section 13(8) to be attracted, and as such the right of redemption would have to be construed in accordance with the substantive part of the provision instead.

(iii) Thirdly, where however, the sale of the secured asset is either through public auction or tender, there, the possibility of the secured creditor proceeding with such sale is palpable, in the absence of any requirement to maintain a clear 30-days gap. It is for such situations that clauses (i) and (ii) of the amended Section 13(8) would come into the play, and the right of redemption would then necessarily have to be construed to continue to exist till the date of actual transfer, as was the position under the unamended Section 13(8) as per Mathew Varghese (supra).

126. The line of reasoning adopted by Venshiv Pharma Chem (supra) to hold that the right of redemption under the amended Section 13(8) of the SARFAESI Act would extinguish differently for different modes of sale, appears to be incorrect. There is nothing in the bare text of Section 13(8) which would suggest that clause(s) (i) and (ii) of the said provision are confined in their application to some modes of sale and not to others. The restrictions on the transfer of the secured asset by way of lease, assignment or sale, under clause(s) (i) and (ii) of Section 13(8) are general and omnibus in nature.

127. The different modes or methods for dealing or disposing the secured asset, as enumerated in the substantive portion of Section 13(8) of the SARFAESI Act are all for the general purpose of facilitating the transfer of the secured asset, either by way of lease, assignment or sale of the secured assets. This is made clear from the general expression "for transfer by way of lease, assignment or sale of the secured assets,-" used in the substantive portion of Section 13(8). Had the intent of the legislature been otherwise, then it would have not used the same general expression "transferred by way of lease assignment or sale" or "transfer by way of lease or assignment or sale" in clauses (i) and (ii), respectively and instead would have specifically alluded to the specific mode(s) of sale, for which such clauses are intended. We shall discuss this issue in detail in the later parts of this judgment.

128. From above it is manifestly clear that the rigours of Section 13(8) of the SARFAESI Act, including clause(s) (i) and (ii) therein, are intended to apply equally irrespective of whether the transfer / sale of the secured asset happens to be by either public auction, or obtaining quotations or inviting tenders or private treaty, as all of the said methods are inevitably for the same purpose i.e., for the transfer of secured asset, by lease, assignment or sale of the secured asset.

129. However, at the same time, as aforementioned the Proviso to Rule 8(6) read with Rule 9(1) of the SARFAESI Rules, stipulates that the notice of sale of secured asset has to be published in the newspaper, only where the mode of sale is by way of either auction or inviting tenders from the public. For all other remaining modes of sale, namely, by obtaining quotations or private treaty, there is no requirement to publish the notice of sale.

130. Thus, in order to better understand the true import of the expression "before the date of publication of notice", it would apposite to understand the form and manner of notice or notice(s), as the case may be, that is required under the SARFAESI Rules for the transfer of secured asset, by lease, assignment or sale of the secured asset.

ii. There is only a single Notice of Sale required under Rule 8(6) of the SARFAESI Rules for transfer of secured asset, by lease, assignment or sale.

131. The entire controversy on the interpretation of Section 13(8) of the SARFAESI Act, revolves around the interpretation of the expression "before the date of publication". The reason why the said expression has been construed by various High Courts to mean the notice of auction is due to the prevailing misconception, that two separate notices are required, where the mode of sale of the secured asset is either by way of public auction or tender. This misconception has largely been because of a misreading of the provision of Rule(s) 8 and 9 of the SARFAESI Rules. a. Contradictory Views of the High Court on the subject.

132. The Telangana High Court in Venshiv Pharma Chem (supra) and K.V.V. Prasad Rao Gupta (supra) have held that the secured creditor is required to give a total of two notices; a thirty-days' notice of sale to the borrower and thereafter, another thirty-days public notice of auction, under the Proviso to Rule 8(6) and Rule 9(1), respectively. This according to the Telangana High Court is necessary, to afford the borrower a reasonable period for exercising his right to redeem the mortgage, which under the amended Section 13(8) is extinguished on the date of publication of the auction notice, thus, a clear 30-days gap has to be maintained between the date of service of notice under Rule 8(6) to the borrower, and the publication of the auction notice under Rule 9(1).

133. This view has also found favour with the Andhra Pradesh High Court in Sri. Sai Annadhatha Polymers (supra) and Amme Srisailam (supra), by placing reliance on Mathew Varghese (supra), to hold that although Section 13(8) underwent an amendment, yet Rule(s) 8(6) and 9(1) remain unchanged, thus, the ratio of Mathew Varghese (supra) insofar as the requirement of giving two notices with a thirty-days gap each, under the SARFAESI Rules, would continue to hold field.

134. Whereas, another bench of the Telangana High Court in Aditya Industries (supra) and Indian Overseas Bank v. RA Pure Life Science Ltd. & Ors. reported in 2023 SCC OnLine TS 634 have partly taken a contrary view. The High Court appears to have expressed agreement to the proposition that although Rule(s) 8(6) and 9(1) of the SARFAESI Rules contemplates two distinct notices being issued, yet it has disagreed with expressed by Venshiv Pharma Chem (supra) and K.V.V.

Prasad Rao Gupta (supra), that there must be a thirty-days gap between the issuance of each of the said notices.

It held that there is no requirement for the secured creditor to give the two notices of sale with a thirty-day gap between each, before it can transfer or sell the secured asset. It observed that the SARFAESI Rules nowhere stipulates a thirty-day gap between the service of notice of sale to the borrower and publication thereof, in the newspaper. According to it, both the notices can be issued by the secured creditor simultaneously. All that is required by Rule(s) 8(6) read with 9(1) is that there is a thirty-days gap between the issuance of the aforesaid notice or notice(s), as the case may be, and the actual date of sale of the secured asset.

135. On the other hand, one another Bench of the Telangana High Court in Concern Readymix (supra) have held that the SARFAESI Rules, more particularly, Rule(s) 8(6) and 9(1), contemplate the issuance of only one notice of sale by the secured creditor. It observed that Rule 9(1) does not stipulate the requirement of publishing a separate notice, rather it merely makes a reference to publish the self-same notice that has to be served to the borrower under Rule 8(6).

According to it, if Rule(s) 8(6) and 9(1) are construed to mean that two separate notices are required, then it would result in the borrower having a period of 60-days, which is repugnant to the statutory stipulated period of thirty-days' or fifteen-days' time, as the case may be, under the SARFAESI Rules. Thus, it held that there has to be only one notice under Rule 8(6), and it would be sufficient for Rule 9(1), if the date of auction falls beyond 30 days from the date of issuance of such notice, and publication thereof. In this regard, reliance was placed by the Telangana High Court on the decision of this Court in Canara Bank v. M. Amarender Reddy reported in (2017) 4 SCC 735.

136. Thus, there appears to be a divergence of opinion as regards, first, whether Rule 8(6) read with Rule 9(1) of the SARFAESI Rules contemplate issuance of two distinct and separate notices of sale; and second, notwithstanding the aforesaid, whether there is a requirement to maintain a gap of thirty-days each, between the service of notice or notice(s) of sale to the borrower, and the publication of such notice or notice(s) in the newspaper in terms of Rule(s) 8(6) and 9(1), respectively.

b. The Scheme under the SARFAESI Rules envisages one single composite Notice of Sale of Immovable Secured Asset.

137. We shall now look into the unique scheme for the transfer of immovable secured asset, by way of lease, assignment or sale, formed by Rule(s) 8(6), 8(7) and 9(1) of the SARFAESI Rules.

138. Rule 8 sub-rule (6) of the SARFAESI Rules stipulates that the authorized officer of the secured creditor shall serve the borrower a notice of thirty-days for the sale of the immovable property by any of the modes, enunciated in the preceding Rule 8(5).

139. The Proviso to Rule 8(6) further enjoins a duty upon the secured creditor, to cause a public notice, in the form and manner specified therein, where the sale of the immovable property happens to be either by way of public auction or tender. Unlike Rule 8(6), which would apply, in respect of all modes of sale of the immovable secured asset in terms of Rule 8(5), the Proviso thereto, has no application whatsoever, if the sale of the immovable secured asset, is not by way of public auction or tender i.e., the said duty cast on the secured creditor under the Proviso would have no application, if the sale is by way of obtaining quotations or private treaty.

140. Rule 9(1) of the SARFAESI Rules provides that no sale of the immovable property, in terms of Rule 8(5), shall take place before the expiry of thirty-days from the date on which the public notice of sale is published in newspaper, as required under the Proviso to Rule 8(6), or notice of sale has been served to the borrower.

141. We must be mindful to not lose sight of Rule 8(7) of the SARFAESI Act, which is significant to the interpretation of Rule 8(6) and 9(1) of the SARFAESI Rules. Rule 8(7) of the SARFAESI stipulates an additional condition upon the secured creditor to affix and upload every notice of sale, containing the relevant terms and conditions of the sale, as specified under the said Rule, on the conspicuous part of the immovable secured asset proposed to be sold and, on its website, respectively.

142. The foremost reason, why we say that for the transfer of an immovable secured asset by way of lease, assignment or sale, under the SARFAESI Rules by the secured creditor only a single composite notice is required, is in view of the language couched in the provisions of Rule(s) 8 and 9, respectively.

143. The marginal note appended to Rule 9 of the SARFAESI Rules reads "Time of sale, Issue of Sale Certificate an delivery of possession, etc.". Thus, it is clear that Rule 9 only provides when the sale of the immovable secured asset may take place along with the formalities by which such sale would be concluded. The "public notice" alluded to in Rule 9(1) does not speak of any separate or distinct notice. This is manifest from the expression "as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower" used in the said Rule.

144. Rule 8(6) is the first instance, in the entire scheme of the SARFAESI Rules where any reference is made to a notice, insofar as sale of immovable secured asset is concerned. It provides that the secured creditor shall serve to the borrower a "notice of for sale" and cause a "public notice", if the sale happens to be by way of public auction or tender. In this regard, Rule 8(7) is particularly of significance, which requires that every "notice of sale" be affixed on the conspicuous part of the immovable property to be sold as-well as uploaded on the website of the secured creditor.

145. The requirement of notice by the secured creditor for the transfer of secured asset, by lease, assignment or sale under the SARFAESI Rules has to be culled out from Rule 8(6).

146. As already stated, Rule 8(6), is the only provision which speak about 'notice of sale', all other provisions, thereafter, only relate back to Rule 8(6) by making a reference to the notice mentioned under the said rule. Rule 8(7), simpliciter uses the word "every notice of sale" indicating, that it is not stipulating the requirement of giving any distinct or sperate notice. Similarly, Rule 9(1) also juxtaposes the word "public notice" with the expression "as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower", again fortifying that its merely referencing the notice of sale as required under Rule 8(6) or the Proviso thereunder. The Proviso to Rule 8(6), is also similar in nature, inasmuch as it uses the expression "shall cause a public notice" in the form as delineated in Appendix IVA to the SARFAESI Rules.

147. The Appendix to the SARFAESI Rules is also instructive in answering whether the SARFAESI Rules, contemplate giving two distinct notice(s) or one single composite notice. The Appendix to the SARFAESI Rules contains the statutorily prescribed standard pro-forma format and forms for the various applications, notices, and communications contemplated under the Rules. Interestingly, the Appendix to the SARFAESI Rules prescribes a specific form and format only for the notice as envisaged under the Proviso to Rule 8(6).

148. Significantly, no corresponding form or format has been provided for the notices ostensibly envisaged under Rule 8(7) or Rule 9(1). This omission of any prescribed form for notices under Rule 8(7) or 9(1) indicates that it is really Rule 8(6) which is the substantive provision that stipulates the requirement of issuance of a notice of sale. The other provisions, particularly Rule 8(7) or 9(1) of the SARFAESI Rules, do not contemplate issuance of a distinct notice thereunder, separate and apart from the one under Rule 8(6). Rather the mentioning of "notice of sale" in Rule 8(7) and 9(1) is nothing but a reference back to the self-same notice of sale under Rule 8(6).

149. We are conscious of the fact, that the Appendix IV-A to the SARFAESI Rules, specifically mentions that the said prescribed format is only for the notice envisaged under the Proviso to Rule 8(6). Since there is no form or format prescribed for the notice of sale that has to be served to the borrower in terms of the substantive part of Rule 8(6), it could be said that, the reason why the legislature thought fit to prescribe a standard format only for the notice contemplated under the Proviso to Rule 8(6) and not the other Rules, was because of the public nature of such notice.

150. To obviate the possibility of any ambiguity, mala-fide, deception, prejudice or unclarity in the sale process of the secured asset being caused to the public for whom such notices are intended, advertently or inadvertently by the secured creditor, the legislature thought fit to prescribe a standard format. In such circumstances, it could be said that mere omission of any prescribed form or format in the Appendix for the other rules, namely Rule 8(7) or 9(1) cannot be possibly construed to mean that there is no requirement for two distinct notices of sale.

151. However, a closer look of Appendix IV-A to the SARFAESI Rules would reveal both Rule 8(6) and the Proviso to Rule 8(6) are speaking of one single notice. Rule 8(6) and the Proviso thereto, do not contemplate issuance of two distinct notices, where the mode of sale happens to be by way of public auction or tender. We say so, because, of the words "Notice is hereby given to the public in general and in particular to the Borrower (s) and Guarantor (s)" used in the prescribed standard form for notice under the Proviso to Rule 8(6) provided in the Appendix IV-A. The said prescribed form in Appendix IV-A is reproduced below:-

"APPENDIX IV-A
[See proviso to Rule 8(6)]
(Sale notice for sale of immovable properties)

E-Auction Sale Notice for Sale of Immovable Assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with proviso to Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 Notice is hereby given to the public in general and in particular to the Borrower (s) and Guarantor (s) that the below described immovable property mortgaged/charged to the Secured Creditor, the constructive/physical .....(whichever is applicable) possession of which has been taken by the Authorised Officer of ..... Secured Creditor, will be sold on "As is where is", "As is what is", and "Whatever there is" on .....(mention date of the sale), for recovery of Rs.....due to the ..... Secured Creditor from ..... (mention name of the Borrower (s)) and .....(mention name of the Guarantor (s)). The reserve price will

be Rs.....and the earnest money deposit will be Rs..... (Give short description of the immovable property with known encumbrances, if any) For detailed terms and conditions of the sale, please refer to the link provided in ..... Secured Creditor's website i.e. www. (give details of website)

Date:

Authorised Officer

Place:]

(Emphasis supplied)

152. The mandatory requirement for stipulation of the words "Notice is hereby given to the public in general and in particular to the Borrower (s) and Guarantor (s)" (emphasis) in the prescribed format under the Appendix IV-A, makes it manifestly clear that the "public notice" contemplated under the Proviso to Rule 8(6), is to be addressed not just to the public in general but also to the borrower(s) and the guarantor(s) to the secured asset. As a natural corollary to the aforesaid, even though, the Proviso to Rule 8(6) only goes so far as to say that, in case of public auction or tender, the secured creditor shall cause a public notice, yet the Appendix IV-A would reveal that this notice to the public is also a notice to the borrower and the guarantors to the secured asset, i.e., effectively, a single composite notice under both Rule 8(6) and the Proviso thereto.

153. It is not difficult to comprehend why, the mentioning or use of the words "shall cause a public notice" or "every notice of sale" or "public notice" in Rule(s) 8(6) Proviso, 8(7) and 9(1), respectively, is only a reference to the notice of sale required under Rule 8(6) and not a stipulation for causing or publishing a separate, distinct notice under each of the aforesaid rules in addition to the notice of sale required under Rule 8(6).

154. The reason why we say, that Rule 8(6) of the SARFAESI Rules is the sole constituent provision stipulating the requirement of giving a notice of sale is because, ordinarily, when the secured asset given as security to the secured creditor is proposed to be sold off by it, the primary party that has a vested interest in knowing about such intention to sell, is the borrower. There can be no sale of a security interest of the borrower by the secured asset, by the secured creditor, without first, informing the borrower of its intention to sell the same. This is why, irrespective of what the mode of sale is in terms of Rule 8(5), be it by obtaining quotations or inviting tenders, or holding public auction or by private treaty, a notice of the intended sale of the secured asset by the secured creditor, by any of the aforesaid method, has to be mandatorily given to the borrower.

155. All the other provisions pertaining to the notice of sale, namely the Proviso to Rule 8(6), Rule 8(7) and Rule 9(1), only govern the manner in which such notice of sale contemplated under Rule 8(6), has to be given. The said rules only go so far as to stipulate certain additional conditions or requirements in effectuating the notice of sale under Rule 8(6), but do not by any stretch stipulate the requirement for causing a completely separate and distinct notice, in addition to the notice of sale under Rule 8(6) of the SARFAESI Rules.

156. In the entire gamut of the scheme formed by Rule(s) 8(6), the Proviso thereto, 8(7) and 9(1), all speak of only one single composite notice of sale, the only difference between these provisions, is the manner in which such notice of sale is to be effectuated and given. Rule 8(6) speaks of serving the notice of sale to borrower for a period of thirtydays. On the other hand, where the public is sought to be involved in sale process, either by auction or by inviting tender, then the same notice of sale has to be published in the newspaper. As per Rule 8(7), apart from serving the notice of sale and / or causing it in a newspaper, as the case may be, the self-same notice of sale has to also be affixed on the conspicuous part of the immovable secured asset and also uploaded on the website of the secured creditor.

157. Thus, it can be seen from above, that Rule 8(6) and the Proviso appended to it, Rule 8(7) and Rule 9(1) of the SARFAESI Rules all speak of only one single notice of sale. The distinction lies only in the manner in which it is to be given, inasmuch as under Rule(s) 8(6), Proviso thereto, 8(7) and 9(1), the same notice is required to be served to the borrower, published in the newspaper, affixed on the secured asset & uploaded on the website, and maintain a 30-day gap from the date of actual sale, respectively. Despite the variance in the manner in which the notice of sale is to be given or effectuated under the aforesaid rules, it nevertheless still continues to be one single composite notice only.

158. The reason which appears to have weighed with the High Courts in Venshiv Pharma Chem (supra) and K.V.V. Prasad Rao Gupta (supra) Sri. Sai Annadhatha Polymers (supra) for arriving at the finding that two separate notices are required under the SARFAESI Rules; one under Rule 8(6) and the other under Rule 9(1), was due to the use of the word "public notice" in Rule 9(1), which the High Courts understood to mean a separate and distinct notice that has to be published by the secured creditor, apart from the notice that has to be served to the borrower under Rule 8(6).

159. The word "public notice" used in 9(1) cannot be singled out and construed devoid of its context. It has to be understood in conjunction with the expression "as referred to in the proviso to subrule (6) of Rule 8 or notice of sale has been served to the borrower".

160. That apart, if at all, a mere mentioning of the word "notice" in Rule 9(1) is the basis for construing that two separate notices are required for the sale of immovable secured asset under the SARFAESI Rules, then it would amount to overlooking the provision of Rule 8(7). Rule 8(7) also mentions the word "notice of sale", that has to be affixed on the conspicuous part of the immovable property to be sold as-well as uploaded on the website of the secured creditor.

If this proposition of law by the High Courts is accepted, then it would result in three-separate notices being required under the SARFAESI Rules i.e., under Rule 8(6), Proviso to Rule 8(6) read with Rule 9(1) (where applicable) and Rule 8(7). While construing a provision, different standards cannot be adopted for one set of provisions and conveniently ignored for some other provision, particularly when all the provisions are substantively the same, at least in nature.

161. The term "notice of sale" is an umbrella term, which refers to and includes the giving of notice for sale by the secured creditor in all the forms and manner that he is obligated to do, under the relevant SARFAESI Rules, depending upon the mode of sale elected by the secured creditor. Thus, whenever, the secured creditor gives a notice for sale in a specific manner either under Rule 8(6), the Proviso thereto read with Rule 9(1) or Rule 8(7), he is not said to be giving different or distinct notices, they all are parts of one single composite "notice of sale". Until the secured creditor has given the "notice of sale" in all forms and manner that he is required to give under the SARFAESI Rules, including the thirty-days gap between the date when the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale, the "notice of sale" for the secured creditor would remain incomplete.

162. It is only after, the secured creditor has given the "notice of sale" in all forms and manner that he is required to give under the SARFAESI Rules, and maintained a period of thirty-days from the date on which he served, affixed or published the notice of sale, whichever is later, would such "notice of sale" be considered valid in the eyes of law.

163. At this stage, we may clarify, with a view to obviate any confusion that, when this Court in Bafna Motors (supra) upheld and approved the decisions of the Sri Sai Annadhatha Polymers (supra) and K.V.V. Prasad Rao Gupta (supra), this Court never held that two separate noticed with a time-gap of thirty-days each was required under the SARFAESI Rules, more particularly, the Proviso to Rule 8(6) and Rule 9(1), respectively.

What has been conveyed in so many words by this Court in Bafna Motors (supra) is that the decisions of the Sri Sai Annadhatha Polymers (supra) and K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law insofar as the interpretation of the amended Section 13(8) of the SARFAESI Act is concerned,

more particularly that by virtue of the amendment, the right of redemption of the borrower now stands significantly curtailed. The relevant observations made by this Court in Bafna Motors (supra) read as under:-

"(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act."

(Emphasis supplied)

164. This Court in Bafna Motors (supra) never examined the interplay between the amended Section 13(8) of the SARFAESI Act with the Page 120 of 139 SARFAESI Rules, more particularly, Rule 8(6), the Proviso thereto and Rule 9(1).

165. Similarly, we also do not see any reason why there should be a thirty-days gap maintained between when the notice of sale is given to the borrower under Rule 8(6), and when the notice of sale is published in the newspaper in terms of the Proviso thereto. The notion, that a thirty-days gap ought to be maintained between the notice of sale to the borrower and the eventual publication of such notice in the newspaper, was due to the decision of this Court in Mathew Varghese (supra), which had interpreted Rule 9(1), more particularly the words "or" used in the expression "from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower" as "and".

166. We need not dwell much on the understanding that the learned Judges had in Mathew Varghese (supra), for two good reasons, first, this interpretation was qua the unamended Section 13(8) of the SARFAESI Act, where reading the word "or" used in Rule 9(1) as "and" would have had no catastrophic consequences, and secondly, due to the subsequent decision of this Court in Amarender Reddy (supra). With the advent of the amended regime, the right of redemption of the borrower stands significantly curtailed in contrast to what was the position prior to the amendment.

Before the amendment, the borrower had the right to redeem the mortgage at any time before the secured asset was transferred, but with the amended regime, the legislature has thought fit to curtail such right prior to the date when the secured asset is transferred, more particularly, at the time of "publication of notice". However, since not all modes of sale envisaged under Rule 8(5), contemplate issuance of a "public notice of sale" and service of notice of sale to the borrower is considered sufficient, Rule 9(1) would only have effect, if the words "or" is read as it is, such that where no public notice is required, there the right of

redemption would extinguish and consequently the sale can take place only on the expiry of thirtydays from the date of service of the notice of sale to the borrower.

167. Lastly, the reason behind the stipulation of time period of 30 days in Rules 8(6) and 9(1) of the SARFAESI Rules respectively is that in the former rule, once the notice of sale is served to borrower by the secured creditor indicating its intention to sell the secured asset, the borrower should have sufficient time to try and redeem the secured asset, it is for this purpose the period of 30 days has been stipulated.

Whereas, the rationale behind the stipulation of 30 days gap between the date of notice of auction and/or notice of sale being served and the date of actual sale is so that whichever mode of sale is involved, a sufficient amount of time is given to the prospective purchasers, to ensure that the mode of sale fetches the maximum possible price in the least time. This is to avoid underbidding, undervaluation, collusion, fraud, inadequate pricing etc. However, there is no rationale whatsoever as to why the gap is necessary.

168. Both the objects that is sought to be achieved by the time period stipulated in Rules 8(6) and 9(1) will be fulfilled if both the notices are issued simultaneously as long as the period of 30 days is adhered to. It is for this reason the decision in Amarender Reddy (supra) held that there is no rhyme or reason why the time be maintained and thus, both the notices can be issued simultaneously. These observations become even more significant in view of the amended Section 13(8) of the SARFAESI Act as explained above. Any other view would not only be repugnant to the bare text of the SARFAESI Rules but rather also undermine the object of enabling the expeditious recovery of loan with maximum returns.

169. From the above discussion, we have no hesitation in holding the following:-

(i) Rule(s) 8(6), the Proviso thereto, Rule 8(7) and Rule 9(1) of the SARFAESI Rules do not speak of any separate or distinct notice of sale that is required to be issued by the secured creditor for the transfer of the secured asset by way of lease, assignment or sale in accordance with any of the methods enumerated in Rule 8(5).

(ii) The different manner in which the notice of sale has to be served, caused, published, affixed, uploaded as stipulated in Rule(s) 8(6) and 8(7) of the SARFAESI Rules, do not constitute separate notices of sale by themselves, they are part and parcel of one single composite intended "notice of sale" of the secured asset by the secured creditor, by any of the mode of sale listed in Rule 8(5). All of the aforesaid rules are concerned with a single composite "notice of

sale", and the only distinction between the said rules, is the manner in which the said "notice of sale" has to be given, on the basis of which relevant rule or rules are applicable, as the case may be.

(iii) Similarly, the stipulation under Rule 9(1) of a thirty-days gap between the date of publication of notice of sale and the date of actual sale does not impute a distinct characteristic to the public notice in the newspaper in contrast to the notice of sale that is served to the borrower. As is evident from Appendix IV-A to the SARFAESI Rules, the public notice of sale in newspaper as-well the notice of sale served to the borrower are one and the same, for the purpose of Rule 9(1).

(iv) The embargo enshrined under Rule 9(1), that no sale, in the first instance shall take place before the expiry of thirty-days, would be reckoned from the date of issuance of the "notice of sale", which would include both the public notice of sale in the newspaper and the service thereof to the borrower, whichever is later.

(v) Under Rule 8(6) read with Rule 9(1) both the notice of sale can be served as-well as published in the newspaper, simultaneously on the same date. All that is required under Rule 9(1) is that thirty-day gap is maintained between when the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale.

iii. What is the import of the expression "before the date of publication" used in Section 13(8) of the SARFAESI Act.

170. We turn back to the provision of Section 13(8) of the SARFAESI Act. The amended provision of Section 13(8) attaches vital importance to date of publication of notice for, namely public auction, invitation of quotation or tender, or private treat, for the purpose of the right of redemption of the borrower. As per the plain language of the provision, the moment the notice for holding auction, obtaining quotation, inviting tender or conducting private treaty is "published", the borrower's right of redemption would be extinguished.

171. However, as already discussed, when the sale is through obtaining quotation or private treaty, then as per Rule 8 and 9 of the SARFAESI Act, there is no requirement of publication of notice for such sale. In such circumstances, the expression "before the date of publication" used in the amended Section 13(8) is frustrated, insofar as the sale is being through invitation of quotations or private treaty. The language couched in the provision of Section 13(8) makes no distinction between what mode or manner of sale is adopted by the secured creditor, insofar as the application of the said provision is concerned.

172. In the foregoing part of this judgment, we have explained how for the transfer of the immovable secured asset by way of lease, assignment or transfer, in any mode stipulated in Rule 8(5) a notice of sale is required. Rule 8(5)

prescribes the different modes by which such secured asset may be transferred / sold by the secured creditor.

173. The subsequent rules, more particularly Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7) prescribe the manner in which the secured creditor is required to give the notice of sale for each mode of sale, enumerated in Rule 8(5). From a combined reading of these rules, it is manifest that the form and manner in which the notice of sale is required to be given, differs on what mode of sale is adopted.

174. We have explained that the mere difference or variation in the manner in which the notice of sale has to be given under each of the aforesaid rules, depending upon the mode of sale elected by the secured creditor, will not by itself constitute the said notices of sale, as distinct and separate. Although, the provisions under which the secured creditor is required to give the notice of sale differ, on the basis of the mode of sale chosen, and even though the manner in which they are to be given are also at variance with one another, yet all these separate modes of effectuating the notice for sale under Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7), are nothing but part and parcel of one single composite intended "notice of sale".

175. As already afore-stated, the term "notice of sale" is an umbrella term, which refers to and includes the giving of notice for sale by the secured creditor in all the forms and manner that he is obligated to do, under the relevant SARFAESI Rules, depending upon the mode of sale elected by the secured creditor.

176. Similarly, despite the different mode or manner in which the notice of sale is to be given by the secured creditor in terms of Rule 8(6), the Proviso thereto read with Rule 9(1), and for that matter even Rule 8(7), if the aforesaid rules are construed to refer and mean parts of a single composite notice of sale, then irrespective of the variation in the manner in which each rule contemplates the giving of such notice of sale, the discord in the language of Section 13(8) of the SARFAESI Act, more particularly, the expression "before the date of publication" may be resolved, notwithstanding the absence of any actual publication of notice of sale in some modes of sale.

177. Thus, for the purpose of the amended Section 13(8) of the SARFAESI Act, the expression "before the date of publication" used therein, has to be construed to refer and mean the publication of a valid "notice of sale" for the secured asset, although such publication may vary depending upon the mode of sale chosen by the secured creditor.

178. The word "publication" used in Section 13(8) of the SARFAESI Act, has to be understood to mean and include the service, publication in newspaper, and the

affixation and uploading of the "notice of sale", as may be required under the SARFAESI Rules. Wherever, the chosen mode of sale requires the secured creditor to effectuate the "notice of sale" in any or all of the aforesaid manner, as the case may be, the expiry of thirty-days as required under Rule 9(1) from the day when the secured creditor complies with the requirement of giving the notice of sale, as per the applicable rules, would be the date on which the secured creditor is said to have validly published the "notice of sale" and it would be this date on which the right of redemption of the borrower would stand extinguished.

D. Whether, the Amended Section 13(8) of the SARFAESI Act is retrospective in nature?

179. We now proceed to deal with the principal contention raised on behalf of the borrowers that the unamended Section 13(8) of the SARFAESI Act would apply in the present case since the loan was obtained on 06.01.2016 and that the amendment to the said provision came into effect on 01.09.2016.

180. We do not find any merit in the principal contention raised on behalf of the borrowers referred to above. The amended provision extinguishes the right of redemption of the borrower in the event he fails to repay his dues and redeem the asset before publication of the Auction Notice. This unambiguous language used in the amended provision of Section 13(8) furthers the object and reasons of the SARFAESI Act for which it was enacted i.e., to ensure that the lender is able to enforce his security interest at the earliest and with least possible intervention of the courts.

181. In the case on hand, indisputably, the loan account of the borrowers came to be classified as NPA on 31.12.2019. The Auction Notice was published by the Bank on 22.01.2021 and the secured assets were successfully auctioned on 26.02.2021.

182. The Auction Sale amount was deposited on 20.03.2021 and the Sale Certificate was issued by the Bank in favour of the appellants herein on 22.03.2021.

183. In such circumstances referred to above, the right to redeem the secured asset stood extinguished on 22.01.2021. The borrowers could be said to have failed to pay the outstanding debt before the publication of the auction notice dated 22.01.23021 by which date the amended Section 13(8) of the SARFAESI Act had already come into force.

184. In the aforesaid context, we may refer to and rely upon a decision of this Court in the case of M.D. Frozen Foods (supra) wherein this Court observed that the SARFAESI Act was brought into force with the object of providing expeditious procedure for recovery of large debts in NPAs. It held that the Act

applied to all the claims which were alive when SARFAESI Act was into force. Certain Non- Banking Financial Companies (NBFCs) were notified at various dates between 2002-2016 (when judgement came). The judgement says for the NBFC it would be similarly applicable.

185. Thus, logically from the above, if the claim is alive on 01.09.16 when the Section 13(8) is amended and the notice for auction is issued after 01.09.16, then the amended section should apply otherwise an absurd situation would be created, that the Act which applied retroactively to "alive claims" prior to the Act coming into force on 2002, but the amendment in it like in Section 13(8) would apply prospectively. That would create absurd situations.

186. The SARFAESI Act intends to provide a remedy in respect of preexisting loans and the interpretation that it would apply only to future debts would defeat the very purpose of that law, which was to reduce non-performing assets.

187. It is no more res-integra that the presumption against retrospection does not apply to the legislation concerned merely with matters of procedure or of evidence ; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

188. We may summarize the principles on retrospective application of legislations as under:-

(i) Presumption against retrospectivity is not applicable to enactments which merely affect procedure or change forum or are declaratory;

(ii) Retroactive/retrospective operation can be implicit in a provision construed in the context where it occurs;

(iii) Given the context, a provision can be held to apply to cause of action after such provision comes into force, even though the claim on which the action may be based may be of an anterior date; and

(iv) A remedial statute applies to pending proceedings and such application may not be taken to be retrospective if application is to be in future with reference to a pending cause of action;

(v) SARFAESI Act is a remedial statute intended to deal with problem of pre-existing loan transactions which need speedy recovery."

189. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consist of words printed on papers but conceptually, it would be a great deal more than ordinary prose. Of the various rules guiding

how a legislation has to be interpreted, the one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation and the idea behind the rule is that a current law should govern current activities.

190. If legislation confers a benefit on some persons without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant a retrospective effect.

191. Even otherwise, as held in Narandas Karsondas (supra) and L.K. Trust (supra), the right of redemption is not a contractual right, and rather a statutory right. Such right of redemption is generally governed by the TP Act, and subject to material modification or alteration by any overriding special law in this regard. Even under the SARFAESI Act, the right of redemption has been statutorily recognized and given effect to in Section 13(8) of the SARFAESI Act, albeit subject to conditions stipulated thereunder insofar as its exercise is concerned.

192. Thus, the contention of the borrowers that their right of redemption has to necessarily be construed in accordance with the date of when the loan was obtained is completely misconceived. Any contractual terms of arrangement in respect of loan facility obtained will have no bearing or significance in respect of application of the statutory provision of the SARFAESI Act and the rules thereunder. Since the right of redemption under the SARFAESI Act, is nothing but a manifestation of the statutory provision.

193. In this regard, reference may be made to the decision of this Court in Authorized Office, Central Bank of India v. Shanmugavelu reported in 2024 INSC 80 wherein one of us, J.B. Pardiwala J., held that where the legislature makes a conscious departure from the general law or contractual terms by providing for a particular consequence by way of a statutory provision, then the general law or contractual terms will have no application.

VI. FINAL CONCLUSION

194. During the course of hearing, it was brought to our notice that that third party rights were being attempted to be created over the secured asset by the borrower, to the prejudice and detriment of the auction purchaser herein, in order to bypass the sanctity of the auction conducted and in a blatant disregard of the dignity of the proceedings before this Court.

195. We make it abundantly clear that if any third party rights have been created over the said secured asset, the same would be non-est in view of this judgment. If at all we come to learn about any obstruction or resistance in handing over of

the possession of the secured asset to the auction purchaser herein, either at the behest of the borrower or anyone else, we will proceed to take the strictest of actions against such person.

196. Before we close this judgment, we would like to say something as regards the litigation which has unfolded before us. The RDBFI Act was the first legislative enactment that came into force in 1993. It was brough in order to facilitate expeditious recovery of debts by the bank, in order to ensure adequate liquidity and an overall healthy growth-oriented economy.

197. However, due to the continuing rise in number of non-performing assets and a pathetically poor rate of loan recovery, the SARFAESI Act was enacted. The SARFAESI Act was envisioned as a watershed legislation and a panacea to the failure of the existing legislation in addressing the major problems that were being faced by banks and financial institutions in India with respect to the recovery of bad debts, by introducing enforcement of debt without intervention of Page 137 of 139 courts through securitisation and asset reconstruction, a need highlighted by several committees. Various amendments have been made to the SARFAESI Act over the years to ensure that the Act continues to be potent in bringing about meaningful change to the poor credit culture prevailing in the country and put a check on the debt evasive acts of scrupulous borrowers.

198. It has been almost twenty-three years, since the SARFAESI Act has remained in force. It is indeed very sad to note that even after these many years procedural issues such as the one involved in the case at hand, have continued to plague the legislation.

199. Despite a catena of amendments, the glaring anomaly that we have come across in respect of Section 13(8) of the SARAFESI Act and Rule(s) 8 and 9 of the SARFAESI Rules persists. The same renders the very mandate of the provision otiose.

200. We are, however, at our wit's end to note how the ill-wording of Section 13(8) of the SARFAESI Act has resulted in a glaring inconsistency between the aforesaid provision and the SARFAESI Rules framed in lieu thereof. It is unfortunate that the ambiguities within the statutory provisions of the SARFAESI Act and Rules thereunder have left the interests of secured creditors and auction purchasers high and dry. The interpretative deadlock between the provision and the rules has single handedly resulted in a huge mess insofar as enforcement of security interest is concerned., giving birth to an endless pipeline of litigation clogging the specialized forums of the DRT and DRAT, that are expected to expeditiously decide matters of recovery of debt.

201. We humbly urge the Ministry of Finance to take a serious look at these provisions and bring about necessary changes, before it is too late in the day.

202. In the result, both the appeals succeed and are hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside. The pending applications if any shall stand disposed of.

203. The Registry shall forward one copy each of this judgment to all the High Courts across the country and also to the Principal Secretary, Ministry of Finance and the Principal Secretary, Ministry of Law & Justice.

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

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

New Delhi;

September 22, 2025

IN THE SUPREME COURT OF INDIA

Shobhit Kumar Mittal
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Criminal) No. 4069 of 2024]

HEADNOTE – Criminal cases arising out of matrimonial disputes have to be scrutinised with great care, taking into account pragmatic realities.

Courts have to be careful and cautious in dealing with complaints and must take pragmatic realities into consideration while dealing with matrimonial disputes where the allegations have to be scrutinized with great care and circumspection in order to prevent miscarriage of justice and abuse of process of law.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. This appeal arises out of the order dated 27.02.2024 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No.2676 of 2024 dismissing the application filed under Article 226 of the Constitution of India preferred by the accused/appellant, Shobhit Kumar Mittal and thereby refusing to quash the proceedings arising out of FIR No.347 of 2023 dated 09.11.2023 registered at PS Civil Lines, Meerut. The said FIR was filed by Smt. Jyoti Garg, the complainant/respondent No.2, against her husband, Mohit Mittal; her mother-in-law, Shashi Mittal and appellant No.1 herein who is her brother-in-law under Sections 323 and 498A of the Indian Penal Code, 1860 ("IPC", for short) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ("Dowry Act", for short).

3. Briefly stated, the facts of the case are that the complainant/ respondent No.2 got married to Mohit Mittal, brother of the accused/appellant herein on 01.05.2014. After a few months into the marriage, on account of marital discord, the complainant/ respondent No.2 left her matrimonial home and started residing at her parental home. Thereafter, both the parties initiated multiple matrimonial proceedings against each other which are not really germane to the facts of the present appeal.

4. On 09.11.2023, the complainant/respondent No.2 lodged FIR No.347 of 2023 with Police Station Civil Lines, Meerut under Sections 323 and 498A of the IPC and Sections 3 and 4 of the Dowry Act against her husband, mother-in-law and the accused/ appellant herein.

5. On perusal of the FIR dated 09.11.2023, the allegations contained in the same can be crystallized as hereunder:

i. The complainant/respondent No.2 got married to Mohit Mittal and within ten days of marriage, she started facing harassment for dowry.

ii. The appellant along with the husband and mother-in-law of complainant/respondent No.2 got her to write a consent letter which was signed by her uncle and four other relatives after which she was allowed to live at her matrimonial house.

iii. On 10.12.2022, due to repeated harassment related to dowry, a vein of the complainant/respondent No.2 in the brain burst and consequently her right hand and right leg got paralyzed due to which the complainant/respondent No.2 had to undertake physiotherapy.

6. Aggrieved by the registration of the FIR, the accused/ appellant, along with the mother-in-law and husband of the complainant/respondent No.2, filed Writ Petition No.2676 of 2024 under Article 226 of the Constitution of India before the High Court of Allahabad praying for the quashing of FIR No.347 of 2023.

7. The Allahabad High Court, vide impugned order dated 27.02.2024 refused to quash the proceedings arising out of the said FIR. It was observed by the High Court that although the prayer made in the said Writ Petition was to quash the FIR, the accused/appellant sought the relief of grant of protection under Section 41A of the Code of Criminal Procedure, 1973 ("CrPC", for short) only; and that on perusal of the said FIR, a prima facie case of commission of a cognizable offence was made out. 8. Aggrieved by the impugned order dated 27.02.2024, the accused/appellant has preferred the present appeal praying for quashing of FIR No.347 of 2023 dated 09.11.2023.

9. We have heard learned counsel for the accused/appellant and learned counsel for the respondent-State as well as respondent-complainant. We have perused the material on record.

10. We have given our thorough consideration to the arguments advanced at the bar and the material on record.

11. In the instant case, the allegations in the FIR pertain to Sections 323 and 498A of the IPC and Sections 3 and 4 of the Dowry Act.

12. Section 323 of the IPC deals with punishment for voluntarily causing hurt.

13. Section 498A of the IPC deals with offences committed by the husband or relatives of the husband subjecting cruelty towards the wife.

14. An offence is punishable under Section 323 of IPC when a person commits an act with an intention to cause or with knowledge that the said act is likely to cause bodily pain, disease or infirmity to another person. Such an act or omission is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

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

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

16. Further, Section 3 of the Dowry Act deals with the penalty for giving or taking dowry. It states that any person who gives, takes, or abets the giving or taking of dowry shall face a punishment of imprisonment for a minimum term of five years and a fine not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks about the penalty for demanding dowry. It states that any person demanding dowry directly or indirectly from the parents or other relatives or guardians of a bride or bridegroom, as the case may be, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

17. The issue for consideration is whether, given the facts and circumstances of the present case and after examining the FIR, the High Court was right in refusing to quash the criminal proceedings arising out of FIR No.347 of 2023

dated 09.11.2023 under Section 323 and 498A of the IPC and Sections 3 and 4 of the Dowry Act, as against the appellant herein.

18. A bare perusal of the FIR shows that the allegations made by complainant/respondent No.2 are vague and omnibus. Other than claiming that the husband and his family along with the accused/appellant herein mentally harassed her with a demand for dowry, the complainant/respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred or the details of the nature of demand or its particulars. Therefore, the FIR lacks concrete and precise allegations.

Furthermore, the complainant/respondent No.2 has failed to impress the Court as to how the alleged harassment has any proximate relationship to the said injury and nerve damage that she sustained, so as to punish her in-laws under Section 323 IPC. There is no remote or proximate act or omission attributed to the accused/appellant that implicates him or assigns him any specific role in the said FIR for the offence of hurt as defined under Section 319 IPC.

Furthermore, merely stating that the accused/appellant has mentally harassed the complainant/respondent No.2 with respect to a demand for dowry does not fulfill the ingredients of Section 498A of IPC specially in absence of any cogent material or evidence on record to substantiate the said allegations. The term "cruelty" cannot be established without specific instances. The tendency of invoking the aforesaid provisions, without mentioning any specific detail, weakens the case of the prosecution and casts serious aspersions on the probability of the version of the complainant.

Therefore, this Court cannot ignore the missing specifics in the FIR which is the basic premise for invoking the criminal machinery of the State. In such cases involving allegations of cruelty and harassment, there would normally be a series of offending acts, which would be required to be spelt out by the complainant against perpetrators in specific terms to initiate criminal proceedings against them. Therefore, mere general allegations of harassment without pointing out the specific details would not be sufficient to continue criminal proceedings against any person.

19. Courts have to be careful and cautious in dealing with complaints and must take pragmatic realities into consideration while dealing with matrimonial disputes where the allegations have to be scrutinized with great care and circumspection in order to prevent miscarriage of justice and abuse of process of law.

20. In this regard, it would be apposite to rely on the judgment of this Court in the case of State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335 ("Bhajan Lal") with particular reference to paragraph 102 therein, wherein this Court observed as hereunder:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge."

21. On a careful consideration of the aforementioned judicial tests, we find that none of the offences alleged against the accused/ appellant herein is made out. In fact, we find that the allegations of cruelty, mental harassment and voluntarily causing hurt against the accused/appellant herein are vague and general in nature and therefore, the judgment of this Court in the case of Bhajan Lal squarely applies to the facts of this case. It is neither expedient nor in the interest of justice to permit the present prosecution emanating from the FIR to continue.

22. Furthermore, at this juncture, we find it appropriate to quote the observations of this Court in Dara Lakshmi Narayana vs. State of Bihar, (2025) 3 SCC 735 wherein it was observed:

"27. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord.

Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. We say so for the reason that while the complainant/respondent No.2 has made vague and omnibus allegations against the accused/appellant herein, she has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.

30. The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise Page 22 of 26 in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife.

Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm-twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.

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

23. In the aforementioned facts of the case and keeping the judicial dicta rendered by this Court in mind, we find that the impugned order dated 27.02.2024 of the High Court ought to be set aside and is set aside. Consequently, FIR No.347 of 2023 dated 09.11.2023 lodged at Police Station Civil Lines, Meerut and all consequent proceedings initiated pursuant thereto stand quashed, only qua the accused/appellant herein.

24. It is needless to observe that the observations made in the present appeal shall not come in the way of any other proceedings pending between the parties which shall be decided on their own merits and in accordance with law. The appeal is allowed in the aforesaid terms.

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

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

New Delhi;

September 24, 2025

IN THE SUPREME COURT OF INDIA

Arshad Neyaz Khan
Vs.
State of Jharkhand & Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Criminal) No. 3606 of 2024]

HEADNOTE – The offence of criminal breach of trust and cheating cannot co-exist on the basis of same allegations. The offence of cheating (S.420 IPC/S.318 BNS) involves criminal intention from inception; however, for criminal breach of trust (S.406 IPC/S.316 BNS), there is lawful entrustment at the beginning, which is later misappropriated.

For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. This appeal arises out of the order dated 19.01.2023 passed by the High Court of Jharkhand at Ranchi in Cr.M.P. No.2384 of 2022 dismissing the application filed under Section 482 of the Code of Criminal Procedure (hereinafter 'CrPC' for short) preferred by the accused-appellant and thereby refusing to quash the proceedings arising out of the Complaint Case No.619 of 2021 and FIR No.18 of 2021 dated 08.02.2021 registered at PS Hindpiri that was filed by Md. Mustafa, the complainant/respondent No.2.

3. Briefly stated, the facts of the case are that the appellant is the owner of the property situated at Khata No.186, MS Plot No.1322, Sub Plot No.1322/38-A and that he is also the power of attorney holder for the property adjacent to the above-mentioned plot situated at Sub-Plot No.1322/39-A-1.

4. On 16.02.2013, the appellant entered into an agreement for sale of the aforesaid properties with the complainant/respondent No.2 for a total consideration of Rs.43,00,000/-. Out of the said consideration, the petitioner received an advance payment of Rs.20,00,000/- on the date of agreement for sale.

5. Thereafter, on 29.01.2021, after nearly eight years from the date of the agreement for sale, aggrieved by the non-transfer of the said properties, a complaint was filed being Complaint Case No.619 of 2021 by the complainant/respondent No.2 against the appellant alleging offences under Sections 406, 420, and 120B of the Indian Penal Code, 1860 (hereinafter, "IPC" for short.). The said complaint culminated into registration of the FIR No.18 of 2021 dated 08.02.2021 at Police Station Hindpiri against the appellant. The allegations contained in the said complaint and F.I.R. can be crystallized as hereunder:

i. In January 2013, one Atik Alam assured the complainant/respondent No.2 that the property owned by the appellant situated at Khata No.186, MS Plot No.1322, Sub Plot No.1322/38-A was available for sale. Thereafter, upon meeting the appellant, the complainant/respondent No.2 was assured that all the documents and titles to the said property were in order and correct.

ii. The complainant/respondent No.2 was also informed that the land adjacent to the property owned by the appellant, situated at M.S. Plot No.1322, Sub Plot No.1322/39-A-1, was owned by six different individuals, all of whom had created a power of attorney in favour of the appellant and therefore authorized him to sell the said adjacent land as well.

iii. Pursuant to the said representations, the complainant/ respondent No.2 agreed to buy the said properties for a consideration of Rs.43,00,000/- vide agreement for sale dated 16.02.2013. In furtherance to the said agreement, a total sum of Rs.20,00,000/- was given to the appellant and it was agreed between the parties that the balance amount shall be paid by the complainant/respondent No.2 to the appellant at the time of the registration of the said document.

iv. After the execution of the said agreement for sale, the appellant failed to convey title of the said lands to the complainant/ respondent No.2 nor did he return the money deposited with him by the complainant/respondent No.2.

6. Apprehending arrest on the aforesaid complaint and F.I.R., the appellant herein preferred Anticipatory Bail Petition No.681 of 2021 before the Judicial Commissioner, Ranchi, Jharkhand on 22.03.2021.

7. Meanwhile, the parties were referred to the Mediation Centre, Ranchi wherein they arrived at a mutually satisfactory disposition according to which the appellant agreed to return a sum of Rs.24,00,000/- to the complainant/respondent

No.2 in five instalments as a full and final settlement of all the claims between the parties.

8. The Court of Judicial Commissioner, Ranchi, vide order dated 23.12.2021, allowed the Anticipatory Bail Application No.681 of 2021.

9. In pursuance to the aforesaid order of the Judicial Commissioner, Ranchi, the appellant appeared before the said Court on 19.01.2022 to surrender and sought permission to furnish bail bond. The appellant, in compliance with the anticipatory bail conditions imposed by the Judicial Commissioner, Ranchi, also furnished a demand draft bearing no. 115484 dated 13.01.2022 of Rs.5,00,000/- in favour of the complainant/respondent No.2 as a payment of the first instalment.

10. Subsequently, on the failure of the appellant to abide by the condition of timely payment of instalments fixed by the Judicial Commissioner vide its order dated 23.12.2021 while granting anticipatory bail, the complainant/respondent No.2 preferred Criminal Miscellaneous Case No.39 of 2022 in Anticipatory Bail Application No.681 of 2021 seeking cancellation of the bail granted to the appellant. The said application was allowed and consequently vide order dated 15.06.2022, the anticipatory bail granted to the appellant was cancelled.

11. Aggrieved by the order dated 15.06.2022 of the Court cancelling the Anticipatory Bail, the appellant preferred Criminal Miscellaneous Petition No.2384 of 2022 under Section 482 CrPC before the Jharkhand High Court at Ranchi praying for the relief of quashing of F.I.R. No.18 of 2021; Criminal Complaint Case No.619 of 2021; and order dated 15.06.2022 vide which the anticipatory bail of the appellant was cancelled.

12. The Criminal Miscellaneous Petition No. 2384 of 2022 preferred by the appellant was partly allowed by the Jharkhand High Court vide impugned order dated 19.01.2023 whereby the High Court although refused to quash the criminal proceedings against the appellant but nevertheless allowed him the liberty to approach the High Court to prefer a fresh anticipatory bail application.

13. Aggrieved by the impugned order dated 19.01.2023 passed by the High Court of Jharkhand, the appellant has preferred the present appeal.

14. We have heard learned counsel for the appellant and learned counsel for the respondent-State as well as respondent-complainant. We have perused the material on record.

15. We have given our thorough consideration to the arguments advanced at the bar and the material on record.

16. The contents of the complaint as well as the FIR would have to be read in light of the ingredients of Sections 406 and 420 IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 29.01.2021, it is noted that the complainant/respondent No.2 has filed the said complaint invoking Sections 406, 420 and 120B IPC. For ease of reference, the aforesaid Sections are extracted as under:

"406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

120B. Punishment of criminal conspiracy.-

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

17. In Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1 ("Inder Mohan Goswami"), while dealing with Section 420 IPC, this Court observed thus:

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest.

In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

18. In light of the facts and circumstances of the present case, we find that the complainant/respondent No.2 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 IPC. We fail to understand as to how the allegations against the appellant herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the FIR as well as the complaint, we do not find that the offence of cheating as defined under Section 420 IPC is made out and we do not find that there is any cheating and dishonest inducement to deliver any property or a valuable security involved in the instant case.

19. It is settled law that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale.

We must hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No.2. Mere allegations by the complainant/respondent No.2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No.2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or

converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case.

In the present case, the complainant/respondent No.2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No.2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust.

21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating.

For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

22. At this point, we must hasten to add that the complaint was filed after a delay of nearly eight years. Learned counsel for the complainant/respondent No.2 has failed to impress the Court about the reason for the delay and hence this fact further raises a suspicion about the bona fides of the complainant/respondent No.2. The delay in lodging of the complaint and FIR, coupled with the vague allegations do not inspire any confidence in the Court to allow the criminal proceedings to continue against the appellant.

Further, the complainant/respondent No.2 had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights which has not been availed but a route through criminal proceedings, when no

ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant therefore, in our view, could not be attributed any mens rea and therefore, the allegations levelled by the prosecution against the appellant are unsustainable.

23. Furthermore, in Inder Mohan Goswami, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down any inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant herein would cause undue harassment to him because as observed hereinabove, no prima facie case for the offence under Sections 406 or 420 IPC is made out.

24. In this regard, it would be apposite to rely on the judgment in the case of State of Haryana vs. Bhajan Lal, 1992 Suppl. (1) SCC 335 ("Bhajan Lal") with particular reference to paragraph 102 therein, where this Court observed:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge."

25. On a careful consideration of the aforementioned judgment in the light of the facts of this case, we find that none of the offences alleged against the appellant herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant herein have been made with a mala fide intent and therefore, the judgment of this Court in the case of Bhajan Lal and particularly sub-paragraphs 1, 3, 5 and 7 of paragraph 102, extracted above, squarely apply to the facts of this case. In our view, it is neither expedient nor in the interest of justice to permit the present prosecution to continue.

26. At this juncture, we find it apposite to mention the observations of this Court in Vishal Noble Singh vs. State of Uttar Pradesh, 2024 SCC OnLine SC 1680 wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud.

We say so for the reason that while the complainant/respondent No.2 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust

among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.

27. In the aforementioned circumstances, the impugned order of the High Court is set aside and consequently, the Complaint Case No.619/2021 and FIR No.18 of 2021 dated 08.02.2021 lodged with Police Station Hindpiri and all consequent proceedings initiated pursuant thereto stand quashed. The appeal is allowed in the aforesaid terms.

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

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

New Delhi;

September 24, 2025

IN THE SUPREME COURT OF INDIA

Sanjabij Tari
Vs.
Kishore S. Borcar and Anr

[Criminal Appeal No. 1755 of 2010]

HEADNOTE – An accused need not be heard at the pre-cognizance stage of complaints filed for dishonour of cheque as per Section 138 of the Negotiable Instruments Act.

The guidelines issued are as follows :

A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued dasti i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub- Sections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023

may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

D. Each and every complaint under Section 138 of the NI Act shall contain a synopsis in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint:

Complaint under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____
(ii) Accused: _____
(In case where the accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____
(ii) Date: _____
(iii) Amount: _____
(iv) Drawn on Bank/Branch: _____
(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____
(ii) Date of Return/Dishonour Memo: _____
(iii) Branch where cheque was dishonoured:_____
(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____
(ii) Mode of Service: _____
(iii) Date of Dispatch & Tracking No.: _____
(iv) Proof of Delivery & date of delivery: _____
(v) Whether served:_____
(vi) If Not, reasons thereof:_____
(vii) Reply to the Legal Demand Notice, if any_____

V. Cause of Action

(i) Date of accrual: _____
(ii) Jurisdiction invoked under Section 142(2): _____
(iii) Whether any other complaint under section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of accused and trial under Section 138 NI Act_____
(ii) Whether Award of Interim compensation under Section 143A of NI Act sought _____

VII. Filed through:

Complainant/Authorized Representative

E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.

F. Since the object of Section 143 of the NI Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, this Court reiterates the direction of this Court in In Re: Expeditious Trial of cases under Section 138 of NI Act (supra) that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this Court clarifies that in view of the judgment of the Delhi High Court in Rajesh Agarwal vs. State and Anr., 2010 SCC OnLine Del 2511, the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under Section 251 Cr.P.C. / Section 274 BNSS, 2023 including the following questions :

(i) Do you admit that the cheque belongs to your account? Yes/No

(ii) Do you admit that the signature on the cheque is yours? Yes/No

(iii) Did you issue/deliver this cheque to the complainant? Yes/No

(iv) Do you admit that you owed liability to the complainant at the time of issuance? Yes/No

(v)If you deny liability, state clearly the defence:
(a) Security cheque only;
(b) Loan repaid already;
(c) Cheque altered/misused;
(d) Other (specify).
(vi) Do you wish to compound the case at this stage? Yes/No

G. The Court shall record the responses to the questions in the order- sheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C. / Chapter XXII of the BNSS, 2023.

H. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

I. Since physical courtrooms create a conducive environment for direct and informal interactions encouraging early resolution, the High Courts shall ensure that after service of summons, the matters are placed before the physical Courts. Exemptions from personal appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

J. Wherever cases under Section 138 of the NI Act are permitted to be heard and disposed of by evening courts, the High Courts should ensure that pecuniary limit of the cheque amount is realistic. For instance, in Delhi, the jurisdiction of the evening courts to hear and decide cases of cheque amount is not exceeding Rs.25,000/-. In the opinion of this Court, the said limit is too low. The High Courts should forthwith issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

K. Each District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting the pendency and progress of cases under Section 138 of the NI Act. The dashboard shall include, inter alia, details regarding total pendency, monthly disposal rates, percentage of cases settled/compounded, average number of adjournments per case and the stage-wise breakup of pending matters. The District and Sessions Judges in aforesaid jurisdictions shall conduct monthly reviews of the functioning of Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.

L. The Chief Justices of Delhi, Bombay and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These Committees should meet at least once a month and explore the option of appointing experienced Magistrates to deal with Section 138 of the NI Act cases as well as promoting mediation, holding of Lok Adalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

JUDGMENT

Manmohan, J.

1. The present Appeal has been filed challenging the ex-parte judgment and order dated 16th April 2009 passed by the High Court of Bombay at Goa acquitting the Respondent No.1-Accused under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') and reversing the concurrent judgments of the Trial Court and the Sessions Court.

ARGUMENTS ON BEHALF OF APPELLANT-COMPLAINANT

2. Mr. Amarjit Singh Bedi, learned counsel for the Appellant-Complainant submitted that the High Court in exercise of its revisional jurisdiction erred in upsetting the conviction of the Respondent No.1-Accused under Section 138 of the NI Act based on categorical findings of facts rendered by both the Courts below that the dishonoured cheque had been issued in favour of the Appellant-Complainant in discharge of a legally enforceable debt.

3. He contended that there was no evidence on record to establish that the Appellant-Complainant did not have the financial means to advance a friendly loan of Rs.6,00,000/- (Rupees Six Lakhs) to the Respondent No.1-Accused. He emphasised that the Appellant-Complainant in his statement under oath had stated that in order to oblige his friend/Respondent No.1-Accused , the Appellant- Complainant had arranged money from his father, who was a cloth merchant having two shops and even went to the extent of parting with a portion of the loan amount which he himself had borrowed from a financial institution.

4. He pointed out that the Respondent No.1-Accused during the course of arguments on sentencing before the Trial Court had prayed for leniency on the ground that he was ready to pay the cheque amount to the Appellant-Complainant within a reasonable time.

5. He further stated that though the Appellant-Complainant filed an application under Section 482 of the Code of Criminal Procedure ('Cr.P.C.') for recall of the impugned judgment by substantiating sufficient cause for the absence of his

advocate on 16th April 2009, yet the learned Single Judge had been pleased to dismiss the said application holding that the Court had become functus officio and it had no jurisdiction under criminal law to recall the impugned order. He submitted that the High Court erred in not exercising its inherent powers to set aside the impugned judgment which, for all legal purposes, was an ex-parte order.

6. He lastly stated that if this Court were to set aside the impugned judgment of the High Court and restore the concurrent judgments of the Trial Court and Sessions Court, the Appellant-Complainant would accept the payment of outstanding amount in instalments as directed by the Trial Court.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1-ACCUSED

7. Per contra, Mr. Ankit Yadav, learned counsel for the Respondent No.1-Accused stated that the Appellant-Complainant was being paid a salary of only Rs.2,300/- (Rupees Two Thousand and Three Hundred) per month at the relevant point of time, which was not even adequate to take care of his family, leave alone sufficient to advance a loan of Rs.6,00,000/- (Rupees Six Lakhs). He contended that the Appellant-Complainant was a highly indebted person who did not have any source of income other than his meagre salary and therefore, he did not have the wherewithal to advance such a huge loan and that too without issuance of any kind of receipt.

8. He submitted that the accused can always rely on material and/or evidence filed by the complainant in order to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability. In support of his submission, he relied upon the judgment of this Court in Rangappa vs. Sri Mohan, (2010) 11 SCC 441.

9. He further submitted that whenever the accused questions the financial capacity of the complainant in support of his probable defence, despite the presumption of a legally enforceable debt under Section 139 of the NI Act, the onus shifts back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash and thereafter issuance of a cheque. In support of his submission, he relied upon the judgment of this Court in APS Forex Services Private Limited vs. Shakti International Fashion Linkers and Ors., (2020) 12 SCC 724.

10. He emphasised that the defence of the Respondent No.1-Accused that a blank cheque had been given to the Appellant-Complainant to enable him to obtain a loan from the bank was more than a probable defence to rebut the presumption under the NI Act, particularly, in view of the fact that the parties were known to each other.

REASONING

COPE AND INTENT OF CHAPTER XVII OF NI ACT

11. Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the scope and intent of Chapter XVII (Sections 138 to 148) of NI Act which has been inserted by Act 66 of 1988 w.e.f. 1st April 1989.

12. The Statement of Objects and Reasons of Act 66 of 1988 states, "to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

13. The provisions contained in Chapter XVII provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

14. Consequently, this Court is of the view that the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.

ONCE EXECUTION OF CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No.1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two Judges Bench in

Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54 have been set aside by a three Judges Bench in Rangappa (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197].

18. The judgment of this Court in APS Forex Services Private Limited (supra) relied upon by learned counsel for the Respondent No.1-Accused only says that presumption under Section 139 of the NI Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for the Respondent No.1-Accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under Section 139 of the NI Act does not arise.

APPROACH OF SOME COURTS BELOW TO NOT GIVE EFFECT TO THE PRESUMTIONS UNDER SECTIONS 118 AND 139 OF NI ACT IS CONTRARY TO MANDATE OF PARLIAMENT

19. Recently, the Kerala High Court in P.C. Hari vs. Shine Varghese & Anr., 2025 SCC OnLine Ker 5535 has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty

Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in P.C. Hari (supra) is set aside.

21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.

NO DOCUMENTS AND/OR EVIDENCE LED WITH REGARD TO THE FINANCIAL INCAPACITY OF THE APPELLANT

22. It is pertinent to mention that in the present case, the Respondent No.1-Accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the Appellant-Complainant to advance the loans in question. For instance, this Court in Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. vs. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125 has held that presumptions under Sections 118 and 139 of the NI Act can be rebutted by the accused examining the Income Tax Officer and bank officials of the complainant/drawee.

WHEN THE EVIDENCE OF PW-1 IS READ IN ITS ENTIRETY, IT CANNOT BE SAID THAT THE APPELLANT-COMPLAINANT HAD NO WHEREWITHAL TO ADVANCE LOAN

23. Most certainly, the accused can rely upon the evidence adduced by the complainant to rebut the presumption with regard to the existence of a legally enforceable debt or liability, yet in the present case, when the evidence of Appellant-Complainant (PW-1) is read in its entirety, like it should be, it cannot be said that the Appellant-Complainant had no wherewithal to advance any loan to the Respondent No.1-Accused.

24. In fact, the Appellant-Complainant, in his statement, has stated that as the Respondent No.1-Accused was his friend, he had advanced part of the loan received by him and had also taken loan from his father to advance money to the Respondent No.1-Accused.

25. The Trial Court in its order and judgment dated 30th April 2007 has held that the Respondent No.1-Accused has failed to rebut the presumption under Sections 118 and 139 of the NI Act and that the Appellant-Complainant has proved the

legally enforceable debt. The relevant portion of the Trial Court's order and judgment dated 30th April 2007 is reproduced hereinbelow:-

"11. Accused had not disputed his signature on the cheque. Complainant stated that he had advanced to accused amount of cheque in two different installments on two different occasions cannot be believed has no merit. Accused himself admitted his signature on the cheque and accused had failed to rebut the presumption in favour of the complainant as available under Negotiable Instruments Act, 1881.

12. As regard the contention of the Ld. Advocate for the accused that the complainant failed to show legally enforceable liability due to him by the accused has also no merit as there is cogent evidence of the complainant supported with documentary evidence as regard the cheque and its dishonour and its non payment by the accused inspite of the receipt of the notice to pay the same."

26. The Sessions Court too specifically rejected the contention of the Respondent No.1-Accused that the Appellant-Complainant had no means to advance the loan of Rs.6,00,000/- (Rupees Six Lakhs) to the Respondent No.1- Accused. The relevant portion of the Sessions Court's judgment dated 17th September 2008 is reproduced hereinbelow:-

"15. The contention of the accused, now in appeal, that the complainant had no means to sustain himself and was in debt to various institutions is not borne out from the records. No doubt, no documentary evidence is produced by the complainant nor any witness is there to prove that he gave Rs.6,00,000/- to the accused. But the circumstances, discussed above are such that the testimony of PW1 is sufficient to prove the said friendly loan transaction."

IN REVISIONAL JURISDICTION, HIGH COURT DOES NOT, IN THE ABSENCE OF PERVERSITY, UPSET CONCURRENT FACTUAL FINDINGS

27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: Bir Singh (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in Southern Sales & Services and Others vs. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

FAILURE OF ACCUSED TO REPLY TO NOTICE LEADS TO AN INFERENCE

29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainant's version. This Court in Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735 has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:-

"10. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents.

It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

(emphasis supplied)

30. This Court in MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234 has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

31. Also, after receipt of the legal notice, wherein the Appellant-Complainant alleged that the Respondent No.1-Accused's cheque had bounced, no complaint or legal proceeding was initiated by the Respondent No.1-Accused alleging that the cheque was not to be encashed. Consequently, the defence of financial incapacity of Appellant-Complainant advanced by the Respondent No.1-Accused is an afterthought.

RESPONDENT NO.1-ACCUSED'S DEFENCE THAT A SIGNED BLANK CHEQUE WAS ISSUED TO ENABLE COMPLAINANT TO OBTAIN A LOAN IS UNBELIEVABLE

32. The High Court's finding that the Respondent No.1-Accused 's defence that a signed blank cheque was issued by him so as to enable his friend/Appellant-Complainant to obtain a loan from a bank was sufficient to rebut the presumptions under Sections 118 and 139 of the NI Act is unbelievable and absurd. This Court agrees with the Sessions Court's finding in the present case that, "It is funny to say that for obtaining loan from the bank, one can show a cheque which is issued on an account in which there are not sufficient funds. The case of the accused is unbelievable".

KEEPING IN VIEW THE MASSIVE BACKLOG OF CHEQUE BOUNCING CASES, THE FOLLOWING GUIDELINES ARE ISSUED

33. Before parting with this matter, this Court takes judicial notice of the fact that despite repeated directions by this Court in various judgments including Indian Bank Association and Others vs. Union of India and Others, (2014) 5 SCC 590, Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663 and In Re: Expeditious Trial of cases under Section 138 of NI Act 1881, (2021) 16 SCC 116, pendency of cheque bouncing cases under the NI Act in District Courts in major metropolitan cities of India continues to be staggeringly high.

For instance, the pendency of Section 138 cases as on 01st September 2025 in Delhi District Courts is 6,50,283 (Six Lakhs Fifty Thousand Two Hundred Eighty Three), Mumbai District Courts is 1,17,190 (One Lakh Seventeen Thousand One Hundred Ninety) and Calcutta District Courts is 2,65,985 (Two Lakhs Sixty Five Thousand Nine Hundred Eighty Five) [Source: National Judicial Data Grid]. This pendency is putting an unprecedented strain on the judicial system as in some States, cases under Section 138 of the NI Act constitute nearly fifty per cent (50%) of the pendency in Trial Court (in Delhi Section 138 NI Act cases constitute 49.45% of total Trial Court pendency).

34. In P. Mohanraj and Others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258, this Court while re-iterating the position of law with regard to the nature of offence under Section 138 of the NI Act, has held as under:

"53. A perusal of the judgment in Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature.

Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."

(emphasis supplied)

35. Admittedly, the offence under Section 138 of the NI Act is quasi-criminal in character and is compoundable [See: Damodar S. Prabhu (supra)]. Recently, in Gian Chand Garg v. Harpal Singh & Anr. (Criminal Appeal No. 3789 of 2025 dated 11th August 2025), a co-ordinate Bench of this Court has set aside concurrent convictions rendered by the Courts below on the ground that the proceeding under Section 138 of the NI Act is essentially a civil proceeding and it is open to the parties to enter into a voluntary compromise.

Consequently, this Court is of the view that not only a voluntary compromise can bring the proceedings under Section 138 NI Act to an end, but the accused under the said offence are entitled to benefit under the Probation of Offenders Act, 1958 [See: Chellammal & Another vs. State Represented by the Inspector of Police, 2025 SCC OnLine SC 870]. Observations to the contrary by Kerala HC in M.V. Nalinakshan vs. M. Rameshan & Anr. 2009 All MR (Cri) Journal 273 are set aside.

36. Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:-

A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued dasti i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed.

The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub- Sections

1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023 may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

D. Each and every complaint under Section 138 of the NI Act shall contain a synopsis in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint:-

Complaint under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____
(ii) Accused: _____

(In case where the accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____
(ii) Date: _____
(iii) Amount: _____

(iv) Drawn on Bank/Branch: _____
(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____
(ii) Date of Return/Dishonour Memo: _____
(iii) Branch where cheque was dishonoured:_____
(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____
(ii) Mode of Service: _____
(iii) Date of Dispatch & Tracking No.: _____
(iv) Proof of Delivery & date of delivery: _____
(v) Whether served:_____
(vi) If Not, reasons thereof:_____
(vii) Reply to the Legal Demand Notice, if any_____

V. Cause of Action

(i) Date of accrual: _____
(ii) Jurisdiction invoked under Section 142(2): _____
(iii) Whether any other complaint under section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of accused and trial under Section 138 NI Act_____
(ii) Whether Award of Interim compensation under Section 143A of NI Act sought _____

VII. Filed through:

Complainant/Authorized Representative"

E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.

F. Since the object of Section 143 of the NI Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, this Court reiterates the direction of this Court in In Re: Expeditious Trial of cases under Section 138 of NI Act (supra) that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this Court clarifies that in view of the judgment of the Delhi High Court in Rajesh Agarwal vs. State and Anr., 2010 SCC OnLine Del 2511, the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under Section 251 Cr.P.C. / Section 274 BNSS, 2023 including the following questions:-

(i) Do you admit that the cheque belongs to your account? Yes/No

(ii) Do you admit that the signature on the cheque is yours? Yes/No

(iii) Did you issue/deliver this cheque to the complainant? Yes/No

(iv) Do you admit that you owed liability to the complainant at the time of issuance? Yes/No

(v) If you deny liability, state clearly the defence:
(a) Security cheque only;
(b) Loan repaid already;
(c) Cheque altered/misused;
(d) Other (specify).

(vi) Do you wish to compound the case at this stage? Yes/No

G. The Court shall record the responses to the questions in the ordersheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C. / Chapter XXII of the BNSS, 2023.

H. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

I. Since physical courtrooms create a conducive environment for direct and informal interactions encouraging early resolution, the High Courts shall ensure that after service of summons, the matters are placed before the physical Courts. Exemptions from personal appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

J. Wherever cases under Section 138 of the NI Act are permitted to be heard and disposed of by evening courts, the High Courts should ensure that pecuniary limit of the cheque amount is realistic. For instance, in Delhi, the jurisdiction of the evening courts to hear and decide cases of cheque amount is not exceeding Rs.25,000/-. In the opinion of this Court, the said limit is too low. The High Courts should forthwith issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

K. Each District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting the pendency and progress of cases under Section 138 of the NI Act. The dashboard shall include, inter alia, details regarding total pendency, monthly disposal rates, percentage of cases settled/compounded, average number of adjournments per case and the stage-wise breakup of pending matters. The District and Sessions Judges in aforesaid jurisdictions shall conduct monthly reviews of the functioning of Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.

L. The Chief Justices of Delhi, Bombay and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These Committees should meet at least once a month and explore the option of appointing experienced Magistrates to deal with Section 138 of the NI Act cases as well as promoting mediation, holding of Lok Adalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

37. It is pertinent to mention that this Court framed guidelines for compounding offences under the NI Act nearly fifteen years back in Damodar S. Prabhu (supra). The relevant portion of the said Judgment is reproduced hereinbelow:-

"THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a

condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

24. We are also conscious of the view that the judicial endorsement of the abovequoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.

26. Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to the subject-matter where there was a legislative vacuum."

38. Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to 'revisit and tweak the guidelines'. Accordingly, the aforesaid guidelines of compounding are modified as under:-

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

39. This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

CONCLUSION

40. Keeping in view the aforesaid findings, the appeal is allowed. The impugned order passed by the High Court dated 16th April, 2009 is set aside and the judgment as well as the orders of Trial Court and Sessions Court are restored with a direction to the Respondent No.1-Accused to pay Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand) in 15 (fifteen) equated monthly instalment of Rs.50,000/- (Rupees Fifty Thousand) each. The High Courts and District Courts shall implement the aforesaid guidelines not later than 01st November, 2025.

.....J. [Manmohan]

.....J. [N.V. Anjaria]

New Delhi;

September 25, 2025

IN THE SUPREME COURT OF INDIA

Executive Trading Company Pvt. Ltd.
Vs.
Grow Well Mercantile Pvt. Ltd.

[Civil Appeal No._____ of 2025
@ SLP (C) No. 1134 of 2024]

HEADNOTE – No defence would be allowed to come on record in a summary suit under Order XXXVII CPC without the leave of the court.

JUDGMENT

S.V.N. Bhatti, J.

1. Leave granted.

2. We have heard Advocates Mr. Debesh Panda and Mr. Sanampreet Singh for the parties. The appeal is at the instance of the Plaintiff in Commercial Summary Suit No. 19 of 2020 before the High Court of Judicature at Bombay and challenges the order dated 05.12.2023. To make the narrative brief, the order impugned is excerpted hereunder:

"1. Let the reply to the Summons for Judgment be filed by 20th December, 2023 with a copy to the other side. Rejoinder, if any, be filed by 9th January, 2024 with a copy to the other side.

2. List on 9th January, 2024."

3. The parties to the civil appeal had business transactions for reasonably good time. The present Commercial Suit is filed to recover the alleged admitted and confirmed total liability of Rs. 2,15,54,383.50/- together with interest at 24% per annum amounting to Rs. 2,38,50,845.00/-.

4. The suit was filed on 15.10.2019 under Order XXXVII of the Civil Procedure Code, 1908 ('the CPC'). Summons were issued on 15.01.2020, along with the Plaint and Annexures, which have been stated as served on the Defendants on 18.01.2020. On 28.01.2020, the Defendant entered appearance in terms of sub-Rule (3) of Rule 3 of Order XXXVII of the CPC. The Plaintiff filed Summons for Judgment No. 75 of 2021 in Commercial Summary Suit No. 19 of 2020. The Plaintiff alleges that the Summons for Judgment No. 75 of 2021 was served on the Defendant on 11.01.2022. According to the plaintiff, the Defendant ought to

have, if advised, filed for leave to defend by disclosing the defence available against the claim in the Summary Suit.

5. Admittedly, instead of filing an Application seeking leave to defend, the Defendant filed an I.A. (L) No. 7771 of 2022 praying for the dismissal of the suit for non-compliance with Section 12A of the Commercial Courts Act. On 08.04.2022, the application was allowed, the parties were referred to mediation, and the Summary Suit was kept in abeyance. The Mediation Report dated 09.02.2023 was filed by the Mediator. The I.A. No. 1353 of 2023 was filed to allow the Plaintiff to amend the plaint and summons for judgment as per the Schedule annexed, and the same was allowed by order dated 29.08.2023. The operative portion reads as follows:

"6. Having heard the learned counsel and having perused the papers and proceedings, the draft amendment as requested by way of praecipe is allowed. Let the amendment to the plane as well as the summons for judgment be carried out within a period of two weeks.

7. Let the amended plane as well as the summons for judgment be served upon the other side within a period of one week thereafter."

The defendant filed an Application for condoning the delay in applying for leave to defend on 23.01.2024. The said application is still pending before the High Court.

6. By referring to the above chronological undisputed events, Advocate for Plaintiff contends that the step ordered by the High Court, allowing reply to the Summons for Judgment, is procedurally incorrect and unsustainable. The requirement in terms of sub-Rule (5) of Rule 3 of Order XXXVII of the CPC is to file an application seeking leave to file the defence. In the application filed praying for leave, the court decides whether a case for granting leave to defend is made out or not, considering the nature of the recovery. At the present stage, we are not determining whether a case for granting leave is made out or not, but the precise question is whether the court could have permitted filing a reply/defence without even praying for leave, setting out the available defence, etc.

7. To appreciate the procedural objection pointed out by the Plaintiff, the sequence of steps under Order XXXVII Rule 3 sub-Rules (1) to (7) of the CPC is set out as follows:

7.1 On filing the Summary Suit, the plaintiff must serve the defendant with the plaint and annexures, together with the summons.

7.2 The defendant has ten days to enter an appearance, in person or through a pleader, and provide a service address. On the same day, the defendant must notify the plaintiff or its pleader of its appearance.

7.3 The plaintiff then serves a summons for judgment on the defendant in the court-prescribed format, supported by an affidavit verifying the cause of action, the amount claimed, and the belief that the defendant has no defence.

7.4 Thereafter, the defendant has ten days to apply for leave to defend by filing an affidavit disclosing a genuine and substantial defence. The court may grant leave to defend unconditionally or on such terms that may appear to be just.

7.5 The court shall not refuse leave unless the defence is frivolous or vexatious. Further, if the defendant admits to owing part of the amount, it must deposit that amount in court to get the leave to defend.

7.6 If the defendant does not apply for leave or its application seeking leave is refused, the plaintiff is entitled to immediate judgment. If the court grants leave to defend but the defendant fails to comply with any condition or other directions, the plaintiff is also entitled to immediate judgment.

7.7 The court has the discretion to condone any delay in entering an appearance or applying for leave to defend if the defendant shows sufficient cause.

8. Advocate Sanampreet Singh, appearing for the Defendant, contends that the Application seeking condonation of delay is pending. Even if the application is under a wrong provision, the same is not a ground to assume that the Plaintiff is entitled to a decree. Further, the delay stated by the Plaintiff in filing the application is not correct, as it is always available to the Defendant to convince the court either to grant leave or condone the delay. He argues that the delay in filing the application, as stated by the Plaintiff, is factually incorrect.

9. After perusing the record and also the step taken by the High Court in bypassing the requirement of sub-Rules (4) and (5) of Rule 3 of Order XXXVII of the CPC; without much deliberation, we are of the view that the order impugned needs to be interfered with in as much as if a reply or defence is allowed to come on record in a summary suit without the Leave of the Court then the distinction sought to be maintained between a Suit normally instituted and Summary Suit under Order XXXVII of the CPC stands effaced.

The procedural deviation goes to the root of the matter. Hence, the order impugned is set aside. The setting aside of the order impugned shall not be understood as foreclosing the options available to the Defendant in the Judgment Summons already issued, or the observations made in the present order shall not prejudice the case of either party.

10. The appeal stands allowed by leaving the option to the parties to pursue remedies in accordance with the steps envisaged in Rule 3 of Order XXXVII of the CPC. There shall be no order as to costs.

.....J. [Ahsanuddin Amanullah]

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

New Delhi;

September 25, 2025

4. Study Material-G.K.

ADVENT OF THE EUROPEANS IN INDIA

In the late fifteenth century, Portuguese explorer Vasco da Gama reached the shores of the Indian subcontinent, establishing maritime connections that marked the onset of European influence. Subsequent expeditions by other European powers, including the Dutch, English, and French, intensified this engagement, leading to competition for trade dominance and territorial control.

The establishment of trading posts and colonies paved the way for a new chapter in India's history, shaped by global interactions and the eventual ascendance of British colonial rule. The arrival of Europeans would indelibly shape India's destiny and leave a lasting imprint on its social, economic, and political landscapes.

The Advent of Europeans in India

The advent of Europeans in India marked a significant turning point in the history of India.

The arrival of Vasco da Gama: It began with the arrival of Portuguese explorer Vasco da Gama in 1498, establishing a direct sea route between Europe and India. This pivotal moment opened doors to European colonialism and trade domination in the sub-continent.

Other Europeans: The Portuguese, followed by other European powers, sought to control the lucrative spice trade, leading to the establishment of trading posts and fortifications along the Indian coastline.

Impact: Their arrival brought about cultural exchanges, conflicts with local rulers, and the reshaping of Indian society. This period laid the foundation for centuries of European influence and colonial rule in India.

The Advent of The Portuguese

The Portuguese arrival in India marked the beginning of European colonialism in the subcontinent.

Factors behind the Portuguese Voyage to India

After the decline of the Roman Empire and the fall of Constantinople in 1453, the Arabs established dominance in Egypt and Persia, controlling the trade routes to

India. The Europeans lost direct contact with India and the easy accessibility to Indian commodities.

Spirit of the voyage: In the 15th century, there was a growing eagerness in Europe for adventurous sea voyages to reach the East, driven by the spirit of the Renaissance and advancements in shipbuilding and navigation.

Division of non-Christian world: The Treaty of Tordesillas(1494) divided the non-Christian world between Portugal and Spain, granting Portugal the eastern territories and Spain the western territories. This set the stage for Portuguese incursions into the waters around India.

The Portuguese Governors

Vasco da Gama:

The arrival of Vasco da Gama in Calicut (now Kozhikode) in 1498 had a significant impact on Indian history. The Hindu ruler of Calicut, the Zamorin, welcomed him as the prosperity of his kingdom relied on trade.

However, the Arab traders, who had a strong presence on the Malabar coast, were concerned about the Portuguese gaining influence in the region.

The Portuguese aimed to monopolise the profitable eastern trade and exclude their competitors, especially the Arabs.

Vasco da Gama returned to India in 1501 but faced resistance from the Zamorin when he sought to exclude Arab merchants in favour of the Portuguese.

Francisco de Almeida (1505-1509):

In 1505, Francisco de Almeida was appointed as the Governor of India, with the mission to consolidate Portuguese influence and destroy Muslim trade.

Almeida faced opposition from the Zamorin and a threat from the Mamluk Sultan of Egypt.

In 1507, the Portuguese squadron was initially defeated in a naval battle off Diu but avenged the defeat the following year.

Almeida aimed to make the Portuguese the masters of the Indian Ocean through his Blue Water Policy.

Blue Water Policy (Cartaze system): It was a naval trade licence or pass issued by the Portuguese empire in the Indian Ocean during the sixteenth century. Its name derives from the Portuguese term 'cartas', meaning letters.

Alfonso de Albuquerque (1509-1515)

Alfonso de Albuquerque succeeded Almeida and established Portuguese bases strategically overlooking the entrances to the Indian Ocean.

Albuquerque introduced a permit system for other ships and exercised control over major shipbuilding centres.

Goa was acquired from the Sultan of Bijapur in 1510, becoming the first Indian territory under European control since Alexander the Great's time.

Albuquerque's rule also saw Portuguese men settling in India, establishing themselves as landlords, artisans, craftsmen, and traders.

An interesting feature of his rule was the abolition of sati.

Nino da Cunha (1529-1538)

He moved the headquarters from Cochin to Goa.

The Portuguese secured the island of Bassein and its dependencies from Bahadur Shah of Gujarat in 1534, but their relations soured after Humayun withdrew from Gujarat, leading to a confrontation in which Bahadur Shah was killed by the Portuguese in 1537.

Additionally, da Cunha attempted to increase Portuguese influence in Bengal by settling many Portuguese nationals there with Hooghly as their headquarters.

Decline of the Portuguese

By the 18th century, the Portuguese in India experienced a decline in their commercial influence.

The Portuguese lost their local advantages as powerful dynasties emerged in Egypt, Persia, and North India, and the Marathas became their immediate neighbours.

The Marathas captured Salsette and Bassein from the Portuguese in 1739.

The religious policies of the Portuguese, including the activities of the Jesuits, caused political concerns.

Their conversion efforts to Christianity, coupled with antagonism towards Muslims, led to resentment among Hindus.

Significance of the Portuguese

The emergence of naval power: The arrival of the Portuguese in India marked the emergence of naval power and initiated what is often referred to as the European era.

Own systems: The Portuguese disregarded existing rules and sought to establish their dominance over Indian trade and the Indian Ocean trading system.

Military innovations: In the sixteenth century Malabar, the Portuguese demonstrated military innovation with their use of body armour, matchlock men, and guns landing from their ships.

Maritime techniques: The Portuguese excelled in maritime techniques, with their heavily constructed multi-decked ships designed to withstand Atlantic gales, allowing for heavier armament.

Organisational skills: Their organisational skills, the establishment of royal arsenals and dockyards, and the maintenance of a regular system of pilots and mapping were notable contributions.

Religious Policy: The Portuguese arrived in the East with a zeal to promote Christianity and persecute Muslims. They were initially tolerant towards Hindus but became increasingly intolerant over time, especially after the introduction of the Inquisition in Goa.

Agricultural introductions: The Portuguese played a key role in transforming Indian agriculture and cuisine by introducing several crops from the Americas, including chillies, potatoes, tomatoes, cashew nuts, pineapple, papaya, etc. These crops became deeply integrated into Indian food habits and farming practices.

The Advent of The Dutch

The Dutch Commercial enterprise led them to undertake voyages to the East.

Trading company: In 1602, the States-General of the Netherlands merged various trading companies to form the East India Company of the Netherlands.

This company was granted the authority to conduct wars, negotiate treaties, acquire territories, and establish fortresses.

Trading centre: The Dutch established their control over Masulipatnam in 1605 and they established their settlement at Pulicat in 1610.

The Advent of the English

In 1599, a group of English merchants known as the 'Merchant Adventurers' formed a company to pursue Eastern trade and share in the high profits enjoyed by the Portuguese.

Queen's charter: Queen Elizabeth I issued a charter on December 31, 1600, granting exclusive trading rights to the newly formed 'Governor and Company of Merchants of London trading into the East Indies.'

Initially granted a monopoly of fifteen years, it was later extended indefinitely.

Foothold in West and South

Arrival at Jahangir's court: In 1609, Captain Hawkins arrived at the court of Jahangir in an attempt to establish a factory at Surat, but it was unsuccessful due to Portuguese opposition.

Beginning of trade: However, the English began trading at Masulipatnam in 1611 and established a factory there in 1616.

Battle with Portuguese: In 1612, Captain Thomas Best defeated the Portuguese in a sea battle of Surat, leading to Jahangir granting permission for an English factory in Surat in 1613.

Peace was established with the Portuguese, and an Anglo-Dutch compromise allowed the English to trade without interference.

Gift of Bombay: Bombay was gifted to King Charles II in 1662 and later given to the East India Company in 1668, becoming their headquarters in 1687.

Madras: The English also obtained trading privileges from the Sultan of Golconda and built a fortified factory at Madras in 1639, which became the headquarters of English settlements in South India.

Foothold in Bengal

Bengal, a prosperous and significant province of the Mughal Empire, attracted English merchants due to its trade and commercial opportunities.

Permission to trade: In 1651, Shah Shuja, the subahdar of Bengal, granted the English permission to trade in Bengal in exchange for an annual payment.

Request for a fortified settlement: Seeking a fortified settlement, William Hedges, the first agent and governor of the Company in Bengal, appealed to Shaista Khan, the Mughal governor, but hostilities ensued.

Settlement at Sutanuti: In 1686, Hooghly was sacked by the Mughals, leading to English retaliation. After negotiations, Job Charnock signed a treaty with the Mughals in 1690, allowing the English to establish a factory at Sutanuti.

Fort William: The English obtained permission to buy the zamindari of Sutanuti, Gobindapur, and Kalikata in 1698, and the fortified settlement was named Fort William in 1700, becoming the seat of the eastern presidency (Calcutta).

The Advent of The French

The French, although harbouring a desire for East Asian commerce since the early 16th century, arrived on the Indian coasts relatively late.

Trading company: In 1664, during the reign of Louis XIV, Minister Colbert established the Compagnie des Indes Orientales (French East India Company), which received a 50-year monopoly on French trade in the Indian and Pacific Oceans.

The company was reorganised as the 'Perpetual Company of the Indies in 1720 and strengthened under the governance of Lenoir and Dumas.

Rivalry with the Dutch: The French company faced setbacks during wars with the Dutch and the outbreak of the War of Spanish Succession, leading to the abandonment of factories in Surat, Masulipatnam, and Bantam.

Pondicherry: It was founded in 1674 and became the nerve centre of French power in India.

The Advent of The Danes

The Danish East India Company, also known as the Danish Asiatic Company, was established in 1616 and 1620; they founded a factory at Tranquebar near Tanjore, on the eastern coast of India.

Their principal settlement was at Serampore near Calcutta.

The Danish factories, which were not important at any time, were sold to the British government in 1845.

The Danes are better known for their missionary activities than for commerce.

Reasons for English success against other Europeans

The success of England over other European powers in India can be attributed to several key factors:

Structure and nature of trading companies: The English East India Company, unlike its counterparts, was controlled by a board of directors elected annually, with shareholders exercising considerable influence.

Naval superiority: The Royal Navy of Britain was the largest and most advanced in Europe, having achieved notable victories such as the defeat of the Spanish Armada and the French at Trafalgar.

Industrial Revolution: England was at the forefront of the Industrial Revolution, benefiting from inventions and advancements in textiles, metallurgy, steam power, and agriculture.

Military skill and discipline: British soldiers were highly disciplined and well-trained. British commanders demonstrated strategic prowess and implemented innovative tactics, which, combined with technological advancements, allowed smaller groups of British fighters to defeat larger armies.

Stable Government: Compared to other European nations experiencing periods of political upheaval, Britain enjoyed relatively stable governance with efficient monarchs. France, in particular, faced the turbulent period of the French Revolution and the Napoleonic Wars, weakening its position and forcing it to align with Britain.

Lesser zeal for religion: Unlike Spain, Portugal, and the Dutch, Britain displayed less zealousness in spreading Christianity. This more tolerant approach made British rule more acceptable to the local population in India.

Use of debt market: Britain successfully utilised the debt markets to fund its wars, particularly through the establishment of the Bank of England.

5. Study Material-Language

Synonyms and Antonyms

Words	Synonyms	Antonyms
Abundant	plentiful, ample, bountiful	scarce, rare, limited
Abolish	Abrogate	Enact
Abash	Disconcert, rattle	Uphold, Discompose
Absolve	Pardon, forgive	Compel, Accuse
Acumen	Awareness, brilliance	Stupidity, Ignorance
Accord	Agreement, harmony	Discord
Adamant	Stubborn, inflexible	Flexible, Soft
Adversity	Misfortune, calamity	Prosperity, Fortune
Alleviate	Abate, relieve	Aggravate, Enhance
Amplify	Augment, deepen	Lessen, Contract
Ascend	Escalate	Descend, Decline
Audacity	Boldness, Courage	Mildness, Cowardice
Awkward	Rude, blundering	Adroit, clever
Axiom	Adage, truism	Absurdity, Blunder
Baffle	Astound, Faze	Facilitate, Clarify
Bewitching	Alluring, charming	Repulsive, Repugnant
Bustle	Commotion, Tumult	Slowness, Quiet
Busy	Active, Engaged	Idle, Lazy
Calamity	adversity, misfortune	Fortune
Callous	obdurate, unfeeling	Compassionate, Tender
Cease	terminate, desist	Begin, Originate
Chaste	virtuous, pure	Sullied, Lustful
Comprise	include, contain	Reject, lack
Classic	Simple, Typical	Romantic, Unusual
Concur	approve, agree	Differ, disagree
Comic	Clown, Jester	Tragic, tragedian
Conceit	Egotism, Immodesty	Modesty
Compress	Abbreviate, Shrink	Amplify, Expand
Consolidate	Solidify, strengthen	Separate, Weaken
Compress	Abbreviate, Shrink	Amplify, Expand
Decipher	interpret, reveal	Misinterpret, distort
Demolish	Ruin, devastate	Repair, construct
Dwarf	Diminutive, Petite	Huge, Giant
Eager	Keen, acquisitive	Indifferent, apathetic
Endeavour	undertake, aspire	Cease, quit
Enormous	colossal, mammoth	Diminutive, negligible
Epitome	precise, example	Increment, expansion

Fabricate	construct, produce	Destroy, Dismantle
Feeble	weak, frail	Strong, Robust
Ferocious	cruel, fierce	Gentle, Sympathetic
Feud	strife, quarrel	Harmony, fraternity
Fluctuate	deflect, vacillate	Stabilize, resolve
Gather	Converge, huddle	Disperse, Dissemble
Gorgeous	magnificent, dazzling	Dull, unpretentious
Gracious	courteous, beneficent	Rude, Unforgiving
Genuine	Absolute, Factual	Spurious
Gloomy	Bleak, cloudy	Gay, Bright
Hamper	retard, prevent	Promote, facilitate
Hazard	Peril, danger	Conviction, security
Humble	Meek, Timid	Proud, Assertive
Humility	Resignation, Fawning	Boldness, Pride
Impulsive	Flaky, Impetuous	Cautious, Deliberate
Interesting	Enchanting, Riveting	Dull, Uninteresting
Immaculate	unsullied, spotless	Defiled, Tarnished
Immerse	submerge, involve	Emerge, uncover
Imminent	impending, brewing	Distant, Receding
Inevitable	unavoidable, ascertained	Unlikely, Doubtful
Infringe	violate, encroach	Comply, Concur
Immaculate	Exquisite, Impeccable	Defiled, Tarnished
Jaded	tired, exhausted	Renewed, recreated
Justify	defend, exculpate	Impute, arraign
Juvenile	young, tender	Dotage, antiquated
Keen	sharp, poignant	Vapid, insipid
Lavish	abundant, excessive	Scarce, deficient
Lenient	compassionate, merciful	Cruel, severe
Liable	accountable, bound	Unaccountable, apt to
Liberal	magnanimous, generous	Stingy, malicious
Linger	loiter, prolong	Hasten, quicken
Luscious	palatable, delicious	Unsavory
Mandatory	Imperative, requisite	Optional
Masculine	Gallant, strapping	Feminine, meek
Modest	humble, courteous	Arrogant, pompous
Mutual	joint, identical	Separate, distinct
Nimble	prompt, brisk	Sluggish, languid
Nonchalant	indifferent, negligent	Attentive, considerate
Nullify	cancel, annual	Confirm, Uphold
Numerous	profuse, various	Scarce, deficient
Obstruct	impede, prevent	Hasten, encourage
Obtain	Access, Inherit	Forfeit

Obvious	Evident, apparent	Obscure, ambiguous
Optimist	Idealist	Pessimist
Pacify	Appease, Chasten	Irritate, worsen
Persuade	Cajole, Impress	Dissuade, halt
Propagate	Inseminate, fecundate	Suppress, deplete
Progress	Pace, Betterment	Retrogress, worsening
Prompt	Precise, Punctual	Slow, Negligent
Prudence	Vigilance, Discretion	Indiscretion
Pompous	haughty, arrogant	Unpretentious, humble
Quaint	Queer, strange	Familiar, usual
Quarantine	seclude, screen	Befriend, socialize
Rebellious	Restless, attacking	Submissive, Compliant
Rectify	Amend, Remedy	Falsify, Worsen
Reluctant	Cautious, Averse	anxious, Eager
Restrain	Detain, Confine	Incite
Redeem	Recover, liberate	Conserve lose
Remorse	Regret, penitence	Ruthlessness, obduracy
Retract	Recant, withdraw	Confirm, assert
Rustic	Rural, uncivilized	Cultured, Refined
Ruthless	Remorseless, inhumane	Compassionate, lenient
Sacred	Cherish, Divine	Ungodly, Profane
Savage	Wild, untamed	Polished, Civilized
Sarcastic	Ironical, derisive	Courteous, gracious
Scathing	caustic, mordant, trenchant	calm, gentle, generous
Scorn	Mockery, Sarcasm, Contempt	Praise, Aid, Please
Semblance	Pretence, Façade, Mien	Concrete, Rear
Smear	Cover, Stain, Patch	Clean, Purify, Honour
Spate	Deluge, Torrent	not in series
Sympathy	Tenderness, harmony	Antipathy, Discord
System	Scheme, Entity	Chaos, Disorder
Taboo	Prohibit, ban	Permit, consent
Taciturn	Reserved, silent	Talkative, extrovert
Tedious	Wearisome. Irksome	Exhilarating, lively
Temperate	Cool, moderate	Boisterous, violent
Utterly	Completely, entirely	Deficiently, incomplete
Uncouth	Boorish, Clownish	Elegant, Compensate
Urchin	Foundling, Orphan	Creep, Knave
Urge	Incite, Implore	Abhorrence, Abomination
Vanity	Conceit, pretension	Modesty, Humility
Venom	Poison, malevolence	Antidote, Benevolent
Veteran	Ingenious, experienced	Novice, tyro
Vicious	Corrupt, obnoxious	Noble, Virtuous

Vigilant	Cautious, alert	Careless, negligent
Wicked	vicious, immoral	Virtuous, Noble
Wield	Exert, employ	Forgo, avoid
Winsome	Beautiful, Comely	Alluring, Rapturous
Yell	shout, shriek	Whisper muted
Yield	surrender abdicate	Resist, protest
Yearn	languish, crave	Content, satisfy
Zeal	eagerness, fervor	Apathy, lethargy
Zenith	summit, apex	Nadir, base
Zest	delight, enthusiasm	Disgust, passive
Zig -zag	oblique, wayward	Straight, unbent

6. Current Affairs

SEPTEMBER 2025

1. The BRICS CCI Healthcare Summit 2025 in New Delhi focused on bridging tradition and innovation under Minister Prataprao Jadhav's leadership.
2. India launched its first National Biofoundry Network to boost biotechnology, biomanufacturing, and job creation.
3. Infosys partnered with Mastercard to enhance cross-border money transfers through Mastercard Move and Finacle integration.
4. India's top four insurers reported covering 14 million fewer lives in FY25 due to a slowdown in credit-linked policies.
5. LIC handed over a dividend of Rs. 7,324.34 crore to the Government of India, reflecting its role as the majority shareholder.
6. Indian shooters clinched double gold in Men's 25m Standard Pistol events at the Asian Shooting Championship in Kazakhstan.
7. Ajaya Babu Valluri won gold in the men's 79kg category at the Commonwealth Weightlifting Championships in Ahmedabad.
8. Researchers rediscover the elusive Ice Age-era dragonfly species Crocothemis erythraea in the southern Western Ghats after decades of misidentification.
9. India celebrated National Sports Day on August 29 to honour hockey legend Major Dhyan Chand and promote fitness.
10. The UN observed August 29 as International Day against Nuclear Tests to raise awareness about the dangers of nuclear explosions.

11. The Ministry of Tribal Affairs is set to launch "Adi Vaani", the country's first AI-based translator for tribal languages.
12. Union Home Minister Amit Shah launched the Janrakshak projects under Dial 112 in Ahmedabad.
13. The 25th meeting of the Shanghai Cooperation Organization (SCO) leaders was held in Tianjin, China, on August 31, 2025.
14. Recently, the State Energy Efficiency Index (SEEI) 2024 ranked Maharashtra, Andhra Pradesh, Assam, and Tripura as top performers.
15. Indian men's doubles stars Satwiksairaj Rankireddy and Chirag Shetty assured India a medal at the BWF World Championships 2025 in Paris.
16. The ICC partnered with Google as its second global women's-only partner to boost the visibility and engagement of women's cricket worldwide.

17. The Indian Army recently carried out Exercise Yudh Kaushal 3.0 in the high-altitude and rugged terrain of the Eastern Himalayas.
18. Indian NGO 'Educate Girls' became the first Indian organization to win the Ramon Magsaysay Award 2025 for advancing girls' education in rural India.
19. A new IUCAA-led study used Mira variable stars for the first time to precisely measure the Universe's expansion rate.
20. The Bihar Cabinet approved the Mukhyamantri Mahila Rojgar Yojana, offering ₹10,000 to one woman per household to start a business, with up to ₹2 lakh support after review.
21. The 20th Global Sustainability Summit, organised by the Confederation of Indian Industry (CII), was held in New Delhi.
22. According to the Global Peace Index 2025, released by the Institute for Economics and Peace (IEP), India ranks 115th out of 163 countries.
23. APEDA has launched the "BHARATI" initiative with the goal of raising agri-food exports to $50 billion by 2030, under which 100 startups will be supported with innovation, technology, and export enablement.
24. IEPFA launched Phase II of its "Niveshak Didi" initiative in Hyderabad's Patelguda Panchayat to empower rural and underprivileged women with financial literacy and secure investment awareness.
25. Prime Minister Narendra Modi inaugurated the 'Semicon India 2025' conference at Yashobhoomi, New Delhi.
26. Australian fast bowler Mitchell Starc has announced his retirement from T20 International cricket at the age of 35.
27. Oscar Piastri clinched victory at the 2025 Dutch Grand Prix, with Max Verstappen finishing runner-up.
28. The 14th edition of the India–Thailand joint military exercise Maitree-XIV began with an opening ceremony at the Joint Training Node (JTN) in Umroi, Meghalaya.
29. World Coconut Day 2025 was celebrated by the ICC on September 2.
30. Indore has achieved a significant milestone by becoming the first city in Madhya Pradesh to be awarded the prestigious CII Indian Green Building Council (IGBC) Green City Platinum Certification.
31. Air Quality Life Index (AQLI) 2025 report ranked air pollution as India's biggest health threat, cutting life expectancy by 3.5 years.
32. Union Minister Prataprao Jadhav inaugurated the Ayush Mission and Capacity Building Summit in New Delhi.
33. India announced 1,000 e-scholarships for Afghan students for 2025-26 under ICCR's Special Scholarship Scheme.
34. The 56th GST Council meeting in New Delhi approved a major GST restructuring with a simplified two-tier system.

35. New Delhi will host the 2026 BWF World Championships, bringing the event back to India after 17 years.
36. India and US armies began the 21st edition of Joint Military Exercise Yudh Abhyas 2025 in Alaska.
37. Rajit Punhani, a 1991-batch IAS officer, assumed charge as the CEO of the Food Safety and Standards Authority of India (FSSAI).
38. T.C.A. Kalyani took charge as the 29th Controller General of Accounts in the Ministry of Finance.
39. TUDA launched "Operation SWARNA" to rejuvenate and protect the Swarnamukhi River in Andhra Pradesh.
40. PM Modi launched 'Bihar Rajya Jeevika Nidhi' to provide affordable credit access to rural women entrepreneurs.
41. IIT Madras, IISc Bengaluru, and IIM Ahmedabad retained top positions in NIRF 2025.
42. The British Museum in London has agreed to lend the revered 16th-century Vrindavani Vastra, a sacred silk textile woven under the guidance of Assamese saint-reformer Srimanta Sankardeva for public exhibition in Assam in 2027.
43. The World Health Organization (WHO) has released its reports "World Mental Health Report," "World Mental Health Today," and "Mental Health Atlas 2024," raising serious concern over a deepening global mental health crisis.
44. DPIIT and ICICI Bank signed an MoU to support startups and innovators.
45. DPIIT signed an MoU with Pfizer to boost healthcare innovation in India.
46. Veteran leg-spinner Amit Mishra announced retirement from all forms of cricket.
47. IAS officer Piyush Goyal assumed charge as Secretary of the Ministry of Mines.
48. Indian-American Amit Kshatriya appointed as NASA's Associate Administrator.
49. India celebrated Teacher's Day on September 5 to honor Dr. Sarvepalli Radhakrishnan.
50. Author Amish Tripathi launched his novel The Chola Tigers: The Avengers of Somnath.
51. Mansukh Mandaviya announced the mobilisation of 1,000+ 'MY Bharat Aapda Mitras'.
52. The Shilp Samagam Mela 2025 is being held in Bengaluru.
53. The Angikaar 2025 campaign was launched under PMAY-Urban 2.0.
54. Nepal banned 26 major social media platforms in September 2025.
55. The Kapas Kisan app was launched by Union Minister Giriraj Singh.
56. India's first port-based green hydrogen project was inaugurated at VOC Port, Tuticorin (Tamil Nadu).

57. The 16th India-Singapore Defence Working Group meeting was held in Singapore.
58. The Indian Navy's First Training Squadron recently visited Seychelles.
59. Anutin Charnvirakul was elected as the new Prime Minister of Thailand.
60. The Greater Bengaluru Integrated Township (GBIT) is being developed at Bidadi.
61. On the birth centenary of Bharat Ratna Bhupen Hazarika, the "Bistirna Parore" musical voyage was launched on the Brahmaputra River.
62. According to the Sample Registration Survey (SRS) 2023, India's total fertility rate declined to 1.9, falling below the replacement level of 2.1.
63. India MedTech Expo 2025 was held at Pragati Maidan, New Delhi.
64. The SAMHiTA Conference on South Asia's manuscript traditions and mathematics was inaugurated in New Delhi.
65. 26 nations pledged postwar security guarantees to Ukraine.
66. Ukraine unveiled the FP-5 Flamingo cruise missile with a 3,000 km range.
67. DRDO held a conclave in Lucknow to boost MSMEs in the defence sector.
68. Fast bowler Mohammed Siraj became the new brand ambassador of Skechers.
69. Union Minister Ashwini Vaishnaw inaugurated a lithium-ion battery plant in Haryana.
70. Indian scientists discovered that protein p47 functions as a "mechanical chaperone."
71. Kuki-Zo Council reopens NH-02 and signs revised peace pact.
72. Singapore supports India's plan to join Malacca Strait patrols.
73. NITI Aayog releases roadmap for Atmanirbharta in pulses.
74. Carlos Alcaraz clinches second US Open title.
75. India wins fourth Asia Cup Hockey title.
76. David Lammy appointed Deputy Prime Minister of the UK.
77. Anuparna Roy makes history with Best Director win at Venice Film Festival.
78. International Literacy Day 2025 observed with focus on "literacy in the digital era".
79. Alia Bhatt named Global Brand Ambassador for Levi's.
80. Kokichi Akuzawa, 102, becomes oldest to climb Mount Fuji.
81. Dong Village in Arunachal Pradesh will host its first "Sunrise Festival" to promote tourism, adventure, and cultural heritage.
82. The two-day 'DialogNext 2025' conference began in New Delhi, focusing on the theme "Take It to the Farmer" to ensure transformative agricultural solutions reach smallholder farmers.

83. India and Israel signed a historic Bilateral Investment Agreement (BIA) in New Delhi to boost investments, ensure transparency and strengthen economic ties.
84. Max Verstappen won the 2025 Italian Grand Prix, setting the fastest race record in F1 history.
85. India defeated Oman in a penalty shootout to claim the bronze medal at CAFA Nations Cup 2025.
86. Nepal and China began the 5th edition of the joint military exercise "Sagarmatha Maitri-2025" to enhance cooperation in counter-terrorism and disaster management.
87. Non-resident Indian businessman Younus Ahamed received the Camel International Award 2025 for his outstanding global business leadership.
88. India unveils bold space vision at International Space Conference 2025, targeting a space station by 2035 and a lunar mission by 2040.
89. The Department of Empowerment of Persons with Disabilities under the Ministry of Social Justice and Empowerment observed World Duchenne Muscular Dystrophy (DMD) Day across the country.
90. India's first ceramic waste park, 'Anokhi Duniya', has been inaugurated in Bulandshahr, Uttar Pradesh, promoting art, employment, and sustainability.
91. The Supreme Court allowed Aadhaar as the 12th valid identity document for Bihar voter list verification.
92. Ministry of Tribal Affairs and Coal India Limited (CIL) signed an MoU to empower over 30,000 tribal students through digital education and career guidance.
93. iDEX-DIO and EdCIL signed an MoU under ASPIRE to develop dual-use technologies and promote innovation.
94. Ethiopia inaugurated the Grand Ethiopian Renaissance Dam (GERD), doubling its electricity capacity amid regional concerns.
95. NCEL and APEDA signed an MoU to enhance cooperative-based agricultural exports and international market access for farmers.
96. 16-year-old Abhimanyu Mishra made history by defeating World Champion Gukesh in FIDE Grand Swiss 2025.
97. Australia's Navy will deploy large autonomous "Ghost Shark" underwater drones for intelligence and attack missions from January 2026.
98. Nepal's PM KP Sharma Oli resigned after violent protests over social media bans and corruption claims.
99. CP Radhakrishnan became India's 15th Vice President, defeating B. Sudarshan Reddy by 152 votes.
100. Indore topped the 2025 Clean Air Survey and, along with Udaipur, received international recognition as a Ramsar Wetland city.
101. Himachal Pradesh declared fully literate with 99.3% literacy rate.

102. Indian Army launches ‘Operation Rahat’ to aid flood-affected areas in Punjab.
103. ‘Adi Sanskriti’ digital platform launched to preserve tribal arts and culture.
104. National workshop on Multidimensional Poverty Index held by NITI Aayog and UNDP.
105. India wins historic gold in men’s compound team at World Archery Championship 2025.
106. An Indian Armed Forces contingent has reached Nizhniy (Russia) to take part in the multilateral military exercise Zapad 2025 at the Mulino Training Ground.
107. Digvijay Diwas is observed every year on 11th September in memory of Swami Vivekananda’s historic speech at the 1893 Parliament of Religions in Chicago.
108. World Suicide Prevention Day 2025 observed globally with theme “Changing the Narrative on Suicide.”
109. UNICEF report warns of rising childhood obesity due to ultra-processed foods.
110. Rajasthan Assembly passes ‘Anti-Conversion Bill, 2025’ to prevent forced conversions.
111. India inaugurated its first overseas Atal Innovation Centre at IIT Delhi–Abu Dhabi to boost education and innovation cooperation.
112. India announced a $680 million economic package for Mauritius, including health, infrastructure and energy projects.
113. Iran and IAEA agreed to resume nuclear inspections, allowing limited monitoring while respecting Iranian sovereignty.
114. Pradhan Mantri Matsya Sampada Yojana completes five years, boosting fish production, exports, jobs, and women empowerment.
115. India launched the UPI-UPU integration project in Dubai to enable faster, safer and low-cost cross-border remittances.
116. TCIL and PNB signed an MOU to strengthen IT infrastructure and enhance digital banking services.
117. ICC launched its “Will to Win” campaign ahead of the 2025 Women’s Cricket World Cup hosted by India.
118. Srinivas Injeti was appointed Chairperson of NSE Governing Board as India prepares for its long-delayed IPO.
119. ISRO transferred SSLV technology to HAL, enabling independent production and commercialization of small satellite launch vehicles.
120. AIIMS-Delhi launched the AI-based “Never Alone” app to prevent student suicides and promote mental health.
121. India reached 250 GW non-fossil fuel power capacity and aims to double it to 500 GW by 2030, promoting clean energy access.
122. PM Modi launched the Gyan Bharatam portal to digitize and preserve India’s one crore manuscripts for global access.

123. India extended the Fast Track Immigration program to 13 airports, offering faster clearance to citizens and OCI cardholders.
124. IIM Ahmedabad inaugurated its first international campus in Dubai, marking a historic step in global education expansion.
125. India voted in favour of the UNGA resolution endorsing the two-state solution for a peaceful settlement of the Palestine issue.
126. The Indian Army showcased drone integration for surveillance, reconnaissance, and precision strikes during 'Exercise Siyom Prahar'.
127. The Indian Army adopted its indigenously developed SAMBHAV system for secure military communications during Operation Sindoor.
128. Former Chief Justice Sushila Karki was sworn in as Nepal's first woman Prime Minister, heading the interim government until March 2026 elections.
129. Former PM Manmohan Singh was posthumously awarded the PV Narasimha Rao Memorial Award for his transformative role in India's economy.
130. Purple Fest 2025 at Amity University highlighted inclusion and empowerment through cultural, sports, and entrepreneurship activities.
131. India announced the opium poppy cultivation policy for 2025-26, supporting farmers and safe production of alkaloid medicines.
132. India and Norway held their first Maritime Security, Disarmament, and Non-Proliferation Dialogue in Oslo to strengthen strategic cooperation.
133. PM Modi inaugurated Assam's first bamboo-based bioethanol plant at Numaligarh Refinery Limited (NRL), boosting green energy and local development.
134. Indian women's hockey team won the silver medal, losing 1-4 to China in the Asia Cup final.
135. Indian boxer Minakshi won gold in the women's 48kg category, defeating Kazakhstan's Nazim Kizaybe 4-1.
136. The Indian Navy commissioned INS Aravali in Gurugram, enhancing maritime domain awareness and operational coordination.
137. Prof. Pradeep Kumar Prajapati assumed the role of Director at All India Institute of Ayurveda, New Delhi.
138. Author Anand V. Patil received the Prof. V.K. Gokak Award in Bengaluru for his outstanding contributions to children's literature.
139. Albania became the first country to appoint an AI system 'Diella' as Minister for Public Procurement to ensure corruption-free governance.
140. PM Modi laid the foundation for Rs. 7,300 crore development projects in Manipur, enhancing infrastructure, connectivity, and welfare schemes.
141. Tirumala Hills and Erramatti Dibbalu were added to UNESCO's tentative list, recognizing their geological and natural significance.
142. India, Iran, and Uzbekistan held their first trilateral meeting to boost regional security and trade via Chabahar Port.

143. CSIR Startup Conclave 2025 showcased India's first swastika-shaped lotus garden and 108-petal lotus, promoting innovation and entrepreneurship.
144. DPIIT and CarDekho signed an MoU to support startups with mentorship, funding, and technology access.
145. The two-day National Agriculture Conference launched the Rabi Campaign 2025 to strengthen India's goal as a global food basket.
146. Mohammed Siraj and Orla Prendergast were named ICC Players of the Month for their stellar performances.
147. Vaishali Rameshbabu made history by winning the FIDE Women's Grand Swiss 2025 for the second consecutive time.
148. Indian Navy received the indigenous ASW SWC 'Androth', enhancing maritime security in the Indian Ocean.
149. Hindi Day 2025 was celebrated nationwide on September 14, highlighting Hindi's role in national unity and global identity.
150. English: Tribals protested in Jharkhand against interference in the traditional Manki-Munda self-governance system.
151. Prime Minister Narendra Modi launched the Swasth Nari, Sashakt Parivar Abhiyaan, focused on the health of women, children, and families.
152. According to a NITI Aayog report, AI adoption could add $500-600 billion to India's GDP by 2035.
153. Prime Minister Narendra Modi inaugurated the National Makhana Board in Purnia, Bihar.
154. Union Home Minister Amit Shah inaugurated India's largest and most advanced Veer Savarkar Sports Complex in Ahmedabad.
155. Anandkumar Velkumar created history by winning India's first-ever gold medal in speed skating at the Speed Skating World Championships 2025 held in Beidaihe, China.
156. South Korea, USA and Japan launched their five-day trilateral exercise Freedom Edge 2025 in waters near Jeju Island.
157. Carlos Felipe Jaramillo from Colombia has been appointed as the World Bank's Vice President for the East Asia and Pacific Region.
158. At the 2025 Emmy Awards, The Pitt won Best Drama Series, The Studio won Best Comedy Series and Adolescence won Best Limited Series, while actors were also honored.
159. Muzaffarpur (Bihar) claimed first place in the INSPIRE Award 2025, with 7,403 students presenting innovative ideas.
160. In India, Engineers' Day is celebrated on 15 September to honor Sir Mokshagundam Visvesvaraya.
161. India has signed a MoU with the International Labour Organisation (ILO) to collaboratively develop and promote the International Reference Classification of Occupations (ISCO).

162. India has intensified efforts to secure UNESCO World Heritage status for Sarnath, set to credit Babu Jagat Singh for its 1787–88 excavation.
163. Lok Sabha Speaker Om Birla inaugurated the first-ever National Conference of Committees on Empowerment of Women of Parliament and State/UT Legislatures, held in Tirupati.
164. EU launches new strategic agenda to deepen cooperation with India in defense, trade, technology, and energy.
165. India and Denmark strengthen their Green Strategic Partnership, focusing on trade, renewable energy, and climate action.
166. India has risen to 38th place in the Global Innovation Index (GII) 2025, up from 48th in 2020
167. Apollo Tyres has secured the Indian cricket team's jersey sponsorship in a landmark five-year deal
168. Indian Navy's INS Nistar participated in Exercise Pacific Reach 2025 in Singapore, showcasing India's submarine rescue capabilities.
169. Baba Kalyani, Chairman and Managing Director of Bharat Forge, has been awarded the prestigious Holley Medal by the American Society of Mechanical Engineers (ASME).
170. India launches National Geothermal Energy Policy to harness 10 GW potential and support Net Zero 2070 goals.
171. Panchgani-Mahabaleshwar (Maharashtra), St. Mary's Islands (Karnataka), Mawmluh Cave (Meghalaya), Naga Hill Ophiolite (Nagaland), Erra Matti Dibbalu & Tirumala Hills (Andhra Pradesh) and Varkala Cliffs (Kerala) have been added to UNESCO's tentative World Heritage list.
172. India and Venezuela agree to collaborate on pilot projects in agriculture, pharmaceuticals, and digital infrastructure.
173. Saudi Arabia and Pakistan sign a historic Strategic Defence Pact, pledging mutual military support and potentially extending Pakistan's nuclear umbrella over Saudi Arabia.
174. The WTO report "Artificial Intelligence: Implications for Trade and Inclusive Growth" highlights AI as a key technology to boost global trade and inclusive growth.
175. Marium Fatima becomes Bihar's first female FIDE Master after crossing 2000 FIDE rating at the Commonwealth Chess Championship.
176. Under Operation Cheyutha, six Maoists surrendered in Telangana, highlighting the government's combined approach of security and rehabilitation to reduce militancy.
177. Gourangalal Das, a senior IFS officer, has been appointed India's next Ambassador to South Korea, strengthening ties under India's Act East Policy.

178. The Bureau of Energy Efficiency (BEE) has launched a new NECA 2025 category for content creators and influencers to promote energy efficiency under PM's Mission LiFE.
179. Delhi reports a surge in HFMD cases among children aged 2–7, most often caused by Coxsackievirus A16, though A6, A10, and Enterovirus A71 can also trigger the disease.
180. The book Unwrapping the China Enigma launch explored China's politics, economy, and India-China relations through expert insights. Unwrapping the China Enigma
181. Puducherry became the first Union Territory in India to achieve zero maternal mortality in 2024–25.
182. PM Narendra Modi launched the Adi Karmayogi Abhiyan from Dhar, Madhya Pradesh, the world's largest tribal grassroots leadership programme.
183. Qatar meets ICC to seek legal action against Israel over the strike on Hamas leaders in Doha.
184. India and UAE discussed boosting cooperation in space, maritime sectors, and investments during the 13th high-level joint task force meeting.
185. UN 'Gender Snapshot 2025' warns that 351 million women and girls may remain in extreme poverty by 2030 if gender gaps persist.
186. Arshdeep Singh becomes the first Indian bowler to take 100 wickets in T20 Internationals.
187. India signs agreement with FAO to modernize Blue Ports for smart, sustainable, and inclusive fisheries.
188. WMO's 2024 report warns of rising global water stress and calls for sustainable water management.
189. UN Secretary-General António Guterres released the "Shifting Paradigms" report under the UN80 Initiative, proposing key reforms to enhance efficiency and effectiveness across the UN's pillars of peace, development, and human rights.
190. Bihar to give unemployed graduates ₹1,000 per month under Mukhyamantri Nischay Swayam Sahayata Bhatta Yojana.
191. Surajpur in Chhattisgarh declared 75 panchayats "Child Marriage-Free."
192. The US launches Trump Gold Card visa to attract wealthy immigrants and investment.
193. Jaish-e-Mohammed has renamed itself Al-Murabitun to continue operations in Pakistan amid international sanctions.
194. PM Modi laid the foundation stone of India's first PM MITRA Park at Bhainsola, Dhar (Madhya Pradesh).
195. CAG's "State Finances 2022-23" report shows states' debt at 22.17% of GDP, above the FRBM target.

196. India to host AI Impact Summit 2026 at Bharat Mandapam, New Delhi.
197. IRDAI launches Bima Sugam, India's first unified digital insurance marketplace.
198. Oil India and Hindustan Copper sign MOU to develop copper and critical minerals, boosting India's mineral security.
199. International Day of Peace is observed on 21st September to promote global peace, harmony, and non-violence.
200. Uttarakhand launches Swabhoomi app to ensure secure and transparent land transactions.
201. Ministry of Rural Development signed 5 MoUs under DAY-NRLM with NIRDPR and 4 SRLMs (Andhra Pradesh, Bihar, Jharkhand, Telangana) for strengthening rural livelihood interventions.
202. India and Morocco have signed an MoU to strengthen defence cooperation, focusing on joint exercises, training, and strategic collaboration.
203. India and Brazil launched the "Maitri 2.0" Cross-Incubation Programme to boost agri-innovation and empower farmers.
204. First Indian deported from UK to France under "one-in, one-out" treaty.
205. Union Minister Piyush Goyal launched IPRS 3.0 to benchmark India's industrial parks, enhance competitiveness, and strengthen the Make in India initiative.
206. India and ADB sign $125 million loan to improve urban services and climate resilience in Assam.
207. Paris Saint-Germain's winger Ousmane Dembélé won the 2025 Ballon d'Or after leading PSG to their first-ever UEFA Champions League title, scoring 35 goals in the season.
208. ICGS Adamya, India's first Adamya-class Fast Patrol Vessel, was commissioned to strengthen maritime security and showcase Atmanirbhar Bharat in defense production.
209. Union Minister Jyotiraditya Scindia interacts with NE students visiting ISRO under NE-SPARKS programme.
210. International Sign Language Day 2025, celebrated on 23rd September 2025, highlighted the importance of sign language in promoting equality, inclusion, and opportunities for the deaf community in India.
211. PM Modi Dedicates Dhordo as Gujarat's Fourth Fully Solar-Powered "Solar Village".
212. The 28th National e-Governance Conference 2025 was held in Visakhapatnam on 22 September, focusing on "Viksit Bharat: Citizen Services and Digital Transformation", with 19 projects awarded for excellence in digital governance.
213. Burkina Faso, Mali, and Niger have officially withdrawn from the ICC and plan to develop local justice systems.

214. France and several countries officially recognised Palestine at the UN, increasing Israel's international isolation.
215. MDL signed an MoU with Tamil Nadu to develop a world-class Greenfield shipyard on India's east coast, with an investment of Rs. 15,000 crore creating 45,000 jobs.
216. UK PM Keir Starmer received the 'Living Bridge' award for his crucial role in concluding the India-UK Free Trade Agreement, aiming to double bilateral trade by 2030.
217. At the 71st National Film Awards 2025, Mohanlal received the Dadasaheb Phalke Award, while Shah Rukh Khan, Vikrant Massey, and Rani Mukerji won the Best Acting Awards.
218. Scientists have created the first AI-designed virus capable of killing harmful bacteria.
219. Project Vijayak (BRO) celebrated 15 years in Ladakh, announcing a ₹1,200 crore expansion to boost connectivity, strategic strength, and local development.
220. 10th National Ayurveda Day 2025 was celebrated in Goa with the theme "Ayurveda for People and Planet"; Dhanwantari Ayurveda Awards were given to Prof. Banwarilal Gaur, Vaidya Neelakanthan Moos E.T., and Vaidya Bhavana Prasher.
221. The Visakhapatnam Declaration 2025 sets India's roadmap for digital governance, citizen empowerment, and inclusive e-governance through emerging technologies.
222. PM-JAY has provided healthcare coverage to over 550 million beneficiaries and ₹1.48 lakh crore cashless services in 7 years.
223. UN-backed Production Gap Report 2025 warns fossil fuel output will exceed safe climate limits by up to 500% by 2030.
224. India launches Viksit Bharat Buildathon 2025 to inspire 12 crore students in creativity and self-reliance.
225. India and Australia sign MRA for organic products to boost trade and farmer income.
226. India inaugurates its first overseas defence manufacturing facility in Morocco, producing WhAP 8x8 combat vehicles.
227. Vandana Gupta assumed charge as the Controller General of Communication Accounts (CGCA), overseeing India's telecom financial operations.
228. Typhoon Ragasaa has caused deaths and severe flooding in Taiwan and southern China, highlighting the risks of climate-induced extreme weather.
229. NCMRWF and NSIL signed an MoU to set up two DBNet stations in Delhi/NCR and Chennai for real-time satellite weather data under Mission Mausam.

230. ISRO will launch Vyommitra on its first uncrewed Gaganyaan mission in December 2025, a step toward India's first human spaceflight in 2027.
231. India elected to the INTERPOL Asian Committee in 2025, strengthening its role in regional and global law enforcement.
232. Violent protests in Leh, Ladakh over statehood and Sixth Schedule protections left four dead and over 80 injured on September 24, 2025.
233. India launched GST Appellate Tribunal (GSTAT) to simplify and speed up GST dispute resolution.
234. PM Modi reviews Rs 65,000 crore projects across 15 states in 49th PRAGATI meeting to ensure timely completion and quality standards.
235. World Food India 2025 aims to position India as a global hub for food processing, innovation, and supply chains.
236. India restricts imports of plain silver jewellery to protect domestic manufacturers and jobs.
237. India successfully tests Agni-Prime missile from rail-based launcher, enhancing strategic deterrence and rapid deployability.
238. UNEP named three innovators from India, Kenya, and the US as the 2025 Young Champions of the Earth for groundbreaking eco-solutions.
239. India's only active volcano, Barren Island, erupted twice in September 2025, showing renewed geological activity.
240. Karnataka's LEAP program aims to boost innovation, entrepreneurship, and job creation in tier-2 and tier-3 cities.
241. Election Commission launches Aadhaar-linked e-sign on ECINET to secure voter registration and prevent fraud.
242. India hosts the Global Food Regulators Summit (GFRS) 2025 to strengthen global food safety and innovation.
243. UPI is now accepted in Qatar, making Qatar Duty-Free the first merchant to go live, enhancing digital payments for Indian travelers.
244. Department of Telecommunications (DoT) and Financial Intelligence Unit – India (FIU-IND) sign MoU to strengthen cyber security and prevent financial fraud in India's digital ecosystem.
245. PM Modi inaugurates UP International Trade Show 2025, emphasizing Atmanirbhar Bharat and promoting UP's industrial and digital strengths.
246. The 11th Asian Aquatics Championship commenced in Ahmedabad, featuring over 900 athletes from 29 countries in swimming, diving, artistic swimming, and water polo.
247. CDS General Anil Chauhan's tenure extended till May 2026 to ensure continuity in defence reforms.
248. Anand Piramal has been appointed as the Chairman of Piramal Finance following its merger with Piramal Enterprises.
249. K.J. Yesudas receives M.S. Subbulakshmi Award for outstanding contribution to music.

250. India and EU launch an ideathon to fight marine plastic pollution.
251. Swachh Shehar Jodi (SSJ) 2025 pairs top-performing cities with low-performing ones to spread best practices in urban cleanliness and waste management.
252. Tamil Nadu's Dugong Conservation Reserve has been recognized as a global model by IUCN for its successful community-based conservation efforts.
253. India highlighted deepening cooperation with SICA countries in trade, digital payments, agriculture, renewable energy, IT, and pharma, offering UPI for enhanced financial inclusion.
254. India defeated Pakistan by five wickets to win their ninth Asia Cup 2025, with Tilak Varma's unbeaten 69 leading the victory.
255. Senior Advocate R. Venkataramani has been reappointed as India's Attorney General for two more years, effective from 1 October 2025.
256. Amshi Prasannakumar was awarded the Hombale Sanhita Harinikumar Alumni Krishi Media Award 2025 for his contribution to agricultural journalism.
257. DRDO was awarded the 'Changemaker of the Year 2025' for its strategic defense technologies strengthening India's national security.
258. India celebrated World Tourism Day 2025 with the theme "Tourism and Sustainable Transformation."
259. Haryana launches 'Deen Dayal Lado Lakshmi Yojana' 2025 to empower economically weaker women with direct monthly financial support.
260. Bihar's Gokul Reservoir (Buxar) and Udaipur Lake (West Champaran) have been declared as new Ramsar Sites, raising the state's total to five.