As on 31.12.2025

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

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NEWSLETTER

December 2025

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Established in Sept. 2022

For Judicial Service Aspirants

1. Live-In Relationships, Constitutional Morality and Article 21

Introduction

Indian society is passing through a phase of intense transition, where traditional social norms increasingly intersect with modern ideas of individual liberty, autonomy, and choice. One such evolving social phenomenon is the **live-in relationship**, which challenges the conventional understanding of marriage as the sole legitimate form of cohabitation. While social acceptance remains divided, the constitutional position on the issue has been gradually crystallised by judicial pronouncements.

On 17.12.2025, Hon'ble Mr. Justice Vivek Kumar Singh, a judge of Allahabad High Court in case **Akanksha and Anr. Vs. State of U.P.** marks a significant reaffirmation of constitutional values by holding that **consenting adults in a live-in relationship are entitled to protection of life and personal liberty under Article 21 of the Constitution of India**, irrespective of societal disapproval. This judgment is not merely about live-in relationships; it is fundamentally about **constitutional morality prevailing over social morality**.

Concept of Live-in Relationships: Social and Legal Context

A live-in relationship refers to an arrangement where two adults cohabit without entering into a formal marriage. In India, marriage has traditionally been regarded as a sacred social institution carrying legal, moral, and familial obligations. Consequently, non-marital cohabitation has often been viewed as immoral or against cultural ethos.

However, **law and morality are not synonymous**. While morality is subjective and varies across communities, law is objective and enforceable. The Indian legal system does not criminalise live-in relationships. No statute declares such relationships illegal or unlawful. Judicial discourse has consistently maintained a distinction between **what is socially unacceptable and what is constitutionally impermissible**.

Judicial Evolution on Live-in Relationships

Allahabad High Court ruled that Indian courts have progressively recognised live-in relationships through various judgments:

- **Badri Prasad Vs. Deputy Director of Consolidation (1978)**: Long cohabitation raises a presumption of marriage.
- **Payal Sharma Vs. Superintendent, Nari Niketan (2001)**: Live-in relationships may be immoral to some but are not illegal.
- **S. Khushboo Vs. Kanniammal (2010)**: Criminal law cannot be used to enforce societal morality.
- **Indra Sarma Vs. V.K.V. Sarma (2013)**: Live-in relationships require legal protection, especially for women.
- **Nandakumar Vs. State of Kerala (2018)**: Even if parties are not legally married, they have the right to live together.

The Allahabad High Court judgment stands firmly on this jurisprudential foundation, extending protection to live-in couples facing threats.

Constitutional Foundations: Article 21 and Personal Autonomy

Article 21 of the Constitution guarantees the **right to life and personal liberty**, which has been expansively interpreted by the Supreme Court to include:

- Right to dignity
- Right to privacy
- Right to autonomy
- Right to choose one's partner

In **Shafin Jahan Vs. Asokan K.M. (2018),** the Supreme Court held that ***choice of a life partner is an intrinsic part of individual liberty***. Similarly, in **Lata Singh Vs. State of U.P. (2006),** the Supreme Court declared that once a person attains majority, they are free to marry or live with anyone of their choice.

The Allahabad High Court, relying on this constitutional jurisprudence, observed that **personal relationships fall within the core zone of individual autonomy**, and the State or society cannot interfere unless such choice violates a law.

Constitutional Morality Vs. Social Morality

A central theme of the judgment is the **supremacy of constitutional morality**. Social morality often reflects majoritarian beliefs and traditional norms, whereas constitutional morality is rooted in values such as liberty, equality, dignity, and fraternity.

The Court categorically held that:

"Social disapproval cannot override fundamental rights guaranteed by the Constitution."

This approach echoes earlier Supreme Court decisions such as ***Navtej Singh Johar Vs. Union of India,*** where the Court emphasised that constitutional morality must guide judicial decisions, not popular sentiment.

State's Duty to Protect Life and Liberty

One of the key arguments raised by the State was that protection should be limited to married couples and that live-in partners cannot demand police protection as a matter of right. The Court rejected this contention and clarified that:

- Protection of life is unconditional
- Marital status is irrelevant for invoking Article 21
- Police authorities are duty-bound to act once a credible threat exists

The Court held that denying protection solely because parties are unmarried would amount to **discrimination and abdication of constitutional responsibility**.

Live-in Relationships and Women's Rights

The judgment also highlights the vulnerability of women in live-in relationships. Recognition under the **Protection of Women from Domestic Violence Act, 2005**, which uses the phrase "relationship in the nature of marriage," reflects legislative intent to extend protection beyond formal marriage.

By invoking evidentiary presumptions under the **Indian Evidence Act and Bharatiya Sakshya Adhiniyam, 2023**, the Court underscored the need to protect women and children from exploitation and social exclusion.

Social Concerns and Judicial Balance

While acknowledging societal concerns regarding erosion of traditional family structures, the Court maintained judicial restraint by clarifying that:

- Protection does not legitimise or promote live-in relationships
- Courts are not endorsing social morality
- Protection does not grant immunity from criminal law

Thus, the judiciary struck a careful balance between **individual freedom and rule of law**, ensuring that constitutional rights are protected without encouraging lawlessness.

Conclusion

The Allahabad High Court judgment is a powerful assertion that **the Constitution protects individuals, not social conformity**. In recognising the right of adults in live-in relationships to protection of life and liberty, the Court upheld the transformative vision of the Constitution.

Notably, this judgment relies heavily on constitutional safeguards that citizens enjoy. But it is also worth noting that this judgment too stops short of reiterating that all couples, irrespective of caste, religion and creed, enjoy such constitutional freedoms.

As India navigates the tension between tradition and modernity, such judgments reaffirm that **democracy thrives not by enforcing uniformity, but by respecting diversity of choices**. Ultimately, the true test of constitutional governance lies in protecting the unpopular, the unconventional, and the individual — and this judgment **stands as a testament to that ideal.**

2. The Law on 'Suspension of Sentence'

The Hindu – 31.12.2025

Why in News?

*On **December 29,** a three-judge vacation bench of the Supreme Court, consisting of **Chief Justice of India (CJI) Surya Kant, Justice J.K. Maheshwari, and Justice A.G. Masih,** stayed the Delhi High Court's decision to suspend the life sentence of Kuldeep Singh Sengar, a former four-time MLA, who was convicted in the infamous 2017 Unnao rape case.*

What is the background of the unnao rape case?

- **2017** – Kuldeep Singh Sengar, then a sitting MLA, allegedly raped a minor girl at his residence.
- **2018** – The incident was marred by police inaction and alleged intimidation of the victim, prompting the case to be transferred to the Central Bureau of Investigation (CBI).
- The trial was then shifted to Delhi under the Supreme Court's directions.
- **2019** – On December 16, 2019, Sengar was convicted, and on December 20, 2019, he was sentenced to life imprisonment until the end of his natural life.
- **2025** – Despite his conviction, Sengar filed an appeal against his sentence, leading to the Delhi High Court's decision to suspend his sentence on December 23, 2025, pending the appeal.

What is the legal framework on suspension of sentence?

- **Conclusion of a trial** – Once a trial concludes, an accused is either acquitted or convicted.
- **Conviction** – A conviction displaces the "presumption of innocence" and renders the sentence operative, requiring the convict to undergo the awarded punishment.
- **Suspension of sentence** – However, under Section Section 389 of the CrPC, 1973 (now Section 430 of the BNSS, 2023), *a convict may seek suspension of the sentence* during the pendency of an appeal.
- The suspension of the sentence, however, does not affect the finding of guilt but only suspends the execution of the punishment.
- **Differences in legal approach** – While suspension of sentence is routine in cases involving short-term or fixed-term sentences, the legal approach is different in cases involving serious crimes like rape, particularly those punishable by life imprisonment.
- In such cases, courts are generally cautious about suspending the sentence, as it may send the wrong message about the severity of the crime.

When do courts suspend a sentence?

- **Exception vs Rule** – In cases involving serious offences, the suspension of a sentence is an exception rather than the rule.
- **Short-term sentences** – The Supreme Court, in cases like ***Bhagwan Rama Shinde Gosai vs. State of Gujarat*** (1999), clarified that suspension of a sentence in appeal should be done liberally in cases involving short-term sentences.
- **Life imprisonment sentences** – However, in cases involving life imprisonment, such as Sengar's, suspension is rare and must be done after considering several factors.
- This factors includes:
    - **The nature and gravity of the offence** – The seriousness of the crime must be assessed.
    - **The manner of commission of the crime** – The brutality and intent behind the crime must be taken into account.
    - **The desirability of granting bail** – Whether releasing the convict on bail would be appropriate, especially considering the victim's safety and potential societal impact.
- The decision to suspend Sengar's sentence by the Delhi High Court was influenced primarily by his conviction under the Protection of Children from Sexual Offences (POCSO) Act, which criminalizes "aggravated" sexual assault by a public servant.
- This decision sparked controversy due to the interpretation of the term "public servant."

What is the 'public servant' debate?

- **POCSO act** – One of the key issues in this case was whether Sengar's actions qualified as "aggravated sexual assault by a public servant" under Section 5(c) of the POCSO Act.
- **Narrow view of High Court** – The High Court took a narrow view and held that Sengar, an elected MLA, did not fall under the category of a *"public servant"* as defined under the Indian Penal Code (IPC), Section 21.
- The court noted that the IPC definition of a "*public servant" does not include elected legislators like MLAs.*
- **Controversial interpretation** – In practice, elected officials wield significant power and influence, often exercising authority over vulnerable populations.
    - The POCSO Act, designed to protect children from sexual exploitation, was meant to address the abuse of power by public servants, including police officers, teachers, and government officials.

    - The High Court's narrow interpretation excluded elected legislators, creating an anomaly.
- **Broader view of trial Court** – This decision diverged from the trial court's judgment, which had interpreted the term "public servant" more broadly, applying the definition under the Prevention of Corruption Act (PCA), 1988, *which includes anyone holding a public office*.
- The High Court's ruling raises important questions about how the law should be applied when it comes to sexual crimes committed by powerful individuals.

Can a life sentence be suspended based on 'prolonged incarceration'?

- **The situation of prolonged incarnation** – The High Court also relied on the fact that Sengar had already spent over seven years in prison.
- It cited the case *Kashmira Singh vs. State of Punjab* (1977), which held that prolonged incarceration without a final conviction could result in injustice.
- **Supreme Court's observation** – However, in cases of life imprisonment, the Supreme Court has consistently stated that mere prolonged incarceration cannot justify the suspension of a sentence.
- In the *Chhotelal Yadav vs. State of Jharkhand* (2025) case, the Supreme Court clarified that suspension of a sentence in life imprisonment cases should only occur if there is a palpable error in the trial court's judgment that could lead to acquittal on appeal.
- The High Court's reliance on Sengar's time served in prison could therefore be seen as insufficient grounds for suspension, given that his appeal was still pending and no clear error in the trial court's judgment had been established.
- **Concerns of Intimidation –** In addition to legal arguments, the survivor in this case raised serious concerns about her safety.
- She had previously been subjected to systemic intimidation, including the custodial death of her father and a truck-car accident in 2019 that critically injured her and her lawyer and killed her two aunts.
- Despite the Supreme Court granting her CRPF protection, the High Court ruled that the risk of further threats could not be the sole reason to deny Sengar's suspension of sentence.
- This stance has drawn criticism, as it highlights the extent to which survivors of sexual violence are often subjected to intimidation and violence while seeking justice.
- The survivor's fears were grounded in her traumatic experiences, yet the High Court's decision seemingly downplayed the gravity of these threats.
- **Important Questions raised** – The case raises several key questions about fairness, equality, and the interpretation of laws that aim to protect vulnerable populations.

- Should MLAs be classified as public servants under POCSO?
- What weight should be given to the period of incarceration when deciding to suspend a life sentence?
- How can the justice system ensure the safety of survivors who have faced systemic intimidation and violence?

What lies ahead?

- While the Delhi High Court's legal interpretation may be technically sound, its narrow reading of the POCSO Act and the suspension of a life sentence in this case raises concerns about justice for survivors of sexual violence.
- This case underscores the need for a more expansive, victim-centric approach in interpreting laws designed to protect children and vulnerable individuals.
- The Supreme Court's stay on the High Court's decision is a timely reminder that legal technicalities must not override the larger principles of justice, especially in cases involving serious crimes like sexual assault.
- As the appeal progresses, it will be crucial to see how the law evolves to address the growing concerns surrounding the abuse of power, gendered violence, and the protection of survivors in India's criminal justice system.

3. Important Supreme Court Cases

December 2025

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S.N.	Subject	Case Reference
1.	The role of the prosecution is not always to seek conviction at all costs, but as an officer of a Court it is their solemn duty to act in the interest of justice.	Chandan Pasi and Ors. Vs. State of Bihar, decided on 01.12.2025
2.	A divorced Muslim woman is entitled to recover the cash and gold ornaments received by her husband from her father at the time of marriage under the Muslim Women (Protection of Rights on Divorce) Act, 1986.	Rousanara Begum Vs. S.K. Salahuddin @ S.K. Salauddin & Anr., decided on 02.12.2025
3.	An act of clicking a woman's pictures and making her videos on a mobile phone without her consent, when is not indulging in a "private act", would not attract an offence of voyeurism under Section 354C IPC.	Tuhin Kumar Biswas @ Bumba Vs. State of West Bengal, decided on 02.12.2025
4.	At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused. What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power. Imminent death is not a precondition for treating statement as dying declaration.	Neeraj Kumar @ Neeraj Yadav Vs. State of Uttar Pradesh & Ors., decided on 04.12.2025
5.	The testimony of a witness cannot be outrightly rejected solely by declaring a witness a hostile witness. A portion of the testimony which is consistent with	Dadu @ Ankush & Anr. Vs. State of Madhya Pradesh & Anr., decided on 08.12.2025

	the case of the prosecution or defence may be accepted.	
6.	The police/investigating agencies are empowered to freeze the bank account of a person under Section 102 Cr.P.C. (now Section 106 Bharatiya Nagarik Suraksha Sanhita)., against whom a proceeding is initiated under the provisions of the Prevention of Corruption Act, 1988.	State of West Bengal Vs. Anil Kumar Dey, decided on 10.12.2025
7.	The power to punish for contempt is not a tool to silence critics or shield judges from scrutiny, declaring that contempt jurisdiction must never become a personal armour for the judiciary.	Vineeta Srinandan Vs. High Court of Judicature at Bombay on its Own Motion, decided on 10.12.2025
8.	Once premises fall within the definition of "public premises" and a tenancy is legally terminated, unauthorized occupants cannot claim the protection of State Rent Control Acts and must face eviction under the summary procedure laid out in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Overruled the judgment **of Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. 2014 (4) SCC 657,** calling it an incorrect interpretation that contradicted a binding Constitution Bench precedent of **Ashoka Marketing Ltd. Vs. Punjab National Bank, 1990 (4) SCC 406**, which held that PP Act overrides over the State tenancy laws irrespective of the date of entering into a tenancy.	Life Insurance Corporation of India & Anr. Vs. Vita, decided on 11.12.2025
9.	Issued directions to all the trial courts aiming to institutionalize a standardized format for cataloguing witnesses, documentary evidence, and material objects.	Manojbhai Jethabhai Parmar (Rohit) Vs. State of Gujarat, decided on 15.12.2025
10.	Dowry is prohibited in the Muslim	State of Uttar Pradesh Vs. Ajmal

	community, mehr is a compulsory gift which the groom is required to give to the wife at the time of nikah. It is defined as that it belongs solely to the bride and the husband, and his family can't take it away. Issued general directions to contain the social evil of dowry death in society.	Beg Etc., decided on 15.12.2025
11.	Long period of separation without any hope for reconciliation amounts to cruelty to both the parties. Pendency of matrimonial litigation for a long duration only leads to perpetuity of marriage on paper. It is in the best interest of parties and the society if ties are severed between parties in cases where litigation has been pending for a considerably long period of time. No useful purpose shall be served by keeping the matrimonial litigation pending in Court without granting relief to the parties.	Nayan Bhowmick Vs. Aparna Chakraborty, decided on 15.12.2025
12.	Once an auction sale is confirmed and the aggrieved party has not sought to set it aside, a separate suit challenging the order confirming the sale is expressly barred under Order XXI Rule 92(3) CPC. The appropriate remedy in such cases is to move an application under Section 47 CPC, limited to grounds such as lack of jurisdiction or nullity of the order.	Danesh Singh & Ors. Vs. Har Pyari (D) through LRS. & Ors. decided on 15.12.2025
13.	The cause of fire is immaterial, when the loss is occurred to the insured from the fire and the insurer can't deny claim saying that the proximate cause of fire was not provided in the specified peril.	Cement Corporation of India Vs. ICICI Lombard General Insurance Company Ltd., decided on 16.12.2025
14.	Omissions made in the examination-in-chief can be cured in the witness's cross-examination.	K. S. Dinachandran Vs. Shyla Joseph & Ors., decided on 17.12.2025
15.	The recovery of incriminating articles from the custody of the accused cannot be treated as a discovery pursuant to a	Shaik Shabuddin Vs. State of Telangana, decided on 17.12.2025

	disclosure statement to attract Section 27 of the Evidence Act. To bring a disclosure statement within the ambit of Section 27, there must be prior concealment of the relevant fact or object by the accused, and its subsequent discovery by the police must be a direct consequence of the information furnished by the accused.	
16.	Discrepancies in the testimony of the sole interested eyewitness rendered it unreliable, and that a conviction could not be sustained solely on such evidence in the absence of corroboration.	Punimati & Anr. Vs. State of Chhattisgarh & Ors. and Dayalu & Ors. Vs. State of Chhattisgarh, decided on 17.12.2025
17.	Arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37.	Ramesh Kumar Jain Vs. Bharat Aluminium Company Ltd. (BALCO), decided on 18.12.2025
18.	Suspension of sentence after conviction for an offence punishable with life imprisonment requires careful and cautious consideration, particularly where the allegations disclose a direct and active role in the crime. The power cannot be exercised mechanically or merely on the ground that the appeal is pending. The court should consider relevant factors like the nature of accusation made against the accused, the manner in which crime is alleged to have been committed and the seriousness of offence.	Rajesh Upadhayay Vs. State of Bihar & Anr., decided on 18.12.2025
19.	A prosecution case resting entirely on	Manoj @ Munna Vs. State of

	circumstantial evidence cannot be sustained solely on the "last seen" theory in the absence of other corroborative evidence.	Chhattisgarh, decided on 18.12.2025
20.	A Sessions Court cannot impose a sentence of life imprisonment for the remainder of a convict's natural life without remission, as such sentencing powers are exclusively vested in the Constitutional Courts. The sentence of life imprisonment no doubt means the entire life, subject only to the remission and commutation provided under Cr.P.C. and also to Articles 72 and 161 of the Constitution of India, which cannot be curtailed by a Sessions Court. Nor can the Sessions Court, a creation of the Cr.P.C. curtail the provision under Section 428, Cr.PC, available in the Code which created it.	Kiran Vs. State of Karnataka, decided on 18.12.2025
21.	It is impermissible for the High Courts to quash cheque dishonour proceedings by undertaking a pre-trial enquiry into disputed facts, particularly when a statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 operates in favour of the complainant.	M/s. Sri Om Sales Vs. Abhay Kumar @ Abhay Patel & Anr., decided on 19.12.2025
22.	Some delay in depositing the balance sale consideration by the buyer, beyond the timeline prescribed in the decree, would not render the decree for specific performance inexecutable if the buyer remained ready and willing to perform his part of the agreement.	Dr. Amit Arya Vs. Kamlesh Kumari, decided on 19.12.2025
23.	The provisions of Section 311 Cr.P.C. must be invoked sparingly and only where the evidence is indispensable for discovering the truth.	Mayankkumar Natwarlal Kankana Patel & Anr. Vs. State of Gujarat and Anr., decided on 19.12.2025
24.	Granting "no arrest" or "no coercive steps" orders while dismissing a	State of Uttar Pradesh & Anr. Vs. Mohd Arshad Khan & Anr.,

	quashing petition is tantamount to granting anticipatory bail without applying the strict legal tests for it. Such orders are "inconceivable and unthinkable."	decided on 19.12.2025
25.	A criminal revision petition does not automatically abate upon the death of the revisionist, particularly when the revision is not filed by an accused but by an informant or victim. In such cases, the revisional court has the discretion to continue examining the legality and propriety of the impugned order and may permit a victim to assist the court in furtherance of justice. Unlike appeals, where abatement is expressly governed by Section 394 CrPC, there is no statutory provision providing for abatement of criminal revisions. Revisional jurisdiction is discretionary in nature and is exercised to supervise the administration of criminal justice and to correct illegality, impropriety or jurisdictional error.	Syed Shanawaz Ali Vs.State of Madhya Pradesh, decided on 19.12.2025
26.	Mutation does not confer any right, title or interest on a person. Mutation in the revenue records is only for fiscal purposes, therefore, where there is no serious dispute raised by any natural legal heir, if any, of the tenure holder, in absence of any legal bar, mutation based on a will should not be denied as it would defeat the interest of Revenue. There is no legal bar on carrying out mutation of land records on the basis of a will, and that such mutation cannot be denied merely because the claim is founded on a testamentary document.	Tarachandra Vs. Bhawarlal & Anr., decided on 19.12.2025

IN THE SUPREME COURT OF INDIA

Chandan Pasi and Ors.
Vs.
State of Bihar

[Criminal Appeal No(s). 5137-5138 of 2025
arising out of SLP (Crl.) No(s). 3685-3686 of 2025]

Head Note – The role of the prosecution is not always to seek conviction at all costs, but as an officer of a Court it is their solemn duty to act in the interest of justice.

JUDGMENT

1. Leave granted.

2. The present appeals arise from the final judgments and orders dated 4th September, 2024 and 26th September, 2024 passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No.443 of 2017, which affirmed the judgment of conviction dated 27th March 2017 and the order of sentence dated 29th March 2017 passed by the Court of District & Session Judge, Buxar1 in Sessions Trial No.256 of 2016, whereby a total of six persons were sentenced to life imprisonment along with a fine of Rs.10,000/- each under Section 302/34 of the Indian Penal Code 18602, one year simple imprisonment each under Sections 448 & 323 along with Section 34 IPC with all of them running concurrently. Before us are three of the six convicts namely - Chandan Pasi, Pappu Pasi and Gidik Pasi. Here only it may be noted that there was a seventh accused person who was, by the process of law held to be a juvenile and thus dealt with in accordance with the applicable law.

3. By way of a factual background, it shall suffice to take notice of the following:

3.1. On 31st March 2016, the informant Kachan Pasi along with his father Ghughali Pasi, mother Kouta Devi and sister-in-law Dharmsheela Devi were returning from the fields of one Nanhaku Singh when the accused persons surrounded the above-named and assaulted Ghughali Pasi with a katta, who died as a result thereof. Particular allegations of such assault were also levelled against Joni Pasi @Ravindra Pasi.

3.2. The Trial Court convicted in the manner already referred to supra. All the accused persons before the Trial Court filed appeals under Section 374(2) of the Code of Criminal Procedure 19733, in which the High Court upheld the findings of the Court below.

4. We have heard Ms. Anjana Prakash, learned Senior Counsel for the appellants and learned Counsel appearing for the State.

5. A perusal of the Special Leave Petition reveals that amongst other grounds, the primary contention rests on the noncompliance of Section 313, CrPC. This Court had indicated in the order issuing notice that, should the ground of proper compliance be made out, only then, we would proceed to examine other grounds.

6. One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.

7. This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

7.1. In Sanatan Naskar v. State of W.B4, this Court as follows, regarding the scope of the examination under Section 313 CrPC:

"21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality.

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct.

The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the

accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain."

(emphasis supplied)

7.2. In Indrakunwar v. State of Chhattisgarh5, this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments formulated the following principles vis-àvis this Section:

"35. A perusal of various judgments15 rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."

7.3. In Raj Kumar v. State (NCT of Delhi)6 as subsequently approved by a bench of three-Judges in Aejaz Ahmad Sheikh v. State of U.P. and Another7, the Court laid down the following factors:

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

[See also: Ranvir Yadav v. State of Bihar8 and Naresh Kumar v. State of Delhi)9]

8. Having duly considered the position of law and principles as above, we now examine the statements of the appellant(s) recorded under this Section. For ready reference, the statements are reproduced below: Appellant No.1 (Chandan Pasi) statement:

"My name is Chandan Pasi, My Father's name is Birendra Pasi ...
(1) Question:- Did you listen to the Deposition of the Witnesses?
Answer:- Yes

(2) Question:- The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM, with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False statement.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question:- Whether you want to Say anything in your defence?
Answer: I am innocent."

Appellant No.2 (Pappu Pasi) statement:
"My name is Pappu Pasi @ Hindustan Pasi

(1) Question:- Did you listen to the Deposition of the Witnesses?
Answer:- Yes

(2) Question:- The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegation.

(4) Question: - Whether you want to Say anything in your defence?
Answer: I am innocent."

Appellant No.3 (Gidik Pasi) statement:
"My name is Gidik Pasi ...

(1) Question:- Did you listen to the Deposition of the Witnesses?
Answer:- Yes

(2) Question:- The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question:- Whether you want to Say anything in your defence?
Answer: I am innocent."

9. The statements extracted above reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law. The statements given by all three persons are carbon copies of each other. How such statements can pass muster at the hands of the learned Trial Judge is something which we fail to understand. Out of the four questions asked, directly related to the sequence of events, were only two. The second question was as general as can be, with reference to only the bare allegations, to which an omnibus denial was issued. The third was also of similar nature, saying that it has been alleged and evidenced, and nothing further.

This cannot be said to be the putting of every material circumstance. It is equally disturbing for us to see that in the desire to secure a conviction for the accused

persons, the prosecutor also let their duty of assisting the Court in conducting the examination of the accused under this section fall by the wayside. The prosecutor is an officer of the Court and holds a solemn duty to act in the interest of justice. They cannot act as a defence lawyer, but for the State, with the sole aim of making the gauntlet of punishment fall on the accused. [See: Sovaran Singh Prajapati v. State of U.P.10]

10. In view of the above observations, we need not delve into the other grounds raised, questioning the concurrent conviction against the appellants herein. On this ground alone, the Appeals are allowed and the matter is sent back to the concerned Trial Court to recommence from the state of the recording of the Section 313 CrPC statements. We may clarify that the remand is limited to the cases of the three appellants before us and our observations herein shall not affect the sanctity of the findings already arrived at, qua the other accused persons.

A trial is a function of memory; it is this memory that, when translated into spoken word testimony on oath, becomes evidence, and thus the same is susceptible to the vagaries of time. Keeping in view the fact that the offence is from the year 2016, and while being cognizant of the observations of the Constitution Bench in High Court Bar Association, Allahabad v. State of U.P. 11, we direct the concerned Trial Court to do the needful within four months from the date of the communication of this judgment.

11. Registrar (Judicial) to communicate this judgment and order to the learned Registrar General, High Court of Judicature at Patna, who will forthwith communicate the same to the concerned court for necessary action and compliance.

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

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

December 01, 2025

1 Hereinafter referred to as the 'Trial Court'.

2 'IPC' for short.

3 Hereinafter referred to as "CrPC"

4 (2010) 8 SCC 249

5 2023 SCC OnLine SC 1364

6 (2023) 17 SCC 95

7 2025 SCC OnLine SC 913

8 (2009) 6 SCC 595

9 2024 SCC OnLine SC 1641

10 2025 SCC OnLine SC 351

11 (2024) 6 SCC 267

IN THE SUPREME COURT OF INDIA

Rousanara Begum
Vs.
S.K. Salahuddin @ S.K. Salauddin & Anr.

[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No(s)._____ of 2025
@ Diary No. 60854 of 2024]

Head Note - A divorced Muslim woman is entitled to recover the cash and gold ornaments received by her husband from her father at the time of marriage under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

JUDGMENT

Sanjay Karol, J.

Delay condoned.

1. Leave granted.

2. These appeals are directed against judgment and order dated 24th November 2022 passed in CRR No. 489 of 2019 and Order dated 31st January 2024 passed in application for modification bearing No. CRAN 9 of 2023 by the High Court at Calcutta, at the instance of the Appellant herein, Rousanara Begum, who is the former wife of the Respondent No.1 - S.K Salahuddin1.

3. The short question which arises for consideration in these appeals are whether goods given to a daughter at the time of her marriage by her father, or to the bridegroom, can be by application of law, returned to the daughter, appellant herein, given that their marriage had ended in divorce.

4. The parties to the lis were married on 28th August 2005. Differences, however, arose shortly thereafter and the Appellant departed from her matrimonial home on 7th May 2009. Subsequently, she filed an application under Section 125 of the Code of Criminal Procedure, 19732 and initiated proceedings under Section 498-A, Indian Penal Code, 18603. The marriage eventually ended in divorce on 13th December 2011. Thereafter, she approached the Court4 under Section 3 of The Muslim Women (Protection of Rights on Divorce) Act, 19865 seeking the return of total of Rs. 17,67,980/-. This amount was arrived at in the following terms:

"6. The petitioner is entitled to receive a total amont of Rs.17,67,980/- from the opposite party, which includes the dower amount of Rs. 1,50,000/-, dowry of

Rs.7,00,000/-, 30 (thirty) Bhori gold ornaments worth Rs.9,00,000/-, the value of the fridge and stabilizer Rs.10,700/-, Panasonic TV and other items worth Rs.18,140/-, showcase Rs.3,000/-, box bed Rs. 19,000/- , dressing table Rs.2,500/-, steel almirah Rs.5,500/-, steel mirror Rs.2,100/-, sofa set Rs.2,000/-, dining table Rs. 1,720/-, and bedding Rs.3,320/ -, and she has claimed it."

It is these proceedings that, after multiple rounds, have travelled to this Court. Before proceeding to the merits of the matter, we must take note of this history.

4.1. The Learned CJM vide order dated 26th June 2014 allowed the application and granted a total of Rs.8.3 lacs as against the claim of Rs. 17.5 lacs.

4.2. Both parties preferred revision petitions before the learned Session Judge who remanded the matter for afresh consideration allowing the evidence of marriage registrar to be entered.

4.3. On remand, the learned Additional Judicial Magistrate by order dated 23rd February 2015 once again decreed the matter in favour of the appellant granting a total of Rs.8 lacs along with 30 bhories of gold ornaments.

4.4. Aggrieved thereby the respondent preferred the revision petition and the learned Additional Sessions Judge by order dated 21st July 2015 allowed the same and once again remanded the matter for additional evidence and fresh trial.

4.5. The Additional Chief Judicial Magistrate, Bolpur in terms of judgment dated 27th April 2017 framed three issues for consideration- issues 1 and 2 concerned the amount of Rs.8 lacs along with 30 bhories as previously awarded and issue 3 pertained to the articles that were given to the bridegroom and whether any right to recover the same existed. Issue no.1 which particularly dealt with Rs.1 lac as mehr was disposed of observing that the amount already stood paid by the respondent to the appellant and as such nothing survived for consideration.

For issue no.2, reference was made to Exhibit 7 and Exhibit 8-two qabilnamas or entries in the marriage register. Exhibit 8 which is the original entry records that the father of the bride gave Rs.7 lacs and 30 bhories of gold to the son-in-law. Exhibit 7 on the other hand, records that the above said amounts were given but it does not state that the same were particularly given to the bridegroom.

It has been noted that this discrepancy has been admitted by the Marriage Registrar, however, the Court, considering the overall circumstances found it apposite not to grant too much weight to the same. It was held that the proof of marriage, the original qabilnama and the inability of the opposite party to disprove the entry in question made the opposite party liable to return the 7 lacs and 30 bhories gold to the appellants. Finally, for issue no.3 it was observed that

since there was no entry in the concerned documents regarding the furniture, there was no entitlement for the same to be returned.

4.6. The Respondent preferred Criminal Revision No.21/2017 which was dismissed by judgment dated 15th December 2018 by the Court of Sessions observing that there is no irregularity or impropriety in the order passed by the ACJM.

4.7. The Respondent was aggrieved and dissatisfied by the order of the Court of Sessions and as such went before the High Court under Article 227 of the Constitution of India.

5. The High Court found merit in the case made out by the respondent and as such allowed the petition. The reasoning is as follows:

5.1. The discrepancy between Exhibit 7 (marriage certificate given to the respondent) & 8 (marriage certificate given to appellant) as also the manner in which the learned ACJM dealt with the same was noticed but the findings were set aside given that the entry in Exhibit 8 tallied with the statement of the father of the appellant made in the proceedings under Section 498A IPC wherein he has categorically stated to have given the amount and gold in question to the respondent, that is Rs.7 lacs and 30 bhories.

5.2. Regarding the maintainability of a petition under Article 227 of the Constitu tion it was observed that the power of superintendence also extends to judicial matters and it confers ample powers on the Court to prevent abuse of process of law.

6. It is in the aforesaid backdrop that the appellant is before us.

7. At the outset, it is requisite to notice Section 3(1) of the 1986 Act, which reads as under:

"3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by

her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends."

(emphasis supplied)

The Section quoted above deals with mehr/dower and/or other properties given to a woman at the time of her marriageclearing the way for the woman to set up a claim against her husband in the above situations, or claim back from her husband properties given, as the case may be. In Daniel Latifi v. Union of India6, the Constitution Bench of this Court discussed the object, purpose and ambit of the Act and the Section reproduced supra in the following terms:

"22. Sections 3 and 4 of the Act are the principal sections, which are under attack before us. Section 3 opens up with a non obstante clause overriding all other laws.

23. Where such reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made and paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or anyone duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be. Rest of the provisions of Section 3 of the Act may not be of much relevance, which are procedural in nature."

(emphasis supplied)

8. It is difficult to agree with the reasoning of the High Court. The primary basis for not giving the amount and gold in question to the appellant, as it appears from the perusal of the judgment, was the apparent contradiction between the statement of the Kazi i.e. marriage Registrar and the father of the appellant. The former stated in evidence that the entry recording the amount and gold being given to the husband was erroneously done so and it should have been that the said amount(s) were only given without specifying, to whom, the father of the appellant on the other hand stated that he had given the amount(s) in question to the respondent.

The High Court observed that since the father was directly responsible for giving the said amount(s), it would be prudent to accept his version of events. What, apparently, the High Court lost sight of is the end result of the proceedings in which the said statement of the father was given. Those proceedings were concerned with Section 498A-IPC and Section(s) 3/4 of the Dowry Prohibition Act, 1961, and despite such a direct statement by the father of the appellant the learned Trial Court seized of the matter acquitted the respondent, a conclusion which appears to have attained finality.

Then, it cannot be said, in our view, that the evidentiary value of that statement is either equal to or greater than the statement of the marriage registrar. The High Court records that the latter statement regarding writing and overwriting in the entry in the marriage register is proved by him having produced the same before the Court. When that is the case, we are at a loss to understand why his statement in entirety should not be accepted. Mere allegation as to his conduct being suspicious on account of overwriting in the marriage register is not sufficient to discard his testimony.

9. This case presents the possibility of two interpretations and whereas it is a settled rule that this Court under its plenary, Article 136 jurisdiction does not interfere with the findings of the High Court simply because there are two views possible, this case, in our considered view, does not fall under this exception for the High Court missed the purposive construction goalpost and instead proceeded to adjudicate the matter purely as a civil dispute. The Constitution of India prescribes an aspiration for all, i.e. equality which is, obviously, yet to be achieved. Courts, in doing their bit to this end must ground their reasoning in social justice adjudication.

To put it in context, the scope and object of 1986 Act is concerned with securing the dignity and financial protection of a Muslim women post her divorce which aligns with the rights of a women under Article 21 of the Constitution of India. The construction of this Act, therefore, must keep at the forefront equality, dignity and autonomy and must be done in the light of lived experiences of women where particularly in smaller towns and rural areas, inherent patriarchal discrimination is still the order of the day.

10. The question framed above is answered accordingly. The Appeals are allowed as aforesaid. The judgment and order passed by the High Court of Calcutta with particulars as contained in paragraph 2, is set aside. Learned Counsel for the Appellant would supply the bank and other relevant details to the learned counsel for the respondent within three working days from the date of this judgment.

The amount be directly remitted into the bank account of the Appellant. The Respondent is directed to file an affidavit of compliance with the Registry of this Court within six weeks thereafter. The said compliance certificate shall be placed on record. If the needful is not done, the respondent, would be liable to pay interest @9% per annum.

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

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

December 02, 2025.

1 Hereinafter referred to as 'the Respondent'

2 Hereinafter referred to as 'CRPC'

3 Hereinafter referred to as 'IPC'

4 Misc. Case No. 149/2011 before Additional CJM, Bolpur District Birbhum

5 Hereinafter referred to as '1986 Act'

6 (2001) 7 SCC 740

IN THE SUPREME COURT OF INDIA

Tuhin Kumar Biswas @ Bumba
Vs.
State of West Bengal
[Criminal Appeal No. 5146 of 2025
arising out of SLP (Crl.) No. 3002/2024]

Head Note - An act of clicking a woman's pictures and making her videos on a mobile phone without her consent, when is not indulging in a "private act", would not attract an offence of voyeurism under Section 354C IPC.

JUDGMENT

Manmohan, J.

1. Leave granted.

2. The present Appeal has been filed challenging the judgment dated 30th January 2024 passed by the Calcutta High Court, whereby the revision petition filed by the Appellant-accused against the order dismissing the discharge application filed by the Appellant in FIR No.50/2020 dated 19th March 2020 lodged with police station Bidhannagar North, was dismissed.

FACTS

3. On 19th March 2020, the complainant-Ms. Mamta Agarwal, an alleged tenant of Mr. Amalendu Biswas, one of the co-owners of the property at CF-231, Sector I, Salt Lake, Kolkata 700064 ("the property") filed a complaint/FIR under Sections 341, 354C, 506 of Indian Penal Code ('IPC'). The complainant alleged that on 18th March 2020, when the complainant along with her friend and workmen tried to enter the property, the Appellant-accused intimidated them and restrained them from entering the property. The complainant further alleged that the Appellant-accused intimidated the complainant by clicking her pictures and making her videos on his mobile without her consent and by doing so, he intruded upon her privacy and outraged her modesty.

4. Upon completion of investigation, a chargesheet dated 16th August 2020 was presented against the Appellant-accused for offences punishable under Sections 341, 354C and 506 of IPC. It is stated in the chargesheet that the complainant expressed her unwillingness to make a judicial statement. The relevant portion of the chargesheet in question is reproduced hereinbelow:-

"17. Brief facts of case: Bidhannagar North P.S. Case No:50/2020 Dated 19.03.2020 U/S 341/354C/506 IPC has been started on the basis of written

Complaint of one Mamta Agarwal of I/B, Kustia Road, Kolkata - 700039. The fact in brief is that on 19.03.2020 at about 15.00 hrs. while she along with her friend were entering into the premise, located at CF-231, Sector-1, Salt Lake, Kolkata-700 064, PS BDN(N), they were restrained by one Tuhin Kr. Biswas @ Bumba. Some argument took place between them. Said Tuhin Kr. Biswas snapped some photographs and recorded video, which caused outrage of female modesty of the complainant.

Being endorsed by IC, Bidhannagar North PS, I took up its investigation. During investigation all follow-up actions were taken. Notice u/s 41A Cr.P.C. was complied with by the accused but he didn't surrender before Ld. Court. The complainant expressed her unwillingness to make judicial statement. Discussed with IC, Bidhannagar North PS and considering all aspects, he opined to submit Charge Sheet in this case.

Hence, I do submit Charge sheet vide BDN(N) PS CS No.128/2020 Dated 16.08.2020 u/s 341/354C/506 IPC against accused Tuhin Kr. Biswas @ Bumba S/O Bimanlendu Biswas of CF-231, Sector-1, Salt Lake Kolkata-700 064, PSBDN(N) to stand his trial in the open Court of law. The witnesses, noted in Col. No.14, will prove the charge during trial. They may kindly be summoned. Kept the complainant informed about the result of investigation."

5. Thereafter, the Appellant-accused, who is son of one of the co-owners of the property in question filed an application seeking discharge, which was dismissed by the Trial Court vide order dated 29th August 2023. The revision petition against the order dated 29th August 2023 was dismissed by the learned Single Judge vide the impugned judgment.

ARGUMENTS ON BEHALF OF THE APPELLANT

6. Learned counsel for the Appellant-accused stated that the two brothers (Mr. Bimalendu Biswas and Mr. Amalendu Biswas) are the joint owners of the property in question and one of the brothers, being Mr. Amalendu Biswas, had tried to dispossess the other brother without due process of law. He stated that said other brother, being father of the Appellant-accused, filed a civil suit being Title Suit No. 20 of 2018 with respect to the property in question against Mr. Amalendu Biswas.

He pointed out that vide order dated 29th November 2018, the learned Civil Judge directed the parties to maintain joint possession of the property as well as not to alienate the property and/or not to create any thirdparty interest in the property. He emphasized that the said injunction was prevalent on the date of the incident which led to filing of the FIR. The relevant portion of the injunction order dated 29th November 2018 is reproduced hereinbelow:-

"Both the parties should maintain a joint possession in the suit property. Both parties are hereby restrained from disturbing the joint possession of the other in the suit property and from alienating the suit property or creating 3rd party interest in the suit property till disposal of the suit."

7. He alleged that the FIR in question had been registered at the behest of Mr.Amalendu Biswas, who attempted to dispossess the Appellant-accused and his father from the property in violation of the injunction order passed by the Trial Court.

8. He contended that on the date of the incident, the complainant had entered the property with anti-social elements in a bid to dispossess the Appellant-accused's father. He pointed out that the complainant-Ms. Mamta Agarwal is a habitual offender and has been charged with offences under Sections 302 & 307 of IPC in one case, and offences under Sections 323, 341, 506(II) & 114 of IPC in another case. He emphasised that the complainant is not a tenant in the property. He further stated that in the chargesheet, the investigating agency has not adduced any document pertaining to tenancy of the complainant.

9. He alleged that the other side, i.e., Mr. Amalendu Biswas was in the process of creating third-party rights in violation of the injunction and mere protest against creation of such third-party rights by the other litigant over the property did not attract Section 341 or 506 of IPC.

10. He stated that the allegations in the FIR did not disclose the commission of an offence under Section 354C of IPC. He stated that no photographs or seizure had been placed on record to substantiate the allegations of voyeurism. He submitted that despite the finding given by the learned Single Judge that the allegation in the FIR did not disclose any offence under Section 354C of IPC, the learned Single Judge did not quash the FIR or discharge the Appellant qua the said offence. He stated that the complaint was silent with respect to the threatening language allegedly uttered by the Appellant-accused.

11. He stated that there are no statements under Section 161 of Code of Criminal Procedure ('Cr.P.C'). of the alleged friend accompanying the complainant or her workmen. He further stated that the complainant had also expressed her unwillingness to get her statement recorded under Section 164 of Cr.P.C., thereby indicating the falsity of her allegations in the FIR.

12. He contended that the allegations in the FIR are false and even if they are accepted at face value, no case is made out against the Appellant-accused.

ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE

13. Per contra, learned counsel appearing for the Respondent-State stated that the complainant was only a prospective tenant. He pointed out that in his statement, the other co-owner of the property, being Mr. Amalendu Biswas had stated that the complainant had come to see the ground floor of the property. He emphasized that there was sufficient material on record which made out a prima facie case against the Appellant-accused for offences punishable under Sections 341 and 506 of IPC. He relied upon the following observations and findings of the High Court in the impugned Judgment:-

"14. With regard to truthfulness, sufficiency or admissibility of the charge under Section 341/506 of the IPC made in the FIR, it cannot be said to be a matter falling within the domain of exercising jurisdiction under Section 227 of the Code of Criminal Procedure at the time of consideration of a prayer for discharge.

15. On careful scrutiny of the order impugned, I find no reason to interfere with the order whereby Ld. Magistrate refused to discharge the accused and fixed a date for framing of charge and hearing of the petition.

16. Thus, the revision application being no. CRR 3443 of 2023 is hereby dismissed. Ld. Trial Court is directed to frame charge, keeping an eye on the observation made by this Court after giving an opportunity of hearing to both the parties."

REASONING ABSENT A STRONG SUSPICION, AN ACCUSED CAN BE DISCHARGED

14. Having heard the learned counsel for the parties, this Court is of the view that before proceeding with the matter, it is essential to outline the legal principles to be kept in mind by the Court while deciding an application seeking discharge.

15. This Court has recently in Ram Prakash Chadha v. State of UP (2024) 10 SCC 651, cited with approval earlier decisions of this Court in Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715; P. Vijayan v. State of Kerala, (2010) 2 SCC 398; and Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 as under:-

"21. In the decision in Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] , this Court held that the word "ground" in Section 227CrPC, did not mean a ground for conviction, but a ground for putting the accused on trial.

22. In P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , after extracting Section 227CrPC, this Court in paras 10 and 11 held thus: (SCC pp. 401-402)

"10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

23. In para 13 in P. Vijayan case [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this Court took note of the principles enunciated earlier by this Court in Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] which reads thus: (Prafulla Kumar Samal case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , SCC p. 9, para 10)

"10. ...

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not

grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

16. In M.E. Shivalingamurthy vs. Central Bureau of Investigation Bengaluru, (2020) 2 SCC 768, this Court has held as under:-

"17.This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar). The expression, "the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi)."

(emphasis supplied)

17. Consequently, at the stage of discharge, a strong suspicion suffices. However, a strong suspicion must be found on some material which can be translated into evidence at the stage of trial.

18. Keeping in view the aforesaid principles of law, this Court will have to assess as to whether there are sufficient grounds for proceeding against the Appellant-accused for the offences alleged in the FIR.

FIR AND CHARGESHEET DO NOT DISCLOSE AN OFFENCE UNDER SECTION 354C IPC

19. Section 354C of IPC defines voyeurism as an act of a man watching or capturing the image of a woman engaging in a 'private act' in circumstances where she would usually have the expectation of not being observed. 'Private act' has been defined in Explanation 1 as an act including "an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public."

20. Upon a perusal of the FIR and chargesheet on record, this Court is unable to conclude the same disclose an offence under Section 354C of the IPC since there is no allegation in the FIR and chargesheet that the complainant was watched or captured by the Appellant-accused while she was engaging in a 'private act'. The learned Single Judge, in the impugned judgment, has concluded with respect to the offence under Section 354C as under:-

"11. Allegation made in the written complaint, in my opinion, did not disclose any offence under Section 354C.

12. From the bare reading of the aforesaid provision, it is clearly intelligible that the allegation of clicking pictures and making video made in the written complaint cannot be said to be an offence within the meaning of Section 354C of IPC."

(emphasis supplied)

21. Consequently, the learned Single Judge in the impugned order itself concluded that the allegations in the FIR and the material on record did not disclose an offence under Section 354C of IPC.

INGREDIENTS OF CRIMINAL INTIMIDATION ARE NOT ATTRACTED

22. Further, in order to constitute an offence of criminal intimidation punishable under Section 506 of IPC, it must be shown that the person charged, threatened another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm. Except for the bald allegation that the Appellant-accused intimidated the complainant by clicking her photographs, the FIR and chargesheet are completely silent about the manner in which the complainant was threatened with any injury to her person or her property.

The words, if any, uttered by the complainant are not mentioned in the FIR. Additionally, as stated above, the complainant or her associates never made a statement to substantiate her allegations. Consequently, in the present case, even if the allegations in the FIR are taken at face value, the ingredients of offence of criminal intimidation are not attracted.

OFFENCE OF WRONGFUL RESTRAINT IS NOT MADE OUT

23. Section 341 of IPC provides punishment for the offence of wrongful restraint, which has been defined in Section 339 of IPC as under:

"339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception- The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section."

24. The ingredients essential to constitute an offence of wrongful restraint are that there should be an obstruction which prevents a person from proceeding in any direction in which the person has a right to proceed. The exception to the offence of wrongful restraint provides that no offence of wrongful restraint is committed if the person alleged of obstruction, in good faith, believes that he has a lawful right to obstruct. Therefore, the evidence required to establish the offence of wrongful restraint is that the person alleging obstruction has a right to proceed in such direction and the person obstructing has no lawful right to cause obstruction.

25. In the present case, the perusal of the FIR reveals that the alleged offences were committed when the complainant attempted to enter the property. The right of the complainant to enter the property stems from the virtue of being a purported tenant of Mr. Amalendu Biswas. However, no material has been placed on record along with the chargesheet which indicates that the complainant was a tenant in the property at any point of time. Surprisingly, the complainant has not even given a statement in pursuance to her complaint.

On the contrary, the said Amalendu Biswas in his statement has stated that the complainant had come to see the property, meaning thereby that the complainant was not a tenant in the property but only a prospective tenant when the FIR was registered. Therefore, the material on record indicates that on the date of the alleged offence, the complainant had no right to enter the property. In fact, the induction of the complainant as tenant in the property would have been in violation of the injunction passed by the Trial Court.

26. In view of the aforesaid, this Court is of the opinion that all that the Appellant-accused did was to enforce what he bonafidely thought was his lawful right over the property in terms of the injunction order passed by the Trial Court. This Court is also of the opinion that the allegations in the FIR and the material on record at best constitute a cause of action for filing a suit for injunction and/or an application seeking modification of the interim order already in subsistence or an application for the relief of ingress and egress in the pending suit.

27. Consequently, this Court is of the view that criminal proceedings against the Appellant-accused for offences punishable under Sections 341, 354C, 506 of IPC cannot be permitted to continue.

TENDENCY OF FILING CHARGESHEETS AND FRAMING CHARGES IN MATTERS WHERE NO STRONG SUSPICION IS MADE OUT CLOGS THE JUDICIAL SYSTEM

28. Before parting with this case, this Court would like to emphasise that where there is a pending civil dispute between the parties, the Police and the Criminal

Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction.

The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal.

This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process.

29. In the present case, the Police and the Trial Court should have been cognizant that as there was a pending civil dispute with regard to the property in question as well as a prior subsisting injunction order and the complainant had refused to make any judicial statement, strong suspicion founded on legally tenable material/evidence was absent.

CONCLUSION

30. Keeping in view the aforesaid, the present Appeal is allowed and the impugned Judgment and Order is set aside as well as the Appellant-accused is discharged from G.R. Case No. 223 of 2020 (arising out of Bidhannagar North Police Station FIR No. 50 of 2020).

.....J. [Nongmeikapam Kotiswar Singh]
.....J. [Manmohan]
New Delhi;
December 02, 2025

IN THE SUPREME COURT OF INDIA

Neeraj Kumar @ Neeraj Yadav
Vs.
State of Uttar Pradesh & Ors.

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 7518 of 2025]

Head Note - At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused. What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power.

Imminent death is not a precondition for treating statement as dying declaration.

JUDGMENT

Sanjay Karol J.

1. Leave Granted.

2. The present appeal arises out of the impugned judgment and order dated 22nd April 2024 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 4729 of 2023, which affirmed the order dated 3rd August 2023 passed by the Court of Additional District and Sessions Judge, Bulandshahar1 whereby the application filed by the prosecution under Section 319 of the Code of Criminal Procedure, 19732, praying for summoning additional accused (Respondent Nos.2 to 4 herein)3 in Sessions Trial No.1151 of 2021 arising out of Case Crime No.187 of 2021, was dismissed.

3. The facts in brief, shorn of unnecessary details, are as under:

3.1. On 25th March 2021, the appellant Neeraj Kumar lodged FIR No. 187 of 2021 at PS Sikandrabad under Section 307 of the Indian Penal Code, 18604 alleging that his sister Smt. Nishi5 had been shot by her husband, Rahul, at her matrimonial home. The said FIR was registered based on the information received by him from his niece Shristi, aged about nine years, who informed the appellant that 'Papa has shot Mummy at home'.

3.2. The deceased was first taken to Government Hospital, Bulandshahar, and thereafter to Kailash Hospital, Noida, where she underwent treatment for the

firearm injury sustained by her. During the course of treatment, her statements were recorded under Section 161 CrPC on two occasions - firstly on 25th March 2021 and then again on 18th April 2021. In her first statement, she named her husband Rahul as the person who shot her; in the subsequent one, she further alleged that he had done so at the instigation of his mother Rajo @Rajwati (Respondent No.2 herein), brother Satan @Vineet (Respondent No.3 herein) and brother-in-law Gabbar (Respondent No.4 herein). Both the statements were video recorded.

3.3. On 15th May 2021, the deceased succumbed to the injuries sustained. Following her death, the appellant, on 20th May 2021, made another complaint before the SHO PS Sikandrabad, requesting that appropriate legal action be taken against the respondents (relatives of the husband), since the deceased had categorically named them and mentioned their role in the statement(s) recorded by the police.

3.4. Upon completion of the investigation, a chargesheet was filed on 16th July 2021 only against Rahul, the husband of the deceased, under Sections 302 and 316 IPC, while exonerating the private respondents herein.

3.5. The case thereafter proceeded to trial before the concerned Court. The charges were framed on 18th October 2021 and the appellant was examined as PW-1 on 28th March 2022 and he deposed about the incident and the events immediately following it. The minor daughter of the deceased, Shristi, was examined as PW-2 on 12th July 2022. In her testimony, she narrated the circumstances surrounding the said incident, stating that her father had shot her mother at the instigation of the private respondents herein.

3.6. On the strength of these testimonies and the statements of the deceased recorded under Section 161 CrPC, the prosecution moved an application under Section 319 CrPC, praying for summoning the private respondents as additional accused to face trial along with the husband of the deceased. It was contended that the evidence recorded during the trial clearly disclosed their role in the commission of the offence.

3.7. The Trial Court, vide its order dated 3rd August 2023 dismissed the said application, holding that the material on record was insufficient or was not of such strength and cogency to exercise the extraordinary power provided under Section 319 CrPC.

3.8. Aggrieved by the said order, the appellant preferred Criminal Revision No.4729 of 2023 before the High Court, which was dismissed vide the impugned judgment for the following reasons:

(i) The statements of the deceased dated 25th March 2021 and 18th April 2021 recorded before her death could not be treated as dying declarations under Section 32 of the Indian Evidence Act 18726 since her death had occurred on 15th May 2021, after the expiry of a substantial period from the date of recording such statements.

(ii) The statement of PW-1, the informant/brother of the deceased, was held to be of limited evidentiary value with respect to the actual occurrence, as he was not an eyewitness to the incident.

(iii) The testimony of PW-2, the minor daughter of the deceased, was also not sufficient to summon the respondents, since she had admitted in her cross-examination that she reached the place of occurrence only after hearing the sound of two gunshots, thereby indicating that she was also not an eyewitness to the said incident. Relying on the above, the High Court concluded that no strong and cogent evidence emerged justifying exercise of power under Section 319 CrPC and accordingly affirmed the order passed by the Trial Court.

3.9. It is against this judgment of the High Court that the appellant is before us.

4. We have heard the learned counsel for the parties and perused the material on record. The sole issue that arises for our consideration is whether the Courts below, in the attending facts and circumstances, were justified in dismissing the application for summoning the respondents as additional accused?

5. Section 319 CrPC contemplates that:

"(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."

6. The law governing the summoning of an additional accused under Section 319 CrPC is now well settled. The provision is an enabling one, empowering the Court, during the course of an inquiry or trial, to proceed against any person not already arraigned as an accused, if, from the evidence adduced before it, such person appears to have committed an offence. Its object is to ensure that no guilty person escapes the process of law, thereby giving effect to the maxim judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted). It casts a duty upon the Court to ensure that the real offender does not go unpunished, for only then can the concept of fair and complete trial be realised.

7. It is no longer res integra that the power conferred under this Section is extraordinary and discretionary in nature, intended to be exercised sparingly and

with due circumspection. While invoking it, the Court must be satisfied that the evidence appearing against the person sought to be summoned is such that it prima facie necessitates bringing such person to face trial. The degree of satisfaction required is higher than that warranted at the stage of framing of charge, yet short of the satisfaction necessary to record a conviction. Such satisfaction must rest on cogent and credible material brought on record during the trial, and not based on conjectures or speculations. In this regard, reference to a few judicial pronouncements of this Court would be apposite.

7.1. The Constitution Bench of this Court in Hardeep Singh v. State of Punjab7 extensively discussed the power conferred under Section 319 CrPC. Relevant part is extracted hereunder:

"90. all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s).

It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie

case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC.

110. In Lal Suraj [Lal Suraj v. State of Jharkhand, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844] , a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in Lok Ram [Lok Ram v. Nihal Singh, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892] , wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial."

(emphasis supplied)

7.2. In S. Mohammed Ispahani v. Yogendra Chandak8, it reiterated that under this Section the Court possesses the power to summon the persons not named in the chargesheet to face trial, if the evidence on record so warrants. It further clarified that a statement recorded under Section 161 CrPC, though not an independent piece of evidence, sufficient in itself to invoke the power under this Section may, nevertheless, be relied upon for corroborative purposes when supported by evidence emerging during trial. It was observed as under:

"34. No doubt, at one place the Constitution Bench observed in Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that the word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In para 105 of the judgment, however, it is observed that "only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner".

This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the evidence which was collected at the stage of inquiry. However there is no contradiction between the two observations as the Court also clarified that the "evidence", on the basis of which an accused is to be summoned to face the trial in an ongoing case, has to be the material that is brought before the Court during trial. The material/evidence collected by the investigating officer at the stage of inquiry can only be utilised for corroboration

and to support the evidence recorded by the Court to invoke the power under Section 319 CrPC.

35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the chargesheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the chargesheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the chargesheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

(emphasis supplied)

7.3. In Omi v. State of M.P.9, a coordinate bench of this Court laid the following principles of law with regard to Section 319 CrPC:

"19. The principles of law as regards Section 319CrPC may be summarised as under:

19.1. On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the chargesheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the chargesheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not

being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

(emphasis supplied)

7.4. Recently, this Court, through one of us (Sanjay Karol, J.), in Shiv Baran v. State of U.P.10 summarised the principles that the Court ought to keep in mind while considering an application under this Section. It was observed:

"15. The principles that the Trial Court ought to follow while exercising power under this Section are:

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;

(b) It is the duty cast upon the Court not to let the guilty get away unpunished;

(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;

(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculpates him;

(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;

(f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);

(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried'.

(emphasis supplied)

8. Keeping in view the principles delineated above, let us now examine whether the Courts below have applied the correct standard while declining the prosecution's prayer to summon the respondents as additional accused. As is evident from record, the prosecution has relied primarily on three facets of evidence:

(i) the testimony of PW-1, the informant and brother of the deceased;

(ii) the testimony of PW-2, the minor daughter of the deceased, along with her statement recorded during investigation; and

(iii) the statements of the deceased herself recorded under Section 161 CrPC. We may consider each in turn.

9. The statement of PW-1, the appellant and informant, when read in its entirety, clearly attributes specific roles to each of the respondents. The relevant extract of the statement reads as under:

"Due to three daughters of my sister, her Dewar- Satan, Husband- Rahul, Sas- Rajwati,Nandoi- Gabbar used to harass my sister- Nishi. When my sister- Nishi, became pregnant fourth time, sex determination test of child in her ovary was got done by Dewar- Satan, Husband- Rahul, Sas- Rajvanti, Nandoi- Gabber. In said test, it had appeared that, this time also in her ovary is female child. Then her Dewar- Sattan, Husband- Rahul, Sas- Rajwati, Nandoi- Gabbar mounted pressure over her for getting abortion.

In this context, my sister had told me telephonically. She had also told that, she is willing to give birth to her female child. On the date of 25.3.21 at about 9.30 a.m. my niece[sister's daughter] namely- Shristi telephonically informed me that, on instigation of uncle- Satan, grandmother- Rajwati and Fufa - Gabbar, Papa opened fire upon mummy. At this information, with members of my family, I proceeded for matrimonial home of my sister Nishi. In route, we got information that; Nishi is brought to Rana Hospital at Buland Shahar."

A perusal of his statement indicates that, allegedly, the deceased, his sister, was continuously harassed by the respondents for having given birth to three daughters, and that upon her subsequent pregnancy, they compelled her to undergo a sex determination test. When it was found that she was carrying a female foetus, they pressured her to terminate her pregnancy. It is further deposed that his niece (PW-2), an eyewitness to the occurrence, telephonically informed him that her father had shot the deceased and that the respondents had provoked him to commit the said act. His statement, therefore, prima facie indicates active

participation and instigation on the part of the respondents in the commission of the offence.

10. While it is true that the appellant did not specifically mention in the FIR that the husband of the deceased had fired at the instigation of the respondents, as conveyed by his niece, however, it is trite law that an FIR is not an encyclopaedia that must contain every minute detail of the incident, since its primary purpose is to set criminal law in motion. [See: CBI v. Tapan Kumar Singh11 and Amish Devgan v. Union of India12] Therefore, at this stage, his deposition cannot be construed as an embellished or improved one simply because of the absence of certain particulars in the FIR, particularly when his testimony is consistent with the overall narrative. Moreover, the representation dated 20th May 2021, made before the SHO, wherein he categorically named the respondents, further corroborates his testimony.

11. The deposition of PW-2, Shristi, the minor daughter of the deceased, prima facie has considerable evidentiary value, given the fact that she is allegedly an eyewitness to the occurrence. She narrated the events of the fateful day in the following terms:

"Mummy had asked to Papa for bringing tea leaves and sugar. But Papa did not bring tea leaves and sugar. Meantime my grandmother came and she asked my mother to consume some pill (contraceptives), but my mummy refused to take the same. So, my grandmother complained to my Papa in this regard. Then my Fufa-Gabbar and Uncle- Satan said that, she gives birth of only female child. So, kill her. Hearing this, Papa opened fire upon my mummy twice.

Receiving fire arms/gun shot injuries, my mummy fell down in her room. Then my uncle and Fufa tried to find out that, whether my mummy is dead or not? After examining they said, she still alive. So, kill her. At this, Papa this time opened fire and shot three more times, from his country made pistol. At this, I suggested mummy to go house of Baba. At this, Mummy reached to house of my Baba. He was at his home. He carried away my mummy to Hospital. My uncle had given to my Papa the said gun. My Papa had opened fire and shot every time before me. Said occurrence is of morning. Name of my grandmother is Rajo."

(emphasis supplied)

From reading the above, it is evident that a quarrel took place between her parents. During this altercation, her father, Rahul Yadav, obtained a country made pistol from her uncle Sattan @Vineet (Respondent No.3 herein) and, on the provocation of her grandmother Rajo @Rajwati (Respondent No.2 herein) and her aunt's husband Gabbar (Respondent No.4 herein), fired at her mother/deceased.

The High Court, however, in the impugned judgment, concluded that PW-2 was not an eyewitness to the actual firing and relied on her cross-examination wherein she stated - "I had heard the sound of firing. From sound of firing I came to know that, that two times firing was made. I had seen empty cartridge on ground.". to hold that she had reached the scene of occurrence only after hearing the gunshots. In our considered view, the High Court's approach is erroneous. Drawing such an inference amounts to conducting a mini-trial at the stage of summoning, which is impermissible.

At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused. What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power. Therefore, the reliance placed by the Courts below on PW-2's cross-examination to discredit her testimony was misplaced.

12. The respondents have further contended that PW-2 did not initially name the respondents in her statement recorded during the investigation and that, being a minor, she may have been influenced or tutored to implicate the respondents, as she was residing with the appellant's family following the incident. However, we are not persuaded to accept this contention, as even in her statement recorded under Section 161, had categorically named the respondents as those who instigated the commission of the said crime. She stated:

"Q.No.12: What happened to your mother and whether father did something to her?
Ans: First Papa went out outside then return back, mother asked him to bring Tea Leaves and Sugar and later on asked him to bring chilli but he did not brought any of the item mother started preparing kitchen after little quarrel. In the meantime, Grand Mother came in and asked my mother to take pills to which she refused. Then Grand Mother went and called father, Rahul, Uncle-Gabbar, Satan Uncle.

Q.13.: What happened next?
Ans: Grand mother told if she wont take pills then she should take bullets now kill her. Uncle gave the pistol.

Q.14: What happened next?
Ans: Then papa fire two bullets and went away, Mummy got up and went inside the room, then Satan Uncle and Gabbar Uncle went inside to check and told she still alive go and finish her .... then Papa again shot 3 more bullets

Q.15: Where your father go?
Ans: He went outside and I do not know where.

Q.20: At the time of incident, who else where there at the time when your father shot your mother?
Ans: Fufa, Uncle and Grand Mother

Q. 21: Who amongst you were there?
Ans: We all were there (Three Sisters)"

(emphasis supplied)

While a statement recorded under Section 161 CrPC is not substantive evidence in itself, it may be used to corroborate the evidence recorded by the Court to invoke the power under Section 319 CrPC, as held in S. Mohammed Ispahani (supra). Therefore, conjointly reading PW-2's deposition along with her Section 161 statement, we find that a specific and overt act has been assigned to the respondents.

Whether she actually witnessed the firing or arrived immediately thereafter, and the extent to which her statement inspires confidence, are matters that are to be determined at the stage of trial, upon full appreciation of the evidence. The testimony of a child witness shall be weighed by the Court concerned in view of the principles in laid in State of Rajasthan v. Chatra13 and State of M.P. v. Balveer Singh14.

13. Lastly, the prosecution has also placed reliance upon the statements of the deceased recorded during the investigation under Section 161 CrPC to seek the summoning of the respondents. However, the respondents have contended that such statements cannot be relied upon as, firstly, they were neither recorded in the presence of a Magistrate nor accompanied by any contemporaneous medical certification regarding the mental fitness of the deceased to give such statements; and secondly, both statements are inconsistent inter se, since the first one does not name the respondents whereas the second does.

14. We find these contentions bereft of any merit. We say so because it is a well-established position of law that a statement made by a deceased person, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and recorded under Section 161 CrPC, shall be relevant and admissible under Section 32(1) of the Evidence Act, notwithstanding the express bar provided in Section 162 CrPC.

Such a statement, upon the death of the declarant, assumes the character of a dying declaration. It is also equally settled that a dying declaration need not necessarily be recorded in the presence of a Magistrate, and that the lack of a

doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. This position has been recently reiterated by this Court in Dharmendra Kumar v. State of M.P.15, wherein it was held:

"65. Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1)CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub- section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act.

In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon.

66. As regards the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence. [Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562 : 2000 SCC (Cri) 432]"

[See also: Laxman v. State of Maharashtra16; Bhagwan v. State of U.P.17; Jagbir Singh v. State (NCT of Delhi)18; Pradeep Bisoi v. State of Odisha19; and Manjunath v. State of Karnataka20]

15. Coming to the instant case, the two statements of the deceased, dated 25th March 2021 and 18th April 2021, clearly fall within the ambit of Section 32(1) of

the Evidence Act. For convenience, the relevant portions of both these statements are extracted below:

First statement dated 25th March 2021:

"Statement of Victim ..... On asking, Mrs Nishi W/o- Rahul ... told that, Sir, I have three daughters. On this issue often my husband used to quarrel with me. But when today my husband quarrelled with me, firstly he asked to our children to go out, but my elder daughter Shrishti remained there and in her presence, my husband opened fire upon me with country made pistol. Thereafter I got dizziness."

Second statement dated 18th April 2021:

"What happened in occurrence? What all thing was done? ..... Answer- I was shot by firearm .. .. By whom? .... By my husband, I was shot on instigation by one of my Nandoi (Brother-in-law of husband), my [Saas] mother-in-law and Dewar [Brother-in-law] under their conspiracy. ..... What is name of your Nandoi? His name is Gabbar. ... What was said by your Dewar? My Dewar had me threatened me. Earlier, we used to reside with him. My Dewar said to me that, he will get send me home, then he will get me killed. What did your Mother-in-Law say? ..... My mother-inlaw said to me that, I shall not permit to live in my house and you cannot live in my house and I will get you killed ... . My Nandoi said one plot is in your name also.

He instigated my husband to open fire upon me. i.e. when your husband opened fire upon you, your Nandoi was present on spot. Yes sir. They had tried to hang me also. i.e. they done everything for committing my murder. ... My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. ... My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. Who had brought you to hospital? Sir, I was unconscious. So, I do not about it."

A perusal of both these statements reveals that while the former primarily narrates the incident, the latter elaborates on the circumstances that culminated in the fatal act and brings forth the complicity of the respondents. The mere omission of their names in the first statement, or the lack of the Magistrate's presence or medical certification, does not undermine the relevance of these statements. Any inconsistencies between them, as well as their evidentiary value, reliability, and the weight to be attached to them are, again, matters which are to be examined at trial and not at the preliminary stage of summoning.

16. Additionally, in our considered view, the High Court erred in holding that these statements cannot be treated as dying declaration(s) merely because the

death of the deceased occurred after a substantial lapse of time from their recordings. Such an approach is clearly untenable since the law does not require that a declarant, at the time of making the statement, to be under the shadow of death or the expectation that death is imminent. Here the time gap between the incident and the death is less than 2 months. In any event, Section 32 of the Evidence Act, contains no such limitation. What is pertinent is that the statement relates either to the cause of death or the circumstances leading to it.

[See: Rattan Singh v. State of H.P.21; Kulwant Singh v. State of Punjab22; and Amar Singh v. State of Rajasthan23]

17. Consequent to the above discussion, we find that the material on record, i.e. the depositions of PW-1 and PW-2, along with the statements of the deceased recorded during the investigation, prima facie suggests the complicity of the respondents in the commission of the said offence. There, thus, exists sufficient ground to exercise the power under Section 319 CrPC and summon them to face trial in Sessions Trial No.1151 of 2021.

The objections raised by the respondents, including the alleged tutoring of the minor witness, omission of their names in the FIR, inconsistencies in the statements of the deceased and lack of contemporaneous medical certification, are all premature and cannot be conclusively decided at the stage of exercising power under Section 319 CrPC.

18. We clarify that all the observations made herein are only for the purpose of deciding the application under Section 319 CrPC to summon the respondents as additional accused and should not be construed as remarks on the merits of the matter.

19. Therefore, the appeal is accordingly allowed. The impugned judgment and order of the High Court, as referred to in Paragraph 2, is set aside. Parties are directed to appear before the Trial Court on 08th January 2026. We direct them to fully cooperate and not take any unnecessary adjournments. The trial is expedited.

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

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

December 04, 2025

1 Hereinafter referred to as the 'Trial Court'.

2 Hereinafter referred to as 'CrPC'

3 Collectively referred to as 'the respondents'.

4 Hereinafter referred to as 'IPC'

5 Hereinafter referred to as 'the deceased'.

6 Hereinafter referred to as 'Evidence Act'

7 (2014) 3 SCC 92

8 (2017) 16 SCC 226

9 (2025) 2 SCC 621

10 2025 SCC OnLine SC 1457

11 (2003) 6 SCC 175

12 (2021) 1 SCC 1

13 (2025) 8 SCC 613

14 (2025) 8 SCC 545

15 (2024) 8 SCC 60

16 (2002) 6 SCC 710

17 (2013) 12 SCC 137

18 (2019) 8 SCC 779

19 (2019) 11 SCC 500

20 2023 SCC OnLine SC 1421

21 (1997) 4 SCC 161

22 (2004) 9 SCC 257

23 (2010) 9 SCC 64

IN THE SUPREME COURT OF INDIA

Dadu @ Ankush & Anr.
Vs.
State of Madhya Pradesh & Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Criminal) No. 10759/2024]

Head Note - The testimony of a witness cannot be outrightly rejected solely by declaring a witness a hostile witness. A portion of the testimony which is consistent with the case of the prosecution or defence may be accepted.

JUDGMENT

Dipankar Datta, J.

1. This appeal, by special leave, is at the instance of the two appellants, Dadu @ Ankush (A-1) and Ankit (A-2). It is directed against the judgment and order dated 18th January, 2024 of a learned Judge of the High Court of Madhya Pradesh at Jabalpur of dismissal of an appeal1 under Section 374(2), Code of Criminal Procedure, 1973 preferred by the appellants.

2. Appellants stood trial in a case2 registered on the basis of a complaint lodged by the respondent no. 23 before the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 19894. The Special Court convicted A-1 under Section 323, Indian Penal Code, 18605 and sentenced him to rigorous imprisonment for 3 months together with fine of Rs.1000/- with default term. A-2 was convicted under Sections 354 and 323, IPC as well as Section 3(1)(xi) of the SC/ST Act. For the offences under Section 354, and Section 3(1)(xi) of the SC/ST Act, A-2 was sentenced to a year's rigorous imprisonment each together with fine of Rs.1000/-. For the offence under Section 323, IPC, he was sentenced to rigorous imprisonment for 3 months and fine of Rs.1000/-. The sentences were directed to run concurrently.

3. Appellants carried the conviction and sentence in appeal before the High Court which, by the aforementioned judgment and order, dismissed the appeal.

4. In the written complaint lodged by the victim giving rise to the First Information Report6, it was alleged as follows:

"I live in Sawargaon, Amba Ward, Padhurna. I study in class 11. My family consists of my mother, father, dadi and younger brother Pawan. On 04/10/2015 my mother, father and dadi had gone for hawking to Ambada market and around

10:30 at night my brother was in the Ganesh Utsav organized nearby our house. I was at home. Dadu Pendse of my locality came along with his friend Ankit Kevte and enquired from the gate of the house, if any one is there, I came out on which Dadu Pendse asked isn't there any one in the house, to which I replied that my father has gone to the market.

On listening to his Ankit Kevta caught hold of my dupatta, I pulled back my dupatta and asked him to leave it, on which he caught hold of my neck with bad intention. I shouted and tried to run away due to which he scratched my neck. My brother Pawan came to save me upon listening my voice, on which both of them gave him beating and abused him. Ankit Kevte belongs to Teli cast and despite knowing that I belong to Schedule Cast (sic, Caste), he teased me, beaten and abused my brother. I have come to lodge the report along with my brother Pawan. I have lodged the report. Action be taken."

5. Paragraph 2 of the impugned judgment and order records the prosecution's case. We consider it appropriate to reproduce the same hereunder:

"2. The facts necessary for disposal of present appeal, in short, are that on 04.10.2015, the prosecutrix lodged a report that she was in her house and her brother had gone to attend a program of Ganesh Ji. At that time, the appellants came there and inquired as to whether there is anybody in the house or not. When the prosecutrix informed that her father has gone to the market, then the appellant No.2 caught hold of her chunni and with evil intention caught hold of her neck.

When she tried to run away, the appellant No.2 scratched her neck. When her brother came running to save her, then he too was also assaulted and he was abused filthily. The police lodged the FIR, arrested the appellants, recorded the statements of the witnesses and after completing the investigation filed the charge-sheet for offence under Sections 354, 294, 323, 34 of IPC and under Section 3 (1) 11 of SC/ST (Prevention of Atrocities) Act."

6. In her examination-in-chief, the victim (as PW-1) deposed as follows:

"3. The accused Dadu present in the court, came to my house and asked if there was anyone in the house or not, to which I replied that no one is there. Then accused Dadu called someone from his mobile phone and after a while, the boy standing with the accused Dadu, also came to my house. I was standing on the staircase of my house suddenly when the boy standing with the accused Dadu pulled my dupatta. I screamed loudly and my brother Pawan who was 16 years old at the time of incident came to the house. The boy standing with Dadu also injured me on my back through nail marks. As soon as my brother Pawan came to rescue me, he was also beaten up by the both the accused present in the court.

He got injuries on his head, hand and chest. Bleeding also oozed from head and chest."

7. From the written complaint giving rise to the FIR as well as the victim's deposition in court, it is clear that qua the victim, A-1 did not touch the victim. His role is confined to enquiring from the victim as to whether anyone was in her house or not. Insofar as A-2 being called on phone by A-1 is concerned, the version in the written complaint is at variance. Allegedly, A-2 had accompanied A-1. Qua her brother (PW-2), the victim deposed that both the appellants beat him and he received injuries on his head, hand and chest. Blood also oozed from his head and chest. Significantly, the victim did not depose in court that A-2, knowing that she and her brother belonged to Scheduled Caste, teased her and beat and abused him.

8. The victim's brother (PW-2) stepped into the box and deposed as follows in course of his examination-in-chief:

"2. The incident happened about 2-3 years ago. The incident took place at 8:00-8:15 pm at night when I was at the temple with my friends. My house is near the temple, I got the information about the fight happening in my house so I ran home and found the accused Dadu alias Ankush who is present in the court and another boy whose name came to be known as Ankit and my sister was there. Both the accused were teasing my sister. Accused Ankit had already pulled my sister's dupatta and there were nail marks on her back. When I intervened, both the accused beat me with their hands and with the wood kept near the stove, due to which I got injured on my nose and mouth and there was bleeding. The accused ran away after assaulting me.

3. There was no one else at my house except my sister. At the time of the incident, many people from the locality had come and had seen the incident. Thereafter I along with my sister reached the Pandhurna police station where she filed a report about the incident. After the report, and I were sent to Pandhurna hospital for medical examination and where both of us were medically examined and treated."

9. The evidence of PW-2 reveals that he was at the Ganesh temple when he got information about a fight happening in his house and, as such, he ran home to find A-1 and A-2 teasing the victim (her sister). From whom PW-2 obtained information is not disclosed. Though not being present at the relevant time, he deposed that A-2 had pulled the dupatta of the victim and scratched her back with nails. Upon intervening, the appellants beat him with a wood (kept near the stove) resulting in PW-2 suffering bleeding injury on his nose and mouth. It is also in his evidence that many people from the locality had come and had seen the incident.

10. From the evidence on record before the trial court, it is revealed that on the next day of the incident, the victim and PW-2 were examined by the medical officer (PW-5). Insofar as the injuries suffered by them are concerned, PW-5 stated as follows:

"1. ***

1. A scratch mark on the back of the neck with length 4 to 5 cm.
2. The said injury was simple in nature and seemed to have been caused by a hard and blunt object. It was occurred within 4 to 5 hours of testing. The report given by me Exhibit P-6 which bears my signature at point A to A.

3. ***

1. There was a scratch mark on his chest of size about 1 cm X 1/2 cm.
2. A scratch mark above the eyebrow of the left eye, of size about 1 cm in length.

4. According to my opinion, the above-mentioned injuries were simple in nature and seemed to be caused by a hard and blunt object. They were of within 4 to 5 hours of examination. The report given by me Exhibit P-7 bears my signature at point A to A."

11. In his cross-examination, PW-5 deposed as follows:

"5. It is correct to say that if a person falls or gets dragged on the ground, it is possible to get both the above-mentioned injuries in such a situation."

12. Having considered the evidence led by the prosecution, there appears to be a discrepancy as to whether A-2 accompanied A-1 when A-1 came to the house of the victim and enquired about the availability of her family members.

13. While the FIR version is that the A-2 had accompanied A-1, in court, she deposed that A1 had called A2 on phone whereafter he arrived. This discrepancy, however, may not be too material for the purpose of a decision on this appeal because of other more glaring discrepances which we propose to highlight now.

14. However, what has struck us is the deposition of PW-2 that many people from the locality had come and seen the incident. Not only did PW-2 not name any person from the locality who had seen the incident, not a single witness from the locality was examined who had seen the incident. No post-occurrence witness, having heard of the incident, was also examined.

15. That apart, the evidence of PW-5 does suggest that the injuries which were suffered by both the victim and PW-2 could have been possible if someone falls

or gets dragged on the ground. It is also noteworthy that the injuries found on the person of both the victim and PW-2 were simple injuries which, according to PW-5, seem to have been caused by a hard and blunt object. PW-2 had referred to a wood by which he was struck by the appellants but such wood was not recovered and exhibited.

16. Although the victim had deposed of being injured by A2 on her back through nail mark, the same (nail mark) does not find mention in the deposition of PW-5. It is also noteworthy that while PW-2 deposed that he was injured on his nose and mouth and there was bleeding, no injury on the nose and mouth appear to have been found by PW- 5. That PW-2 suffered injury on his nose and mouth is belied by the deposition of the victim, who deposed that PW-2 was bleeding from the head and chest.

17. It is in the evidence of the victim that when A-2 pulled her dupatta, she screamed loudly prompting PW-2 to rush to the house. PW-2, however, did not say that he rushed to the house on hearing the victim's scream. He said, someone had informed him of a fight in his house. If the statement of the victim is contrasted with the statement of PW-2, we find it improbable that victim's loud screams could only reach the ears of PW-2 and no one else's considering that a large number of members of the public were present for the Ganesh Puja celebrations (as per the version of PW-2 himself).

18. At this stage, it is also apposite to highlight that as per PW-2, many people from the locality had come and seen the incident, hence, it would appear strange that none from the locality was produced in the court as a prosecution witness. While it is within the realm of possibility, the fact that no member of the public rushed to rescue the victim when she was being teased by the appellants is also a circumstance to find the testimony of PW-2 unbelievable. We have, therefore, come to the ineluctable conclusion that PW-2 has not been truthful.

19. It is also important to note the deposition of PW-4. Though related to the victim and PW-2, he deposed that the pandal of Ganesh Puja was overcrowded and peoples' feet were touching each other due to which PW-2 felt that A-1 and A-2 had stepped on PW-2's feet. This resulted in a scuffle breaking out between A-1 and A-2 on the one hand and PW-2 on the other. Though PW-4 was declared hostile after he made the above statement, he was subjected to cross-examination by the Public Prosecutor. Notably, it is in his evidence that it was wrong to suggest that PW-2 was assaulted by A-1 and A-2.

The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court in State of U.P. v. Ramesh Prasad Misra7

wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW- 4 in the manner aforesaid is contrary to the law laid down by this Court.

20. The High Court further observed that from the statements of the appellants recorded under Section 313 Cr. PC, it was clear that they knew PW-1 belonging to Scheduled Caste. An abrupt finding was recorded that "it is clear that the offence was committed by the appellants simply for reason that the complainant was belonging to scheduled caste." Curiously, there appears to be no statement in court in course of trial by the victim that A-2 committed the alleged offence only because of the victim being a member of Scheduled Caste. No such statement was even made by PW-2. The finding returned by the High Court is, thus, perverse.

21. In our view, the defence has been successful in placing a probable and believable account of a scuffle having broken out between PW-2 and the appellants at the Ganesh Puja pandal, which might have prompted PW-2 to set up a false story of commission of offence on the victim. Such scuffle could have resulted in PW-2 falling on the ground and suffering injuries which were ultimately found on his person by PW-5.

22. Insofar as the victim is concerned, as noted above, she has not attributed any offensive act to A-1. Her version of A-2 pulling her dupatta and the appellants beating PW-2 also do not inspire confidence, in view of the aforesaid discussions. What remains is the scratch on the back of her neck. We do not see reason to hold, in view of the evidence of PW-5 and our above findings, that A-2 ought to be held guilty of an offence under Section 323, IPC.

23. The conviction and sentence of the appellants being indefensible, stand set aside. They are set free and discharged from their bail bonds.

24. The appeal, thus, stands allowed.

.....J. (Dipankar Datta)

.....J. (Augustine George Masih)

New Delhi;

December 08, 2025.

1 Crl. Appeal No. 7239 of 2019

2 Special Case No. 200010 of 2016

3 victim

4 SC/ST Act

5 IPC

6 FIR

7 (1996) 10 SCC 360

IN THE SUPREME COURT OF INDIA

State of West Bengal
Vs.
Anil Kumar Dey

[Criminal Appeal No. 5373 of 2025
arising out of SLP (Crl.) No. 1003/2025]

Head Note - The police/investigating agencies are empowered to freeze the bank account of a person under Section 102 Cr.P.C. (now Section 106 Bharatiya Nagarik Suraksha Sanhita)., against whom a proceeding is initiated under the provisions of the Prevention of Corruption Act, 1988.

JUDGMENT

For ease and clarity, this judgment is divided as follows:

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FACTUAL AND LEGAL BACKDROP.....
IMPUGNED JUDGMENT.....
RELEVANT PROVISIONS.....
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CONSIDERATION.....
CONCLUSION.....

Sanjay Karol, J.

1. Leave granted.

QUESTION TO BE CONSIDERED

2. The short but significant question that arises in this appeal is whether, when proceedings initiated against a person are only under the provisions of the Prevention of Corruption Act 19881, would it be open for the investigating authorities (police) to freeze the accounts of the accused persons under Section 102 of the Code of Criminal Procedure 19732. In other words, are the powers under Section 18A of the PC Act, which prescribes the application of the Criminal Law Amendment Ordinance, 19443 insofar as the proceedings of attachment are concerned, and the power under Section 102 Cr.P.C., i.e., the

power of a police officer to seize certain property, co-existent or mutually exclusive.

FACTUAL AND LEGAL BACKDROP

3. The facts in which the question framed above arises are that:

a) Kalyan Mandal, Sub-Inspector of Police posted at the Directorate of Anti-Corruption Branch, West Bengal, conducted a preliminary enquiry against the Respondent's son, Mr. Prabir Kumar Dey Sarkar, and asked, vide complaint dated 30th July 2019 addressed to the Superintendent of Police, Directorate of Anti-Corruption Branch, West Bengal, that a case be registered under Section 13(2) read with 13(1)(b) of the PC Act. The relevant extracts thereof are extracted hereinbelow:

"During enquiry, it could be revealed that Sri Prabir Kumar Dey Sarkar, S/O- Sri Anil Kumar Dey Sarkar residing at GA-130, Rajdanga Main Road, PS-Kasba, Kolkata-700107 had joined as Constable of Police in 1979 and was promoted to the rank of Wireless Operator in the year 1984. Subsequently, he joined as Sub Inspector in the year 1991 and was promoted to the rank of Inspector of Police in the year 2011. During his tenure at different Police Stations, he earned huge illegal money thereby creating enormous movable/immovable properties, channelizing the said illegal money in the name of his relatives which have been found disproportionate to his known sources of income.

He, being a Police Officer (SI in 1991) had drawn net salary for the check period from 2007 to 2017 to the tune of Rs.40,08,090/- (approximately) and kitchen expenditure for the said check period will be 1-3rd of his Net Salary i.e., Rs. 13,36,030/-. Thus, his likely savings for the said check period could be Rs. 26,72,060/- But during the enquiry, available documents revealed that the total movable/immovable properties acquired by Sri Prabir Kumar Dey Sarkar in his name as well as in the name of his relatives, together with the expenditure incurred during the said check period, comes around Rs. 1,49,18,628/- [One Crore Forty-enine lakh eighteen thousand six hundred & twenty-eight].

The said amount of Rs. 1,49,18,628/- comprises (a) construction cost, labour cost and KMC fees of building (G+3) OF GA-130, Rajdanga Main Road, (b) liquid cash seized from the premises of GA-130, Rajdanga Main Road, (c) value of gold ornaments seized from the residence of P.K. Dey Sarkar at GA-130, Rajdanga Main Road, (d) cost of a Flat at P.Majumdar Road, (e) landed properly at Chak Kalar Khal measuring abut four cottahs, (f) premium for LICI and (g) fees paid to the Heritage School for his daughter.

During calculation the valuation of : (I) the five storied building at BF-11, Rajdanga Main Road, (ii) three storied building at GA-97, Rajdanga Main Road,

(iii) GB-50, Rajdanga Main Road have not been taken into consideration which may further compound the valuation of the total assets. Considering his income, expenditure, likely savings, Sri Prabir Kumar Dey Sarkar primafacie, has possessed huge assets disproportionate to his known sources of income."

b) Pursuant to the complaint, FIR No. 09/19 came to be registered. During investigation, certain fixed deposits held by the Respondent (father of the main accused) were frozen. An application was filed before the City Sessions Court, Calcutta4 seeking de-freezing of the said accounts. The same came to be rejected by order dated 28th March 2023. The operative portion is thus:

"The petitioner by filing his petition has stated that his fixed deposits have been freezed by the police. He is 93 years old and is suffering from various ailments. He has prayed for defreezing the fixed deposits standing in his name. Ld. Spl. P.P. vehemently opposes the petition. A written objection is filed against the petition by the I.O through Ld. Spl. P.P. It is submitted by Ld. Spl. P.P. that Prabir Kr. Dey Sarkar acquired movable and immovable properties in his name and also in the name of his relatives. The amount he acquired is abnormally disporportaiton to his income. That apart, he has also acquired to Benami properties standing in the name of his nearest relatives. This petitioner has six fixed deposits in Axis Bank, Cosba Branch. He also has six fixed deposits in SBI, Rubi Park branch.

It is submitted that those are not standing only in his name. Those are standing either jointly in thename of this petitioner and Deepa Dey Sarkar or in the name of this petitioner and Subrata Dey Sarkar or in the name of this petitioner and other rleatives of his family. The petitioner could not give appropriate source of his income where from he deposited this huge amount of money jointly with others. It is further submitted that in course of investigation it revealed that the son of this petitioner has acquired huge disproportionate property. The prosecution apprehends that the same is kept by his son in the name of this petitioner and others.

Therefore, according to the prosecution if the fixed deposits are allowed to be defreezed the prosecution will suffer irreparable loss to prove the case. I have considered the submissions made by Ld. Spl. P.P. and Ld. Advocate appearing on behalf of this petitioner. I have examined the CD carefully. I also do not find any CD that the petitioner has bee able to show the source of his income where from he fixed the amounts. As the investigation is still in progress, I am unable to entertain the prayer of the petitioner. The petitioner dated 16.03.2023 filed on behalf of the petitioner, Anil Kr Dey Sarkar to defreeze the fixed deposits is rejected."

c) The Home and Hill Affairs Department, Government of West Bengal, by order dated 22nd April 2024, by order of the Hon'ble Governor, granted sanction for prosecution against the son of the respondent.

d) Upon completion of the investigation, chargesheet was presented on 13th May 2024 which named a total of 4 accused persons: Prabir Kumar Dey Sarkar (main accused and son of Respondent herein); Dipa Dey Sarkar (wife of main accused); Anil Kumar Dey Sarkar (Respondent herein); and Subir Kumar Dey Sarkar (brother of main accused and son of Respondent herein). Some of the observations made in the chargesheet against the instant respondent, inter alia, are:

"Investigation further revealed that business income and house property income of Dipa Dey Sarkar and Anil Kumar Dey Sarkar could not be substantiated in the instant case. The circumstances and evidences collected so far in the case substantiated that the construction at BF-11 was solely attributed on Prabir Kumar Dey Sarkar apart from Anil Kumar Dey Sarkar Besides, huge number of Fixed Deposits in the name of accused Anil Kumar Dey Sarkar. Investigation revealed that there had been thirty eight nos. of FD accounts lying in the name of Anil Kumar Dey Sarkar, Dipa Dey Sarkar, Subrata Dey Sarkar, Papiya Dey Sarkar and Supriyo Dey Sarkar.

Out of thirty eight nos. of FD accounts, twelve FD accounts were still live and twenty six nos. of FD accounts were opened and closed within the check period and benefit of interest of the same was given to the accused persons in case of sixteen nos. of FDs, but in case of ten nos. of FDs, maturity benefit of the same was not provided to the accused persons because those matured FDs were re-invested. Investigation revealed that prior to the creation of the following FDs were re-invented. Investigation revealed that prior to the creation of the following FDs, there was huge deposition of unexplained cash in the SB accounts of accused persons.

Such type of huge deposition of cash in the SB accounts of accused of persons was not in conformity with the legal source of income of accused person. Moreover, neither Dipa Dey Sarkar nor Anil Kumar Dey Sarkar was in position to explain the deposition of huge cash in their accounts. Therefore, Dipa Dey Sarkar being house wife and Anil Kumar Dey Sarkar being the pension holder of scanty amount was dependent on Prabir Kumar Dey Sarkar. So evidence collected so far substantiated that Prabir Kumar Dey Sarkar played major role in the creation of the following FDs."

e) The City Sessions Court, Calcutta took cognizance on the basis of the chargesheet by order dated 14th May 2024 against the above said persons.

IMPUGNED JUDGMENT

4. The order of the Trial Court rejecting the application for de-freezing of accounts was challenged before the Calcutta High Court5. The Judgment and Order dated 4th October 2024, delivered therein setting aside the findings of the learned Trial Court and directing de-freezing of the accounts, has been challenged before us by the State. The relevant paras of the order are:

"13. In other words, an attachment/freezing of the bank accounts in connection with an offence under the 1988 Act is to be made in accordance with section 18A of the Act. Admittedly the bank accounts of the petitioner have been frozen by the opposite party in exercise of power under section 102 of the Code of Criminal Procedure.

14. Diverse views have been taken by the High Courts of Madras and Patna with regard to applicability of section 102 of the Code in seizure and freezing of bank accounts in a criminal case registered under the 1988 Act. The Madras High Court has held in favour of such application whereas the Patna High Court has held that such seizure and freezing can be made only under section 18A of the Act and not under section 102 of the Code.

15. The Hon'ble Supreme Court, in the authority in Ratan Babulal (supra) has examined the question whether attachment of bank accounts is sustainable in exercise of powers under section 102 of the Code. The Hon'ble Court has held that it is not possible to sustain freezing of the bank accounts taking recourse to section 102 of the Code as The Prevention of Corruption Act is a Code by itself. The freezing was accordingly set aside by the Hon'ble Court leaving open to the respondents/State to take such recourse in law as may be permissible.

16. Section 18A of the Act envisages that attachment, administration of attached property, execution of order of attachment and confiscation of money or property procured by means of an offence under the Act shall be governed by section 18A. Since admittedly the bank accounts of the petitioner were frozen by the opposite party by invoking section 102 of the Code and not by procedure under section 18A of the Act, the said freezing cannot be sustained.

17. In view of the fact that the bank accounts in question were not frozen in accordance with law, this Court does not find it necessary to deal with the prayer for de-freezing the same and objection raised thereto on merits.

18. Accordingly, freezing of the bank accounts of the petitioner is set aside.

19. The opposite party is directed to de-freeze the said accounts within seven days from date."

RELEVANT PROVISIONS

5. Before proceeding further, it would be important to take note of the relevant provisions. Section 13 of the PC Act

"13. Criminal misconduct by a public servant.-

1[(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.-A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.-The expression "known sources of income" means income received from any lawful sources.] (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine."

Section 18A of the PC Act

"18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.-

(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".]"

Section 102, CrPC

"102. Power of police officer to seize certain property.-

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]"

Section 109, IPC

"109. Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

Sections of the Criminal Law (Amendment) Ordinance 1944

3. Application for attachment of property

"(1) Where the [State Government or, as the case may be, the Central Government], has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government] may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be, the Central Government] believes the said person tohave procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavit, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnishany information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

4. Ad interim attachment

(1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believe that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached,

a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or subsection (3), as the case may be, of section 5."

BRIEF SUBMISSIONS

6. We have heard Mr. Shadan Farasat and Mr. Siddharth Agarwal, learned senior counsel for the State and the Respondent, respectively. We have also perused the written submissions. The State's position is that the High Court's reliance on Ratan Babulal Lath v. State of Karnataka6 which observes that the PC Act is a Code complete in itself, is not justified, for it does not lay down any authoritative position in law, binding under Article 141 of the Constitution of India.

The two provisions, i.e., Section 18A of the PC Act and Section 102 Cr.P.C., operate in distinct and/or complementary spheres and are not mutually exclusive. This seizure of property may or may not culminate in attachment. The purpose of the former is to secure the property as evidence during investigation, and that by itself does not constitute attachment. The power of attachment/ad interim attachment given under Sections 3 and 4 of the Ordinance are not akin to the power of seizure given under Section 102, Cr.P.C.

The latter is a power to be exercised by the police, which does not require prior judicial approval and so, is effective in securing evidence, even if it is also suspected, tainted property, whereas the latter has to be supported by grounds set out in affidavits, inherently making it a deliberative process. This means that both powers cannot be construed as inconsistent with the other or barring the exercise of the other. It was, as such, submitted that the High Court had erred in its conclusion.

Per contra, the Respondent's position is that Ratan Babulal Lath (supra) does in fact constitute binding precedent as evidenced by the fact that it has been relied on by this Court in The State of Bihar & Ors. v. Sukhdani Devi Etc. Etc.7as also by other High Courts. The purpose of the power under Section 102, CrP.C. is, to serve investigative needs. The account, having been frozen by the police, does not serve any such investigative need as the banks have already supplied detailed statements regarding the same, and the Respondent has also disclosed the source of funds in his replies to the authorities.

Further, it is the State's case that the action of reason has been taken since the funds found in these bank accounts are disproportionate to the known sources of income. In other words, the same was done, not for any investigative purpose. In effect, the freezing has been done to prevent the funds suspected of being disproportionate, from being withdrawn/transferred, which is the object of attachment. This Court in State of Maharashtra v. Tapas D. Neogy8, permitted the freezing of bank accounts under Section 102, Cr.P.C. In that case, the Respondent, such as in the present case, was also a public servant, given that, at the relevant point in time there was no provision for attachment under the PC Act.

This lacuna was addressed and cured by the 2018 amendment to the PC Act, and so, the procedure provided therein has to be followed. [Ref: Opto Circuit India Ltd v Axis Bank & Ors9]. Lastly, it has been submitted that the allegations of disproportionate assets have been responded to by the Respondent before the Police, however, the same has not been reflected in the chargesheet, nor have they been considered in their proper light, i.e., retirsl benefits, profits from the sale of lands belonging to his wife, rental income, etc. The said seizure was not reported to the concerned Magistrate, in accordance with Section 102(3), Cr.P.C. In the above terms, the conclusion of the High Court was submitted to be correct in law.

CONSIDERATION

7. In light of the afore-stated submissions, let us now consider the question as framed in paragraph 2.

8. Section 102, which appears in Chapter VI of the Cr.P.C. titled as 'Processes to Compel Appearance' and more particularly Part 'D' thereof, which is headlined as 'Miscellaneous', uses the word 'seizure' and Sections under the Ordinance, which Section 18A applies to the PC Act, uses the word 'confiscation' and 'attachment'. The meaning of these two words, which obviously would indicate the similarities and/or differences, acquires importance. Seize means to "to take something quickly and keep or hold it10" Merriam Webster defines 'seizure' as "the act,

action, or process of seizing : the state of being seized or the taking possession of person or property by legal process"11.

Black's Law Dictionary describes 'seize' as "To put in possession, invest with fee simple, be seized of or in, be legal possessor of, or be holder in fee simple." Seizure is "to take possession of forcibly, to grasp, to snatch, or to put in possession.12 P. Ramanatha Aiyar's Advanced Law Lexicon defines 'seizure' as "In general "seizure" is a forcible taking possession. The legal definition of the word "seizure" is the taking possession of property by an officer under legal process."13 Confiscate, then means "to officially take private property away from someone, usually by legal authority"14 Black's Law Dictionary defines 'confiscate' as "To appropriate property to the use of the state.

To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use" Now moving to attachment, the Cambridge Dictionary, describes attachment, in law, as "the act of arresting a person for failing to obey the order of a court, or of officially taking their property because they have failed to pay money that they owe"15 Black's Law Dictionary defines attachment as "The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over.

Also, the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain." Having referred to and understood the meaning of the terms, we move forward.

9. The text of Section 102, Cr.P.C., has already been reproduced supra. From a studied analysis of the judgments of this Court involving this provision, the following principles/aspects can be highlighted:

9.1 Under this Section, property that is alleged/suspected to be stolen; is the object of crime; has a direct link to the commission of the offence, can be seized. [See: M.T. Enrica Lexie v. Doramma16]

9.2 The police have the power to seize passports and bank accounts under this Section. [See: Tapas D. Neogy (supra), Suresh Nanda v. CBI17, Teesta Atul Setalvad v. State of Gujarat18. 9.3 Orders of freezing issued under this Section, can only be in effect to aid investigation. [See: Jermyn Capital LLC v. CBI19] Once the investigation is complete, that ipso facto, does not entitle the person

whose bank accounts have been frozen, to have them released. It shall, however, be open to them to apply to the concerned authority for the same, and the authority shall consider the same in accordance with law. [See:Teesta Atul Setalvad (supra)]

9.4 The police do not have the power to seize any immovable property. It cannot dispossess someone who is in possession of the immovable property. [See: Nevada Properties (P) Ltd. v. State of Maharashtra20]

9.5 It is not an enabling provision under which the police may, to do justice, seize the property and hand it over to whom they believe to be the rightful owner thereof. [See: Nevada Properties (P) Ltd. (supra)]

10. In order to understand attachment, i.e., what is prescribed in the PC Act, let us look at the procedure given in the Ordinance, as also other legislations where attachment of property is a consequence, to appreciate, in particular, the procedure of the Ordinance, as also attachment as employed in other statutes.

10.1 The Ordinance prescribes the following procedure:

- Step 1: Application under Section 3
  - State or authorised agency files an application before the District Judge.
  - Must be supported by affidavit(s) stating grounds of belief that the accused committed a scheduled offence and giving details/value of property believed to be procured.
  - Prior cognizance of the offence by a criminal court is not required. (Ravi Sinha v. State of Jharkhand, Kamal Malik case).
- Step 2: Ad-interim attachment (Section 4)
  - On receiving the application, the District Judge ordinarily passes an ad-interim order of attachment without delay.
  - This order prevents alienation or disposal of the property pending further proceedings.
- Step 3: Notice and Opportunity to Show Cause
  - The person whose property is attached is given notice.
  - They must be given a fair opportunity to show cause why the attachment should not be made absolute.
- Step 4: Making the Order Absolute (Section 5)
  - After hearing objections, the Judge may confirm the order and make the attachment absolute.
  - Ownership objections and claims about the lawful source of acquisition are considered judicially. (AIR 2018 SC (Cri) 164).
- Step 5: Execution and Enforcement

    - The attachment order is carried out "so far as may be practicable" under the Code of Civil Procedure, 1908.
    - This may include seizure, freezing of assets, or appointment of a receiver.
- Step 6: Security in lieu of Attachment (Section 8)
    - The affected person may apply to provide security in place of attachment.
    - If the Judge finds security sufficient, the attachment can be lifted or not enforced.
- Step 7: Appeal / Revision (Section 11)
    - Orders making attachment absolute (or other specified orders) are appealable under Section 11.
    - Appeal must be filed before the appropriate forum within limitation.

10.2 Now, moving to other statutes. The Prevention of Money Laundering Act, 2002, dedicates an entire chapter, i.e., Chapter III, to these processes. Sections 5 and 8 thereof, provide for the procedure to be followed. A perusal of Section 5 (Attachment of property involved in money-laundering) reveals these sequential steps:

1. Director/Authorised Officer forms 'reason to believe'.

2. Provisional Attachment Order issued (max 180 days).

3. Order + material sent to Adjudicating Authority (sealed envelope).

4. Within 30 days → Complaint filed before Adjudicating Authority.

5. Adjudicating Authority holds hearing (Section 8).

6. Order under Section 8(3): Confirm or Release attachment.

7. If confirmed → Property continues attached until trial ends.

8. Final outcome: Confiscation to Government OR Release.

Section 8, (Adjudication) also prescribes detailed steps:

1. Receipt of complaint (u/s 5(5)) or application (u/s 17(4) or 18(10)).

2. Adjudicating Authority forms 'reason to believe' (person committed offence u/s 3 or possesses proceeds of crime).

3. Notice issued (≥ 30 days) to such person → requiring explanation of sources of income/assets + evidence.

- If property held on behalf of another → notice is also served to that person.
- If property is jointly held → notice to all holders.

4. Adjudicating Authority considers:

(a) Reply to notice,

(b) Hearing of aggrieved person & Director (or authorised officer),

(c) All relevant material on record.

5. Order recorded: Finding whether property is involved in money laundering.

- If claimed by a third party → opportunity of hearing is given.

6. If property involved → Attachment / Retention / Freezing is confirmed (u/s 8(3)).

- Continues during investigation (≥ 365 days) or pendency of proceedings.
- Becomes final upon confiscation order (u/s 8(5)/(7), 58B, 60(2A)).
- Period of stay by the Court is excluded from 365 days.

7. After confirmation → Director/Authorised Officer takes possession of property (u/s 8(4)).

8. Trial before Special Court:

- If money laundering proved → property confiscated to Central Government (u/s 8(5)).
- If not proved → property released to entitled person (u/s 8(6)).
- If trial cannot be concluded (death/proclaimed offender/other reason) → Court decides confiscation or release (u/s 8(7)).

9. Restoration to Claimants:

- If property confiscated → Special Court may restore to the claimant with legitimate interest who suffered quantifiable loss (u/s 8(8)).
- Conditions: claimant acted in good faith, took precautions, not involved in laundering.
- Court may even consider restoration during trial (Proviso to s. 8(8)).

10.3 The Income Tax Act, 1961, provides for provisional attachment to protect the interests of the revenue. A perusal of Section 281B makes clear the following steps:

1. Proceeding pending for assessment/ reassessment / escaped assessment; Assessing Officer (AO) forms an opinion that provisional attachment is necessary to protect revenue.

2. AO obtains previous approval from the relevant higher authority (Principal Chief Commissioner/Chief Commissioner; Principal Commissioner/Commissioner; Principal Director General/Director General; Principal Director/Director).

3. On approval, AO issues a written order provisionally attaching the assessee's property in the manner provided in the Second Schedule.

4. Initial period of provisional attachment is six months from the date of the order.

5. The higher authority may extend the provisional attachment (reasons recorded), but total extension cannot exceed two years or sixty days after the date of assessment/reassessment, whichever is later.

6. Assessee may furnish a bank guarantee from a scheduled bank for an amount not less than the fair market value (FMV) of the attached property. If accepted, the AO shall revoke the attachment.

7. AO may refer the matter to the Valuation Officer (s.142A) to determine FMV - report due within 30 days.

8. AO must revoke the provisional attachment within 45 days of receiving the guarantee if a Valuation Officer reference was made; otherwise, within 15 days.

9. If a notice of demand specifying a sum is served and the assessee fails to pay, the AO may invoke the bank guarantee (wholly or partly) to recover the amount.

10. The AO shall invoke the guarantee if the assessee fails to renew the guarantee 15 days before its expiry.

11. Amount realized by invoking the guarantee is adjusted against existing demand; any balance is deposited in the Personal Deposit Account (PDA) of the Principal Commissioner/Commissioner.

12. If AO is satisfied that the guarantee is no longer required, the AO shall release the guarantee forthwith.

11. A detailed analysis of the provisions concerning attachment given in the Ordinance as also the other Acts, the steps of which have been detailed above, is an effort to juxtapose the procedure laid down in different statutes, showing that

attachment is a consequence which is given effect to after due application of mind and compliance with procedure. It is not a decision that can be taken on the spur of the moment. It is not a decision that can be taken by a single person. The situation prevalent on the ground and in response to the situation as it may be developing, has to be considered.

Instead, the law provides detailed steps and procedures to be complied with before someone's property can be attached. Now, contrasting this with the power contained under Section 102 Cr.P.C., it is clear from the text reproduced supra that it allows 'any police officer' to 'seize any property', and in order to balance the scales, requires that once such a seizure is done, information thereof has been sent forthwith to the concerned Magistrate. This requirement of communication to the Magistrate forthwith received consideration in a recent judgment of this Court in Shento Varghese v. Julfikar Husen21, the conclusions of which are as below:

"26. From the discussion made above, it would emerge that the expression "forthwith" means "as soon as may be", "with reasonable speed and expedition", "with a sense of urgency", and "without any unnecessary delay". In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

27. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straitjacket formula prescribed in this regard. In that sense, the interpretation of the word "forthwith" would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

28. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3)CrPC, the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, "forthwith" as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay.

If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated

against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail hereinabove."

While it is undoubted that in ordinary circumstances, information is to be sent to the Magistrate, in certain circumstances, if that is not done, even then the seizure will not be vitiated. This indicates the width of the power granted to the police with the sole aim of smooth facilitation of the investigation. As evidenced by the procedure given in the Ordinance, it is sequential and has to be compliant with principles of natural justice, for it to survive scrutiny. It is necessarily time consuming and deliberative. The difference between the two processes is, therefore, clearly exhibited.

In essence, we hold that the power of seizure and attachment are separate and distinct, even if, to the naked eye it may so appear, that the effect is same/similar which is, that the property is taken into custody of, by the authority, either investigative or judicial. Consequentially, the conclusion to be drawn is that the powers under Section 18A of the PC Act and Section 102, CrP.C. are not mutually exclusive. Mr Farasat's submission to this extent merits acceptance and is so done accordingly.

12. The next submission to be weighed is whether Ratan Babulal Lath (supra) constitutes a binding precedent in as much as it declares the PC Act to be a 'code in itself', thereby ruling out the application of the Cr.P.C. or any other law to any proceedings which emanates therefrom. There have been several instances where this Court has declared a particular statute to be a self-contained Code or, a Code in itself. Reference to some of these instances is as follows:

12.1 The Industrial Disputes Act, 1947, which N.L.Untwalia J., writing for this Court in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke22, observed to be an act providing for "investigation and settlement of industrial disputes, which means adjudication of such disputes." is one such example. In para 8 of this judgment, the learned Judge gives a glimpse of the width and expanse of the powers provided therein. Krishna Iyer J., in Rohtas Industries Ltd. v. Rohtas Industries Staff Union23, called it a Code for it "it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein.

Neither the civil court nor any other tribunal or body can award relief." What is seen from the Act is that its references to other procedural laws are only limited to certain extents, which have been clearly laid down for example, Section 11 thereof provides that every Board, Court constituted thereunder shall have the powers under the Code of Civil Procedure, 1908, insofar as the four aspects mentioned therein are concerned.

12.2 The Insolvency and Bankruptcy Code, 201624 is another example. The name itself professes that this legislation is a Code. [See: Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)25] Various judgments since its enactment have underscored its self-contained nature. In Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee)26, this Court expressly rejected the importation of the guarantees of non-arbitrariness and fair procedure into the Court holding that the Code defines in itself what is fair and equitable treatment "constituting a comprehensive framework".

It was also noted that the same is compliant with the "Legislative Guide on Insolvency Law" given by UNCITRAL. In E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd.27, it was observed that the IBC "confers jurisdiction" and "structures, channelises and circumscribes the ambit of such jurisdiction". V. Nagarajan v. SKS Ispat & Power Ltd.28, held that the Code overrides its inconsistencies as they may be with other laws.

12.3 Two further examples. The Land Acquisition Act, 1894, was held in State of Bihar v. Dhirendra Kumar29, to be a complete code in itself since it details the complete procedure to be followed by the State when it exercises the power of eminent domain. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been termed as a code in itself since it provides the procedure to be followed by a secured creditor and also the aggrieved party including borrower. [See: Raj Kumar Shivhare v. Directorate of Enforcement30]

13. Analysing the judgments referred to immediately hereinabove, the following factors can be deduced as essentials of a code being self-contained or complete in all respects:

I. A Code should be comprehensive, dealing with all aspects arising directly out of or, ancillary to, the main issue addressed in the statute.

II. It should lay down, clearly, when dealing with criminal laws, the offence, its punishment, and when dealing with civil laws, the rights and liabilities of the parties.

III. Addressing the above, the procedure provided therein should be all-encompassing. This includes, for instance, adjudication of grievances, and appeals from findings recorded by authorities. In other words, the reliance of the statute upon general laws with reference to the offences/ punishments or, rights/liabilities should be limited as far as possible.

14. With utmost respect to the learned Judges and the conclusion in Ratan Babulal Lath (supra), we would state that in the absence of a detailed discussion made of the scheme of the Act, its provisions and its interactions with other

substantive or procedural laws, as far as they may be applicable, it cannot be stated that the conclusion arrived at therein constitutes ratio decidendi and, therefore, would be binding on all Courts as per the effect of Article 141 of the Constitution of India. We draw support for our conclusion from a judgment of this Court in MCD v. Gurnam Kaur31:

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

Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

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

(Emphasis supplied)

In the same vein, a reference can also be made to Jayant Verma v. Union of India32 wherein R.F Nariman J, writing for the Court, referred to the dissenting opinion of A.P. Sen, J. who set out in Dalbir Singh v. State of Punjab33 what is the ratio decidendi of a judgment, in the following terms:

"22. According to the well-settled theory of precedents every decision contains three basic ingredients: '(i) findings of material facts, direct and inferential. An

inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of (i) and (ii) above."

15. In our considered view, Ratan Babulal Lath (supra) does not constitute binding precedent for want of (ii) and (iii) since it does not discuss the facts of the matter. Granted, inference can be made as to the facts of the case, and the background in which the order came to be passed. However, Courts ought not to be expected to follow judgments and orders of this Court as binding precedents when, the facts, in light of which the conclusion arrived at, are not properly disclosed and discussed, for law is not always applicable as the black letter of the law and is instead applied to the facts of each case. It may be clarified here that our observations regarding the PC Act do not hold, either way, as to its status as a code. They are only confined to the precedential value of Ratan Babulal Lath (supra).

CONCLUSION

16. Having decided the points of law, as above, let us now turn to the facts of this case. The respondent is the father of the main accused. Although he had submitted certain responses to the source of the money present in his accounts, the same was not found to be a justifiable explanation by the investigating authorities and as such, seizure was effected. The release of the funds so seized was rejected by the Trial Court but later accepted by the High Court on the premise that the same had been carried out on an erroneous interpretation of the law.

We do not agree. We have held as above that Section 102, Cr.P.C., being distinct from the powers and procedures as detailed under Section 18-A of the PC Act, would apply to the case. Generally, with the setting aside of the order of the High Court, the matter would have ended there, but since the investigation has been completed and the final report already stands presented in the case, the freezing of the accounts, of which fixed deposits are undoubtedly a part, may or may not be required.

Considering that in light of the principles enunciated in para 9 of this judgment, we may observe that as per this Court's order issuing notice dated 27th January 2025, we had stayed the operation of the impugned judgment which was dated 4th October 2024. This may result into two situations, viz., (a) where the amount stands released; and (b) is yet to be released.

If the situation is the former, then the respondent herein would either re-deposit the amount or furnish tangible security / bank guarantee of the like amount. This

shall be done positively within three weeks from today. Rights of the parties emanating from the statute whether in situation (a) or (b) for follow up action are left open to be adjudicated in appropriate proceedings before the appropriate court.

17. The appeal is allowed as aforesaid.

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

.....J. (Sanjay Karol)

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

New Delhi;

December 10, 2025

1 Hereinafter referred to as 'PC Act'

2 Hereinafter referred to as 'CrPC'

3 Hereinafter referred to as 'Ordinance '

4 Hereinafter referred to as 'Trial Court'

5 CRR No. 4511 of 2023

6(2022) 16 SCC 287

7 Order dated 14.10.24 in Criminal Appeal Nos.4232-4234 of 2024

8 (1999) 7 SCC 685

9 (2021) 6 SCC 707

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11 https://www.merriam-webster.com/dictionary/seizure#:~:text=seizure-,noun,the%20brain%20(as%20in%20epilepsy)

12 Henry Cambell Black, Black's Law Dictionary, 4th Edition.

13 3rd Edition, 2009

14

15

16 (2012) 6 SCC 760

17 (2008) 3 SCC 674

18 (2018) 2 SCC 372

19 (2023) 7 SCC 810

20 (2019) 20 SCC 119

21 (2024) 7 SCC 23

22 (1976) 1 SCC 496

23 (1976) 2 SCC 82

24 Hereinafter referred to as 'IBC'

25 (2022) 2 SCC 401

26 (2021) 10 SCC 623

27 (2022) 3 SCC 161

28 (2022) 2 SCC 244

29 (1995) 4 SCC 229

30 (2010) 4 SCC 772

31 (1989) 1 SCC 101

32 (2018) 4 SCC 743

33 (1979) 3 SCC 745

IN THE SUPREME COURT OF INDIA

Vineeta Srinandan
Vs.
High Court of Judicature at Bombay on its Own Motion

[Criminal Appeal No. 2267 of 2025]

Head Note – The power to punish for contempt is not a tool to silence critics or shield judges from scrutiny, declaring that contempt jurisdiction must never become a personal armour for the judiciary.

JUDGMENT

Vikram Nath, J.

1. The power to punish necessarily carries within it the concomitant power to forgive, where the individual before the Court demonstrates genuine remorse and repentance for the act that has brought him to this position. Therefore, in exercise of contempt jurisdiction, Courts must remain conscious that this power is not a personal armour for Judges, nor a sword to silence criticism. After all, it requires fortitude to acknowledge contrition for one's lapse, and an even greater virtue to extend forgiveness to the erring. Mercy, therefore, must remain an integral part of the judicial conscience, to be extended where the contemnor sincerely acknowledges his lapse and seeks to atone for it.

FACTUAL MATRIX

2. The present appeal is by appellant-contemnor under Section 19(1)(b) of Contempt of Courts Act, 19711 preferred against judgment dated 23rd April, 2025, passed by the Division Bench of High Court of Judicature at Bombay ("High Court") in Suo Motu Criminal Contempt Petition No. 2 of 2025, whereby the appellant-contemnor was held guilty of committing the offence of criminal contempt of court punishable under Section 12 of Contempt Act, sentenced her to undergo simple imprisonment for a period of one week and imposed a fine of Rs. 2,000/-.

3. Brief facts, germane to the controversy at hand, are narrated hereinbelow: -

3.1. Appellant-contemnor is a former Director, Cultural of Seawoods Estates Ltd. (hereinafter referred to as "Seawoods"). In an already pending writ petition2 filed by Seawoods before the High Court, laying challenge to the vires of Rule 20 of the Animal Birth Control Rules, 2023, one Ms. Leela Verma had moved an intervention application3. She filed an affidavit stating that the present appellant-

contemnor had issued a circular (hereinafter "contemptuous circular") dated 29th January, 2025. The relevant portions of the said circular are as follows:-

"SEL/CLR/31 /6558/2025
29th Jan. 2025

How Democracy is being crushed by Judicial System?

The entire country has a stray dog menace, and most of the urban residential societies in class A cities are struggling to fight this dog feeder's mafia spread across the country. This is such a huge well-established network of trained professionals who have a very strong presence in the Judicial system too.

So much so that if affected societies want to show videos or photos of the dog attacks, show information of fake cases filed by dog feeders, or show videos showing training of feeders where they are training their female members to file fake molestation cases against people who stop their illegal activities of feeding pack of strays in areas close to houses of other people, then Judges don't want to see them and completely avoid taking cognizance of such material.

In one case, where we had shown the video of a Dog attack on a small girl in front of building 11 to the Hon'ble Bombay High Court made fun of it and outrightly rejected it by saying that the dog wanted to play with that girl. Now we are convinced that there is a big Dog mafia operating in the country, who has a list of High Court and Supreme Court judges having views similar to the dog feeders. No matter how many people are dying or attacked in the country every year but most of the high court/supreme court orders will defend dog feeders ignoring the value of human life.

2. Despite the latest status being on record, the Hon'ble Court insisted on implementing the 20th March 2023 order on us which is meant for community animals (which are born inside) and we do not have any community animals at all. Still Justice wants to impose this illegal order on us by using his power on the NMMC officer and the police.

For, SEAWOODS Estates Limited

SD/-
Vineeta Srinandan
Director Cultural."

3.2. The High Court, vide order dated 4th February, 2025, observed that the said circular was contemptuous in nature and ordered that appellant-contemnor be intimated the same. The High Court wanted to ascertain whether the statement

made in the contemptuous circular was passed in private capacity or were made on behalf of the Board of Directors of the Seawoods.

3.3. On 7th February, 2025 the High Court directed that show-cause notice be issued to the appellant contemnor against initiating criminal contempt against her. Vide an affidavit submitted by Seawoods before the High Court, it was clarified that the Board of Directors had no knowledge of the contemptuous circular issued by appellant-contemnor, and its contents were never discussed, approved or accepted by any Board member.

3.4. Subsequently thereto, on 18th February, 2025 the appellant-contemnor filed a reply affidavit stating, inter alia, the reasons why contempt action must not be initiated against her. She accepted that a grave error was committed in the issuance of the contemptuous circular, which was done by her upon the mental pressure exerted by the residents. She further stated that in repentance, she had also resigned from the Board of Directors of Seawoods.

3.5. The High Court numbered the suo motu proceedings as Suo Motu Criminal Contempt Petition No. 2 of 2025, and directed to pronounce a separate order in that petition.

4. In the subject suo motu petition, the High Court held that the contemptuous circular issued by the appellant-contemnor satisfied the ingredients of criminal contempt under Section 2(c) of Contempt Act. By placing reliance on various precedents, the High Court disposed of the suo motu petition holding that the act of issuing the circular by appellant-contemnor cannot be categorized as fair criticism as the same was issued with an intent to scandalize the Court. The High Court, therefore, sentenced the appellant-contemnor to undergo simple imprisonment for a period of one week with a fine of Rs. 2,000/-.

5. Aggrieved, the appellant-contemnor is before this Court.

ANALYSIS AND DISCUSSION:

6. We have given our thoughtful consideration to the submissions advanced on behalf of both the parties and have gone through the material placed on record.

7. The issue that arises for consideration is whether the challenge preferred by the appellant- contemnor to the judgment of the High Court is sustainable in law, and further, whether the High Court was justified in declining to accept her apology and consequently refusing to remit the sentence imposed.

7.1. In returning the finding of guilt qua the appellant-contemnor, the High Court gave the following reasons:-

i. that the act of publishing the contemptuous circular by the appellant-contemnor satisfied the ingredients of criminal contempt, inasmuch as it scandalized and lowered the authority of the Court.

ii. that the fact that the publication of contemptuous circular was made by the appellant-contemnor during the pendency of the writ petition4 filed by Seawoods, it amounted to causing an interference with the due course of judicial proceedings and obstruction with the administration of justice.

iii. that it is totally unbelievable that appellant-contemnor while undertaking to write such contumacious writing, was not conscious or was unaware of the consequences of such writing.

iv. that the whole act of publishing the contemptuous circular was done with the intention to disrepute and tarnish the judicial system. v. that the decisions of this Court in Rajendra Sail v. M.P. High Court Bar Association,5 and decisions relied upon therein, i.e. Roshan Lal Ahuja, In re,6 DC Saxena v. Hon'ble the Chief Justice of India,7 and Perspective Publications (P) Ltd.

v. State of Maharashtra,8 has held that a communication imputing improper motives to the Court or its Judges cannot be regarded as fair criticism of the judiciary.

8. At the outset, while we are satisfied that the contemptuous circular does satisfy the essential ingredients of criminal contempt, we find ourselves unable to concur with the reasoning adopted by the High Court in invoking Section 12 of Contempt Act to impose punishment upon the appellant-contemnor. Admittedly, pursuant to the order dated 7th February, 2025, calling upon the appellant-contemnor to show cause as to why proceedings for criminal contempt be not initiated, she filed a reply-affidavit. In the said affidavit, the appellant-contemnor tendered an unconditional and unqualified apology, which stands duly recorded by the High Court.

8.1. However, the High Court declined to accept the apology, observing that, on a holistic reading, the affidavit did not reflect any genuine compunction for the acts complained of. It concluded that the apology was merely perfunctory, tendered for the sake of formality, and that the expression of remorse appeared borrowed rather than borne out of sincere repentance.

8.2. Section 12 of Contempt Act provides for punishment for contempt of court. Relevant portion of the said provision reads as follows:-

"12. Punishment for contempt of court.-

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.- An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide."

8.3. Although Section 12 of the Contempt Act bears the marginal note "punishment for contempt of court", a holistic reading of the provision indicates that it contemplates not merely the imposition of punishment but also the power to remit the same. The proviso and the Explanation to Section 12 recognise that where the contemnor expresses genuine remorse and tenders an apology to the satisfaction of the Court, he may be discharged, or the sentence awarded may be remitted. Even after a finding of guilt and the imposition of punishment, the Court retains the discretion to exercise such power. The statutory scheme is thus clear, once repentance is demonstrated, the Court may act with magnanimity. However, the apology must be bona fide and must satisfy the judicial conscience of the Court, which is required to exercise this discretion judiciously.

8.4. The Explanation to Section 12 further provides that an apology shall not be rejected merely because it is qualified or conditional, if offered bona fide. The scheme of Section 12(1) thus reflects a balance, i.e. while the majesty of law must be preserved against attempts to malign the institution and those discharging judicial functions, the provision also recognises human fallibility. It is for this reason that the proviso empowers the Court, upon being satisfied of genuine remorse, to accept the apology and discharge the contemnor or remit the punishment awarded.

9. The second ground on which the judgment of the High Court cannot be sustained is the erroneous reliance placed on the decisions referred to above. This Court has consistently held that the ratio decidendi of a judgment must be understood in the context of its facts and the issue decided therein. Only where the factual matrix is materially similar can the ratio in an earlier decision be applied. In this regard, reference may be made to the decision of a three-Judge Bench of this Court in Royal Medical Trust v. Union of India9, the relevant extract of which is set out hereinbelow:-

"28. It is well settled in law that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it

is based on a particular fact or the decision of the Court is guided by specific nature of the case, it will not amount to the ratio of the judgment."

(emphasis supplied)

9.1. Further, another three-Judge bench of this Court in Union of India v. Dhanwanti Devi, (1996) 6 SCC 44, held that:-

"9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment.

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 is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent.

The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

(emphasis supplied)

Therefore, it is a settled position that where a decision turns upon its own facts or is guided by the peculiarities of a particular case, it does not constitute the ratio of the judgment. In Dhanwanti Devi (supra), this Court cautioned that it is neither profitable nor permissible to rely upon isolated lines from a judgment, for the binding element lies in the ratio decidendi and not in every observation contained therein.

9.2. In the present case, the High Court placed reliance on the decisions referred to earlier and concluded that the appellant-contemnor's act of issuing the contemptuous circular could not be regarded as fair criticism, and that the statements therein were calculated to ascribe improper motives to the Court and its Judges. Proceeding on this basis, the High Court sentenced the appellant-contemnor to simple imprisonment for a period of one week and imposed a fine of ₹2,000/-.

9.3. In our considered view, the reliance placed by the High Court on the decisions of this Court stands misplaced. The distinguishing features of those cases were not duly appreciated. In Dr. D.C. Saxena (supra) and Perspective Publications (P) Ltd. (supra), the contemnors had not offered any apology. In Roshan Lal Ahuja (supra), the apology initially tendered was later withdrawn. In Rajendra Sail (supra), though an unconditional apology was offered, this Court declined to accept it in view of the gravity of the allegations, which included imputations made in a public rally that a sitting Judge had been bribed and possessed assets disproportionate to income. The factual matrix of the present case is materially distinct, and therefore, the precedents relied upon could not have been applied as a basis to record the conviction or justify the sentence imposed upon the appellant-contemnor.

9.4. In the present case, the appellant-contemnor promptly entered appearance and filed her replyaffidavit pursuant to the show-cause notice issued by the High Court on 7th February, 2025. In the said affidavit, she explained the circumstances leading to the issuance of the contemptuous circular and expressed unconditional remorse for her conduct, tendering an unqualified apology at the earliest opportunity.

9.5. While an act may amount to contempt, the proviso to Section 12 of the Contempt Act empowers the Court to discharge the contemnor or remit the punishment awarded. The only requirement for exercising such power is that the apology must be genuine and acceptable to the Court. The Explanation to Section 12 further clarifies that an apology shall not be rejected merely because it is qualified or conditional, if it is made bona fide. The statutory scheme, therefore, recognises that once a contemnor expresses sincere remorse, even if the apology is not unqualified in form, the Court is competent to accept it and, where necessary, discharge the contemnor or remit the sentence imposed.

9.6. Therefore, in our considered view, the High Court failed to exercise its contempt jurisdiction with due circumspection. Once the appellant-contemnor had, from the very first day of her appearance in the suo motu proceedings, expressed remorse and tendered an unconditional apology, the High Court was required to examine whether such apology satisfied the statutory parameters under Section 12 of the Contempt Act. Thus, in our opinion, in the absence of

any material suggesting that the apology was lacking in bona fides, the High Court ought to have considered remitting the sentence in accordance with law.

10. In light of the foregoing discussion, we summarise our conclusions as under:-

i. The reliance placed by the High Court on the decisions of this Court in Dr. DC Saxena (supra), Perspective Publications (P) Ltd. (supra), Roshan Lal Ahuja, In re (supra), and Rajendra Sail (supra) is misplaced, as the material facts in those cases are clearly distinguishable from the facts of the present matter.

ii. Considering that the appellant-contemnor has, from the very outset, expressed genuine remorse and repentance for issuing the contemptuous circular, we are satisfied that the ends of justice would be met by remitting the sentence imposed by the High Court.

11. Accordingly, the impugned judgment dated 23rd April, 2025, passed by the High Court of Judicature at Bombay in Suo Motu Criminal Contempt Petition No. 2 of 2025 is hereby set aside to the aforesaid extent.

12. Consequently, the appeal is allowed.

13. Pending application(s), if any, are disposed of.

.....J. [Vikram Nath]

.....J. [Sandeep Mehta]

New Delhi;

December 10, 2025

1 Hereinafter, "Contempt Act".

2 Writ Petition No. 11652 of 2023.

3 Interim Application No. 10251 of 2024

4 Supra note 2.

5 (2005) 6 SCC 109.

6 1993 Supp (4) SCC 446.

7 (1996) 5 SCC 216.

8 AIR 1971 SC 221.

9 (2017) 16 SCC 605

IN THE SUPREME COURT OF INDIA

Life Insurance Corporation of India & Anr.
Vs.
Vita

[Civil Appeal No(s). 2638 of 2023]
[C.A. Nos. 2636-2637/2023]
[C.A. No. 5369/2015]
[SLP(C) No. 28081/2012]
[SLP(C) No. 8296/2014]
[SLP(C) No. 4112/2015]
[SLP(C) No. 6677/2015]
[SLP(C) No. 24905/2015]
[S.L.P.(C)...CC No. 6501/2016]
[S.L.P.(C)...CC No. 7091/2016]
[S.L.P.(C)...CC No. 7050/2016]
[S.L.P.(C)...CC No. 7207/2016]
[S.L.P.(C)...CC No. 7203/2016]
[SLP(C) No. 15938/2016]
[C.A. No. 6110-6111/2017]
[C.A. No. 8227/2017]

[Conmt. Pet.(C) No. 1668/2017 in C.A. No. 8227/2017]

[SLP(C) No. 25244-25245/2017]
[SLP(C) No. 23824/2018]
[SLP(C) No. 28119/2018]
[SLP(C) No. 8589/2025]

Head Note – Once premises fall within the definition of "public premises" and a tenancy is legally terminated, unauthorized occupants cannot claim the protection of State Rent Control Acts and must face eviction under the summary procedure laid out in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Overruled the judgment **of Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. 2014 (4) SCC 657,** calling it an incorrect interpretation that contradicted a binding Constitution Bench precedent of **Ashoka Marketing Ltd. Vs. Punjab National Bank, 1990 (4) SCC 406**, which held that PP Act overrides over the State tenancy laws irrespective of the date of entering into a tenancy.

JUDGMENT

N.V. Anjaria, J.

1. In view of two conflicting judgments on the aspect of overriding applicability of the Public Premises (Eviction of Unauthorised Occupants) Act, 19711 as against State Rent Control Legislations, a two-Judge Bench of this Court passed order dated 17.03.2015 in Special Leave to Appeal (Civil) No.35859 of 2014, [now Civil Appeal No.2638 of 2023] along with other Special Leave Petitions (Civil) Nos.6677 of 2015 and 4112 of 2015, referring the matters for adjudication by a three- Judge Bench.

1.1 The referral order dated 17.03.2015, aforementioned, reads as under, "In these petitions, in fact, the ratio decided by the two-Judge Bench of this Court in the case of Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer2, is contrary to the decision of the Constitution Bench rendered in the case of Ashoka Marketing Ltd. And Another vs. Punjab National Bank and Ors.3. Therefore, these matters need to be heard by a three-Judge Bench."

1.2 It is accordingly that the present batch of cases came to be posted before this Court, which await answer to the issue referred to.

Issue Under Reference

2. The principal question that arises for determination in this batch of matters is whether the provisions of the PP Act 1971 would prevail over the respective State Rent Control legislations, in relation to premises let out prior to the commencement of the said Act, as against the premises let out after its enforcement but before their acquisition or transfer to the Government or any statutory corporation, by which the character of such premises stood transformed into "public premises" within the meaning of the Act.

2.1 In other words, the issue that falls for determination is whether, for the purposes of application of the PP Act 1971, a valid distinction can be made between tenants who were in occupation of the premises prior to the enforcement of the said Act and those who entered into occupation subsequent thereto but before such premises were taken over by the Government or a Government Corporation, as the case may be; and whether in such cases, the operation of the PP Act 1971 is intended to be only prospective in nature.

Representative Facts

3. As the Civil Appeal No.2638 of 2023 titled as "Life Insurance Corporation of India Limited vs. Vita Pvt. Ltd. & Anr." has been treated to be the lead matter, the basic facts involved therein may be highlighted as representative. In all other cases the facts are more or less similar. The Special Leave Petition/Civil Appeal arises from the judgment and order of the High Court of Bombay dated

20.06.2014 in Writ Petition (C) No.2628 of 2013 whereby the High Court quashed the order of the City Civil Court which had declared the order of eviction passed by the Estate Officer under the PP Act 1971 to be illegal, resting on the reasoning that the controversy was covered by the judgment of this Court in Suhas H. Pophale2.

3.1 The Life Insurance Corporation of India Limited-appellant herein, which is a statutory Corporation established under the provisions of the Life Insurance Corporation Act, 1956 an entity wholly owned by the Central Government, owns and maintains, amongst other immovable properties, the premises described as Flat No. G-B, Ground Floor, Jeevan Jyot Builiding, 7 Setalwad Road, Mumbai-400 006, and identified with Tenancy Code 2445. The tenancy in respect of this property was created in favour of respondent No.1-Vita Private Limited in or around April, 1957.

3.1.1 The PP Act, 1971came into force on 23.08.1971. This Central Legislation was given effect retrospectively from 16.09.1958, by virtue of Section 1(3) of the Act. It appears that Respondent No.1 addressed a letter dated 31.08.2007 asking the appellant to send the bills and receipts at the address as suggested in the letter. The Building Inspector gave report dated 28.07.2008 that the premises in question was locked for over a period of one year and that the same was occupied by one Smt. B.J. Malhoutra-respondent No.2 herein who used to visit the premises occasionally. It was the case of the appellant that respondent No.2 was a trespasser, and her occupation of the premises was illegal.

3.1.2 Thereupon, a notice dated 24.03.2009 under Section 108 of the Transfer of Property Act, 1882 for terminating the tenancy was sent by the appellant to the respondents, asking the tenant to vacate and handover the possession of the premises, to pay the arrears of rent, as also compensation etc. in order to avoid initiation of proceedings for unauthorised occupancy of the premises under the PP Act 1971. As the notice did not yield any result, the appellant-Corporation made an application dated 08.09.2009 under Sections 5 and 7 of the PP Act 1971 before the Estate Officer appointed under Section 3 of the Act, seeking eviction of the respondents and any other persons found to be in unauthorised occupation of the public premises.

Contentions before the Estate Officer

3.2 One of the contention of the respondents before the Estate Officer was that the respondent no.1-Company was inducted in the premises as tenant in the year 1957 and that in view of Section 33 of the Maharashtra Rent Control Act, 19994, only the Small Causes Court had jurisdiction in the subject matter, although it appeared that the said contention was not seriously pressed. It was also the

contention that it was illegal on the part of the Estate Officer to issue show cause notice in relation to arrears and damages.

3.2.1 The appellant Corporation asserted that respondents were the unauthorised occupants with effect from 01.05.2009 as the monthly tenancy of respondent No.1 was terminated by notice dated 24.06.2009, and that respondent No.2 was a trespasser in occupation unauthorisedly. Holding that the premises was governed by the PP Act 1971, the Estate Officer by order dated 27.03.2012, directed eviction of the respondents and further mandated for payment of rent and the damages with interest.

The appeal preferred by the respondents before the City Civil Court, Mumbai came to be dismissed on 29.01.2013. The aforesaid order of the City Civil Court, Mumbai was subjected to challenge before High Court by way of Writ Petition (C) No.2628 of 2013. The said writ petition came to be allowed vide order dated 20th June, 2014, which is assailed in this appeal by special leave.

Reasoning of the High Court

3.3 The reasons supplied by the High Court while allowing the Writ Petition and setting aside the judgment and order of the City Civil Court may be looked at in their necessary details inasmuch as they directly reflect on the issue to be addressed in this reference.

3.3.1 The High Court relied upon the decision of this Court in Suhas H. Pophale2, and addressed the question whether the rights of an occupant/ licensee/ tenant protected under the State Rent Control Act, namely the Bombay Rents, Hotel & Lodging House Rates Control Act, 19475 and its successor Maharashtra Rent Control Act, 1999 which was applicable in the instant case, would be superseded because of the application of the PP Act 1971.

3.3.2 The High Court stated that the principle contention raised by the appellant was that his occupation of the premises concerned was protected by the 1947 Rent Control Act with effect from 1st February, 1973, which was even prior to the respondent in that case acquiring title over the property from 1st January, 1974 and therefore, by invoking provisions of the PP Act 1971, he could not have been evicted treating him to be an unauthorised occupant.

3.3.3 The High Court followed the view in Suhas H. Pophale2 and held that the Public Premises could not have been given retrospective effect to take away the benefits to the petitioner-tenant under the 1947 Rent Control Act and the rights made available under the State enactment. The tenant could not be evicted by giving retrospective application to the provisions of the PP Act 1971 stated the High Court.

3.3.4 The High Court proceeded with the reasoning, as extracted below,

"The Public Premises Act, 1971 came into force on 23rd August, 1971. But Section 1(3) thereof states that it shall be deemed to have come into force on 16th September, 1958 except for Section 11 (on offences and penalty) and Sections 19 and 20 (on repeal and validation). The respondent Corporation came into existence on it's creation under Life Insurance Corporation Act of 1956. It became entitled to resort to the provisions of Public Premises Act, 1971 only on 16th September, 1958. Therefore, any tenancies created prior to that date being protected by the State Rent Legislation remained beyond the application of Public Premises Act, 1971."

Guided By Suhas H. Pophale

3.3.5 The High Court concluded that any tenancy created, prior to the date of coming into force of the PP Act 1971 that is, 16.09.1958 would stand protected under the State Rent legislation and shall remain beyond the application of the PP Act 1971 and that the landlord-Life Insurance Corporation was required to file eviction proceedings in the Court of Small Causes at Bombay. This view was based on what Suhas H. Pophale2 had held.

3.3.6 The two-Judge Bench carved out two categories of the persons in occupation of a premise which became public premises, for the purpose of applying to them the provisions of the PP Act 1971. The conclusions it summarised were as under,

(i) For any premises to become public premises, the relevant date will be 16-9-1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like Respondent i.e. The Oriental Insurance Co. Ltd.; and that

(ii) All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the PP Act 1971 and cannot therefore, be said to be persons in 'unauthorised occupation'.

(iii) there are two categories of occupants of these public corporations who get excluded from the coverage of the PP Act itself.

(a) Firstly, those who are in occupation since prior to 16.09.1958, that is, prior to the Act becoming applicable and thus, they are clearly outside the coverage of the Public Premises Act.

(b) Secondly, those who come in occupation thereafter but prior to the date of the premises concerned coming under the ownership/control of a government

corporation or a company and are covered under a protective provision of the State Rent Act also gets excluded and until such date, 1947 Rent Control Act and its successor 1999 Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other.

(iv) Hence, with respect to such occupants it would not be open to such companies or corporations to issue notices, and to proceed against such occupants under the PP Act 1971 and such proceedings will be void and illegal.

Rival Submissions

4. Heard learned Attorney General for India Mr. R. Venkataramani with learned senior advocate Shri Ashok Panigrahi, other senior advocates and respective assisting learned advocates in the lead appeal as well as other appeals for the appellants, learned senior advocate Dr. Anindita Pujari, learned senior advocate, Mr. Vishnu Mehra assisted by other respective learned advocates for the respondents, at length.

4.1 Learned senior counsels and assisting learned advocate led by learned Attorney General, on behalf of the appellant-Life Insurance Company and the other Insurance Companies, as the case may be, the owners of the premises, raised following main submissions,

(a) There exists an ex-facie inconsistency between the Constitution Bench judgment in Ashoka Marketing3 and in two Judges Bench decision in Suhas H. Pophale2.

(b) The distinction created by Suhas H. Pophale2 between the tenants in occupation of the Public Premises prior to coming into force of the PP Act 1971 and those in occupation post-coming into force of the Act is in clear conflict with the ratio of the five Judges Bench decision in Ashoka Marketing3. The distinction so carved out is totally artificial in nature and in essence, such distinction does not exist.

(c) It was erroneous on the part of Suhas H. Pophale2 to make the applicability of the PP Act 1971 to be dependent on the date of the entry of the tenant into the said premises.

(d) As held in Ashoka Marketing3, the PP Act 1971 would have an overriding effect over the Rent Control Act. The provisions of the PP Act 1971 have to be applied even to such premises which were within the bounds of the Rent Control Act and no exception could be created on the basis of the date of coming into force of the PP Act 1971.

(e) Suhas H. Pophale2 drew inferences from Ashoka Marketing3 in its own way which were unfounded and not in consonance with the ratio of Ashoka Marketing3. The High Court of Bombay seriously erred in relying on Suhas H. Pophale2.

4.2 On the other hand learned senior counsels with learned advocate assisting them for the respondents-tenants in respective matters argued on the following lines,

(i) It was incorrect on part of the High Court to hold that the provisions of the PP Act 1971 would apply merely for the reasons that the 1999 Rent Control Act is not applicable inasmuch as the petitioner-tenant is excluded under Section 3(1)(b) of the 1999 Rent Control Act.

(ii) In holding as above, the High Court disregarded the following aspects:

(a) In a situation where neither the PP Act 1971 is applicable nor the Maharashtra Rent Control Act, 1999 is applicable, then in such a situation the dispute between the parties had to be adjudicated under Section 41 of The Presidency Small Cause Courts Act, 1882, as applicable to State of Maharashtra.

(b) As per Section 41 the Court of Small Causes shall have jurisdiction to entertain and try eviction proceedings with respect to immovable property situated in Greater Bombay or with respect to its Rent, irrespective of the value of subject matter of such suits or proceedings.

(c) The tenancy/Lease between the parties would be governed by Section 106 of Transfer of Property Act, 1882 in as much as after expiry of the Lease Agreement, the Petitioner has been continuing as tenant/Lessee in the premises in question and has been regularly paying rent to the appellant-insurance company since 1965.

(d) Respondent cannot be termed as unauthorized occupant as it was inducted as tenant and had paid the rent regularly.

(e) The Corporation duly accepted the amount of rent without protest. The law laid down in Suhas H. Pophale2 is correct in the context of the facts of the case.

(iii) Reliance was placed on Section 15A of the 1947 Rent Control Act to contend that the PP Act 1971 cannot be applied to the subject premises and tenancy of the respondents.

Framework of Public Premises Act, 1971

5. Before we proceed to delve into and consider the issue at hand, noticing the relevant provisions of the PP Act 1971 by way of preface would be useful.

5.1 The definition of 'Public Premises' is provided under Section 2(e) of the Act. Sub clause (ii) of sub-section (1) includes any premises belonging to, or taken on lease, by or on behalf for Corporation such as LIC. For ready reference, Section 2 (e) of PP Act 1971 is reproduced herein below:-

'2(e) 'public premises' means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any Corporation not being a company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), or a local authority established by or under a Central Act and owned or controlled by the Central Government,

(iii) any company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first mentioned company and which carries on the business of public transport including metro railway.

Explanation.-For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause

(i) of subsection (1) of Section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iii-a) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra- Beas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the [National Capital Territory of Delhi,-

(i) any premises belonging to the Council as defined in clause (9) of Section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of Section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957) of Delhi, or any municipal committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.- For the purposes of this clause, the expression, "State Government" occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi.

(4) any premises of the enemy property as defined in clause (c) of Section 2 of the Enemy Property Act, 1968 (34 of 1968)."

5.1.1 Section 2(g) defines "unauthorised occupation" as under:

'2(g) "unauthorised occupation, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of

transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

5.1.2 Sections 4 and 5 of the Act outline the procedure of eviction under the Act. The provision of Section 4 stipulates that if the Estate Officer has information or has reason to believe that any person is in unauthorised occupation of any public premises and that he should be evicted, the Estate Officer shall issue a notice in writing specifying the grounds calling upon the person concerned to show cause why an order of eviction should not be made. It is further provided that any delay in issuing a notice shall not vitiate the proceedings under this Act. In response to the notice, the occupant(s) shall be required to appear before the Estate Officer on the date specified along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

5.1.3 Section 5 deals with the eviction of unauthorised occupants. It provides inter alia that after considering the cause shown by any person in pursuance of a notice issued under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of Section 4, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the Estate Officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, but not later than fifteen days from the date of the order, by the person/s who may be in occupation thereof or any part thereof.

5.1.4 It is further provided that if any person refuses or fails to comply with the order of eviction on or before the date specified in the said order, the Estate Officer or any other officer duly authorised by the Estate Officer is entitled to take possession of the public premises and for that purpose, the said officer may use force as may be necessary. The Estate Officer has power to grant time to vacate if any compelling reason exists.

5.1.5 The PP Act 1971 thus envisages special procedure for eviction of unauthorised occupant/s of the public premises. The special procedure seeks to facilitate speedy recovery of the possession of 'public premises' avoiding technicalities and possibility of delay.

5.1.6 The Constitutionality of the PP Act 1971 and the summary procedure for eviction provided thereunder came to be upheld by a five-Judge Bench of this Court in Kaiser-i-Hind Pvt. Ltd. & Anr. vs. National Textile Corpn. (Maharashtra North) Ltd. & Ors.6

Suhas H. Pophale Versus Ashoka Marketing

(a) Facts in Suhas H. Pophale

5.2 In the process of analysing as to how Suhas H. Pophale2 stands in contradiction to Ashoka Marketing3, the facts involved and the issue addressed in Suhas H. Pophale2 may be noticed. The premises identified as Flat No. 3 in Colaba, Mumbai belonged to the Indian Mercantile Insurance Company, which subsequently merged with the respondent Oriental Insurance Company Limited - a government company.

One Mr. Voller was a tenant of the erstwhile Indian Mercantile Insurance Company i.e., the predecessor-in-title of the Oriental Insurance Company Limited. Subsequently, Mr. Voller executed a leave and licence agreement dated 20.12.1972 in favour of the appellant for two years, and put him in exclusive possession of the premises. Mr. Voller, migrated to Canada. The appellant, a practising physician remained in exclusive possession, and was accepted as tenant by the Oriental Insurance Company Limited.

5.2.1 The landlord - Oriental Insurance Company Limited addressed a notice dated 12.7.1980 to Mr E. Voller terminating his tenancy with respect to the said premises, and also instituted a suit for eviction against him as well as against the appellant Suhas H. Pophale in the Court of Small Causes at Mumbai, under the provisions of the 1947 Rent Control Act. The appellant requested the Oriental Insurance Company Limited to regularise his tenancy as a statutory tenant. The Insurance Company served on the appellant notices under Sections 4 and 7 of the PP Act 1971 to show cause as to why he should not be evicted.

5.2.2 Ultimately, the eviction order dated 28.05.1993 was passed directing the eviction of said Mr. Voller as well as the appellant from the premises. The appellant's appeal before the City Civil Court filed under Section 9 of the PP Act 1971 was dismissed and the eviction order was upheld. The High Court also dismissed the writ petition.

5.2.3 The principal contention raised by the appellant-tenant before the High Court was that the occupation of the premises in question was protected under Section 15-A of the 1947 Rent Control Act with effect from 01.02.1973, that is, prior to the respondent-Insurance Company acquiring the title over the property on 01.01.1974 from the erstwhile Indian Mercantile Insurance Company. It was the contention of the appellant that in view of the protection of the said provision, he could not have been evicted by invoking the provisions of the PP Act 1971, and by treating him as an unauthorised occupant under that Act.

(b) View in Suhas H. Pophale

5.3 The two-Judge Bench of this Court in Suhas H. Pophale2 proceeded to lay down that the PP Act 1971 had only prospective effect. It was held that the PP

Act 1971 would apply to those premises which (a) were public premises on 16.09.1958 or (b) become public premises after 16.09.1958 i.e., from the date of vesting of the premises in any government/public entity mentioned in Section 2(e) of the said Act or from the date when the owner/lesser of the premises becomes a government/public entity under Section 2(e) of the said Act.

5.3.1 The aforesaid date 16.09.1958 described as 'date 1' and post 16.09.1958 described as 'date 2' were the effective dates. It was also, when the PP Act 1971 would have overriding effect over the State Rent Act. In the process, the Court also considered the concept as to when premise could be said to be owned/controlled by a government/ public entity.

5.3.2 The Court adverted to the definition of 'unauthorised occupation' contained in Section 2(g) of the PP Act 1971. According to Suhas H. Pophale2, the aforesaid definition was to be read in two parts. The first part dealt with the persons who are in occupation of the public premises "without authority for such occupation" and the second part dealt with those in occupation of the public premises, whose authority to occupy the premises "had expired or had been determined for any reason whatsoever".

Taking such context, the Court ruled that the PP Act 1971 would not apply to persons who entered in the occupation prior to the 'date 1' and 'date 2' mentioned above, as the case may be, who, (according to the two-Judge Bench), had acquired the vested right of the occupation. The prospectivity and application of the PP Act 1971 was accordingly underlined.

5.3.3 In other words, separate categories were carved out by the Court, stating that the premises of LIC would become public premises within the meaning of the PP Act 1971 from the date of coming into force of the Life Insurance Corporation Act, 1956, similarly, for banking companies the relevant date would be the date of their nationalization which took place under the provisions of the Banking Companies Act, 1970. The Court held that the third class namely all other persons falling within the definition of tenant occupying the premises would not come under the umbrella of the PP Act 1971 and they would not be classified as persons in 'unauthorised occupation'.

5.3.4 It was, thus, reasoned that the premises could be said to be belonging to the government only when the aforesaid Acts namely the Life Insurance Corporation Act, 1956 and the Banking Companies Act, 1970 came into force. It was held that the occupants of such premises were the tenants of the erstwhile Insurance Company which were the private landlords and that status as occupants of the public insurance companies had been thrust upon later, by applying the PP Act 1971 to evict them.

(c) Facts In Ashoka Marketing Ltd.

5.4 The issue of overriding effect of the PP Act 1971, vis-à-vis State Rent Control Act was dealt with by the five-Judge Bench of this court as back as in the year 1990 in Ashoka Marketing3 in the context of set of facts akin and similar to Suhas H. Pophale2. The Constitution bench in Ashoka Marketing3 dealt with the tenancies prior to the coming into force of the PP Act 1971. In first case involved in Ashoka Marketing3, the building originally belonged to the Punjab National Bank-a banking corporation. Ashoka Marketing3 and Sahu Jain Service Ltd. were the tenants in the premises since 10.07.1958.

As a result of the enactment of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the undertaking of the Punjab National Bank Ltd. came to be transferred and stood vested in the Punjab National Bank, which became a body corporate constituted under the 1970 Act. The tenants of the Punjab National Bank Ltd. became the tenants of the Punjab National Bank. The tenancy of both the tenants came to be terminated with effect from 30.11.1971 by issuance of notices dated 18.05.1971 under Section 106 of the Transfer of Property Act, 1882.

5.4.1 In another case, the tenant was inducted since 1948 by the then Insurance Company. The life insurance business was nationalized under the Life Insurance Corporation Act, 1956, whereby the Life Insurance Corporation was established. The tenant became a tenant of the Life Insurance Corporation. The Life Insurance Corporation proceeded to determine the tenancy by giving notice under Section 106 of the Transfer of Property Act, 1882. Eviction proceedings were successfully initiated under the PP Act 1971 against the tenant Ashoka Marketing3.

5.4.2 The Constitution Bench in Ashoka Marketing (supra) addressed this question:- "whether a person who was inducted as a tenant in premises, which are public premises for the purpose of the PP Act 1971, and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provisions of the PP Act 1971 and whether such a person can invoke the protection of the Delhi Rent Control Act, 1958". In other words, the issue before the Court was whether the provisions of the PP Act 1971 would override the provisions of the State Rent Control Act in respect of the premises which come within the purview of both the enactments.

Interpretation In Ashoka Marketing Ltd.

5.5 In dealing with the above issue, the five- Judge Bench of this Court observed that the Rent Control legislations fall within the ambit of Entries 6, 7 and 13 of

List III of the Seventh Schedule to the Constitution. The Rent Control Act has been enacted by Parliament in exercise of its legislative power under Article 246(4) of the Constitution.

On the other hand, PP Act 1971 which deal with the eviction of unauthorised occupants from the premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government would fall within Entry 32 of List I being law with respect to a property of the Union. At the same time, it was stated that in relation to the properties belonging to the various legal entities mentioned in clauses (2) and (3) of Section 2(e) of the PP Act 1971 would stand covered by Entries 6, 7 and 46 of List III.

5.5.1 Thus, both the statutes namely, the Rent Control Act and the PP Act 1971 were enacted by the same legislature in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List and the Union List respectively. The Court stated that in its opinion, the question whether the provisions of the PP Act 1971 override the provisions of the Rent Control Act had to be considered in light of the principles of statutory interpretation applicable to the laws made by same legislature.

5.5.2 The Court proceeded to highlight such principle of statutory interpretation observing,

"One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriores priores conterarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, Statutory Interpretation pp. 433- 34)."

(Para 50)

Domain of Two Statutes

5.6 It was observed that the Delhi Rent Control Act is an earlier enactment, whereas the PP Act 1971 is subsequently enacted law and thus, it being the enactment later in point of time, represents the last will of the Parliament. The Court observed that the PP Act 1971 should, therefore, prevail over the Delhi Rent Control Act unless it can be said that the PP Act 1971 is a general enactment, whereas the Rent Control Act is a special enactment.

5.6.1 Explaining the operational status of the Rent Control legislation and the PP Act 1971, it was observed, "The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi."

(para 55)

5.6.2 The PP Act 1971 intends for speedy eviction, stated the Constitution Bench, "The Public Premises Act, 1971 makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act, 1971 confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order."

(para 55)

5.6.3 It was thus clearly expressed that the PP Act 1971 is a special statute and that it will override the Rent Control Act

"Therefore, the Public Premises Act, 1971 is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, 1971, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act, 1971 is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act, 1971 must prevail over the Rent Control Act."

(Para 55)

Policy And Purpose Would Prevail

5.7 As both the enactments are 'special enactments' in their respective realms, the five- Judge Bench observed on the basis of the principle stated in Shri Ram Narain vs. Simla Banking and Industrial Co., Limited7 that when each enactment is a special Act, the ordinary principle that a special law overrides a general law

does not afford any clear solution. In such circumstances, it was stated, it would be desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given scenario, on much broader considerations of the purpose and policy underlying the two statues and the clear intendment conveyed by the language of the relevant provisions therein.

5.7.1 After referring to several other decisions, the proposition was stated thus,

"The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein."

(Para 61)

5.7.2 It was stated that the consequence of giving overriding effect to the provisions of the PP Act 1971 over the Rent Control Act would be that the buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the PP Act 1971 would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. It was further stated that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest.

Legislative Intent Recognised

5.8 Ashoka Marketing3 considered the object and purpose of the PP Act 1971 and the overall legislative intendment behind the enactment. It was held that the object and purpose of the PP Act 1971 would give it an overriding effect over the provisions of the Rent Control Act, even though, the relevant sections of both the PP Act 1971 and Delhi Rent Control Act contained a non-obstante clause.

The Court provided that the scope of the provisions of the Pubic Premises Act cannot be whittled down on the basis of the apprehension that the Corporations like nationalised banks or the Life Insurance Corporation are trading Corporations interested in earning profit. They cannot be precluded from buying the properties in possession of the tenants at low price and then vacating the tenants after terminating the tenancy and thereafter selling the property at higher price.

5.8.1 Negating the contention that the provisions of the PP Act 1971 if given overriding effect would be exploited by such corporations to expand the business with a view to earn profit, it was observed,

"The consequence of giving overriding effect to the provisions of the Public Premises Act, 1971 is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2(e) of the Public Premises Act, 1971 would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act, 1971 while dealing with their properties under the Public Premises Act, 1971 will, therefore, have to be judged by the same standard".

(Para 69)

5.8.2 The Constitution Bench with above interpretational philosophy and cogent reasons stated further, "we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act, 1971 cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, 1971, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act."

(Para 70)

Law Settled Even Prior to Ashoka Marketing

5.9 Even before the decision in Ashoka Marketing2, a three-Judge bench of this Court in M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.8 had an occasion to deal with an identical issue interpreting Section 2(g) and Section 5 of the PP Act 1971. The Court held that the factum of occupation at the material time is sufficient for the purpose of eviction under Section 5 of the PP Act 1971.

5.9.1 In M/s. Jain Ink7, the LIC purchased the premises in which the appellant was the tenant who was inducted by the original owner of the premises. The LIC issued notice to the appellant-tenant under Section 106 of the Transfer of Property Act, 1882 asking the appellant to vacate the premises, but the appellant failed to do so, which led the LIC to file an application with the Estate Officer under the PP Act 1971. The contention was that the appellant could not be treated to be an unauthorised occupant since he had entered into possession of the premises long before the premises were purchased by the LIC, i.e., the subsequent owner.

5.9.2 This Court explained and interpreted the concept of 'unauthorised occupant' under Section 2(g) of the PP Act 1971, to conclude that Section 2(g) is an inclusive definition which consists of two separate limbs. First, is where a person

is in occupation in relation to any public premises without authority for such occupation, and second, when the possession or occupation of the tenant continues after the lease is determined.

5.9.3 It was pointedly observed that the definition of 'unauthorised occupation' of the public premises does not use the word "possession" or the words "entry into possession" at any point of time at all. What is contemplated, observed the Court, in the said Section is the occupation of any public premises. It was stated that the entry into possession connotes one single terminus, when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises.

5.9.4 The Court was unequivocal in stating that 'what is germane for the purpose of interpretation of Section 2(g) is whether or not the person concerned was in occupation of the public premises when the PP Act 1971 was passed'. It was recorded in M/s. Jain Ink7, that the appellant continued to occupy the property even after the PP Act 1971 came into force and in fact accepted the LIC as his landlord. Since the lease was determined by the LIC by issuing a notice under Section 106 of the Transfer of Property Act, the appellant-tenant fell 'within the ambit of definition of Section 2(g) of the PP Act 1971 to become an 'unauthorised occupant' liable to be evicted in accordance with the procedure envisaged, and was not entitled to claim the applicability and protection of the Rent Control Act.

5.9.5 It was held in M/s. Jain Ink7,

(a) The mere fact that by virtue of a fiction the Public Premises Act, 1971 was given retrospective effect from 1958 will not alter the date when the Public Premises Act, 1971 was actually passed, that is to say August 23, 1971.

(b) In these circumstances, the Public Premises Act, 1971 being subsequent to the Rent Control Act would naturally prevail over and override the provisions of the Rent Control Act.

(c) Although in both the Public Premises Act, 1971 and the Delhi Rent Control Act there are non obstante clauses but the question to be determined is whether the non obstante clauses operate in the same field or have two different spheres though there may be some amount of overlapping. In such cases the conflict should be resolved by reference to the object and purposes of the laws in consideration.

Ashoka Wholly Misread

6. In rendering the decision, the two-Judge Bench in Suhas H. Pophale2 contradicted and disregarded what was laid down in the earlier decisions of the

Bench of larger strength. Suhas H. Pophale2 adverted to split-reading of definition in Section 2(g). Reading the same disjunctively, a view was taken that the first part of the definition deals with the persons who are in occupation of the 'Public Premises' 'without authority of such occupation' and the second part deals with those in occupation of the 'Pubic Premises' whose authority to occupy the premises 'has expired or has been determined for any reason whatsoever'.

6.1 Taking such context, Suhas H. Pophale2 ruled that the PP Act 1971 would not apply to persons who entered into occupation prior to the 'date 1' and 'date 2' mentioned above, as the case may be, and that such persons had acquired the vested right of occupation. In other words, Suhas H. Pophale2 underscored that the PP Act 1971 has only prospective application. This was completely in conflict with the ratio laid down in Ashoka Marketing3.

6.2 According to Suhas H. Pophale2, the eviction of unauthorised occupants under the PP Act 1971 would come into play from 16.09.1958, or from the later date when the premises concerned became 'Public Premises' by virtue of the same vesting into a Government company or a Corporation like LIC or the Nationalized Banks or the General Insurance Company. According to the decision, the occupants-tenants of categories who were in occupation prior to 16.09.1958, that is, before coming into force of the PP Act 1971, would be beyond the purview of the Act.

6.3 It was further observed in para 64 that in respect of such occupants, it would not be open for the Government bodies, Corporations or Companies to proceed against them under the PP Act 1971 and that any such proceedings initiated would be void and illegal. Further view was taken that this class of occupants can seek declaration of the status and for their other rights such as transmission of the tenancies to the legal heirs etc, under the 1947 Rent Control Act or its successor 1999 Rent Control Act to seek the protective relief in the nature of injunction, etc. and that the forums provided under the State Rent Control Act will alone have the jurisdiction to entertain such proceedings.

Contrary Propositions

7. The following propositions set out in Suhas H. Pophale2 are contrary to and in direct conflict with what was laid down earlier by the Benches of larger strength,

"For any premises to become public premises, the relevant date will be 16-9-1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior

thereto will not come under the ambit of the Public Premises Act, 1971 and cannot therefore, be said to be persons in "unauthorised occupation".

(para 59)

7.1 The error was further exacerbated by the following observation,

"Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Control Act, 1947 or the Maharashtra Rent Control Act, 1999. If the person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.'

(para 59)

7.2 Suhas H. Pophale2 again charted different course ignoring the binding law, by observing, 'The Public Premises Act, 1971 will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in para 66 of Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406] We must remember that the occupants of these properties were earlier tenants of the erstwhile insurance companies which were the private landlords. They have not chosen to be the tenants of the government companies. Their status as occupants of the public insurance companies has been thrust upon them by the Public Premises Act, 1971.' (para 60) 7.3 The law in Ashoka Marketing3 was literally brushed aside: -

"It is true that Section 15 of the Public Premises Act, 1971 creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between Respondent 1, the other general insurance companies, LIC, nationalised banks and such other government companies or corporations, on the one hand and their occupants/ licensees/ tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes."

Guise of Clarifying

8. It is evident that the view taken and the interpretation sought to be provided by the two- Judge Bench in Suhas H. Pophale2 is in direct conflict with Ashoka Marketing3. Not only that, there was a misdirected attempt on part of the two-

Judge Bench in Suhas H. Pophale2 to try and explain, that the view taken by it, was justified in the facts of the case.

8.1 A flimsy distinction was sought to be drawn,

"In Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406], this Court was concerned with the premises of two nationalised banks and Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act, 1971 from 16-9- 1958 i.e the date from which the Act is brought into force. As far as the nationalised banks are concerned, their nationalisation is governed by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of the Public Premises Act, 1971 to the premises of the nationalised banks will be from the particular date in the year 1970 or thereafter."

(Para 59)

8.2 Not following the law laid down by larger Bench under the cloak of a purported exercise of clarification, cannot be countenanced. Such approach was evident when Suhas H. Pophale2 observed, "We have not for a moment taken any position different from the propositions in Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406]. The only issue is with effect from which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment.

(para 66)

8.3 Claiming to be in agreement with Ashoka Marketing2, following was said by Suhas H. Pophale2 with clear departure,

"We are only clarifying that the application of the Public Premises Act, 1971 will be only from 16-9-1958, or from such later date when premises concerned become public premises on the landlord concerned becoming a government company or public corporation. When the law laid down by the different Benches of this Court including by the Constitution Benches on retrospectivity is so clear, and so are the provisions of the Public Premises Act, 1971, there is no occasion for this Court to take any other view. When this judgment is only clarifying and advancing the proposition laid down in Ashoka Marketing (supra).

(para 66)

8.4 According to the two-Judge Bench in Suhas H. Pophale2, the issue about the retrospective application of the PP Act 1971, tenancies existing before

16.09.1958, or before the property in question becoming public premises, was neither canvassed before nor considered by the Bench in Ashoka Marketing3, therefore, the said decision would not prevent the Bench of two- Judges in any way from clarifying the judgment on the said issue. It took the view, as observed in paragraph 67 that the judgment in Ashoka Marketing3 was an authority for what is deduced and not what can be logically reduced therefrom. According to Suhas H. Pophale2, what was decided was only something which could be logically deduced from Ashoka Marketing3, therefore, on that score, the said decision was not a binding authority.

Turned Blind Eye

9. Conspicuously, the two-Judge Bench of this Court in Suhas H. Pophale2, in what it decided and in the propositions it laid down, overlooked, ignored and disregarded the ratio decidendi of the Constitution Bench in Ashoka Marketing Ltd. 3 as also the very ratio laid down by three-Judge Bench in M/s. Jain Ink7. The mandate of law of precedent was completely disregarded by the two-Judge Bench in Suhas H. Pophale2. It could be viewed as judicial indiscipline, if not judicial impropriety.

Discipline of Law of Precedent

10. The doctrine of stare decisis embodies the foundational principle that precedents must be observed with institutional fidelity, not merely by the High Courts or subordinate courts, but by this Court as well. It enjoins that a Bench of lesser or coequal strength must follow the law declared by a larger Bench, in recognition of the binding authority of such pronouncements.

This adherence to precedent is not a matter of mere formality, but of judicial discipline and constitutional propriety. The underlying purpose for respecting and following the decisions of the Bench consisting of greater number of Judges and even of the Bench of co-equal strength, is part of judicial discipline. It ensures certainty, predictability and dependability in the operation and application of law.

10.1 It is immaterial that the decision of the larger Bench is rendered prior in point of time or at subsequent stage. The precedential value is determined by virtue of the hierarchical position or the number of Judges delivering the judgment. Given these well settled principles in the realm of law of precedent, the two-Judge Bench in Suhas H. Pophale2 could not have taken a view contrary to the decisions of the Benches of larger strength of this Court.

Binding Nature

11. In Mattulal vs. Radhe Lal9, this Court was beset with the situation similar to one obtained here in terms of abiding by the law of precedent, and observed, 'The

argument that the learned Judges of the High Court exceeded their jurisdiction under Section 39(2) of the Delhi Rent Control Act, when they reversed the finding of bona fide requirement of the appellant, has no substance. Whether on the facts proved the requirement of the landlord is bona fide within the meaning of Section 14(1)(e) is a finding on a mixed question of law and fact. An inference that the requirement of the appellant in the present case was bona fide could not be regarded as conclusive.'

(para 11)

11.1 The Court further observed, 'Now there can be no doubt that these observations made in Kamla Soni's case [S.A. No. 2150 of 1956, dec. on 26th September, 1969] are plainly in contradiction of what was said by this Court earlier in Sarvate T.B.'s case [1965 MPLJ 26]. It is obvious that the decision in Sarvate T.B.'s case' was not brought to the notice of this Court while deciding Smt Kamla Soni's case, [S.A. No. 2150 of 1956, dec. on 26th September, 1969] or else this Court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in Sarvate T.B.'s case [1965 MPLJ 26] as against the decision in Smt Kamla Soni's case [S.A. No. 2150 of 1956, dec. on 26th September, 1969] as the former is a decision of a larger Bench than the latter.

(para 11)

11.2 A similar situation of violating/breaching the doctrine of stare decisis was dealt with by this Court in General Manager, Telecom vs. A. Srinivasa Rao & Ors.10, holding that the bench of lesser strength cannot take a view contrary to, or bypass, that has been taken by a larger Bench. The issue was with regard to concept and definition of 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. A two-Judge Bench in Sub-Divisional Inspector of Post vs. Theyyam Joseph11 held that the functions of the Postal Department, since part of the sovereign functions of the State, the Department would not be an 'industry'. This view was taken and the decision was rendered without reference to the seven-Judge Bench decision in Bangalore Water Supply and Sewerage Board vs. A. Rajappa12.

It was noticed that in the later decision in Bombay Telephone Canteen Employees' Assn. vs. Union of India13, a Bench having strength of two-Judges followed the decision of Theyyam Joseph (supra) to hold that the Telephone Nigam was not an 'industry'. In Bombay Telephone Canteen Employees' Assn. (supra), the Court although had referred to the Bangalore Water Supply and Sewerage Board (supra), the two-Judge Bench proceeded to distinguish Bangalore Water Supply and Sewerage Board (supra) to observe that if the law

laid down in Bangalore Water Supply and Sewerage Board8 is followed, then catastrophic consequences would ensue.

11.3 This Court observed in General Manager, Telecom (supra) that the view taken by the two- Judge Bench that the application of law laid down in Bangalore Water Supply and Sewerage Board8 would cause catastrophic consequences will have no impact on the role of stare decisis and the two- Judge Bench was bound to follow the law laid down by the seven-Judge Bench in Bangalore Water Supply and Sewerage Board8.

11.4 Following pertinent observations were made. 'It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back-nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone Canteen Employees' Assn. cannot be treated as laying down the correct law.'

(Para 7)

Conclusions

12. In view of the foregoing discussion, reasons and analysis, the following positions of law emerges,

(a) In view of the law laid down by the Constitution Bench in Ashoka Marketing3 and the three-Judge Bench decision in M/s. Jain Ink7, the view taken in Suhas H. Pophale2 which is a two-Judge Bench decision, is palpably incorrect and unjustified. Suhas H. Pophale2 cannot and does not hold the field.

(b) Since, the propositions laid down in Suhas H. Pophale2 runs contrary to the decisions laid down by the Benches of larger strength in Ashoka Marketing3 and M/s. Jain Ink7, the same is bad in law.

(c) The ratio decidendi by the Bench of larger strength is binding on the Bench of the smaller strength, irrespective of the fact whether the judgment by the Bench of the larger strength is apriori or posterior, in point of time.

(d) A Bench of the smaller strength cannot mark a departure from the decision of the Bench of larger strength, so as to vary the ratio of the Bench of larger strength, in guise of explaining the decision of the larger Bench.

(e) It was not permissible for the two- Judge Bench in Suhas H. Pophale2 to interpret the statutes and lay down propositions in conflict with what was laid

down by the Constitution Bench in Ashoka Marketing3 and by a three-Judge Bench in M/s. Jain Ink7, when the set of material facts in the background of the controversy dealt with, were similar.

(f) In laying down the propositions incongruent to and contrary to the law laid down in Ashoka Marketing3, the Bench in Suhas H. Pophale2 disregarded the principle of stare decisis and violated the well settled law of precedent.

Answers

13. As a sequitur, this Court reiterates the propositions of law laid in Ashoka Marketing3

(i) Both categories of statutes namely, the PP Act 1971 on one hand, and the Bombay Rent Control Act, 1947, Maharashtra Rent Control Act, 1999, Delhi Rent Control Act, 1958 and similar Rent Control Legislations, on the other hand, are special laws. Therefore, in order to determine as to which Act will apply in case of conflict, reference has to be made to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. Keeping in view the object and purpose underlying both the enactments, that is, the PP Act 1971 and the Rent Control Acts, the provisions of the PP Act 1971 shall override the provisions in the Rent Control Legislations.

(ii) The PP Act 1971 and the State Rent Control Acts are special enactments in themselves. Rule generalia specialibus non derogant will not apply. Having regard to the purpose, policy and legislative intent of the PP Act 1971, the same would prevail over the State Rent Control Acts in respect of eviction of 'unauthorised occupants' of 'public premises' as defined in Section 2(g) of the Act.

(iii) The provisions of PP Act 1971, to the extent they cover the premises falling within the ambit of Rent Control Act, override the provisions of the Rent Control Act.

(iv) A person in unauthorised occupation of 'Public Premises' under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

(v) In cases where the tenanted premises are claimed to be governed by the State Rent Control Act and the same have also become 'Public Premises' within the meaning in Section 2(e) of the PP Act 1971, for their unauthorised occupation, the PP Act 1971 will have the application.

(vi) The statutory machinery envisaged under the PP Act 1971, could be activated for recovery of possession of public premises by any Government or public entity mentioned in the definition.

(vii) The PP Act 1971 will apply to the tenancies which may have been created and in existence either before coming into force of the Act or which may have been created subsequent to coming into the force of the Act.

(viii) Two conditions must be satisfied for the applicability as above. Firstly, the tenanted premises must fall within the purview of definition under Section 2(e) of the PP Act 1971. Secondly, the premises should have been in unauthorised occupation.

(ix) Termination of tenancy of 'Pubic Premises' by issuing notice under Section 106 of the Transfer of Property Act, 1882 is one of the modes which would render the occupation of the tenant unauthorised, post the date specified in such notice. This would hold true in respect of tenancies created before or after coming into force of the PP Act 1971.

(x) Invocation and applicability of the provisions of the PP Act 1971 is not dependent upon the aspect of possession. What is material is the occupation of the premises which has become unauthorised occupation. The occupation is a continuous concept.

(xi) The propositions enunciated in Suhas H. Pophale2, as noticed in paragraph 3.3.6 of this judgment, do not, in our considered view, state the correct position of law. The observations made therein, with great respect, are not in consonance with the settled legal principles and runs contrary to the principle of stare decisis and stand overruled to that extent.

14. The Reference is answered accordingly.

.....J. (Vikram Nath)

.....J. (Sandeep Mehta)

.....J. (N.V. Anjaria)

New Delhi

December 11, 2025.

1 PP Act 1971

2 2014 (4) SCC 657

3 1990 (4) SCC 406

4 1999 Rent Control Act

5 1947 Rent Control Act

6 (2002) 8 SCC 182

7 AIR 1956 SC 614

8 (1980) 4 SCC 435

9 (1974) 2 SCC 365

10 (1997) 8 SCC 767

11 (1996) 8 SCC 489

12 (1978) 2 SCC 213

13 (1997) 6 SCC 723

IN THE SUPREME COURT OF INDIA

Manojbhai Jethabhai Parmar (Rohit)
Vs.
State of Gujarat

[Criminal Appeal No(s). 2973 of 2023]

Head Note - Issued directions to all the trial courts aiming to institutionalize a standardized format for cataloguing witnesses, documentary evidence, and material objects.

JUDGMENT

Mehta, J.

1. Heard.

2. A grave and distressing case of brutal sexual assault upon a four-year old girl1 stands before this Court, enveloped in layers of investigative apathy and procedural infirmities. The First Information Report, despite the informant's professed complete knowledge of the incident, is bereft of even the most rudimentary details, neither the name of the accused person (appellant herein) nor those of the purported witnesses of the last seen together circumstance find mention.

What followed was an investigation hopelessly botched and a trial conducted with a pedantic rigidity that obscured, rather than unveiled, the truth. The highly unnatural conduct of the witnesses, marked by gross insensitivity/rank apathy, contradictions and apparent concoctions raises serious doubts about the reliability of the prosecution's case. Yet, in face of this disturbing matrix, the accused-appellant stands convicted and has remained behind bars for nearly thirteen long years.

3. This Court cannot remain oblivious to the sobering reality that such handling of criminal cases leaves scars not merely upon the individuals involved but upon the justice system itself. When investigations are carried out in a manner that betrays their foundational purpose, and trials become mechanical exercises divorced from the quest for truth, the resulting miscarriage of justice reverberates far beyond the confines of the courtroom.

It erodes public faith, instils uncertainty in victims, and sends a chilling message to society at large that the pursuit of justice may falter not at the altar of complexity but at the hands of indifference. The criminal law, which must stand as a bulwark protecting the vulnerable, risks becoming an instrument of

unintended cruelty when procedural lapses and institutional negligence overshadow substantive justice. With this prelude, we now proceed to examine the factual matrix of the case.

4. The appellant-Manojbhai Jethabhai Parmar2 was arraigned as an accused in connection with FIR bearing Crime No. I-68 of 2013 registered at Kalol Police Station for the offences punishable under Sections 363, 376(2)(i) and 201 of the Indian Penal Code, 18603 and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 20124. He was subjected to trial before the learned Additional Sessions and Special Judge, Panchmahal, Godhra5 in Special Case No. 08 of 2014 (POCSO). Vide judgment of conviction and order of sentence dated 3rd November, 2015, the accused-appellant was convicted and sentenced as below:

i. For offence under Section 363 IPCRigorous imprisonment for 3 years and fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 3 months.

ii. For offence under Section 376(2)(i) & 201 IPC- Life imprisonment and fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months.

iii. For offence under Section 3/4 of POCSO Act- Life Imprisonment and fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months.

5. The appeal6 preferred by the accused-appellant for assailing the judgment of the trial Court stands rejected by the Division Bench of the High Court of Gujarat7 vide judgment dated 5th April, 2016 which is subjected to challenge in this appeal by special leave.

Brief facts:

6. On 13th June, 2013, the complainant, Nazir Mohammed (PW-1), had taken his dinner and was resting with his family members in the open courtyard of his house. At about 11 o'clock in the night, he saw three to four boys going from the front of his house with the child victim who did not have a stitch of cloth on her body. The complainant stopped them and made an inquiry as to where they were taking the child, on which one of the boys replied that they suspected the child to be from the Nayak community and that she might have gone missing and thus, they were taking her to the Nayak Faliya for making an inquiry.

7. The complainant (PW-1) thereupon brought the child victim under some light in order to identify her. He judged that the child was aged about four years and saw blood dribbling down her legs. He accompanied the boys to Nayak Faliya

and made inquiries from two to three people, however, no information was forthcoming regarding her family.

8. The complainant (PW-1) tried to inspect the body of the child victim closely, on which, he found that she was bleeding continuously from her nether regions. He suspected that some untoward incident had happened with the child victim. He, therefore, asked the boys as to where they had brought the child victim from, on which, they replied that the child victim was found nearby a house situated in front of pan stall of Jafrubhai situated at Oad Faliya.

9. The complainant (PW-1) thereupon informed his friend Karimbhai Mogal over the phone. Persons from vicinity gathered there, amongst whom one was Vivekbhai Suthar8 (PW-2), a journalist. Vivekbhai tried to make an inquiry from the child victim who did not respond, on which, an ambulance was called, and she was taken to the hospital.

10. The complainant (PW-1) and Vivekbhai (PW-2) followed the ambulance to the Kalol Government Hospital where the child victim was admitted, and her treatment started. The treating Doctor, Ms. Shakuntala Parmar (PW-10) examined the victim and opined that the child victim had been sexually assaulted and due to that reason, she was bleeding from her private parts. After gathering the above information, Nazir Mohammed (PW-1) lodged a complaint at the Kalol Police Station which was registered as Crime Report No. 68 of 2013 against unknown persons for the offences punishable under Sections 376(1)(i) and 201 of the IPC.

11. For sake of ready reference, the complaint (Exh. 10) is reproduced hereinbelow in its entirety:-

"I, hereby, state the facts of my complaint in person that I reside with my family at the aforementioned address and I earn my living by doing door-to-door plumbing and electrical work in Kalol town. I have been residing in a rented house in Kalol for the past twelve years. Presently, I reside on rent in the house of of Shahbuddin Maiyuddin Shaikh. I know most of the persons living in Kalol town.

On 13/06/2013, yesterday, I was spending leisure time with my family at around 9 pm. When I was playing game in my mobile by lying on my cot outside my home at around 11 pm, I saw 3-4 boys coming from Ode Faliya and passing by my house. I stopped them and asked about the situation and the little girl they were carrying. One of them responded that the girl seemed to have lost; she did not have any clothes on her body; she seemed to belong to Nayak community and therefore they were taking her to Nayak Faliya for more details. I tried to identify the girl by bringing her to light. I found that she had no clothes on her body. She

seemed to me of around four years. She was bleeding on her legs. I went with the boys to Nayak Faliya. We inquired around by waking 3-4 persons up.

However, we did not have get any details. When the girl was being inspected with the torch, I noted that she was bleeding from the private part. As she was still bleeding slowly at that time, I felt that something untoward had happened with the girl. When asked the boys where they found the girl, they responded that she was found at the house, located opposite to the Jafarbhai's Pan Stall at the offside of Ode Faliya. Subsequently, I informed my friend Karimbhai Mogal by making a call. People residing nearby gathered around in a while. Vivekbhai Suthar who resides at Kalol also arrived by that time. He observed the girl. We asked the girl about her name and whereabouts.

She did not utter her name and stated 'from Chowkdi (crossroads)'. As the girl was bleeding, Vivekbhai made a call to 108 ambulance. After handing over the girl to the ambulance, Vivekbhai and I went to Government Hospital, Kalol on a motorcycle. The girl was immediately given medical treatment. Doctor told me that the girl was bleeding from the private part because somebody had raped her. I then moved out of the hospital. Other people also gathered around by that time. Therefore, Vivekbhai and I are here at the Kalol Police Station for lodging the complaint.

Therefore, I, hereby, lodge my complaint for investigation of an incident of rape which has taken place with a four-year old unknown girl by an unknown person at an unknown place at any time before 11 pm, yesterday, on 13/06/2013. My witnesses are the persons mentioned in my complaint and others as and when found in the police investigation. My complaint is as per my dictation before the police and true. I have appended by signature herein below after reading and understanding it thoroughly."

(Emphasis supplied)

12. Investigation was conducted by Hareshbhai Pallacharya (PW-15) Inspector of Police, Kalol Police Station who recorded the statements of the witnesses concerned. Medical examination of the child victim was conducted. The four boys who had brought the child victim to Nayak Faliya were identified as Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6).

13. These four boys were examined under Section 161 of the Code of Criminal Procedure, 19739, on 14th June, 2013, and they claimed that they had seen the accused-appellant pushing the child victim out of his house.

14. The accused-appellant was arrested, and his house was inspected from where blood-stained clothes of the child victim were allegedly recovered. The bedding

lying in the house as well as the floor of the house were also bearing blood stains. These articles were seized for forensic examination. Finding sufficient evidence against the accused-appellant, chargesheet was filed against him in the Special Court. The Special Judge framed charges against the accused-appellant for the offences punishable under Sections 363, 376(2)(i) and 201 of the IPC and Sections 3 and 4 of the POCSO Act, who abjured his guilt and claimed trial.

15. The prosecution examined 18 witnesses and exhibited 19 documents and presented certain material objects in order to prove its case.

16. The accused-appellant was confronted with the circumstances appearing against him in the prosecution evidence by way of questions put under Section 313 CrPC which he denied and claimed to be innocent. He also stated that he had been falsely implicated in the case.

17. The trial Court, after hearing the arguments advanced by the learned Public Prosecutor and the defence counsel, and upon appreciation of evidence on record, came to the following pertinent conclusions:-

i. That the testimony of witnesses Arifkhan (PW-3) and Shahejadkhan (PW-4) provided strong evidence pertaining to the circumstance of last seen together.

ii. The accused-appellant kidnapped the child victim from the guardianship of her parents; forcibly took her to his house where he subjected her to gruesome sexual assault causing numerous injuries to the private parts of the child victim.

iii. The allegation of forcible sexual assault was thoroughly corroborated by the evidence of Dr. Shakuntala Parmar (PW-10) who also took note of an injury on the private parts of the accused-appellant thereby, providing strong corroboration to his involvement in the crime.

iv. The Investigating Officer, Hareshbhai Pallacharya (PW-15), who conducted spot inspection of the house owned by the accused-appellant claimed to have recovered significant incriminating material viz. blood-stained bedsheets, mattress and curtains from the said house. Legging and t-shirt of the child victim and mobile, handkerchief, night pant, lining t-shirt and underwear of the accused-appellant were also seized from the house allegedly owned by him.

v. These articles including the personal belongings/apparels of the child victim were analyzed at the Forensic Science Laboratory10, and tested positive for "A" blood group which was same as that of the child victim.

vi. The circumstance of last seen together spoken to by Arifkhan (PW-3) and Shahejadkhan (PW-4) was corroborated in material particulars by the incriminating recoveries effected from the house of the accused-appellant. The

FSL report established the presence of semen in the viscera collected from the private parts of the child victim.

18. The trial Court observed that there was no occasion for the witnesses to falsely implicate the accused-appellant in such a gruesome case. As per the trial Court, the prosecution proved the complete and unbroken chain of incriminating circumstances by leading unimpeachable evidence and proceeded to convict and sentence the accused-appellant as noted above11.

19. The appeal preferred by the accused-appellant to the High Court for assailing the judgment of the trial Court stands dismissed vide final judgment and order dated 5th April, 2016 which is assailed in this appeal by Special Leave.

Discussion and Findings

20. We have heard and considered the submissions advanced by learned counsel appearing for the accused-appellant and the learned standing counsel Ms. Swati Ghildiyal representing the State of Gujarat and have also gone through the impugned judgments passed by the High Court and the trial Court. We have also carefully scrutinized the original trial Court record.

21. Admittedly there is no direct evidence in the present case, and the case of the prosecution rests entirely on circumstantial evidence, to be specific, in form of last seen together circumstance, incriminating recoveries and medical evidence.

22. The law with regard to conviction based on circumstantial evidence has been crystallized by this Court in the case of Sharad Birdhichand Sharda v. State of Maharashtra12, wherein it was held:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(Emphasis supplied)

23. Having noted the principles governing a case based purely on circumstantial evidence, we shall now analyse the evidence led by the prosecution in order to bring home the charges against the accused-appellant.

24. Firstly, we shall proceed to consider the evidence on last seen together circumstance.

25. The prosecution has sought to prove this circumstance stating that the informant/complainant, Nazir Mohammed (PW-1), saw four boys taking the child victim to Nayak Faliya at around 11:00 P.M., and that these four boys were later identified as Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6). These four boys were the ones who saw the accused-appellant pushing the child victim from his house.

26. It may be noted that Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) did not support the prosecution case during their deposition at the trial and were declared hostile. However, Arifkhan (PW-3) and Shahejadkhan (PW-4) tried to pose as witnesses of last seen together circumstance during their deposition.

27. We find that the evidence of these witnesses is absolutely unconvincing and that they seem to have cooked up the last seen together theory so as to somehow implicate the accused-appellant in the case for oblique motives. Rather, we feel that the entire story is dubitable and there exist grave doubts regarding the identity of these witnesses and the credibility of their evidence.

28. We shall now analyze the evidence of the material witnesses and assign reasons for discarding their testimony. The relevant excerpts from the evidence of the complainant, Nazir Mohammed (PW- 1) are extracted hereinbelow for ready reference:-

"Examination-in-chief

At that time at around 10:30-11:00 pm, I saw four boys carrying a little girl with them. I asked them about the situation and the place there were heading to. They responded that the girl was from Nayak community, lost, and was bleeding from the private part. I joined them and went to the the place where Nayaks reside. I woke them up and enquired about girl's family. They all stated that the girl did not belong to them. I asked the boys who were carrying the girl about the place where they found the girl.

They stated that they saw Manoj Jethabhai Parmar ousting the girl from his house. Names of these four boys were (I) Arifkhan and (2) Sartaj; I am unable to recall names of the remaining two. However, I said all names in the police station. Having seen the girl bleeding from the private part, I made a call to my journalist friend, Karimbhai Mogal. He could not come. Bilalbhai was present with me at this time. He called a journalist, Vivekbhai Suthar. He reached at our place in 10 minutes. He also looked at the girl. Looking at the condition of the girl, we felt like someone has established physical relation with her.

I registered a police complaint then. I am being shown the complaint vide Mark 5/4; which has my signature on it and I recognize the same. It is given Exhibit 10. Police, after registering the complaint the same night, recorded my special statement. I told police the name of the accused from the talks with the four boys.

Cross-examination: for the accused

I did not seek for help from neighbors when the boys were bringing the girl. My family consists of my wife and four daughters. They also did not come outside at that time. I did not call my wife for coming out for inspection of the girl who was in difficult situation. My wife or daughter did not come out of home until Vivekbhai Suthar arrived. Further, none of my neighbors or anyone from Ashiyana Society came out; nor did I call anyone for help. Around 30-45 minutes lapsed from the boys brought the girl and the girl was taken to the hospital in a mobile van. During this time, I did not feel like informing my neighbors about this incident. It is not true that the fact that the accused Manoj Jethabhai was ousting the girl from his house was told only to me by the four boys.

I did not mention anything in the complaint such as the four boys had told the fact in presence of other people. It is not true that the four boys did not tell me the fact that they saw the accused Manoj Jethabhai ousting the victim from his house.

It is true that I did not state about my doubt on Manoj Jethabhai when I made a call to the journalist. When I made a call to Vivekbhai Suthar and then Vivekbhai made a call to the police, the fact of having doubt regarding the incident on Manoj Jethabhai was not mentioned. It did not strike my mind to call my wife for examination. The girl was without any clothes when I saw her for the first time. I did not cover her up with shawl or bed sheet. Nayak Faliya is about 300-350 feet away from my house. I did not happen to visit Nayak Faliya.

After examination with the torch, bleeding from the private part was ascertained. I am aware of the fact that such type of cases are dealt by the police. I did not inform the police immediately after Bilalbhai examined with the torch. It is not true that I did not know the four boys who brought the victim. I did not mention the names of these four boys. My special statement was recorded at 10 am on the next day of registering the complaint. It was not recorded at night of registering the complaint. The police did not ask me to identify the four boys. It is true that I never mentioned the names of four boys to the police. It did not happen that the four boys left after handing over the victim to me at my house. Two out of four boys carried the victim to the Nayak Faliya.

The clothes of the boys did not have blood marks. I have not dictated the description of four boys in either complaint or special statement. It is not true that while we reached the Nayak Faliya, the four boys who brought the victim showed their doubt but did not name the person. When I went to register the complaint, the accused was not present at the police station. Further, I did not meet the accused before. The four boys did not tell me the name of the accused, Manoj. I did not mention the name of the accused in the complaint. It is not true that I did not mention the name of the accused in my special statement. I went inside the police station. It is not true that persons waiting outside were Jafarubhai, Rafiqbhai, Sikandarbhai and Amanbhai.

These four persons were not in the hospital too. I know all the four persons. The four boys who brought the victim are the sons of the said four persons. It is true that Manojbhai, father of the accused, had earlier filed a police complaint against six persons i.e. aforesaid four persons and two others. It is not true that the four boys abducted the victim with intention to rape her. It is not true that in order to save the four boys, they were allowed to flee from the spot because they belonged to our Muslim community.

It is not true that their names were not dictated while registering the complaint for saving them. It is not true that I registered the complaint on being asked by Jafurbhai for the same. The statements of these four boys were not recorded by the police in my presence. I stayed at the hospital for around 20 minutes. It is not true that in order to save these four boys, I filed a false complaint or am giving false deposition. It is true that neither in the complaint nor in the police statement

did I mention that when asked the four boys, they stated to have seen Manoj Jethabhai Parmar ousting the girl from his home."

(Emphasis supplied)

29. In his testimony, the complainant, Nazir Mohammed (PW-1), stated that the four boys whom he had seen taking the child victim, told him that they had seen the accused-appellant pushing the child victim out of his house. On receiving this information, Nazir Mohammed (PW-1) made a call to the reporter Vivekbhai (PW-2) who, in turn, called the 108 Ambulance so that the child victim could be taken for treatment to the hospital. Thereafter, Nazir Mohammed (PW-1) lodged the complaint (Exhibit- 10).

30. Thus, going by the evidence of Nazir Mohammed (PW-1) (supra), well before the FIR (Exh. 10) was lodged by him, he had complete knowledge of all the relevant facts including the identity of the four boys who were seen taking the child victim to Nayak Faliya, and the most crucial fact that these boys had seen the accused-appellant pushing the child victim out from his house.

31. We may reiterate that the FIR of the case (Exh. 10) was lodged on the basis of the written complaint of Nazir Mohammed (PW-1). In the complaint, neither the names nor description of the four boys who were seen by Nazir Mohammed (PW-1), taking the child victim in a denuded state finds a mention. It is also significant to note that the witness Vivekbhai (PW-2), who along with Nazir Mohammed (PW-1) was instrumental in lodging the complaint, is a reporter. This fact heightens the expectation that all the relevant facts known to the complainant would have been set out in the complaint.

32. Had there been any iota of truth in these allegations, there was no chance that the complainant (PW-1) would have missed or omitted to mention the following vital/crucial facts in the complaint:-

(i) The identity of the four boys who were seen taking the child victim with them.

(ii) The fact that these boys had seen the accused-appellant pushing the child victim out of his house.

33. The omission of these material facts in the FIR brings the entire case of the prosecution under a grave cloud of doubt.

34. This Court in Amar Nath Jha v. Nand Kishore Singh13 dealt with a similar issue regarding non reporting of essential facts in the FIR, wherein it was observed as follows:-

"10. The third circumstance which we need to concentrate on concerns non-reporting of essential facts which were known to the informant in the FIR. The High Court while appreciating the entire materials on record has affirmatively concluded that PWs 1, 2, 3, 4, 8, 10 and 12 belong to the same family of the deceased and reside in the same house. It may be of some significance to note that PW 9 (the informant) of this case is the nephew of the deceased who lives in an adjacent house to that of the deceased.

In the FIR, PW 9 has failed to mention the name of PW 1, is a significant person as per the prosecution as he had allegedly identified the accused Nand Kishore Singh and Maheshwar Singh, who were the dacoits responsible for the aforesaid crime. It has come out from the cross-examination of PW 9 that he was aware of the presence of PW 1 during the incident but he failed to mention his name in the FIR. Such non-mentioning of presence of PW 1, who was a material witness in this case, creates further suspicion on the hypothesis portrayed by the prosecution.

11. The High Court on appreciation of detailed evidence has for the right reasons concluded that the informant (PW 9) was aware of the names of dacoits who had killed the deceased but failed to name them in the FIR. In this context we may note that the incident is alleged to have taken place in the intervening night of 21-4- 1999 and 22-4-1999, whereas the FIR came to be registered at 3.15 a.m., after a lapse of 3 hours.

Despite sufficient time for the informant to gather necessary information, which he did, the names of two accused-respondents have conspicuously been missing, which also formed an additional factor for the High Court to acquit the accused-respondents. Although we accept that the FIR need not be an encyclopaedia of the crime, but absence of certain essential facts, which were conspicuously missing in the present FIR, point towards suspicion that the crime itself may be staged."

(Emphasis supplied)

35. Similarly, the effect of a vital omission in the first information report was considered by this Court in the case of Ram Kumar Pandey v. State of M.P14, the relevant observations from the said judgment are quoted hereinbelow: -

"8. The abovementioned first information report was lodged at Police Station Ganj on March 23, 1970 at 9.15 p.m. The time of the incident is stated to be 5 p.m. The only person mentioned as an eye-witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the FIR only as persons who saw the wrapping of the chadar on the wound of Harbinder Singh. What is most significant is that it is

nowhere mentioned in the FIR that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9'15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh.

9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughers had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

10. Even Joginder Singh, PW 8, was not an eyewitness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the FIR that Joginder Singh had met Uttam Singh before the FIR was made. Uttam Singh did not mention there that any dying declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh.

The omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR seems very significant in the circumstances of this case. Indeed, according to the version in the FIR, Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside.

17. As regards the second and third points, we are unable to give credence to the version of the three alleged eyewitnesses as they were not mentioned as eyewitnesses in the FIR made in the circumstances indicated above.

18. Lastly, the alleged dying declaration is also not mentioned in the FIR On the other hand, the FIR, mentions Joginder Singh who tried to prove the dying declaration only, as an eyewitness.

21. Consequently, we allow this appeal and set aside the conviction and sentence of the appellant under Section 302/34, IPC If the appellant has already served the sentence awarded under Section 324 IPC, as it stated on his behalf, he will be released forthwith."

(Emphasis supplied)

36. Therefore, the attempt of prosecution in posing through the complainant Nazir Mohammed (PW-1) that Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) were the four boys whom he had seen with the child victim or that these boys had seen the accused-appellant pushing the child victim out of his house is a clear embellishment and significant omission, as these vital facts were not set out in the complaint. This crucial omission effects the credibility of the complaint itself.

37. Furthermore, the introduction of the witnesses namely Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) for proving the last seen together circumstance is a clear afterthought, as manifested by the fact that their names cropped up for the first time on 14th June, 2013 i.e. the day after the incident.

38. A lame reason was assigned by the trial Court to brush aside this serious flaw and effect of the grave omission on the prosecution's case observing that no fact had come on record to show that the Nazir Mohammed (PW-1), Arifkhan (PW-3) and Shahejadkhan (PW-4) bore any enmity against the accused-appellant due to which, they would make an attempt to falsely implicate the accused-appellant. This, in our opinion, could not have been a logical ground to ignore this material omission.

39. The Journalist, Vivekbhai (PW-2), also tried to take a similar stance as the complainant Nazir Mohammed (PW-1) in his deposition. Relevant excerpts from the deposition of Vivekbhai (PW-2) are extracted hereinbelow for ready reference:-

"The incident occurred on 13/06/2013. I was at Godhra in morning and returned Kalol at around 12:30 hrs after finishing my work by staying half and hour there. As being native of Kalol, I was present at my home that day. I was present at my home in evening after taking dinner. I received a call from Bilalbhai at around 11:30 pm. Bilalbhai is my consulting. Bilalbhai told me that a girl was bleeding from the lower part and something had happened. I went through a road to river which is opposite to the police station. Bilalbhai, 5-6 other friends, and a four-year girl without clothes were there. The girl was sitting with her legs wide and others were standing. I speculated the case of rape.

At first, I made a call to Kalol PSI on his mobile. He was on leave. He said he would inform the police station. I made a call to 108 mobile van thereafter. It took the girl to the Government Hospital, Kalol for treatment. We did not know the name and whereabouts of the girl. We arranged for her primary treatment. In-charge P.S.I. Pallacharya and C.P.I. Vajpai arrived at the hospital. In view of

limitation of treatment at Kalol Hospital, the girl was referred to the Godhra Hospital. By this time, the parents of the girl arrived at the hospital due to police efforts. The doctor during the treatment at Kalol Hospital asserted about rape with the victim. When I was there during the treatment at Kalol Hospital, my friends who brought the girl went to the police station for lodging a complaint.

The four boys who brought the girl told me the fact at the Kalol Hospital that the accused, Manoj, had raped the girl. The boys told me that the accused, Manoj, ousted the victim without any clothes from his house when they were sitting at the stall near Manoj's house. The girl without clothes was walking on the way towards river. The police were searching for the family of the victim when she was being treated at the Kalol Hospital. Parents and younger brother of the victim were found during the exercise. They asserted about the victim being their daughter. Police recorded my statement in connection with the incident. I did not know the accused before the incident.

I know the accused after the incident. He is present in the court today. Cross-examination: for the Accused When I reached at the river-slope, around 50 people gathered there. P.S.I. Pallacharya arrived at the hospital within 2 minute of our arrival. C.P.I. Vajpai arrived in 10 minute. At around 12 at night, P.S.I. Pallahcharya and C.P.I. Vajpai were present at the hospital. Parents of the victim arrived at the hospital at round 12:00-12:15 am. I was the only one present during the treatment. I did not go outside the room even after the arrival of girl's parents. Bilalbhai and Najirbhai were talking to the police outside the treatment room.

I did not suggest police to inquire the four boys who brought the girl. Najirbhai registered a complaint at the police station; not at the hospital. It is not true that Najirbhai went to police station for registering the complaint when I was engaged in the treatment in the hospital. It is not true that the four boys who brought the victim talked to me in the hospital. It is a true fact that the four boys told me at the Kalol Hospital that accused, Manoj, raped the girl. It is true that I did not dictate this fact before the police during recording the statement.

It is true that I did not dictate the fact before the police while recording the statement that the boys told us that when they were sitting at the stall near the house of accused, Manoj, the accused, Manoj, ousted the girl without clothes from his home and the girl without clothes was walking towards the way to river. I came to know the names of the four boys on the next day of the incident. I did not tell the P.S.I. the fact that I had doubts on the said four boys. I came to know that the four boys were from Muslim community. It is not true that the grave act was done by the four boys and they were sent to their homes from the hospital with a view to save them."

40. The witness (PW-2) testified that he had been called to the place of occurrence at about 11:30 P.M. where he saw one Bilalbhai and four to five boys with a minor girl aged about four years in a nude condition. The witness (PW-2) called the ambulance for taking the child victim to the hospital. The witness (PW-2) tried to create an entirely new story that with the efforts of the police, the parents of the child victim came to the Kalol Hospital on the same night. This theory was not stated by any other witness including the police officers (PW-14 and PW-15) in their respective testimonies.

41. The witness (PW-2) categorically stated that the boys who had brought the child victim, stated to him at the hospital that they were sitting nearby the house of the accused-appellant and had seen him throwing the child victim out of the house in a nude condition.

42. This assertion of Vivekbhai (PW-2) makes his entire testimony nothing but a bundle of lies. It is the admitted case of the prosecution that these boys did not accompany Nazir Mohammed (PW-1) and the child victim to the hospital. Thus, when the four boys never came to the hospital, there could not have been any occasion for Vivekbhai to make any enquiries or receive information from them about the incident at the hospital.

43. Had there been any iota of truth in the version of Vivekbhai (PW-2), then there was no reason whatsoever as to why the police officers from the Kalol Police Station who had reached the hospital, would not have made immediate inquiries from these boys and would have left a serious lacunae in the case by accepting a sketchy complaint having no details whatsoever of the alleged assailant and also about the identity of the material witnesses of the last seen together circumstance, who were allegedly present in the hospital.

44. A very important admission was made by Vivekbhai (PW-2) in his cross-examination that he came to know the names of the four boys on the day after the incident. We find the testimony and conduct of Nazir Mohammed (PW-1) and Vivekbhai (PW-2) to be highly suspicious. It seems highly probable that both connived together to protect and cover up for the four boys belonging to the community of Nazir Mohammed by putting the blame on the head of the accused-appellant.

The claim of the witnesses that they took over the charge of the child victim from the four boys being the alleged witnesses of the last seen together circumstance and then took her to the hospital without making any effort whatsoever to provide her some clothes further fortifies our conclusion that the conduct of these witnesses viz. Nazir Mohammed (PW-1) and Vivekbhai (PW-2) was highly unnatural all along. Their suspect actions would give rise to a strong inference that they were trying to protect the true assailants of the ghastly sexual assault.

The fact that Nazir Mohammed's wife was in the house and in spite thereof, he did not call her out and made no effort whatsoever to provide a decent coverage to the victimised girl, adds further succour, to our conclusion, regarding the suspicious conduct of Nazir Mohammed (PW-1) and Vivekbhai (PW-2).

45. It is very surprising and rather shocking that neither Nazir Mohammed (PW-1) and Vivekbhai (PW- 2) and so also the police officials present at the hospital were completely in the dark about the identities of the most crucial witnesses to the ghastly crime when the report of the incident was lodged.

46. Since two of the four witnesses of the last seen together circumstance, namely, Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) did not support the prosecution case and were declared to be hostile, we shall discuss the evidence of Arifkhan (PW-3) and Shahejadkhan (PW-4), who, in their depositions, tried to assert the claim of being witnesses of last seen together circumstance.

47. The relevant excerpts from the evidence of Arifkhan (PW-3) and Shahejadkhan (PW-4) are reproduced hereinbelow:-

Deposition of Arifkhan (PW-3)

"Examination-in-chief

About three months ago I was sitting at the Pan Parlour of my uncle Jaffarulla Khan, where my brother Aiyaz, Nephew Shehzaad and Sartaaj were also present. At around 11-11:30 in the night, when we saw the girl departing from the accused Manoj's home, whose age was about four-five years, who was in a naked condition and came towards us crying. She was bleeding at her private parts, seeming to be of Nayak community, we inquired further, but as she could not say anything, we four took her to the Nayak Vas. On our way to Nayak Faliya, we met Nazirbhai near Ashiyana Society.

We informed Nazirbhai that the girl was found near Manojbhai's house and handed her over to him. Thereafter we four as well as Nazirbhai as well as the girl, were standing near Nayakvas Tekra, when Nazirbhai called Bilalbhai, who arrived, and on seeing the girl said that she doesn't seem to be of our locality, so he called Vivekbhai. Thereafter, on inquiring about her parents in the Nayakvas, it was found that she doesn't belong there. Vivekbhai was present at the spot, when after talking to Bilalbhai, he called Police Station.

While Vivekbhai and Bilalbhai were talking, we were standing away with the victim. When Bilalbhai and Vivekbhai came to the spot, the child was bleeding at her private parts, and thereafter Vivekbhai called Police Station, who told us to dial 108 and take her to the dispensary. On dialling, 108 mobile van arrived and

the victim was taken to hospital. Thereafter, we reached home via Police Station. We came to know the fact that the girl is of a traveller, the next day. I saw when the accused threw out the victim from the home. Police took my statement with this regard.

Cross-Examination for the Accused

The owner Jaffarulla Khan is aged forty to fifty years. I saw the victim approaching the parlour while crying, from about fifty to sixty feet away. It is not true that we did not saw the girl before she came to the parlour. We did not inform Jaffarulla Khan about the fact that the girl was bleeding from her private parts. I did not wake people from my home, a person from Ode community came, whom I know, but name is not known to me. Apart from my uncle Jaffarulla Khan, a person named Suhanben also came. It is not true that we were taking the victim from the parlour to the Ashiyana Society by lifting, but as I said, we walked her towards Ashiyana Society. During this time, we did not wrap any cloth to the girl, while the victim was still bleeding.

Few other people sitting outside their homes, whose names I cannot recall, asked what happened to the girl. Such thing did not happen that on handing over the victim to Nazirbhai, we went to our home. When we reached Ashiyana society, Nazirbhai asked us where are we taking her. Then as Nazirbhai approached us and saw the girl, she was bleeding at her private part. It is not true that Nazirbhai told us to go home. Nazirbhai's wife was about to deliver, so he went to the Hospital and there was nobody at his home. In my statement before the police, I stated that on meeting Nazir Mohammad Malek and Bilal Vaghela at the Ashiyana society, as they thought the girl to be of Nayak community, asked to hand over the girl in order to search for her parents in the Nayak Faliya.

On handing over the girl, we went to our homes. It is not true that we did not go to Nayak Tekra from Nazir's home. We four did not go to Kalol Hospital. It is not true that on handing over the girl to Nazirbhai, near his house, we went to our homes. On seeing the girl at the Pan parlour, I didn't go to Manojbhai's home, nor did we call the accused Manojbhai outside. It is not true that the I cannot say with surity whether the house from which the girl came out, belongs to Manojbhai. It is not true that I did not see the accused Manojbhai throwing the girl from home and I am giving false deposition. I know the accused's father Jethabhai, who had lodged a police complaint against my uncle Jaffarulla Khan in the year 2006, which included my father's name in the accused, who was not arrested.

I am unaware of the proceedings of that case. It is not true that after the complaint against my father was registered in 2006, we have displeasure with the accused as well as his family. There was no dispute between the accused and his brother, and our family on March 2006. It is not true that I am giving false

deposition because father of the accused had lodged police complaint against my father and my uncle. It is not true that me as well as my friends, committed rape against the victim girl and threw her near Nazirbhai's house. It is true that till we reached Nayak Faliya, Nazirbhai was knowing where the girl came from, because I had conveyed that fact to him, which he also conveyed to Bilalbhai when he came.

Similiarly when Vivekbhai arrived, he was conveyed the fact by Bilalbhai and Nazirbhai where the girl was found. It did not happen that I told the fact to Nazirbhai, Bilalbhai and Vivekbhai. When we were heading towards our home from the Police Station, the victim was being thrown away from the house by Manojbhai, such fact we did not convey to the Police. We reached our home at about 12-12:15 p.m. Police inquired us the next morning. It is not true that Nazirbhai has given false complaint to save us as he knows me, and I am giving false deposition for the sake of same. It is not true that I did not see the victim thrown out of the house by the accused, and it did not happen that the girl approached us while crying, and it did not happen that we headed towards Ashiyana Society."

Deposition of Shahejadkhan Khan (PW-4)

"Examination-in-chief

The incident took place about 5 months ago, when there was a Chhakda, in which I, Arif, Sartaj and Aiyaz were sitting, at about 10 in the night. At this time the accused sent a girl outside the home, who approached us while crying and she seemed to be of Nayak Faliya, so we took her to the Nayak Faliya and asked everybody whose girl is this, but was denied by all. Hence, we came back to the Ashiyana Society, where Arifbhai and Bilalbhai came, and 108 Ambulance was called as she was bleeding through her private parts, and taken to the Hospital for treatment. Bilalbhai took the girl to the Hospital, while we four proceeded to our homes. The next day, we got to know that the accused Manojbhai raped the girl. The fact that the accused Manojbhai threw the girl out of home was witnessed by me, and the same was given in the complaint by Nazirbhai. I identify the accused who is present before the court.

Cross-Examination for the Accused

When we saw the girl for first time, she was crying at about 5-6 feet away from the Chhakda, so our attention was drawn to her cry. Few people of the Faliya gathered, whose name I do not know. My home is 3-4 feet away from the parlour, where I live with my parents and brother. I did not call my parents or brother on seeing the crying girl coming towards us. It is not true that we four boys carried

the girl with us to the Nayak Faliya, which is about a km away from our house. After crossing the Ashiyana Society, we traversed through the pukka road.

On our way from the place of incident to the Nayak Faliya, we did not meet anybody. We woke people of Nayak Faliya and asked about the girl. As they refused, we went towards Ashiyana Society with the girl, when Nazirbhai met us. All this time, the girl was walking with us and was bleeding. Nazirbhai met us and told us to leave the girl there, and we went towards our homes, leaving the girl there. I have no knowledge of what did Nazirbhai do thereafter, and when did Police and ambulance reach. Nazirbhai is present in the court today, who met me today. With me are my other friends, whose parents were not called. We feared whether our parents would doubt us on seeing the girl bleeding. Such did not happen that Police took recorded our statement on the day of incident.

It is true that I did not tell anybody whom I met that I have seen Manojbhai throwing the girl out of the home. We did not see when, how and with whom the girl came there. In my statement before the police, recorded at 12 in the afternoon, I did not inform about 7-8 people reaching during the incident, nor that I can identify their houses. The fact that I saw the accused Manoj keeping the girl outside home, was not told to anybody before it was firstly stated in my statement before the police. Neither did I asked Nazirbhai about what happened the next day, nor did he call me before 12 in the noon.

While handing over the girl to Nazirbhai, we did not give our name and address to him. Nazirbhai do not identify me by name, but identifies on seeing. It is not true that she was raped by someone from amongst us. It is not true that we lodged a false complaint through Nazirbhai, in order to avoid any case against us. It is not true that I am giving false deposition. It is true that Police did not conduct any medical examination of us, nor did they seize our clothes. It is not true that I am giving false deposition on Nazirbhai's insistence, and identifying the accused wrongly."

(Emphasis supplied)

48. The highlighted part from the evidence of these witnesses give rise to the following irrefutable inferences: -

i. The four witnesses after seeing the accused-appellant pushing out the child victim from his house, casually took the girl in their charge; made no effort to provide clothes to the child victim; and started walking with the child victim in a denuded state towards Nayakvas without even having the faintest of idea about her identity or place of residence.

ii. These witnesses claimed to be having an idea that the child victim belonged to Nayak community and, therefore, they were taking her to Nayak Faliya. This

could not have been possible unless they were privy to the incident. As there was no clue regarding the identity of the child victim by the time her parents were located, it is very strange that these four witnesses had knowledge regarding the community to which the child victim belonged.

iii. Nazir Mohammed (PW-1) did not command a position of significance in the society or community. Inspite thereof, the boys casually handed over the girl to Nazir Mohammed (PW-1) near the Ashiana society, after telling him that she had been found near the accused Manojbhai's house.

iv. The boys, who were four in number and the owner of the Pan Parlour, namely, Jafarulla Khan, who was also closely known to them, would, in the natural course of events, be expected to confront Manojbhai i.e. the accused-appellant, had they actually seen the child victim coming out from his house in a naked condition as claimed. This would be expected from any human being with the bare minimum sense of decency, empathy and awareness.

v. Arifkhan (PW-3) stated that Nazir Mohammed's wife was about to deliver, and she was admitted at the hospital and nobody was at home. This fact is contradicted by the evidence of Nazir Mohammed (PW-1) who did not make any such averment in his deposition and rather stated that he did not call his wife out for inspecting the child victim who was in a very bad shape and was bleeding from her nether regions. If, at all, these persons had any empathy and were not the offenders themselves, looking at the compromised condition of the girl, natural human conduct demanded that they should, at the outset, made an attempt to provide clothes to cover the body of the child victim and to involve some lady to ease her misery.

vi. Arifkhan (PW-3) admitted that Jethabhai, the father of the accused-appellant had lodged a complaint against Jaffarulla Khan in the year 2006 and his father was also arraigned as an accused in the said case. Thus, there was a clear state of animosity between Arifkhan (PW-3) and the accused-appellant owing to the said criminal case.

vii. Arifkhan (PW-3) stated that the incident took place around 11:00-11:30 at night. On the other hand, Shahejadkhan (PW-4) stated that the incident took place at 10 o'clock in the night.

viii. Shahejadkhan (PW-4) stated that they became aware of the child victim for the first time, when he heard her crying at a distance of about 5-6 feet away from the Chhakda, and thus, their attention was drawn to her. Admittedly, the house of the accused-appellant was 40 to 50 feet away from pan parlour. Thus, the witnesses sensed the presence of the child victim for the first instance, when she was at a distance to 5-6 feet away from the place where they were sitting. Hence,

there was hardly any possibility that in the dead of the night, they could have seen the child victim being pushed out from the house by the accused-appellant.

ix. A very candid admission was made by Shahejadkhan (PW-4) in his cross-examination wherein he stated that he and his other friends, did not call their parents because they feared that their parents would doubt them on seeing the child victim bleeding. The witness further admitted that he did not tell anybody who he met that he had seen the accused-appellant pushing the child victim out of the home. This fact was stated by him, for the first time, to the police when his statement was recorded. He did not ask Nazir Mohammad (PW-1) as to what had transpired after handing over of the child victim to him. He also admitted that while handing over the child victim to Nazir Mohammad (PW-1), they did not share their names and address to him.

49. These facts make it clear that by the time the FIR was lodged, there was no material whatsoever to establish the identity of the four witnesses of last seen together theory or that they had actually seen the child victim being pushed out by the accused-appellant from his house. As per Shahejadkhan (PW- 4) they did not tell anybody that they had seen the accused-appellant pushing the child victim out of his home. There is a significant discrepancy regarding the time of the incident in the versions of PW-3 and PW-4 as mentioned supra.

50. Since the identity of the witnesses of last seen together circumstance was not known to anyone, it becomes a matter of grave doubt as to how they were pinpointed and called to the police station on the day next to the incident for recording their statements under Section 161 CrPC.

51. In juxtaposition with these embellishments, the crucial fact borne out from the statement of Nazir Mohammed (PW-1) that the four boys did not tell him the name of Manojbhai (accused-appellant) and that he did not mention in the complaint, or his statement (sic) under Section 161 CrPC that these witnesses had seen Manojbhai (accused-appellant) pushing the child victim from his house, makes it clear that the entire story implicating the accused-appellant for the crime was cooked up after consultations and deliberations on the day next to the incident. The effect of this grave embellishment on the prosecution case was not considered in the correct perspective either by the trial Court or the High Court.

52. The rank indifference shown by these four witnesses i.e. Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) in taking any steps whatsoever either to report the matter to the police or to make the efforts for taking the child victim to the hospital and instead trying to take her to Nayak Faliya reaffirms our doubt that they might have been the perpetrators of the offence and by way of self-preservation, threw the blame on to the accused-appellant stating that they had seen the accused-appellant pushing the child

victim from his house and that they were trying to take her to Nayak Faliya. Thus, we reiterate that the evidence of Arifkhan (PW-3) and Shahejadkhan (PW-4) is totally unworthy of credence.

53. At this stage, it would be fruitful to refer to the testimony of the two Investigating Officers i.e. Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15).

54. The relevant excerpts from the evidence of Pankajkumar Darji (PW-14) are reproduced hereinbelow for ready reference: -

"Examination-in-chief

The name of Mr. Manojbhai Jethabhai as accused was revealed during the investigation. Therefore, the investigation was conducted. When the accused person was found, he was arrested in this offence after making physical examination. The accused did not co-operate in timelimit regarding clothes worn at the time of incident, he was produced before the court and remands were obtained. The accused person has willingly stated about the clothes worn at the time of incident during remand and same were seized.

The statement of witness Bilal Ahmed Waghela was dictated. The collected sample of the victim and the accused during medical investigation were sent in F.S.L. to analyse and Medical Certificate was received. The process of preparing map of the incident place was done due to serious nature of offence. The sufficient evidence were found to frame chargesheet against the arrested accused person therefore the chargesheet was prepared and sent to the Hon'ble Court. The accused persons are same who present before the court.

Cross examination: for the accused

I came to know the fact while receiving the complaint that three to four boys took the victim to the complainant. Thereafter, I saw the said four boys during investigation. I did not conduct any medical check up of these boys. I have neither collected sample of boys' sperm and blood. No panchnama of dog tracking was drawn. I did not feel that the victim was found from four boys and conduct their medical check up."

(Emphasis supplied)

55. The witness (PW-14) stated that the name of the accused-appellant cropped up during investigation and thus, he was arrested and various other steps of investigation were carried out. In cross examination, the witness admitted that he met the four witnesses of last seen referred to in the complaint during

investigation. However, he did not explain as to how the identity of these witnesses was established.

56. Now, we come to the evidence of the other Investigating Officer, Hareshbhai Pallacharya (PW- 15). The relevant excerpts of his deposition are reproduced hereinbelow for ready reference:-

Cross examination: for the accused

"I was at home at that time. I left in Government vehicle to reach Kalol. Entry is not made in Station Diary when I left to go Kalol. First of all, I went to Kalol Police Station and thereafter went to the hospital, where the victim was taken. I reached Kalol Police Station at around 11-00 to 11-30 hours. I do not remember as to who told me from Police Station that the victim is in the hospital. I do not remember as to whether Najirbhai was present there or not. I did not record statement of the person who brought this girl to the hospital. I reached hospital at about 12-30 to 1-00 hours. When I reached hospital, I saw Najirbhai. Najirbhai was sitting there and as I reached there, complaint was given to me.

Other persons were also sitting with Najirbhai. It is true that Najirbhai dictated in his complaint that four boys were bringing the victim and these persons handed over the victim to Najirbhai. I did not ask Najirbhai as to who these four boys were. Names of these four boys were revealed during my course of investigation. I did not seize any document showing that house to be of the accused. When I went there, nobody was present in the house. It is not true that the house, which I visited, was not the house of the accused. It is not true that Muddamal, which I had shown, was seized from the house of the accused.

It is not true that I also recorded statements of the persons present around. I took complaint at police station. It has not happened that complainant had given complaint in the hospital. It is not true that I have not written the statement as dictated by Mohasinkhan. I did not record statement of Bilal Ahmed. I do not remember exactly as to whether Bilal Ahmed was present at the time when Najirbhai came to lodge complaint. Statement of Vivekbhai was recorded on 14/06/2013. Vivekbhai was also present at Police Station.

I handed over charge to Darji sir at around 10-30 hours in the morning. Panchnama of crime scene was completed at that time. It is not true that I have not drawn any panchnama in presence of panchas. It is not true that statements of witnesses were written as dictated by them. It is not true that the victim and four boys were handed over to Najirbhai and despite the fact that they were present there, their statements were not recorded. Semen, blood or nails of these four boys were not collected to send to FSL."

(Emphasis supplied)

57. In his cross-examination, the witness (PW-15) stated that he reached Kalol Police Station at about 11.00 p.m. to 11.30 p.m., proceeded to the hospital, and found that other police officials of Kalol Police Station and Vejalpur Police Station were present there from before. He admitted that he did not record the statements of the persons who brought the child victim to the hospital, nor did he record the statement of Vivekbhai (PW-2).

He further stated that Nazir Mohammed (PW-1) was present at the hospital and handed over the complaint to him, in which there was a reference to four boys; however, he candidly admitted that he did not ask Nazir Mohammed (PW-1) for the names of those four boys and that their identity was allegedly revealed during the investigation. He also admitted that when the panchnama of the house where the incident took place was drawn, he did not collect any documentary evidence regarding ownership of the house.

58. The trial Court has observed that the accused-appellant was apprehended from inside the house, however, as is evident from the testimony of the two Investigating Officers i.e. Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15), neither of them uttered a single word regarding presence of the accused-appellant in the house when the search was undertaken. Neither of the Investigating Officers bothered to prove the arrest memo of the accused-appellant. Memorandum statement of the accused-appellant under Section 27 of the Indian Evidence Act, 1872, leading to the recovery of his blood-stained clothes was not proved by proper evidence.

59. The material facts as elicited during the evidence of the two investigating officers Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15) make it abundantly clear that the entire prosecution story has been woven on a fabric of lies by introducing the four boys as selfacclaimed witnesses to the last seen together circumstance.

60. Hareshbhai Pallacharya (PW-15) admitted in his cross-examination that he did not record the statements of the persons who brought the child victim to the hospital. Although the complaint referred to four boys who had accompanied the child victim and handed her over to the complainant (PW- 1), no effort was made by the Investigating Officers to ascertain their identities at the earliest opportunity. A vague explanation was furnished that the names of these four boys cropped up during investigation. However, the record contains no statement or any other credible material that could convince the Court that the identity of these four boys was ever established by any cogent evidence.

61. We further find the conduct of the police officers who conducted the investigation of the case to be highly pedantic and gravely negligent.

62. After Nazir Mohammed (PW-1) had filed the complaint and the child victim had been medically examined, the facts presented a case of grave sexual assault on the minor child victim aged four years. In such a situation, any vigilant police officer would be immediately expected to proceed to the crime scene; try to locate the witnesses of the last seen together circumstance by establishing their identity and make efforts to apprehend the accused. However, after perusing depositions of both the Investigating Officers (PW-14 and PW-15), it is evident that neither of them showed any intent or interest to conduct these vital steps of investigation at the earliest opportunity.

63. The investigation was casually proceeded with. The so-called witnesses of last seen together circumstance, namely, Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) somehow popped up and presented themselves before the Investigating Officer on the next day of the incident. The police officers casually proceeded to the house of the accused-appellant on 14th June, 2013. The incriminating material viz. blood stain clothes, bedsheet, curtain, etc. were lying scattered in the house as if to serve the incriminating evidence to the Investigating Officer on a platter.

64. On a perusal of material on record, it is evident that the site map plan of the place of incident (Exh. 42) was prepared by the Circle Officer, Bharatkumar Mahajan (PW-12), with the panch witnesses being Krunalkumar (PW-7) and Pintukumar. If the prosecution intended to fortify its allegation that the accused-appellant was seen pushing the child victim out of the house by the witness of last seen together theory, it was imperative that at least one of these four witnesses, namely, Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6), be associated as a panch witness to the preparation of the site map plan. However, no such step was taken by the Investigating Officers. This omission, coupled with the rank failure of the Investigating Officers in collecting any evidence whatsoever to link the possession or ownership of the house in question to the accused-appellant, further dilutes the credibility of the prosecution case.

65. In the present case, it is manifest that the Investigating Officer had ample opportunity to secure and preserve crucial forensic material, particularly by securing samples necessary for conducting DNA profiling of the child victim and the accused-appellant. Such scientific examination, now an integral component of modern criminal investigation, would have provided objective corroboration and materially assisted in ascertaining the truth. However, no effort was made to obtain or preserve such forensic material. This omission, whether arising from negligence or otherwise, assumes significance in light of the seriousness of the allegations.

The failure to pursue an available and reliable scientific avenue not only weakens the prosecution's case but also raises a legitimate apprehension that the investigation may not have been carried out with the requisite fairness and diligence. In the circumstances, the possibility that such inaction was intended, or at least operated, to shield the actual perpetrators of the offence cannot be ruled out. Such lapses ex facie undermine the credibility of the prosecution's case and strike at the foundational requirement that every investigation must be fair, diligent, and oriented solely towards the discovery of truth.

66. The admitted sequence of facts narrated above clearly indicates something very fishy and unnerving in the manner in which, the entire prosecution story has been unfolded. In face of such grave allegations, the rank apathy of the Investigating Officers in not conducting expeditious and diligent investigation, should have been sufficient to put the Courts below on guard and become cognizant of the fact that something was really amiss in the case presented for trial. However, sadly, neither the trial Court nor the High Court, adverted to these glaring shortcomings in the case and mechanically accepted the case of prosecution even though the conduct of the material witnesses (of last seen together circumstance) was sufficient to raise a strong suspicion that they might have been the actual perpetrators of the crime.

67. It is imperative to state that during the trial, the child victim was herself examined as (PW-18) however, she could not give any evidence whatsoever to connect the accused-appellant with the crime. She could not even identify the accused-appellant as the assailant. She further stated that she was tutored by her mother. Hence, this significant point was also missed by the trial Court before convicting the accused-appellant.

68. Adverting to the aspect of incriminating recoveries, we find that the recoveries allegedly effected from the house of the accused-appellant included a blood-stained bedsheet, mattress, curtain, leggy, handkerchief, light green colour tshirt and night pant. The seizure of this forensic material was carried out by Hareshbhai Pallacharya (PW-15), who stated that he recorded the statements of the concerned witnesses and prepared the panchnama of the place of occurrence in the presence of the independent panchas and the FSL Officer. However, in his deposition, the witness remained conspicuously silent regarding the recovery of any legging of the child victim, which was later projected as a crucial piece of evidence.

These articles, upon being subjected to chemical examination, gave positive test for blood group "A", alleged to be that of the child victim. Yet neither of the two investigating officers (PW-14 and PW-15) gave any evidence regarding the safe keeping of these incriminating materials from the time of seizure until they reached the forensic laboratory. In their entire evidence, both police officers

failed to state anything regarding the sealing of the seized articles, their deposit in the police station malkhana or the manner of their transmission to the FSL. This vital link evidence, necessary to establish the sanctity of the muddamal articles was therefore never provided. Consequently, neither the recoveries nor the forensic reports can be read in evidence.

69. The trial Court relied on the testimony of panch witnesses i.e., Krunalkumar (PW-7) and Altaf Husenbhai (PW-8) to accept the recoveries. It is to be noted that Krunalkumar (PW-7) in his testimony stated that the recoveries of bloodstained mattress, bedsheet and leggings of child victim were made from the house of the accused-appellant on 14th June, 2013. However, in his cross-examination the witness made the following admissions:-

"When I went to the place of offense at night, police was already present there. When I departed for my home, police was still present. About 50 people assembled at the place of offense. No article was seized at the night. Police went to the house which was the place of offense, but we did not go inside. We do not know what did police do inside the house, which was the place of offense."

(Emphasis supplied)

70. Hence, what comes out from the evidence of the witness (PW-7) is that when he went to the place of offence at night, the police were already present; that about 50 people had assembled; that no article was seized in his presence, and that the police entered the house without the panchas. This seriously undermines the credibility of the alleged recoveries.

71. Altaf Husenbhai (PW-8), in contrast, stated that he acted as a panch on 17th June, 2013, that the accused-appellant was found sleeping inside the house in an intoxicated condition, and the clothes of the child victim and blood-stained articles were recovered on that day along with the accused's t-shirt and night pant. When the evidence of Krunalkumar (PW-7) and Altaf Husenbhai (PW-8) is read in juxtaposition to that of Hareshbhai Pallacharya (PW- 15), stark contradictions emerge.

The witness (PW- 15) never specifically mentioned about the recovery of the child's clothing from the house of the accused-appellant. The trial Court overlooked the fact that Krunalkumar (PW-7) admitted in his cross-examination that no recovery was effected in his presence on 14th June, 2013 and that the police entered the house on their own, raising serious suspicion whether the alleged recoveries were genuine or were planted ones.

72. In stark contradiction, Altaf Husenbhai (PW-8) stated that the accused-appellant was arrested on 17th June, 2013, and the recoveries were also affected

on the same day. Thus, the entire sequence of arrest and recoveries is absolutely unacceptable.

73. It must further be noted that the only persons who could have identified the child victim's clothes were her parents i.e. Veenaben Pagi (PW-16) and Ranchhodbhai Pagi (PW-17). However, they were never made to do so either during investigation or at the trial.

74. The prosecution also failed to establish that the house at Oad Faliya belonged to or was in the possession of the accused-appellant. Hareshbhai Pallacharya (PW-15) admitted in his evidence that he did not collect any evidence proving ownership. Pankajkumar Darji (PW-14) also admitted the same and even the Circle Officer, Bharatkumar Mahajan (PW-12) conceded that he did not verify who occupied the premises. No revenue records, bills, or statements of neighbours were produced to establish ownership or possession on the house. Without proof of exclusive possession, recovery from the premises cannot be treated as incriminating.

75. The contradictions between the depositions of panch witnesses Krunalkumar (PW-7) and Altaf Husenbhai (PW-8), and Investigating Officer (PW-15); the absence of proof regarding the ownership of the house; the lack of a proper chain of custody of seized items; and the medical evidence negating the presence of semen on the child victim, casts grave doubt on the genuineness of the recoveries. The attempt of the prosecution to rely on the FSL report despite these grave infirmities is unacceptable. Since the seizures itself were tainted and the ownership of the house remains unproven, the FSL results hold no evidentiary value. The trial Court and High Court overlooked these critical flaws and the possibility of planting evidence, thereby committing serious error in recording the conviction.

76. Thus, we are convinced that the entire story of the prosecution wherein it has been claimed that the accused-appellant was seen throwing out the child victim in a denuded condition after committing forcible sexual assault upon her is not established by any credible or reliable evidence. Rather, we find the conduct of the complainant, Nazir Mohammed (PW- 1), Journalist Vivekbhai (PW-2), witnesses of last seen together circumstance, Arifkhan (PW-3) and Shahejadkhan (PW-4) and also of the concerned Investigating Officers (PW-14 and PW-15) to be highly unnatural, suspicious, full of improbabilities, and self-contradictions.

77. Therefore, it is firmly established that the prosecution case is clearly missing the key component of an unbroken chain of incriminating circumstances to convict the accused-appellant on the basis of last seen together circumstance.

78. Having made a thorough analysis of the evidence on record, and for the reasons stated above, we find that the impugned judgment do not stand to scrutiny. As a result, the judgment of conviction and order of sentence dated 3rd November, 2015, rendered by the trial Court and the impugned judgment dated 5th April, 2016, rendered by the High Court are hereby set aside. The appellant stands acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

79. The appeal thus succeeds and is allowed.

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

81. Before parting with the present case, we would like to highlight that the judgments of the trial Court as well as the High Court in the instant case have indeed appended charts of witnesses and documents in their respective judgments. However, we are of the considered view that a more structured and uniform practice must be adopted to enhance the legibility of criminal judgments.

Accordingly, to ensure a systematic presentation of evidence that enables efficient appreciation of the record, we issue the following directions to all trial Courts across the country. These directions aim to institutionalize a standardized format for cataloguing witnesses, documentary evidence, and material objects. This will serve to facilitate better comprehension and immediate reference for all stakeholders, including the Appellate Courts. Hence, we are passing the following directions, which shall be adhered to by all trial Courts across the country.

82. Preparation of Tabulated Charts in all the judgments:

82.1 All trial Courts dealing with criminal matters shall, at the conclusion of the judgment, incorporate tabulated charts summarizing:-

a. Witnesses examined,

b. Documents exhibited, and

c. Material objects (muddamal) produced and exhibited.

82.2. These charts shall form an appendix or concluding segment of the judgment and shall be prepared in a clear, structured and easily comprehensible format.

83. Standardized Chart of Witnesses

83.1. Each criminal judgment shall contain a witness chart with at least the following columns:

a. Serial Number

b. Name of the Witness

c. Brief Description/Role of the Witness, such as: Informant, Eye-witness, Medical Jurist/Doctor, Investigating Officer (I.O.), Panch Witness, etc.

83.2. The description should be succinct but sufficient to indicate the evidentiary character of the witness. This structured presentation will allow quick reference to the nature of testimony, assist in locating the witness in the record, and minimize ambiguity.

83.3. Specimen Chart for Witnesses Examined

Prosecution Witness	**No. Name of Witness**	**Description**
1	Mr. X	Eye-witness
2	Mr. Y	Witness of last seen circumstance
3	Ms. Z	Medical Jurist
4	Mr. A	Investigating Officer
5	Mr. B	Complainant/First Informant

84. Standardized Chart of Exhibited Documents

84.1 A separate chart shall be prepared for all documents exhibited during trial. This chart shall include:

a. Exhibit Number;

b. Description of document;

c. The Witness who proved or attested the document.

84.2 Illustratively, the description may include: FIR, complaint, panchnamas, medical certificates, FSL reports, seizure memos, site plans, dying declarations, etc.

84.3. The requirement of specifying the witness who proved the document ensures traceability of proof and assist the Court in appreciating compliance with the Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.

84.4. Specimen Chart for Exhibited Documents

Exhibit No.	**Description of the Exhibit**	**Proved by/Attested by**
1	Inquest Panchnama/Memo	PW-1

2	Recovery Panchnama/Memo	PW-2
3	Arrest Memo	PW-3
4	Post-mortem Report	PW-4
5	FSL Report	PW-5

85. Standardized Chart of Material Objects/Muddamals

85.1 Whenever material objects are produced and marked as exhibits, the trial Court shall prepare a third chart with: a. Material Object (M.O.) Number; b. Description of the Object; c. Witness who proved the Object's Relevance (e.g., weapon, clothing, tool, article seized under panchnama, etc.) 85.2. This enables clarity regarding the physical evidence relied upon.

85.3 Specimen Chart for Material Objects/Muddamals

Material Object No.	**Description of the Exhibit**	**Proved by/ Attested by**
1	Weapon of Offence	PW-1
2	Clothing of accused/victim	PW-2
3	Mobile Phone/Electronic Object	PW-3
4	Vehicle	PW-4
5	Purse/earrings/identity card	PW-5

86. Special Provisions for Cases Involving Voluminous Evidence

86.1. In complex cases, such as conspiracies, economic offences or trials involving voluminous oral or documentary evidence, the list of witnesses and exhibits may be substantially long. Where the number of witnesses or documents is unusually large, the trial Court may prepare charts only for the material, relevant, and relied-upon witnesses and documents, clearly indicating that the chart is confined to such items. This ensures that the charts remain functional reference tools rather than unwieldy compilations.

87. Application to Defence Witnesses and Evidence

87.1. The aforesaid directions shall apply, mutatis mutandis, to all witnesses examined and all evidence adduced by the defence.

88. Adoption of Specimen Format and Permissible Deviations

88.1. The specimen charts provided herein shall ordinarily serve as the standard format to be followed by trial Courts across the country.

89. Observations Regarding Applicability to Civil Proceedings

89.1. While these directions are primarily intended to streamline criminal trials, we leave it open to the High Courts to consider, wherever appropriate, the adoption of similar tabulated formats in civil matters as well, particularly in cases involving voluminous documentary or oral evidence, so as to promote clarity, uniformity, and ease of reference.

90. The High Court may consider incorporating the above directions in their respective rules governing the procedure of trial Courts.

91. Registry shall forthwith transmit a copy of this judgment to the Registrar General of all the High Courts to ensure due compliance with the directions issued by this Court in paragraph Nos. 81-90 (supra).

.....J. (Vikram Nath)

.....J. (Sandeep Mehta)

New Delhi;

December 15, 2025.

1 Hereinafter, being referred to as 'child victim'.

2 Hereinafter, referred to as the accused-appellant.

3 For short, 'IPC'.

4 For short, 'POCSO Act'.

5 Hereinafter, referred to as 'trial Court'.

6 Criminal Appeal (Against Conviction) No. 448 of 2016.

7 Hereinafter, being referred to as 'High Court'.

8 Hereinafter, being referred to as 'Vivekbhai'.

9 For short, 'CrPC'.

10 Hereinafter, referred to as 'FSL'.

11 Para 4.

12 (1984) 4 SCC 116.

13 (2018) 9 SCC 137

14 AIR 1975 SC 1026.

IN THE SUPREME COURT OF INDIA

State of Uttar Pradesh
Vs.
Ajmal Beg Etc.
[Criminal Appeal Nos. 132-133 of 2017]

Head Note – Dowry is prohibited in the Muslim community, mehr is a compulsory gift which the groom is required to give to the wife at the time of nikah. It is defined as that it belongs solely to the bride and the husband, and his family can't take it away.

Issued general directions to contain the social evil of dowry death in society.

JUDGMENT

Sanjay Karol, J.

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

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THE APPEALS .....
DOWRY: A CROSS-CULTURAL EVIL .....
FACTS OF THE CASE .....
THE FINDINGS OF THE TRIAL COURT .....
THE IMPUGNED JUDGMENT .....
ANALYSIS AND DISCUSSION .....
CONCLUSION .....

THE APPEALS

1. These appeals are at the instance of the State of Uttar Pradesh, laying challenge to a judgment of the High Court of Judicature at Allahabad in Criminal Appeal under Section 374 Cr.PC. Nos. 5109 of 2003 and 5110 of 2003, entering a finding of acquittal of the respondents herein, setting aside the judgment and order dated 7th October 2003, of conviction returned by the Additional Sessions Judge, Bijnor[1] in Sessions Trial 573 and 574 of 2001 arising out of the First Information Report[2] bearing No. 94/2001 registered at P.S Kiratpur, under Sections 498-A and 304-B, Indian Penal Code, 1860[3] and Section 3/4 of the Dowry Prohibition Act, 1961[4].

2. In this case, a young girl, barely of twenty, when she was sent away from the world of the living by way of a most heinous and painful death, met this

unfortunate end simply because her parents did not have the material means and resources to satisfy the wants or the greed of her family by matrimony. A coloured television, a motorcycle and Rs. 15,000/- is all she was apparently worth of.

DOWRY: A CROSS-CULTURAL EVIL

3. Evil, unless eradicated, can never be contained. What originally began as a voluntary gift-giving practice to the daughter upon marriage, for her own use and financial independence, with time, morphed into an institutionalized practice - becoming an essential aspect of hypergamy[5]. This practice of marrying 'higher up' traces its origins to caste and kinship along with, to use a colloquial term, the 'baggage of the samaj' that comes with it. Since lineage is traced through the patriarchal line, the desire to marry daughters into equal or higher-status families ensured that their offspring retained or enhanced the family's standing. Hypergamy thus became both a social strategy and a religiously sanctioned norm.

Among upper castes, this evolved into rigid practices where daughters were "married up" to families of higher ritual or political rank, often necessitating large dowries as inducements. Over time, hypergamy was not just about varna but also about wealth, landholding, and political influence. Medieval royal families practiced hypergamy to forge alliances, and landed elites followed suit to consolidate power. By the early modern and colonial periods, hypergamy had become a widespread cultural pattern across many Hindu communities, entrenching the link between dowry and upward mobility.

Today, even though outlawed, it continues, having divorced itself entirely from the well-being of the female (its original intent) to what is now being referred to as the 'groom price theory'- i.e., the amount of dowry being determined by the particulars of the groom, such as social and educational background, earning capacity etc. What all of this translates to, is a systemic bias against women - pervasive across all sections of society - undervaluing them grossly. The amount of dowry the woman brings into the marital home directly corresponds to the value of the groom, which the woman, just as herself, is condemned to be unable to meet, or is otherwise unworthy, sans the dower.[6]

4. As this case represents, however, dowry is not a feature only amongst the Hindus, but it can also be found in other communities professing different faiths and religions. In Islam, dowry, stricto senso, is prohibited. What is prescribed is, in fact, the reverse. 'mehr' is a compulsory gift that the groom is required to give to the bride at the time of marriage. It is an essential part of the nikah (marriage contract), without which the contract is considered incomplete.

The mehr can take many forms - money, jewellery, property, or any valuable as agreed upon by the couple - but what defines it is that it belongs solely to the bride and cannot be taken back by the husband or his family. The Quran makes this obligation explicit in Surah An-Nisa (4:4)[7]:

لَكُمْ عَن شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيٓـًٔا مَّرِيٓـًٔا ٤ وَءَاتُواْ ٱلنِّسَآءَ صَدُقَٰتِهِنَّ نِحْلَةً ۚ فَإِن طِبْنَ

"And give the women [upon marriage] their bridal gifts graciously. But if they of themselves remit to you a portion of it, then you may enjoy it with pleasure and goodwill"[8] The purpose of mehr is both symbolic and practical: it signifies respect for the woman and ensures her financial security in the marriage.

5. The adoption of dowry amongst the Muslims of the subcontinent is explained through a combination of cultural, economic, and institutional factors. Historically, dowry was most closely associated with Hindu caste society, but over a time it diffused into Muslim practices through processes of cultural assimilation, social emulation, and inter-community influence[9]. Scholarly undertakings trace how Muslim families, particularly in urban centers, began adopting dowry as a status marker and as part of competitive marriage negotiations. At the same time, marriage- market pressures - including imbalances in sex ratios, rising educational aspirations, and competition for higher-status grooms - encouraged families to provide substantial dowry payments.

6. As a result, mehr and dowry have come to coexist in complex ways. In many Muslim marriages in India, mehr continues to be stipulated, but often only in nominal terms. The real financial transfers flow from the bride's family to the groom, effectively hollowing out the protective function of mehr. This undermines the original Islamic intention of empowering women through property ownership, as the dowry frequently ends up under the control of the husband or his family[10].

Where dowry replaces or overshadows mehr, women lose an important bargaining tool and face greater economic vulnerability. Scholars note that this dual system - nominal mehr alongside substantial dowry - illustrates how religious norms have been reshaped by social and economic forces. The consequences of this shift are serious. Dowry places a heavy financial burden on the bride's family, sometimes delaying or preventing daughters' marriages[11]. It has also been linked to harassment, domestic violence, and even dowry deaths - problems that affect not only the Muslim households but cut across all religions. By contrast, the neglect of mehr erodes women's financial security, leaving them less protected in cases of divorce or widowhood.

7. The eradication of dowry is an urgent constitutional and social necessity. Dowry, legally defined under Section 2 of the DPA, 1961, refers to "any property or valuable security given or agreed to be given directly or indirectly" by one

party to a marriage to the other, or by the parents of either party, in connection with the marriage. Although the law sought to prohibit the practice, dowry has persisted in society, slipping through the statutory definition, cloaked as "gifts" and social expectations. This practice is, at the most basic level, at odds with the values enshrined in the Constitution, i.e., the constitutional ethos of justice, liberty, and fraternity, and more particularly, Article 14, which guarantees equality before the law and equal protection of the laws, a principle directly undermined by a system that treats women as a source of financial extraction and reinforces structural discrimination.

8. The Constituent Assembly debates highlight that independence was meant to inaugurate not only political freedom but also social transformation. Dr. B.R. Ambedkar, amongst others emphasized that democracy in India would be hollow if entrenched social hierarchies and oppressive customs continued unchecked. While dowry was not debated specifically, the Assembly's call for social reform in pursuit of justice and equality clearly applies to the eradication of such a practice.

9. Thus, eliminating dowry is not only a matter of enforcing the DPA 1961 but a constitutional imperative. It fulfills the Republic's promise that every woman should enter marriage as an equal citizen and not as the bearer of an unjust financial burden.

FACTS OF THE CASE

10. The facts of this case are as follows:

(i) Nasrin (hereinafter referred to as 'the deceased'), who was married to Ajmal Beg[12], was the daughter-in-law of Jamila Beg[13]. The deceased and Ajmal had been married just over a year prior to the incident.

(ii) Repeatedly, Ajmal, Jamila and other family members had demanded from the deceased and her father Taslim Beg (PW1)[14], a coloured television, a motorcycle and Rs. 15,000/-.

(iii) Ajmal reiterated his demand to PW1 on 4th June 2001 and, in similar fashion to the previous times that this demand had been made, later had expressed his inability to comply.

(iv) The next day, on 5th June 2001 Ajmal, Jamila (the two Respondents before us) Aslam, Shakila @Wakila, Shabina and Akbar Beg - all accused persons before the Trial Court, allegedly assaulted the deceased and threatened her that if she doesn't fulfil their demands, they would kill her.

(v) Alarmed at such threat, the deceased called for help and certain persons namely, Fahmid Beg and Khaliq Beg (PW2)[15] reached the spot but by that time the accused persons had set her on fire by pouring kerosene oil, and she could not be saved.

(vi) PW2 informed PW1 who reached the spot of crime and found the deceased lying burnt, dead. An FIR was lodged, setting in motion the machinery of criminal law.

(vii) Upon completion of investigation, challan was presented for trial.

THE FINDINGS OF THE TRIAL COURT

11. The findings arrived at by the Trial Court were on the basis of 8 witnesses examined on behalf of the prosecution. The defense led no evidence other than deposing in statements under Section 313 Code of Criminal Procedure 1973[16], that they had been falsely implicated in the case, owing to enmity. The discussion made by the Trial Court can be encapsulated as follows:

(i) As regards the charge under Section 304-B is concerned, the evidence of PW1 was considered. He testified to the fact of the deceased having visited her parental home on 10 - 12 occasions since having been married and having consistently mentioned regarding the demand of dowry. Further, in his cross examination he testified to the demand for a colour TV, motorcycle/scooter and Rs.15000/-. The demand made on 4th June 2001 was testified by PW1 and Zahida (PW6)[17] as well. The fact that the names of all the accused persons were not mentioned in the FIR is not of negative consequence for the prosecution as the same has been mentioned by PW1 in his statement under Section 161, CrPC.

(ii) Qua the involvement of the other accused (excluding Ajmal, Jamila), upon consideration of all the testimonies on record, it was held that Shakila and Shabina, being married daughters, resided in their matrimonial homes and were not to gain anything from the additional demand of dowry. For Aslam also, it was concluded that he does not live in the same house.

(iii) The defence of the accused, to the effect that no immediate demand for dowry had been made, was rejected, given the uncontroverted position that a day prior to the incident, Ajmal's demand for dowry had been established. Physical and mental torture, in the facts, stood proved.

(iv) Other ancillary arguments such as the possibility that the deceased had committed suicide were rejected given that none of the accused persons had tried to save her.

(v) The quilt and the thatched roof having also been burnt led the Court to the conclusion that the deceased has been burnt to death, by pouring so much kerosene oil that even the above-mentioned quilt and roof caught fire.

(vi) Guilt of only Ajmal and Jamila - Respondents before us, was as such deemed established beyond reasonable doubt and sentenced as under:

Section	**Sentence**	**Fine**	**In default**
304B IPC	Life Imprisonment	5000/-	Two years
498A IPC	Three years	1000/-	One year
3/4 DPA	Two years	1000/-	Six months

THE IMPUGNED JUDGMENT

12. Quite apparently no appeal against the judgment of acquittal was preferred and only the two aforesaid convicts assailed the Trial Court judgment. The High Court in arriving at a conclusion, opposite to the Trial Court acquitted both Ajmal and Jamila, and made the following observations:-

(i) Both PW1 and PW6 are not eyewitnesses to the incident, being residents of not the same, but a nearby village. They claim receipt of information about the incident through PW2, brother of PW6.

(ii) The evidence of PW2 is unreliable. It was held-

(a) That he seems confused and not in direct knowledge of the events surrounding the death of the deceased. Instead, it appeared that he had gathered information from secondary sources, which he then transmitted to PW1.

(b) In his examination-in-chief, the witness stated that having seen the deceased lying dead in the verandah from where he, along with another witness, Fahmid, saw Ajmal and other men fleeing, as also the females exiting, he went and informed the parents of the deceased. However, in his cross-examination, he says that he has not informed them.

(c) Similarly, he cannot place the above said Fahmid, at the scene of the incident, when crossexamined about the same.

(d) His version that the deceased had, prior to the incident, had come over to his house and complained about the behaviour of Ajmal and others is concluded by the High Court to be an important fact. This too, however, is disbelieved given that PW1 and PW6, both, did not say anything to that effect.

(e) Another factor taken against the credibility of PW2 is that he did not, in the course of investigation, make any statement before the police.

(iii) The evidence of PW6 is also doubted on similar accounts as she did not make any statement during the investigation, before the police, and that during her cross examination she stated that her daughter lived in the matrimonial house happily.

(iv) Certain other observations made, merit being extracted hereunder:-

"PW6 was stating in paragraph 5 of her evidence that there was no demand of dowry ever prior to the marriage, and it was made only after marriage. Thus, there is sufficient evidence before the Court to record that the marriage was dowryless. If that be so, then we have some difficulty in accepting that such heavy demands for articles could be made by the appellants subsequently. We, further find the allegations of demand of dowryarticles improbable for the reason that PW6 and PW1, both have stated that the accused persons were poor fellows.

We believe that the demands are made as per status of a man, as regards the present case, in our opinion, the appellants could not have even afforded to maintain the articles, which was demanded by them. This also makes it notacceptable. We find that both PWs 1 & 6 were feeling cheated and let down by the fact that their daughter had been married to a person who belonged to the poor stratum of the society. PW1, the father was venting his disgust and frustration on account of being cheated. While reply to a question, which appears at page 22 of the paper book, that the accused persons had let him down."

13. The State, being aggrieved by the acquittal based on the findings as aforesaid, has carried the matter in appeal before us. We have heard learned counsel for the parties and perused the record.

ANALYSIS AND DISCUSSION

14. Before adverting to the merits of the matter, it would be useful to take note of a few pronouncements of this Court regarding the sections under which the Trial Court had originally convicted, and the High Court has subsequently acquitted Ajmal and Jamila.

I. DOWRY DEATH

14.1 Section 304-B, IPC It reads as follows:

"Dowry death.-

(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection

with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

a) Pawan Kumar v. State of Haryana[18], culled out the following essentials of the Section-

"6. Let us see Section 304-B IPC. The ingredients necessary for the application of Section 304-B are:

(a) When the death of a woman is caused by any burns or bodily injury, or

(b) occurs otherwise than under normal circumstances

(c) and the aforesaid two facts spring within 7 years of girl's marriage

(d) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative,

(e) this is in connection with the demand of dowry.

7. If these conditions exist, it would constitute a dowry death; and the husband and/or his relatives shall be deemed to have caused her death. In the present case, it is not in dispute that the deceased Urmil died of burn injuries, that she died otherwise than under normal circumstances, and that the death was within a period of 7 years of marriage. The only consideration has to be: whether she was subjected to any cruelty or harassment by the appellants soon before her death, and whether the same was for or in connection with any demand of dowry."

b) The discussion in Ashok Kumar v. State of Haryana[19] is important to understand the phrase "soon before her death" as it appears in the Section. It was held:-

"19. In our view, the expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction.

But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in Tarsem Singh v. State of Punjab [(2008) 16 SCC 155 : (2010) 4 SCC (Cri) 27] , held that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.

22. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression "demand for dowry" will have to be construed ejusdem generis to the word immediately preceding this expression. Similarly, "in connection with the marriage" is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties.

These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage."

(emphasis supplied)

[See also: Devender Singh v. State of Uttarakhand20& Parvati Devi v. State of Bihar[21]]

II. PRESUMPTION OF DOWRY DEATH

14.2 Section 113B

"Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).]"

a) A three judge bench in Devender Singh v. State of Uttarakhand[22], succinctly encapsulated the functioning of this presumption as follows:

"12. Section 304-BIPC read along with Section 113-B of the Evidence Act, 1872 makes it clear that once the prosecution has succeeded in demonstrating that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry soon before her death, a presumption shall be drawn against the said persons that they have caused dowry death as contemplated under Section 304-BIPC.

The said presumption comes with a rider inasmuch as this presumption can be rebutted by the accused on demonstrating during the trial that all the ingredients of Section 304-BIPC have not been satisfied. [Ref. : Bansi Lal v. State of Haryana [Bansi Lal v. State of Haryana, (2011) 11 SCC 359 : (2011) 3 SCC (Cri) 188] , Maya Devi v. State of Haryana [Maya Devi v. State of Haryana, (2015) 17 SCC 405 : (2018) 1 SCC (Cri) 768] , G.V. Siddaramesh v. State of Karnataka [G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152 : (2010) 2 SCC (Cri) 19] and Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] .]"

(emphasis supplied)

III. WOMEN SUBJECTED TO CRUELTY

14.3 Section 498-A It runs:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a)any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b)harassment of the woman where such harassment is with a view to coercing 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."

Although there are numerous judgments that delineate the scope, object behind the introduction of this Section reference to a recent order of this Court in Aluri Venkata Ramana v. Aluri Thirupathi Rao[23], would serve the present purpose. The relevant paragraphs are extracted hereunder:-

"8. Section 498A of the IPC was introduced in the year 1983 with the primary objective of protecting married women from cruelty at the hands of their husbands or their in-laws. The section provides a broad and inclusive definition of "cruelty," encompassing both physical and mental harm to the woman's body or health. In addition, it covers acts of harassment designed to coerce the woman or her family into fulfilling unlawful demands for property or valuable security, including demands related to dowry. Notably, the provision also recognizes acts that create circumstances leading a woman to the point of suicide as a form of cruelty.

9. The definition of "harassment" under the Explanation to Section 498A is specifically outlined in clause (b), independent to the "wilful conduct" described in clause (a), thus necessitating a separate reading of the two. It is significant to note that the inclusion of the word "or" at the end of clause (a) clearly indicates that "cruelty" for the purposes of Section 498A can either involve wilful conduct that causes mental or physical harm or harassment related to unlawful demands, such as dowry.

Moreover, these forms of cruelty can co-exist, but the absence of a dowry-related demand does not preclude the application of the section in cases where there is mental or physical harassment unrelated to dowry. In interpreting the provision, it is crucial to consider the broader objective behind its introduction-to safeguard women from all forms of cruelty, regardless of whether the nature of the harm inflicted includes a specific demand for dowry or not.

10. The statement of objects and reasons for the introduction of this provision in the Penal Code, 1860 by The Criminal Law (Second Amendment) Act, 1983 (Act No. 45 of 1983) reads as under-

"The increasing number of Dowry Deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the Penal Code, 1860, the Code of Criminal Procedure and the Indian Evidence Act suitably to

deal effectively not only with cases of Dowry Death but also cases of cruelty to married woman by their in laws."

11. It is relevant to note the last line which explains that the aim for the introduction of Section 498A in the IPC is not only to curb cruelty relating to dowry demand but also cases of cruelty to married woman by their in laws. A reasonable interpretation of this would be that cruelty within this section goes beyond the definition of cruelty relating just to dowry demand.

(emphasis supplied)

IV. DOWRY PROHIBITION ACT

14.4 Sections 3 & 4, DPA,1961

It is also important to make reference to the objects and reasons of the said Act, here itself:

"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956.

It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs 2000. Such a provision appears to be necessary to make the law workable."[24]

3. Penalty for giving or taking dowry.-

[(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

4. Penalty for demanding dowry.- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable 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:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]"

A Bench of two learned Judges in S. Gopal Reddy v. State of A.P.[25], appreciated the context and purpose of the provisions of DPA, 1961 in the following terms:

"11. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security "made at or after the performance of marriage" as is urged by Mr Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, "before, at or after" the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act.

Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable

security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all.

Where definition has been given in a statute itself, it is neither proper nor desirable to look to the dictionaries etc. to find out the meaning of the expression. The definition given in the statute is the determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage.

Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Act."

15. Having appreciated the provisions and the judgments as aforesaid, let us now proceed to consider whether, in view of the evidence, the High Court was justified in setting aside the findings of the Trial Court. However, prior to that we will undertake the task of examining the scope of this Court's power under Article 136 of the Constitution of India in criminal matters.

15.1 In Surajdeo Mahto v. State of Bihar[26], it was held:

"25. It may be highlighted at the outset that although the powers vested in this Court under Article 136 of the Constitution are wide, this Court in a criminal appeal by special leave will ordinarily loath to enter into a fresh reappraisement of evidence and question the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. While it is difficult to lay down a rule of universal application, it has been affirmed time and again that except where the assessment of the High Court is vitiated by an error of law or procedure, or is based on misreading of evidence, or is inconsistent with the evidence and thus has led to a perverse finding, this Court will refrain from interfering with the findings of the courts below."

15.2 On a reading of various judgements, viz., Ramaniklal Gokaldas v. State of Gujarat,[27], Nadodi Jayaraman v. State of T.N.[28], Banwari Ram v. State of U.P.[29],

the generally accepted standard - which it ought to be stated, is not a rule - is that when the Courts below concurred, this Court does not enter into the reappreciation of the evidence, in a criminal case. In the present case, the Courts below have, in fact, arrived at opposite findings and as such, to set the matter to rest either by conviction or acquittal, this Court must analyse the evidence on record.

16. As we have already observed, the defense led no evidence. Let us, in that view of the matter, revisit the evidence of those witnesses on the basis of which the High Court arrived at findings opposite that of the Trial Court.

16.1 PW1, Taslim Beg, the father of the deceased testified that marriage of the deceased and Ajmal, took place about 2 years and a few months back from the date of recording of the evidence and that he had given certain goods as dowry in the said wedding. The demand for further dowry in the form of goods mentioned earlier as well has been consistent, to which he has also disclosed his response which was to the effect that, providing the same would be beyond his financial capabilities. He testified that since her marriage the deceased had visited her natal home, on 10 - 12 occasions, till her passing and that grievance of harassment regarding dowry was almost a regular feature.

The deceased told her father that she had been warned of the consequences of non-fulfillment of their demands - to the effect that she would be killed. On the last occasion when she visited, even then, this issue came up and he 'advised' her before sending her off with Ajmal. According to him, PW2 and Fahmid Beg, who told him of this horrible incident, were eyewitnesses to the same. The only effective point in the cross-examination was as to why the initial report filed by this witness was lacking in detail - but in our considered view, not material particulars.

16.2 PW2 is Khaliq Beg, the maternal uncle of the deceased and brother-in-law of the complainant - PW1. In his examination-in-chief he testified to the specific demand of dowry in terms of the motorcycle, colour TV and cash to the tune of Rs.15,000/- and complaints made by the deceased regarding harassment, to the effect that Ajmal and other members of his family did undertake, in his presence as also that of other witnesses that they would not harass the deceased in this regard.

He, along with Fahmid Beg reached the spot and saw some of the accused, including Ajmal fleeing from the spot and yet others running away from the house, seeing them approaching. By way of cross-examination, it comes forth that although he was the one to have informed PW1 of the incident, but the presence of Fahmid Beg is under question. On a suggestion that, the deceased was in fact unhappy and as such, had committed suicide as opposed to Ajmal and

the other accused having killed her, he denied the same. He states that he had seen the accused persons running away from the spot but however, not seen them actually setting the deceased ablaze.

16.3 PW-4 is Dr. VK Mishra who conducted the postmortem of the deceased. The cause of death was testified to be asphyxia and shock caused by extreme burns. It was deposed that hundred percent of the body surface was burnt down to the muscles. It was possible, therefore, that the death had been caused due to pouring of kerosene.

There was no injury inflicted by any weapon on the body. 16.4 PW6, is the mother of the deceased and wife of the complainant. She testified to the particular demand of motorcycle, cash Rs.15,000/- and a colour TV; the 10 or 12 prior visits of the deceased; the demand of dowry a day before the death of the deceased and, PW2 informing them of the incident. In her cross-examination, it comes forth that the deceased apparently lived in the matrimonial home, happily.

17. A perusal of the witness statements, as encapsulated above, reveal the following facts:

(a) The deceased and Ajmal were married, and the former resided in her matrimonial home. The marriage lasted for just over a year, before the deceased passed away.

(b) All the witnesses have consistently deposed the demand for two specific items and that particular amount of cash.

(c) All the witnesses have testified that the deceased told them that she had been threatened with her life, should the demands not be fulfilled.

(d) The case of the prosecution is consistent insofar as the demand for dowry being restated by Ajmal himself, just one day prior to the death of the deceased.

18. A perusal of the testimonies also reveals the following inconsistencies:

(a) On the one hand, PW6 states that there was no demand at the time of marriage but on the other, her husband states that he had given dowry at the time of marriage that is, double bed etc.

(b) PW1 states that it was PW2 who informed him about the incident and were eyewitnesses to the incident but however PW2 states that he had not seen the accused people setting the deceased ablaze.

(c) PW2 stated that he and one Fahmid Beg, reached the spot after the deceased cried for help, but however, in his crossexamination it appears that presence of Fahmid Beg, could not be established.

(d) On the one hand, all witnesses depose as to the continued harassment of the deceased for dowry, whereas on the other, PW6 stated that she lived in her matrimonial home happily.

19. What is now for us to do is balance the position of statements unblemished by the assault of cross-examination and the inconsistencies, omissions, contradictions in the testimony of witnesses, in order to determine the guilt, as found proved by the Trial Court, or lack thereof as held by the High Court. At this juncture, we must notice the effect of certain omissions or inconsistencies in the testimonies of witnesses.

19.1 In Sohrab v. State of M.P.[30] the Court held as follows in connection with inconsistencies in statement of witnesses in a criminal trial:

"8. It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the Court comes to the conclusion that what can be accepted implicates the appellants it will convict them. This Court has held that falseus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments.

In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest."

19.2 In this connection, various judgments of this Court have restated the position. [See: Radha Mohan Singh v. State of U.P.[31], Hari v. State of U.P.[32] and Ravasaheb v. State of Karnataka[33].]

20. The position of law being clear, as referred supra let us now consider the evidence. The demand for dowry, and in particular, a motorcycle, a colour TV and Rs.15,000/- in cash, have been established beyond reasonable doubt, with such a version not to have been shaken at all. Equally so, in no manner could it

be disputed that the said demand had been reiterated just a day prior to the deceased passing away. This ties in with the fact that PW1 and PW 2, both have testified to the effect of continuous harassment of the deceased.

The expression "soon before her death", as explained in Ashok Kumar (supra) would, in the considered view of this Court, be met and all the essentials, as noted in Pavan Kumar (supra) would be satisfied. Here itself, it may then be noted that the presumption under Section 113-B of the Indian Evidence Act, 1872 came into effect as soon as it stood proved that the deceased had been subjected to cruelty soon before her death, and went unrebutted by the defence, since no evidence was led by them.

21. The next aspect to be considered is the disregarding of the evidence of PW2, by the High Court. We are of the view that the same was not justified. He has stated that when he reached the spot he saw Ajmal and other co-accused persons fleeing. He is the one who told PW1. Nowhere in his testimony has it come forth that he is an eyewitness to the incident. PW1 on the contrary said that PW2 and Fahmid Beg had witnessed the incident. On first blush, this contradiction appears significant and material, but, it is not so. The witness, PW2, regarding whose presence the discrepancy is, has himself categorically stated that upon reaching the spot, he only saw that the deceased had been set ablaze and that the accused persons were fleeing away.

He has nowhere said that he saw the act being committed. As such, this contradiction will not have a bearing on the overall value of the testimony of PW2. The High Court, in disbelieving the testimony of this witness, as extracted supra, further stated that prior to the incident the deceased had come to his residence which is in the same village as her matrimonial home and complained to her uncle, about her maltreatment, at the hands of Ajmal and others on account of the demand for dowry. As such, the same was held, not to be an ordinary fact and so, it could be very well supposed that PW 1 and 6, parents of the deceased knew of this incident.

Given that in their testimonies, neither of these persons mentioned this, has been taken to mean a credible doubt on the testimony of PW 2. We cannot agree. True it is that this fact has not come in the testimony of the parents of the deceased, but it is equally so that the statement of PW2 could not be shaken by cross-examination. Further, it is generally well understood that demands for dowry lead to considerable stress on the paternal family, and it is entirely possible that, being fully aware of the situation, PW2 did not want this additional incident to cause further stress on PWs 1 and 6.

We notice further that the examination-in-chief as well as the crossexamination of PW 2 took place on 8th April 2003 and this fact was therefore, on record much

before the testimony and crossexamination of PW6 which took place on 2nd July 2003. No question appears on record regarding this incident. That being the case, it would only be on the basis of conjectures and surmises that the statement of PW2 would be rejected and as such, it would be unfair and unjust to cast doubt on the testimony of the said witness.

22. Now, coming to the alleged happiness of the deceased in her married life we only wish that it was true. Once again adverting to the testimonies of the witnesses, PW1 said as quoted hereunder:

"Ajmal Beg came to my house one day before the incident. He had come to my house with my daughter also. He had demanded colour TV, motorcycle and INR 15,000/-coming to my house. However I had sent the daughter after persuading her. The daughter also went with him happily. Since I was a poor man I did not stop my daughter and sent her she was assaulted and dowry was demanded from her."

PW 6 stated as below:

"My daughter mostly resided in her matrimonial home after the marriage and she lived there happily."

The High Court appears to have been misdirected by the use of the word 'happily', at least insofar as the testimony of PW1 is concerned. Reading the entire statement as extracted herein above, clearly establishes that the deceased went back to her matrimonial home having been persuaded and assured by her father. He also states that she had been assaulted and dowry had been demanded from her. Therefore, the use of one word does not colour the entire tenor of the evidence. The sum of the evidence is to be understood, taking into account all aspects testified to therein. Insofar as the statement of PW6 is concerned, we find the same to be an outlier on record. It cannot be read out of context.

Nothing else whatsoever, present on record can lend credence to this statement of the mother. The evidence of all the witnesses, including the mother, is consistent on the demand of dowry and both PW1 and PW2 have also testified to the continued harassment that was endured by the deceased. The High Court disbelieved the evidence of PW2 but as we have observed above, his testimony cannot be disregarded in its entirety. This statement alone cannot help the case of Ajmal and Jamila. When the harassment for dowry is proved and so is the fact that such harassment was made soon before her death, then a mere statement of one of the witnesses that she was apparently happy, would not save the Respondents from guilt.

23. We may also record that the reasoning given by the High Court to acquit Ajmal and Jamila, in the considered view of this Court, is fallacious. The learned

judges record that as per the statement of PW6, there was no demand of dowry prior to the marriage and, therefore, they have certain difficulties in accepting the factum of subsequent demand. We find this difficult to accept for two reasons - one, that PW1's statement regarding having given certain goods as dowry to Ajmal and his family at the time of marriage, has gone unrebutted, and two, that the DPA, 1961 does not distinguish between demand made prior to or after marriage. In this regard Section 2 thereof, which runs thus, may be seen -

2. Definition of "dowry".- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

4 * * * * *

Explanation II.-The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860). It is clear from the above that any property or valuable security given by either party to a marriage to the other, or by any other person to the party to marriage, or to any other person, on the day of marriage, before or at any time after marriage, shall be considered to be dowry. So, the demand by Ajmal and/or his family members for a colour TV, a motorcycle and Rs.15,000/- in cash, unquestionably constitutes dowry.

Yet another reason given by the High Court for acquittal was that since Ajmal and his family members were poor, they could not have made such demand because even if they managed to procure the same, they had no means of maintaining the said goods. Suffice it to say that this reason does not appeal to reason. We may also observe that, while reversing the findings of facts returned by the Trial Court, the High Court has not assigned any reasons explicitly holding such findings to be erroneous/perverse or illegal.

CONCLUSION

24. The upshot of the discussion made in the preceding paragraphs is that the High Court has erred in setting aside the judgment of conviction returned by the Additional District Judge, Bijnor, and acquitting Ajmal and Jamila in connection with the FIR bearing No. 94/2001 registered at P.S Kiratpur, under Sections 498-

A and 304-B, IPC and Section 3/4 of the DPA, 1961. The State's appeals, therefore, deserve to be allowed. The judgment of the Trial Court, insofar as it relates to the conviction of both Ajmal and Jamila, is restored, as also the quantum of sentence in respect of Ajmal is concerned.

However, insofar as the respondent in Criminal Appeal No. 133 of 2017 is concerned, i.e., Jamila, who, as we have recorded in our order reserving judgment dated 10th September 2025, is 94 years of age - the question we must ask ourselves is whether any fruitful purpose will be served by sending her to prison. While weighing and assessing sentencing particularly in case of convicts of advanced age such as in praesenti causa, the Court must take into consideration humanitarian considerations which dictate that imposing imprisonment may be inhumane, given the severe physical frailty, likely medical dependency, and reduced capacity to endure the hardships of custody, thereby implicating and compromising the dignity protected under law.

As such, while we restore the conviction as awarded by the Trial Court however, in the attending facts and circumstances of this case, we refrain from incarcerating her. Respondent Ajmal in Criminal Appeal No. 132 of 2017 is directed to surrender before the concerned Court, within a period of four weeks from today, for serving the sentence awarded by the Trial Court.

25. Before we part with this judgment, we deem it appropriate to note that while in this case, the accused person(s) has finally been brought to book, there are many cases in which it is not the case. Many, who openly seek and give dowry, go scot-free. It has been noted time and again, in various judicial pronouncements that DPA, 1961 suffers from various difficulties in its implementation. About forty-two years ago, R.S Pathak J., (as His Lordship then was) in Bhagwant Singh v. Commr. of Police[34], observed:

"18. Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery. It is pertinent to note that such cases evidence a deep-seated malady in our social order. The greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil, and the solution must ultimately be found in the conscience and will of the social community and in its active expression through legal and constitutional methods.

19. Besides this, what is important to point out is that where the death in such cases is due to a crime, the perpetrators of the crime not infrequently escape from the nemesis of the law because of inadequate police investigation. It would be of

considerable assistance if an appropriately high priority was given to the expeditious investigation of such cases, if a special magisterial machinery was created for the purpose of the prompt investigation of such incidents, and efficient investigative techniques and procedures were adopted taking into account the peculiar features of such cases.

Among other suggestions, we would recommend that a female police officer of sufficient rank and status in the police force should be associated with the investigation from its very inception. There are evident advantages in that. In a case where a wife dies in suspicious circumstances in the husband's home it is invariably a matter of considerable difficulty to ascertain the precise circumstances in which the incident occurred.

As the incident takes place in the home of the husband, the material witnesses are usually the husband and his parents or other relations of the husband staying with him. Whether it was cooking at the kitchen stove which was responsible for the accident or, according to the inmates of the house, there was an inexplicable urge to suicide or whether indeed the young wife was the victim of a planned murder are matters closely involving the intimate knowledge of a woman's daily existence.

A few years later, taking note of this ineffective implementation, this Court even entertained a writ petition[35] and issued various directions for effective implementation of the Act finally culminating in Enforcement and Implementation of Dowry Prohibition Act, 1961, In re[36]. These issues undoubtedly persist today.

The tables[37] below capture the current position of cases arising out of Section 304-B and 498-A IPC.

1. Annual Incidence of Dowry Deaths (Section 304B IPC) [2019-2023][38]

Year	Total Dowry Deaths	Year-on-Year Change
2019	7141	-
2020	6966	▼ 2.45%
2021	6753	▼ 3.06%
2022	6516	▼ 3.51%
2023	6156	▼ 5.52%

2. Annual Incidence of Cruelty by Husband/ Relatives (Section 498A IPC) [2019-2023][39]

Year	Cruelty by Husband/ Relatives	Year-on-Year Change
2019	124934	-

2020	111549	▼ 10.71%
2021	136234	▲ 22.13%
2022	140019	▲ 2.78%
2023	133676	▼ 4.53%

While on the one hand, the law suffers from ineffectiveness and so, the malpractice of dowry remains rampant, on the other hand, the provisions of this Act have also been used to ventilate ulterior motives along with Section 498-A, IPC. This oscillation between ineffectiveness and misuse creates a judicial tension which needs urgent resolution. While this urgent resolution cannot be stressed upon enough, at the same time it is necessary to be recognized that particularly when it comes to the giving and taking of dowry, this practice unfortunately has deep roots in society, hence, it not being a matter of swift change, instead needs concentrated effort on part of all the involved parties, be it Legislature, law enforcement, Judiciary, civil society organizations etc.

26. With an intent to further this change, we issue the following directions:-

(a) to ensure that the change brought in is able to make an impact on the efforts to eradicate this evil, it is to be ensured that the future generation, youngsters of today, are informed and made aware about this evil practice and the necessity to eschew it. As such, it is directed that States and even the Union Government consider changes as are necessary to the educational curricula across levels, reinforcing the constitutional position that parties to a marriage are equal to one another and one is not subservient to the other as is sought to be established by giving and taking of money and or articles at the time of marriage;

(b) The law provides for the appointment of Dowry Prohibition Officers[40] in States. It is to be ensured that these officers are duly deputed, aware of their responsibilities and given the necessary wherewithal to carry out the duties entrusted to them. The contact details (name, official phone number and email ID) of such an officer designated to this position are disseminated adequately by the local authorities ensuring awareness of citizens of the area;

(c) the police officials, as also the judicial officers dealing with such cases, should periodically be given training, equipping them to fully appreciate the social and psychological implications which are often at the forefront of these cases. This would also ensure a sensitivity of the concerned officials towards genuine cases versus those which are frivolous and abusive of the process of law;

(d) it is not lost on us that the instant case began in 2001 and could only be concluded 24 years later by way of this judgment. It is but obvious that there would be many such similar cases. The High Courts are requested to take stock

of the situation, ascertain the number of cases pending dealing with Section 304-B, 498-A from the earliest to the latest for expeditious disposal; and

(e) in furtherance of (a) above, we also recognize that many people today are/have been outside the education fold, and that it is equally, if not more so, important to reach them and make accessible and comprehensible, the relevant information regarding the act of giving or taking of dowry as also other acts sometimes associated therewith, other times independent thereof (mental and physical cruelty) is an offence in law. The District Administration along with the District Legal Services Authorities, by engaging and involving civil society groups and dedicated social activists, is requested to conduct workshops/awareness programs at regular intervals. This is to ensure change at the grassroot level.

27. Let a copy of this judgment be circulated electronically to the Registrar General of the High Courts who are requested to place the same before the Learned Chief Justices and solicit directions in accordance with the above, and also, to the Chief Secretaries of all States for necessary follow up action.

27.1 While the main appeals are disposed of, so far as these directions are concerned, to ensure compliance thereof, as also issue any other directions as may be necessary, list this matter after four weeks. States are requested to file affidavits indicating the position qua the direction given under (b) hereinabove. The High Courts shall do the same for (d).

Pending applications, if any, shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

December 15, 2025

1 Hereinafter referred to as 'Trial Court'

2 Hereinafter referred to as 'FIR'

3 Hereinafter referred to as 'IPC'

4 Hereinafter referred to as 'DPA, 1961'

5 https://www.merriam-webster.com/dictionary/hypergamy

6 Suparna Soni, PhD "Institution of Dowry in India: A Theoretical Inquiry", Societies Without Borders, Vol 14, Issue 1 (2020)

7 https://quran.com/an-nisa/4

8 The Qur'an, English Meanings, Saheeh International, 1997. See, https://alrashidmosque.ca/wp-content/uploads/2019/05/The-Quran-Saheeh-International.pdf

9 See, Generally- Abdul Waaheed, The Phenomenon of Dowry Among Muslims in India, Centre for the Study Of Social Systems School of Social Sciences Jawaharlal Nehru University, 1987

10 See, Section 4 of Okumus and Gümüş, "Revitalizing 'mahr' for Muslim women's empowerment within Türkiye's secular legal system", Social Sciences and Humanities Open, Volume 12, 2025. See, https://www.sciencedirect.com/science/article/pii/S2590291125003729#abs0015

11 In this case as well, one of the reasons given by the father of the deceased, for not being able to fulfill the demands of the respondent son-in law, was that he had other daughters whose marriage, he has to make arrangements for.

12 Respondent in Criminal Appeal No. 132 of 2017

13 Respondent in Criminal Appeal No. 133 of 2017

14 Hereinafter referred to as 'PW1'

15 Hereinafter referred to as 'PW2'

16 Hereinafter referred to as 'Cr.PC'

17 Hereinafter referred to as 'PW6'

18 (1998) 3 SCC 309

19 (2010) 12 SCC 350

20 (2022) 13 SCC 82

21 (2022) 14 SCC 500

22 (2022) 13 SCC 82

23 2024 SCC OnLine SC 5473

24 as quoted in Enforcement and Implementation of Dowry Prohibition Act, 1961, In re, (2005) 4 SCC 565

25 (1996) 4 SCC 596

26 (2022) 11 SCC 800

27 (1976) 1 SCC 6

28 1992 Supp (3) SCC 161

29 (1998) 9 SCC 3

30 (1972) 3 SCC 751

31 (2006) 2 SCC 450

32 (2021) 17 SCC 111

33 (2023) 5 SCC 391

34 (1983) 3 SCC 344

35 W.P. No. 499 of 1997

36 (2005) 4 SCC 565

37 Data supplied by Centre for Research and Planning, Supreme Court of India

38 Data from the National Crime Records Bureau (NCRB) Reports

39 Data from the National Crime Records Bureau (NCRB) Reports

40 Section 8B of DPA

IN THE SUPREME COURT OF INDIA

Nayan Bhowmick
Vs.
Aparna Chakraborty
[Civil Appeal No. 5167 of 2012]

Head Note - Long period of separation without any hope for reconciliation amounts to cruelty to both the parties. Pendency of matrimonial litigation for a long duration only leads to perpetuity of marriage on paper. It is in the best interest of parties and the society if ties are severed between parties in cases where litigation has been pending for a considerably long period of time. No useful purpose shall be served by keeping the matrimonial litigation pending in Court without granting relief to the parties.

JUDGMENT

Manmohan, J.

1. The present Appeal has been filed challenging the judgment dated 13th April 2011 passed by the Gauhati High Court (Shillong Bench), whereby the appeal filed by the Respondent-wife was allowed and the judgment and decree dated 9th March 2010 dissolving the marriage on the ground of desertion by the Respondent-wife passed by the Additional Deputy Commissioner (Judicial), Shillong was set aside.

FACTUAL BACKGROUND

2. Briefly stated, the relevant facts are that the marriage between Appellant and Respondent was solemnized according to Hindu rites and rituals on 04th August 2000 at Shillong. The parties knew each other prior to their marriage as they had been working together since 1992 as Development Officers under Life Insurance Corporation of India Ltd.

3. According to the Respondent-wife, though the Appellant-husband knew the nature of Respondent's duty and responsibility in their office even before their marriage, yet the Appellant and his family members demanded the Respondent give up her job ignoring the fact that she had to financially look after her old and ailing mother, her brother and other dependents. It is the Respondent-wife's case that due to the continuous ill-treatment meted out by the Appellant and his family, Respondent-wife was compelled to leave her matrimonial home in 2001.

4. In 2003, Appellant-husband instituted a suit for divorce before the Additional Deputy Commissioner (Judicial), Shillong for dissolution of the marriage under

Section 13(1)(i-b) of the Hindu Marriage Act, 1955 ("the Act"). However, the suit was dismissed by the learned Additional Deputy Commissioner (J), Shillong as premature vide judgment dated 18th May 2006.

5. The Appellant preferred RFA No. 9(SH) of 2006 before the High Court challenging the judgment dated 18th May 2006, but the same was withdrawn by the Appellant vide order dated 22nd November 2007 with liberty to file a fresh suit.

6. The suit being MAT Divorce Suit No.13(T) of 2007, underlying the present proceedings was filed by the Appellant-husband on 29th November 2007 under Section 13(i)(i-a))(i-b) of the Act contending that the Respondent had deserted the Appellant-husband with wilful intent of not returning to the matrimonial home.

7. The Additional Dy. Commissioner, Shillong vide judgment dated 9th March 2010 dissolved the marriage observing that Appellant-husband has been able to prove his case under Section 13(1)(i-b) of the Act namely desertion.

8. The Respondent-wife feeling aggrieved by the judgment and decree dated 9th March 2010 filed a First Appeal being RFA No. (SH) 1 of 2010 before the High Court. Vide judgment dated 13th April 2011, High Court allowed the appeal filed by Respondent-wife observing that there was no intent to permanently forsake and abandon the Appellant-husband. The High Court in paragraph 6 and 7 of the impugned judgment dated 13th April 2011 has held as under:-

"6. The question which falls for consideration in this appeal is whether there is an intentional permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause? It is a well settled proposition of law that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt [see Bipinchandra Saisinhbhai (supra)]. In my opinion, the respondent is unable to clinchingly establish that the appellant has deserted him. The evidence led by him are absolutely insufficient to prove desertion.

According to his evidence, after the appellant deserted his house, he along with his family members and some of his friends tried to patch up their differences in which she had proposed that if he would not keep his mother with him, then and then only she could come back to him, which he refused to oblige. This evidence of the respondent, who examined himself as PW 7, is conspicuous by the absence of details such as the date, time and place when such reconciliation attempt was made by him. If the appellant had made her return to her matrimonial home conditional upon the abandonment by the respondent of his mother as alleged by him, this could amount to an unreasonable refusal on the part of the appellant to

go back to her husband. But none of the six witnesses examined by him corroborated him on this point.

Desertion is matter of inference to be drawn from the facts and circumstances of each case. Not an iota of evidence has been adduced by the respondent to show the attempt made by him for reconciliation with the appellant. On the contrary, he appears to be quite content in the appellant leaving his house on 29-11-2001 after a month of the death of his father and did not return. All that he did was to send a letter to her on 12-11-2002 i.e. one year after she left his house. The contents of this letter, which is at Annexure I, is undisputed, are not only revealing but also make an interesting reading.

In the first place, the letter did not mention anything about the many attempts allegedly made by him for reconciliation. Secondly, his statements that "I know you might dislike so many things of our family at the time of you left my house. You might dislike my stand also" corroborate the case of the appellant that she had been forced to leave her matrimonial house as he and his family wanted her to confine herself as a housewife and to give up her job. Assuming that this part of the contents of the letter was a sincere attempt on his part to reconciliate with her also, the last sentence seems to convey the idea that the letter, in substance, is an ultimatum.

In my judgment, this cannot be construed to be a sincere attempt on the part of the respondent to welcome her back to her matrimonial home: this is merely eyewash. On the contrary, it is difficult to believe that a husband longing for the return of his wife to him in his right mind could send such a letter, which is an ultimatum in nature. Therefore, the absence of reconciliatory attempt by him for almost a year and the contents of the aforesaid letter lead me to one and one conclusion, i.e., there is no intentional permanent forsaking and abandonment of the respondent by the appellant and that there is sufficient evidence of conduct on the part of the respondent and his family giving reasonable cause to her for leaving her matrimonial home.

There is evidence to show that the appellant continues to affirm her marriage and is ready and willing to resume her married life with the respondent. The respondent is, on the other hand, trying to take advantage of his own wrong or disability for the purpose of the relief contemplated under Section 23(1) of the Act. As observed by the Apex Court in Savitri Pandey (supra), no party can be allowed to carve out the grounds for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be preserve the sanctity of marriage and be reluctant to dissolve the marriage on the asking of one of the parties.

7. That apart, even if it is assumed for the sake of argument that this Court also has the power "conflicting decisions are galore in this behalf" I cannot lose sight of the proven conduct of the respondent in rushing to the Court on earlier occasion without waiting for the expiry of the minimum period of two years prescribed by Section 13(l)(i-b) of the Act, which was rightly withdrawn by him later on, a conduct which lends credence to the contention of the appellant that he has never been serious about welcoming her back to this house. He is thus demonstrably interested only in creating a hostile atmosphere at home to discourage the return of the appellant to his house and then take advantage of his own wrong to obtain a decree of divorce by falsely projecting that she has deserted him."

9. The present appeal has been filed by the Appellant-husband challenging the judgment dated 13th April 2011 passed by High Court in RFA No. (SH) 1 of 2010.

SUBMISSION ON BEHALF OF APPELLANT-HUSBAND

10. Learned counsel for the Appellant-husband submitted that the parties are living separately since 29th November 2001 and there is no possibility of reconciliation despite sincere efforts. He contended that the marriage between the parties has irretrievably broken down which is evident from the fact that both the parties are working as Development Officers in Life Insurance Corporation of India Ltd in the same branch but they do not interact with each other.

11. He further stated that the Respondent-wife had categorically admitted in her cross-examination that she had received two letters dated 12th November 2002 and 2nd December 2002 whereby the Appellant-husband had requested the Respondent-wife to join the matrimonial home, but despite the receipt of the said letters, Respondent-wife did not reply to any of them and continued to stay with her parents which further proves that Respondent-wife has no inclination to join the matrimonial home.

12. He further contented that in the facts and circumstances of the case, the ingredients of desertion i.e. (i) the factum of separation (ii) intent to bring cohabitation to an end, were proved which had been rightly appreciated by the Trial Court while granting a decree of divorce.

SUBMISSION ON BEHALF OF RESPONDENT-WIFE

13. Per contra, learned counsel for the Respondent-wife submitted that Respondent-wife did not leave the matrimonial home with intent to desert the Appellant-husband. He stated that Respondent-wife was forced to leave her matrimonial home because of constant abuse and humiliation by Appellanthusband and his family members.

14. He stated that the Respondent-wife had categorically informed the Appellant-husband about her responsibility towards her family. However, after marriage, the Appellant-husband in league with other members of his family had started pressurizing her to resign from her job on the specious plea that Appellanthusband's father did not like a working woman. Respondent-wife could not agree to the same as that would have rendered her parental family destitute.

15. He further stated that the letters dated 12th November 2002 and 2nd December 2002 are nothing but an eye-wash as no sincere effort had been made by the Appellant-husband to resume matrimonial life with the Respondent-wife.

16. He submitted that the rush and hurry shown by the Appellant-husband in filing a divorce suit in 2003 clearly indicated his intent to bring about an end to the matrimonial relationship.

17. He placed reliance on the judgment of this Court in Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73 wherein it has been held as under:-

"17. The marriage between the parties cannot be dissolved only on the averments made by one of the parties that as the marriage between them has broken down, no useful purpose would be served to keep it alive."

18. He further placed reliance on the judgment of this Court in Prabhavathi @ Prabhamani vs. Lakshmeesha M.C. [Civil Appeal No. 8790/2024] wherein it has been held as under:-

"6. The boggy of irretrievable breaking down of marriage cannot be used to the advantage of a party who is solely responsible for tearing down the marital relationship."

19. He lastly submitted that the Respondent-wife continues to affirm her marriage and is ready and willing to resume her matrimonial life with Appellan-thusband.

REASONING IN THE PRESENT CASE THERE IS LONG PERIOD OF SEPARATION WITHOUT ANY HOPE FOR RECONCILIATION

20. Having heard the learned counsel for the parties, the admitted position that emerges is that matrimonial litigation between the parties commenced within two (2) years of marriage i.e. 2003 and has been pending for last twenty-two (22) years.

21. It is pertinent to mention that the parties have been living separately for twenty-four (24) years and there is no child from the wedlock. Despite repeated efforts by Courts, there has been no reconciliation between the parties. At the stage of admission of appeal, this Court had referred the parties to mediation vide

order dated 26th March 2012. However, mediation was unsuccessful which is evident from the Mediation report dated 10th April 2012. No efforts have been made since then, by either of the parties, to reconcile their matrimonial differences.

22. In a multitude of cases, this Court has had the opportunity to deal with situations where parties have been living separately for a considerable time and it has been consistently held that long period of separation without any hope for reconciliation amounts to cruelty to both the parties.

23. A coordinate bench of this Court in the case of Rakesh Raman vs. Kavita [(2023) 17 SCC 433], has observed that where the parties have been living separately for the past twenty-five (25) years, marriage is only on paper and such relationship must be taken to have broken down irretrievably long back. It was further observed that such a marriage spells cruelty to both the parties and is therefore a ground for dissolution of marriage under Section 13(1)(i-a) of the Act. The observations of the coordinate bench of the Court are squarely applicable to the facts of the present case, as even in the case at hand, the parties have been living separately for better part of their lives i.e. twenty-four (24) years without any hope for reconciliation.

THE SPOUSES' STRONGLY HELD VIEWS AND THEIR REFUSAL TO ACCOMMODATE EACH OTHER AMOUNTS TO CRUELTY TO ONE ANOTHER

24. In the case at hand, spouses have strongly held views with regard to the approach towards matrimonial life and they have refused to accommodate each other for a long period of time. Consequently, their conduct amounts to cruelty to each other. This Court is of the view that in matrimonial matters involving two individuals, it is not for the society or for the Court to sit in judgment over which spouses' approach is correct or not. It is their strongly held views and their refusal to accommodate each other that amounts to cruelty to one another.

25. A three-Judge Bench of this Court in the case of Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 has observed that an unworkable marriage, which has ceased to be effective, is futile and bound to be a source of great misery to the parties. It was further observed that where there has been a long period of continuous separation, it can fairly be surmised that the matrimonial bond is beyond repair and in such cases, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of parties.

26. Another three-Judge Bench of this Court in the case of Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511 observed that where there has been a long period of

continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. Marriage becomes a legal fiction supported by a legal tie and refusal to sever such a tie does not serve the sanctity of marriage, but may lead to mental cruelty.

27. Further, the judgment of this Court in Prabhamani (supra) relied on by the learned counsel for Respondent-wife is not applicable to the present matter as it is not a case where the "boggy of irretrievable breakdown of marriage" is being used by the Appellant-husband. Also, the order of this Court dated 14th November 2025 in Dr. Anita vs. Indresh Gopal Kohli, Civil Appeal No. 13616/2025 (i.e. after reservation of the judgment in the present case) offers no assistance to the Respondent-wife as in the present case, there is cogent evidence that the parties have refused to cohabit with each other due to a fundamental difference in their approach towards matrimonial life.

THE POWER TO DO 'COMPLETE JUSTICE' UNDER ARTICLE 142(1) IS NOT FETTERED BY THE DOCTRINE OF FAULT AND BLAME

28. In any event, this Court in exercise of power to do "complete justice" under Article 142(1) of the Constitution of India has the discretion to dissolve the marriage on the ground of irretrievable breakdown.

29. A constitution Bench of this Court in Shilpa Sailesh vs. Varun Sreenivasan, (2023) 14 SCC 231 has held that the power to do 'complete justice' is not fettered by the doctrine of fault and blame, applicable to petitions for divorce under Section 13(1)(i-a) of the Hindu Marriage Act. While dealing with the power to grant divorce under Article 142(1) of the Constitution of India inspite of the other spouse opposing the prayer, this Court has held as under:-

"52. An unworkable marriage, which has ceased to be effective, is futile and bound to be a source of greater misery for the parties. The law of divorce built predominantly on assigning fault fails to serve broken marriages. Under the fault theory, guilt has to be proven, and therefore, the courts have to be presented with concrete instances of adverse human behaviour, thereby maligning the institution of marriage. Public interest demands that the marriage status should, as far as possible, be maintained, but where the marriage has been wrecked beyond the hope of salvage, public interest lies in recognising the real fact. No spouse can be compelled to resume life with a consort, and as such, nothing is gained by keeping the parties tied forever to a marriage which has, in fact, ceased to exist.

56. We have referred to the judgment in Owens [Owens v. Owens, 2018 AC 899 : (2018) 3 WLR 634 : 2018 UKSC 41 (SC)], which applies the then law in England and Wales, not as a precedent, but to highlight that even two perfectly gentle and pleasant individuals having incompatible and clashing personalities

can have a miserable and morose married life. In such cases, fault theory in the pure form requiring apportionment of guilt and blame, is a difficult, if not an impossible task, whereas in practical reality the situation is appalling and unnerving. The marriage is irretrievably broken down and dead.

We would not read the provisions of the Hindu Marriage Act, their underlying intent, and any fundamental specific issue of public policy, as barring this Court from dissolving a broken and shattered marriage in exercise of the constitutional power under Article 142(1) of the Constitution of India. If at all, the underlying fundamental issues of public policy, as explained in the judgments of V. Bhagat [V. Bhagat v. D. Bhagat, (1994) 1 SCC 337] , Ashok Hurra [Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226], and Naveen Kohli [Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558] , support the view that it would be in the best interest of all, including the individuals involved, to give legality, in the form of formal divorce, to a dead marriage, otherwise the litigation(s), resultant sufferance, misery and torment shall continue.

57. Therefore, apportioning blame and greater fault may not be the rule to resolve and adjudicate the dispute in rare and exceptional matrimonial cases, as the rules of evidence under the Evidence Act are rules of procedure. When the life-like situation is known indubitably, the essence and objective behind section 13(1)(i-a) of the Hindu Marriage Act that no spouse should be subjected to mental cruelty and live in misery and pain is established.

76. This Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do "complete justice" to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified."

(emphasis supplied)

30. It is pertinent to mention that the judgment in Savitri Pandey (supra), has been read down by this Court in Shilpa Sailesh (supra) in the context of the power of this Court under Article 142 of the Constitution of India to do 'complete justice'.

31. Further, a coordinate bench of this Court in Pradeep Bhardwaj v. Priya (2025) SCC OnLine SC 1436 exercised its power under Article 142 of the Constitution to dissolve the marriage between the parties while observing that due to complete detachment and the prolonged estrangement, there has been an irretrievable breakdown of the marital bond which cannot be mended by any means. It was further observed that the institution of marriage is rooted in dignity, mutual

respect and shared companionship, and when these foundational aspects are irreparably lost, forcing a couple to remain legally bound serves no purpose.

32. In another case of Kumari Rekha v. Shambhu Saran Paswan (2025) SCC OnLine SC 1032, this Court observed that non-availability of grounds for dissolution of Hindu marriage is not a bar for this Court to exercise its powers under Article 142 of the Constitution especially when the Court is satisfied that it is a case of irretrievable breakdown of marriage.

THERE IS NO SANCTITY LEFT IN THE MARRIAGE AND RAPPROCHEMENT IS NOT IN THE REALM OF POSSIBILITY

33. This Court is conscious of the view that approach of the Courts should be to preserve the sanctity of marriage and the Court should be reluctant to dissolve the marriage at the mere asking of one of the parties. But, in the present case, the parties have lived separately for far too long a period of time and there is no sanctity left in the marriage. Also, rapprochement is not in the realm of possibility. Grant of divorce in the present proceedings would not have a devastating effect on any third party, as there are no children from the wedlock.

34. This Court is also of the view that pendency of matrimonial litigation for a long duration only leads to perpetuity of marriage on paper. It is in the best interest of parties and the society if ties are severed between parties in cases where litigation has been pending for a considerably long period of time. Consequently, this Court is of the opinion that no useful purpose shall be served by keeping the matrimonial litigation pending in Court without granting relief to the parties.

RELIEF

35. Consequently, this Court is of the view that marriage between the parties has irretrievably broken down and, therefore, in exercise of its power under Article 142 of the Constitution of India dissolves the marriage between the parties.

Accordingly, the order of the Additional Deputy Commissioner (Judicial) Shillong, insofar as, it grants a decree of divorce to the parties is upheld and the impugned order of the High Court is set aside.

With the aforesaid observations, the appeal stands allowed.

.....J. [Manmohan]

.....J. [Joymalya Bagchi]

New Delhi;

December 15, 2025

IN THE SUPREME COURT OF INDIA

Danesh Singh & Ors.
Vs.
Har Pyari (D) through LRS. & Ors.

[Civil Appeal No. 14761 of 2025
arising out of SLP(C) No. 14461 of 2019]

Head Note – Once an auction sale is confirmed and the aggrieved party has not sought to set it aside, a separate suit challenging the order confirming the sale is expressly barred under Order XXI Rule 92(3) CPC. The appropriate remedy in such cases is to move an application under Section 47 CPC, limited to grounds such as lack of jurisdiction or nullity of the order.

JUDGMENT

J.B. Pardiwala, J:

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

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G. CONCLUSION .....

1. Leave granted.

2. This appeal arises from the judgment and order dated 29.01.2019 (hereinafter, the "Impugned Judgment") passed by the High Court of Punjab and Haryana in RSA. No. 2518 of 2004 (O&M) (hereinafter, the "High Court"), by which the second appeal filed by the appellants herein came to be dismissed, thereby affirming the judgment and order dated 12.05.2004 passed by the Court of District Judge, Faridabad (hereinafter, the "Appellate Court") holding the suit instituted by the respondent nos. 1 and 2 respectively herein to be maintainable.

A. FACTUAL MATRIX

3. The description of the parties before this Court, the High Court, the Appellate Court, and before the Trial Court is tabulated as follows:-

BEFORE THIS COURT	**BEFORE THE HIGH COURT**	**BEFORE THE APPELLATE COURT**	**BEFORE THE TRIAL COURT**	**PARTICULARS**
Appellants	Appellants	Appellants	Defendant Nos. 1-3	Auction Purchasers and sons of one of the judgment-debtors i.e., the respondent no.4.
Respondent Nos. 1-2	Respondent Nos. 1-2	Respondent Nos. 1-2	Plaintiffs	Wife and husband, respectively through their LRs, who purchased the suit property from respondent no. 3.
Respondent No. 3	Respondent No. 3	Respondent No. 3	Defendant No. 4	One of the judgment-debtors and vendor

				of the suit property.
Respondent No. 4	Respondent No. 4	Respondent No. 4	Defendant No. 5	One of the judgment-debtors and father of the appellants.
Respondent No. 5	Respondent No. 5	Respondent No. 5	Defendant No. 6	One of the judgment-debtors and sister of the respondent nos. 4 & 5.
Respondent No. 6	Respondent No. 6	Respondent No. 6	Defendant No. 7	Decree-holder bank.

4. In the year 1970, Duli Chand had availed a loan of Rs. 20,000/- from New Bank of India, i.e., the respondent no. 6, to purchase a tractor, and in lieu thereof he had mortgaged his property admeasuring 116 Kanals 13 marlas (hereinafter, "the mortgaged property"), vide a registered Mortgage Deed dated 06.06.1970. However, it is to be noted that this appeal pertains to only a portion of the aforesaid mortgaged property, more particularly, a parcel of land admeasuring 24 Kanals 11 marlas (hereinafter, "the suit property").

5. Owing to his failure in repaying the entire loan amount, on 04.06.1982, the respondent no. 6-bank instituted a suit before the Sub-Judge, 1st Class, Faridabad, being Suit No. 151 of 1982, for recovery of the due amount of Rs. 15,529/- and in the event of default in repayment, the respondent no. 6-bank prayed for foreclosure and sale of the aforesaid mortgaged property.

6. On 12.11.1984, the suit instituted by the respondent no. 6-bank was decreed ex-parte against the respondent nos. 3 to 5 respectively, as the original borrower had passed away during the pendency of the suit (hereinafter, the "original decree"). The decree ordered the recovery of the due amount alongwith costs and interest amounting to Rs. 22,753/- (hereinafter, "the decretal amount"). No appeal was preferred against the original decree and the same had, therefore, attained finality.

7. It is only subsequent to the passing of the original decree that, on 13.05.1985, the respondent no. 1 purchased 17 Kanals 2 marlas of the mortgaged property for Rs. 45,000/- from the respondent no. 3, i.e., one of the judgment debtors and son of the original borrower.

8. Shortly thereafter, on 25.05.1985, the respondent no. 6-bank moved for execution of the decree and prayed that the decretal amount be paid, alongwith costs and interest by way of attachment and sale of the mortgaged property.

9. Again, on 24.06.1985, the respondent no. 2 (husband of the respondent no. 1) purchased another 7 Kanals 9 marlas of the mortgaged property for Rs. 25,000/-

from the same respondent no. 3. Thus, in totality the respondent nos. 1 and 2 respectively, purchased 24 Kanals 11 marlas of the mortgaged property (which constitutes the present suit property) for an amount of Rs. 70,000/- from the respondent no.3. The first purchase was effected before the execution petition came to be instituted by the respondent no. 6- Bank and the second purchase occurred after its institution.

10. Thereafter, the respondent nos. 1 and 2 respectively, are also said to have mortgaged the suit property or a portion thereof with the Ballabgarh Primary Co-op Agricultural and Rural Development Bank for the purpose of availing a loan.

11. Meanwhile, the Executing Court, vide order dated 08.10.1985, attached the entire mortgaged property, i.e., 116 Kanals 13 marlas, as the judgment-debtors failed to make the payment to the respondent no.6-bank. Consequently, an auction of the mortgaged property came to be held on 20.06.1988. In the said auction, the appellants, who are the sons of one of the judgment debtors, i.e., respondent no. 4, were declared as the highest bidders. The appellants' bid for a sum of Rs. 35,000/- for the entire mortgaged property, was accepted.

12. On 30.08.1988, the Executing Court confirmed the auction sale. The delivery of possession in favour of the appellants is also said to have been completed on 24.06.1989. Later, after a month, on 28.07.1989, the Executing Court had disposed of the execution proceedings after recording its satisfaction as regards the fulfillment of the decretal amount and delivery of possession to the appellantauction- purchasers.

13. It is the case of the respondent nos. 1 and 2 respectively that on 05.07.1989, i.e., on a date after the delivery of possession to the appellant-auction-purchasers, they were denied access to the suit property. This denial, according to them, gave rise to the cause of action to file a separate suit, being Suit No. 353 of 1989, before the Civil Judge (Jr. Division), Faridabad (hereinafter, the "Trial Court"). This suit is the genesis of the appeal before us.

14. In the suit, the plaintiffs-respondent nos. 1 and 2 respectively, prayed for a declaration to the effect that the sale in respect of the suit property is void and not binding upon their right, title and interest, and that they continue to be owners in possession. As a consequential relief, a decree for permanent injunction against the appellants was also prayed for, and in the alternative, a decree for possession qua the suit property was sought.

15. In the aforesaid suit, the Trial Court passed a decree declaring that the sale in respect of the suit property was void, illegal and not binding upon the plaintiffs-respondent nos. 1 and 2 respectively, and that the plaintiffs are the owners of the

suit property. Further, a decree for joint possession was passed in favour of the plaintiffs-respondent nos. 1 and 2 respectively.

16. Aggrieved by the decree, the appellants-auction-purchasers, preferred an appeal before the Appellate Court. The Appellate Court dismissed their appeal and held that the vendor of the plaintiffs-respondent nos. 1 and 2 respectively (i.e., respondent no. 3) being the joint owner of the mortgaged property was competent to sell the same and that the plaintiffs-respondent nos. 1 and 2 respectively, are lawful owners of the suit property.

17. Being aggrieved by the aforesaid, the appellants preferred Regular Second Appeal No. 2518 of 2004 before the High Court. The High Court had also dismissed the second appeal.

18. In such circumstances referred to above, the appellants are here before this Court with the present appeal. Vide order dated 15.07.2019, while issuing notice, this Court had directed that the parties shall maintain status quo.

B. THE JUDGMENT & DECREE OF THE TRIAL COURT

I. Ownership and possession of the respondent nos. 1 and 2 respectively

19. In order to ascertain the ownership of the respondent nos. 1 and 2 respectively to the suit property, the Trial Court found it necessary to determine whether the respondent no. 3 possessed any subsisting right to the suit property at the time of transfer in favour of the plaintiffs-respondent nos. 1 and 2 respectively.

While answering this issue in the affirmative, the Trial Court observed that the original decree in the suit instituted by the respondent no. 6-bank was passed only on 12.11.1986, whereas, the respondent no. 3 executed the sale deed on 24.06.1985. Therefore, since the suit property was purchased before the passing of the original decree, it could not be said that the respondent no. 3 lacked any right to transfer the property. It further held that the attachment of the property by the Executing Court would not affect the rights of those parties who had purchased the property prior to such attachment.

20. However, on the issue of possession, the Trial Court observed that no evidence had been adduced by the respondent nos. 1 and 2 respectively to establish that they still remained in possession over the suit property. Hence, it concluded that although plaintiffs were the owners of the suit property, yet they were not in continuing possession. II. Knowledge of both the auction sale and the existence of the mortgage in favour of the respondent no. 6-bank on part of the plaintiffs-respondent nos. 1 and 2 respectively.

21. The Trial Court recorded that the plaintiffs-respondent nos. 1 and 2 respectively had purchased the suit property with due diligence as they had obtained a No Encumbrance Certificate from the Tehsildar before entering into the sale with the respondent no. 3, and their names were also mutated in the revenue records.

It further observed that, owing to the subsequent mortgage of a part of the suit property by the plaintiff-respondent no. 1 with the Ballabgarh Primary Coop Agricultural and Rural Development Bank and its reflection in the revenue records, there was sufficient material before the respondent no. 6-bank to ascertain that the plaintiffs-respondent nos. 1 and 2 respectively had a right, title and interest in the suit property and thereby give notice of the proclamation of sale to them. However, the respondent no. 6-Bank failed to give such notice and also failed to indicate the same in its affidavit filed under Rule 66 of Order XXI CPC.

22. In such circumstances, the plaintiffs-respondent nos. 1 and 2 respectively could not have reasonably had any notice of the auction sale or the mortgage that was created by Duli Chand in favour of the respondent no. 6-bank. It was only much later, i.e., on 05.07.1989, when the plaintiffs-respondent nos. 1 and 2 respectively were not allowed to plough their land did they know about the auction sale and the transfer of the property in favour of the appellants.

III. Manner in which the auction was conducted.

23. The Trial Court found that the manner of conducting the auction of the mortgaged property in camera, where only the appellants herein were the bidders along with the auctioning of the entire property instead of a portion thereof, was contrary to the provisions of law and that it left little room for doubt that the sale of the suit property was illegal, void, and not binding upon the plaintiffs-respondent nos. 1 and 2 respectively.

The Court further found that the respondent nos. 3 to 5 respectively, i.e., the judgment debtors were specifically debarred from participating in the bidding process by the Executing Court and that the same was clear from the conditions of sale. However, in order to circumvent the said restriction, the appellants, being the sons of one of the judgment debtors, had participated in the auction on their behalf. Thus, the Trial Court held that the manner in which the auction was conducted was not permissible, either in law or in equity.

IV. Maintainability of the suit instituted by the respondent nos. 1 and 2 respectively

24. The Trial Court noted that the appellants-defendant nos. 1 to 3 respectively failed to make good their case as to how the suit was not maintainable. It held

that the appellants failed to show why the plaintiffs-respondent nos. 1 and 2 respectively were estopped from instituting the said suit. Accordingly, the Court answered the issue of maintainability in favour of the respondent nos. 1 and 2 respectively. It must be noted that the argument that the suit would be barred on account of Rules 99 to 103 of Order XXI respectively, was not raised by the appellants before the Trial Court.

V. Relief granted

25. The Trial Court held the suit to be maintainable and passed a decree in favour of the plaintiffs-respondent nos. 1 and 2 respectively. It declared that the auction sale only insofar as the suit property was concerned, was void, and did not affect the right, title and interest of the respondent nos. 1 and 2 respectively. The Trial Court further held that the respondent nos. 1 and 2 respectively were the lawful owners of the suit property and granted them the relief of joint possession of the entire mortgaged property along with the appellants.

26. In the first appeal, the Appellate Court affirmed the judgment and decree passed by the Trial Court, and held that the respondent no. 3, being the joint-owner of the mortgaged property, was competent to sell the land to the respondent nos. 1 and 2 respectively.

C. THE IMPUGNED JUDGMENT

27. The High Court, in its impugned judgment, also took note of the fact that the auction had taken place in camera at the residence of the Village Sarpanch. It further observed that the proclamation of the sale issued by the Executing Court specifically barred the judgmentdebtors from offering any bid or participating in the said auction. Despite such a prohibition, the appellants had participated in the auction without obtaining any express permission of the Executing Court. It further lamented that not only were the plaintiffs-respondent nos. 1 and 2 respectively kept uninformed about the auction, the fact of the transfer of the property in favour of the plaintiffs-respondent nos. 1 and 2 respectively was also not disclosed before the Executing Court.

28. The High Court expressed its concern over the validity of the auction sale by noting that the suit property admeasuring 24 Kanals 11 marlas, which constitutes merely 1/4th of the entire mortgaged property, admeasuring 116 Kanals and 13 marlas, was sold for Rs. 70,000/- to the plaintiffs-respondent nos. 1 and 2 respectively. Whereas the entire mortgaged property was sold in auction only for a meagre amount of Rs. 35,000/-. It further observed that although the amount sought to be recovered by the respondent no.6-Bank was only Rs. 22,753/- and that such amount stood satisfied yet the plaintiffs-respondent nos. 1 and 2

respectively had been put in a very precarious position on account of the auction sale.

29. On the question of maintainability of the suit, the High Court held that the respondent nos. 1 and 2 respectively could be said to be "representatives" of the judgment debtor (respondent no. 3) as per Section 47 of the Code of Civil Procedure, 1908 (for short, "the CPC"). It held that despite such status, the suit would be maintainable owing to the fact that the auction sale in the execution proceedings was a result of fraud, thereby vitiating the entire proceedings.

The Court arrived at the finding that the respondent nos. 1 and 2 respectively were bona fide vendees, and that a decree or sale obtained through fraud must not cause any prejudice to them. The High Court held that despite the auction sale being confirmed by the Executing Court, a separate suit would be maintainable, and, stating so, it upheld the decision of the courts below, although for different reasons, and consequently, dismissed the appeal preferred by the appellants.

D. SUBMISSIONS ON BEHALF OF THE PARTIES

I. Submissions on behalf of the appellants

30. Mr. Vikas Singh, the learned Senior Counsel appearing for the appellants would argue that since the decree obtained by the respondent no. 6-bank had attained finality as no appeal had been preferred against it, the judgment-debtor(s) had no subsisting right, title and interest in the mortgaged property for the purpose of selling a portion of it to the respondent nos. 1 and 2 respectively. It is well-settled law that a vendor cannot transfer a title to the vendee better than what he himself possesses. He submitted that the respondent nos. 1 and 2 respectively could be said to have attained a derivative title from the respondent no. 3 and accordingly, stepped into his shoes.

31. Further, relying on the decision of this Court in M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors., reported in 2024 INSC 861, he submitted that the transfer of the suit property by the respondent no. 3 in favour of the respondent nos. 1 and 2 respectively would be hit by Section 52 of the Transfer of Property Act, 1882 (for short, "the 1882 Act"), as the principle of lis pendens continues till the satisfaction of the decree. By placing reliance on another decision of this Court in Sanjay Verma v. Manik Roy, reported in (2006) 13 SCC 608, he submitted that no question of good faith or bona fides arise as the principle of lis pendens is a principle of public policy. He urged that this Court must not encourage pendente lite transactions and regularize the conduct of such transferees by showing equity in their favour.

32. He further submitted that the respondent nos. 1 and 2 respectively were fully aware of the possession being handed over to the auction purchasers-appellants

on 24.06.1986, i.e., during the pendency of the execution proceedings. At that stage they could have availed themselves of the remedy available under Order XXI Rules 99 and 100 respectively but could not have instituted a separate suit. Such a suit, in his opinion, would also be barred under Section 47 of the CPC.

33. He relied on the decision of this Court in Harnandrai Badridas v. Debidutt Bhagwati Prasad & Ors., reported in (1973) 2 SCC 467, N.S.S. Narayana Sarma & Ors. v. Goldstone Exports (P) Ltd., reported in (2002) 1 SCC 662, Asgar & Ors. v. Mohan Varma, reported in (2020) 16 SCC 230, and Shamsher Singh & Anr. v. Lt. Col. Nahar Singh (D) Thr. Lrs., reported in 2019 SCC OnLine SC 938, to submit that it is a settled position of law that all questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the executing court and not by a separate suit. Such is also the mandate reflected under Section 47 CPC.

34. Mr. Singh further submitted that no material facts regarding fraud were pleaded in the plaint by the respondent nos. 1 and 2 respectively as required under Order VI Rules 2 and 4 of the CPC respectively, hence, no issue regarding fraud was framed by the Trial Court. He stated that allegation of fraud was raised for the first time before the High Court.

35. Furthermore, Mr. Singh submitted that as regards the alleged irregularities in the auction sale, the respondent nos. 1 and 2 respectively could have preferred an application under Order XXI Rule 90. However, even if they had preferred such an application, they would have still remained unsuccessful since no sale is liable to be set aside solely on the ground of fraud or irregularity as regards the price at which the property was sold. He submitted that an auction sale cannot be reversed solely on the ground of inadequacy of price.

In this regard, he placed reliance on the decision of this Court in Siddagangaiah v. N.K. Giriraja Shetty, reported in (2018) 7 SCC 278. He also submitted that due sanctity must be attached to the auction sale conducted by the executing court and to make this argument good, he placed reliance on the decision of this Court in M/s Al-Can Export Pvt. Ltd. v. Prestige HM Polycontainers Ltd. & Ors., as reported in (2024) 9 SCC 94. He further submitted that a separate suit cannot be allowed to be filed by the respondent nos. 1 and 2 respectively to overcome the limitation period which has been prescribed for an application under Rule 90.

36. In such circumstances referred to above, the learned Senior Counsel appearing for the appellants-auction purchasers would submit that there being merit in his appeal, the same may be allowed and the impugned judgment passed by the High Court be set aside.

II. Submissions on behalf of the respondent nos. 1 and 2 respectively

37. Per contra, Ms. Aparajita Singh, the learned Senior Counsel appearing for the respondent nos. 1 and 2 respectively 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 judgment.

38. She submitted that the separate suit was not barred by Section 47 of the CPC as the respondent nos. 1 and 2 respectively were "third parties" as contemplated under Order XXI Rule 92(4). The said provision permits a third party to challenge the title of a judgmentdebtor by filing a suit against the auction purchaser wherein the decree-holder and the judgment-debtor would be necessary parties. She further submitted that the essentials of Order XXI Rule 92(4) stood satisfied, and therefore, the question of maintainability assumes no relevance.

39. To fortify her submission on the question of maintainability, reliance was placed on the decision of this Court in T. Vijendradas v. M. Subramanian, as reported in (2007) 8 SCC 751, wherein in an almost-identical factual situation, the property was fraudulently auctioned in execution of a decree without notice to the actual owner. She submitted that the court took note of the fraudulent conduct of the vendor and held that a judgment or an order obtained by fraud is a nullity and non-est, and could thereby be challenged even in a collateral proceeding. Therefore, it was her view that the High Court rightly arrived at the finding that the appellants had indulged in fraudulent transactions as a consequence of which the respondent nos. 1 and 2 respectively could have challenged the validity of the auction sale even in collateral proceedings. Thus, the separate suit in no manner suffered from the want of maintainability as per Section 47 of the CPC.

40. To indicate the bona fides of the respondent nos. 1 and 2 respectively, Ms. Singh submitted that the respondent no. 3 was competent and had a proper title in law to transfer the suit property also because the warrant of attachment of the mortgaged property came to be issued only on 08.10.1985, i.e., much after the sale in their favour. The respondent nos. 1 and 2 respectively had also obtained a No Encumbrance Certificate from the Office of the Sub-Registrar before their purchase. The certificate reflected no charge over the property. After obtaining these certificates, the respondent nos. 1 and 2 respectively took another loan over the suit property which would not have been possible if there were encumbrances over the property.

41. She further submitted that given the mandate of Order XXI Rule 66(2)(a), it belies credence that there was a need to sell the entire mortgaged property for a paltry amount of Rs. 22,753/-, when just four years before the auction, the respondent nos. 1 and 2 respectively had paid Rs. 70,000/- for the suit property which constituted 1/4th of the total extent of the mortgaged property.

Order XXI Rule 66(2)(a) states that where the mortgaged property is large and more valuable than the decretal amount, it would be incumbent upon the Executing Court to order the sale of only such portion of the mortgaged property which would satisfy the decree. Ms. Singh contended that the nature of Order XXI Rule 66 is mandatory and not directory. To fortify her submission, she relied upon the decision in the case of Lal Chand v. VIIIth Additional Judge & Ors., reported in (1997) 4 SCC 356.

42. Ms. Singh alluded to the deceitful conduct of the auction purchasers-appellants by pointing out that, on the date of the auction, they had purchased the entire mortgaged property for meagre amount of Rs. 35,000/- in spite of the fact that they were proscribed from participating in the auction without the permission of the Executing Court. On the other hand, the respondent nos. 1 and 2 respectively have registered sale deeds in their favour, along with their names mutated in the revenue record.

43. In the last, she submitted that the suit property was lawfully transferred to the respondent nos. 1 and 2 respectively. The Trial Court had rightly declared the auction sale to be void on the grounds of fraud and irregularities in and during the auction proceedings. The two appellate courts below could not be said to have committed any error in refusing to disturb the said findings.

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

E. ISSUES FOR DETERMINATION

45. 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. Whether the transfer of the suit property in favour of the respondent nos. 1 and 2 respectively, is hit by Section 52 of the 1882 Act and the doctrine of Lis Pendens?

II. Whether the respondent nos. 1 and 2 respectively, could have sought any relief under Rule(s) 89 or 90 of Order XXI CPC respectively before the Executing Court?

III. Whether the respondent nos. 1 and 2 respectively, were "third parties" who could have instituted a separate suit as per sub-rule (4) of Rule 92 Order XXI CPC?

IV. Whether the respondent nos. 1 and 2 respectively, were "representatives of the judgment-debtor" upon whom the bar to a separate suit as envisaged under Section 47 CPC could be said to be applicable?

V. Whether the respondent nos. 1 and 2 respectively, should have sought the remedy made available to a dispossessed third party under Rule 99 read with Rules 100 to 102 of Order XXI of the CPC respectively? If yes, whether the failure to do so would affect the maintainability of a separate suit for the same relief(s)?

F. ANALYSIS

I. Whether the transfer of the suit property is hit by Section 52 of the 1882 Act and the doctrine of Lis Pendens?

46. It was submitted on behalf of the appellants that the decree obtained by the respondent no. 6-bank had attained finality owing to no appeal being filed against the same. Therefore, the judgment debtorrespondent no. 3 could not be said to have any subsisting right, title, or interest in the suit property to transfer the same to the respondent nos. 1 and 2 respectively, after the passing of the original decree. Moreover, it was submitted that the suit instituted by the respondent nos. 1 and 2 respectively was hit by the doctrine of lis pendens, and therefore, that the respondent nos. 1 and 2 respectively could be said to suffer the same legal rights and obligations as that of their vendor.

47. Whereas on the other hand, it was canvassed on behalf of the respondent nos. 1 and 2 respectively that although the respondent no.6-bank, in their plaint, prayed for the payment of the due amount either in cash or by way of sale of the mortgaged property, the original decree had only provided for the recovery of the due amount without specifically directing that the mortgaged property be sold. In other words, the original decree was a simple money decree. It was only subsequent to the aforesaid decree that the mortgaged property came to be attached by the Executing Court vide its order dated 08.10.1985 due to the failure of the judgment-debtors in making the payment to the decree-holder bank.

Therefore, in the suit instituted by the bank for recovery of money, the right, title or interest of the mortgaged property was not directly in question, and the transfer of the suit property, after the passing of the original decree, would not be hit by the doctrine of lis pendens, especially considering that the order of attachment was made much later in time. To reiterate, she would submit that the sale deeds in favour of the respondent nos. 1 and 2 respectively, were executed on 13.05.1985 and 24.06.1985 respectively, whereas, the suit property was attached only much later, on 08.10.1985.

48. To address this issue, we shall look into Section 52 of the 1882 Act. It reads thus:-

"52. Transfer of property pending suit relating thereto.- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

49. Section 52 of the 1882 Act stipulates that during the pendency of any suit in a court of competent jurisdiction in which any right to the immovable property is directly and specifically in question, such property cannot be transferred or otherwise be dealt with by any party to the suit or proceedings with a view to affect or defeat the rights of any other party under any decree or order. The only exception that the provision carves out is with regard to a situation where the transfer of the property is made permissible under the authority of the court and in accordance with the terms imposed by the court.

50. The explanation to the section further elaborates that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and would continue until the suit is disposed of by a final decree, and the "complete satisfaction or discharge of such decree" has been obtained, unless the same cannot be obtained due to the expiry of the prescribed limitation period.

51. This Court in Celir LLP v. Sumati Prasad Bafna, reported in 2024 SCC OnLine SC 3727, where one of us (J.B. Pardiwala, J.) was part of the Bench had the occasion to elucidate the essentials of Section 52 of the 1882 Act. The relevant observations read as under:-

"158. The following conditions ought to be fulfilled for the doctrine of lis pendens to apply:-

i. There must be a pending suit or proceeding;

ii. The suit or proceeding must be pending in a competent court;

iii. The suit or proceeding must not be collusive;

iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;

v. The property must be transferred by a party to the litigation; and

vi. The alienation must affect the rights of any other party to the dispute.

159. In short, the doctrine of lis pendens, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a thirdparty, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding."

(Emphasis supplied)

52. This Court in Celir LLP (supra) had also emphasized that such a pendente lite transferee would be bound by the result of the proceedings irrespective of whether they had notice of the pending suit or not. In other words, that the lack of knowledge of the proceedings would not be a valid defence against the application of the doctrine of lis pendens. a. Whether the suit property was "directly and specifically in question" in the suit instituted by the respondent no.6-bank and the import of the words "any suit" along with "any right" occurring in Section 58 of the 1882 Act.

53. The principal contention canvassed on behalf of the respondent nos. 1 and 2 respectively was that Section 52 of 1882 Act will not apply to the facts of the present case as the suit property was not "directly and specifically in question" in the suit instituted by the respondent no. 6-bank which was only for the recovery of money. The submission although seemingly lucrative yet is flawed in our considered opinion for the reasons elaborated hereinbelow.

54. The Transfer of Property (Amendment) Act, 1929 had brought certain significant changes by way of which the present Section 52 has come into existence. It had substituted the words "active prosecution" occurring at the beginning of the provision with the word "pendency" and the words "a contentious suit or proceedings" was replaced with the words "any suit or proceedings". Along with this, an explanation was also inserted in order to clarify that the pendency of a lis would continue till the satisfaction or discharge of the

decree, or until the satisfaction or discharge of the decree has become unobtainable by reason of the expiration of the prescribed limitation period.

55. There is no gainsaying that by the substitution of the words "a contentious" with "any", the scope of the provision has been widened. We say so because, first, the dictionary meaning of the word "contentious" would be - an adversary, or a litigation between adverse or contending parties, or a judicial proceeding comprising of an attack and defense as between opposing parties. By the use of the expression "a contentious suit or proceeding", the application of the doctrine may have been confined only to those proceedings in which both the parties were present and actively contesting the matter. In other words, the provision may have had no application on ex-parte proceedings where one of the parties had chosen not to participate.

56. It was recognised that such a restricted view would defeat the purpose of the provision. Section 52 casts an embargo on the parties to the suit from transferring the property in question, in order to preserve the subject matter of the lis and to prevent the rights of the parties from being defeated by alienations pendente lite. If the doctrine were made inapplicable to ex-parte proceedings, a party would deliberately abstain from appearing before the court, transfer the property during the pendency of the suit, and thus, render the adjudication of rights in the said suit, infructuous.

57. Secondly, the words "any suit or proceeding" has to be read in conjunction with the expression "in which any right to immovable property is directly and specifically in question". Careful attention must be paid to the words "any right" along with the words "directly and specifically". While the former indicates the intention of the legislature to afford some expansiveness to Section 58, the latter narrows down its scope. To elaborate, this indicates, on the one hand, that the scope of the provision is not confined to suits wherein the same right to the property is in question, while indicating on the other hand that, that it also cannot be expanded to all suits wherein any right to the suit property is not directly and specifically considered by the court.

58. What then holistically emerges from the amendment is that, under the pre-amended provision, the suit was required to be actively contested in relation to any right in the immovable property. However, after the amendment, the pendency of any suit, whether contentious or not, is enough. Moreover, even where the suit is not solely one relating to the same right in the immovable property, if any right, title or interest as regards such immovable property is directly and specifically forming part of the subject-matter of the suit, Section 52 and the doctrine of lis pendens would stand attracted. In other words, the amendment, considered cumulatively, has widened the application of Section 52 of the 1882 Act.

59. In this regard, we may refer to the decision of the Full Bench of the Allahabad High Court in Mahesh Prasad & Ors. v. Musammat Mundar, reported in 1950 SCC OnLine All 16, wherein the plaintiff had filed a suit for maintenance, and prayed that it be charged on the whole or a sufficient portion of the ancestral property specified in the plaint. The suit was dismissed by the trial court, however, in appeal, the appellate court fixed an amount as maintenance by creating a charge on the property vide its decree dated 21.02.1917. Sometime on or after 01.04.1930, the property had been sold to the transferees.

Thereafter, the plaintiff-appellant filed an application for execution of the decree against the defendants as well as the transferees. As a result, the executing court had directed the sale of the properties in execution. The transferees claimed that they were transferees for consideration and without notice of the charge. One of the main issues before the High Court was whether the doctrine of lis pendens would apply to the facts of the case.

The Court held that the want of notice would be immaterial to the application of Section 52 of the 1882 Act, and the plaintiff would be entitled to enforce the decree against the property in the hands of the transferees, even if the transferees had purchased the property for consideration and without notice of the original suit. The Court concluded that the right to be maintained out of the income of the immovable property was a "right to immovable property" which was directly and specifically in question, thereby attracting the doctrine of lis pendens. The relevant observations read thus:-

"The next point for consideration is whether section 52 of the Transfer of Property Act applied. If section 52 applied then want of notice would be immaterial and the widow would be entitled to enforce the decree against the property in the hands of the transferee from her judgment-debtors even if the transferee had purchased the property for valuable consideration and without notice. Section 52, as amended by Act XX of 1929, is in these terms-

"During the pendency in any court having authority in British India, or established beyond the limits of British India by the Governor-General in Council of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation- For the purposes of this section the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to

continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

The section has been amended in certain material particulars. The word 'pendency' has been substituted for the words 'active prosecution'. The words 'any suit or proceeding which is not collusive' have been substituted for the words 'a contentious suit or proceeding', and the Explanation has been added. These amendments were not with the object of changing the law of lis pendens, but to remove certain doubts and conflicts which had arisen in the decisions of the High Courts in India. There is no doubt that the amended section will apply to the transfers which have taken place after the amendment came into force.

The only question is whether in a suit filed by a Hindu widow, claiming that she was entitled to be maintained out of the income of the properties mentioned in the plaint, which she claimed were joint family properties in which her husband had a share and asking for a charge to be created on the said property, any right to immoveable property is directly and specifically in question. The right to be maintained out of the income of immoveable property is no doubt right to immoveable property. It may be mentioned that the words are not 'right in the immoveable property', but 'right to immoveable property'.

The fact that the Hindu widow claimed that this was property belonging to her husband, that she was entitled to be maintained out of the income of that property, and that she was entitled to have a charge created on the property, all raise questions relating to right to immoveable property. The point, however, is whether 'right, to such property' is 'directly and specifically in question' or the main claim is for maintenance and it is only collaterally that the property has been brought in. There is some difference of opinion on this point, but I am inclined to the view that in such a case it can be said that right to immoveable property is directly and specifically in question. Any doubts that one may have had on the point must be deemed to have been set at rest by the decision of their Lordships of the Judicial Committee in Syud Bazayet Hossein v. Dooli Chund [(1879) I.L.R. 1 Cal. 402.].

In that case a Mohammedan widow had claimed a right to be maintained out of certain properties detailed in the plaint and had also claimed that a charge be created, and when the property was transferred in disregard of the charge created in favour of the widow by the decree their Lordships of the Judicial Committee held that the doctrine of lis pendens applied. It is not for me to examine whether a Mohammedan widow is entitled to the maintained out of certain properties in the absence of agreement merely on the ground that she is a Mohammedan widow. It

is also not for me to consider whether the charge was rightly created, but that being the nature of the suit and a decree creating a charge having been passed their Lordships held that it operated as lis pendens, and that, to my mind, must set this point at rest."

(Emphasis supplied)

60. In Siddagangaiah (supra), the plaintiff had filed a suit against her defendant-husband for the grant of maintenance and the creation of a charge on certain properties. After the filing of the suit and before it came to be decreed, the defendant executed a sale deed qua some of those properties. This Court by relying on the decision in the case of Nagubai Ammal & Ors. v. Shama Rao & Ors., reported in (1956) 1 SCC 698, held that when a prayer in the suit seeks to create a charge on a specific property, it is a suit in which the right to immovable property is directly in question. Further, the lis is said to commence on the date of the presentation of the plaint and not on the date of the decree. The relevant observations read thus:-

"28. Coming to the question of lis pendens, Smt Thopamma had filed the suit in 1968 for the creation of charge of maintenance, inter alia, on the properties in question. Explanation to Section 52 of the TP Act makes it clear that pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint. Thus, on the date of execution of the sale deed on 9-11-1974, the suit filed by Thopamma was pending. Thus, the provisions contained in Section 52 would clearly apply to the case. In Nagubai Ammal v. B. Shama Rao [Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593] this Court observed: (AIR p. 597, para 9)

"9. On this question, as the plaint in OS No. 100 of 1919-20 praying for a charge was presented on 6-6-1919, the sale to Dr Nanjunda Rao subsequent thereto on 30-1-1920 would prima facie fall within the mischief of Section 52 of the Transfer of Property Act, and would be hit by the purchase by Devamma on 2-8-1928 in the execution of the charge decree.

Sri K.S. Krishnaswami Ayyangar, learned counsel for the appellants, did not press before us the contention urged by them in the courts below that when a plaint is presented in forma pauperis the lis commences only after it is admitted and registered as a suit, which was in this case on 17-6-1920, subsequent to the sale under Ext. VI - a contention directly opposed to the plain language of the Explanation to Section 52. And he also conceded and quite rightly, that when a suit is filed for maintenance and there is a prayer that it be charged on specified properties, it is a suit in which right to immovable property is directly in question, and the lis commences on the date of the plaint and not on the date of the decree, which creates the charge."

(Emphasis supplied)

61. One could argue that the decree in Mahesh Prasad (supra) had specifically mentioned that a charge be created on the property and the property was alienated after the passing of such a specific decree, and it was therefore held that the transaction would be hit by the doctrine of lis pendens. Whereas in the facts of the present case, the decree was silent on whether the mortgaged property must be directed to be sold and hence, the transfer in favour of the respondent nos. 1 and 2 respectively would not be covered by Section 52. In other words, that the decree in the present case was simply a money decree. This is, more or less, the argument canvassed by the counsel for the respondent nos. 1 and 2 respectively.

62. This line of reasoning is plainly defeated by the decision in Siddagangaiah (supra) wherein the court had applied the doctrine underlying Section 52 even in a situation where the plaint had prayed that a charge be created on the properties and some of the properties were sold off before the decree creating a charge came to be passed. Therefore, one must also look carefully at the prayers sought for in the plaint to ascertain the application of the doctrine of lis pendens.

63. To substantiate our reasoning, we may also look into the decision of the High Court of Madras in Annakkili v. Murugan & Anr., reported in 2021 SCC OnLine Mad 1673, wherein the plaintiff had filed a suit for the recovery of money, and also sought for a direction to be given to the judgment-debtor to furnish security for the suit claim, failing which the court must direct that the properties mentioned in the plaint, be attached. Before any direction could be passed, the appellant therein purchased one of the properties mentioned in the plaint.

It was then argued that Section 52 of the 1882 Act cannot be invoked in case of a simple money suit. The Court held that Section 52 does not state that it is not applicable to suits for recovery of money, and the provision would not say so, because the Explanation to the provision states that the pendency of any suit continues until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained.

It was further held that the parties must not create new rights in the property till the execution proceedings are discharged. The Court underscored that if Section 52 was read as always excluding money suits, despite a specific prayer in the plaint as regards the attachment of the property, a decree passed therein would be rendered meaningless, since the party would be free to alienate the property and there would be no property available to execute the money decree. The relevant observations read thus:-

"7. In this context only, the Supreme Court in the case of Vidur Impex & Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd., CDJ 2012 SC 560 has clearly ruled that the transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest during the pendency of the suit will be subject to the decision in the suit. The reason being that the operation of bar under Section 52 is subject to the power of the Court to exempt the suit property from the operation of Section 52."

9. A close reading of the Explanation given under Section 52 makes it abundantly clear and comes to the aid of the first respondent/decree holder that for the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction. As highlighted above, when the plaintiff/decree holder had filed the suit and also the I.A. No. 1513 of 2009 on 29.9.2009, it goes without saying that the interest on the immovable property was directly and specifically in question, therefore, the suit properties ought not to have been sold in favour of the appellant on 8.10.2009, who is the brother's wife of the second respondent/judgment debtor.

10. Further, Section 52 does not say that the doctrine of lis pendens will not apply to any money suit, because this section cannot say so, since the Explanation given in Section 52 is conspicuous and explicit that for the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained.

Therefore the true intent of Section 52 with Explanation is vividly clear that the Defendant or Judgment Debtor cannot transfer the suit property from the date of initiation of proceeding for attachment before judgment in a pending money suit and moreover, till the execution proceeding of decree or order obtained is completely satisfied or discharged, the mischief of Section 52 with Explanation and Section 53 will operate against the Defendant, irrespective of the fact whether it is a money suit or suit for immovable property, inasmuch as Section 52 with Explanation does not bar application of the principle of lis pendens to money suit.

Law maker of the Transfer of Property Act were careful enough to mention in the Explanation that the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding, namely, filing of an Interlocutory Application for Attachment Before Judgment. Moreover, if Section 52 is excluded to money suit, then the money decree obtained after a long contest from a Court of competent jurisdiction will

become meaningless, if there is no property available for execution of money decree, as a result, the decree holder of money suit will go remediless."

(Emphasis supplied)

64. In a simple mortgage, the property is encumbered with the mortgagee's interest in it, which means that any purchaser of the property would receive an interest in the property subject to the mortgagee's rights, irrespective of whether the transfer is with or without notice of the mortgage, unless there is anything to the contrary to this effect in the mortgage agreement. It is in the same breath that we say that a transferee of a mortgaged property will have only such interest which the mortgagor himself had at the time of transferring the property.

65. In the present case, the suit property purchased by the respondent nos. 1 and 2 respectively, was a parcel of land forming part of the mortgaged property that the original borrower had mortgaged with the respondent no. 6-bank in lieu of the loan availed by him. When the bank instituted the suit and described the mortgaged property in its material particulars along with seeking that the property be sold in the event of default, the Trial Court could be said to have been in seisin of a dispute wherein the right or interest in the suit property was directly in play.

66. When the respondent nos. 1 and 2 respectively purchased the suit property, it was a property which was "directly and specifically in question" in the pending proceedings and hence, stood squarely covered by Section 52 of the 1882 Act and the principle of lis pendens. By purchasing a mortgaged property during the pendency of the suit instituted by the respondent no.6-bank, the respondent nos. 1 and 2 respectively could be said to have agreed to be bound by the outcome of such proceedings.

Their contentions regarding the lack of knowledge of the proceedings and the procurement of a No Encumbrance Certificate respectively, to say that they were bona fide purchasers, cannot be countenanced as the doctrine of lis pendens applies to an alienation during the pendency of the suit irrespective of whether the transferee had notice of the pending proceedings or not. [See: Sanjay Verma v. Manik Roy, (2006) 13 SCC 608; Usha Sinha v. Dina Ram, (2008) 7 SCC 144]

67. Further, once the decree itself recorded the existence of the mortgage, and the plaint contained a joint prayer for recovery of money alongwith the sale of the mortgage property, the implication would naturally be that if the decretal amount remained unpaid, the amount was to be realized by proceeding against the mortgaged property in execution. In other words, the mortgage created an interest in the property in favour of the respondent no. 6-bank, and the decree also

recognized that the property would answer the debt in the event of default. The decree read thus:-

"2. The plaintiff is a banking company incorporated under the banking companies (Acquisition and transfer of Undertakings) Act, 1980, having its head office at New Delhi and a branch at Nehru Ground Faridabad Sh. V.P. Gupta is the Manager and Principal Officer of the plaintiff bank. He is conversant with the fact of the case and is authorized and competent to institute the present suit vide power of attorney dt.29.4.71. The defendant No.1 was given a loan of Rs. 20,000 /- against hypothecation of his tractor bearing No.HRG884 7 and the personal guarantee of defendant no.2 and mortgage of movable property by defendant no. 1.

The defendant no. 1 executed several documents in favour of the bank enumerated in para no. 4 of the plaint. The said amount was disbursed to defendant no. 1 on 31.7.70. Besides execution of the documents given above, the defendant no.1 mortgaged his agricultural land with the plaintiff vide registered mortgage deed dt. 6.6. 70 and the details of the mortgage can be found in para no. 6 of the plaint.

The amount of loan was to carry interest @ 2 o/o over the R.B.I. rate with a minimum of 91;20;0 which was subsequently raised to 15112% The said amount as to be repaid in six half yearly in statements. The defendants remained irregular in payment of the amount. They acknowledged their liability by signing acknowledgment in favour of the plaintiff on various dates, last of which is 5.6.79. The defendant No 1 &2 died and the defendants no. 1a to 1c and defendant no. 2(a) are their legal heirs. Various demands were made on them to do so and hence the present suit.

3. The defendants did not appear despite service and they were proceeded against exparte.

4. In exparte evidence, Sh. S.C. Gupta Assistant Manager of the plaintiff bank appeared as PW1 and he has supported the plaintiffs case in all material particulars. The on oath statement of this witness which goes un rebutted, goes to prove the plaintiffs case. Hence, the suit of the plaintiff for recovery of Rs. 15529.35p. is decreed exparte against the defendants with costs. Interest @ 15°/o P.a. is allowed to the plaintiff on the decretal amount from the date of institution of the suit till the date of 3ealization of the decretal amount. Decree sheet be prepared and file be consigned.

Announced.
Dated: 12.11.84"

(Emphasis supplied)

68. Therefore, there exists no doubt that the respondent nos. 1 and 2 respectively were pendente lite transferees of the judgment-debtor(s).

69. We would also like to point out at this juncture, that the Trial Court had unfortunately misdirected itself in recording that the transaction in favour of the respondent nos. 1 and 2 respectively was made on a date prior to the passing of the original decree, when in actuality, it was made in two tranches i.e., one, after the decree came to be passed and another, after the execution petition came to be filed by the respondent no.6-bank. To put it simply, both tranches of the transaction in favour of the respondent nos. 1 and 2 respectively were made well after the original decree was passed.

70. Even going by the Trial Court's understanding of when the transactions in favour of the respondent nos. 1 and 2 respectively were made, for the reasons we have assigned hereinabove, we are of the view that they would still be hit by the doctrine of lis pendens since the transactions were made after the institution of the original suit by the respondent no.6-bank in which the right and interest to the mortgaged property was directly and specifically in question.

II. Whether the respondent nos. 1 and 2, respectively, could have sought for any relief under Rule(s) 89 or 90 of Order XXI CPC, respectively?

71. Before directly addressing the rival contentions as regards the maintainability of the suit instituted by the respondent nos. 1 and 2 respectively, we must first look into Order XXI, more particularly, the various kinds of remedies that are contemplated under Rules 89 to 92 thereunder. We find it necessary to do so because - first, the counsel appearing for the appellant seems to have made an argument before the High Court that the plaintiffs-respondent nos. 1 and 2 respectively, should have preferred an application under Rule 89 of Order XXI CPC before the confirmation of the auctionsale and upon failing to do so, and allowing the sale to be confirmed, they would have no remedy.

72. Secondly, Mr. Vikas Singh would submit that a sale made during execution by the executing court must be accorded some sanctity and not be left vulnerable to general claims of irregularity or fraud. He would argue that the respondent nos. 1 and 2 respectively must have preferred an application under Rule 90 immediately after they got to know of the alleged irregularities. However, even in such a scenario, several essentials must have been fulfilled for them to successfully set-aside the sale. Having not fulfilled those essentials, it is his view that their application under Rule 90 would have also been unsuccessful.

73. Thirdly, Ms. Aparajita Singh would submit that the separate suit instituted by the respondent nos. 1 and 2 respectively, would be maintainable by virtue of Rule 92(4) which comes into play once the sale is confirmed.

74. Before we specifically address ourselves to these submissions, let us look into the scope of these provisions.

a. Scope and application of Rule 89 of Order XXI CPC, with specific reference to whether pendente lite transferees can maintain such an application

75. Order XXI Rule 89 reads thus:-

"89. Application to set aside sale on deposit.-

(1) Where immovable property has been sold in execution of a decree, [any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his depositing in Court,-

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decreeholder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale."

76. The rule stipulates the procedure for setting aside the sale made in execution of a decree by (a) any person claiming an interest in the auctioned property, either at the time of the sale or at the time of making the application under Rule 89 or; (b) by a person acting for or in the interest of such person. However, such an application under Rule 89 must mandatorily be accompanied by a deposit which contains two components - (a) a sum equal to five per cent of the purchase money paid in the auction sale, which is to be given to the auction purchaser, and; (b) the amount specified in the proclamation of sale, less any amount which may have already been received by the decree-holder since the date of such proclamation, which is to be given to the decree-holder.

77. What can be discerned from the aforesaid is that the heart of the provision lies in the expression, "apply to have the sale set aside on depositing in Court". The

strict nature of the rule is reflected by the necessary condition stipulated by the legislature that the sale would be set-aside only upon the payment of a deposit of the prescribed amount. In other words, the deposit of the amount stipulated in subrule (1) of Rule 89 is sine qua non for an application seeking to set aside the execution sale under this rule.

78. A careful perusal of the rule indicates that it gives the judgment debtor another opportunity to retain his property, even after the property is sold, by paying the decretal amount to the decree-holder and compensating the auction purchaser with five percent of the purchase money. In Challamane Huchha Gowda v. M.R. Tirumala, reported in (2004) 1 SCC 453, this Court held that Rule 89 provides the judgment-debtor a final opportunity to put an end to the dispute and prevent his dispossession from the property, before the sale is confirmed by the court. If the conditions prescribed under this rule are satisfied, then the executing court would be obligated to make an order setting aside the sale, provided that notice is given to all persons affected thereby, as stipulated under the proviso to Rule 92(2). The relevant observations read thus:-

"9. Execution is the enforcement by the process of the court of its orders and decrees. This is in furtherance of the inherent power of the court to carry out its orders or decrees. Order 21 CPC deals with the elaborate procedure pertaining to the execution of orders and decrees. Sale is one of the methods employed for execution. Rule 89 of Order 21 is the only means by which a judgment-debtor can escape from a sale that has been validly carried out. The object of the rule is to provide a last opportunity to put an end to the dispute at the instance of the judgment-debtor before the sale is confirmed by the court and also to save his property from dispossession.

Rule 89 postulates two conditions: they are depositing: (1) of sum equal to five per cent of the purchase money to be paid to the purchaser, (2) of the amount specified in the proclamation of sale less any amount received by the decree-holder since the date of such proclamation, in the court. If these two conditions are satisfied the court shall make an order for setting aside the sale under Rule 92(2) of Order 21 CPC on an application made to it. In other words, then there will be compliance with the court's order or decree that is sought to be executed.

Because the purpose of Rule 21 is to ensure the carrying out of the orders and decrees of the court, once the judgment-debtor carries out the order or decree of the court, the execution proceedings will correspondingly come to an end. It is to be noted that the Rule does not provide that the application in a particular form shall be filed to set aside the sale. Even a memo with prayer for setting aside sale is sufficient compliance with the said Rule. Therefore, upon the satisfaction of the compliance with conditions as provided under Rule 89, it is mandatory upon

the court to set aside the sale under Rule 92. And the court shall set aside the sale after giving notice under Rule 92(2) to all affected persons.

(Emphasis supplied)

79. The question which would then arise is whether a transferee pendente lite of the judgment-debtor would also fall within the scope of the words "any person claiming an interest in the auctioned property". There remains very little reason for the courts to extend the benefit of Rule 89 to the judgment-debtor himself but not to a transferee pendente lite of the judgment-debtor.

80. A perusal of the amendment to Rule 89 made by the Amendment Act of 1976 would prove beneficial in the answering the aforesaid question. Through the amendment, the words, "any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale" was replaced with "any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person".

81. The Andhra Pradesh High Court in Pallepu Poleswari v. Tammisetty Nageswarao Rao and Others reported in 2011 SCC OnLine AP 601 had looked into what had prompted the legislature to amend Rule 89 and stated that the impetus was given by the decision of a Full Bench of the Patna High Court in Onkar Nath Jalan v. Ramanand Prasad reported in AIR 1970 Patna 368. In the said decision, the Full Bench had suggested a change to Rule 89 along the lines of what it thought would truly be in consonance with the intent of the provision. The amendment was also suggested with a view to prevent an unnecessary investigation into the nature of interest that an applicant may have. This suggestion is what has been verbatim adopted by the Amending Act of 1976. The relevant observations are thus:

"17. What prompted the Parliament to amend Rule 89 of Order XXICPC in 1976 appears to be certain administrative and judicial steps taken by the Patna High Court. Even when the Rule remained in its unamended form, the Patna High Court introduced a State amendment to that Rule, in its application to the State of Bihar, substituting the following text:

"a judgment-debtor or any person deriving title through the judgment-debtor, or any person holding an interest in the property at the date of the application under this rule."

(in the place of the words underlined portion at page 535)

18. The said provision has fallen for interpretation before a Full Bench of the Patna High Court in Onkar Nath Jalan's case (supra). The Full Bench took note of the background in which the Patna High Court substituted a different provision

and the division of opinion among various High Courts. Ultimately, it held that provision as it applied to the State of Bihar did not warrant that an applicant must prove his title to the property, before he can seek the relief of setting aside the sale. After holding so, the Full Bench made the following observation:

"I may, however, state before parting with the case that the most comprehensive wording and the one which is not only consonant with the underlying policy of the amendments but has besides it, the advantage of avoiding unnecessary investigation of the nature of interest is that of the High Court of Lahore, prior to partition and that of the Nagpur High Court and should be adopted in our High Court as well. The amendment stands thus:

"any person claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person."

The decree-holder is interested in getting his dues. The auction-purchaser while bidding knows the provision of Order XXI, Rule 89. and receives the compensation and thereby can have no grudge as to why the amount of purchase money is deposited and sale set aside. No one suffers by the procedure adopted in the above amendment and it may be reaffirmed that no prudent man is likely to waste his good money in depositing it for the benefit of the judgment-debtor merely in a gratuitous manner."

19. It is indeed gratifying that the text suggested by the Full Bench were adopted verbatim, by the Parliament and it was incorporated in Rule 89, in the year 1976."

(Emphasis supplied)

82. On a bare reading of the aforesaid amendment, it is lucid that the legislature had consciously widened the ambit of the rule by undertaking two major changes - first, doing away with the requirement that an applicant under Rule 89 must either own the property or hold an interest by virtue of a title, and secondly, expanding the period during which such an interest could have been acquired from 'before the occurrence of the sale' to 'at the time of making the application under Rule 89'. Therefore, the legislature very consciously did away with the requirement of having an applicant under Rule 89 prove his title or absolute right in the property. Presently, it is sufficient if the applicant claims an "interest" in the property sold, either at the time of the auction or at the time of making the application under Rule 89 or, is acting for or on behalf of the persons having such interest.

83. We have had the benefit of looking into a decision of the Madras High Court in Vootla Viriah and Others v. Tadepalli Subba Rao and others reported in 1948 SCC OnLine Mad 287, wherein it was emphasized that the word "interest"

occurring in Rule 89 must be construed quite liberally. Such an interest which is referred to under Rule 89 may not be sufficient to enforce any claim to the detriment of the auction-purchaser or the decree-holder and this is probably why the interest referred to in this rule, may not be successfully used to prevent the attachment of the property and defeat the rights of the decree-holder. However, the object of this rule is very different - what Rule 89 seeks to achieve is to provide the decreeholder the amount that he is owed and also compensate the auction purchaser in the course of setting-aside the sale - i.e., to set-aside the sale while not detrimentally affecting the rights of the decreeholder or the auction-purchaser.

In other words, the decree-holder is relegated to the same position as if the sale of the property was not interfered with at all and the auction-purchaser, in whose favour the sale has not yet been confirmed and rights are not crystallized, is instead compensated. Therefore, even an inchoate right which a party may have over the property may be enough to constitute an "interest" under Rule 89. The relevant observations are thus:

"O. 21, R. 89 should be liberally construed and a restricted interpretation should not be put upon the words of that rule. It may be that the interest may not be sufficient to be put forward as a shield against the decree-holder's claim, and that was the-reason why the properties were attached and sold in execution of the decree. The word "interest" in O. 21. R. 89 has got a very wide import and should be construed very liberally, as Venkatasubba Rao, J. observed in the case abovementioned. Any inchoate right which a party may have over a property may be sufficient "interest" to enable him to apply under O. 21, R. 89."

(Emphasis supplied)

84. The mandate of this rule is further strengthened by the time limit stipulated by the legislature under sub-rule (2) of Rule 92, wherein the deposit required under Rule 89 has to be made within sixty days from the date of sale. This time-limit also flows from Article 127 of the Limitation Act, 1963. A relaxation of this sixty-day period is only contemplated if, the amount already deposited within this period of sixty days is found to be deficient for the reason that the depositor made a clerical or arithmetical mistake. In such a scenario, the court fixes an additional time within which the depositor shall make good that deficiency.

85. Furthermore, sub-rule (2) goes on to indicate that an application under Rule 89 cannot be made when the same person has already applied under rule 90 for setting aside the sale on the ground of irregularity or fraud. One cannot allege material fraud or irregularity to set-aside the sale while simultaneously also wanting to pay a deposit to set it aside.

86. On a complete reading, what then becomes obvious is that the provision is in the nature of a concession. It is intended to provide the person claiming an interest in the property sold, or a person acting for or on behalf of the persons having such an interest, a last opportunity to receive the property, by getting the auction sale set aside and depositing the amount as stipulated. The payment of the deposit by such persons, by itself, is reason enough to stop the sale of the property from being confirmed. We say so because of two reasons, first, the deposit is in lieu of the execution of the decree which is the sole concern of the executing court in such cases, and secondly, as a sequitur, the deposit of the amount is couched in mandatory terms alongwith the time limit prescribed, reinforcing that the sale cannot be set-aside without the deposit, and within prescribed timeline.

87. Having explained the scope of Rule 89 in the aforesaid manner and having arrived at the conclusion that a pendente lite transferee of the judgment-debtor would also be eligible to make an application under this rule, we are of the view that even if the respondent nos. 1 and 2 respectively were willing to make the deposit and set-aside the sale as contemplated under Rule 89 of Order XXI, they were not in a position to move an application under this rule. This is because they were put to knowledge about the auction of the mortgaged property much after the date of confirmation of sale. The sixty-day time limit which starts running from the date of the sale, had long lapsed. In other words, the stage of the execution proceedings during which they could have preferred an application under Rule 89 had already passed.

b. Scope and application of Rule 90 of Order XXI CPC

88. We may now examine the parameters provided for under Rule 90 and whether the respondent nos. 1 and 2 respectively could have preferred an application under the said rule. Rule 90 reads thus:-

"90. Application to set aside sale on ground of irregularity or fraud.-

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.-The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule."

89. The aforesaid rule contemplates that an application can be made under Rule 90 by four categories of individuals - (a) the decreeholder, (b) the purchaser in such sale, (c) any other person entitled to share in a rateable distribution of assets, or (d) any person whose interests are affected by the sale. The Amendment Act of 1976 had inserted the words "or the purchaser" under Rule 90 and thereby, clarified that the purchasers in the sale made in execution of a decree could also prefer an application under this rule.

90. Moving further, the rule states that the aforesaid individuals can apply to the executing court to set-aside a sale that has already been conducted on the ground that a "material irregularity or fraud in publishing or conducting it" has occurred. Careful attention must be paid to two aspects herein - First, what constitutes "material" irregularity or fraud would depend on the facts and circumstances of each case, and secondly, such material irregularity or fraud must be as regards the manner of "publishing or conducting" the sale in execution of a decree.

91. Along with the aforesaid two-pronged requirement, by virtue of sub-rule (2) the court must also be satisfied, upon the facts proved, that the applicant praying for such sale to be set-aside has sustained a "substantial injury" "by reason of" such material irregularity or fraud. This sub-rule, apart from indicating that the injury must be substantial, also denotes that the injury claimed to be suffered by the applicant must have a direct nexus with the publishing or the manner in which the sale was conducted.

92. The respondent nos. 1 and 2 respectively, have made several allegations as regards the manner in which the sale was conducted including that of the sale being conducted in camera, the auction price being inadequate etc. However, they are also of the opinion that the suit property should not have been attached by the Executing Court in the first place. Therefore, we find it necessary to examine whether an application under Rule 90 could have been made to address any grievances pertaining to attachment.

i. The maintainability of an application under Rule 90 vis-á-vis fraud or irregularities pertaining to stages prior to the proclamation of sale i.e., at the stage of attachment.

93. In order to make an application under Rule 90, the applicant must ensure that the ground which they have taken is not one that they could have raised on or

before the date on which the proclamation of sale was drawn up. This comes as a caution from sub-rule(3) of Rule 90. Sub-rule (3) must, however, not be read to mean that the ground sought to be raised must only be related to a stage which arrives after the date of drawing up the proclamation of sale. One must pay careful attention to the words "grounds which the applicant could have taken". This refers directly to the ability of the applicant to take the same ground on a prior occasion. Necessary context as to why the legislature felt the need to incorporate this sub-rule can be derived from the 14th Report of the Law Commission of India (Vol 1. Pg 454-455) which is reproduced thus:

"50. Proclamation of sale. Rules 64 to 73 contain provisions for the sale of property generally. We have dealt with the notice of the proclamation of sale to be given to the judgment-debtor under Rule 66. The proclamation which is drawn up under sub-rule (2) of Rule 66 must contain several particulars relating to the description of the property. Under clause (e) of sub-rule (2) the court is required to state in the proclamation everything material for a purchaser to know in order to judge of the nature and value of the property. The court has to make an approximate estimate of the market value of the property to be stated in the proclamation. This requirement has been known to cause much trouble and delay.

Under the present law, an omission to state the correct market value of the property or an undervaluation of it has been regarded as a material irregularity affecting the sale under Rule 90. In practice, a judgment-debtor who is intent upon postponing the sale of property allows the sale to be held knowing that the particulars as regards the valuation in the proclamation are defective and thereafter makes an application under Rule 90 for setting aside the sale on the ground of a material irregularity in publishing or conducting the sale. These proceedings involve delays which may well be avoided by omitting the item of the court's estimate of the price. The Patna High Court has made what is in our view a very wholesome and salutary amendment by adding a proviso to clause (e) of sub-rule (2) of Rule 66 as follows:

"Provided that no estimate of the value of the property other than those, if any, made by the decree- holder and the judgment-debtor respectively together with the statement that the court does not vouch for the accuracy of either shall be inserted in the sale proclamation."

Similar amendments have also been made by the High Courts of Calcutta, Madras, Orissa and Punjab. We are of the view that clause (e) may itself be amended on these lines.

51. Setting aside of sale. Under Rule 90 a sale of immovable property in execution of a decree can be set aside on the ground of material irregularity or fraud in publishing or conducting the sale. The right to apply under this Rule is

given to the decree-holder or to any person entitled to a share in the rateable distribution of assets or whose interests are affected by the sale. It is generally accepted that a large percentage of applications made by the judgment-debtors to set aside, sales under this Rule are frivolous and are filed with the object of delaying the delivery of possession.

It is therefore necessary to make an amendment in Rule 90 by providing that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who did not attend, though given notice to appear at the drawing up of the proclamation or of any person in whose presence the proclamation was drawn up, unless an objection was taken by him before the sale was held. Following the recommendations of the Uttar Pradesh Judicial Reforms Committee the High Court of Allahabad has added sub-rule (2) to Rule 90 providing for an award of costs to the decreeholder or auction-purchaser or both as against the party whose application under Rule 90 has been rejected.

Another useful amendment made by the Allahabad High Court in subrule (1) is to the effect that the application to set aside a sale shall not be entertained unless the applicant deposits such amount not exceeding 12 per cent of the sum realized at the sale or furnishes such security as may be fixed by the court, except when the court for reasons to be recorded dispenses with the requirements of this clause. This provision is presumably made in order to compensate the purchaser. Under Rule 89 the applicant at whose instance the sale is set aside has to deposit 5 per cent of the purchase money for payment to the purchaser. We recommend that a provision similar to that in the Allahabad amendment be inserted in Rule 90. An amendment of the Rule on these lines would, in our opinion, serve to control the filing of frivolous applications."

(Emphasis supplied)

94. A reading of the aforesaid would indicate that, an omission to state the correct market value of the property or its undervaluation in the proclamation of sale was earlier considered to constitute a material irregularity in publishing or conducting the sale under Rule 90. Therefore, a cunning judgment-debtor, who was already aware that the particulars in the proclamation of sale as regards the valuation of the property are wrong/defective, could allow the sale to be conducted without raising an issue and thereafter, make an application under Rule 90 with an intent to set-aside the sale and postpone the process.

Furthermore, it was also suggested that an allegation regarding a defect that has occurred in the proclamation of sale must not be made in an application under Rule 90 at the instance of those persons who did not attend the drawing up of the proclamation of sale despite a notice being served upon them, or by those persons

who were present during the drawing up of the proclamation, unless an objection was taken before the sale was conducted.

95. These issues which were identified in the 14th Report were remedied by the insertion of sub-rule (3) in Rule 90 which stated that the objections which could have been taken on or before the date on which the proclamation of sale was drawn up, cannot be brought under Rule 90. The reason behind clarifying this was to fend off such individuals who may unnecessarily and with a view to prevent the sale from being confirmed, prefer an application under Rule 90, when they could have very-well raised their objection at the appropriate time and stage.

96. A recent decision of this Court in G.R. Selvaraj (Dead), through LRs v. K.J. Prakash Kumar and Others reported in 2025 INSC 1353 emphasized that as per the mandate of sub-rule (3) of Rule 90, an applicant cannot, at a belated stage, seek to assail an auction sale, particularly when there existed a prior opportunity to raise the same objection before the proclamation of sale was drawn up. Therein, the applicant had ample opportunity to raise the ground that the entire property need not be sold to satisfy the decree even before the date of the last proclamation of sale. Therefore, it was held that one who has acquiesced despite being put to notice would be precluded from assailing the legality or correctness of the same thereafter. The relevant observations are thus:

"17. Given the insertion of Order XXI Rule 90(3) in the statute book with effect from 01.02.1977, it would be incumbent upon a judgment debtor or any other interested person who applies for setting aside an execution sale, held thereafter, to satisfy the executing Court that the ground upon which the application was made could not have been taken on or before the date on which the proclamation of sale was drawn up. In effect, if such a ground could have been taken by that applicant who seeks setting aside of the sale but he failed to do so at the appropriate stage, he would stand barred, by Order XXI Rule 90(3) CPC, from doing so at a subsequent stage.

It is in this context that the aforementioned observations made by this Court in Desh Bandhu Gupta (supra) gain significance as that was a case involving an execution sale held after the insertion of Order XXI Rule 90(3) CPC and this Court made it clear that, even in the context of a material irregularity under Order XXI Rule 66(2)(a) CPC, if the judgment debtor had been put on notice by the executing Court but had acquiesced, by taking no action before the date of the sale, he would be precluded from assailing its legality or correctness thereafter. In a given case, where a judgment debtor is not given notice prior to the sale, as was the situation in Desh Bandhu Gupta (supra), Order XXI Rule 90(3) CPC obviously cannot posit a bar to his raising a ground thereafter.

18. However, on the facts obtaining presently, we are convinced that not only were the judgment debtors in the case on hand put on notice at every stage during the exercises undertaken by the executing Court to reduce the upset price from one unsuccessful sale to the other, they also participated to an extent and then chose to refrain from doing so. Therefore, they do not have the right to claim that they were not put on notice, though they feebly contended to such effect.

The record clearly negates their claim in that regard. Having failed to raise a material irregularity in the context of Order XXI Rule 66(2)(a) CPC at the appropriate stage, i.e., with regard to sale of a part of the property being sufficient to satisfy the decree, it is not open to them to now raise such a belated plea and blithely place the burden on the executing Court, so as to seek setting aside of a sale held as long back as in the year 2002. Unfortunately, the High Court, having noted the bar postulated by Order XXI Rule 90(3) CPC in para 31 of the impugned judgment, failed to give effect to it assuming that the obligation under Order XXI Rule 66(2)(a) CPC would operate independently upon the executing Court, irrespective of the lapse on the part of the judgment debtors."

(Emphasis supplied)

97. Finally, the Explanation to Rule 90 also takes forward this underlying theme that an irregularity or fraud pertaining to stages prior to the drawing up of the proclamation of sale could also be brought within the ambit of Rule 90, provided an opportunity to raise the same did not exist earlier. It states that "the mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule". It is necessary for us to understand the import and rationale behind this Explanation to ascertain whether grievances which specifically relate to attachment can be brought within the ambit of Rule 90. If yes, then what kind?

98. The 27th Report of the Law Commission (Vol 1, pg 206-207) had made some observations regarding the explanation which came to be added to Rule 90. They are as follows:

"Order XXI, rule 90 and absence of attachment The question whether absence of, or irregularity in attachment is, a defect in the "publication or conduct of the sale" has been discussed in several decisions. At one extreme is the view that attachment is not necessary at all before sale. At the other extreme stands the view that sale without attachment is void. A third view is, that attachment is an irregularity, but not in publishing or conducting the sale. According to the fourth view, a sale is not a nullity because of a defect in the attachment or want thereof, but if it causes "substantial injury", it can be set aside under rule 90. The last view seems to be the correct one.

The object of attachment is to bring the property under the control of the court, and in the case of immovable property one of the requirements is that the order of attachment should be publicly proclaimed. The main object of the proclamation is to give publicity to the fact that the sale of the proclaimed property is in contemplation. The publication of the attachment is thus a step leading up to the proclamation of the sale. The question whether it is necessary to insert a provision to clarify the position on the subject, has been considered. In the draft Report which had been circulated, an Explanation had been proposed to rule 90 to the effect that absence of or defect in attachment shall be regarded as an irregularity under this rule. After some consideration, it has been decided that no such provision need be inserted."

(Emphasis supplied)

99. The 27th Report pointed out that, prior to the insertion of the Explanation, several courts were faced with the issue of whether the absence of, or irregularity in the attachment of a property would constitute a defect in the "publication or conduct of the sale". Several decisions gave divergent opinions. Some operated in extremes i.e., the first view was that an attachment is not necessary at all for conducting a sale and the second view was that a sale conducted without an order of attachment is void and a nullity.

A third view was that matters pertaining to attachment would constitute an irregularity but would, however, remain outside the scope of Rule 90 since they would not amount to an irregularity in "publishing or conducting the sale". The Law Commission found merit in an alternate fourth view which stated that a sale which has been conducted in the absence of attachment or a defect in attachment must not automatically be considered as null and void. Such a defect in the attachment or the want thereof, must cause substantial injury for Rule 90 to be applicable to it.

100. Therefore, the Law Commission subscribed to the idea that irregularities pertaining to attachment must not completely be taken away from the purview of Rule 90. This is plainly evident from its implicit disagreement with the third view taken by a few decisions, as aforementioned. However, it was emphasized that a sale would be set-aside, only if the defect in the attachment or the absence of attachment, causes "substantial injury" to an applicant under Rule 90. Meaning thereby, that if the process involved in publishing or conducting the attachment of a property is riddled with a material irregularity or fraud, interference can be justified under Rule 90 if substantial injury is proved.

The intention was that, just the mere pointing out of the absence of attachment or a defect in attachment, by itself, must not be construed as nullifying the entire sale and thereby, giving rise to substantial injury as a very natural consequence.

In other words, substantial injury is not automatic or implicit in these scenarios. If it were assumed so, then all applications under Rule 90 pertaining to such facts and circumstances would always be allowed and the sale would be setaside. That would be a very extreme position to take.

Due emphasis must be placed on the words "mere" present in the Explanation to reconcile the wording of the Explanation with the aforesaid intention of the Law Commission. This indicates that, apart from pointing out the defect in the process of attachment or the absence of attachment itself, one must move a step forward and also specifically plead as to how substantial injury has been caused, similar to what has already been mandated under sub-rule (2) of Rule 90. This Explanation only clarifies and takes forward the intent already evident from Rule 90 and sub-rule (2) thereof.

101. The fourth alternate view endorsed by the 27th Report is the decision of the Madras High Court in K. Swaminatha Iyer v. K.G. Krishnaswami Iyer and Others reported in 1946 SCC OnLine Mad 189, wherein emphasis was placed on "whether substantial injury was caused" due to the absence of a subsisting attachment order for interference to be justified under Rule 90. The relevant observations are thus:

"As regards the second contention that the Court had no jurisdiction to sell the house as the attachment had ceased, it is to be observed that this Court has held in a series of cases that a sale of immoveable property without previous attachment is not null and void and that the omission to attach before the sale is only an irregularity which renders the sale liable to be set aside if substantial injury is proved.

The position therefore is this: Attachment is a necessary preliminary to a judicial sale, but a sale without attachment is not a nullity. Omission to attach is a material irregularity which renders the sale liable to be set aside under O. 21, R. 90 if substantial injury is proved. Are the plaintiffs then entitled to avoid the sale to Sundararaja Pillai so far as their shares are concerned?

Their father, the first defendant, failed to take any steps to have the sale set aside under O. 21, R. 90 on account of the irregularity, presumably because no substantial injury had resulted. Nor did they avail themselves of that remedy which was open to them also as "persons whose interests are affected by the sale." [See Bubaneshwar Prasad Narayan Singh v. Biharilal]. Even in the present proceedings they have not attempted to prove any substantial injury by reason of the attachment having ceased to be in force at the time of the order for sale.

If omission to attach does not affect the jurisdiction of the Court to sell and is a mere irregularity, the purchaser's title cannot, as it seems to us, be displaced by

any antecedent irregularity in publishing or conducting the sale except by resort to the statutory remedy provided by O. 21, R. 90. That remedy not having been availed of, the purchaser's title has become unassailable and the appeals must fail."

(Emphasis supplied)

102. The 54th Report of the Law Commission of India (Vol 1, pg 186) took the discussion made in the 27th Report forward and suggested that the Explanation, as we see it today, be inserted in Rule 90 in order to put the matter to rest and obviate any further confusion.

103. That rule 90 concerns itself with material irregularities and fraud occurring in the process of sale and those causing substantial injury, at any stage of the sale, even prior to the proclamation of sale, is also brought forth from the decision of this Court in Satyanarain Bajoria and Another v. Ramnarain Tibrewal and Another reported in (1993) 4 SCC 414. Therein, after the decree was passed, the judgment-debtor deposited the decree amount in satisfaction of his debt. However, after about three years, the decree-holder had filed an application before the executing court claiming an additional amount. In execution of this application, the property of the judgment-debtor came to be sold.

It was of note that the decreeholder himself had purchased the property in the auction sale. Furthermore, before the expiry of the sixty-day period as provided under Article 127 of the Limitation Act, 1963, the sale was confirmed by the executing court. In such circumstances, the judgment-debtor had preferred an application under Rule 90 within the prescribed period of limitation for setting aside the sale alleging that he had no knowledge of the sale whatsoever because no process had been served on him at any stage.

The notice published in the newspaper during the time of proclamation of sale also deliberately contained incorrect particulars to misguide the judgment-debtor. Upon a detailed consideration of the evidence and the oral testimony of several witnesses, the executing court concluded that no notice was served as prescribed under Rules 22 and 54 respectively, upon the judgment-debtor and since, "substantial injury" was caused to him, the application under Rule 90 must be allowed. The relevant observations are reproduced hereinbelow:

"13. It will be noticed that the decree was passed as far back as 1964. The present application was filed in 1968 more than 2 years after dismissal of earlier execution application and, therefore, for further proceedings in pursuance of a fresh execution application, the court was duty bound to issue notice and serve notice of the execution application on the judgment-debtor as provided for in Order 21 Rule 22 of the Code which contemplates inter alia that if an application

for execution is made more than two years after the date of the decree, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.

The last order made in the earlier execution application was on November 29, 1965 and the second execution application was filed more than two years thereafter i.e. in 1968. Therefore, issuing of notice under Order 21 Rule 22 was mandatory. The idea of issuing such a notice is to ascertain whether the averments as to the amount being claimed in the execution application are true or incorrect. Besides, even if the amount was due, the judgmentdebtor could have paid it and he was deprived of this opportunity to clear off dues, if any, under the decree. It is only after the service of notice under Order 21 Rule 22 of the Code and failure of the judgment-debtor to pay the decretal amount, as claimed, that the decree-holder takes recourse to proceedings under Order 21 Rule 54 of the Code.

14. It will be noticed that sub-rule (1) of Rule 54 of Order 21 of the Code contemplates an order of prohibition to be served on the judgment-debtor from transferring or charging the property in any way first if the property sought to be sold is immovable property. This is for the benefit of the decreeholder. Even at this stage if the judgment-debtor had notice of attachment, he could pay the balance decretal amount and thereafter attachment would either not be effected and if already effected would be vacated. Sub-rule (1-A) contemplates that this order shall also require the judgmentdebtor to attend court on a specified date, to take notice of the date to be fixed for settling the terms of the proclamation of sale provided under Rule 66 of Order 21 of the Code.

There was no evidence that the judgment-debtor was personally served with such a notice. Though sale proclamation after settlement of terms of proclamation ex parte was published in local newspaper Dalit Mitra but that gave wrong case number and wrong name of the court. There was also no evidence that any notice was affixed on a conspicuous part of the court-house or that the provisions of sub-rules (1-A) and (2) of Rule 54 of Order 21 of the Code were complied with. Rule 54 is again for safeguarding the right of the decreeholder as well as the judgment-debtor.

By the notice the judgment-debtor is put on notice that his property is attached and would be sold unless he pays off to the decree-holder. The trial court observed that this notice is required to be affixed on a conspicuous part of the property. We do not mean that merely if it is not being affixed on the conspicuous part, the sale would be liable to be set aside but we are only emphasising the requirement of it being affixed on a conspicuous part of the property and on court house.

All these stages give an opportunity to the judgment-debtor to pay off dues, if any under the decree. The proclamation of sale in this case was thus settled without notice to the judgment-debtor. The judgment-debtor had the right to participate in the proceedings for settlement of terms of proclamation of sale and atleast to know the date of sale. This is necessary since Order 21 Rule 89 of the Code confers again a right on any person having interest in the property sold, to file an application to set aside sale on making deposit as contemplated by Rule 89.

15. The lower appellate court after assuming that there was no proper service of notice under Order 21 Rule 54 of the Code of Civil Procedure went on to the question of judgmentdebtor's having not pleaded any substantial loss or injury. It will be noticed that it was a case of typical money lender who has evil-eye to grab the property of the judgment-debtor somehow or the other. He allows the first application for execution to be dismissed; waits for practically three years to file another execution application claiming a sum of Rs 350 only; sees to it that judgment-debtor is kept ignorant of the proceedings in court; obtains permission to himself buy the property; gets the property sold for recovery of petty amount of Rs 649.45ps and buys the property himself.

This again is a typical illustration of fraudulent conduct of decree-holder. In such cases the court will even presume loss and substantial injury to the judgment-debtor. In the present case there was evidence of value of the property and both the parties had led evidence in this behalf and it was too late for the lower appellate court to blame the executing court for recording evidence as to the valuation at that stage. The fraud permeates the whole proceedings. At no stage was the judgment-debtor made aware of the pending execution application till even the confirmation of sale and purchase of the property by the decree-holder himself.

17. It is true that now it has been specifically clarified by the Explanation to Rule 90 of Order 21 of the Code that "the mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule". But if the judgment-debtor is kept totally ignorant of the execution proceedings right from the date of execution application till sale, it cannot be merely called a mere irregularity in attachment and thus of no consequence.

18. The facts of the case show that the lower appellate court totally missed the points which were required to be determined and merely by assuming that even if notice under Order 21 Rule 54 of the Code is not served, by virtue of explanation to Rule 90 of Order 21 of the Code it is not a material irregularity or illegality to auction sale. The lower appellate court totally misunderstood the importance and efficacy of notices being served in execution proceedings under Order 21 Rule 22; Order 21 Rule 54(1-A) notice for settlement of terms of proclamation in the

presence of the judgment-debtor which led to the finding recorded by it and the finding on fact in the circumstances is totally vitiated."

(Emphasis supplied)

104. In Satyanarain Bajoria (supra), this Court has specifically stated that the Explanation to Rule 90 must be understood in the right manner and courts must be cognizant of differentiating between a "mere irregularity or defect" from one that causes "substantial injury". In its only in the latter scenario that one can press an application under Rule 90.

105. Having now understood the scope and intent underlying subrule(3) of Rule 90 and the Explanation thereto, it can be said without any cavil of doubt that although any fraud or irregularity in the process of publication of an order of attachment or the lack thereof is broadly covered within the scope of Rule 90, yet an applicant must be able to prove that he has suffered substantial injury as a consequence of it. At the very least, the facts must be able to convince that substantial injury has been caused. Only then can it fall within the ambit of Rule 90.

ii. Questions on whether the judgment-debtor had any "saleable interest" over the attached/sold property cannot be brought under the ambit of Rule 90

106. However, the scope of Rule 90 as elaborated in the aforesaid paragraphs must, by no means, be read to mean that a grievance that the judgment-debtor did not have any title to the attached property, can be raised by an applicant under Rule 90. This would squarely fall within the scope of Rule 58 wherein one is entitled to make a claim or raise objections "on the ground that such property was not liable to attachment". The same would be beyond the purview of Rule 90 also for the reason that under this rule the executing court, unlike Rule 58, does not have the expanded scope to decide all questions relating to the right, title, or interest arising between the parties to the proceeding.

107. There exists a fine but pertinent distinction between the questions - whether the attachment and/or sale of the immovable property could have been ordered by the executing court and whether the manner in which such attachment and/or sale has taken place, was proper or not. The former directly refers to a dispute pertaining to whether the immovable property could be attached or sold for the purpose of satisfaction of decree, whereas the latter refers to 'how' such attachment or sale is effected for the purpose of satisfying the decree. It is only the latter which is covered by Rule 90.

108. To buttress the aforesaid, we may look into the decision of High Court of Allahabad in Ch. Syed Iqbal Husain v. Rameshwar Dayal, reported in 1972 SCC

OnLine All 288, wherein the Court held that the question as to whether the property was saleable in execution of the decree or in other words, whether the judgment-debtor had a saleable right in the immovable property was neither a question of fraud nor a question of material irregularity, and hence, would be beyond the scope of Order XXI Rule 90. The relevant observations read thus:-

"7. The next question which was pressed in this appeal was that the plea now raised by Iqbal Husain is barred by constructive res judicata. In so far as the plea that the property in dispute was not saleable, was not taken by Iqbal Husain in his objection which he filed under Order 21, Rule 90 of the CPC is concerned, the reply to this question would come round the fact as to whether such an objection is covered under Order 21, Rule 90 of the CPC or under Section 47 of the CPC Order 21, Rule 90 of the CPC relates to setting aside of a sale on the ground of a material irregularity or fraud in publishing or conducting if.

Does the question about the saleability of the property relate to a question of material irregularity or fraud in publishing or conducting a sale? My reply to this question would be in the negative. There are a number of authorities to the effect that where the decree is against the asset of a deceased debtor, an objection by the judgment-debtor that the property belongs to him personally is one covered under Section 47 of the CPC. Such a person cannot file a regular suit or raise such an objection under Order 21, Rule 58 of the CPC.

The question as to whether the property was saleable in execution of the decree is neither a question of fraud nor a question of material irregularity. In the instant case, the only question was as to whether the property was the asset of the deceased debtor against whose asset the decree has been passed or it was the personal property of Iqbal Husain. Such a question, in my opinion, is beyond the ambit of Order 21, Rule 90 of the CPC."

(Emphasis supplied)

109. This Court in Kadiyala Rama Rao v. Gutala Kahna Rao and Others reported in (2000) 3 SCC 87 had similarly emphasized that the issue of absence of a saleable interest cannot be introduced as a ground under Rule 90. The relevant observations are as follows:

"10. The provisions of Order 21 Rule 90 thus categorically envisage that material irregularity and fraud alone would confer jurisdiction on to the executing court to set aside the same. Needless to record here that there is no evidence of fraud or material irregularity, neither even an allegation in regard thereto. The only issue was of saleable interest for a period of 15 years since the deed of sale as executed by the Municipality of Rajamundhry in favour of the judgmentdebtor, contained a

condition that the property cannot be alienated by the judgment-debtor for a period of 15 years.

It is to be noticed at this juncture that question of saleable interest does not come within the ambit of Order 21 Rule 90 and as such the judgment-debtor had no locus standi to apply to the court for setting aside the sale. In the present factual context, statute recognises such a locus standi only in the event of material irregularity or fraud and not otherwise. Apart therefrom, saleable interest can only be challenged by the purchaser and not by the judgment-debtor since the purchaser's right would otherwise be clouded therewith by reason of there being no saleable interest in the property so far as the judgment-debtor is concerned. Order 21 Rule 91 is specific on this score and a right has been conferred on to the purchaser only.

14. The learned Single Judge erroneously proceeded on a certain misconception of facts as also of law by reason of the factum of challenge of sale being on the ground of saleability. Order 21 Rule 90 does not envisage the issue of saleability and the learned Single Judge was in error in introducing such a concept under Order 21 Rule 90 of the Code. In any event as noticed above the issue of "saleable interest" can only be agitated by the purchaser in terms of Order 21 Rule 91 and not in any event by the judgment-debtor. The ground of challenge is specific in the provision itself, namely, material irregularity or fraud and in the absence of any evidence or even an allegation in regard thereto in the petition under Order 21 Rule 90, question of introduction of the concept of no saleable interest or another opportunity to the judgment-debtor does not and cannot arise."

(Emphasis supplied)

110. One of the principal contentions of the respondent nos. 1 and 2 respectively is that, since the suit property had been sold to them by one of the judgment-debtors, prior to the attachment of the property by the Executing Court, the said property could not have been attached and consequently, made a subject-matter in the execution proceedings for the satisfaction of the original decree.

This is because, according to them, the judgement-debtor had ceased to be the lawful title-holder of the suit property on the date of the order of attachment i.e., on 08.10.1985 owing to the transfer of the suit property in their favour by way of the two sale deeds dated 13.05.1985 and 24.06.1985 respectively. It is to be noted that the respondent nos. 1 and 2 respectively, wish to set-aside the sale conducted by the Executing Court only insofar their share is concerned i.e., only as regards a portion of the entire mortgaged property sold by way of auction and confirmed in favour of the appellants herein.

111. Although much has been canvassed on behalf of the respondent nos. 1 and 2 respectively that the auction was conducted in an irregular manner inasmuch, as the auction process was conducted in secrecy, the property was undervalued and was eventually sold off to the relatives of the judgment debtor, yet these reasons do not constitute the actual grievance of the respondent nos. 1 and 2 respectively. In other words, there was no "substantial injury" which was caused to them by reason of these alleged irregularities.

112. Why an application under this rule could not have been maintained may be better understood from one another angle. Had the auction in the present case been conducted in the prescribed manner, in accordance with Order XXI, even then, the respondent nos. 1 and 2 respectively would have been aggrieved. We say so because the source of their grievance is the attachment and sale of the suit property; the source is not the manner in which the sale was conducted.

In other words, the injury that may have been sustained by the respondent nos. 1 and 2 respectively cannot be said to stem from the aforesaid alleged irregularities in the sale, but rather by the deceptive manner in which the judgment-debtors allowed the suit property to be attached by the Executing Court under Rule 54 of Order XXI, despite the fact that one of them had already sold the same to the respondents nos. 1 and 2 respectively. However, we have already explained that an issue regarding the saleability of the property or the title of the judgment-debtor to the property, could not be brought within the ambit of Rule 90.

113. The respondent nos. 1 and 2 respectively have also made averments that, at all stages of the execution proceedings they were deliberately kept in the dark. Therefore, it was not just the secretive nature of the auction sale, the undervaluation of the property and the relationship of the auction-purchasers with the judgment-debtors that rendered the entire process doubtful, but that notices even during prior stages of the execution proceedings were also not served upon them. Hence, the auction sale was entirely bad for having been done at their back and expense. We have explained that irregularities pertaining to stages prior to the proclamation of sale could also very well be brought within the scope of Rule 90.

114. Let us now ascertain whether in the entire process of execution there was any other irregularity, for example, whether the respondent nos. 1 and 2 were entitled to receive some notice which was not served upon them. The notices under Rules 22 and 66 respectively, only pertain either to the judgment-debtor alone (or the persons against whom execution is applied for) or to the judgment-debtor and the decree-holder.

On the other hand, the notices mentioned under Rules 54 (pertaining to order of attachment) and 67 (pertaining to order of proclamation of sale) respectively, are

required to be proclaimed by the beat of drum or any other customary mode at some place on or adjacent to the concerned property. Further, a copy of such order is to be affixed on a conspicuous part of the property, courthouse and the office of the Collector/Gram Panchayat.

115. It is not the case of the respondent nos. 1 and 2 respectively, that the aforesaid Rules 54 and 67 respectively were not complied with or that there were any irregularities as regards the issuance and publishing of notices under these rules. They have not specifically pleaded that there were material irregularities in the aforesaid context and that therefore, that they were put to any substantial injury. In the absence of such a specific pleading, it would not be open to the executing court or for us to assume the contrary. [See: Ram Maurya v. Kailash Nath and Others, (1999) 9 SCC 276]

116. No specific pleading is evident from the record especially as regards non-compliance with Rules 54 and 67 respectively and insofar as the other alleged irregularities specifically mentioned in the plaint are concerned, we have already explained as to how they could not have caused substantial injury to the respondent nos. 1 and 2 respectively. Therefore, the twin conditions for setting aside any sale under Rule 90, i.e., (i) material irregularity or fraud in publishing or conducting the sale AND (ii) substantial injury being sustained by reason of such irregularity or fraud, cannot be said to have been fulfilled. In light of the aforesaid, we are of the view that the respondent nos. 1 and 2 respectively could not have maintained an application under Rule 90 of Order XXI CPC.

117. Another aspect of the matter is also that, the order of sale declaring the appellants as the highest bidders was issued on 20.06.1998 and as per Article 127 of the Limitation Act, 1963, the time-limit to prefer an application under Rule 90 would be sixty days from the date of the sale. The same would have lapsed on 20.08.1998 and any delay could not have been condoned. Therefore, limitation would have also come in the way of any application under Rule 90 that the respondent nos. 1 and 2 respectively may have preferred. [See: Aarifaben Yunusbhai Patel and Others v. Mukul Thakorebhai Amin and Others, (2020) 5 SCC 449]

III. Whether the respondent nos. 1 and 2 respectively, could have maintained a separate suit in light of the bar envisaged under Rule 92(3) of Order XXI CPC and Section 47 CPC respectively, and whether they are "third parties" as referred to under Rule 92(4) of Order XXI CPC?

a. Scope and application of Rule 92 of Order XXI CPC

118. Order XXI Rule 92 reads thus:-

"92. Sale when to become absolute or be set aside.-

(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute: Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and where, in the case of an application-under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby:

Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decreeholder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered."

119. Order XXI Rule 92 governs the circumstances in which the sale of an immovable property attains finality and becomes absolute or, conversely, stands set-aside by the executing court. No separate application is required to be made to the executing court for this purpose.

120. Sub-rule (1) of Rule 92 clearly states that where no application is filed under Rules 89, 90, or 91 respectively within the prescribed period of limitation, or where any such application is filed but disallowed, the executing court shall proceed to pass an order confirming the sale, upon which the sale shall become

absolute. In other words, where the remedies under Rules 89 to 91 respectively are not invoked or do not succeed, the sale stands confirmed.

121. The proviso to sub-rule (1) of Rule 92 takes care of a situation where the order of sale has been passed while an application under Rule 58 raising a claim or an objection as regards the attachment of the property sold, is still pending adjudication. While the process of sale by itself does not come to a halt solely owing to an application being filed under Rule 58, the executing court stands barred from confirming the sale until such an application under Rule 58 is finally disposed. This is also due to the fact that upon an order of confirmation of sale being passed, the same becomes absolute and immune from being assailed under any rule preceding rule 92. Therefore, it becomes the duty of the executing court to ensure that no application remains pending or undecided when it is making its decision under Rule 92(1).

122. Rule 92(1) being couched in a mandatory language reflects that the executing court is cast with an obligation to pass an order confirming the sale when the requisites mentioned therein stand fulfilled. When the sale becomes absolute, the executing court proceeds to grant a certificate under Rule 94, specifying the particulars of the property and the name of the purchaser.

123. On the contrary, under Rule 92(2), where an application under Rules 89, 90, or 91 respectively, as the case may be, is made within the prescribed period of limitation and allowed, the court must proceed to pass an order setting aside the sale.

b. The bar to a separate suit envisaged under sub-rule (3) of Rule 92.

124. Rule 93(3) prohibits any person against whom an order under subrule (1) or sub-rule (2) respectively has been passed, from instituting a separate suit to set-aside that order. Thus, what Rule 92(3) seeks to achieve is to prevent the institution of separate suit by those persons who are already bound by the order of confirmation/setting aside made under sub-rule (1) or (2) of Rule 92 respectively. They simply must not be allowed to rehash their grievance by way of a separate suit.

The object is to accord some finality to the order passed under sub-rule (1) of Rule 92 (subject to an appeal against the order disallowing an application under 89, 90 or 91 respectively or confirming a sale under Rule 92(1)). Moreover, this sub-rule to Rule 90 also fortifies that there should be some sanctity granted to a sale which has been conducted in execution of a decree in case it comes to be confirmed and it indirectly reinforces the weight of the words "the sale shall become absolute" occurring in sub-rule (1) of Rule 92.

125. On the other hand, when an order setting aside the sale has been passed under sub-rule (2) of Rule 92, some finality is, again, required to be accorded to it (subject to an appeal against the order allowing an application under 89, 90 or 91 respectively or settingaside the sale under Rule 92(2)). It is ensured that such an order setting aside the sale is not subject to further litigation by way of a separate suit and there remains no unnecessary delay in moving ahead with or resuming the execution process to enable the decreeholder obtain the fruits of his decree. To put it simply, seeking to either set aside an order confirming the sale under sub-rule (1), or to set-aside an order setting aside a sale under sub-rule (2), both, by instituting a separate suit, is barred.

126. Sub-rule (3) only foists this bar on "any person against whom such an order is made". The breath of this bar to filing a separate suit is, therefore, only applied to those persons against whom an order either confirming or setting-aside the sale, operates. The decisions of several High Courts have interpreted the extent of the operation of this bar based on the unique grounds which have been raised in the facts and circumstances of each case, and rightly so.

127. However, what appears to be the general rule is that -

(a) any person who has already filed an application under Rules 89, 90 and 91 respectively, and the same has been disallowed, cannot re-agitate their grievances by instituting collateral proceedings once the sale has been confirmed; and

(b) any grievance pertaining to grounds which are covered under Rules 89, 90 and 91 respectively, cannot be brought in by way of a separate suit after the sale has been confirmed, especially when such a person instituting the suit was competent to maintain an application under Rules 89, 90 or 91 respectively, had they preferred it within the time stipulated under Article 127 of the Limitation Act, 1963.

128. With a view to elaborate on (a), it is obvious that it embodies the well-entrenched principle of res judicata. However, one must particularly look closely into how or why the application under Rule 90 was disallowed to contextualize when a separate suit filed after the confirmation of the sale, could be said to be maintainable. Let us look at a few illustrations in this regard:

i. Illustration 1: Say, the application under Rule 90 was regarding certain alleged irregularities or fraud in publishing or conducting the sale which did not cause substantial injury to the applicant and for this reason, his application was disallowed. In such a scenario, the bar under sub-rule (3) of Rule 93 would apply to a suit which is brought by the same applicant to set-aside the order confirming the sale made under Rule 92, upon the same or similar grounds.

ii. Illustration 2: Say, the application under Rule 90 was dismissed for the reason that, although the alleged irregularities or fraud in publishing or conducting the sale may have caused substantial injury to the applicant yet it was not maintainable because it was not preferred within the prescribed period of limitation i.e., it was preferred after the sale was confirmed. In such a situation, the bar under sub-rule (3) of Rule 92 would squarely apply to a separate suit preferred by the same applicant seeking to set-aside the order confirming the sale by alleging irregularities or fraud in publishing or conducting the sale.

iii. Illustration 3: Say, the application under Rule 90 was dismissed because the applicant sought to raise the issue that the judgment-debtor did not have any saleable interest in the property. This application came to be disallowed for the reason that such questions cannot be gone into by the executing court under Rule 90. Here, the bar under sub-rule (3) of Rule 92 would not apply to a separate suit instituted by the same applicant challenging the title of the judgment-debtor. This is because the question of saleable interest was raised under the misapprehension that Rule 90 would cover an adjudication of the same. Such an applicant must not be prevented from raising his grievance before a competent forum, even after the sale is confirmed.

129. We have emphasized on placing the scenario covered under the third illustration beyond the bar under sub-rule (3) of Rule 92, in light of our exposition of law as regards Rule 90 of Order XXI CPC. Under the scenario mentioned in third illustration, the maintainability of a separate suit would also depend on whether the applicant under Rule 90 was a party to the original decree or his representative (as understood under Section 47 CPC) or whether they were a third party. It is only in the latter case where, the party is a third party, can one maintain a separate suit in that regard. We would further elaborate on the reasoning behind holding so, in the subsequent paragraphs of this judgment by discussing the scope of Section 47 and also the meaning of the words "third party" occurring in sub-rule (4) of Section 92.

130. On the aspect referred to in (b), we say that someone who was competent to prefer an application under Rules 89, 90 or 91 respectively, but did not raise it at the appropriate time i.e., within the limitation period prescribed under Article 127 of the Limitation Act, 1963, would also be covered by the bar under sub-rule (3) of Rule 92. This is because the relief envisaged under the aforesaid rules are strictly time-bound and according to Article 127 of the Limitation Act, 1963, the prescribed period of limitation would start running "from the date of the sale" and not from the "date of knowledge of the sale" or "the date of knowledge of the grounds covered under those rules".

The decision to have the limitation period tethered to the date of sale itself and not making it dependent on the knowledge of any prospective applicant, seems to

have been conscious on part of the legislature. It was designed to ensure that the execution proceedings do not take forever to grant the decree-holder the amount that he is entitled to and that they also not make the auction-purchaser endlessly wait for the sale certificate to be issued to him.

Therefore, it would be of no avail for one to say that they didn't have the requisite knowledge to file an application under Rules 89, 90 or 91 respectively and that they must be allowed to institute a separate suit for the same grounds envisaged under those rules. This plea is especially rampant in relation to grounds envisaged under Rule 90 and the same must be curbed. However, we must emphasize that if a separate suit is allowed for grounds which could be raised under Rule 90, this would, in effect, render the limitation period laid out under Article 127, meaningless.

131. In addition to the aforesaid, it must be noted that sub-rule (1) of Rule 93 states that "where no application is made under rule 89, rule 90, or rule 91", the sale would be confirmed. If it was the intention of the legislature to allow grounds or grievances which could have verywell been brought under Rules 89, 90 or 91 respectively, to also be brought under a separate suit, then there would have been no reason for such a phrase to be inserted in the first place.

If such a phrase was omitted by the legislature, then there may have been some scope for an individual to state that they could not prefer an application under Rules 89, 90 or 91 respectively, for the want of knowledge of the proceedings, and that therefore, they must be allowed to institute a separate suit in that regard; that otherwise great prejudice must be cause to such a plaintiff. However, it is almost as if the legislature had foreseen such a defence and therefore, deemed it fit to clarify that even if such an application under Rules 89, 90 or 91 was not preferred, the sale would be confirmed, and the clock would not be turned back.

Having acknowledged that this phrase has been inserted with a specific purpose, we must not render it otiose by allowing the same grounds to be raised under a separate suit and dilute the intent that is manifest from a combined reading of this phrase with sub-rule (3) of Rule 92 i.e., that there is only a small window of time within which such grounds falling under Rules 89, 90 or 91 respectively, can be taken. In this regard, Mr. Vikas Singh would be right in submitting that an aggrieved party must not be able to circumvent or indirectly overcome the limitation prescribed for an application under Rule 90 and be allowed to institute a separate suit on the same grounds.

132. To further buttress the aforesaid, we may look at the decision of the Punjab and Haryana High Court in Basanta Mal v. Behari Lal and Another reported in 1952 SCC OnLine Punj 115. Therein, no application was made under Rules 89, 90 or 91 respectively and consequentially, the auction sale was confirmed. After

more than 10 years, the appellant instituted a suit, which amongst other reliefs, prayed that the auction be set-aside for being fraudulent. The respondent took recourse to sub-rule (3) of Rule 92 to submit that the suit was barred. Finding merit in the said submission, it was observed that the objections which were raised in the suit fell within the ambit of Rule 90 and therefore, a suit in that regard would be barred. The relevant observations are thus:

"From paragraph 9 of the plaint it appears that the right of redemption was sold on the 19th of April, 1935 and that the sale was confirmed within rule 92 of Order 21 of the Code of Civil Procedure on the 14th of May, 1935. In paragraphs Nos. 10, 11 and 12 of the plaint it is stated that there was fraud in the matter of publishing the sale. Clearly the objections on which the auction sale is sought to be set aside, fall within rule 90 of Order 21 of the Code of Civil Procedure. If so, rule 92(3) of Order 21 bars the suit.

Article 166 of the Limitation Act provides that the period of limitation for an application to set aside an auction-sale is 30 days from the date of the sale.

Now, the sale which is sought to be set aside took place on the 19th of April, 1935, while the suit was brought on the 27th of March, 1946."

(Emphasis supplied)

133. To the same effect, is the decision of the Bombay High Court in Nagindas Chhotalal v. Kunversha Hormasji and Others reported in 1946 SCC OnLine Bom 20 wherein it was observed that when all the grounds set out in the plaint fell under the scope of Rule 90, and having failed to prefer the said application before the sale was confirmed, the suit would be barred under sub-rule(3) of Rule 92. The relevant observations are thus:

"If the plaintiffs wanted to have the sale set aside on the ground of such an irregularity, the only course open to them was to make an application under O. XXI, r. 90, of the Civil Procedure Code. But they failed to make such an application and allowed the sale to be confirmed by the Collector under O. XXI, r. 90 [sic r. 92], sub-r. (1). There is no ground set out in the plaint which is not covered by O. XXI, r. 90 of the Civil Procedure Code. Hence the present suit is barred under O. XXI, r. 92, sub-r. (3) of the Civil Procedure Code and the learned District Judge was wrong in setting aside the dismissal of the suit and remanding it for further hearing."

(Emphasis supplied)

134. In Siddagangaiah (supra) as well, one of the issues pertained to whether the dismissal of an application under Rule 90 for default of appearance, could

operate as a bar to the filing of a separate suit by the same applicant. This Court answered in the affirmative, and observed thus:

"23. Where an application has been filed under Rule 90 Order 21 CPC to set aside a sale on the ground of material irregularity, and the sale is confirmed under Rule 92(1) of Order 21, the objector is precluded by virtue of the provisions under Order 21 Rule 92(3) from bringing a suit to set aside the sale on the same grounds as held in Kalianadhahotla Brahmayya v. Maria Appayya Sastri [Kalianadhahotla Brahmayya v. Maria Appayya Sastri, 1920 SCC OnLine Mad 212 : ILR (1921) 44 Mad 351 : AIR 1921 Mad 121 : 62 IC 203] , Ma Saw v. Maung Kyaw Gaung [Ma Saw v. Maung Kyaw Gaung, 1927 SCC OnLine Rang 58 : AIR 1928 Rang 18] and Nand Kishore v. Sultan Singh [Nand Kishore v. Sultan Singh, 1925 SCC OnLine Lah 293 : AIR 1926 Lah 165].

24. There can be restoration of the petition dismissed for default filed under Order 21 Rule 90 and thereafter if sale has been confirmed, it is provided under Order 21 Rule 92(3) that no suit to set aside an order made under Rule 92(1) shall be brought by any person against whom such an order is made. Order 21 Rule 92(1) provides that where an application has been filed under Order 21 Rule 89, 90 or 91, same has been disallowed, the court shall make an order confirming the sale and thereupon the sale shall become absolute, and no suit shall lie as per the mandate of sub-rule (3) of Rule 92 of Order 21 CPC against whom such an order is made.

The order confirming the sale may be made either where no application is made at all to set aside the sale or where an application is made and disallowed may be that it is dismissed for default. No suit shall lie in either case to set aside the order confirming the sale. The refusal to set aside a sale is an order appealable. In case the court has set aside or refused to set aside a sale that would include a case where an application under Order 21 Rule 89, 90 or 91 has been dismissed for default.

25. In the instant case admittedly an application was filed by the original plaintiff under Order 21 Rule 90 read with Section 47, on the ground that he was the owner of the land in question purchased by a sale deed dated 9-11-1974 for a sum of Rs 10,000 and was placed in possession. He was not aware of the court sale. There was no beat of drums before the auction was held. He was not aware of the execution proceedings. He was a purchaser for value. The property was not correctly valued. There were material irregularities in the conduct of the sale. Hardship would be caused in case auction was confirmed. Thus, prayer was made to set aside the auction-sale. The aforesaid application had been dismissed. Thus, Order 21 Rule 92(3) CPC would operate as a bar for the entertainment of the fresh suit on the ground so urged.

26. The plaintiff has totally suppressed the factum of court auction-sale and confirmation in the plaint and did not make any averment that he had filed an application under Order 21 Rule 90(1) CPC and it was dismissed on 31-3-1978 whereas the suit was filed on 19-4-1978 after 19 days of the dismissal of the objection and confirmation of the sale. The plaintiff has not questioned the auction so held by the court on the ground of fraud or any material irregularity. He has claimed himself to be a bona fide purchaser. That plea was also raised in the application filed under Order 21 Rule 90 CPC. Dismissal of the same would preclude him to file a fresh suit."

(Emphasis supplied)

135. When no application has been made under Rule 90 and a suit is preferred directly to assail an auction sale conducted in execution of a decree, courts have attempted to adopt a balanced approach in deciding whether the suit was maintainable or not. While, on the one hand, courts have taken a strict approach in situations where the grounds which fall under Rules 89, 90 or 91 are being raised in a separate suit; on the other hand, in cases where the executing court did not have jurisdiction to sell the properties in the first place and therefore, the sale as a whole was rendered, a nullity, several decisions have leaned in favour of holding the separate suit maintainable.

To curb any misuse of this leeway granted in the latter situation, over the period of time, the discussions reflected in the various law commission reports and the coming into force of the 1976 amendment respectively, have shown us that several grounds which were earlier interpreted as rending the whole sale a nullity were clarified as only being irregularities which would fall under the scope of Rule 90 instead. As a result, this progressively narrowed down the already small scope which existed for the filing of a separate suit.

136. An example of allowing the filing of a separate suit on the ground of the sale as a whole being rendered a nullity (as understood in the present narrow manner) would be the decision of the Bombay High Court in Smt. Savitri Poto Gaonkar & Ors. v. Jaganath Cau Bhomkar & Ors. reported in 2005 SCC OnLine Bom 904. Therein, certain properties which were neither the subject-matter of the execution application or the attachment nor the proclamation of sale, in fact a property which was not auctioned at all in reality, was included, for the first time, in the certificate of sale issued at the time of the sale confirmation under Rule 92.

In other words, the executing court did not have any jurisdiction to sell such property at all and the confirmation of sale against it was void and non-est. The question was whether a suit as regards the setting-aside of auction vis-à-vis the said property would be barred due to the operation of sub-rule (3) of Rule 92. Holding the suit to be maintainable, it was observed as thus:

"21. Both the lower courts, not having followed the said procedure, in my view, have committed a grave error in deciding the suit pertaining to the property described in 2(f) on the preliminary issue by holding that it is not maintainable in view of the bar under Rule 92(3) of Order XXI of the Civil Procedure Code. While deciding the issue regarding the maintainability of the suit the trial court ought to have first considered whether the provisions of Order XXI, Rules 92 sub-clause (3) were applicable to the property in question.

If there is prima facie evidence to indicate that the said property was not the subject matter of the auction which was held, in that case, the provisions of order XXI Rule 89, 90, 91 and 92 would not apply at all and the Executing Court, therefore, would not be justified in including the property which is not auctioned or sold in auction and include such property in its order of confirmation of sale. In my view, therefore, it the sale itself had not taken place in respect of a particular property the confirmation of the sale of such property need not arise. Such an order could be challenged in the second suit on the ground that it is non est. All these questions, therefore, ought to have been decided by the trial court along with other issues which were raised by the parties in respect of the property described in 2(f).

The submission of the learned Counsel appearing on behalf of the respondents that the issue whether the suit is barred under the provisions of Order XXI, Rule 92(3) is a pure question of law and, therefore, it would be decided by the trial court as a preliminary issue cannot be accepted. In a given case, if the plaintiffs are in a position to show that the property which is not sold in auction is referred in the final confirmation of sale under Order XXI, Rule 92(1) then the said issue would become a mixed question of fact and law and the Court would be required to decide the issue after considering the factual aspect of the case and the oral and documentary evidence which is brought on record and, thereafter, decide whether the bar under the aforesaid section should be made applicable or not.

If such a question which is a mixed question of fact and law is to be decided by the trial court then, in my view, it would be appropriate to decide all other issues which have been raised and framed by the trial court. For the aforesaid reasons, in my view, both the lower Courts have committed an error in not deciding the preliminary issue in respect of the property described in para 2(f) along with other issues and, on that ground also, the finding of both the courts below that the suit is not maintainable in respect of the property described in 2(f) is clearly illegal and the said finding will have to be set aside, and the matter will have to be remanded back to the trial court for deciding the maintainability of the suit vis-a-vis the property described in 2(f) along with other issues which have arisen in the matter."

(Emphasis supplied)

137. In a situation akin to that of Savitri Poto Gaonkar (supra), where the entire sale is alleged to have been without jurisdiction and therefore, a nullity or non-est, if the persons seeking to assail the sale are either the parties themselves or their representatives, the appropriate course of action would be to file an application under Section 47 CPC before the executing court itself, rather than preferring a separate suit.

138. This is because several decisions have, time and again, emphasized that the recourse under Section 47 CPC could be availed in a situation where the execution proceedings were itself without jurisdiction and a nullity. Therefore, in holding a separate suit maintainable, along with ensuring that it is not hit by the bar under Rule 92(3), one must also be mindful of the fact that the words "and not by a separate suit" finds mention under Section 47 as well. Therefore, courts have to consider the interplay between allowing the filing of a suit and the possibility of raising such an issue under Section 47 CPC.

c. The interplay between the bar to a separate suit as provided in Rule 92(3) of Order XXI CPC and the bar to a separate suit referred to under Section 47 CPC.

139. Mr. Vikas Singh would submit that the Trial Court also lacked jurisdiction to entertain the suit filed by the respondent nos. 1 and 2 respectively, in light of the bar to the filing of a separate suit envisaged under Section 47 CPC. The questions raised in the suit, according to him, directly related to the execution of the original decree which lies under the exclusive domain of the executing court. He further submitted that the impugned decision had clearly declared the respondent nos. 1 and 2 respectively to be representatives of the judgment-debtor and therefore, the bar under Section 47 would squarely apply to them. 140. Section 47 CPC reads as follows:

"47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.2

Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

141. A bare perusal of Section 47 makes it clear that all the questions which arise between (a) the parties to the original suit in which the decree was passed, or (b) their representatives, which relate to the execution, discharge or satisfaction of the decree, shall be determined by the executing court and not by way of a separate suit. Therefore, Section 47 also envisages a bar to the filing of a separate suit under certain circumstances. Our attempt is to understand how the bar envisaged under Section 47 interacts with the bar envisaged under Rules 92(3) of Order XXI CPC; whether they are one and the same or whether there is a nuanced distinction between the two?

142. In our opinion, there is indeed a difference, although admittedly small, between the bar to the filing of a separate suit as mentioned under the aforesaid two provisions. On the one hand, Rule 92(3) states that no suit to set aside an order made under Rule 92 shall be filed by a person against whom such an order is made. Meaning thereby that, the person must, first, somehow be prevented by an order made under Rule 92 from filing a separate suit.

We have explained in sufficient detail as to when and how the bar under Rule 92(3) would apply to a separate suit. On the other hand, Section 47 envisages a bar which is wider in scope and states that any (other) question pertaining to the execution, discharge or satisfaction of a decree which is arising between the parties to the original suit or their representatives, must not be raised in a separate suit. This enlarged scope of application of Section 47 is probably why parties, on several instances, file simpliciter applications under Section 47.

143. What we are trying to say is that there may also arise unique situations where the party cannot file a separate suit to set-aside the order of confirmation of sale owing to the bar under Rule 92(3), yet they may be able to prefer an application under Section 47 to allege that the entire sale was without jurisdiction or a nullity. To put it simply, although someone could be covered under the bar to a separate suit referred to in Rule 92(3), yet they may very well maintain an application under Section 47 CPC.

For example, consider a scenario where a judgment-debtor has already paid the decretal amount but his property is nevertheless sold in the auction sale and the

auction sale is also confirmed - he would not be able to file a separate suit owing to him being a person against whom the order confirming the sale was passed under Rule 92(1) and thereby, he would fall under the bar specified in Rule 92(3). However, he would be able to prefer an application under Section 47 CPC on the ground that the entire sale was a nullity. In such a situation, both the bars to a suit i.e., the bar under Rule 92(3) and the bar under Section 47 CPC, would interact and prevent the filing of a separate suit while making the option of preferring a simpliciter application under Section 47 CPC available to him. In such cases, the appropriate course of action would be to prefer an application under Section 47 and not institute a separate suit.

144. However, the aforesaid must not be construed to mean that when a party is unable to raise the grounds mentioned under Rules 89, 90 or 91 respectively within the limitation as prescribed under Article 127 of the Act, 1963, they can file an application under Section 47 CPC after the sale has been confirmed by reiterating those same grounds falling under Rules 89, 90 or 91 respectively. In such cases, the executing court would look at the averments made in the application and the grounds raised therein.

Where upon an examination of the same, the executing court is of the opinion that the application under Section 47 CPC directly relates to a specific rule i.e., either Rules 89, 90 or 91 respectively, then the section 47 application would be treated as an application under Rules 89, 90 or 91 respectively as the case may be, and it will be decided according to the law settled under those rules. This settled law would then have the consequence of such a Section 47 application being dismissed, for the reason that the limitation period under Rules 89, 90 or 91 respectively has long lapsed.

145. To put it simply, one cannot overcome the limitation period prescribed under Rules 89, 90 or 91 respectively by filing a simpliciter application under Section 47 and demanding that the same be allowed. Only in situations wherein a party to the original suit or their representative wants to assail the auction sale for the reason that the entire auction sale was without jurisdiction and a nullity, can a simpliciter application under Section 47 be allowed after the order of confirmation of sale has been passed under Rule 92. As we have already elaborated previously, the grounds on which the execution sale could as a whole be rendered a nullity have been narrowed over the period of time and grounds which may, say, fall under Rule 90, could not be camouflaged as those rendering the entire sale a nullity or non-est.

146. The reason we have endeavored to explain the aforesaid is simple - that in order to maintain a separate suit, merely overcoming the bar under Rule 92(3) would not be enough, one must also satisfy the court that the bar under Section 47 does not apply to the separate suit which has been instituted.

147. The grounds which are urged in the plaint would give an idea as to whether it is only a material irregularity or fraud in publishing or conducting the sale which is sought to be raised as a ground (in which case the bar under Rule 92(3) would apply) or whether it is alleged that the entire sale was rendered a nullity. For the latter ground, depending on whether such a plaintiff was a party to the original decree or their representative, or not, the bar under Section 47 would then apply. If such a plaintiff was indeed a party to the original suit in which the decree was passed or their representative, then the bar under Section 47 would operate against the filing of a separate suit.

However, if the plaintiff can establish that they do not fall within the meaning of the phrase "parties to the suit in which the decree was passed" or "their representatives" and if they allege that the auction sale was a nullity and was done without jurisdiction, then they may be able to maintain a separate suit. One of these instances where the sale could be rendered a nullity and be held to be without jurisdiction is, if a "third party", obtaining knowledge that his property was sold in execution of a decree after the sale was confirmed, asserts that the judgment-debtor never possessed any title over the concerned property. This aspect shall be dealt with in more detail in the subsequent parts of our judgment, more particularly in the part relating to Rule 92(4) of Order XXI CPC.

148. In Ameena Bi v. Kuppuswami Naidu and Others reported in (1993) 2 SCC 405, this was precisely the reason behind holding the suit filed by the plaintiff to not be barred by Section 47. Therein, the plaintiff was neither a party to the original suit nor a representative and she alleged that the sale was a nullity and not binding on her. Therein, the appellant-plaintiff and her uncle were amongst the heirs to her father's estate. The uncle, upon being appointed as a receiver by the High Court in the partition suit, had leased some properties belonging to the estate in favour of the respondent no. 1 and had obtained an advance for the same.

Before the partition suit came to be decreed, the respondent no. 1 filed a suit for recovery of the advance amount paid by him to the uncle. This money suit filed against the uncle was decreed with a direction that such advance amount be adjusted from the uncle's share to the deceased estate upon partition. However, the respondent no. 1, in execution of his money decree, got attached and sold the properties which were allotted to the plaintiff in the partition suit. All the while, the plaintiff was kept in the dark about the said execution proceedings. Thus, the plaintiff had instituted a separate suit for possession by stating that the sale was a nullity and not binding on her.

149. In Ameena Bi (supra), amongst several questions, the question whether the money decree was the personal liability of the uncle or a liability against the estate as a whole, was crucial to the issue of whether the separate suit was hit by

Section 47. This was because in the former situation, the plaintiff would not be a representative and in the latter she would be. If the money decree created a liability as against the estate, then the appropriate course of action would have been to prefer an application under Section 47. However, it was held that the liability was the personal liability of the uncle. In light of the same, the plaintiff neither being a party to the money suit nor a representative of the uncle, the separate suit was held to be maintainable. The relevant observations are reproduced hereinbelow:

"15. We have given our anxious considerations to the submissions made on behalf of the appellant and find lot of merit in the same. It is clear from the extract of the decree of the suit register (Ext. A-7) that the decree was personally against the second defendant, Mohammad Sheriff only and also against defendant 1 to the extent of second defendant's family properties in the hands of the Receiver. It is thus clear that no decree had been passed against the estate of deceased S.M. Sheriff. The plaintiff/appellant, Ameena Bi, got her rights from her father.

She never got any right from Mohammad Sheriff in the partition decree. At the stage when the execution was applied for, the court Receiver had ceased to exist and the final decree had been passed in the partition suit allotting the disputed properties to Ameena Bi. Ameena Bi was never a party to the suit filed by Kuppuswami Naidu. Even the decree which was passed against defendant 1 was to the extent of the family properties of Mohammad Sheriff in the hands of the Receiver and not the properties of the deceased S.M. Sheriff in the hands of the Receiver.

16. We are thus of the view that the High Court erred in construing as if the money decree had been passed against the estate of deceased S.M. Sheriff. Admittedly Ameena Bi was not a party to the suit. Since Ameena Bi was neither a party to the suit nor any decree was passed against the estate of deceased S.M. Sheriff, no question arose of Ameena Bi taking proceedings under Section 47 of the Code of Civil Procedure in the suit filed by Kuppuswami Naidu (O.S. No. 208 of 1955). We thus set aside the finding of the High Court on the construction of Ext. A-7, and uphold the construction placed by the trial court and the lower appellate court."

(Emphasis supplied)

150. In the present case, Mr. Vikas Singh would be right in submitting that the respondent nos. 1 and 2 respectively, have been identified as being "representatives" of the judgment-debtors by the impugned decision owing to them being pendente lite transferees of the judgment-debtor. In other words, the respondent nos. 1 and 2 respectively, had stepped into the shoes of their vendor

who was a judgment-debtor. The relevant observations by the High Court are reproduced as follows:

"Let us now examine as to whether plaintiffs are representatives of the Judgment Debtor or not. Section 47 of the Code of Civil Procedure lays down that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court, executing the decree and not by a separate suit. The subsequent purchasers after the decree passed are representative of the Judgment Debtor. Plaintiffs have stepped into the shoes of Judgment Debtors. Counsel for the plaintiffs-respondent is not correct in contending that the plaintiffs are not representatives of the Judgment Debtor."

(Emphasis supplied)

151. In view of the above finding of the High Court, it is difficult to reject the contention of Mr. Vikas Singh, that the separate suit would be hit by the bar envisaged under Section 47 as well.

152. To get more clarity as regards the position of law pertaining to who can prefer a separate suit by alleging that the entire sale was without jurisdiction and a nullity, after the confirmation of sale, we must necessarily explain the scope and ambit of Rules 92(4) and 92(5) respectively, with special focus on who is a "third party" as referred to in Rule 92(4).

d. The scope and meaning of the term "third party" under Rule 92(4), the option of filing a separate suit being made available to such third parties and its interplay with Rule 58 of Order XXI CPC.

153. It was submitted on behalf of the respondent nos. 1 and 2 respectively, that Rule 92(4) permits a "third party" to challenge the title of a judgment-debtor by filing a suit against the auctionpurchaser, and joining the decree-holder along with the judgmentdebtor as necessary parties in such suit. It was stated that since the respondent nos. 1 and 2 respectively fall within the term "third parties" as given under Rule 92(4) of Order XXI, and the essentials of this provision are fulfilled, their suit would be maintainable. We find ourselves, yet again, unable to agree with this submission of the learned Senior Counsel for the respondents for the reasons that we shall assign hereinafter.

154. To understand the import of the term "third party" let us look at a pertinent observation made by the Law Commission in its 54th Report (Vol 1, pg. 172) which reads that - "Attachment may be followed by an application for its removal by a third party, and the present rules require a summary inquiry and order, which may be followed by a suit to establish the right denied in the summary proceedings". This referred to the scheme of Rule 58 as it existed prior to the

1976 Amendment. However, the reason behind our drawing attention to this observation is the acknowledgment that a third party asserting their title would be able to raise the grievance that his property has been wrongly attached in the execution proceedings under Rule 58. The third party referred herein, in the context of Rule 58, has some significance as regards how the same term must be interpreted under Rule 92(4) as well.

155. With particular reference to Rule 92, the 54th Report of the Law Commission of India, had recommended the insertion of sub-rules (4) and (5) respectively, to address a situation where a sale conducted by the executing court is subsequently found to be a nullity for want of title, more particularly, where the defect in title is discovered after confirmation of the sale in a suit instituted by a "third party". The objective of sub-rule (5) is to reimburse the auction purchaser, and the liability for such reimbursement is placed upon the decree-holder because it was at his instance that the sale was held. The Report reads thus:-

"**21.48-D. Recommendation.-** Whatever be the correct view on the existing language, it appears to us that something should be done to improve the position. No doubt, to permit the auction-purchaser to sue for refund from the decreeholder, is to add to the troubles of the decree-holder and thus to delay execution. But that seems to be the only possible alternative. As between the decree-holder and the auction-purchaser, if someone has to suffer, the former should suffer.

It may not be feasible for the court to inquire into the title of the judgment-debtor (at the time of the proclamation), in an elaborate manner; but that does not answer the basic question, namely, when a sale held by a Court and culminating in a certificate issued by the court is held to be a nullity for want of title, by reason of a defect discovered after expiry of the period for making objections under R. 91 etc. is it justice to dispose of the purchaser's grievance by saying that the purchaser purchased the property at his peril? The decree-holder should reimburse him for the loss suffered by him, because it is the decree-holder at whose instance the sale was held.

The abstract principle that there is no warranty at court sales fails to yield a just result in this case. The auction-purchaser should have a right to sue the decreeholder. Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser the decreeholder and judgment-debtor should be necessary parties and in that suit the court shall direct the decree-holder to refund the money to the auction-purchaser. If such a decree is passed, the original execution proceedings shall be revived at the stage where the sale was ordered, unless the court otherwise directs. This provision is necessary to avoid complications as to limitation.

21.49. Recommendation.- We, therefore, recommend that the following sub-rules should be added to Or. 21 R. 92:

"(5) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit;

(6) If the suit referred to in sub-r.

(5) is decreed, the court shall, direct the decree-holder to refund the money to the auction-purchaser and where such an order is passed, the execution proceedings in which the sale had been held shall, unless the court otherwise directs, be revived at the stage at which the sale was ordered."

(Emphasis supplied)

156. No doubt, the aforesaid discussion of the Law Commission as regards Rule 92 stemmed from a different lacunae in law that they were trying to cure. However, in the aforesaid observations too, it is very clear that only upon a suit for title instituted by a "third party" which comes to be decreed in the third party's favour, would the auction-purchaser be entitled to a refund of his purchase money and the execution proceedings would be revived at the stage at which the sale was ordered, unless otherwise directed. While the refund of money to the auction-purchaser is mandatory, the revival of the execution proceedings is subject to any other direction from the court. This recommendation is what has been adopted verbatim and have become Rules 92(4) and 92(5) respectively, as we see them today.

157. We may, with a view to obviate any confusion, clarify that Rule 92(4) does not create or confer a right to challenge the judgment debtor's title. It only prescribes a mandatory procedural requirement i.e., where a third party files a suit asserting his title over the property, he must necessarily implead the auction-purchaser, the decree-holder, and the judgment-debtor as parties to the suit. The sub-rule is couched in mandatory terms because once the sale has attained finality under Rule 92(1), any decree passed in a separate suit without the presence of all the affected parties would be ineffective. To put it simply, Rule 94(4) is not a jurisdiction-conferring provision; it merely lays down the condition as to who must be made parties to such a separate suit.

158. The interplay of Rules 92(1) and 92(2) respectively, indicates that such a suit under Rule 92(4) can arise only after an order confirming the sale under Rule 92(1) has been passed. We say so because a third party would otherwise be able to challenge the title of the judgment-debtor under Rule 58 instead, by raising a claim or an objection as regards the attachment of the property in the execution proceedings. In other words, the option to assert his title over the attached

property is available to the third party under Rule 58 until the sale comes to be confirmed.

If knowledge that his property has been attached and sold in an unrelated execution proceeding, has been acquired by a third party after the sale has been confirmed under Rule 92(1), then the only remedy available to him would be to file a suit challenging the judgment-debtor's title to the property, alleging the sale to be a nullity. Here, although he is challenging the title of the judgment-debtor to the property in question, yet his suit would be instituted against the auction-purchaser because the sale has become absolute in favour of the auction purchaser. Conversely, if the sale is set-aside under Rule 92(2), there would be no reason for a third party to institute a separate suit to assert his title, since the remedy to file an objection under Rule 58 would be re-opened to him.

159. Therefore, what then becomes obvious is that, a third party referred to in Rule 92(4) has no other option to challenge the judgmentdebtor's title to the property sold, within the realm of the execution proceedings, owing to the sale being confirmed. This is the reason behind allowing such a person to institute a separate suit for the same. The general principle is that all matters pertaining to the execution, discharge and satisfaction of the decree be kept under the umbrella of the executing court.

A deviation from the above is justified when the legislative scheme does not envisage an adequate and proper remedy within the scheme of Order XXI and Section 47 CPC respectively. We have already emphasized that Rule 92(4) is not a jurisdiction conferring provision. It is merely a reflection of the right to institute a suit which exists with the third party who is unable to address his grievances before the executing court.

160. With a view to demarcate when such a right of a third party to file a separate suit would arise with respect to the property which is the subject matter of execution proceedings, we find it necessary to briefly discuss the scheme underlying Rule 58 of Order XXI CPC which reads as follows:

"58. Adjudication of claims to or objections to attachment of, property.-

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such, claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or (b) disallow the claim or objection; or (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (I), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive. "

161. What is relevant from the aforesaid, for the purposes of our discussion is that, Rule 58 uses the words "where any claim is preferred to, or any objection is made to the attachment" along with the words "on the ground that such property is not liable to such attachment" respectively. This would indicate that a third party, i.e., a party who was alien to the proceedings in the original suit in which the decree was passed, could also prefer a claim or file an objection under Rule 58 against the attachment of the property by stating that the judgment-debtor does not have title to such property. By virtue of Rule 58(2) (in its amended form), all questions including those relating to the right, title or interest in the property attached could be looked into by the executing court. A separate suit in this regard, at this stage of the execution proceeding, is barred and this is indicated from the words "and not by a separate suit" occurring in Rule 58(2).

162. The proviso to Rule 58(1) states that no claim or objection under Rule 58 shall be entertained by the executing court under two circumstances - (a) where the property attached has already been sold before the claim is made or the objection is preferred under Rule 58, or (b) where the executing court considers that the claim or objection preferred was designedly or unnecessarily delayed.

The use of the word "shall" in the proviso indicates that at least insofar as (a) is concerned i.e., when the attached property has already been sold, the executing court has to mandatorily dismiss the application made under Section 58. When the executing court disallows an application under Rule 58 by invoking clause (a) of the proviso to Rule 58(1), Rule 58(5) comes into the picture.

163. Rule 58(5) states that when a claim or an objection is not entertained owing to the mandatory nature of clause (a) of the proviso to Rule 58(1), then such a party against whom this order under Rule 58 was made, may institute a separate suit to establish the right which he claims to the property that is the subject matter of attachment in the execution proceedings. However, during the period in which such a separate suit, if any, is being decided by the court of competent jurisdiction, the order refusing to entertain the claim or objection made under Rule 58 would be conclusive insofar as the progress of the execution proceedings are concerned.

164. What is evident from the aforesaid reading is that the executing cannot entertain an application under Rule 58 once the stage of sale has already passed. In other words, it would only be competent to decide an application under Rule 58, at stages prior to the occurrence of the sale. The moment the property comes to be sold, the recourse available to any third party would be to institute a separate suit, as so specifically elaborated under Rule 58(5).

165. Having said so, the words "the property attached has already been sold" under clause (a) of the proviso to Rule 58 could give rise to some interpretational ambiguity. In other words, it is unclear as to whether the legislature intended this to refer to a stage when the order of sale has been passed or whether it refers to a stage when the order of confirmation of sale has been passed under Rule 92(1).

There is, otherwise, a very stark distinction between these two orders - the former refers to the order which creates an opportunity to resort to Rules 89, 90 and 91 respectively to set-aside the sale, and the latter refers to the order which arises after the applications made under Rules 89, 90 and 91 respectively have been decided or when the time for making those applications has lapsed. Therefore, there is a significant gap between these two orders, which is, at the least a minimum of 60 days as prescribed under Article 127 of the Limitation Act, 1963.

166. Let us understand why a conscientious and careful interpretation of the words "the property attached has already been sold" is of utmost importance here. One possible way of interpreting it would be to say that it refers to the order of sale which is passed once the property has been auctioned and the auction-purchaser has been chosen. To be more specific, it is that order after the passing of which the recourse to Rules 89, 90 and 91 respectively would become available.

However, with such an interpretation, the consequence would be that, if an application under Rule 58 is preferred even one day after the order of sale has been made, then such an application would come to be rejected in accordance with clause (a) of the proviso to Rule 58(1) and Rule 58(5) would be set in motion, whereby the said applicant could institute a separate suit. To put it simply, this would mean that the option to institute a suit for a third party arises from the moment the order of sale has been passed and he needn't wait until the sale has been confirmed. Therefore, in that period between the order of sale and the order confirming sale, which can be 60 days or more (as we had stated previously), any third party would be able to file a separate suit for a claim or objection which he could otherwise agitate under Rule 58.

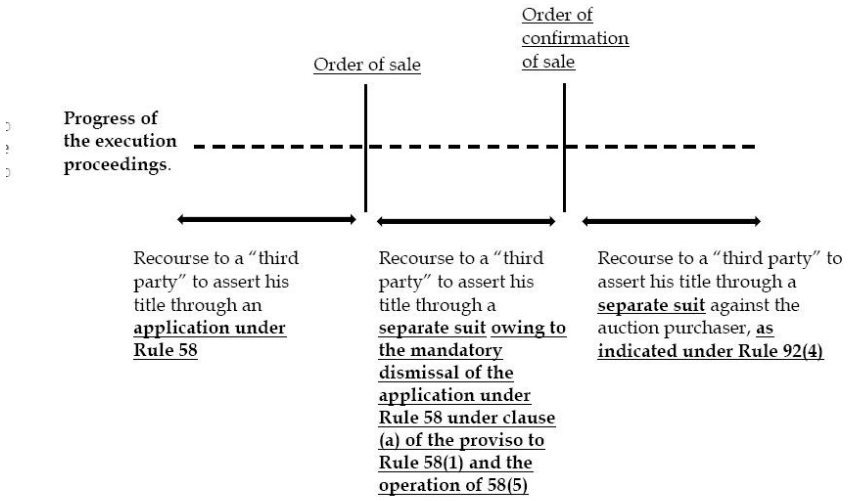
167. Another possible way of interpreting the aforesaid phrase would be to understand it to mean an order of confirmation of sale as referred to in Rule 92(1). Reading it in such a manner would mean that the option of filing a suit would be activated or, to be precise, reactivated for a third party, the moment the sale has been confirmed under Rule 92(1). The benefit of this view would be that, during the period between the order of sale and the order confirming the sale, the third party asserting that the judgment-debtor does not have title to the attached property could still move the executing court in that regard under Rule 58.

This view would also be in consonance with the plain reading of Rule 92(4) which states that when a "third party" challenges the judgment-debtor's title, after the sale has been confirmed, he must institute the same against the auction-purchaser and must implead the decree-holder and judgment-debtor as necessary parties. This would cohesively tie the rationale in Rule 58(5) with that in Rule 92(4) and infer that they allude to the same underlying suit which is instituted after the sale has been confirmed under Rule 92(1), wherein a third party asserts his title amongst other rights.

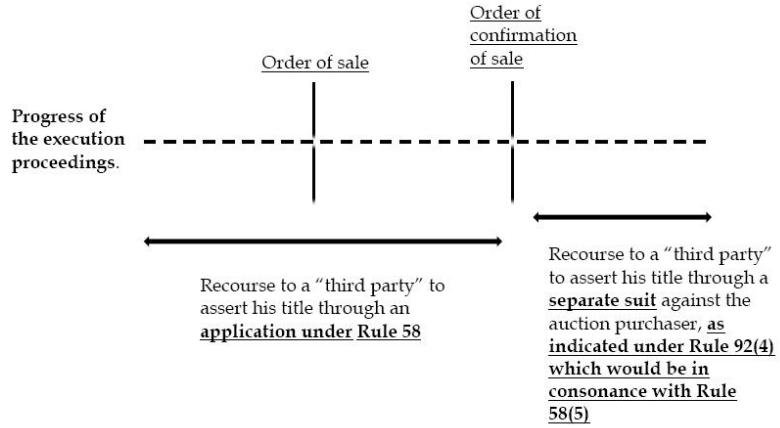
168. Furthermore, Rule 92(1) also requires the executing court to halt the confirmation of sale if an application under Rule 58 is pending. This should ideally be inferred as also referring to any application under Rule 58 which has been instituted after the order of sale has been passed and is pending adjudication before the executing court, unless any contrary intention is apparent. We do not see any reason why we must deviate from this view.

169. The following visualizes the consequences of the two interpretations:

(i) Interpretation (A)



(ii) Interpretation (B)



170. What the aforesaid further makes clear is that, in the former interpretation, the effect would be that the recourse to file a separate suit would be made available to a third party at a relatively earlier stage of the execution proceedings and in the latter interpretation, it would be available at a later stage. We are of the opinion that the latter interpretation of the words "the property attached has already been sold" i.e., to understand it as referring to the order confirming the sale under Rule 92(1) would ensure better coherence and synergy in the overall scheme of Order XXI CPC.

171. Such a view insofar as Rule 58(1) and its proviso are concerned, has also been taken by the decision of this Court in Kancherla Lakshminarayana v. Mattaparthi Syamala and Others reported in (2008) 14 SCC 258 wherein it was held that the word "sold" used in Rule 58(1) proviso (a) would mean complete sale including the confirmation of auction as under Rule 92(1). Therefore, objections made under Rule 58 before the date on which the sale was confirmed, would be tenable. The relevant observations are reproduced as thus:

4. The High Court has thus considered the question of the stage at which the objection could be raised and has dealt with that such objection would not be tenable on the backdrop of the language of clause (a) of the proviso to Order 21 Rule 58. The stress is thus on the stage at which the objection could be raised (or the time when the objection is raised). These concurrent orders are now in challenge before us.

16. It is our considered opinion that in this case the sale was not confirmed and that made a substantial difference. The word "sold" in clause (a) of the proviso to Rule 58 has to be read meaning thereby a complete sale including the confirmation of the auction. That not having taken place, it cannot be said that the objection by the appellant was illfounded or untenable as has been held by the High Court and the trial court.

(Emphasis supplied)

172. Therefore, the decision in Kancherla Lakshminarayana (supra) supports the view that the words "sold" under Rule 58(1) proviso (a) must be understood to mean confirmation of sale under Rule 92(1). This decision is key in clarifying the "time factor" in challenging the sale i.e., what remedy would be available to a third party at what time.

173. Having arrived at the aforesaid interpretation of the word "sold" under Rule 58(1) proviso (a) and having held that the underlying suit referred to in Rule 58(5) and Rule 92(4) respectively is one and the same, the interpretation of the term "third party" under Rule 92(4) must also be in consonance with Rule 58.

174. Therefore, the term "third party" under Rule 92(4) would mean a party other than the judgment-debtor, decree-holder or the auctionpurchaser and would refer to a party who has not had his right, title or interest vis-à-vis the property in question adjudicated under Rule 58, Rule 97 or Rule 99 of Order XXI CPC respectively or has not had the opportunity to do so.

175. The reason why we have included Rules 97 and 99 respectively within this ambit will become more apparent after the discussion we have undertaken in the subsequent paragraphs of this judgment on Rules 99 to 104 respectively. For a specific kind of third parties i.e., third parties who are in possession and who come to be dispossessed, Order XXI CPC, through Rule 99 has already envisaged a remedy, which will be shortly elaborated upon. Therefore, there might be no need for such third parties in possession who are able to avail a remedy under Rules 97 or 99 to also be allowed to institute a separate suit as indicated under Rule 92(4).

176. However, to put it very simply, the term "third party" under Rule 92(4) would refer to a party who is extraneous to the original suit proceedings and the

proceedings under Order XXI CPC, and who either has not had his right, title or interest adjudicated or having the opportunity to have his right, title or interest adjudicated, has not availed such a remedy within the required time.

177. A few High Courts have taken the view that the words "third party" under Rule 92(4) must be read to mean any third person who is asserting an independent title to the property. However, such a reading would keep at bay those persons who have bought the property from the judgment-debtor but before the institution of the suit i.e., bona fide purchasers for value who are not hit by the doctrine of lis pendens.

The unintentional bar to the filing of a suit by such purchasers who wish to establish their right, title and interest to the property must not be a by-product of the interpretation of the term "third party" in Rule 92(4). The legislature has consciously used the term "party" instead of "person" to reinforce that those individuals who have not been party to the original suit proceedings or party to the execution proceedings and have not had the opportunity to avail any remedy both in the original suit and in the execution proceedings, must be given the option of filing a separate suit.

178. Such an interpretation of the term "third party" would also naturally refer to those parties who are not covered under Section 47 CPC. In other words, parties to the original proceedings in which the decree was passed and their representatives could never fall under the aforesaid interpretation of the term "third party".

As a consequence, synergy would also be established between Section 47 CPC and Rule 92(4), especially the words "and not by a separate suit" occurring in Section 47. The third parties referred to under Rule 92(4) could never be said to comprise those persons who could prefer an application under Section 47 CPC. To put it simply, the suit referred to in Rule 92(4) cannot be resorted to by someone to overcome the bar to a suit under Section 47 CPC for the reason that such persons falling within the scope of Section 47 CPC could never be "third parties".

179. To recapitulate, once the sale is confirmed, if a party seeks to set the sale aside on grounds that they could have taken under Rules 89, 90 or 91 respectively, the defence that they didn't obtain knowledge of the grounds falling under those rules at a time before the sale came to be confirmed would not be reason enough to allow the filing of a separate suit. Such a suit would be hit by the bar to a suit under Rule 92(3). However, there is some leeway, albeit very small, for a party to assail the sale which was made in execution of a decree even after the sale comes to be confirmed. If it is their case that the entire sale was without jurisdiction and a nullity and the person taking such an objection is either

a party to the original decree or their representatives, then their remedy would ideally exist under Section 47 CPC.

They would not be able to prefer a separate suit owing to the bar to a separate suit under Section 47 CPC. On the other hand, if they are neither parties to the original decree nor their representatives, then the bar to a suit under Section 47 would also not operate against them and they would be able to file a separate suit alleging that the entire sale was a nullity. One of those predominant grounds wherein such a person not falling with the scope of Section 47 CPC can claim that the entire sale was without jurisdiction or a nullity is that the judgment-debtor did not have any title over the property which came to be sold.

Such a specific situation has been addressed under Rule 92(4) where guidance is given as to whom such a suit must be filed against and who would be the necessary parties under such proceedings. It is of utmost importance to ensure that such a third party who has instituted the separate suit could not get his rights adjudicated under Rule 58 for the want of knowledge of the execution proceedings at the relevant time. Otherwise, third parties could derail the outcome of the execution proceedings by simply waiting to institute collateral proceedings when they very well had an opportunity to file an application under Rule 58.

180. From the above exposition of law, it is limpid that the respondent nos. 1 and 2 respectively were not "third parties" under Rule 92(4). This is because they were representatives of the judgment-debtor as envisaged under Section 47 CPC having purchased the suit property during the pendency of the proceedings. Although the respondent nos. 1 and 2 respectively had instituted a suit against the auction purchaser-appellants, the decree holder-bank, and the judgment-debtors respectively yet owing to the reason that they are not third parties, their suit could not be said to be maintainable.

IV. Whether the respondent nos. 1 and 2 respectively could have obtained any relief under Rule 99 of Order XXI CPC and in the absence of availing such remedy, could their suit be said to be not maintainable?

181. It was submitted on behalf of the appellants that the respondent nos. 1 and 2 respectively could have raised their objections regarding the alleged irregularities in the auction sale during the execution proceedings itself by filing an application under Rule 99 r/w Rule 101 of Order XXI CPC. Further, it was submitted that in preferring not to do so, the filing of a separate suit must also be disallowed. We shall now discuss whether the respondent nos. 1 and 2 respectively could have filed such an application.

182. At the outset, we must clarify that any irregularity or fraud in the publishing or conducting of the auction sale cannot be raised even in a proceeding under Rule 99, as such grounds lie within the exclusive domain of the application under Rule 90. However, in an application under Rule 99, a dispossessed person could allege that the entire sale conducted by the executing court was a nullity for the reason that the judgment-debtor did not have any title over the said property.

183. Rule 99 of Order XXI of the CPC reads thus:

"99. Dispossession by decree-holder or purchaser.-

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

184. We also find it apposite to reproduce Rules 100, 101 and 102 of Order XXI CPC respectively, since they are closely connected with Rule 99 referred to hereinabove. These rules read thus:

"100. Order to be passed upon application complaining of dispossession.-

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.-

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee lite pendente.-

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.-In this rule, "transfer" includes a transfer by operation of law."

a. Essential ingredients for the invocation of Rule 99

185. On a reading of the aforesaid, it can be seen that the necessary requirements for the purpose of invoking Rule 99 of Order XXI are as follows:

i. The person making an application, i.e., the applicant under Rule 99, must be 'any person' other than the judgment debtor;

ii. Such an applicant must be 'dispossessed' from the immovable property;

iii. The dispossession of such a person must be caused by:

a. the holder of a decree for the possession of such an immovable property; or

b. the purchaser, in case the immovable property is sold pursuant to the execution of the decree.

186. The condition precedent for making an application under Rule 99 maintainable is that the person preferring such an application must be dispossessed from the immovable property, and that he must be someone other than the judgment debtor. This dispossession must occur as a direct consequence of or in the course of execution of said original decree.

Thus, an applicant under Rule 99 needs to establish two things: first, that he had possession prior to the execution of the decree; and secondly, that he was dispossessed by the decree holder, or the auction purchaser, as the case may be, during the execution of the decree. When such an application complaining of his dispossession is made, all questions including the questions relating to the right, title and interest of the property can be decided by an executing court.

187. Insofar as Rule 99 of Order XXI CPC is concerned, the decision of this Court in Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Another reported in (1997) 3 SCC 694 observed that if a stranger to the original decree is dispossessed of the suit property relating to which he claims any right, title or interest, then his remedy would lie in filing an application under Rule 99 of Order XXI CPC. In deciding such an application, the executing court would then determine whether his dispossession was illegal and whether possession must be

restored to such an applicant by way of an order under Rule 100. The relevant observations are reproduced hereinbelow:

"8. A conjoint reading of Order 21, Rules 97, 98, 99 and 101 projects the following picture: (2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order 21, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him.

If such an application is allowed after adjudication then as enjoined by Order 21, Rule 98 [sic Rule 100], sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21, Rule 99 to be put in possession of the property or if his application is found to be substance-less, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21, Rule 98 [sic Rule 100], sub-rule (1) would be deemed to be a decree as laid down by Order 21, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21, Rule 101."

(Emphasis supplied)

188. In H. Seshadri v. K.R. Natarajan and Another reported in (2003) 10 SCC 449, this Court was concerned with an application under Rule 99 of Order XXI CPC filed by a tenant who claimed a title independent to that of the judgment-debtor and was dispossessed in the course of the execution of an eviction decree. In holding that such a person can maintain an application under Rule 99, it was observed thus:

"13. For the purpose of considering an application under Order 21 Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not."

(Emphasis supplied)

189. In order to better understand who can maintain an application under Rule 99, the words "any person" other than the judgmentdebtor used therein must be further clarified. This is more so because the decision in Brahmdeo Chaudhary (supra) has employed the phrase "a stranger to the decree" as analogous to the words "any person other than the judgment debtor"

190. A "stranger to the decree" must necessarily be someone other than the person who is the judgment-debtor and of course, other than someone who is the decree-holder. Meaning thereby that, they must be unconnected to the original lis which decree is sought to be executed by the executing court. It is only logical that a decreeholder can never be an applicant under Rule 99 since he is the dispossessor. In that sense, the terms "stranger to the decree" and "any person other than the judgment debtor" are synonymous and they may be used interchangeably, insofar as Rule 99 is concerned.

191. The words "any person other than the judgment debtor" in Rule 99 is of a wider import. It must be read to mean any person other than the judgment-debtor or his legal representatives. To put it simply, it may include a person asserting his own independent title and it may also include persons who are subsequent transferees of the judgment-debtor but were not made parties to the original suit.

Although the latter group of persons would be deriving their title or interest from the judgment-debtor, the phrasing of Rule 99 is such that, in the event of their dispossession, they would be able to prefer an application under the said provision. Whether they would be able to obtain any order under Rule 100 is another question altogether. However, if the intention was to prevent even such persons from falling within the purview of Rule 99, then the provision would have read as "any person other than the judgment debtor or those claiming through or under the judgment-debtor".

192. Furthermore, reading the phrase "any person other than the judgmentdebtor" widely and the words "judgment-debtor" narrowly also makes sense for the simple reason that it is only the judgmentdebtor who has been dispossessed by virtue of execution of the original decree, by the decree-holder or the auction purchaser, who must not reagitate what he has already agitated or had the opportunity to agitate in the original suit. If that were allowed, then it would virtually create an endless loop in favour of the unsuccessful judgment-debtor when the decree against him has already attained finality.

193. We subscribe to the aforesaid wider reading of the phrase for yet another reason. It is only afterwards, that in Rule 102 of Order XXI CPC, it is stated that a transferee pendente lite of the judgment-debtor or to put it simply, a person to whom the judgment-debtor has transferred the suit property after the original suit was instituted, would not be able to avail the remedy available under both Rules 97 and 99 respectively, by way of an order under Rules 98 and 100 respectively. There was no reason for Rule 102 to explicitly exclude such transferees pendente lite if the words "any person other than the judgment debtor" employed in Rule 99 had not already included them.

194. The net effect of the phrase "any person other than the judgment debtor" used in Rule 99 and the bar under Rule 102 is that, it is only the judgment-debtors themselves or the pendente lite transferees of the judgment debtor who would not be able to take the cumulative benefit of Rules 99 and 100 of Order XXI CPC in the event of their dispossession. A person who has bought the property from the judgment-debtor but before the institution of the suit i.e., a bona fide purchaser for value who is not hit by the doctrine of lis pendens, would then be able to prefer an application under Rule 99 and may obtain an order under Rule 100 in the event of his dispossession by the auction-purchaser, without the bar under Rule 102 operating against him.

195. The decision of this Court in Ashan Devi and Another v. Phulwasi Devi and Others reported in (2003) 12 SCC 219 discussed the maintainability of an application under Rule 99 of Order XXI and contextualized the meaning of the terms "possession" and "dispossession". It was stated that the term must not always be relegated to a restricted understanding i.e., as the ouster from actual and physical possession. Rather, its legal meaning must necessarily be understood from the context that it is subject to. In the context of an open vacant land, it was stated that such a land is generally possessed by someone who can exercise control over it to the exclusion of others. Therefore, dispossession must also be understood as occurring when such a general control to put the land to their own use, is lost. The relevant observations are thus:

"22. The word "dispossessed" as used in Order 21 Rule 99 of the Code has been narrowly construed to be an ouster from actual and physical possession of the property by several High Courts. See Pera Naidu v. Soundaravalli Ammal [AIR 1954 Mad 516 : (1954) 1 MLJ 179] AIR at p. 519; Rajendra N. Das v. Minatunnisa Bibi [(1966) 32 Cut LT 972 : ILR 1966 Cut 611] and Emerciano Leonardo Dias (Dr.) v. Ganexama B. Naique Vaingancar [AIR 1978 Goa 48].

23. Salmond on Jurisprudence explains that the word "possession" is a word of "open texture". Its legal meaning has to be ascertained from the context. The property involved in the present case is open vacant land. Such property is possessed by a person who has control over the same. This "control" over the property means "power to exclude all others". The test then for determining whether a man is in possession of anything is whether he is in "general control" of it - maybe, that he is not in actual and physical possession or using the same.

24. The objectors have laid evidence before the executing court to show that after obtaining by recitals in the sale deeds delivery of possession of the property, the names of purchasers were also mutated in the municipal records. Merely because at the time of execution of the decree through Court Nazir, the objectors were not physically present on the property, it cannot be said that the delivery of possession to the decreeholder by the court does not amount to the objectors'

legal ouster or "dispossession". The word "possession", therefore, has to be given contextual meaning on facts of a particular case and the nature of the property involved.

(Emphasis supplied)

196. Several decisions have laid down that the dispossession of the applicant who was in possession of the suit property is a sine-qua non for the maintainability of an application under Rule 99 of Order XXI CPC. Without referring to all those decisions in detail, we refer with profit to the decision of this Court in Sriram Housing Finance and Investment India Limited v. Omesh Mishra Memorial Charitable Trust reported in (2022) 15 SCC 176, wherein it was held that since the appellant continued to remain in possession, the application under Rule 99 could not have been entertained. The relevant observations are as thus:

"24. Further, Rule 99 pertains to making a complaint to the Court against "dispossession" of the immovable property by the person in "possession" of the property by the holder of a decree or purchaser thereof.

25. It is factually not in dispute that the appellant purchased the said property from Mr Yogesh Mishra vide sale deed dated 12-4-2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent Trust in execution of decree dated 2-9-2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99."

(Emphasis supplied)

197. On a combined reading of Ashan Devi (supra) and Sriram Housing (supra), what possession and dispossession would mean in the facts and circumstances of each case must be adequately and conscientiously contextualized. In the present matter, there seems to be some confusion regarding whether the respondent nos. 1 and 2 respectively were dispossessed or not. In the SLP before us, the appellants have contended that they have been in possession of the suit land for the past 20 years or so. Meaning thereby, that the respondent nos. 1 and 2 respectively were successfully dispossessed during the execution of the original decree. In this context, certain averments made by the respondent nos. 1 and 2 respectively in their plaint need to be reproduced:

"7. That the plaintiffs were not aware of the above-said proceedings and they continued to be in possession of the land mentioned in para No. 1 above of the plaint.

8. That a week ago, the plaintiffs went to the land for ploughing it, but they were prevented by defendant No. 1 to 3, who asserted that they have purchased the whole land including the suit land in court auction and that they have alleged to have taken possession on 14-6-1989 of the same, on the basis of warrant of possession having been issued by the Civil Courts.

11. That the defendants No. 1 to 3 alleged to have taken possession of the land including of the land of the plaintiffs on 24-6-1989, vide Rapat Roznamcha No. 400. This entry is a paper entry so far as the plaintiffs are concerned. No notice, whatsoever, was given to the plaintiffs while making the alleged delivery of possession and writing of the Rapat Roznamcha entry by the revenue officials. The plaintiffs still continue to be in possession of the suit land. In the alternative, if for any reason, the plaintiffs are proved to have been dispossessed from the suit land, they are entitled to a decree for possession of the suit land."

(Emphasis supplied)

198. We have also had the benefit of looking into the 'Possession Mauja' which records that the possession was successfully handed over to the appellants in execution of the warrant of possession issued by the executing court on 24.06.1989. The relevant portions of the same read thus:

"Thereafter, I called the opposite party namely Sh. Sumer Singh and Smt. Harpyari through Chowkidar who flatly refused to come at the spot. Now after reaching at the spot, the above said land has been inspected and there is small crops of Jawar and Arhad over the land bearing Rect. No. 30, Killa Nos. 10, 11/1, 11/3, 20/1, 20/2; ,Rect. No. 31, Killa Nos. 4/2, 7/2, 14/1, 14/2, which has not been possessed by opposite party. The said land has been owned and possessed by the applicant whereas the remaining land is lying vacant.

Therefore, the possession of above said entire land was given to the applicant by using Phawra. The aforesaid fact of completion of auction and delivery of possession was announced through Narangi Chowkidar the receipt of which is enclosed. Now the entry has been made in the Daily Diary with Patwari vide Rapat No. 400. At the same time the Patwari has been directed to make mutation entry No 929. This mutation entry be produced before C.R.O. Accordingly, the present report is being submitted."

(Emphasis supplied)

199. The Trial Court vide its judgment and decree dated 22.02.2001 also observed that the respondent nos. 1 and 2 respectively were no longer in possession of the suit land and observed as follows:

"However, I am agreed with the contention of counsel for defendants that plaintiffs could not prove the fact by leading any cogent and reliable material that he is still in possession of the suit property. It is therefore, held that though plaintiffs are owners of the suit property but not in possession of the same."

(Emphasis supplied)

200. On a consideration of all the above, it could be said that, having fulfilled all the necessary conditions underlying Rule 99, the respondent nos. 1 and 2 respectively could have preferred an application under Rule 99 instead of instituting a separate suit. However, we have already explained in sufficient detail in the preceding parts of this judgment as to why the respondent nos. 1 and 2 respectively are transferees pendente lite of the judgment-debtor.

The consequence of this would be that even if they had chosen to prefer an application under Rule 99, Rule 102 would have stood in their way. Therefore, in light of the bar against transferees pendente lite of the judgment-debtor in obtaining any relief under Rule 99 read with rule 100, we must further examine whether this by itself would make a separate suit instituted by such transferees pendente lite maintainable.

201. It is at this juncture that we must look into the import of the words "and not by a separate suit" occurring in Rule 101 of Order XXI CPC with a view to understand what this means for any general applicant under Rule 99 and also for an applicant who may be a transferee pendente lite of the judgment debtor, especially in the context of the availability of the option of filing a separate suit. The answer to this question would also help in understanding whether the separate suit filed by the respondent nos. 1 and 2 respectively, could said to be maintainable.

b. The scheme underlying Rules 100 to 104 respectively and the availability of the remedy of filing a separate suit as an alternative to an application under Rule 99 of Order XXI CPC

202. There are two possible views that one can take with regard to the aforesaid - i.e., First, subscribe to the interpretation that the scheme underlying Rules 99 to 102 respectively only bar the filing of a separate suit when an application under Rule 99 has already been preferred before the executing court. To put it simply, Rule 101 would be interpreted quite literally herein. This would imply that a person dispossessed in the course of execution of a decree, either by the decree-

holder or the auction purchaser, has an option to either (a) to prefer an application under Rule 99; or (b) to file a separate suit.

Therefore, it is only when one of these options are already adopted that the other would be barred. Several High Courts seem to have adopted this approach. 203. Secondly, on the other hand, one could also adopt the view that, even in a scenario where the dispossessed person has not preferred an application under Rule 99 and has instead, alternatively filed a separate suit, such a separate suit would not be maintainable since the executing court exercising its jurisdiction afforded under Rule 99 would be the only appropriate forum for adjudicating such a dispute. In other words, that the dispossessed person cannot be said to have options that he could exercise simultaneously.

204. Before we lay down which interpretation is more plausible, we must look into the provisions which existed prior to the Amendment Act of 1976. The same are reproduced as under:

"97. Resistance or obstruction to possession of immovable property-

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Resistance or obstruction by judgment debtor-

Where the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgmentdebtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Resistance or obstruction by bona fide claimant-

Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgmentdebtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall make an order dismissing the application.

100. Dispossession by decree-holder or purchaser-

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Bona fide claimant to be restored to possession- Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

102. Rules not applicable to transferee lite pendente- Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgmentdebtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Orders conclusive subject to regular suit- Any party not being a judgment-debtor against whom an order is made under Rule 98, Rule 99 or Rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive."

205. We also deem it necessary to reproduce some pertinent observations made by the Law Commission of India in several of its reports. In its 14th Report (Vol I, pg. 454), it was suggested that the executing court under Rules 97 and 99 respectively, must themselves indulge in a full inquiry as regards the ultimate right and title of the parties and must not keep it restricted to a summary inquiry leaving it open for the aggrieved party to again file a suit under the old Rule 103. This suggestion was whole-heartedly accepted by way of the Amendment Act of 1976. The relevant excerpts from the report are thus:

"49. Suits under Rules 63 and 103 to be barred.-

In regard to suits under Rule 63 or 103 we have no hesitation in accepting the suggestion which has been made by a number of persons including some eminent members of the judiciary that the executing court itself should make a full inquiry into the ultimate right and title of the parties and not merely a summary inquiry into possession leaving it open to the aggrieved party to file a suit. Such a recommendation has been made by us in our report on the Limitation Act. The

order passed in such inquiries should be deemed to be a decree within the meaning of section 2, sub-section (2) as in the case of orders under section 47 and be subject to such appeals as are allowed by the law relating to appeals from decrees. We recommend that the law be amended in this manner and the provisions saving or enabling suit to be filed in Rules 63 and 103 be omitted."

(Emphasis supplied)

206. Thereafter, in its 27th Report (Vol 1, pg 18-20), the Law Commission of India gave further necessary context as to why the aforesaid old provisions came to be amended and it agreed with the recommendations of the 14th Report in view of giving expedited relief to the litigants. The excerpts are as under:

"41. Delay in execution - Order 21, Rule 58 and 97. Delay in execution proceedings is mainly due to certain dilatory tactics adopted by judgment-debtors. When in execution proceedings any property is attached, there is generally a claim filed under Order XXI, rule 58. If this claim is rejected, a suit is filled under rule 63 of that Order. If the attachment of the property is finally upheld, there are obstruction proceedings under rule 97, followed by a suit under rule 103. The Fourteenth Report, contains a recommendation that claim proceedings or obstruction proceedings should be finally determined by the execution court, and that where they are so determined, there should be no right of suit.

This recommendation has been made with a view to eliminating delay in execution proceedings. Unfortunately, we have no statistics to indicate in what percentage of cases a suit is filed under rule 63 or rule 103. We are, however, in agreement with the recommendation in the Fourteenth Report, which is based upon certain evidence recorded by the Commission. 45. Other changes suggested in Order 21 to avoid delay. Apart from these principal amendment, we have suggested some other amendments in Order XXI, which in our opinion, will expedite execution proceedings."

(Emphasis supplied)

207. Although the aforesaid observations allude only to the mischief which was being caused under the old rule 97, where undue obstruction would be caused either by the judgment-debtor or by persons colluding with him and thereafter, the same persons would resort to the filing a separate suit under the old Rule 103 in order to delay giving finality to the proceedings, yet it must be remembered that under the new regime, the option of filing a separate suit has been done away with for both rules 97 and 99 respectively. Therefore, it would only be reasonable for us to infer that the same or at least a similar mischief was sought to be

curtailed even under Rule 99 and thereby, it was included within the ambit of the new Rule 101 which bars the filing of a separate suit.

208. In Ghasi Ram v. Chait Ram Saini reported in (1998) 6 SCC 200, this Court made some important observations as regards the regime that existed pre-amendment and that which exists post-amendment. It was stated that under the pre-amendment scheme, an order which was made under the old Rules 98, 99 and 101 respectively could be the subject of a separate suit by virtue of the old Rule 103.

In other words, since an order under the rules as aforesaid did not always involve a full and final adjudication on the questions of right, title or interest of the competing parties, the old provisions collectively envisaged that the any party not being a judgment-debtor would have the option of file a separate suit to decide those questions in case an order adverse to him is rendered by the executing court under the old Rules 98, 99 and 101 respectively. Therefore, the order passed by the executive court would be final subject to a separate suit being filed by the aggrieved person under the old Rule 103. The relevant observations are as thus:

"7. A perusal of the aforesaid provisions would show that the scheme commencing under Rule 97 and onwards before the enactment of the Amendment Act, 1976 was that where a decree-holder or the purchaser at the court sale of property was obstructed in obtaining possession of such property by any person, he was entitled to apply to the court complaining of such resistance or obstruction. If an order was passed under Rule 98 allowing the application under Rule 97 CPC, such an order was conclusive between the parties except that a party other than the judgment-debtor against whom the order was passed was entitled to file a fresh suit under Rule 103 to establish his right to the possession.

However, the position has changed after amendment of the Code of Civil Procedure by the Amendment Act of 1976. Now, under the amended provisions, all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit. 8. The word "conclusive" appearing in Rule 103 indicates that it creates a presumption in favour of facts relating to rights to property as well as legality of the matter stated in the order.

Such an order passed under Rule 98 is not subject to any further enquiry in any other proceeding, except by bringing a fresh suit under Rule 103. Thus, in view of the conclusiveness attached to the order passed by the executing court on an application filed under Rule 97, which is subject to result of a suit, if any, filed under Rule 103, is not assailable in any other proceedings. In case no suit is filed under Rule 103, the order passed under Rule 98 is final between the parties."

(Emphasis supplied)

209. Hence, the filing of a separate suit, even under the old regime, was available as a remedy only because of the inability of the executing court to look into the questions of right, title or interest of the competing parties. So, in that sense, there was a distinct and very specific reason why the remedy of filing a separate suit was kept open. When the legislature has consciously done away with the old Rule 103 and instead, empowered the executing court itself to look into these questions, then logic would demand that there is now no need for providing the remedy of filing a suit in the same regard.

210. In Noorduddin v. K.L. Anand reported in (1995) 1 SCC 242, this Court elaborated on the nature of determination envisaged under the Rules 98, 100 and 101 of Order XXI respectively, as follows:

i. First, a comparison was drawn between the position which existed prior to the Amendment Act of 1976 to state that the old Rule 103 allowed the filing of a separate suit, however, that this right has been explicitly taken away post the amendment. This combined with the change brought through the new Rule 101 would mean that the legislature has relegated the parties to an adjudication of right, title or interest in the immovable property in the execution proceedings itself and finality is also accorded to it.

ii. Secondly, the change made vide the amendment was said to have been enacted with the object of putting an end to the protraction of execution and in order to shorten the litigation between all persons claiming a right, title or interest in the immovable property which is the subject of execution.

iii. Thirdly, it was stated that although the right, title or interest are substantive rights, yet the right to adjudication in that behalf is a procedural right to which no person can claim to have a vested right. It was emphasized that the judicial process should not be interpreted such that it becomes an instrument of abuse or a means to subvert justice. Courts must, therefore, evolve processes that aid expeditious adjudication. The relevant observations are reproduced as under:

"8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit.

In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of

suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

9. Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like (sic) in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts.

The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almameter (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution."

(Emphasis supplied)

211. In the aforesaid context, in Noorduddin (supra) it was observed that "Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution." This observation, read in light of the change brought in post-amendment can only mean that, with a view to accord finality to the dispute pertaining to the subject property, even a third party asserting a right, title or interest ought to agitate his grievances only under Rule 99 in the event his dispossession is caused by the execution of the decree.

212. In Babulal v. Rak Kumar reported in (1996) 3 SCC 154, this Court made an observation that the procedure prescribed under Rules 98 to 103 is a complete code in itself and observed thus:

"6. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance."

(Emphasis supplied)

213. This Court in Sameer Singh and Another v. Abdul Rab and Others reported in (2015) 1 SCC 379, while deciding what would constitute an 'adjudication' under Rules 97, 99 and 101 of Order XXI CPC respectively, shed some light on how the scheme underlying the said rules must be appreciated. It was reiterated that rules 97 to 103 respectively is a self-contained code which empowers the executing court to adjudicate the entire lis and any order passed would be deemed to be a decree. The relevant observations are thus:

"20. The submission of the learned counsel for the appellants is that if the scheme underlying the said Rules is appositely appreciated, it is clear as crystal that the legislature in order to avoid multiplicity of proceedings has empowered the executing court to conduct necessary enquiry and adjudicate by permitting the parties to adduce evidence, both oral and documentary, and to determine the right, title and interest of the parties and, therefore, such an order has been given the status of a decree. As has been put forth by him, a proceeding in terms of Rule 97 or Rule 99 is in the nature of a suit and the adjudication is similar to that of a suit.

26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings.

It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree.

(Emphasis supplied)

214. Giving an order made under Rules 98 and 100 of Order XXI CPC respectively, the status of a 'deemed decree' for the purpose of an appeal has effectively given the parties more reason to agitate everything that they would in

a separate suit before the executing court itself. In light of this, it would be absurd to still say that the right to file a separate suit in so far as matters pertaining to Rules 97 and 99 respectively would still remain alive. There would be no purpose in holding so. On the contrary, it would only defeat the reasons due to which the legislature thought fit to expand the jurisdiction of the executing court under Rule 101 by way of the amendment.

215. It was very aptly pointed out by this Court in Sreenath v Rajesh reported in (1998) 4 SCC 543 that the courts, within their own limitations, have been interpreting the procedural laws so as to conclude all possible disputes pertaining to the decretal property within the execution proceeding itself, i.e., including what may be raised later by way of another bout of litigations through a fresh suit. Similarly legislatures equally are also endeavouring by amendments to achieve the same objective. Therefore, in interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted.

The procedural law is always subservient to and is in the aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. So, under Order XXI Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings.

216. This Court in N.S.S. Narayana Sarma and Others v. Goldstone Exports (P) Ltd. and Others reported in (2002) 1 SCC 662 also observed that, by way of the Amendment Act of 1976, the legislature has vested wide powers in the executing court to deal with "all issues" relating to the suit property. This, in the opinion of the court, may have been brought to allay the apprehension in the minds of the litigant public that it takes years before the decree-holder can enjoy the fruits of the decree. The relevant observations are thus:

"15. From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree.

Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the

aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case."

(Emphasis supplied)

217. In Sriram Housing (supra), it was finally buttressed that rule 101 effectively does away with the requirement of filing a fresh suit for the adjudication of a dispute which could be dealt with under rules 97 or 99, as the case may be and it was observed as thus:

"26. Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above."

(Emphasis supplied)

218. In addition to all the decisions discussed above, a three-judge bench of this Court in Silverline Forum Pvt. Ltd. v. Rajiv Trust and Another reported in (1998) 3 SCC 723 discussed the scope of adjudication that is envisioned under Rule 101 and stated that the executing court would be obligated to decide such questions that (a) have legally arisen between the parties and (b) are relevant for consideration and determination between the parties. The observations are thus:

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally

arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties.

(Emphasis supplied)

This observation can be looked at from a different perspective for the purpose of the question that we are presently faced with i.e., - when the executing court under Rule 101 is anyway required to looked at such questions, by way of a strict obligation, then there is no reason for a person who can very well fall under the scope of Rules 97 or 99, to prefer a separate suit for the adjudication of the same claims which the executing court is competent to look into.

219. In Shamsher Singh (supra), the application filed under Rule 99 was ultimately dismissed after conducting the exercise of determining whether the applicant had a right, title or interest in the decretal property by way of adverse possession. This Court rejected the contention of the applicant that mere prior bona fide possession, would require the executing court to restore the possession of the applicant.

This Court had acknowledged the sea-change brought to the Rules 99 to 101 respectively and stated that post the amendment, the executing court could only direct that possession be given to the applicant under Rule 99 if it is satisfied that he has established his right, title or interest and not otherwise. In that context, it was observed that "What was earlier to be adjudicated in a suit under unamended Rule 103 is now to be adjudicated in Rule 101 itself".

220. In light of all the aforesaid, we are of the view that there exists no option of filing a separate suit for a person who may very well prefer an application under Rule 99 of Order XXI CPC. To put it simply, one cannot file a separate suit as an alternative to an application under Rule 99. If such a suit is preferred, it could be said to be nonmaintainable for the reason that the appropriate course of action would have been to prefer an application under Rule 99 instead. Hence, amongst the two alternate interpretations to which we had alluded at the beginning of our discussion on this aspect, we are inclined to adopt the latter.

221. As a consequence, a question that then arises is whether transferees pendente lite of the judgment debtor would have the remedy of filing a separate suit considering the bar placed upon them by virtue of Rule 102? We are also inclined to answer this in the negative.

222. Before proceeding further, at the outset, we would like to clarify the scope of Rule 102 of Order XXI CPC. A recent decision of this Court in Tahir V. Isani v. Madan Waman Chodankar reported in 2020 SCC OnLine SC 1962 observed that the bar under Rule 102 applies only to a person to whom the judgment-debtor has transferred the suit property pendente lite. In other words, if the person has received the property from anyone other than the judgment-debtor, even pendente lite, then he would be entitled to the benefit under Rules 98 and 100 respectively.

It was also stated that the object underlying Rule 102 is to protect the interest of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who deprive the decree-holders from taking any benefit of the decree passed in their favour. In delineating the ingredients that are required to be fulfilled for the application of Rule 102, it was stated that it is absolutely necessary for the transfer to have been made by the judgment-debtor after the institution of the original suit in which the decree was passed. Only then, can the protection afforded under Rules 97 to 101 respectively, be denied. The relevant observations are thus:

"9. In a suit pending between a plaintiff and a defendant as to the right to a particular estate, the decision of the court in that case shall be binding not only on the litigating parties, but also on those who derive title under them by alienations (transfer) made while the suit was pending, whether such alienees, i.e. transferees, had or had not notice of the pending proceedings. Therefore, Rule 102 of Order XXI intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour. The Rule being equitable in nature, therefore, estops further creation of rights as it explicitly states that nothing in Rules 98 and 100 shall apply to the resistance or obstruction being made by the transferee pendente lite of judgment-debtor.

11. While it is important to protect the interests of decreeholders, who hold an enforceable decree in their favour, it cannot be gainsaid that such interests cannot be blanketly protected. Rule 102 of Order XXI expressly lays down the ingredients as to when it can be applied. For a case to fall under Rule 102, it is condition precedent that there exists a decree for the possession of immovable property. Secondly, there must be a resistance or an obstruction in the execution of the said decree. Thirdly, such obstruction or resistance must be made by a person to whom the judgment-debtor has transferred the property. Fourthly, such transfer must have occurred after the institution of the original suit, i.e. the one in which the decree was passed. If the aforesaid ingredients are made out, Rule 102 prohibits the protection of Rules 98 and 101 to such errant transferee of judgment-debtor.

13. However, Rule 102 of Order XXI applies only to a person to whom the judgment-debtor has transferred the immovable property which was subject matter of that suit pendente lite. If the person who is resisting or obstructing the execution of the decree for possession of such property, is not the transferee of judgment-debtor, i.e. he does not trace his title from judgment-debtor, bar of Rule 102 does not apply to him. That is to say that if the person who is resisting or obstructing the decree for possession has received the property from person other than the judgment-debtor, such person is competent to gain the benefit of Rules 97 to 101 of Order XXI. In fact, he is entitled to such benefit even if he had been transferred the immovable property pendente lite, i.e. during the pendency of the suit, in which the decree was passed."

(Emphasis supplied)

223. Therefore, the bar under Rule 102 must be read correctly; it is very specific and must not be unduly expanded.

224. However, what must be carefully noticed is that Rule 102 does not say that such a transferee pendente lite of the judgment-debtor would not be entitled to even file an application under Rules 97 or 99 respectively, as the case may be. It reads that "Nothing in rules 98 and 100 shall apply". This leads us to arrive at the interference that it is not the filing of the application under Rules 97 or 99 respectively, per say, which is barred under Rule 102. The bar under Rule 102 is with regard to the orders which would come to be passed as a consequence of the adjudication of the applications under Rules 97 or 99, as the case may be. Therefore, it is a bar placed on the executing court's power to afford any relief to the applicant rather than a bar on the applicant themselves.

225. In their natural course, the executing court would necessarily have to adjudicate the application before them, whether it was made by a transferee pendente lite of the judgment-debtor or not. However, when an objection is raised that the applicant is barred from obtaining any relief under Order 102, then such an adjudication would be confined to whether he is a transferee pendente lite of the judgment-debtor or not. If yes, then the executing court would be barred from making any further orders under rules 98 and 100 respectively.

226. The aforesaid is supported by the decision in Silverline Forum (supra), wherein it was observed in the context of Rule 97 that, if the resistance is being offered by a transferee pendente lite of the judgment-debtor as defined in Rule 102, then the scope of the adjudication under Rule 101 would be shrunk to the limited question of whether the applicant under Rule 97 is such a pendente lite transferee. If answered in the affirmative, then such an applicant would be held to not be entitled to offer such a resistance based on the salutary principle

underlying Section 52 of the Transfer of Property Act. The relevant observations are thus:

"10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree.

No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."

(Emphasis supplied)

227. One might question, what is the reason behind adjudicating an application under Rules 97 or 99 respectively, if the passing of an order under Rules 98 and 100 respectively is anyway barred? The simple reason would be that some judicial forum must arrive at the finding that the person(s) in question is a transferee pendente lite of the judgment-debtor so as to determine his right, title or interest to the suit property or the lack thereof.

228. Again, it is with this background that one must look at the ratio of the decision of this Court in Renjith K.G. and Others v. Sheeba reported in 2024 SCC OnLine SC 2821, authored by one of us, R. Mahadevan, J. Therein, it was stated that an applicant under Rule 99, who is a stranger to the decree, can very well adjudicate his claim of right, title and interest in the decretal property. It was further held that this term i.e., "stranger to the decree" would include a pendente lite transferee who has not been impleaded in the original suit. The relevant observations are thus:

"13. It was the specific plea of the appellants that the predecessor of the respondents being a pendente lite transferee, is not entitled to file an application under Order XXI Rule 99 CPC and raise the question of limitation of the Execution Petition, so as to deprive the right of the appellants to enjoy the fruits of the decree.

14. On a reading of Order XXI Rule 99 CPC, it is lucid that where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

It also means that a third party to the decree has a right to approach the Court even after dispossession of the immovable property, which he was occupying. In the case on hand, the predecessor of the respondents was not a party to the suit and he was dispossessed from the property, in execution of the decree passed in the suit and therefore, he who is purported to be a stranger to the decree, can very well adjudicate his claim of independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.

15. In so far as the claim of appellants that the predecessor of the respondents, namely Mr. Raghuthaman, being pendent lite transferee and hence would have no locus to file the application seeking re-delivery, we have already held that "any person" not a party to the suit or in other words a stranger to the suit can seek re-delivery, after he has been dispossessed. The term "Stranger" would cover within its ambit, a pendent lite transferee, who has not been impleaded. The pendent lite purchaser has every right to defend his right, title, interest and possession.

19. the High Court rightly set aside the order passed in the Execution Petition and remanded the matter to the trial court for fresh consideration, leaving all the issues including the independent right, title or interest claimed by the respondents in the property in question, to be adjudicated therein. Therefore, we do not find any infirmity or illegality in the judgment so rendered by the High Court, warranting our interference.

(Emphasis supplied)

229. In Renjith (supra), the applicant under Rule 99 was a pendente lite transferee of one of the judgement-debtors but was not impleaded in the original suit. Although he was not a party to the original suit and a stranger to the decree yet, since he derives his right through a transfer made by judgment-debtor during the course of the suit proceedings, ultimately, the law would not look at him favorably even under an application under Rule 99. This is reflected in Rule 102.

230. Having said so, the conclusion reached in Renjith (supra) would still hold good because, in light of the decision in Silverline Forum (supra), the application under Rule 99 could still be filed by such a person for the adjudication of his right, title or interest since he would be a stranger to the decree. It is just that the adjudication of the same would then be limited to whether he would be a

transferee pendente lite of the judgment-debtor or not in order to determine whether the bar envisaged under Rule 102 would apply to him.

Therein, the matter was ultimately remanded to the trial court leaving all questions under Rule 99 read with 101 open for fresh consideration. Therefore, it was implicit that the trial was to proceed in light of the decision given in Silverline Forum (supra) and if the auction-purchaser or the decree-holder raised a preliminary issue that the applicant is a transferee pendente lite of the judgmentdebtor and hence he cannot be given the benefit of an order under Rule 100, that issue would be decided first as a preliminary issue in the course of the said proceedings.

231. We have now explained in sufficient detail the scope of the bar under Rule 102 and the scope of adjudication under Rule 101 if a transferee pendente lite of the judgment-debtor prefers an application under Rule 99. This position now begs the question whether such a transferee pendente lite of the judgment-debtor would be allowed to file a separate suit, in case he does not prefer an application under Rule 99 in view of the bar imposed by Rule 102? As we had mentioned at the beginning of our discussion on this aspect, the answer must necessarily be an emphatic 'No'.

The same reasoning that we had adopted to observe that other persons falling under the scope of Rules 97 or 99 would not be able to prefer a separate suit, would apply here as well. When the executing court is vested with the same power as the court before which a separate suit would be filed and Rule 102 bars any relief to a transferee pendente lite of the judgment debtor, why should a separate suit wherein an adjudication which is akin to that under Rule 101 would be conducted, be allowed? One must remember that it is the avowed object of Section 52 of the Transfer of Property Act which has given rise to Rule 102.

The same section 52 would bar any relief being accorded to the transferee pendente lite of the judgment-debtor in the separate suit as well. To put it simply, the fate of a transferee pendente lite of the judgment-debtor in the separate suit would be the same as that of his fate under Rule 101. Therefore, there exists no special reason to carve out an exception and allow the filing of a separate suit for persons falling within the bar under Rule 102 when the end result would be the same.

232. Before we close the discussion on this aspect, with a view to obviate any confusion as regards the position of law expounded by us above, we wish to advert to Rule 104 which we reproduce as under:

"104. Orders under rule 101 or rule 103 to be subject to the result or pending suit.- Every order made under rule 101 or rule 103 shall subject to the

result of any suit that may be pending on the date of commencement of the proceeding in which such order, is made if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property."

233. Rule 104 begins with the phrase "every order made under rule 101 or rule 103". This, in a way, substantiates the discussion made by us hereinabove that the determination of the questions referred to in Rule 101 may not always lead to an order being passed under Rules 98 or 100 respectively and a classic example of this scenario would be determining these questions in relation to a pendente lite transferee of a judgment-debtor. In other words, sometimes an order may be passed under rule 101 and it may not be followed with an order under rules 98 or 100. This is probably why Rule 104 brings both the order under Rule 101 and those under Rule 103 (which collectively includes orders under Rules 98 or 100) respectively, within its ambit.

234. Rule 104 then proceeds to say that an order under both Rule 101 and 103 respectively shall be subject to the result of any suit that may be pending on the date of the commencement of the proceeding in which such an order is made, i.e., the institution of an application under rule 97 or 99 as the case may be, if in such a suit that is pending, the party against whom an order is made under Rules 101 or 103 has sought to establish a right which he claims to the present possession of the property.

To put it simply, if a person has already filed a suit seeking to establish his right over the concerned property including that of possession, before the actual institution of an application under rules 97 or 99 or before the cause of action to file an application under rules 97 or 99 arose, it is only then that the orders which come as a consequence of the application under Rule 97 or 99, would be made subject to the result of such a previously instituted suit.

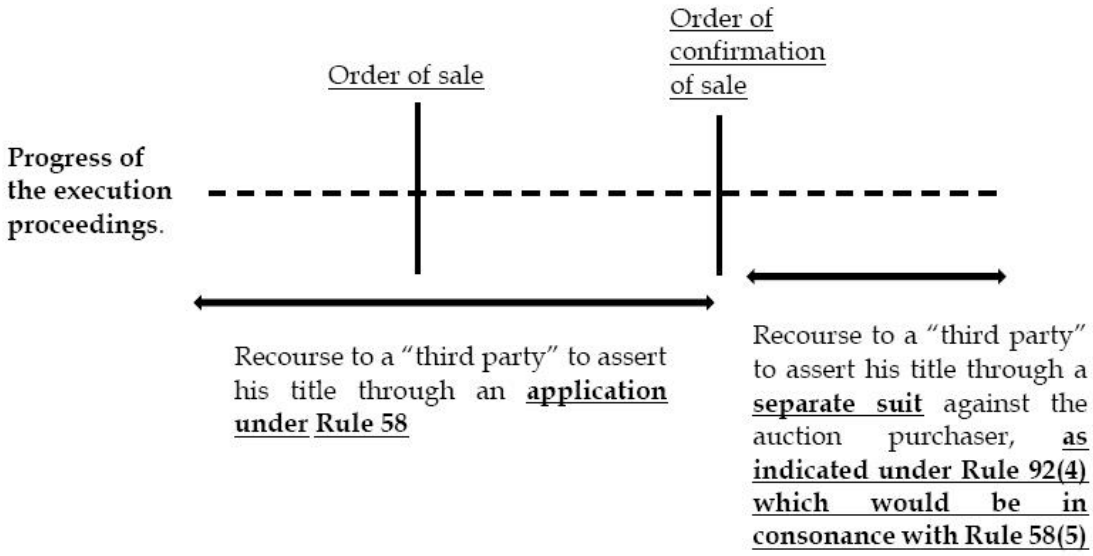
235. Such was the situation in Shamsher Singh (supra). The applicant under Rule 99 who was dispossessed by way of execution of the decree had already filed a suit over the same property in which he claimed title on the basis of adverse possession.

236. This rule must not be read to mean that once the cause of action to file an application under rule 99 has arisen, a party can resort to the remedy of a separate suit instead. V. Delineating when a third party could file an application under Order XXI CPC and when he could resort to a separate suit in order to assert his right, title and interest in the said property.

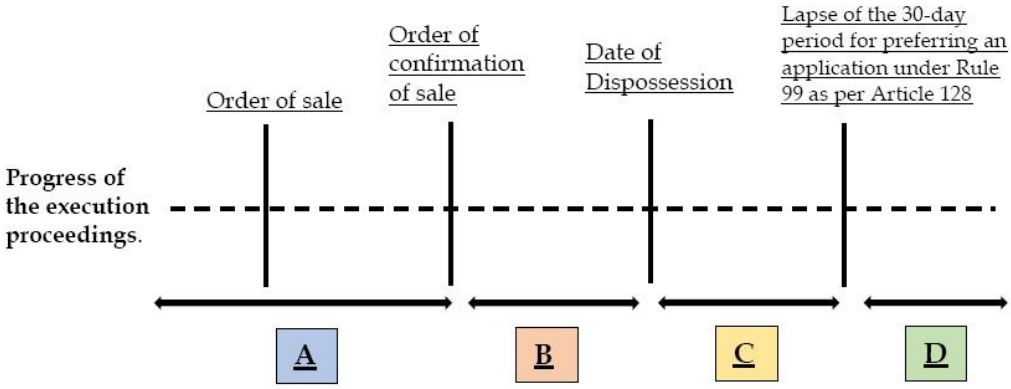
237. Having discussed rules 58, 89 to 92 and 99 to 104 respectively in great detail, to avoid any confusion and to provide a more holistic picture of when a

separate suit praying for the relief of title, amongst others, can be filed by a third party, when the property is sold in execution of a decree, is elaborated as follows:

i. Scenario 1 - When Rule 99 is not involved, i.e. when the third party filing the separate suit is not a person who has been in possession and subsequently, dispossessed in the course of execution of the decree:



ii. Scenario 2 - When Rule 99 is involved and the third party in possession is one who has been dispossessed as a consequence of the execution proceedings:



A	Recourse to a "third party" in possession to assert his rights including that of title through an **application under Rule 58**
B	Recourse to a "third party" in possession to assert his rights including that of title through a **separate suit** against the auction purchaser, **as indicated under Rule 92(4) which would be in consonance with Rule 58(5)**
C	Recourse to a "third party" in possession who is dispossessed to assert his rights including that of title through an **application under Rule 99**.
D	No recourse to a "third party" in possession who is dispossessed to assert his rights including that of title, either through an **application under Rule 99 or by way of a separate suit due to the expiry of limitation under Article 128 of the Limitation Act, 1963.**

238. A pertinent clarification in Scenario 2, especially as regards the period referred to as "B" would be that, if a third party who is in possession of the property which is the subject-matter of the auction sale, obtains knowledge of the auction sale, after the confirmation of sale, he needn't wait until he eventually comes to be dispossessed by the auction-purchaser to file an application under Rule 99. Before any cause of action to file an application under Rule 97 or 99 arises, he may choose to file a separate suit, if he wishes to, in accordance with Rule 92(4). However, once there arises an opportunity for such third party possessor to obtain appropriate redressal of his grievances through an application under Rule 97 or Rule 99, he must not be allowed to file a separate suit.

239. We say so also because we are cognizant of the differing views as regards whether a third party can make an application under Rule 97 taken by the decisions of this Court in Brahmdeo Choudhary (supra) and Sriram Housing (supra) respectively. Another coordinate bench of this Court in P. Sumathi v. K. Krishna Gounder & Ors in SLP(C) No. 14092 of 2025 has already taken seisin of such conflicting views while issuing notice vide its order dated 16.05.2025.

Without delving into which interpretation of Rule 97 may be right, we only wish to point out that in case the view taken by Sriram Housing (supra) is held to be

the correct view, then the interests of justice would demand that a third party in possession who obtains knowledge of the confirmation of sale and wishes to assert his right, title or interest in the same, must not be allowed to be remediless until he comes to be dispossessed, which dispossession is an essential ingredient under Rule 99. Therefore, the option of filing a separate suit must be made available to him.

240. Another reason why we have taken the view that in the time period falling in "B", the recourse to a separate suit may be available to a third party in possession is because of the language employed in Rule 104. Rule 104, basically, makes any order under Rules 98, 100 or 101 subject to the result of any pending suit (which was instituted before the commencement of the proceedings under Rules 97 or 99) wherein the party against whom the order under Rules 98, 100 or 101 is made has already sought to establish a right through which he claims possession to the property in question.

Therefore, Rule 104 itself indicates that a suit may be instituted by a person in possession of the property but before the commencement of the proceedings under Rules 97 or 99, with a view to not compel him to needlessly wait and agitate his rights only under these rules. In other words, Rule 104 also substantiates that in the period referred to as "B" in Scenario 2, the third party in possession may choose to file a separate suit.

241. However, we must point out that we have come across several decisions that refuse to hear the third parties in possession, in an application under Rule 97 or 99, merely owing to the fact that a separate suit has already been instituted by them for adjudication of the same rights. This would not be the right approach.

If the third party who is offering resistance to delivery of possession or who has been dispossessed has chosen to participate in the proceedings under Rule 97 or 99, the executing court would be obligated to decide all questions including those of their right, title and interest in the concerned property. The fact that Rule 104 would make such an order under Rules 98, 100 or 101 subject to the result of the previously instituted suit would not be reason enough for the executing court to refuse to hear the third party in possession or the third party who is dispossessed under Rules 97 or 99, as the case may be.

242. One may question as to why there is a stricter treatment under the period referred to as 'D' in Scenario 2 i.e., why both the option of filing a separate suit or an application under Rule 99 becomes unavailable upon the lapse of the limitation period as prescribed under Article 128 of the Limitation Act, 1963. Such a treatment, in our opinion, would not be onerous. Let us look at Scenario 1 to substantiate this rationale better.

As we have already explained previously, the progress of the execution proceedings, at least between the order of sale and the order of confirmation of sale is continuous and starts running from the date of the order of sale. In other words, the cause of action to file an application under Rule 89, 90 or 91 is not dependent on when a prospective applicant would acquire the knowledge of the order of sale.

The mere fact that a person acquired knowledge of his property being attached and sold, after the confirmation of the sale under Rule 92(1), would not turn the clock back in his favour and make available the option to file an application under Rules 89, 90 or 91 respectively. Therefore, under Scenario 1, the third party's option to file separate suit after the sale is confirmed (albeit on narrower grounds i.e., that the sale was a nullity etc.) would be dependent on when he obtains the knowledge of his property having been sold and this suit would be governed by the general provisions of limitation which would be applicable to such suits.

243. On the other hand, the limitation period for filing an application under Rule 99 i.e., Article 128 of the Limitation Act, 1963, which is 30-days from the date of dispossession is deliberately short because it takes into consideration the fact that the date of dispossession comes to the immediate knowledge of the dispossessed party. In other words, the cause of action to file an application under Rule 99 and the date of his knowledge that he is dispossessed, is one and the same. Even according to the interpretation to dispossession given in Ashan Devi (supra), the loss of control over the property which gives rise to the cause of action to file an application under Rule 99 would be the same date on which the applicant under Rule 99 would obtain knowledge of his dispossession.

Therefore, although Article 128 of the Limitation Act, 1962 uses the words "the date of the dispossession", it is implicit that it alludes to the date of the knowledge of dispossession considering the nature of the relief envisaged under Rule 99 and also considering that it is at the instance of a dispossessed party that the proceedings under Rule 99 come to life. It is under such circumstances, that a stricter standard is placed on such a dispossessed party to move the executing court within the limitation period as given under Article 128 and the option of filing a suit after the lapse of the said period is made impermissible under the period referred to in 'D'.

Once knowledge of dispossession is obtained, the applicant under Rule 99 must act promptly. Furthermore, when Rule 99 has been specifically created for the purpose of addressing such a situation and is bound by a strict timelimit, it would not be appropriate to allow the filing of a separate suit for the same relief that the executing court would be competent to provide, while also by-passing the limitation prescribed under Article 128.

244. In light of the expanded scope given to an adjudication under Rule 101 by the 1976 amendment, it is our view that once an application under Rule 99 comes to be allowed and the person dispossessed by the auction-purchaser is put back into possession by the executing court through an order under Rule 100, Rule 92(5) or at least its underlying intent must be carried forward by the executing court such that the auction-purchaser, against whom the order under Rule 100 would operate is able to take back the purchase-money he paid at the auction-sale, with or without interest.

This is because after the right, title or interest to the property is decided in favour of the dispossessed applicant under Rule 99, an auction-purchaser would be subjected to a similar, if not an identical hardship insofar as getting back his purchase-money is concerned. Especially having elaborated that the jurisdiction afforded to the executing court under Rule 101 is wide and all questions relevant to the adjudication of the dispute would be decided just as it would be in a separate suit and the order passed would be deemed to be a decree, such a measure is all the more necessary to alleviate the concerns of the auction-purchaser.

245. However, one impediment in seamlessly carrying the intent of the Rule 92(5) forward, would be the potential non-impleadment of the decree-holder in the proceedings under Rule 99. In a situation where the auction-purchaser is the one who is dispossessing the third party, the application under Rule 99 may or may not include the decree-holder as a party. In case, the decree-holder is not impleaded, it would not be possible for the executing court to direct the decree-holder to return the purchase money to the auction-purchaser.

It is suggested that a necessary amendment be brought in this regard regarding the impleadment of the decree-holder as a necessary party under Rule 99, even in cases where the auctionpurchaser is the one who is dispossessing the applicant under Rule 99. This would also enable to decree-holder to resume or revive the execution proceedings at the stage at which the sale was ordered, unless the executing court directs otherwise.

246. In the present factual scenario, where the respondent nos. 1 and 2 respectively are transferees pendente lite of the judgment-debtor who were kept completely unaware of the execution proceedings, as a result of which the sale came to be confirmed under Rule 92(1) and the possession was also handed over to the auction-purchaser appellants by the executing court, the respondent nos. 1 and 2 respectively must have preferred an application under Rule 99 within 30 days of their dispossession i.e., before 24.07.1989. They could have raised all their contentions regarding the title that they had over the suit property in such a proceeding under Rule 99.

The fact that no order could have been passed under Rule 100 owing to the bar under Rule 102 was, by itself, no reason to allow the filing of a separate suit in that regard. This is also because in case the filing of such a separate suit praying for the relief of title and possession was allowed, that would have also been dismissed for the sole reason that the respondent nos. 1 and 2 respectively are transferees pendente lite of the judgment-debtor. In simple terms, their fate in the separate suit would also have been the same as under an application under Rule 99.

247. To summarize - the relief for declaration of title and possession prayed for by the pendente lite transferees of the judgment-debtor i.e., the respondent nos. 1 and 2 respectively, could not have been granted in their favour whether it was made in an application under Rule 99, in an application under Section 47 CPC or in a separate suit.

Apart from the nuances relating to all these provisions which we have elaborated in detail, the very reason that their vendor was one of the judgment-debtors, would have disentitled them to the aforesaid reliefs. In short, since the relief(s) which they would be entitled to could only include the recovery of money, irrespective of the provision they invoked, their prayer for the reliefs of declaration of title and/or possession could not have been granted to them. VI. The decision of this Court in T. Vijendradas (supra).

248. Ms. Aparajita Singh, in her submissions, placed heavy reliance on the decision of this Court in T. Vijendradas (supra) and stated that the said decision would squarely cover the issue as regards the maintainability of the suit instituted by the respondent nos. 1 and 2 respectively.

249. In T. Vijendradas (supra), this Court was directly concerned with the interpretation of Rule 92(4) of Order XXI CPC. Therein, one 'V' who was the owner of the suit property had transferred his right, title and interest in the property in favour of the plaintiff. The factum of this sale was not intimated to the Municipal authorities and the plaintiff's name was also not mutated in the revenue records. Property tax had not been paid in respect of the said property for a period of three years, both by V before transfer to the plaintiff and by the plaintiff after the transfer in her favour. With a view to enforce a statutory charge on the property, the Municipality instituted a suit under the relevant legislation against 'V'. The plaintiff was not made a party therein.

The said suit was decreed and in execution, the property was put up for auction. Initially, since no buyer was available, the upset price was reduced twice and subsequently, the property was sold to the auction-purchaser, who was the wife of 'V'. The sale was also confirmed. It was alleged that, during the first instance of reduction of the upset price, notice was not issued to the judgment-debtor in

accordance with Rule 66 of Order XXI CPC and during the second instance, no order for reduction of upset price was even passed.

It was only after the confirmation of sale that the plaintiff obtained knowledge of the execution proceedings and the resultant sale thereof. Therefore, she filed a suit for declaration and possession against 'V' and the auction-purchaser respectively. During the pendency of this suit, the auction-purchaser further sold the said property to one 'R' who then sold it in favour of the appellants therein. Both 'R' and the appellants, were impleaded in the said suit. However, the decreeholder- Municipality being a necessary party as per Rule 92(4), was not impleaded. Despite the same, the said suit was decreed in favour of the plaintiff.

250. In the plaint, the plaintiff alleged that 'V' had committed fraud i.e., (a) he had not intimated the transfer of the property in favour of the plaintiff while initially appearing in the suit instituted by the Municipality, (b) the notice which was eventually sent to the plaintiff was deliberately made to the wrong address, (c) 'V' had voluntarily suffered an ex-parte decree, (d) 'V' did not object to the reduction of the upset price during the sale in execution of the decree, (e) 'V' participated in the auction sale through his wife and subsequently, sold it to 'R' who in turn, sold it to the appellants.

251. What we understand to be the essence of the plaintiff's case in T. Vijendradas (supra) is that the original decree which was directly concerned with her property was not binding on her inasmuch as the same was a nullity and without jurisdiction, having been passed without impleading her as a party despite the fact that the property had already been transferred in her favour before the institution of the suit by the Municipality.

In other words, she was not a pendente lite transferee of the judgment-debtor-'V' but was a bona fide purchaser for value who was not hit by the doctrine of lis pendens. Therefore, not having an opportunity to assert her title either in the original suit or in an application under Rule 58 of Order XXI CPC for the want of knowledge, she was a "third party" as indicated under Rule 92(4). Being neither a party to the original suit, nor a representative of the judgment-debtor-'V', her suit would not be hit by Section 47 CPC either.

252. We are aware that the plaintiff therein seems to have raised several contentions as regards the reduction of the upset price, non-service of notice etc. as well. However, for reasons that we have elaborated upon in the preceding parts of this judgment, those are grounds that could only be raised in an application under Rule 90 within the prescribed limitation period under Article 127 of the Limitation Act, 1963. Therefore, even in T. Vijendradas (supra) these grounds falling with the scope of Rule 90, referred to by the plaintiff, must not be understood to have motivated this Court in holding the suit maintainable. The

crux of the arguments of the plaintiff was only that the original decree was without jurisdiction and not binding on her.

253. A crucial question in T. Vijendradas (supra) was whether the non-impleadedment of the decree-holder-municipality would be detrimental to the suit instituted by the plaintiff. When there was enough material to infer that the original decree was a nullity, this Court did not wish to non-suit the plaintiff only based on the ground that the decree-holder-municipality was not made a party to the suit instituted by her as per Rule 92(4).

Moreover, it was not the Municipality themselves who had raised the issue of their non-impleadment; such an issue was raised by the appellants who were pendente lite transferees. It was in such a background that this Court had exercised its jurisdiction under Article 142 of the Constitution of India with a view to do complete justice between the parties and the suit was held to be maintainable. The relevant observations are thus:

"Conclusion

33. The appellants and their predecessors, therefore, are also guilty of suppressio veri. Ordinarily a statute shall prevail over the common law principle. However, in a case of this nature, in the event of any conflicting interest, this Court in exercise of its equity jurisdiction under Article 142 of the Constitution of India is to weigh the effect of a fraud and the consequence of non-impleadment of a necessary party. We would hold that the scale of justice weighs in favour of the person who is a victim of fraud and, thus, we should not refuse any relief in his favour, only because he might have been wrongly advised. The purport and object for which Order 21 Rule 92(5) was enacted furthermore would be better subserved if it is directed that the respondents shall pay the amount which the court paid to the Municipality out of the amount of auction.

34. We have noticed hereinbefore that one of the objects sought to be achieved in amending Order 21 Rule 92 was to do complete justice to the parties so as to enable the auction-purchaser to get back the amount from the decree-holder and revive the execution proceedings so that the decree-holder may proceed against the judgment-debtor for realisation of the decretal amount. In this case, the plaintiff-respondents had not claimed any relief against the Municipality.

The Municipality's right to realise the amount of property tax together with interest, if any, is not in dispute. Although the liability of Venugopal in terms of the 1920 Act to pay the property tax continued, it has been accepted at the Bar that the plaintiff-respondents were also liable to pay the amount of property tax after the date of sale. In a case of this nature, therefore, the plaintiff-respondents

can be directed to pay the amount of property tax by way of redemption of mortgage in favour of the Municipality.

35. If any amount is available with the court out of the amount received from the auction-sale, the same may be paid to the appellants. The appellants would also be otherwise entitled to file an appropriate suit as against Manickam and others."

254. The aforesaid decision in T. Vijendradas (supra) would not help the case of the respondent nos. 1 and 2 respectively herein. As opposed to the respondent nos. 1 and 2 respectively herein, the plaintiff in T. Vijendradas (supra) was a "third party" who was not a transferee pendente lite of the judgment-debtor and whose suit was not hit by the bar under Section 47 CPC. Furthermore, not having been dispossessed in the course of the execution proceedings, there was no question of availing the remedy under Rule 99 either. Hence, the suit instituted by the plaintiff therein fell under Scenario 1 (as we have illustrated above).

Her suit was otherwise maintainable, and the only impediment in her way was the non-impleadment of the original decree-holder-municipality. In the unique facts and circumstances of case therein, this Court had exercised its plenary powers to only overcome the non-impleadment of such a necessary party in the separate suit. Along with that, with a view to keep the intent underlying Rule 92(5) intact, the plaintiff therein was directed to pay the property tax to the decree-holder Municipality and the appellants were held to be entitled to any amount remaining from the auction-sale, along with the filing an appropriate suit for recovery of money against their vendors.

255. The facts and circumstances that we are faced with are entirely different and goes to the very root of the maintainability of the suit instituted by the respondent nos. 1 and 2 respectively. Their suit is non-maintainable not merely because of the failure to implead a necessary party but owing to the bar to a suit under Section 47 CPC and Rule 99 of Order XXI CPC respectively. Moreover, they are transferees pendente lite of the judgment-debtor, which fact, by itself, renders them ineligible to obtain any relief of declaration of title and/or possession.

G. CONCLUSION

256. A conspectus of the aforesaid detailed discussion on the position of law as regards the doctrine of lis pendens along with Rules 58, 89 to 92, 99 to 104 of Order XXI CPC respectively and Section 47 CPC is as follows:

(i.) Section 52 of the 1882 Act embodying the doctrine of lis pendens would apply to suits where any right to the property in question is directly and specifically in issue. Whether any right in the property was directly and specifically in question in the suit would depend on the facts and circumstances of each case. The doctrine cannot blindly be made inapplicable to suits in which

the plaint contains a specific averment that the mortgaged property be attached and sold in lieu of the decree or a charge be created on the property. If interpreted so, any judgment-debtor can render the decree incapable of execution by transferring his interest in the property during the pendency of such a suit.

(ii.) Rule 89 of Order XXI CPC provides an opportunity to any person claiming an interest in the property sold or a person acting for or on behalf of the persons having such interest, another opportunity to save the property from the clutches of the sale. A sine qua non for setting aside the sale under this rule would be the payment of the deposit as prescribed therein within a period of sixty days from the date of the sale. For the purposes of this rule, a pendente lite transferee of the judgment-debtor would also fall under the ambit of the phrase "person claiming an interest in the property sold".

(iii.) Rule 90 of Order XXI CPC provides that the sale shall be setaside if there exists any material irregularity or fraud in publishing or conducting the sale. Furthermore, such material irregularity or fraud must cause a substantial injury to the applicant under Rule 90. In other words, there must be a direct nexus between the material irregularity or fraud and the substantial injury caused to the applicant.

(iv.) The words "material irregularity in publishing or conducting it" in Rule 90 would include any material irregularity or fraud occurring at a stage prior to the proclamation of sale as well, provided that the applicant did not have an opportunity to raise or could not have raised such a grievance at the appropriate time. Furthermore, the mere absence of or any defect in the attachment, by itself, cannot be a ground for setting aside the sale under Rule 90, unless substantial injury is proved. The applicant must make specific averments as regards the alleged irregularities or fraud, and convince the executing court that a substantial injury has been caused to him as a consequence.

(v.) The absence of a saleable interest on the part of the judgment-debtor to the suit property cannot be brought in as a ground under Rule 90 of Order XXI CPC. Such a ground would squarely fall within the ambit of Rule 58 of Order XXI CPC, if the sale is yet to be confirmed.

(vi.) Rule 92(3) of Order XXI CPC states that no person against whom an order under Rule 92 is made (either confirming the sale under Rule 92(1) or setting it aside under Rule 92(2)) can institute a separate suit in that regard. However, there is a very narrow scope for a person to file a separate suit despite the bar under Rule 92(3). The reason for such a separate suit must be that the execution proceedings and the sale was without jurisdiction and therefore, a nullity and not binding on the plaintiff who has instituted a separate suit.

(vii.) Having said so, before holding such a separate suit instituted by a plaintiff alleging that the entire execution proceedings was without jurisdiction and therefore, the sale was a nullity, maintainable, courts must be vigilant in ensuring that the plaintiff was not a party to the original decree or a representative of a party to the original decree, as stated in Section 47 CPC. If so, instead of filing a separate suit, such persons must prefer an application under Section 47 CPC. Upon any failure to do so, their separate suit would be hit by the bar contained in Section 47 CPC which specifically uses the words "and not by a separate suit".

(viii.) The term "third party" under Rule 92(4) would mean a party other than the judgment-debtor, decree-holder or the auction-purchaser and would refer to a party who has not had his right, title or interest vis-à-vis the property in question adjudicated under Rule 58, Rule 97 or Rule 99 of Order XXI CPC respectively. To put it very simply, the term "third party" under Rule 92(4) would refer to a party who is extraneous to the original suit proceedings and the proceedings under Order XXI CPC, and who either has not had his right, title or interest adjudicated or having the opportunity to have his right, title or interest adjudicated, has not availed such a remedy within the required time. Such a "third party" would also be someone who falls outside the scope of Section 47 CPC.

(ix.) Rule 92(4) is not a provision which confers any right to the third party to institute a suit for challenging the title of the judgment-debtor to the property which is subject to the execution proceedings. It is merely a procedural provision which states that such a suit must be instituted against the auction-purchaser, where the decree-holder and judgmentdebtor would be necessary parties.

(x.) When a party other than the judgment-debtor, including a third party, is dispossessed during the course of execution of a decree, the only remedy for such a dispossessed party would lie in filing an application under Rule 99 complaining of its dispossession. In such an application, all questions including that of the right, title and interest of the parties in the proceeding, to the property, would be examined by the executing court.

(xi.) The words "may" used in Rule 99 along with the words "and not by a separate suit" used in Rule 101, must not be read to mean that a party who has been dispossessed has two options i.e., to either prefer an application under Rule 99 or to file a separate suit, the moment they are dispossessed. This would defeat the underlying object of the amendment made to the scheme of Rules 99 to 104 respectively wherein the executing court has been specifically empowered to look into the questions relating to the right, title and interest of the parties, quite akin to that which would have been done by way of a separate suit. Once the period of limitation for preferring an application under Rule 99 lapses, the person who has been dispossessed in the course of the execution of the decree, including a third

party, cannot file a separate suit to circumvent or by-pass the said prescribed period of limitation.

(xii.) Rule 102 prevents the executing court from passing any order under Rule 100 if it is found that the applicant under Rule 99 is a transferee pendente lite of the judgment-debtor. This again, cannot be construed as giving leeway to such a person to institute a separate suit. We say so for the simple reason that, even in the separate suit, the law would not look favorably upon a pendente lite transferee, and no relief of declaration of title and/or possession would be granted to him. His fate would be the same as under an application under Rule 99.

(xiii.) Therefore, - First, the separate suit instituted by the respondent nos. 1 and 2 respectively would be non maintainable because they are representatives of the judgment-debtor and the bar envisaged under Section 47 CPC would squarely apply to their case. Secondly, having not availed the remedy under Rule 99 of Order XXI CPC within time, the separate suit instituted for the same relief(s) would be barred. Thirdly, even if the aforesaid two reasons assigned by us could be said to not affect the suit instituted by the respondent nos. 1 and 2 respectively, they would still not be entitled to the reliefs claimed owing to them being pendente lite transferees of the judgment-debtor whose transaction would be hit by the doctrine of lis pendens.

257. In light of the aforesaid, the High Court in its impugned judgment could be said to have committed an error by preoccupying itself with the allegations of fraud made by the respondents nos. 1 and 2 respectively and ignoring the true essence of the provisions under Section 47 and Order XXI CPC respectively, in holding the suit to be maintainable.

If the approach taken by the impugned decision i.e., that fraud vitiates everything, is endorsed, especially in the context of an auction sale conducted by the executing court, then Rule 90 of Order XXI CPC which is time-bound and which deals with the very same aspect i.e., material irregularities or fraud in conducting or publishing the sale, would be rendered obsolete. Courts must be vigilant as to when the plaintiff is invoking grounds which otherwise could be said to fall under the scope of Rule 90 of Order XXI CPC and when the grounds raised by the plaintiff are such that the entire execution proceedings and the consequent sale suffered from the want of jurisdiction and/or was a nullity.

258. The impugned judgment also seems to have missed the key aspect that the respondent nos. 1 and 2 respectively are transferees pendente lite of one of the judgment debtors. 259. In the result, the appeal succeeds and is hereby allowed.

260. Before we close the present matter, we consider it apposite to point out that the peculiarity of the facts and circumstances of this case has not escaped our

attention. We have given a considerable amount of thought and we believe that we should put all the disputes between the parties herein to rest, once and for all. We seriously considered whether we could grant any other relief to the respondent nos. 1 and 2 respectively, at this stage.

261. What has predominantly weighed with us is that the sale deeds in favour of the respondent nos. 1 and 2 respectively were executed by their vendor in the year 1985. We are now in the year 2025. More than 40 years have passed by. It would be a long and taxing battle for respondent nos. 1 and 2 respectively to recover the sale consideration paid by them to the respondent no. 3.

262. We have taken note of the fact that the original vendor i.e. respondent no. 3 before us, was one of the judgment-debtors. We are also cognizant of the fact that appellants-auction purchasers before us are none other than the nephews of the original vendor i.e., respondent no. 3. Amongst assigning several other reasons, we have already indicated that the factum of such a relationship between the auction-purchasers and judgment-debtor(s) could not have been raised as a ground to make the separate suit instituted by the respondent nos. 1 and 2 respectively, maintainable.

All such allegations may constitute material irregularity or fraud in publishing or conducting the sale, which would instead fall within the purview of Rule 90 of Order XXI CPC and such an application has to be made in a timely manner before the executing court. However, in the course of assessing whether we could direct the payment of any amount from the respondent no.3-vendor, the counsel for the appellants-auction purchasers fairly conceded that since his clients are the nephews of the vendor, they would be willing to pay a fair amount to the respondent nos. 1 and 2 respectively.

263. In such circumstances referred to above, we do not wish to subject the respondent nos. 1 and 2 respectively to a fresh yet arduous round of litigation for the limited relief of recovery of money from the original vendor i.e., respondent no.3.

264. In the peculiar facts and circumstances of the present case and with a view to do substantial justice, we direct that the appellants pay a sum of Rs. 75,00,000/- to the respondent nos. 1 and 2 respectively, within a period of 6 months from the date of this judgment. The failure to pay the aforesaid sum within such a period would attract an interest at the rate of 12% per annum till the date of payment.

265. In the event of any default by the appellants herein in complying with the aforesaid directions, the respondent nos. 1 and 2 respectively, would be at liberty to move to this Court.

266. Pending applications, if any, shall stand disposed of.

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

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

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

New Delhi,

December 15, 2025

IN THE SUPREME COURT OF INDIA

Cement Corporation of India
Vs.
ICICI Lombard General Insurance Company Ltd.

[Civil Appeal No. 2052 of 2016]

Head Note - The cause of fire is immaterial, when the loss is occurred to the insured from the fire and the insurer can't deny claim saying that the proximate cause of fire was not provided in the specified peril.

JUDGMENT

Vijay Bishnoi, J.

1. This appeal has been preferred by the Appellant challenging the Judgment dated 16.07.2015 (hereinafter referred to as "impugned judgment") passed in CASE NO.210/2009 by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "NCDRC"). The NCDRC, thereby dismissed the complaint preferred by the Appellant- Insured herein, thus denying the Appellant any reimbursement/claim from the Respondent-Insurance Company herein.

BRIEF FACTS

2. The brief facts giving rise to the controversy are that the Appellant, a Government company, invited tender for insurance for its various Units/Dumps/Offices etc., in June 2005. Pursuant to the said tender, on 16.06.2005 the Respondent herein submitted its quote for centralized insurance policy and consequently, on being declared as the successful bidder, the Respondent was awarded the contract for Centralised Insurance coverage at the CO Unit and Zonal Units.

Accordingly, a contract dated 21.07.2006, was entered between the Appellant and the Respondent herein and a Standard Fire and Special Perils Policy (Material Damage) (hereinafter referred to as "the policy") was issued by the Respondent herein for the Appellant's unit, Mandhar Cement Factory, Cement Corporation of India, P.O. Mandhar, Rampur District, Chhattisgarh 243111 (hereinafter referred to as "factory").

3. On the early morning of 01.11.2006, a theft and fire incident occurred at the factory of the Appellant where some petty thieves entered the premises of the Appellant company with a blow torch and portable gas cutter-like apparatus.

Although the thieves intended to steal winding copper and transformer oil, using bolt cutters and blow torch, which triggered a fire in the transformer and resulted in a fire in the factory premises. Following this, the Appellant formally notified the Respondent about the incident through a letter dated 01/02.11.2006 and also got registered an FIR bearing No. 106/2006 dated 01.11.2006 with the concerned police station.

4. On 30.01.2007, the Appellant calculated the loss and lodged a claim of Rs. 2,20,14,190 with the Respondent. The Respondent, vide letter dated 15.05.2007, acknowledged the receipt of the claim and requested the Appellant to submit the documents as required by the panel adjuster/Surveyor.

5. On 12.10.2007, the Final Survey Report was submitted by the Surveyor. In the said survey report, circumstances of loss and cause of fire have been reported as under:

"Circumstances of Loss	As reported, at around 7 a.m. on 1st November 2007, a fire incident took place inside the plant premises, in the Transformer SI. No. 24994, which had no electrical input / output power for the last several years. The Fire Brigade on receipt of the Call of Duty from the Insured's staff, reached there and extinguished the fire, which was of a light nature due to the absence of combustibles, viz. very little transformer oil was inside. From local enquiries it was learnt that being a silent Risk, there were a past history of theft of transformer oil and copper windings by local petty thieves and miscreants on several occasions, being a desolate place with thick bushy growth all around. This fire incident was a result of attempted theft, by blow lamp / portable gas cutters, who had on the previous night stole oil from another similar Transformer, SI. No. 24993, which was not affected by the fire.
Cause	Transformer, SI. No. 24994 was reported to have been set on fire while some unknown miscreants / thieves were attempting to take away the copper windings with the help of blow torch or such type of flame cutters."

Based on this the Surveyor thus opined that in this situation insurer's liability would not attach as the cause falls under the exclusion sub-clause (d) of Clause V in the Policy.

6. Relying upon the said survey report, the Respondent vide letter dated 04.01.2008 repudiated and rejected the claim of the Appellant on the grounds that

the peril was not covered under the Policy as the cause of the loss was covered under the exclusion clause of Riots Strike, Malicious and Damage ("hereinafter referred to as RSMD"). The contents of the Repudiation letter are reproduced hereunder:

"our surveyor was in contact with you and as per the report submitted by them the proximate cause of loss was Burglary. Kindly note that this policy is a named peril policy and this peril is not covered under the policy (RSMD Exclusion Clause-D). In the light of the above facts, we are treating the case as 'No claim' and accordingly closing the same as 'Nil Liability' case."

7. Being aggrieved by the repudiation of the claim by the Respondent, the Appellant filed Complaint No. 210 of 2009 before the NCDRC, inter alia praying that the Respondent be directed to pay the Appellant a sum of Rs. 2,99,39,298.40 along with interest @18% p.a. till date.

8. The Respondent filed their written submissions before the NCDRC inter alia stating that the theft which took place on the premises in the factory preceded the fire, and thus, the incident of theft was the proximate cause of damage. Since theft was not a named peril in the policy, the Respondent was not liable to reimburse the damage claim of the Appellant.

9. The NCDRC vide the impugned judgment dismissed the complaint on grounds that the proximate cause of the loss to the Appellant was burglary and the insurance policy taken by the Appellant did not cover the loss on account of theft/ burglary. Therefore, the Respondent is not liable to compensate the loss to the Appellant. While arriving at this conclusion, the NCDRC has placed reliance on the judgment of this Court in New India Insurance Company Limited Vs. Zuari Industries Limited & Others (2009) 9 SCC 70, holding that the proximate cause means "active and efficient cause" and not merely the event closest in time.

10. Aggrieved by the impugned judgment, the Appellant filed the instant civil appeal.

SUBMISSIONS OF THE PARTIES

11. The learned counsel for the Appellant contended that a fire insurance policy is intended to protect against loss caused by fire, and it is trite to say that the cause of the fire is irrelevant unless it stems from a peril expressly excluded in the policy. It is pertinent that under the "Fire" peril, the policy excludes merely the damage caused to the property either by (i) its own fermentation, natural heating or spontaneous combustion or undergoing any heating or drying process; and (ii) burning of property insured by order of any Public Authority. It is further submitted that apart from this, the policy had a general exclusion clause which provides that terrorism and earthquake would be considered as an exclusion

under the policy and the theft during or after the incident but not in case where it precedes the incident.

12. It is thus submitted that the cause of damage in the instant case was fire. The damage was caused by the ensuing fire itself, and not by theft/ burglary. Since the policy does not list any further caveat or exclusion regarding the cause of a fire, the insurer cannot repudiate the claim by citing theft/ burglary as the proximate cause. The cause of the fire becomes irrelevant in the absence of a specific exclusion.

13. It is further submitted that the test of proximate cause is applied to see whether the loss was due to a specified peril. However, in the present case, the damage was due to an insured peril, i.e., fire which does not categorize theft/ burglary as an exclusion. The test of proximate cause becomes irrelevant in the instant case as the damage results from separate perils and the one causing the loss (fire) is expressly covered and not excluded.

14. It is further argued that the policy does not list burglary/ theft as an exclusion in the case of fire. Thus, there is no reason for the Respondent to repudiate the claim of the Appellant on the ground that the theft precedes the fire and therefore, the cause of the loss was covered under the exclusion clause of "RSMD". It is further argued that the "RSMD" clause has no application in the facts and circumstances of the case because the damage to the insured property was caused due to fire and not by any of the exclusion made under the "RSMD" clause.

15. Per contra, learned counsel for the Respondent submitted that the policy is a "named peril" policy as opposed to a general allrisks policy and the policy contained a specific exclusion under Clause V(d) which excluded loss from "Burglary, housebreaking, theft in any malicious act.". Further, the policy also excluded loss by theft during or after the occurrence of any insured peril except as provided under the RSMD cover.

16. It is argued that the cause of the fire is undisputed that it originated from an attempted theft/burglary where miscreants used blow lamps or portable gas cutters to steal copper windings from a transformer. The cause of fire was also confirmed by the Fire Department Report and the Final Survey Report. Thus, the proximate cause of loss is burglary and not fire. The Appellant chose not to take a separate theft policy for its factory and therefore, on the said basis, their claim was repudiated.

17. The learned counsel also relied upon the judgment of this Court in Zuari Industries (supra) wherein it was established that the proximate cause of the loss would be "the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the intervention of any

other force working from an independent source". It is submitted that when this reasoning is applied in the instant case, burglary/ theft was to be considered as the active and efficient cause as, had the theft not occurred, there would have been no fire, and the damage would not have happened. Since the theft/burglary comes under the exclusion of RSMD clause, the claim of the appellant has rightly been repudiated.

18. The learned counsel for the Respondent further contended that even if theft and fire are considered to be the two concurrent proximate cause of the damage, no payments could be made to the Appellant as an exclusion clause of theft was acting under the policy and hence, the damage would be excluded from the ambit of the policy.

19. We have heard the parties and have perused the materials on record.

ANALYSIS

20. It is not in dispute that when the incident of fire took place, which resulted in loss to the property insured, the Appellant holds a "Standard Fire and Special Perils Insurance Policy" which was issued by the Respondent. The opening paragraph reads as under:

"In consideration of the insured named in the Schedule hereto having paid to ICICI Lombard General Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said schedule, the Company agrees, (Subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon) that if, after payment of the premium, the Property insured described in the said Schedule or any part of such Property be destroyed or damaged by any of the perils specified hereunder, during the period of insurance named in the said schedule or of any subsequent period, in respect of which the insured shall have paid and the Company shall have accepted the premium required for the renewal of the Policy, the Company shall pay to the insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof."

(Emphasis Supplied)

From the bare reading of the opening paragraph of the policy, it is clear that the Respondent had assured to indemnify the loss to the insured by any of the perils specified in the policy. The Perils which are specified in the policy are as follows:-

I. Fire
II. Lightning

III. Explosion/Implosion
IV. Aircraft Damage
V. Riot, Strike, Malicious and Damage
VI. Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood, and Inundation
VII. Impact Damage
VIII. Subsidence and Landslide including Rockslide
IX. Bursting and/or overflowing of water-tanks, apparatus, and pipes
X. Missile Testing Operation
XI. Leakage from automatic sprinkler installations
XII. Bush Fire

In each of the specified perils, certain exclusions are provided. For the present controversy, the specified peril "Fire" is relevant wherein the exclusions have been provided which are as under:-

"**1. Fire:**
Excluding destruction or damage caused to the property insured by
(a) i) its own fermentation, natural heating or spontaneous combustion.
ii) its undergoing any heating or drying process.

(b) Burning of property insured by order of any Public Authority."

From the above, it is clear that burglary/theft are not included in the exclusion given in the specified peril "Fire." The opening part of the policy specifically says that the insurance company will indemnify the loss by any of the perils specified in the policy. Once it is not disputed that the loss is caused by fire, then the cause igniting the fire becomes immaterial.

The insurer cannot refuse to indemnify the damage caused by fire, which is a specified peril, on the ground that the proximate cause of fire was burglary/theft (which is excluded under the RSMD clause), particularly when no such exclusion is provided in the specified peril "Fire". Further, if we look into the general exclusion in the policy, loss by theft is excluded during or after the occurrence of the insured peril except as provided under the RSMD clause. Nonetheless, the policy is silent on the aspect of whether the burglary/ theft which precedes the insured peril is excluded or not.

21. The Respondent has repudiated the claim of the Appellant on the ground that since the theft preceded the fire, the claim for loss by the Appellant is not maintainable because under the RSMD clause, burglary/theft is an exclusion. The NCDRC had also upheld the said stand of the Respondent, however, in our considered view, the reason for repudiation of the claim of the Appellant is not justified.

22. In Avtar Singh's Law of Insurance, 2nd Edition 2010, pp. 89, it was observed that the law need not go into the cause of the causes in case of fire as it may result in an infinite process. Therein it is stated as under:

"Fire means actual ignition and not merely generation of heat..... BYLES J said:

"The expression in the policy which we have to construe is, 'loss or damage occasioned by fire'. Those words are to be construed as ordinary people would construe them. They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is in the one case there is a loss, in the other a damage, occasioned by fire. LORD BACON says:

'It were infinite for the law to judge the causes of causes, and their impulsions one of another, therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree.' If that were not so, a ship in the neighbourhood of Mount Etna or Vesuvius during an eruption, and receiving damage from substances projected therefrom, might be said to be damaged by fire. So, a shot falling amongst crockeryware might in one sense be said to occasion a loss by fire. But neither of these cases would fall within these words, which must be understood in their plain and ordinary sense."

(Emphasis Supplied)

23. A fire insurance policy is essentially a contract entered between the insurer and the insured for indemnification of the loss caused to the insured goods by fire. The High Court of Madras in its judgment in Sri. Balaji Traders vs. United India Insurance Co. Ltd. reported in 2005 (1) CTC 267, which was later confirmed by this Court, while dealing with a case where a fire took place in a godown which resulted in loss of stock to the petitioner, held that, the cause of fire is immaterial unless it is specifically pleaded that the fire was occasioned by the wilful act of foul play or fraud by the insured himself. The relevant paragraphs from the judgment of the High Court are reproduced below:

"24. The learned counsel for the appellant relying upon certain passage in "Fire and Motor Insurance" by E.R. Hardy Ivamy, (1973 Edition), submitted that the cause of fire in this case may not weigh the quantum of evidence or it may not be the cause for rejecting the claim, since the contract is to provide for the payment of money, upon the happening of a fire. In the said book, it is observed under the heading 'Immateriality of Cause of the Fire' as follows:

"The object of the contract is to provide for the payment of a sum of money, or for some corresponding benefit, to meet a loss or detriment which may be suffered by the insured upon the happening of a fire. To carry the investigation,

therefore, beyond the cause of the loss, and to cast upon the insured the burden of establishing that the cause of the fire itself was covered by his contract, would largely defeat this object. When it is one established that the loss is due to fire within the meaning of the contract, the cause of the fire is, as a general rule, immaterial. The fact that the fire was occasioned by negligence does not exempt the insurers from liability, for one of the objects of the contract of fire insurance is to provide against the consequence of negligence.

It is therefore immaterial whether a fire which causes a loss is lighted improperly, or, after being properly lighted, is negligently attended, since the insured is in both cases entitled to recover. It is equally immaterial whether the fire is caused by the negligence of servants or strangers, or even by the negligence of the insured himself." It is also observed in the above cited book that, "Where the act is committed without his privity, the insured, being guilty of no misconduct himself, does not commit a breach of good faith in making a claim in respect of his loss, and is therefore not precluded from recovery."

25. From the above observation, which was deduced from the rulings of the High Court, it is clear that it is immaterial whether the fire was caused by the negligence of the servant of the plaintiff firm or by some other method, unless it is pleaded specifically that the fire occasioned by the willful act of foul play or fraud by the insured himself. The first defendant has not raised any plea of fraud and therefore, as observed by the learned single Judge, since the plaintiff has failed to prove the cause of fire, the claim should be negatived, is not acceptable to us.

26. The learned counsel for the appellant submitted, that the fire loss caused negligently by the insured, even if it is correct, is covered by fire insurance, since otherwise such policies would practically be of little importance. Therefore, on the ground that the contract is based upon the utmost good faith, the insurer cannot repudiate the claim of the insured, unless it is shown that the assured or insured failed to make such disclosure as agreed under the terms of the contract.

27. In the book 'Principles of Insurance Law' by Dr. Avtar Singh, it is said as follows, under the heading 'Cause of fire is immaterial':

"In insuring against fire, the insured wishes to protect himself from any loss or detriment which he may suffer upon the occurrence of a fire, however it may suffer upon the occurrence of a fire, however it may be caused. So long as the loss is due to fire within the meaning of the policy, it is immaterial what the cause of the fire is, generally. Thus, whether it was because the fire was lighted improperly or was lighted properly but negligently attended to thereafter or whether the fire was caused on account of the negligence of the insured or his

servants or strangers is all immaterial and the insurer is liable to indemnity the insured."

Therefore, considering the policies taken by the insured here, we affirm the above said view, thereby concluding that the claim of the plaintiff cannot be dismissed on the ground that the cause of fire pleaded in the plaint has not been established. The cause of fire becomes material and should be seen, where there is a defence such as that the fire occasioned not by the negligence, but by the willful act of the insured or where any foul play has been made out or suspected, which are not even pleaded in this case and no such case has also been made out."

(Emphasis Supplied)

24. The principles governing "Fire Insurance" have been very succinctly laid down by this Court in the case of Orion Conmerx Pvt. Ltd. vs. National insurance Co. Ltd. reported in 2025 SCC OnLine 2309, wherein it was held that if there was a fire and something was on fire which ought not to be on fire and such a fire was not caused by the wilful act of the insured, then any loss attributable to fire would be covered under the policy. The relevant portions of the said judgment are reproduced herein under:

"REASONING
PRINCIPLES GOVERNING 'FIRE INSURANCE'

"32. Having heard learned counsel for the parties, this Court is of the view that fire insurance is a strategic tool for risk management, asset protection and economic resilience. Fire insurance policy does not prevent fire - but it cushions the financial impact when it occurs. Keeping in view the importance of the concept of fire insurance, it is important to outline the principles governing the same.

33. It is settled law that the contract of fire insurance is a contract to indemnify the Insured against loss by fire. The expression 'fire' signifies the cause of the loss and in order to determine whether in a particular case the loss is caused by fire, the following rules generally apply:-

a) There must be an actual fire; hence mere heating or fermentation will not be sufficient to render the insurers liable for loss occasioned thereby.

b) There must be something on fire which ought not to have been on fire.

c) There must be something in the nature of an accident, but a fire occasioned by the wilful act of a third person without the consent of the Insured, is to be regarded as accidental for the purpose of this rule. If these requisites are satisfied,

any loss attributable to the fire, whether by actual burning or otherwise, is within the contract.

34. The object of the contract is to protect the Insured against loss occasioned by fire. The fire must be accidental. The dictionary meaning of the expression 'accidental' is a 'happening occurring unexpectedly or by chance'. Consequently, damage from a deliberately set fire will not be covered. To carry out the investigation, therefore, beyond the cause of the loss and to cast upon the Insured the burden of establishing that the cause of the fire itself was covered by his contract, would largely defeat this object.

35. The cause of fire, however, becomes material where the circumstances of the case are open to suspicion, and seem to indicate that it would be contrary to the principle of good faith (doctrine of uberrima fides) inherent in the contract to permit the Insured to recover. Accordingly, the cause of fire becomes material in cases where the fire is occasioned not by negligence but by the wilful act of Insured himself or of someone acting with his privity or consent. In such a case, his conduct, coupled with the making of a claim, is a fraud upon the insurers and he cannot enforce his claim against them. (See: The Law Relating to Fire Insurance by A.W. Baker Welford and W.W. Otter-Barry Fourth Edition).

36. This Court in New India Assurance Company Limited v. Mudit Roadways, (2024) 3 SCC 193 has held, 'the precise cause of a fire, whether attributed to a short-circuit or any alternative factor, remains immaterial, provided the claimant is not the instigator of the fire'. The said judgment categorically holds that the precise cause of fire is immaterial provided the Insured is not the instigator of the fire. This judgment underscores the importance of insurers' duty to act in good faith and honour its commitment to the Insured.

37. Consequently, this Court is of the opinion that once it is established that the loss is due to fire and there is no allegation/finding of fraud or that the Insured is the instigator of the fire, the cause of fire is immaterial and it will have to be assumed and presumed that the fire is accidental and falls within the ambit and scope of fire policy."

(Emphasis Supplied)

25. In light of the law laid down by this Court as discussed above, it is a settled position that if the damage is caused by fire, then the reason by which the fire took place becomes irrelevant. In the current scenario, the fire took place in the factory of the Appellant which caused a huge loss to the Appellant. The loss occurred on account of the transformer being set ablaze and the fire could not be controlled for about 6 hours. It is also an admitted position that, on the intervening night of 01.11.2006, some miscreants entered the factory and

committed burglary. It was reported in the FIR that flames were coming out of the transformer and at no stage any defense was taken that the insured caused the fire. Thus, it is now established that the loss caused to the Appellant was due to fire only and the incident of theft/ burglary merely preceded the incident of fire.

26. Additionally, in case of insurance contracts, the exclusion clause must be construed strictly and wherever there is any ambiguity between two or more clauses in the contract, it must be interpreted in favour of the insured. This court in the case of Texco Marketing Private Limited vs. Tata Aig General Insurance Company Limited and Others reported in (2023) 1 SCC 428 has held as under:

"13. An exclusion clause has to be understood on the touchstone of the doctrine of reading down in the light of the underlining object and intendment of the contract. It can never be understood to mean to be in conflict with the main purpose for which the contract is entered. A party, who relies upon it, shall not be the one who committed an act of fraud, coercion or misrepresentation, particularly when the contract along with the exclusion clause is introduced by it. Such a clause has to be understood on the prism of the main contract. The main contract once signed would eclipse the offending exclusion clause when it would otherwise be impossible to execute it.

A clause or a term is a limb, which has got no existence outside, as such, it exists and vanishes along with the contract, having no independent life of its own. It has got no ability to destroy its own creator i.e. the main contract. When it is destructive to the main contract, right at its inception, it has to be severed, being a conscious exclusion, though brought either inadvertently or consciously by the party who introduced it. The doctrine of waiver, acquiescence, approbate and reprobate, and estoppel would certainly come into operation as considered by this Court in Union of India v. N. Murugesan [Union of India v. N. Murugesan.

14. On the aforesaid principle of law, particularly with respect to the issues qua onus, burden and reading down, this Court in Shivram Chandra Jagarnath Cold Storage v. New India Assurance Co. Ltd. has held as follows : (SCC pp. 546-47, paras 19-20)

"19. Another instance where exception clauses may be interpreted to the benefit of the insured is when the exception clauses are too wide and not consistent with the main purpose or object of the insurance policy. In B.V. Nagaraju v. Oriental Insurance Co. Ltd., a two-Judge Bench of this Court read down an exception clause to serve the main purpose of the policy. However, this Court clarified that the breach of the exception clause was not so fundamental in nature that would have led to the repudiation of the insurance policy. In that case, the terms of the insurance policy allowed an insured vehicle to carry six workmen, excluding the driver. When the vehicle met with an accident, it was carrying nine persons apart

from the driver. The insured had moved a claim for repair of the vehicle, which was rejected by the insurer.

20. Allowing the claim, this Court held thus : (B.V. Nagaraju case, SCC pp. 650-51, para 7)

'7. It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage.

Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor. In Skandia case, this Court paved the way towards reading down the contractual clause by observing as follows : (SCC pp. 665-66, para 14)

"14. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice.

The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonise the two instead of allowing the exclusion clause to snipe successfully at the main purpose. This theory which needs no support is supported by Carter's "Breach of Contract" vide para 251. To quote:

'Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion

clauses defining a promisor's contractual obligations. For example, in Glynn v. Margetson & Co., AC at p. 357, Lord Halsbury, L.C. stated : (AC p. 357)

"It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard, as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract."

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suisse Atlantique Societe d' Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

27. In the case of Shivram Chandra Jagarnath Cold Storage and Another vs. New India Assurance Company Limited and Others reported in (2022) 4 SCC 539, this Court has held as under:

"18. In a similar vein, a two-Judge Bench of this Court in Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank held that an insurance policy must be construed only with reference to its stipulations and no artificial meaning can be given to the words of the policy. This Court observed that a cash box cannot be classified as a "safe" within the meaning of a burglary insurance policy and the insurer was exempted from any liability arising from the theft of jewellery and cash from the cash box.

The exceptions to an insurance policy must be construed strictly since they reflect the agreement between the parties with respect to the losses that are covered by the insurance policy. Any departure from this principle is possible only if the terms of the policy are ambiguous or unclear. In Sangrur Sales Corpn. v. United India Insurance Co. Ltd., a two-Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J.) was a part, held that in the event two constructions are possible or if there is any ambiguity, a construction that is beneficial to the insured should be adopted consistent with the purpose of the policy.

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Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suisse Atlantique Societe d' Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale [Suisse Atlantique Societe d' Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale, (1967) 1 AC 361 : (1966) 2 WLR 944 (HL)]. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

28. In the case at hand, in terms of the policy, the burglary/theft is not an exclusion under the specified peril "Fire". Even, the general exclusions to the policy do not cover theft which precedes the insured peril as an exclusion and the said exclusion is only provided under the RSMD clause. It is a trite law that the exclusions in the contract for insurance must be read strictly and, therefore, the exclusion provided under the RSMD clause would not oust the liability of the insurer when the loss or damage is attributable to the peril of fire which has its independent exclusions.

29. In view of the above discussion, we are of the view that there is no justification for the Respondent to repudiate the claim of the Appellant and the NCDRC had erred in not rectifying the mistake and to reject the claim.

30. Consequentially, the appeal is allowed and the letter dated 04.01.2008, sent by the Respondent repudiating the claim of the Appellant and impugned judgment, are set aside and matter is remitted back to the NCDRC to assess the loss pursuant to the claim filed by the Appellant. We further expect that the NCDRC must decide the issue as expeditiously as possible, and in any case, not later than six months from the date of receiving the certified copy of this judgment.

31. All pending application(s), if any, shall stand disposed of.

.....J. (J.K. Maheshwari)

.....J. (Vijay Bishnoi)

New Delhi,

December 16, 2025

IN THE SUPREME COURT OF INDIA

K. S. Dinachandran
Vs.
Shyla Joseph & Ors.

[Civil Appeal Nos._____ of 2025
@ SLP (C) Nos. 11057-11058 of 2025]

[Civil Appeal No._____ of 2025
@ SLP (C) No. 11639 of 2025]

Head Note – Omissions made in the examination-in-chief can be cured in the witness's cross-examination.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. Concurrent findings; disbelieving a will, excluding one out of nine children, who married out of the community, holding the estate of the testator partible, is challenged in the two appeals filed by two defendants.

3. The parties are referred to as the plaintiff and the defendants, the first respondent, common in both the appeals, is the plaintiff.

4. The relevant facts to be noticed are that one N.S. Sreedharan, executed Exhibit B2 will dated 26.03.1988 and registered it on the very next day, a Sunday, the Sub-Registrar having come to his house on commission. The will provided for allocation of the properties to the eight (the defendant Nos. 1 to 8) out of the nine children of the testator; the plaintiff having been left out.

An injunction suit was filed by the defendant in the year 1990, against the plaintiff, who was the sole defendant therein, to restrain her from interfering with the peaceful possession and enjoyment of the suit property. A copy of the will was produced along with the plaint. The sole defendant therein did not choose to contest the matter. There was an ex parte judgment and decree passed by the Principal Munsif Court of Ernakulam which is produced as Annexure P2. It was later in the year 2011 that the present suit was filed seeking partition of the properties of the father.

5. The first defendant who was examined as DW-1 along with other defendants contested the suit on the strength of the will. There were two attesting witnesses, one of whom was no more at the time of trial and the other was examined as DW-2. The trial court decreed the suit on the ground that DW-2 only spoke of the execution of the will by the testator and his own attestation. Though, the presence of the other attesting witness at the time of execution was spoken of, his attestation was not deposed to by DW-2.

It was also argued that the deposition of DW-2 indicated that the testator and he himself affixed their signatures in the presence of the Sub-Registrar, giving rise to an anomaly insofar as the will was dated 26.03.1988, while the registration was on the next day i.e. 27.03.1988, on which day DW2 according to his own testimony had not visited the house of the testator, which argument was not accepted even by the trial court.

6. The High Court found that though in the examination-inchief, DW-2 did not depose on the attestation by the other witness, in cross-examination to a leading question he answered that all persons signed on the will on the date when DW-2 signed the same. It was held that by the leading question, the answer was put in the mouth of the witness and hence, it lacks probative value and fell short of the mandate under Section 63(c) of the Indian Succession Act, 19251 read with Section 68 of the Indian Evidence Act, 18722.

The High Court emphasised the statement of DW-2 in cross examination that after signing the will on the date when it was prepared, he had not gone to the house of the testator till his death. Hence, the attestation by DW-2 itself was found suspicious when DW- 2 also stated that when he reached the house of testator, the Sub-Registrar and the other witness were present there.

7. Mr.V.Chitambaresh and Mr.A.Hariprasad learned Senior Counsel for the appellants contended that the ingredients of Section 68 of the Evidence Act read with Section 63 of the Succession Act, were fully satisfied. DW-2 had not only spoken of the testator having affixed his signature on the will, Exhibit B2, but also spoke of his attestation and his introduction to the other witness by the testator and all of them having signed the will.

Statements were taken out of context to disbelieve the will and in any event, the earlier will executed, clearly indicated the mind of the testator insofar as exclusion of the plaintiff. It is also argued that despite the will having come to the notice of the plaintiff in the suit filed in the year 1990, nothing was done for a long period, and the plaintiff is estopped from challenging the will. The impugned judgment affirming the judgment of the trial court is clearly erroneous and against the evidence led in the suit. Both the judgments have to be reversed and the suit dismissed, is the contention.

8. Mr. P.B. Krishnan, learned Senior Counsel appearing for the first respondent/plaintiff argued that the first will was not proved and there can be no reliance placed on the same. It is also urged that in the earlier suit for injunction only a copy of the will was produced and, in any event, that was a simpliciter injunction suit. This would not stand in the way of the co-owner instituting later, a suit for partition.

It is specifically pointed out from the deposition of DW-2 that he had stated categorically that his visit to the testator's house was only once, in the presence of the Sub-Registrar, in which circumstances his signature on 26.03.1988, attesting the will and later on the back of the first page at the time of registration, on the next day cannot be believed. DW2 also stated that after the day the will was prepared, he had gone to the house of the testator only when he died. Both the trial court and the first appellate court rightly found the will to be not proved.

9. In support of his submissions, learned counsel for the respondent relied upon the decisions in Meena Pradhan v. Kamla Pradhan3, Rani Purnima Debi & Anr. v. Kumar Khagendra Narayan Deb & Anr.4, Janaki Narayan Bhoir v. Narayan Namdeo Kadam5, Vishnu Ramkrishna Wani v. Nathu Vittal Wani6, Raj Kumari & Ors. v. Surinder Pal Sharma7 and Mansinghrao Yeshwantrao Patil v. Ramchandra Govindrao Patil8.

10. Before we go into the fact adjudication, we would look at the decisions relied upon by the respondent, in the chronology of its reporting.

11. Vishnu Ramkrishna6 found that the defendants failed to prove the due execution of the will since the one attesting witness examined, out of the four attestors, only spoke of the presence of one other attestor along with the testator, when the latter acknowledged her thumb impression in the will. The witness spoke of his attestation but not that of the other. It was also held that recourse to Section 71 of the Evidence Act is impermissible without exhausting the remedy under Section 68 of the Evidence Act of calling the available attesting witnesses and if they deny or fail to prove the execution, only then Section 71 of the Evidence Act could be invoked.

Though finding insufficient proof as required under Section 68 of the Evidence Act, all the same, the High Court remanded the matter for further evidence of the other three attesting witnesses said to be available to determine whether there was due execution of the will. The remand was on dual reasoning; one, approaching the issue as a 'Court of Conscience', especially, to arrive at a satisfaction as to the last will and testament of the testator and then, to ensure that the bequest made in the subject will to a charity, is not defeated.

12. Mansinghrao Yeshwantrao Patil8 cautioned the Courts from converting a question of fact into a question of law and mechanical use of time-honoured phrases like 'the conscience of the Court being satisfied'. Though great caution should be exercised in upholding a will, where the legal heirs are divested in whole, proof of a will remains a question of fact and satisfaction of the conscience of the court is only a rule of prudence, was the declaration.

13. Rani Purnima Debi4, a four Judge Bench decision of this Court disbelieved the will propounded, based on various suspicious circumstances, including doubts raised about the testator's signature itself and the proclivity of the testator to sign blank papers to be delivered to his lawyer, who was also one of the three attesting witnesses examined.

Especially considering the very serious suspicions on the due execution and attestation of the will, the testimony of the two probable witnesses whose signatures were found on the bottom of the will; other than those examined as attestors, one the registration clerk who came on commission and another, who identified the testator, were found to be grossly insufficient. The registration clerk merely spoke of having examined the testator, who admitted execution and the other, having merely identified the testator at that time, without anything more on the signature affixed, of the testator or himself.

14. Meena Pradhan3 succinctly stated the formalities required under Section 63 of the Succession Act which was also declared to be of a standard affording sufficient proof to satisfy a prudent mind and not one of mathematical accuracy. Quite distinct from Rani Purnima Debi4 which brought forth various suspicious circumstances in which there was felt a need for a higher standard of proof of execution.

15. What is relevant for the present case, which does not bring forth any such suspicious circumstance, is the requirement that, at least one of the attesting witnesses, if alive and capable of being examined, shall be examined, who shall speak on the execution of the testator; which he had witnessed or was acknowledged by the testator himself, and the attestation by both witnesses. It is pertinent that in the earlier suit for injunction, in which the plaintiff herein first appeared as a defendant and then did not contest, the will was spoken of and a copy was produced.

The suit was one for injunction simpliciter and there was neither occasion to offer proof of the will nor was there a declaration of title sought; which disables a claim of res judicata being raised since the will or title was not a matter substantially in issue in the said suit. But the fact remains that despite knowledge, the plaintiff pleaded no suspicious circumstances and did not even mention the will in the plaint. The plaintiff also did not mount the box, and none were

examined on her side. The attesting witness examined, hence in the facts of this case should speak about the execution of the will by the testator, his attestation and also about the attestation of the other witness who was no more, at the time the suit went to trial.

16. In Janaki Narayan Bhoir5, the impugned judgment of the High Court relied on the evidence of the scribe, led under Section 71 of the Evidence Act, which was found to be incompetent insofar as one of the two attesting witnesses failed to prove the attestation of the other and the other, though available was not examined. This affirms the principle in Vishnu Ramkrishna6. In fact, the attesting witness examined, categorically stated that he was not even aware of the presence of the other attesting witness in the house wherein the execution was stated to have occurred.

It was held in paragraph 10 that, "The one attesting witness examined, in his evidence has to satisfy the attestation of a Will by him and the other attesting witness in order to prove there was due execution of the Will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. (sic)".

17. Raj Kumari7 was also a case in which one of the attesting witnesses failed to prove the examination of the other witness, who was not called to the box since he was the husband of one of the respondents. The principle of exhausting the remedy under Section 68 of the Evidence Act before invoking Section 71 was reiterated; which question does not arise in the instant case.

18. Learned Senior Counsel for the appellant relied upon the decision in H. H. Maharaja Bhanu Prakash Singh v. Tika Yogendra Chandra9 to contend that when evidence was recorded after a long period, minor discrepancies in the evidence would be a natural consequence. Therein the evidence was recorded about eight years after the execution of the will and in the present case, the examination of the attesting witness was twenty-four years after the execution of the will. It was argued that it is natural that a witness will not be able to remember as to when exactly he went to the house of the testator; which was truthfully spoken of by DW2.

19. Reliance was also placed by the appellant on Gopal Swaroop v. Krishna Murari Mangal and Ors.10 in which satisfaction as to the proof of the will was entered, when it was stated by one of the attesting witnesses that the other attesting witness was also present at the time the testator affixed his signature.

20. We cannot but notice that there is clear departure, insofar as the decision in Gopal Swaroop10, from the principles consistently declared in the other decisions above cited and also of a four-judge bench in Rani Purnima Debi4. However, we are of the opinion that we need not look into that aspect, specifically considering the deposition of DW-2. 21. We think, at this point, it is apposite to extract paragraph 19 to 22 from the decision in H. Venkatachala Iyengar v. B.N. Thimmajamma11, as to the proof required in establishing a will, in varying circumstances: -

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents.

The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind.

In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts

would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence.

It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence.

It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson [(1946) 50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable

incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

(underlining by us for emphasis)

22. The translation of the deposition of DW-2 has been provided in both the appeals and a copy of the vernacular Malayalam has also been handed over to us across the Bar (one of us, Vinod Chandran, J being familiar with the language). The proof boils down to what has been stated by the witness. Looking at the chief-examination, it is clearly stated by DW-2 that he had signed on the thirteenth page and the back side of the first page of Exhibit B2 will, which was shown to him.

He also affirmed that the signature of the executant was that of N.S. Sreedharan, the testator. He also spoke of N.S. Sreedharan; the testator, Xavier Mash (Teacher) & himself; the attesting witnesses, as also the Sub-Registrar being present at that time. If we look at the examination-inchief alone, it cannot be said that there was proof of the other witness having put his signature in the document. In the cross examination of DW-2 to DW-8, a question was asked as to whether he saw the testator signing on the document which was answered in the affirmative. Answering a question as to his signature, it was said that he signed it in front of the testator. Again, there was no proof offered of the signature of the other attesting witness.

23. However, this missing piece was supplied in cross-examination by the plaintiff. In the cross-examination by the plaintiff, DW2 was specifically asked as to whether he had an acquaintance with Xavier, the other attesting witness. The answer was that the other attesting witness was known to him earlier, as introduced to him by the testator.

Then a question was put as to whether the will was written after he reached there. The answer was in the negative and he added that it was already written and 'they' put their signatures on it. Significant is the question put by the plaintiff, to DW-2 as to whether himself and 'others' put their signatures on the will on the date on which it was written; answered in the affirmative. Hence, on the plaintiff's suggestion, DW-2 affirmed not only the signature of the testator and himself but also the other attesting witness.

24. We are definitely of the opinion that DW-2 spoke of the presence of the testator along with himself and the other attesting witnesses as also affirmed the signature of the testator and of both the attesting witnesses in the document.

25. Now, we have to deal with the confusion created as to whether DW-2 had gone to the house of the testator only on 26.03.1988, the date shown in the will on which day it is presumed to have been executed. A reading of the deposition clearly indicates that DW-2 had very close association with the testator and he was a frequent visitor to the house of the testator. DW-2 also had a part time job at the textile shop of the testator and had carried out such work even when he was working with an auditor; which he stopped after the death of the testator.

He categorically deposed that the testator had summoned him to the testator's house, over telephone, when he was at the Auditor's office. At the testator's house, he saw the testator's wife and not the children. He did not reveal the factum of the will to the children since he understood it as a confidential matter. To a specific question as to whether the testator was bedridden, he answered in the negative and added that but for a small oedema in the legs, the testator had no ailments, bringing forth no doubts on his physical health, much less on the sound and disposing state of mind of the testator; which was never disputed.

26. The specific issue on which the learned Senior Counsel for the plaintiff lays emphasis, are to two suggestions made in cross-examination, raising suspicion on the very execution of the will. The suggestion that "but for the day on which the will is said to have been prepared, DW-2 has not gone to the house on any other date to sign the will", was answered in the affirmative. A further suggestion that DW2 after 26.03.1988 went to the house of the testator only after his death, was answered in the affirmative. Since the will is dated 26.03.1988 and the registration was on the next day, the execution itself is under a cloud, for reason that DW2 speaks of the presence of the Sub-Registrar too on the solitary day he was present in the house of the testator, is the argument.

27. We are unable to agree. The first suggestion only indicates that on the date the will was prepared, DW2 had gone to the house of the testator 'to sign on it' and he had not visited the testator on any other day, 'to sign the will'. This does not indicate that DW-2 had not visited the house of the testator otherwise than on 26.03.1988. It cannot also be said that he was not present on 27.03.1988; when he was present only for the registration and not the signing of the will.

Another response emphasised by the plaintiff was to the suggestion that after 26.03.1988, DW-2 had gone to the testator's house only after his death. The execution of the will was in the year 1988, the registration being on the very next day. The examination of the witness was on 25.05.2012, twenty-four years later. It would be puerile to think that the witness would have remembered the visits made to the testator's house, even for execution of a will, with mathematical precision, especially given his close association and as is seen from the deposition, a frequent visitor to the testator's house.

28. We find that in the present case the only suspicion raised about the execution of the will is the testamentary capacity of the testator, relatable specifically to his physical disposition, questioned in the cross-examination of DW2; unequivocally affirmed as sound. We also reiterate, with respect, that the rule of prudence; of the caution required in upholding a will which divests the legal heirs as a whole, is not the situation existing in the instant case. But, the person excluded was one of the children of the plaintiff, the sole one excluded.

The propounders of the will are the siblings of the one excluded. There is a reason stated for such exclusion, the acceptability of which to our minds, is not what the rule of prudence dictates. We cannot put the testator in our shoes, and we should step into his. We cannot substitute our opinions in place of that of the testator; his desire prompted by his own justifications. As is trite, we would only ensure that, sitting in the arm-chair of the testator the rule of prudence is satisfied for the exclusion; which on the facts of this case amply satisfies the judicial conscience.

29. We find absolutely no reason to uphold the judgment of the High Court which affirmed the judgment of the trial court. We set aside both and find the will to have been proved satisfactorily. The presence of the testator and the attesting witnesses and the signatures affixed on the will by each of them have been stated by DW-2 in his deposition. What was lacking in the examination-in-chief was brought out in the cross examination by way of a positive suggestion. Leading questions are permitted in cross-examinations and the response elicited cannot be said to have lesser probative value, as held by the High Court.

The testator was also established to be of sound and disposing mind at the time of execution of the will. There can be no interference to the will which stands proved unequivocally. The judgment and decree of the High Court and that of the trial court stands set aside. The plaintiff is found to have no partible claim over the properties of her father, which by a will have been bequeathed to the other siblings of the plaintiff.

30. The learned Senior Counsel for the respondent then urged that the plaintiff in any event, would be entitled to only 1/9th share of the total properties which is a negligible portion of that held by her father. We are not on equity, and the wish of the testator assumes pre-eminence. The last will and testament of the testator cannot be digressed from or frustrated.

31. The appeals are allowed and the suit stands dismissed.

32. Pending applications, if any, shall stand disposed of.

.....J. (Ahsanuddin Amanullah)

.....J. (K. Vinod Chandran)

New Delhi

December 17, 2025.

1 for short, 'the Succession Act'

2 for short, 'the Evidence Act'

3 (2023) 9 SCC 734

4 (1962) 3 SCR 195

5 (2003) 2 SCC 91

6 AIR 1949 Bombay 266

7 (2021) 14 SCC 500

8 (1954) 1 SCC 688

9 1989 Supp (1) SCC 16

10 (2010) 14 SCC 266

11 1959 Supp (1) SCR 426

IN THE SUPREME COURT OF INDIA

Shaik Shabuddin
Vs.
State of Telangana

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 6850 of 2024]

Head Note - The recovery of incriminating articles from the custody of the accused cannot be treated as a discovery pursuant to a disclosure statement to attract Section 27 of the Evidence Act. To bring a disclosure statement within the ambit of Section 27, there must be prior concealment of the relevant fact or object by the accused, and its subsequent discovery by the police must be a direct consequence of the information furnished by the accused.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. In the Special Leave Petition, notice was issued limited to the quantum of sentence. Despite that we perused the judgment to satisfy ourselves regarding the conviction. We have very serious reservation about the conviction under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 19891 and also on certain circumstances found by the Division Bench of the High Court to convict the accused, which we are dutybound to notice since while confirming the conviction for rape and murder we may not be understood as having approved the said reasoning of the High Court, whose order merges with our order.

3. Briefly stated, on 24.11.2019, the deceased, wife of PW-1 who had been dropped at Yellapatar Village, by PW1, to pursue their vocation of hawking utensils, was found missing and the calls to her mobile were not answered. A complaint was lodged with the police who along with PW1 and his relatives, searched for the missing person. Eventually her dead body was found on the next day, first detected by PW3, within the bushes on the right side of the road leading to Yellapatar Village. PW1 rushed to the spot, identified the body and immediately intimated the police upon which an inquest was carried out and the criminal law put in motion. Based on Ex. P2 complaint of PW1, PW24 altered the provisions of law to Sections 376D and 302 read with Section 34 of the Indian Penal Code, 18602 and Section 3(2)(v) of the SC/ST Act.

4. Trial was conducted and A1 to A3 were convicted & sentenced for offences under Sections 302 & 376D read with Section 34 of the IPC and Section 3(2)(v) of the SC/ST Act with death and life imprisonment respectively and fine of Rs.5,000/- (Rupees five thousand) and Rs.2,000/- (Rupees two thousand) with default sentences respectively of simple imprisonment (S.I.) for three and two months. Further, under Section 3(1)(w)(i) of SC/ST Act, a sentence of rigorous imprisonment (R.I.) for 3 years and a fine of Rs.1,000/- (Rupees one thousand) with default sentence of S.I. for 1 month was imposed on all the accused. A2 and A3 were further convicted under Section 404 read with Section 34 of the IPC and sentenced to R.I. for 3 years and to pay fine of Rs.1,000/- each with default sentence of S.I. for 1 month.

5. Prosecution allegation was that A1 to A3 followed the deceased while she was proceeding to the village, and in an isolated area, pulled her towards the bushes and committed rape on her one by one, despite vehement protests made by her. To ensure that the accused are not implicated after the commission of rape, A1 slit her throat while A2 and A3 held her hands and legs to render her immobile. It was also alleged that A2 stole a mobile from the woman and A3 took Rs.200/- which was found in his possession.

6. The trial court had relied on various circumstances, one of which was the 'last seen together' theory, based only on the deposition of PW4 and PW5 that they saw the woman and A1 to A3 proceeding in the same direction towards Yellapatar Village. The High Court also found that the circumstance of no explanation having been offered, after being seen together, provides an additional link in the chain of circumstances under Section 106 of the Indian Evidence Act, 18723. We cannot but notice that there is no acquaintance proved between the accused and the deceased and there cannot be any 'last seen together theory' propounded as a circumstance in the above case, though it has to be accepted that the accused and the deceased were found in the same vicinity just prior to the time of the crime.

7. Further, the High Court relied upon the confession made by the accused to one PW15 who was called to the police station as a witness. It was the prosecution version that PW25, the DSP Asifabad, the Investigating Officer, secured the presence of PW15 and one Md. Yunus as panch witnesses and the confession was made to them. There can be no reliance placed on such a confession at the behest of the police and the finding of the High Court that it could be relied on cannot at all be countenanced for the reason also that it was made while in police custody.

The next aspect on which we have serious reservation is with respect to the recovery made of MO1/mobile, MO11/knife and MO21/cash as purportedly admissible under Section 27 of the Evidence Act. Even as per the prosecution story, the same were handed over along with the confession, to PW15, which

material objects were said to be in the possession of the accused at the time of arrest. MOs 12 to 20/clothes were projected as seized under Section 27 which were worn by the accused at the time of arrest.

8. There was no concealment as such and in any event, on an arrest, when the material objects could have been seized from the body of the accused on a mere search by the police, the attempt to convert it as a recovery under Section 27 cannot at all accepted. It goes against the very principle of Section 27, insofar as the disclosure relied upon can only relate to the concealment and the recovery of material objects on such disclosure made, which recovery has to be made in the persons of witnesses. We find absolutely no reason to accept the circumstances as hereinabove stated, relied on by the High Court, to convict the accused.

9. Having said that, we notice the fact that the accused were in the vicinity in which the deceased was also present just prior to her rape and murder; clearly established by the prosecution. PW5 while he was crossing Yellapatar Village on his motorcycle at about 9:00 am saw the accused going to Ramnaik Thanda and noticed that the deceased was also proceeding in the same direction with a bag full of utensils on her head. PW4 who was working in the adjacent field on the fateful day, at about 10:30 am, heard the shrieks of a lady and went in search, but failed to find anybody.

He also deposed of having seen the accused at the same time proceeding from Ramnaik Thanda, the specific location in which the dead body was detected, to Yellapatar Village. He spoke of PW1, the husband of the deceased having come in search of her in the evening and confirmed that the shrieks he heard came from the location in which the body was eventually found. PW6 on the very same day, at about 11:30 am, spoke of the accused having come to his kirana shop and sat on a bench. A2 took water from a pot and drank it, and PW6 observed blood stains on the clothes of all the accused. PW8 deposed that the accused, residents of the village were missing from the village after the incident took place.

10. The medical evidence clearly indicated a homicide, and it noticed 14 ante-mortem external injuries, which also conclusively proved that the victim was raped. The approximate time of death indicated in the preliminary postmortem report produced as Ex. P18 tallied with the time the witnesses saw the accused and the deceased and when PW4 heard the shrieks of a woman. The time indicated of the death, as noticed in Ex. P18, preliminary postmortem examination report, was 24 to 28 hours prior, which placed the murder exactly at the time when the above-mentioned witnesses saw the accused and the deceased, then alive, in the vicinity of Ramnaik Thanda.

11. PW18, the doctor who conducted postmortem, also deposed that the vaginal smear and swab of semen and spermatozoa and DNA profile from the dead body

was handed over to the police for onboard transmission to the Forensic Science Laboratory, Hyderabad for analysis. Blood samples were also obtained from the accused, and they were also sent for DNA test and serology report as deposed by PW21 who collected the blood samples. PW21 also spoke of the Autosomal SRT analysis having indicated that the seminal stains on the saree of the victim matched with the DNA profiles of A1 and A2 and they are of the same biological origin.

12. The medical evidence regarding the homicidal death and the rape committed on the victim, the time of death as stated in the postmortem report, the accused having been found in the same vicinity as the victim and the failure of the accused to establish the alibi as spoken of under Section 313 questioning, would provide a complete chain of circumstances to convict the accused under Sections 302 & 376D read with Section 34 of the IPC.

13. However, we are not convinced that any offence is made out or that there could be any conviction entered under the provisions of the SC/ST Act. Though the prosecution has proved the caste of the victim/deceased, there is nothing to indicate that the accused knew the caste of the victim or even that they were in any manner acquainted with the victim, to be aware of her caste status. The offence hence cannot be said to have been committed with the knowledge of the caste status of the victim; which is an essential ingredient under both the provisions charged under the SC/ST Act.

14. Further, the conviction under Section 404 against A2 cannot also be sustained since, as we found, there can be no circumstance of Section 27 recovery accepted as an incriminating circumstance, on the alleged recovery of the mobile by PW15, as handed over to him by A2. Yet again, though, the mobile number has been proved to be that of PW11 as per the evidence of PW22, there is nothing to indicate that the mobile handset was the one in which the SIM card was used.

The prosecution has not produced any SIM card, and their case is that while the mobile was appropriated from the possession of the deceased victim, the SIM card was thrown away. Neither was the SIM card traced out nor is the ownership of the mobile established which persuades us to acquit A2 under Section 404 read with Section 34 of the IPC. So would A2 be acquitted of the offences alleged under Sections 3(1)(w)(i) & 3(2)(v) of the SC/ST Act.

15. Now, we come to the sentencing, which the High Court has modified from death sentence as awarded by the trial court to imprisonment of life, under Section 302, with a rider that the accused shall remain in custody till the last breath, without remission.

16. We are in this case concerned only with A2 and we have considered the mitigating circumstances with respect to A2, as found by the High Court. A2 was aged 40 years at the time of commission of the offence, and he is said to have a family consisting of his wife, four children and aged parents. He was the only earning member of the family. A2 did not have any past criminal record, nor can it be said, as has been found by the High Court, that he poses a grave danger to the society at large, which requires his life to be extinguished.

It was also found by the High Court, rightly so, that the subject case is not one which can be categorized as the rarest of the rare requiring death to be handed down. The trial court has further noticed that despite A2 being in custody, there is no report from the jail authorities about his adverse conduct or that he is beyond reformation. Even before us, the State Counsel does not argue on any such adverse conduct while in prison or that the person is beyond reformation.

Despite the aforesaid circumstances, the Division Bench proceeded to impose a sentence of life imprisonment, till the remainder of his life. We are convinced that the case is one in which imprisonment of life till the remainder of A2's life can be modified to one extending to 25 years without remission. The conviction under Section 302 read with Section 34 of the IPC is thus modified and that under 376D read with Section 34 of the IPC is affirmed, which sentences shall be concurrently suffered.

17. The appeal stands partly allowed.

18. Pending applications, if any, shall stand disposed of.

19. Before leaving the matter, we notice that all together there were three accused in the case, all of whom were convicted and sentenced, identically. There is no appeal filed by the other two accused.

We direct the Registry of this Court to forward a copy of this Judgment to the Member Secretary, Telangana Legal Services Authority, who shall through the concerned District Legal Services Authority provide legal assistance to the other accused to file an appeal to this Court through the Supreme Court Legal Services Committee.

.....J. (Ahsanuddin Amanullah)

.....J. (K. Vinod Chandran)

New Delhi

December 17, 2025.

1 'the SC/ST Act'

2 for short, 'the 'IPC'

3 for short, 'the 'Evidence Act'

IN THE SUPREME COURT OF INDIA

Punimati & Anr.
Vs.
State of Chhattisgarh & Ors
[Criminal Appeal No. 3647 of 2025]

Dayalu & Ors.
Vs.
State of Chhattisgarh
[Criminal Appeal No. 3648 of 2025]

Head Note - Discrepancies in the testimony of the sole interested eyewitness rendered it unreliable, and that a conviction could not be sustained solely on such evidence in the absence of corroboration.

JUDGMENT

Vipul M. Pancholi, J.

1. Both these appeals arise out of the common judgment and order dated 17.02.2021 rendered by the Chhattisgarh High Court in Criminal Appeal No. 904 of 2012 and Criminal Appeal No. 931 of 2012. The present Criminal Appeal No. 3647 of 2025 has been filed by original accused no. 2 and accused no. 3, whereas the Criminal Appeal No. 3648 of 2025 has been filed by original accused no. 6, accused no. 7 and accused no. 5.

2. In both these appeals, the appellants-accused persons have challenged the judgment and order rendered by the High Court by which the appeals preferred by the appellants came to be dismissed. The High Court has thereby affirmed the order of conviction and sentence dated 01.09.2012 passed by IInd Additional Sessions Judge, Baloda Bazar, District Raipur, Chhattisgarh.

3. Factual Matrix of the present case is as under:

i. It is a case of the prosecution that on 14.07.2010, the informant, i.e. Parasbai, was cooking the food inside her house. Her son, Goreylal, had gone to take bath in the pond. At about 09:00 A.M., granddaughter of the informant, Indu Bai, came and informed the informant that persons belonging to caste-Teli were assaulting her father. On hearing the same, the informant came out of her house and went near the pond. At that time, she saw that in front one Maya Ram Sahu's house, the accused persons, namely, Sonaibai, Punimati, Punibai, Shyambai, Dayalu, Gajadhar and Dayanidhi Sahu, were assaulting her son with lathi/stick and even stones were pelted at him. It is also stated that they tied the hands of her

son at the back side. Thereafter, she went back to her house and came out of it after some time, and she found that her son had died.

ii. Thereafter, the F.I.R. was lodged before the concerned Police Station for commission of the offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1980, (hereinafter to be referred as "the IPC") against the accused persons.

iii. After the investigation, the Investigating Officer filed the chargesheet against the accused persons.

iv. Charges were framed under Section 302 read with Section 148 and 149 of the IPC against the accused persons. Additional charge was framed against accused no. 5 for committing offence under Section 506 B of the IPC for giving threat to Parasbai, PW-4.

v. During the course of the trial, the prosecution examined ten witnesses and produced documentary evidence. Thereafter, statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be recorded.

vi. After conclusion of the trial, the Trial Court convicted the accused persons for committing the offences punishable under Section 302 read with Section 149, and 148 of the IPC.

vii. Accordingly, under Section 302 read with 149 of the IPC, accused persons were sentenced to life imprisonment and a fine of Rs. 1,000/-, and in default, further imprisonment for 6 months was awarded. And under Section 148 of the IPC, accused persons were sentenced to rigorous imprisonment for 2 years and a fine of Rs. 200/- was also imposed, and in default, further imprisonment of 6 months was awarded.

viii. Being aggrieved with the judgment and order rendered by the Trial Court, the accused persons preferred separate criminal appeals, being Criminal Appeal Nos. 904 of 2012 and 931 of 2012, before the High Court.

ix. The High Court vide impugned judgment and order dated 17.02.2021 dismissed both the appeals preferred by the accused persons. x. Thus, the appellants-accused persons have filed the present appeals.

4. Learned Counsel for the appellants mainly contended that:

i. PW-4, i.e. the informant, is an interested/related witness. She is mother of the deceased and therefore her deposition is required to be scrutinized closely. It is contended that the Courts below, simply relying upon the deposition given by the so-called eyewitness (PW-4), have convicted the accused persons. In fact, PW-4

is a chance witness and there are material contradictions in the deposition given by PW-4.

ii. The Granddaughter of PW-4, i.e. Indu Bai, who had given information to the informant regarding the assault being made by the accused persons on the deceased, has not been examined by the prosecution.

iii. Independent witnesses, i.e. PW-1 and PW-9, have turned hostile and they have not supported the case of the prosecution. However, the said witnesses have specifically stated that the accused persons were not seen assaulting the deceased.

iv. PW-2 and PW-3, who are also independent witnesses and signatory of the seizure memo have also turned hostile.

v. The medical evidence also does not support the version given by the so-called eyewitness, i.e. PW-4.

vi. Learned Counsel, therefore, urged that the prosecution has miserably failed to prove the case against the appellants-accused persons beyond reasonable doubt, despite which the Courts below have recorded the order of conviction. Hence, the impugned orders are liable to be set aside.

5. The learned Advocate General ("AG") for the respondent-State has opposed the present appeals and submits as under:

i. In the present case, PW-4, mother of the deceased, is an eyewitness to the occurrence of offence in question. She has narrated in detail about the manner in which the incident took place. It is further submitted that PW-7, Dr. Chain Singh Painkara, has conducted post-mortem on the dead body of the deceased and has supported the version of eyewitness. Thus, the medical evidence corroborates the version of the eyewitness.

ii. It is further contended that from the deposition given by PW-8, the Investigating Officer (hereinafter to be referred as "the I.O."), it transpires that all the accused persons had produced all the weapons before the I.O., i.e. a stone and sticks (lathis). It is also contended that PW-7, the doctor, has specifically deposed that the injury sustained by the deceased can possibly be caused by the aforesaid weapons.

iii. Learned AG also contends that there was no reason for the informant, i.e. PW-4, to falsely implicate the accused persons. At this stage, it is further submitted that merely because PW-4 is an interested/related witness, her deposition cannot be discarded. Learned AG, therefore, urged that the Trial Court has rightly convicted the accused persons for committing the offence punishable under Section 302 of the IPC read with Section 149 and 148 of the IPC.

iv. Similarly, the High Court has also rightly dismissed the appeals preferred by the accused persons, thereby confirming the judgment and order of conviction recorded by the Trial Court. He, therefore, urged that no interference is required with the impugned orders.

Discussion:

6. We have heard learned Counsels for the respective parties and have perused the evidence laid by the prosecution and the other material placed on record.

7. It transpires from the material placed on record that PW-4, informant, lodged the F.I.R. on 14.07.2010 at 12:40 hours, for the incident which took place on 09:00 A.M. It is her specific case that her son, Goreylal, had gone to the pond to take a bath. Her granddaughter, Indu Bai, was playing in the lane in the front of the house and at about 09:00 A.M, the granddaughter came and told that the people belonging to caste-Teli were assaulting her father. On hearing about said occurrence, PW-4 came out of the house and when she reached the place of occurrence, she saw the accused persons were assaulting her son with lathis and stone, while his hands were tied at the back side.

8. Now, at this stage, if we examine the deposition of PW-4 given before the Trial Court, it is revealed that she has stated in her examination-in-chief that Indu Bai is Goreylal's daughter. Indu Bai came and told her that accused persons - Sonai Bai, Puni Bai, Punimati, Shyam Bai, Gajadhar, Dayalu and Dayanidhi, present in the Court, have killed Goreylal. On being informed by Indu Bai, she went near to the pond and the accused persons were present there. The accused persons had also tried to assault her.

9. Thus, there are major contradictions in the deposition given by PW-4. It is pertinent to note that the granddaughter of the informant has not been examined by the prosecution. It is also pertinent to note that in cross-examination, PW-4 has admitted that when she reached at the place, the accused persons were standing there and Goreylal was injured.

She has also stated that she cannot tell which accused's lathi (stick) and which accused's stone had hit Goreylal. From paragraph 17 of her cross-examination, it is further revealed that she stated that PW-1, Ram Gulal, had not seen the incident and he had come later and had covered Goreylal with a cloth. Thus, from the evidence laid by the prosecution, it can be said that PW-1 did not see as to who had tied the hands of the deceased and why the deceased was in a naked state.

10. It is pertinent to note that the independent witnesses have not supported the case of the prosecution and that they have turned hostile. However, from the deposition of PW-1, it is revealed that police had seized one stone from the place

of incident. PW-2 (Sarpanch) and PW-3 have also turned hostile. As per PW-2, the police had prepared the inquest of dead body of the deceased in his presence. However, the said witness has specifically stated that none of the accused persons had given any memorandum statement to the police in his presence. He has also stated that police have not seized anything from the accused persons in his presence. Thus, PW-2 did not support the case of the prosecution. Similarly, PW-3 has also not supported the case of the prosecution and has turned hostile.

11. PW-8, the I.O., has deposed before the Court that he had recorded memorandum of statement of the accused persons wherein the accused persons produced lathis/sticks, details are given in paragraph 3 of his deposition. It is pertinent to note that as per his deposition, Sonai Bai had stated about lathi and stone. From the deposition of the I.O., it transpires that total seven sticks were produced before the said witness and one stone was seized from the place of occurrence.

12. Keeping in view the aforesaid deposition, the deposition given by PW-7, Dr. Chain Singh Painkara, is carefully examined. It is revealed that the doctor found multiple injuries on the dead body of the deceased, out of which three injuries were incise wounds. Though, the said witness has stated that the injury sustained by the deceased could possibly be caused by the stone which was shown to him by the Constable as well as the sticks shown to him. It is pertinent to observe that the said witness admitted, during cross-examination, that he has not mentioned in post-mortem report that the lacerated and incised wounds were caused by which weapon. He has further admitted that he has not mentioned in the report as to which wounds were caused by which weapon.

13. It is a well-settled law that merely because the witness is an interested or related witness, his/her deposition cannot be discarded. Further, deposition of such witnesses is required to be scrutinized closely. As such, we have closely scrutinized the deposition given by PW-4, who is the mother of the deceased. As observed hereinabove, there are material contradictions in her deposition regarding the manner in which the incident took place and with regard to which the information about the incident was given by her granddaughter.

14. Further, the prosecution has failed to examine Indu Bai who had given the information to the informant/PW-4. Further, from the cross-examination of PW-4, it is revealed that when she reached the place of occurrence, the deceased was already injured, and the accused persons were standing there. It is also revealed that she was not in a position to state as to which accused's stick and which accused's stone had hit the deceased.

15. Thus, simply relying upon the deposition given by PW-4, conviction cannot be recorded. Further, PW-2 and PW-3, the independent witnesses did not support

the case of the prosecution, and therefore the recovery/production of the weapons from/by the accused persons through their memorandum of statement also cannot be believed.

16. Furthermore, PW-7, the doctor, who had conducted the postmortem of the dead body of the deceased specifically stated that three incise wounds were found on the dead body of the deceased. However, from the evidence laid by the prosecution, it is revealed that one stone was seized, which was shown to the said doctor by the police constable for taking his opinion whether the injury from the said stone is possible or not. It is difficult to believe that three incise wounds have been caused by one stone.

It is not the case of the informant/PW-4 that the accused persons have used the same stone which hit the deceased repeatedly. It is also pertinent to note that PW-7, the doctor, has specifically stated that one stone was shown to him which was triangular in shape. In his cross-examination, it was deposed that he has not mentioned in the query report as to which injury to the deceased has been caused by the said stone.

Conclusion:

17. In view of the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against the appellants-accused persons beyond reasonable doubt, despite which the Trial Court has recorded the judgment and order of conviction and order of sentence, which has been confirmed by the High Court vide the impugned judgment.

18. The present appeals are accordingly allowed and the impugned judgment and order passed by the High Court, affirming the order of conviction and sentence passed by the Trial Court, is hereby set aside.

19. All the appellants were recently released on bail by this Court vide order dated 30.07.2025. Accordingly, their bail bonds stand discharged.

20. Pending applications, if any, shall stand disposed of.

.....J. [Prashant Kumar Mishra]

.....J. [Vipul M. Pancholi]

New Delhi,

December 18, 2025

IN THE SUPREME COURT OF INDIA

Ramesh Kumar Jain
Vs.
Bharat Aluminium Company Ltd. (BALCO)

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 14529 of 2023]

Head Note - Arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37.

JUDGMENT

Aravind Kumar, J.

1. Heard. Leave Granted.

2. We have been called upon to examine the correctness of the Judgement and order dated 03.05.2023 passed by the High Court of Chhattisgarh at Bilaspur in ARBA No. 05 of 2017 whereby the arbitral award dated 15.07.2012 passed by the sole Arbitrator awarding a sum of Rs. 3,71,80,584 (Three crores seventyone lacs eighty thousand five hundred eighty-four only) along with the statutory interest to the appellant, affirmed by the Commercial Court by judgement and order dated 02.01.2017 in MJC No. 33/16 while exercising jurisdiction under section 34 Arbitration and Conciliation Act, 1996 (hereinafter "A&C Act") has been set aside by the High Court in exercise of its limited appellate jurisdiction under section 37 of the A&C Act.

3. The facts shorn of unnecessary details are set forth herein under:

3.1. The respondent-Bharat Aluminum Company Limited (in short "BALCO") invited a tender for the purpose of mining and transporting 3,70,000 Metric Tons (MTs) of Bauxite from Mainpat mines to respondent's Korba Alumina plant. The appellant submitted his bid at Rs. 697/- per metric ton which happened to be the lowest among all the bids received. Therefore, the respondent, after negotiation, entered into an agreement with the appellant for mining and transporting of 2,22,000 MTs of Bauxite from the Mainpat Mines to Alumina plant at rate of Rs. 634.20 per MT on 11.12.1999.

The said work had to be completed within a period of 18 months i.e., by May 2001 but it was extended up to September 2001. After the appellant had completed supplying the agreed quantity of bauxite, the respondent by letter dated 05.01.2002 requested the appellant to continue the work of mining and transporting and the rate for the extra work was agreed to be decided in due course of time after consulting with the appellant. Thereafter, appellant continued the work and supplied total quantity of 1,95,000 MT of Bauxite between 16.06.2001 to 31.03.2002.

Subsequently, dispute arose between the parties regarding the payment of extra work performed by the appellant which led to invocation of arbitration clause and the claimant approached the High Court by filing an application seeking appointment of an arbitrator under section 11(6) of the A&C Act. The High Court by way of order dated 12.04.2007 in MCC No. 192 of 2006 referred the said dispute to the Tribunal as per clause J of the agreement between the parties.

3.2. The sole arbitrator after considering the pleadings filed by the appellant and respondent formulated 13 (Thirteen) issues. The learned sole arbitrator after hearing both the parties at length passed the arbitral award dated 15.07.2012 in favour of the appellant as follows:

Claim Heading	**Description**	**Amount Awarded**
Para 19.1	Claim for extra work of 1,95,000 MT allowed @Rs. 10 per metric ton	Rs.31,85,000/- (including interest @10% p.a. from 31.03.2001 till Aug 2007
Para 19.2	Claim for restriction and quantity of Trucks resulting in extra cost of transportation	Rs.1,23,06,058/- (including interest @10% p.a. from March 2002 till July 2007)
Para 19.3	Claim for removal of extra overburden	Nil
Para 19.4	Claim for idle manpower and machinery during the strike period of 67 days	Rs.71,36,568/- (including interest @10% p.a. from 13.03.2001 till 25.08.2007
Para 19.5	Claim on interest on account of delay in respect of 15th R.A. Bill	Rs.8,30,157/- (Interest has been awarded @18% p.a. for a period of 90 days and thereafter from 01.06.2001 to 31.08.2007
	TOTAL	**Rs. 2,34,57,783/-**

3.3. On the above sum, 12% p.a. interest was awarded from 01.09.2007 to 15.07.2012 which came to Rs. 1,37,22,801 (One crore thirty-seven lacs twenty-two thousand eight hundred and one only). Hence, on adding the said sum the

total award of Rs. 3,71,80,584 and statutory interest as per section 31(7)(b) of the A&C Act from the date of award till payment by the respondent was ordered by the arbitral tribunal.

3.4. Being aggrieved by the arbitral award, the respondent preferred an objection petition under section 34 of the A&C Act bearing no. MJC No. 33/16 before the Commercial court. On meticulous consideration the civil court came to the conclusion that the sole arbitrator had given a well-reasoned findings on each claim after considering the oral and documentary evidence which could not be regarded as arbitrary or capricious especially in the light of section 34(2)(b)(ii) of A&C Act and therefore, refused to interfere and affirmed the arbitral award dated 15.07.2002 by way of judgement and order dated 02.01.2017.

3.5. The respondent being not satisfied with the findings of civil court invoked the limited appellate jurisdiction of the High Court under Section 37 of A&C Act by preferring ARBA No. 05 of 2017 against judgement and order dated 02.01.2017. The said appeal came to be allowed by the impugned judgement and the arbitral award dated 15.07.2012 affirmed by civil court by order dated 02.01.2017 has been set aside.

3.6. Aggrieved by the same, the appellant, the original claimant, is in appeal before us.

REASONING ASSIGNED UNDER THE IMPUGNED JUDGEMENT

4. At the outset, before examining the submissions made by the learned Senior counsels appearing on behalf of the parties, we deem it apt and appropriate to examine the reasonings given by the high court for setting aside the concurrent findings in favour of the appellant. Hence the same has been encapsulated hereinbelow.

5. The first and foremost reason given by the High Court is that fixation of additional cost from Rs. 634.20 PMT to the tune of Rs. 644.20 PMT by addition of Rs. 10/- per metric ton for the extra work determined by the sole arbitrator on the basis of principle of "quantum meruit" was without jurisdiction since the letter dated 05.01.2002 whereunder the appellant was obligated to perform extra work of excavation did not fix any rate. Therefore, in the absence of the agreement, the arbitrator could not have fixed the rate, as such it amounted to rewriting of the contract.

The High Court further relied upon the decision of this court in Mahanagar Telephone Nigam Limited v. Tata Communications Limited1 to arrive at an conclusions that principle of "quantum meruit" could not have been applied since its application is limited to cases wherein the price has not been fixed by the contract but in the instant case since previously the rate was accepted and work

was done, fixation of amount of compensation additionally by Rs. 10/- PMT was erroneous which falls under the realm of exceeding jurisdiction or rewriting of the contract which according to the High Court tantamounts to "patent illegality".

6. Another reason assigned by the High Court for allowing the appeal of the respondent was that the learned arbitrator had assessed the damages only on the basis of oral statement and on the guess work, therefore, the same was not sustainable and according to the High Court it also fell within the sweep of patent illegality. Further, the High Court while considering the award with respect to extra cost for transportation borne due to restriction on carrying capacity of trucks relied upon the specific statement made by the claimant during the trial in respect of Question No. 45 to arrive at conclusion that respondent was not prima facie responsible for any reduction in weight, hence the loss caused on transportation cannot be attributed to the respondent.

It was held that arbitrator had merely relied upon the tabular statement given by the appellant without examining the basis of rate and calculation on which the loss was determined. Hence, it was of the opinion that claim of appellant was not based on the evidence and facts relied upon. Therefore, in the absence of any documentary evidence on record to show that appellant was restricted to carry only 10.2 MT, the award on the basis of alleged loss was only a guess work. In this regard, the High Court placed reliance on the decisions of this court rendered in Kailash Nath Associates v. Delhi Development Authority and Anr.2 to hold that Arbitrator cannot rewrite the award and the part of findings of the arbitrator which is without any evidence and beyond the terms of contract would be a patent illegality.

7. The High court further concluded that the tribunal in respect of idle machinery and idle manpower merely relied upon the tabular chart tendered by the appellant which was only a self-declaratory opinion and not based on evidence of facts.

SUBMISSIONS ON BEHALF OF THE PARTIES

8. Learned Senior Counsel Shri Mukul Rohatgi appearing on behalf of the appellant submitted that the High Court exceeded its jurisdiction in reappraising the factual matrix and arriving at a different conclusion to that of the arbitrator. The High Court was acting as an appellate court while the jurisdiction in section 37 of A&C Act is restricted by virtue of the act and the lens of scrutiny under the said provision is very narrow. The High Court went into the merits of the case and has re-appreciated and re-examined the documents and evidence on record which was impermissible under section 37 of the A&C Act. To buttress the said contention, the learned senior counsel relied upon the law laid down by this court in Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation3.

9. The learned senior counsel further submitted that under section 34 and section 37 of the Act, the court does not sit in appeal and it cannot go into the merits of the matter. Hence, in the present case, the High court acted in excess of jurisdiction conferred upon it by law. In this regard reliance was placed upon the case of MMTC Limited v. Vedanta Ltd.4

10. The Learned senior counsel vehemently submitted that arbitral tribunal has given detailed reasons for the conclusion that it had reached while passing the award. Further, the claims awarded by the arbitral tribunal have been supplemented with proper reasons and justifications. The award was upheld by the commercial court, Raipur and the application under section 34 of the Act was dismissed as "being without substance". Hence, it was not proper for the High Court to set aside the award in the name of patent illegality, merely because the reason that the High Court's interpretation of facts were different than that of the arbitral tribunal.

11. He further submitted that Interpretation of the contract is a matter for the arbitrator to determine based on evidence and communications and an error in interpretation is not a basis for interference under section 34 of A&C Act. To back his contention, he placed reliance upon Hindustan Construction Company Ltd. v. NHAI5, MMTC Ltd. (supra) and Associate Builders v. Delhi Development Authority6.

12. The learned senior counsel while placing reliance upon Parsa Kente Collieries Ltd. v. RRVUN Ltd.7 vehemently submitted that arbitral tribunal is the master of evidence and findings of facts which are arrived at by the arbitrators based on evidence on record and not to be scrutinized, as if the court was sitting in appeal.

13. He further submitted that as long as there is material available before the arbitrator to show damages have been suffered, but such material does not give him an insight into the granular details, the arbitrator is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying the damages. To buttress the said contention, the learned senior counsel relied upon Construction and Design Services v. Delhi Development Authority8.

14. He also submitted that High court with respect to extra work from July 2001 to March 2002, was factually not correct in stating that earlier rate was agreed between the parties. For the subsequent period from July 2001 onwards, the respondent had taken out fresh tenders which were later withdrawn despite the petitioner being the lowest bidder. Nonetheless the respondent requested the petitioner to continue the work but the rates were never agreed between the parties which is an admitted fact as evident from the letters dated 15.08.2001 and 05.01.2002.

15. He also submitted that the tribunal considered the fact that the strike at respondent's plant was an issue between the management and workers of the respondent. Since there was no Force Majeure clause in the contract and the strike was not an Act of God, the petitioner was entitled for compensation with respect to idle machinery and manpower.

16. Per Contra, Learned Senior Counsel Shri Ranjith Kumar appearing for the respondent submits that there was no clause for in the contract for increasing the rate except for the diesel variation clause. He further contended that petitioner from the beginning of the contract, started protesting and raising unnecessary demands for increasing the price of the contract by comparing it with the contract awarded by the respondent to a third party. The respondent through its letter dated 25.03.2000 had already informed the petitioner that it should not be of his concern who the respondent pays or at what rate, for the bauxite purchased from outside.

17. He further contended that it was specifically mentioned in the contract that the contractor should investigate and inspect the work, site and surrounding area and keep all circumstances in mind before submitting the tender. He also submitted that the Sole arbitrator after holding that neither party has agreed to the rate, has proceeded to guess that the prices have arisen by Rs. 10/- without any evidence or materials to support such findings.

He further contended that additional work was executed at existing rate, and that the additional work was executed at existing rate, and that the claimant had accepted the amount and did not challenge the same. The respondent paid the petitioner Rs. 657/- throughout the period and the rate was impliedly agreed between the parties.

18. With reference to route map, the learned senior counsel contended that there was no specific route map prescribed in the contract for transportation of the bauxite. The petitioner contended that they had to carry the bauxite from the longest route which was costing them additional 50 KM distance for which the respondent was liable to pay as per the diesel variation clause, which is completely baseless. It was an admitted fact that the petitioner was not bound by the contract to follow any particular route. Further, bare perusal of clause 2(a) of the contract i.e., the diesel variation clause shows that it depends on the rate of the diesel and not on the distance and the word 'average' has been mentioned for the entire contract irrespective of the route which the contractor choses for transportation.

19. He further submits that the Learned sole arbitrator without appreciating the specific bar under clause 6 and without giving a simple meaning to the terms therein, went beyond the terms of the contract to allow the claim for idle

machinery. The arbitrator adopted a hyper-technical approach which is not permissible while interpreting the terms of the contract.

20. He has also submitted that the arbitrator after holding that the petitioner had not submitted any documentary evidence on record in respect of the claim for alleged loss due to idle machinery and manpower, however erroneously granted 75% of the alleged amount claimed. The High Court rightly held that there is no evidence to show that the mining process came to stand still and there is no document to show the expenses incurred by the petitioner.

21. He submitted that petitioner continued to work and execute a quantity of 1,95,000 MT from 16.06.2001 to 31.03.2002 and respondent was paying the petitioner at the existing rate plus Rs. 23/- as diesel escalation. The respondent paid the petitioner Rs. 657/- inclusive of diesel rate throughout the period and the rate was impliedly agreed between the parties. The contention of the petitioner that they were expecting a payment of Rs. 697/- PMT is baseless for the reason that the tender 01.01.2001 was cancelled because the bidders offered a very high rate which was not acceptable to the respondent.

22. He further submitted that there was no documentary evidence on record to show that the penalty was imposed by the respondent over the carrying capacity. The Arbitrator wrongly allowed the claim for extra cost of transportation to be borne by the respondent in the absence of any evidence. Only an unsubstantiated tabular statement was placed on record by the petitioner and the basis on which the facts and figures were arrived at therein was absent since there was no evidence.

23. He vehemently submitted that the contract does not permit the Ld. Arbitrator to decide the rates between the parties. It could not have applied the principle of quantum meruit and fixed the rates between the parties. The Award, is thus, against the most basic notions of morality and justice. To buttress his submissions, he placed reliance upon SsangYong Engineering v. NHAI9, MTNL v. TATA Communications10, and Alopi Parshad v. Union of India11.

24. He also submitted that Ld. Arbitrator has re-written the contract since the rates were fixed at Rs. 634.20/- PMT and the extension of contract was on the same terms and conditions. Once the rates are fixed, the arbitrator could not award an additional amount. To back the said contention, he has placed reliance upon Satyanarayan Construction Company v. Union of India12.

25. He lastly submitted that Ld. Arbitrator while awarding a sum of Rs. 10/- as a reasonable compensation to the petitioner has not been relied upon any evidence and merely a guesswork. He has placed reliance upon Kailash Nath Associates v. DDA13, to buttress the said contention.

POINT FOR OUR CONSIDERATION

26. Having heard the learned senior counsels at length on behalf of both the parties and after examining the material on record, we are of the considered opinion that the core issue that arises for our consideration is: Whether interference with the arbitral award by the High Court under Section 37 of the Arbitration and Conciliation Act, 1996 on the ground of patent illegality is sustainable when once the award has been affirmed under section 34 of the Arbitration and Conciliation Act, 1996?

DISCUSSION & OUR ANALYSIS

27. The Arbitration and Conciliation Act, 1996 avows to provide a speedy, costeffective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.

28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow.

It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited14, this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

29. When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in MMTC Ltd. v. Vedanta Ltd.15, at Paragraph 14 observed that

interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking16 this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court.

Even this court has observed in M/s. Hindustan Construction Company Limited v. M/s. National Highways Authority of India17, wherein one of us (Justice Aravind Kumar) was part of the bench at Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contains reasons, especially when they interpret contractual terms, ought not to be interfered with lightly. This court has also observed in Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors.18 at Paragraph 15 that the scope of interference in exercise of appellate power under section 37 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under section 34.

Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37.

This court in Punjab State Civil Supplies Corporation Limited & Anr. v. M/s. Sanman Rice Mills & Ors.19, at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view.

This court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.20 held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious.

30. Hence, in the light of the aforesaid discussion, we would deal with the submissions made by the learned senior counsels on behalf of the parties. But there is yet another aspect that warrants our attention before delving into the analysis of submission and that is the setting aside of the impugned order by the High Court by placing reliance on the ground of "patent illegality" therefore, it becomes imperative to understand the true import of the said term before we move further.

31. Prior to 2015 amendment, the ground of "patent illegality" emerged as result of judicial interpretation in ONGC Ltd. (supra) while interpreting "public policy" mandated under section 34(2)(b)(ii) of A&C Act wherein this court for the first time read patent illegality as a sub-ground to set aside the award on the broader purport of "public policy". In Paragraph 22 of the decision this court observed: Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the arbitral tribunal could be set aside." This court went on to illustrate what would constitute patent illegality at Paragraph 22 and we extract the same for easy reference:

"Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent.

Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality"."

32. In Associate Builders v. Delhi Development Authority21, this court attempted to filter out what contemplated patent illegality in paras 42.1 to 42.3

under the following three subheads: firstly, contravention of the substantive law of India; secondly, contravention of the Arbitration Act itself and thirdly, contravention of Section 28(3) of the Arbitration Act which mandates the Arbitral Tribunal to decide the case in accordance with the terms of the contract, taking into account the usages of the trade applicable to the transaction.

With regard to the third sub-head Justice R.F. Nariman, observed by stating that: if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of term of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.

33. In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality' ground for setting aside a domestic arbitral award made it an independent and distinct ground from 'public policy' under section 34. The proviso to the newly inserted clause further provided that an award "shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence".

The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of 'patent illegality'. However, the Amendment clarified that "an erroneous application of the law" or "reappreciation of evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity.

For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.

34. Thereafter, this court elucidated the meaning of the expression 'patent illegality' in Ssangyong Engg. & Construction Co. Ltd. v. NHAI22 while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes:

(a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission);

(b) an award contradicting the substantive law of India or the Arbitration Act itself;

(c) an award against the terms of the contract; and

(d) an award so unreasoned or irrational that it manifests an error on its face.

35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings.

If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

36. Having discussed the said law, we move ahead to another limb of the submission which was espoused by the respondent particularly with reference to obligations of the arbitrator to decide the dispute in accordance with the terms of the contract. It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations inter se the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation.

The arbitral tribunal in exercise of their power can very well interpret the implied terms or fill gaps where the contract is silent, so long as doing so does not contradict any express term. For example, if a contract is silent on interest on delayed payments, an arbitrator awarding reasonable interest is not contradicting the contract rather it is a power exercised by the arbitrator to fulfill the gap on the basis of equity which also mandated under Section 31(7)(a) of the A&C Act. Similarly, if a contract does not say either way about compensating extra work

done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award?

If the answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss.

Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often termed quantum meruit or unjust enrichment remedy. For ready reference the said provision has been extracted hereinbelow:

"70. Obligation of person enjoying benefit of non-gratuitous act. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

37. The close scrutiny of the aforesaid provision reveals that it comes into play when one party confers a benefit on another in circumstances not governed by a contract, without intent to act gratuitously. Hence in such situation, the party taking the benefit is bound to pay compensation to the party who had gratuitously taken the benefits and the courts including arbitral tribunals, can award compensation under Section 70 if the conditions are met.

38. Coming to submissions of the parties, we refrain ourselves from meticulously examining each submission made by the parties since most of the submissions raised are purely factual in nature and as observed hereinabove, the arbitrator is considered as the master on question of facts and even an erroneous interpretation of facts would not lead us to invoke our extra-ordinary jurisdiction, the only

caveat being the said interpretation of facts is patently illegal that is it is based on no evidence or beyond the scope of contract.

39. Keeping the said position in mind, we have first meticulously examined the arbitral award dated 15.07.2012 passed by the Learned arbitrator with sole intent to analyze whether there is any part of the award which is based on no evidence or is alien to the terms of contract. However, the perusal of the award as a whole, in our view, does not reveal any findings arrived by the tribunal which seems unreasonable or capricious, rather, the arbitrator has scrutinized the material on record: oral evidence of Shri R.K. Jain, the claimant and Shri A. Hussain, the then Assistant General Manager & Engineer-in-charge, who was overseeing the performance of the contract in question, adduced during cross-examination by the Respondent; and documentary evidence in the form of affidavits and correspondence letters to arrive at individual findings of each claim.

The sheer application of mind at the behest of the arbitrator is apparent from the very fact that the claims asserted by the appellant were not accepted by the arbitrator as a gospel truth but were put on pedestal of evidentiary proof. The respondent has argued that the arbitrator has based its findings based on the calculation sheets and guesswork. We would have agreed with the respondent had there been no evidence available before the arbitrator to arrive at such findings but the same is not true since the arbitrator after considering the evidence on record has given its finding.

For instance, the claim under Para 19.2 to the tune of Rs. 1,96,11,000 towards extra transportation cost incurred by the appellant on the premise of restricting the capacity of the truck was proved by the fact that after the District Transport Officer order was stayed by the High Court, the respondent did not allow the appellant to deliver at the weight of 11 MT which was not controverted by the respondent.

Also, the arbitrator was conscious to draw adverse conclusions against the appellant, where he failed to sufficiently satisfy the basis of the claim and the arbitrator in such cases has either reduced the said claim substantially while applying the principle of quantum meruit (as evident from claim under Para 19.1 for executing the extra work) while balancing the interest of both the parties to the arbitral proceedings or has completely denied it (as evident from claim under Para 19.3 for removal of extra burden).

Hence, in our view, the overall analysis of the arbitral award does not reveal any arbitrary exercise of power or findings which is based on lack of evidence as such to fall within the sweep of "patent illegality" as held by the impugned judgement. In our assessment, the High Court allowed itself to be deviated by things that are in truth within a range of normalcy in arbitral adjudication.

40. With regard to application of principle of quantum meruit the respondent had argued the Ld. Arbitrator had erroneously applied the said principle when the rates were already fixed between the parties. Even the High court observed in the impugned judgement that the said exercise tantamount to rewriting of contract. The Impugned judgement has proceeded on an erroneous understanding of the decision of this Court in Mahanagar Telephone Nigam Limited v. Tata Communications Limited23. We say so because the said decision is applicable to situations where the contract between the parties fully governs the field and the consideration for the very work in dispute stands conclusively determined by express contractual terms.

However, in the present case, after the currency of the earlier two contract the appellant continued to mine and transport the additional work of supplying the additional Bauxite to the tune 1,95,000 MT at the behest of the respondent, but the price thereof was left open to be finalized in due course of time by mutual consensus as is evident from the bare reading of Letter dated 05.01.2002 (Annexure P4) addressed by the respondent to the claimant, which exercise was never undertaken.

In such a factual matrix, the arbitral tribunal cannot be said to have rewritten or varied the contract rather the arbitrator addressed a vacuum in the contractual arrangement by determining reasonable compensation in terms of Section 70 of the Contract Act, 1872, to obviate the possibility of unjust enrichment. The quantification of additional compensation at Rs. 10/- PMT i.e., from Rs. 634.20/- PMT to Rs. 644.20/- PMT represents an assessment of reasonable value for the extra work performed and does not amount to substitution of any agreed contractual rate as no such sum was mutually inked down by both the parties.

Therefore, we disagree with said view of the High court as the arbitral award did not rewrite the contract but merely enforced a restitutionary obligation arising from admitted extra work directed and accepted by the respondent, where the aspect of consideration was consciously left open and later misused by the respondent to sway away from discharge of its usual contractual obligation. Hence, the High Court, in exercise of limited jurisdiction under Section 37, impermissibly re-appreciated facts and substituted its own interpretation, contrary to settled law under Associate Builders, Ssangyong Engineering and MMTC (referred to supra).

41. Further, we have no hesitation to hold that claims in the nature of quantum meruit or unjust enrichment can be decided by the arbitrator provided they fall within the scope of disputes referred either explicitly or by necessary implication. For instance, in a situation like the present, claim for payment for such work has been entertained as it relates to the performance of the contract.

The measure of compensation under Section 70 is typically the value of the benefit obtained by the other party or the cost incurred by the claimant in doing the act (whichever is reasonable to avoid unjust enrichment). The law does not permit arbitrary awards under Section 70. The award must still be grounded in evidence of the benefit's value or the expense incurred. Nonetheless, tribunals have a degree of discretion to approximate a fair value, especially when exact evidence is hard to come by, so long as the final figure is reasonable and not pulled from thin air.

42. The errors pointed out in the impugned judgement, i.e., lack of evidence, percentage-based guess allowances, etc. do not, singly or cumulatively, amount to patent illegality warranting annulment. There were at least some evidence and logical rationale for each award element. The arbitrator's approach was certainly a possible view a reasonable man might take. The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible.

The High Court's scrutinized the award from a stricter standard of proof than arbitration law demands. Arbitrators are not bound by the strict rules of evidence as per Section 19 of the A&C Act and may draw on their knowledge and experience. It is settled that a court should not interfere simply because the arbitrator's reasoning is brief or because the arbitrator did not cite chapter and verse of the contract as long as the path can be discerned by which the arbitrator arrived at his conclusions. Here, the path is discernible and not absurd.

CONCLUSION

43. In light of the foregoing analysis, we are of the considered view that impugned judgement dated 03.05.2023 passed in ARBA No. 05 of 2017 cannot be sustained and the appeal deserves to be allowed. Accordingly, the appeal stands allowed and the aforesaid impugned judgement is set aside.

44. Consequently, the judgement and order dated 02.01.2017 passed by Commercial Court, Raipur in MJC No. 33/16 which affirmed the arbitral award passed by the sole arbitrator dated 15.07.2012 is restored. Pending applications, if any, stands disposed of.

.....J. [Aravind Kumar]

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

New Delhi;

December 18th, 2025.

1 (2019) 5 SCC 341

2 (2015) 4 SCC 136

3 (2022) 1 SCC 131

4 (2019) 4 SCC 163

5 (2024) 2 SCC 613

6 (2015) 3 SCC 49

7 (2019) 7 SCC 236

8 (2015) 14 SCC 263

9 (2019) 15 SCC 131

10 (2019) 5 SCC 341

11 AIR 1960 SC 588

12 (2011) 15 SCC 101

13 (2015) 4 SCC 136

14 (2003) 5 SCC 705

15 (2019) 4 SCC 163

16 (2023) 9 SCC 85

17 2023 INSC 768

18 (2023) 15 SCC 472

19 2024 INSC 742

20 2023 INSC 850

21 2014 SCC OnLine SC 937

22 (2019) 15 SCC 13

23 (2019) 5 SCC 341

IN THE SUPREME COURT OF INDIA

Rajesh Upadhayay
Vs.
State of Bihar & Anr.

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 8736 of 2025]

Head Note - Suspension of sentence after conviction for an offence punishable with life imprisonment requires careful and cautious consideration, particularly where the allegations disclose a direct and active role in the crime.

The power cannot be exercised mechanically or merely on the ground that the appeal is pending. The court should consider relevant factors like the nature of accusation made against the accused, the manner in which crime is alleged to have been committed and the seriousness of offence.

JUDGMENT

N.V. Anjaria, J.

1. Leave granted.

2. The appellant-original complainant has questioned judgment and order dated 28.08.2024 of the Division Bench of the High Court of Judicature at Patna in Criminal Appeal (DB) No.542 of 2024, whereby the High Court suspended the sentence imposed on respondent No.2 and released him on bail during the pendency of the Appeal.

2.1 Respondent No.2-Sheo Narayan Mahto came to be convicted under Section 302 read with Section 149 of the Indian Penal Code, 1860 and sentenced to rigorous imprisonment for life with imposition of fine of ₹20,000/-, by learned Additional District and Sessions Judge, 19th Rohtas in Sessions Trial No.101 of 2022. The respondent No.2 was further convicted for the offence under Sections 342/149, IPC and sentenced to undergo rigorous imprisonment of one year and to pay fine of ₹500/-. In respect of conviction under Sections 147 and 504/149, IPC, sentence of one year for each offence and fine of ₹500 and ₹1,000/- respectively was imposed.

2.2 Respondent No.2 came to be convicted also for the offence under Section 148, IPC, for which he was sentenced to rigorous imprisonment for a term of two years with fine of ₹1,000/-. Conviction was also recorded by the Sessions Court under Section 27 of the Arms Act and in respect thereof respondent No.2 was

sentenced to undergo rigorous imprisonment for a term of four years and to pay a fine of ₹3,000/-, with default clause.

3. The appellant-informant's father named Krishna Behari Upadhyay was murdered. As per the prosecution story, on 11.12.2021 at about 4.30 p.m., the appellant along with his father Krishna Behari Upadhyay reached at Mahavir temple of the village to light 'Diya' and to do 'Arti'. At that time, the accused persons and the co-villagers Bashishthha Singh alias Munna Singh, Ajit Singh, Naga Kumar, Raghunandan Kumar and Sheo Narayan Mahto-respondent No.2 herein wielding the arms and weapons reached, at the temple. Hurling abuses, all of them surrounded the appellant and his father, telling said Krishna Behari Upadhyay that he was not performing Puja and was engaging in politics.

3.1 It is the further case of the prosecution that Pandit Krishna Behari Upadhyay tried to close the main gate of the temple, but the accused persons pushed the gate and made a forcible entry inside the temple. Ajit Singh and Raghunandan Kumar caught hold of Krishna Behari Upadhyay and Munna Singh is stated to have fired at him with a revolver. It was stated respondent No.2 also had a country-made pistol with him and that he as well as another Rajesh Mehto alias Rajesh Kumar were instigatively uttering that the Pandit should be killed as he was excessively indulging in politics. Because of gun fire shots, Krishna Behari Upadhyay fell down inside the temple premises and was in a pool of blood.

3.2 The appellant somehow managed to flee away from the place and informed his family members. Om Prakash Tiwari and Ritesh Mukhia who were the family members, as well as the other co-villagers reached at the place of the offence. They saw Munna Singh, Ajit Kumar, Naga Kumar, Raghunandan Kumar and Rajesh Kumar Mahto alias Rajesh as also respondent No.2-Sheo Narayan Mahto running away in the Eastern direction.

3.3 Upon being taken to the hospital, Krishna Behari Upadhyay was declared dead. A Fardbeyan was given by the appellant on 11.12.2021, pursuant to which the police registered the First Information Report No.96 of 2021 for the offences under Sections 147, 148, 149, 341, 342, 504, 506, 302 and 120 (B), IPC, and for the offence under Section 27 of the Arms Act against the six persons, including respondent No.2. On 02.02.2022, respondent No.2 surrendered before the Trial Court. Chargesheet No.9 of 2022 was filed on 28.03.2022.

3.4 The Sessions Court convicted and sentenced respondent No.2 for the offences as mentioned above. In the appeal proceedings before the High Court, respondent No.2 filed an application praying for suspension of sentence, which was allowed by the High Court and during the pendency of the appeal, respondent No.2 was ordered to be released on bail, suspending the sentence imposed on him.

3.5 The High Court took the view that the role attributed to respondent No.2 in the incident was of instigation, therefore, the sentence could be suspended. Accordingly to the High Court, the First Information Report (FIR) was sent to the Magistrate's court after three days and further that the original copy of the inquest report was not produced, which, stated the High Court, were also the factors entitling respondent No.2-the convict to be released on bail during the pendency of the appeal.

4. Heard learned counsel Mr. Adarsh Kumar Tiwari for the appellant and Mr. Anshul Narayan, learned additional standing counsel for the respondent-State of Bihar.

5. There is no escape from the fact that respondent No.2 is convicted under Section 302 read with Section 149, IPC and is imposed with sentence of rigorous imprisonment for life with payment of fine. He is also convicted for the offence under the Arms Act. Respondent No.2 had undergone incarceration so far for three years. His appeal has been awaiting final outcome.

5.1. In order to assess the merits and justification or otherwise of the impugned order of the High Court whereby the High Court thought it fit to suspend the sentence imposed on respondent No.2 herein, it would be worthwhile to notice the total scenario of the events in the commission of the crime as well as relevant to consider the role and the nature of participation of respondent No.2.

5.2. The nature of role played by respondent No.2 was the aspect weighed with the High Court in suspending the sentence awarded to him, the High Court was further persuaded itself to justify the suspension of sentence of respondent No.2 on the ground inter alia that that the FIR was sent to the Magistrate's court after a gap of three days and that the original copy of the inquest report was not produced.

5.3 At the outset, it may be observed that the High Court was in evident error in resting upon the said two counts. Delay of three days in sending the copy of the FIR to the court of the Magistrate and the non-production of original copy of the inquest report could be said to be illogical considerations applied by the High Court, insofar as those aspects do not have any bearing on the credence of the prosecution's case which was otherwise established on evidence before the Trial Court. These considerations could not have guided the application of mind of the High Court.

5.4 The High Court was swayed away to observe that the role played by respondent No.2 in the incident was of instigation only. It may be true that respondent No.2 was instigator when the deceased Krishna Behari Upadhyay was shot at, however, it is revealed from the record and the evidence, which the High

Court has also accepted and observed, that respondent No.2 also had with him a country-made pistol.

5.5 As stated above, respondent No.2 had pistol with him and he along with Rajesh Kumar and other accused persons had been shouting 'kill him' (Pandit Krishna Behari Upadhyay). After the incident, the accused persons fled away. PW1, who was a Pujari present at nearby Hanuman temple deposed to state that he heard sounds of gun shot and upon hearing the sound, he came out to run towards the place and at such time, he saw Munna Singh running with weapon in his hand. Respondent No.2 was also seen running to flee from the Northern door of the temple. Thus, in the events turned out inside the temple, Munna Singh is stated to have fired the gun shots at the victim, whereas respondent No.2 with countrymade pistol was inside.

5.6 While the ocular evidence on record was as above, the Medical Officer Dr. Kumar Dev Pujan (PW6) described the injuries. The nature of injuries stated by PW6 matched with the prosecution's case that the deceased was fired from the pistol on his temple. The injuries described by the Doctor were- 'Lacerated & burn & charring l"Xl/2" muscle deep on left side of face, wound of entry. On dissection of skull bone, he found lacerated would on the left mid skull, parietal region. Elongated brass metal foreign body was found lodged in brain substance of parietal region. Brain substance and meninges lacerated and blood clout in skull cavity.' The cause of the death of the deceased was mentioned by PW6 to be haemorrhage and shock due to the injuries caused as above by use of firearm.

6. Section 389 of the Code of Criminal Procedure, 1973 deals with suspension of execution of sentence pending appeal and release of appellant on bail. Conceptually, there is a distinction between bail and suspension of sentence. In State of Haryana v. Hasmat1, this Court emphasising that the Appellate Court is expected to record proper reasons in writing for ordering suspension of execution of sentence or the order appealed, further observed that before suspension of sentence could be ordered, there has to be careful consideration of the relevant aspects. It was stated that order directing suspension of sentence and grant of bail should not be passed as matter of routine.

6.1 It is also the settled principle that the Appellate Court should not reappreciate evidence at stage of Section 389, CrPC and try to pick some lacunae or loopholes here and there in the case of prosecution. The presumption of innocence of the accused which is a principle applied in criminal jurisprudence, holds good only until the accused is tried. Once the accused is convicted at the end of the trial, the presumption of innocence does not continue.

6.2 In Shakuntala Shukla v. State of Uttar Pradesh & Anr.2, this Court was considering the question of grant of bail during pendency of appeal at the

instance of appellant who was convicted under Section, 302/149, 201 read with Section 120-B, IPC. It was observed inter alia that the High Court should be slow in granting bail to an accused convicted under Section 302/149, IPC and that once convicted, the presumption of innocence would vanish.

'The High Court has not at all appreciated and considered the fact that the learned trial court on appreciation of evidence has convicted the accused for the offences under Sections 302/149, 201 r/w 120-BIPC. Once the accused have been convicted by the learned trial court, there shall not be any presumption of innocence thereafter. Therefore, the High Court shall be very slow in granting bail to the accused pending appeal who are convicted for the serious offences punishable under Sections 302/149, 201 r/w 120-B IPC.'

(Para 11)

6.3 In Omprakash Sahni v. Jai Shankar Chaudhary & Anr.3, this Court again reiterated that the benefit of suspension of sentence can be granted only in exceptional cases more particularly so in cases involving conviction under Section 302, IPC. It was further observed that the court should consider the relevant factors like nature of accusation made against the convict, the manner of commission of crime, the gravity of the offence, etc. Distinction was brought out between grant of relief of suspension of sentence in the cases where fixed term sentence is imposed versus the cases where the convicted person is sentenced to life imprisonment, by relying on its own decision in Bhagwan Rama Shinde Gosai v. State of Gujarat4,

'When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach.'

(Para 3)

6.4 Even in respect of cases where the sentence awarded is for a fixed term, this Court in Chhotelal Yadav v. State of Jharkhand & Anr.5 observed that 'there is a caveat that if there are exceptional circumstances, then the Court may decline to suspend the sentence even in cases where fixed term of sentence is imposed'. It was specifically observed that in respect of plea of suspension of sentence where the sentence is of life imprisonment, such relief has to informed by a gross and apparent error in the judgment of the Trial Court.

'What could be those exceptional circumstances is not something exhaustive. It is for the Court concerned to look into those exceptional circumstances as may be pointed out by the State. However, the only consideration that should weigh with the appellate court while considering the plea for suspension of sentence of life imprisonment is that the convict should be in a position to point out something very palpable or a very gross error in the judgment of the Trial Court on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed and he be acquitted.'

(Para 16)

6.5 The dictum that the benefit of suspension of sentence, if at all to be granted in the cases involving conviction under Section 302, IPC, it has to be only in exception cases, is well settled in the catena of judgments. In Vijay Kumar v. Narender & Ors.6 it was observed that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the court should consider relevant factors like the nature of accusation made against the accused, the manner in which crime is alleged to have been committed and the seriousness of offence. The view was reiterated in Ramji Prasad v. Rattan Kumar Jaiswal & Anr.7, Vasant Tukaram Pawar v. State of Marashtra8, Gomti v. Thakurdas & Ors.9.

7. Looking to the crime scenario in the instant case, the murder of father of complainant- Pundit Krishna Behari Upadhyay took place inside the temple. The appellant complainant (PW2) in terms deposed that respondent No.2 had pistol in his hand. When all the accused persons came, the father of the appellant got frightened, went inside the temple. Thereupon, as is stated, the accused persons, including respondent No.2, pushed the door of the temple and made a forced entry inside, catching hold of Pandit Krishna Behari Upadhyay.

The victim fell down having received gun shot injury to be in a pool of blood. As per the evidence appreciated by the Trial court leading to conviction of respondent No.2 under Section 302 read with Section 149, IPC, the firearm was used by Munna Singh whereas respondent No.2 with pistol in his hand was instigating. Munna Singh and respondent No.2 had firearms with them. Respondent No.2 had with him a country-made pistol.

8. It is also to be noted that two of the accused persons are absconding.

9. In the light of the above highlighted principles applied to the facts of the present case and having regard to the relevant considerations such as nature of accusation, events in the crime and even the attribution of role of the appellant, it has to be held that the High Court should not have suspended the sentence, and releases respondent No.2. A clear error was committed by the High Court. The

participation and role played by respondent No.2 in the entire commission of offence has to be viewed as grave and could not have been discounted for its seriousness to suspend his sentence imposed upon conviction under Section 302 read with Section 149, IPC.

9.1 It goes without saying that observations in this order are limited to the aspect of suspending the sentence of respondent No.2 and releasing him on bail, not to influence the course of merit of the trial.

10. For foregoing reasons and discussion, impugned judgment and order of the High Court dated 28.08.2024 suspending the sentence of respondent No.2 is hereby set aside. Respondent No.2 Sheo Narayan Mahto to is directed to surrender within ten days. The police authorities shall ensure that respondent No.2 is sent behind the bars within the above time permitted for surrendering.

11. The present appeal is accordingly allowed. In view of disposal of the Appeal, the interlocutory applications, if any, shall not survive.

.....J. [Manmohan]

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

New Delhi;

December 18, 2025.

1 (2004) 6 SCC 175

2 (2021) 20 SCC 818

3 (2023) 6 SCC 123

4 (1999) 4 SCC 421

5 Criminal Appeal No.4804 of 2025 decided on 10.11.2025

6 (2002) 9 SCC 366

7 (2005) 5 SCC 281

9 (2007) 11 SCC 160

IN THE SUPREME COURT OF INDIA

Manoj @ Munna
Vs.
State of Chhattisgarh

[Criminal Appeal No. 1129 of 2013]

Head Note – A prosecution case resting entirely on circumstantial evidence cannot be sustained solely on the "last seen" theory in the absence of other corroborative evidence.

JUDGMENT

Prashant Kumar Mishra, J.

1. This Appeal is directed against the impugned judgment and order dated 11.05.2011 passed by the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No.306/2008, whereby the High Court affirmed the conviction and sentence imposed by the Trial Court convicting the appellant for the offences under Sections 302 and 201 of the Indian Penal Code, 18601 and sentenced him to undergo imprisonment for life with fine of Rs.1,000/- and rigorous imprisonment for 05 years with fine of Rs. 500/- and in default of payment of fine amounts, to undergo additional rigorous imprisonment for 06 months and 03 months respectively.

A. FACTUAL MATRIX

2. According to the prosecution, on 07.06.2004, the appellant, along with five co-accused, committed dacoity and, during its commission, caused the death of Yuvraj Singh Patle. The accused were, therefore, charged under Sections 302, 302/34, 396, 201 and 120-B of the IPC for murder, dacoity with murder, criminal conspiracy, and causing disappearance of evidence. It was further alleged that on 06.06.2004, the appellant was last seen with the deceased. The appellant had taken him on his motorcycle from Salhevara. The deceased was subsequently found dead on the next day, i.e., 07.06.2004.

3. The dead body of Yuvraj Singh Patle was sent for autopsy to Primary Health Center, Gandai where Dr. Ashish Sharma (PW 13) vide Ex. P-20 found the following injuries:

i) Burn injury found over body of 2-3 degree.

ii) Body was decomposed.

iii) Hairs were pilling off. iv) Swelling over stratum and penis.

v) Two ligature marks over the neck.

vi) Lacerated wound over right temporal region of 2 x 2 x 1 c.m.

vii) Lacerated wound over right collar bone.

viii) Both palms were burnt.

ix) Burn injury over the legs were found. According to Dr. Ashish Sharma (PW 13), the cause of death was shock and burn injury and the death was homicidal in nature.

4. In order to prove the guilt of the appellant, the prosecution examined as many as 26 witnesses. The appellant was also examined under Section 313 of the Code of Criminal Procedure, 1973, where he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

5. The Trial Court, while acquitting the remaining five accused, convicted the appellant by placing reliance on the testimonies of Bedram (PW-18), Chamru Singh (PW-20) and D.S. Marko, Executive Magistrate (PW-22), particularly with respect to the last seen theory. The Trial Court held that the appellant had caused the death of the deceased while returning from the house of Mangal Patle on a motorcycle.

The medical evidence, according to the Trial Court, established that attempts had been made to burn the body with the intention of destroying the evidence. The Trial Court further found that the appellant had looted the tractor after murdering the driver, Yuvraj Singh Patle, for the purpose of arranging money. On this basis, the Trial Court concluded that the prosecution had successfully proved the motive and established a complete chain of circumstantial evidence pointing unerringly to the guilt of the appellant.

6. The High Court in the impugned judgment affirmed the conviction and sentence passed by the Trial Court on the basis of the last seen theory and the fact that the appellant did not offer any explanation as to when he left the company of the deceased Yuvraj Singh Patle. In absence of such explanation and circumstance, the High Court held that only inference possible was that it was the appellant who committed homicidal death amounting to murder of Yuvraj Singh Patle and with a view to conceal the evidence of crime, the appellant burnt the dead body of Yuvraj Singh Patle.

B. SUBMISSIONS

7. Learned Amicus Curiae appearing for the appellant would submit that since the present case is based on circumstantial evidence, the chain of circumstances

is not complete. The evidence adduced by the prosecution suffer from infirmities and contradictions. It was submitted that a similar set of evidence was rejected in respect of other five accused persons, but the same evidence were relied upon against the appellant which has resulted in discrimination against the appellant.

Further, the depositions of Bedram (PW- 18) and Chamru Singh (PW-20) regarding the last seen theory are not reliable. It was also submitted that the prosecution totally failed to prove the motive to commit the murder of the deceased. Thus, learned Amicus Curiae argued that since the chain of circumstances is not complete as against the appellant, the appellant is entitled to the benefit of doubt.

8. Per contra, the learned counsel for the State submitted that the Trial Court and the High Court, after careful examination of the evidence, rightly came to a conclusion that the evidence of 'last seen together' has been duly proved which along with other incriminating circumstances is sufficient to convict the appellant.

9. The rival submissions now fall for our consideration.

C. ANALYSIS

10. The only question that arises for our consideration is - whether the Trial Court and the High Court were correct in convicting the appellant solely on the basis of the theory of last seen together?

11. In the present case, it is not in dispute that the case of the prosecution is based purely on circumstantial evidence in the form of motive and last seen together, since there is lack of ocular version of the crime. The fact that the death was homicidal in nature was duly proved by Dr. Ashish Sharma (PW-13) who conducted the autopsy. Large number of injuries were found on the body of the deceased and the cause of death was shock and burn injury. Thus, there is no doubt on the aspect that the death of Yuvraj Singh Patle was homicidal in nature.

12. It is a well-established rule in criminal jurisprudence that circumstantial evidence can be made the basis of conviction of an accused person if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. The incriminating circumstances being used against the accused must be such as to lead only to a hypothesis of guilt and must exclude every other possibility of innocence of the accused and if the circumstances proved against the accused, in a particular case, are consistent with the innocence of the accused, he will be entitled to the benefit of doubt.

13. This Court in a landmark judgment in Sharad Birdhichand Sarda vs. State of Maharashtra2 laid down the five golden rules to be kept in mind while appreciating circumstantial evidence. The same reads thus:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

(emphasis supplied)

14. Further, in the case of Umedbhai Jadavbhai vs. State of Gujarat3, this Court held that while convicting the accused based on circumstantial evidence, there should remain no circumstance which aligns with the innocence of the accused. The observations made by this Court read thus:

"7. It is well-established that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of the accused and there should be no circumstance which may reasonably be considered consistent with the innocence of the accused. Even in the case of circumstantial evidence, the Court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution case."

(emphasis supplied)

15. Having noted the principles governing a case based purely on circumstantial evidence, we now proceed to discuss the evidence as put forth by the prosecution in bringing home the charges against the appellant: i) Motive - It is the case of the prosecution that the appellant needed money to get his jeep back and for this purpose, the appellant looted the tractor by killing the driver Yuvraj Singh Patle to arrange money. However, there is no further evidence on record to prove that after looting the tractor and committing the alleged murder of the deceased, the appellant has tried to sell the tractor for arranging money. In fact, it was stated during the course of argument that the tractor was recovered from some other place after one month of the incident.

Thus, in the absence of evidence that the appellant attempted to sell the tractor, the theory of appellant trying to arrange money to get his jeep back is not established. ii) Last Seen Together Theory - In the present case, the prosecution has examined Bedram (PW-18) and Chamru Singh (PW-20). It was the case of the prosecution that the appellant took the deceased on the motorcycle and, thereafter, the dead body of the deceased in injured condition was found. As per the evidence of PW-18, the appellant and one of the accused Bhagwandas called Yuvraj Singh Patle at Salhevara, thereafter they went to Banjari. After that, Yuvraj Singh Patle was not found along with them and later his dead body was found.

16. We now proceed to examine the evidence on record in the context of the last seen theory. Bedram (PW-18) deposed that the appellant and co-accused Bhagwandas had requested the deceased, Yuvraj Singh Patle, who was the driver of the tractor, to take the tractor to Salhevara. Acting upon this request, PW-18 instructed the deceased and Chamru Singh (PW-20), to proceed to Salhevara with the tractor.

17. Chamru Singh (PW-20) informed Bedram (PW-18) that after reaching Salhevara, the deceased left him there on the request of the accused persons, who asked him to remain behind. Thereafter, both, the appellant and Bhagwandas, proceeded towards Banjari along with the deceased on the tractor, stating that

they were going to collect cable wire. However, none of them, neither the deceased nor the appellant, returned with the tractor that night.

18. Chamru Singh (PW-20) further deposed that on 06.06.2004 he had accompanied the deceased to Salhevara by tractor. Upon their arrival, they met the appellant and Bhagwandas, who invited them for tea at Tihati Hotel. Thereafter, both the accused informed him that they were proceeding to Banjari with the deceased and the tractor to collect cable wire, and asked PW-20 to wait.

19. According to PW-20, before departing for Banjari, the appellant and the deceased took him on the motorcycle to the house of one Mangal Patle and instructed him to stay there for the night, assuring that they would return shortly. The witness waited the entire night, but neither the deceased nor the accused came back.

20. On the following day, PW-20 waited until around 2:00 p.m. When neither the accused nor the deceased returned, he travelled back to his village Rengakhar by bus, where he met Bedram (PW-18) and narrated the entire sequence of events. Thereafter, both PW-18 and PW-20 undertook a search for the tractor and the deceased at Banjari, but found that no cable laying work was underway, and neither the deceased nor the tractor could be traced even on the next day.

21. Further, as per the evidence of D.S. Marko, Executive Magistrate (PW-22), present appellant was placed for identification inside the jail and he was identified by the witnesses. Thus, in the present case, factum of identification and Dok identification have been well established by Bedram (PW-18) and Chamru Singh (PW-20).

22. Thus, from the testimonies of Bedram (PW-18) and Chamru Singh (PW- 20), the prosecution has been able to prove that deceased Yuvraj Singh Patle was last seen alive in the company of the appellant and co-accused Bhagwandas at Salhevara on the evening of 06.06.2004. The accused persons took the deceased along with them towards Banjari on the pretext of fetching cable wires, after leaving Chamru Singh (PW-20) behind at the house of Mangal Patle. Thereafter, Yuvraj Singh Patle was never seen alive again, and his dead body was subsequently recovered.

23. Keeping in view the above-stated testimonies, the crucial question is - whether the evidence of last seen together is sufficient enough to convict the appellant in a case resting entirely on circumstantial evidence?

24. The doctrine of last seen rests on the logical presumption that where an individual is last seen alive in the close company of an accused, and is soon thereafter found dead, the accused must reasonably account for the circumstances in which they parted ways, as such facts fall particularly within his knowledge.

Thus, it rests on the presumption that human behavior follows natural probabilities, and, hence, the person who was last seen with the deceased must be able to explain the facts that resulted in the subsequent death of the deceased.

25. Recently in the case of Padman Bibhar vs. State of Odisha4, this Court, speaking through one of us (Prashant Kumar Mishra, J.), while acquitting the accused of charges under Sections 302 and 201 of the IPC held that the conviction cannot be sustained against the accused merely on the ground that the accused was last seen with the deceased.

26. In Rambraksh vs. State of Chhattisgarh5, this Court observed that the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

(emphasis applied)

27. Further this Court in the case of Krishnan alias Ramasamy and Others vs. State of Tamil Nadu6 while relying on its judgment in Arjun Marik vs. State of Bihar7 observed as follows:

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31)

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only

with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.""

(emphasis supplied)

28. In Kanhaiya Lal vs. State of Rajasthan8, this Court held that evidence on last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 of the IPC.

29. Another circumstance that the High Court took into consideration against the appellant was that the present appellant has not offered any explanation about when he left the company of the deceased Yuvraj Singh Patle and in absence of such explanation and circumstance, inference would be possible that the present appellant has committed homicidal death amounting to murder of Yuvraj Singh Patle and with a view to conceal the evidence of crime, he burnt his dead body.

30. It is a settled principle that Section 106 of the Indian Evidence Act, 18729 clearly provides that when a fact lies especially within the knowledge of a person, the burden of proving that fact rests upon him. Accordingly, when an accused is shown to have been last seen in the company of the deceased, it becomes incumbent upon him to explain how and when they parted ways. The explanation furnished must be reasonable, probable, and satisfactory in the opinion of the Court.

If such an explanation is offered, the burden cast by Section 106 of the Evidence Act stands discharged. However, if the accused fails to present a credible explanation regarding facts within his special knowledge, this failure constitutes an additional link in the chain of circumstantial evidence established against him. At the same time, it must be emphasized that Section 106 of the Evidence Act does not shift the primary burden of proof, which in a criminal trial always remains on the prosecution.

31. Thus, any adverse inference under Section 106 of the Evidence Act is to be drawn against the accused person when the prosecution has been able to establish the case beyond a reasonable doubt.

32. This Court in the case of Sabitri Samantaray vs. State of Odisha10 while elaborating on the principle surrounding Section 106 of the Evidence Act observed that this provision does not dilute or substitute the prosecution's fundamental obligation to prove the guilt of the accused beyond reasonable doubt. Rather, it comes into operation only in situations where the prosecution has already established a reasonable inference against the accused. This Court held thus:

"18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80]"

(emphasis supplied)

33. Further, in the case of Anees vs. State Government of NCT11, this Court held thus:

"37. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act.

Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience"."

(emphasis supplied)

D. CONCLUSION

34. In view of the above discussion, we are of the opinion that the nature of circumstantial evidence available against the appellant though raises a doubt that he may have committed the offence but the same is not so conclusive that he can be convicted only on the evidence of the last seen together. Be that as it may. It is a settled proposition that whenever any doubt emanates in the mind of the Court, the benefit shall accrue to the accused and not the prosecution. The present is a case where except for the evidence of last seen together, there is no other corroborative evidence against the appellant. Therefore, the conviction only on the basis of last seen together cannot be sustained.

35. Thus, we set aside the impugned judgments and orders passed by the High Court as well as the Trial Court convicting the appellant for the offence under Sections 302 and 201 of the IPC. The appellant is acquitted of the offence alleged against him. Since the appellant is on bail, his bail bonds stand discharged.

36. The Appeal is allowed accordingly.

.....J. (Sanjay Karol)

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

New Delhi;

December 18, 2025

1 "IPC"

2 (1984) 4 SCC 116

3 (1978) 1 SCC 228

4 2025 INSC 751

5 (2016) 12 SCC 251

6 (2014) 12 SCC 279

7 1994 Supp (2) SCC 372

8 (2014) 4 SCC 715

9 For short, 'the Evidence Act'

10 (2023) 11 SCC 813

11 (2024) 15 SCC 48

IN THE SUPREME COURT OF INDIA

Kiran
Vs.
State of Karnataka

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 15786 of 2024]

Head Note - A Sessions Court cannot impose a sentence of life imprisonment for the remainder of a convict's natural life without remission, as such sentencing powers are exclusively vested in the Constitutional Courts.

The sentence of life imprisonment no doubt means the entire life, subject only to the remission and commutation provided under Cr.P.C. and also to Articles 72 and 161 of the Constitution of India, which cannot be curtailed by a Sessions Court. Nor can the Sessions Court, a creation of the Cr.P.C. curtail the provision under Section 428, Cr.PC, available in the Code which created it.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. A widow, with five children was torched to death, for not having responded to the lustful advances of the accused, a relative by marriage.

3. This Court had issued notice on 08.11.2024, limited to the question as to whether the trial court was correct in imposing life imprisonment meaning that it will be till the end of his natural life and directing the accused to be not granted the benefit of remission under Section 428 of the Code of Criminal Procedure, 19731.

4. Despite the limited notice, we have gone through the evidence to convince ourselves on the conviction, especially since the witnesses, including the daughter of the deceased, an eyewitness turned hostile. The crime was committed on 01.01.2014 at 11:30 pm when the accused was alleged to have entered the shanty in which the deceased was living with her daughters. The woman having not succumbed to the sexual advances made, which had been continuing for some time earlier, the accused poured kerosene over her and set her ablaze. The woman was rushed to the hospital, taken to a higher center but later, after ten days, she succumbed to death. That the death was due to 60% burns caused, has been established by the medical evidence, making a clear case of homicide.

5. The crucial witnesses, who were close relatives, including the father and daughter of the deceased, PW-1 and PW-7, turned hostile. PW-1 though did not support the allegation against the accused, deposed on the incident and spoke of the deceased having been taken to the hospital after having sustained burns, to which she succumbed. As found by the High Court, PW-7 though turned hostile with respect to the allegation against the accused, admitted the presence of PW-8 and PW-24, neighbors who had come to the crime scene immediately after it occurred, hearing the hue and cry.

PW-24 was the brother-in-law of the deceased who shifted her to the hospital along with PW-8, a neighbor, who also spoke of this factum. PW-24, additionally spoke of having seen the accused running away from the scene of occurrence, known to him as a relative by marriage. The presence of PW-24 having been spoken of by the other prosecution witness, the presence of the accused and his flight from the scene of occurrence is established.

6. One other compelling circumstance is the dying declaration made by the deceased. Though there was a dying declaration made to PW-1, PW-9, PW-10 and PW-11 they resiled from their statements. However, it has been established from the testimony of PW-9, the sister of the deceased that the victim was conscious and could speak at the time when she was admitted in the Hospital and continued as an inpatient. Exhibit P-27 is the dying declaration given by the deceased on 02.01.2014 at Nikhil Hospital, Hyderabad to PW-25, the Head Constable deputed on medical intimation having been received from the Government Hospital, Bidar, to which place the deceased was first taken before transferring her to Hyderabad.

PW-25 categorically stated that he was the Station House Officer of Santapur Police Station and on receiving intimation from the Government Hospital, Bidar, he had gone there when he was informed of the victim having been taken to Hyderabad. He then, after obtaining sanction from the higher authorities, proceeded to Hyderabad where he recorded Exhibit P-27, the dying declaration, categorically pinning the crime on the accused. He also stated that at Hyderabad he submitted a request to the Chief Metropolitan Magistrate to record the dying declaration which request was produced as Exhibit D-1.

In Exhibit D-1, the recital was of a suicide having been committed by pouring kerosene over oneself. However, this was explained insofar as the crime scene was in the northernmost part of Karnataka and the victim having been taken to Hyderabad within the then State of Andhra Pradesh. It was the deposition of PW-25 that he could not communicate in Telugu, which resulted in the police at Hyderabad not being properly communicated with the offence; resulting in a mistaken intimation of suicide being made in the request to the CJM, written in Telugu.

7. In any event, the Magistrate was examined as PW-21 who clearly spoke of Exhibit P-23, the dying declaration in a question-and-answer form, on the very next day of admission, again implicating the accused, in accordance with the prosecution story, as also speaking of the detestable prior conduct of the accused, resistance to which was the motive projected. The dying declaration was taken in the presence of PW-22, the duty doctor, who signed on the declaration and fully corroborated in the box. PW-22 also confirmed that the deceased was conscious and coherent when the statements were given. In the totality of circumstances, as coming out from the case records, we are convinced that the conviction was entered into properly.

8. Now, the question remains as to whether the Sessions Court was competent to award a sentence of imprisonment for life till the remainder of life and prohibit the benefit of set-off as provided under Section 428 of the Cr.PC.

9. The sentence of life imprisonment no doubt means the entire life, subject only to the remission and commutation provided under Cr. PC and also to Articles 72 and 161 of the Constitution of India, which cannot be curtailed by a Sessions Court. Nor can the Sessions Court, a creation of the Cr.PC curtail the provision under Section 428, Cr.PC, available in the Code which created it.

10. The learned counsel for the appellant relied on the decision in Navas Alias Mulanavas v. State of Kerala2 in which the principle under Swamy Shraddananda (2) v. State of Karnataka3 was employed to confirm the sentence imposed by the High Court of a life sentence without remission but modifying the period of 30 years imprisonment to that of a period of 25 years of imprisonment without remission.

11. In Swamy Shraddananda3, this Court held that: -

"56. But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 28 March, 1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration.

This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded

as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior Courts in their respective States" (sic-para 56).

12. An alternative measure was brought in, to break the standardisation in sentencing in such cases wherein the crime is heinous, dastardly and brutal. Though life sentence literally denotes imprisonment till the last breath, it operates only as an imprisonment for 14 years with the power of remission and commutation conferred on the Government. Balancing, the need to provide proportionate punishment at least in crimes which shocks human society, with the need to avoid death; an irreversible penalty, a middle ground was found.

A measure by which, in crimes possible of categorisation as 'rarest of the rare', the Courts even then finds a need to avoid death, on mitigating circumstances, could award life imprisonment without remission. Also, when the case falls short of the 'rarest of the rare' category, thus excluding imposition of death sentence, but by the nature of crime the normal sentence of life imprisonment subject to remission or commutation, working out to a term of 14 years would not suffice and would be grossly disproportionate and inadequate, again this measure could be employed.

It was in such circumstances that this Court considered the possibility of expanding the options so as to cover the 'vast hiatus between 14 years imprisonment of life and death' (para 92). The Court thus, substituted the death sentence awarded by the Trial Court and confirmed by the High Court, with imprisonment for life and directed that the accused shall not be released till the rest of his life.

13. This Court, hence, as evident from the extract hereinabove, clearly held that in appropriate cases as a uniform policy, punishment of imprisonment for life beyond any remission can be awarded, substituting the death penalty; not only by the Supreme Court but also by the High Courts. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts.

14. In Union of India v. V. Sriharan alias Murugan and Others4, a Constitution Bench of this Court by majority reaffirmed the alternative option as laid down in Swamy Shraddananda (2)3 restricting the principle to be applied only by the Constitutional Courts, the Supreme Court and the High Courts. While upholding the principle of alternative sentencing, it was also held that this would not affect

the power conferred under Articles 72 & 161 of the Constitution of India. It is on the same principle that we say, the Sessions Court is not competent to interfere with or curtail the effect of the provisions of the Cr.PC.

15. Going by the decisions cited, it has to be held that life imprisonment awarded would be for the rest of the life, the power to grant remission and commutation under Sections 432 to 435 Cr.PC cannot be curtailed by the Sessions Court, when the remission as provided under the Constitution was declared to be not permissible of interference by the Constitutional Courts. The power of alternate sentencing to cover the hiatus between 14 years and death, cannot be applied by the Sessions Courts.

Hence, the sentence of life imprisonment cannot be directed to be till the end of natural life, by the Sessions Court which direction would be in conflict with the provisions of the Cr. PC. The power of remission or commutation conferred on the State cannot be taken away and the sentence as awarded by the trial court and confirmed by the High Court for the offence under Section 302 of the Indian Penal Code, 18605 is confirmed as imprisonment for life.

16. Now, we come to the question of set-off under Section 428, Cr. PC having been curtailed. The learned Government Advocate brought to our notice a refence made by a Division Bench of this Court, in The Superintendent of Prison and Anr. v. Venkatesan @ Senu @ Srinivasan @ Baskaran @ Radio @ Prakasam6. Therein the question referred was the principle of set-off being made applicable insofar as the period of detention with respect to other offences, suffered in the course of a separate investigation inquiry and trial.

In the present case, no such question arise insofar as the direction of the trial court is not to grant the set-off for the period of detention undergone by the accused in the course of the investigation and trial of the same case. The statutory imprimatur in Section 428, Cr. PC is that the period of detention undergone by an accused during the investigation, inquiry or trial of a case, before the date of conviction in the case shall be set-off against the term of imprisonment imposed on the accused, as the sentence on such conviction. The direction of the Sessions Court not to grant set-off under Section 428, Cr. PC will stand deleted, as there is no escape from it.

17. The learned Government Advocate also relied on Ravinder Singh v. State (NCT of Delhi)7, in which this Court following the decisions in Swamy Shraddananda3 and V. Sriharan alias Murugan4, upheld the special category of sentence of a life term for 20 years as imposed by the trial court, finding it to be fit and proper in the circumstances of the case. We do not think the offence herein requires the same treatment.

18. The appeal stands partly allowed, modifying the sentence to imprisonment for life under Section 302, IPC and permitting set-off, as provided under Section 428, Cr. PC as also confirming the sentence under the other offences, which would run concurrently. The accused would be entitled to avail of remission/commutation, in due course, but subject to the decision being taken by the Government as per its policy.

19. Pending applications, if any, shall also stand disposed of.

.....J. (Ahsanuddin Amanullah)

.....J. (K. Vinod Chandran)

New Delhi

December 18, 2025.

1 for short, the Cr.PC

2 (2024) 14 SCC 82

3 (2008) 13 SCC 767

4 (2016) 7 SCC 1

5 for short, 'the IPC'

6 2025 INSC 541

7 (2024) 2 SCC 323

IN THE SUPREME COURT OF INDIA

M/s. Sri Om Sales
Vs.
Abhay Kumar @ Abhay Patel & Anr.

[Criminal Appeal No. 5588 of 2025
arising out of SLP (Crl.) No. 8703/2019]

Head Note - It is impermissible for the High Courts to quash cheque dishonour proceedings by undertaking a pre-trial enquiry into disputed facts, particularly when a statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 operates in favour of the complainant.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns judgment and order of the High Court of Judicature at Patna1 dated 20.06.2019 in Criminal Miscellaneous No. 3744 of 2015 whereby, while exercising powers under Section 482 of the Code of Criminal Procedure, 19732, High Court quashed the entire criminal proceedings arising out of Complaint Case No. 1563(C) of 2013.

3. Briefly stated, the facts giving rise to the appeal are that the appellant lodged a complaint under Section 138 of the Negotiable Instruments Act, 18813 against the first respondent by alleging, inter alia, that the first respondent took delivery of goods from the complainant and in lieu thereof issued cheque, dated 04.03.2013, of Rs. 20,00,000. On 04.03.2013 itself, the complainant presented the said cheque with its banker for collection. However, the same was returned unpaid on 11.03.2013 with a remark of insufficient funds in the drawer's account.

The complainant thereafter met the first respondent on 12.03.2013 who assured that if the cheque is presented after a week, it will be honored. In consequence, cheque was re-presented on 17.03.2013 but it was again returned unpaid on 18.03.2013, with same remark. As a result, on 02.04.2013 a legal notice of demand was sent to the first respondent. In its reply dated 08.04.2013, the first respondent denied having issued the cheque and refused to make payment. Since payment was not made within the stipulated period, the complaint was filed.

4. The learned Magistrate took cognizance on the complaint and vide order dated 27.09.2013 summoned the first respondent under Section 138 of N.I. Act.

Aggrieved by the summoning order dated 27.09.2013, the first respondent filed an application (i.e., Criminal Miscellaneous No. 3744 of 2015), under Section 482 of the Code, before the High Court.

5. By the impugned order dated 20.06.2019, the High Court quashed the complaint proceedings, inter alia, on the ground that the cheque was not issued for the discharge, in whole or in part, of any debt or other liability.

6. Aggrieved by the impugned order, the complainant has filed this appeal.

7. We have heard learned counsel for the parties and have perused the materials available on record.

8. In short, the submission on behalf of the appellant is that the High Court exceeded its jurisdiction under Section 482 of the Code by holding an enquiry as to whether the cheque in question was for the discharge, in whole or in part, of any debt or other liability inasmuch as under Section 139 of the N.I. Act a presumption is raised, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

Though this presumption is rebuttable, such presumption can only be rebutted in trial and therefore, the complaint which encapsulates all the essential ingredients of an offence punishable under Section 138 of N.I. Act could not have been quashed at the threshold by examining whether the cheque concerned was received by the holder of the cheque for the discharge, in whole or in part, of any debt or other liability.

9. Per contra, the learned counsel for the first respondent submitted that the complaint was mala fide and therefore, the High Court was well within its jurisdiction to consider whether the cheque had been issued for the discharge, in whole or in part, of any debt or other liability. It was argued that once the High Court has recorded a finding that the cheque was not issued for the discharge, in whole or in part, of any debt or other liability, no interference with the order of the High Court is called for.

10. We have considered the rival submissions and have perused the materials on record.

11. The law is well settled that while considering a prayer to quash the criminal complaint and the consequential proceedings at the threshold, the Court is required to examine whether the allegations made in the complaint along with materials in support thereof make out a prima facie case to proceed against the accused or not.

If upon reading the complaint allegations and perusing the materials filed in support thereof, a prima facie case is made out to proceed against the accused, the complaint cannot be quashed, particularly, by appreciating the evidence/ materials on record because the stage for such appreciation is at the trial. No doubt, in exceptional circumstances, the Court may take notice of attending circumstances to conclude that continuance of the proceedings would amount to an abuse of the process of the Court, or where quashing of the proceedings is necessary to secure the ends of justice.

12. In the instant case, the complaint clearly spells out the necessary ingredients for commission of an offence punishable under Section 138 of the N.I. Act. It is also alleged in the complaint that the cheque was issued in the discharge of liability qua goods supplied by the complainant. The cheque was brought on record along with the dishonor memo of the bank concerned which indicated that it was returned unpaid for insufficient funds in the drawer's account.

The complaint also indicated that complainant had served notice of demand within the specified period and despite service of notice of demand, no payment was made. In such circumstances, the necessary ingredients of an offence punishable under Section 138 of N.I. Act were disclosed by the complaint warranting issuance of process to the accused (i.e., the first respondent).

13. However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section 139 of the N.I. Act, there is a presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/ revisional court.

14. In Maruti Udyog Ltd. v. Narender and others4, this Court held that a presumption must be drawn that the holder of the cheque received the cheque of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved and, therefore, the High Court was not justified in entertaining and accepting the plea of the accused at the initial stage of the proceedings and quash the complaint.

15. Likewise, in Rangappa v. Sri Mohan5, it was held that the presumption mandated by Section 139 of the N.I. Act includes the existence of a legally enforceable debt or liability. It was observed that such a presumption is rebuttable, and the accused must raise its defense in the trial.

16. In Rajeshbhai Muljibhai Patel v. State of Gujarat6, it was held that the High Court should not quash the criminal complaint under Section 138 of N.I. Act by going into disputed questions of fact regarding the cheque in question being issued for the discharge of debt or liability. Moreso, when Section 139 of the N.I. Act raises a statutory presumption as regards the cheque being issued for discharge of debt or liability.

17. In Rathish Babu Unnikrishnan v. State (NCT of Delhi)7, this Court held that when there is a legal presumption under Section 139 of N.I. Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. The relevant observations in the judgment are extracted below:

"17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defense without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

18. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also, because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favor of the complainant / prosecution, as the accused will have the opportunity to adduce defense evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

18. Having regard to the aforesaid decisions of this Court as also the provisions of Section 139 of the N.I. Act, we are of the considered view that the High Court committed an error by conducting a roving enquiry, at the pre-trial stage, as regards the cheque being issued for the discharge of debt or liability.

Such an exercise, in our view, was not merited in exercise of power under Section 482 of the Code more so when the complaint allegations disclosed that the cheque was issued for discharge of liability. As fulfillment of the necessary ingredients of Section 138 N.I. Act are prima facie made out from the complaint allegations, in our view, neither the summoning order nor the complaint could have been quashed by the High Court at the pre-trial stage.

19. For the aforesaid reasons, this appeal is allowed. The order of the High Court is set aside. The criminal complaint in question is restored on the file of the concerned Magistrate and shall be dealt with in accordance with law.

20. We make it clear that we have not expressed any opinion as to whether the cheque in question was issued for the discharge, in whole or in part, of any debt or liability. The said issue shall be decided by the Trial Court independently without being prejudiced by any of the observations made in the order of the High Court which has been set aside by this order.

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

.....J. (Manoj Misra)

.....J. (Ujjal Bhuyan)

New Delhi;

December 19, 2025

1 The High Court

2 The Code

3 N.I. Act

4 (1999) 1 SCC 113

5 (2010) 11 SCC 441

6 (2020) 3 SCC 794

7 (2022) 20 SCC 661

IN THE SUPREME COURT OF INDIA

Dr. Amit Arya
Vs.
Kamlesh Kumari

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 20091/2022]

Head Note - Some delay in depositing the balance sale consideration by the buyer, beyond the timeline prescribed in the decree, would not render the decree for specific performance inexecutable if the buyer remained ready and willing to perform his part of the agreement.

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

2. This appeal arises out of a judgment and order dated 8th August 2022 of the High Court of Punjab & Haryana at Chandigarh in CR.No.979 of 2018 (O&M), titled Kamlesh Kumari v. Dr. Amit Arya. The dispute pertains to the execution of an 'agreement to sell' between the parties regarding a property located in the District of Panchkula. A certain sum of money was deposited as 'earnest money', but the matter did not proceed further.

A suit for specific performance1 was decreed by the Trial Court2, which was eventually affirmed on second appeal3 by the High Court. Seeking execution, the plaintiff/decree holder, the appellant herein, filed the said application4, in which the respondent's objections were dismissed.5 The appeal against the dismissal of such objections gave rise to the impugned judgment, which accepted the objections and dismissed the execution petition.

BACKGROUND AND PREVIOUS PROCEEDINGS

We may, by way of a table, recall some important dates which are essential to putting the dispute in context:

Serial No.	Particulars	Date
1.	Date of Agreement Total sale consideration Rs.9,05,000/-	11th December 2004
2.	Trial Court Judgment	14th May 2011
3.	Judgment in First Appeal	22nd April 2013

4.	Judgment in Second Appeal	8th February 2016
5.	Date of Execution Application	4th July 2016
6.	Deposit worth Rs.7,39,700/- by the decree holder6	26th August 2016
7.	Deposit worth Rs.65,300/- by the decree holder7	13th December 2016

3. Facts are to the effect that:

3.1 The parties entered into an agreement to sell a plot of land admeasuring 2 biswas, 10 biswasi situated in Kalka, District Panchkula, on 11th December 2004. To that effect, Rs.1,00,000/- was paid as 'earnest money'.

3.2 The appellant filed a suit for specific performance and permanent injunction against the Respondent, restraining her from alienating the suit land by way of sale, mortgage, gift, or otherwise in favour of any third party. In the alternative, it was prayed that the appellant be paid Rs.2,46,000/- with an interest @18% from the date of the agreement till actual payment.

3.3 The Trial Court framed nine issues for consideration, which read as under:

"1. Whether the defendant entered into an agreement to sell dated 11.12.2004 with the plaintiff of the suit property, as detailed in the head note of the plaint, situated in Kalka, Tehsil Kalka, District Panchkula, as alleged.? OPP.

2. Whether the plaintiff is entitled for the relief of possession, as prayed for.? OPP.

3. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for.? OPD.

4. Whether the plaintiff is entitled for the alternative relief for the recovery of Rs.2,46,000/- along with interest @18% per annum from the date of its actual realization, as prayed for.? OPP.

5. Whether the plaintiff has no cause of action to file the present suit.? OPD.

6. Whether the suit of the plaintiff is not maintainable in the present form.? OPD.

7. Whether the plaintiff has not come to the court with clean hands,? OPD.

8. Whether the plaintiff is estopped form filling the present suit by his own act and conduct? OPD 9. Relief."

Issue No.1 was decided in favour of the appellant and, consequently, Issue No.4 was rejected. Issue Nos.2, 3, 5, 6 and 8 were decided in favour of the appellant as a result of the finding in Issue No.1. Issue No.7 was not pressed by the respondent-defendant but decided against the said party by the Court. The relief granted by the Court, which is the genesis of the present dispute, reads as under:-

"18. As a sequel to findings of this court on the aforesaid issues, the suit of the plaintiff succeeds and is decreed with costs. Resultantly, the plaintiff is entitled for possessions of the suit land and defendant is directed to execute the sale deed in favour of the plaintiff on receiving balance sale consideration of Rs.8,05,000/- from the plaintiff, in terms of the agreement to sell dated 11.12.2004 Ex.P1 within two months from today, failing which the plaintiff shall be at liberty to get executed the sale deed from the court on deposit of necessary expenses. The defendant is also retrained from alienating the suit land in favour of any other person, except the plaintiff. Decree sheet be drawn accordingly. File be consigned to the record room, after due compliance."

3.4 On First Appeal8 before Addl. District Judge, Panchkula, it was held that the finding of the Trial Court qua specific performance could not be sustained for the reasons that,

(a) no document of ownership had been produced and proved;

(b) the agreement to sell contained a clause stipulating that if a sale deed was not executed before the specified date of 10th March 2005 then the appellant would be liable to pay double the amount of earnest money, and the sale deed was indeed not executed before the specified date;

(c) the parties adduced evidence regarding readiness and willingness but the same was not considered in the judgment of the Trial Court, neither was a specific issue framed to that effect, i.e., whether there was any entitlement to the relief of specific performance. As such, it was concluded that the respondent herein entitled to recovery of double the earnest money, i.e., Rs.2,00,000/-.

3.5 The appellant herein preferred a second appeal wherein the sole issue to be considered was whether the appellant herein was entitled, either to specific performance or to the grant of alternate relief. It was held therein that the presence of a clause regarding the date by which the sale deed had to be executed would not bar a suit of specific performance.

It was further held that neither non-consideration of the affidavit nor the non-framing of the issue regarding specific performance would be a reason for the First Appellate Court to interfere with the finding of the Trial Court. Insofar as the readiness and the willingness is concerned, the Court concluded, on appreciation of evidence and in consideration of the sum total of circumstances,

the appellant herein remained ready and willing to perform his part of the agreement. As such, the judgment of the First Appellate Court was set aside, and that of the Trial Court was restored.

3.6 The appellant filed Execution Application No.35 of 2016 on 4th July 2016. Objections were filed thereagainst on 3rd September 2016. The primary ground taken therein that the application was filed with a delay of 87 days which is after the two months' period provided by the judgment and the decree does not exist in the eyes of law; the balance consideration has not been paid even at the time of filing the execution application which displays lack of readiness and willingness to perform his part of the contract; the delay cannot be condoned at any cost.

3.7 The Civil Judge, (Jr. Divisional)-cum-JMIC, Kalka vide order dated 20th January 2018 dismissed the objections. It is against the dismissal of such objections that the impugned order came to be passed, taking the opposite view, allowing the objections.

3.8 The High Court observed as follows: "The execution was filed on 04.07.2016 i.e. after 87 days of the 02 months extended time granted by this Court and further part amount of Rs.7,39,700/- was deposited on 26.08.2016 i.e. after about 138 days of the extended time w.e.f. 08.04.2016 and finally even the remaining amount of Rs.65,300/- was deposited on 30.12.2016 i.e. about 245 days with effect from the extended time i.e. 08.04.2016. From the conduct of the decree-holder, it is apparent that though, he was willing to get the sale deed executed but apparently he was not ready with the money which he never deposited within 02 months extended time as noticed above.

There is no dispute with regard to the judgments cited by counsel for the respondent/judgment-debtor i.e. Surinder Pal Soni's case (supra) and Raman Kutty's case (supra), however, on facts the judgments are distinguishable as in Surinder Pal Soni's case (supra), the plaintiff has deposited the balance sale consideration within 01 month from the passing of the original decree of the trial Court and in Raman Kutty's case (supra), it is held that the application for extension of time was filed before the Appellate Court whereas in the instant case, the petitioner has not shown any readiness to deposit the balance sale consideration with the trial Court immediately within 02 months even, after the judgment passed by this Court and never moved any application before the Appellate Court/this Court to allow him to deposit the balance money subject to final outcome of the case.

In view of the judgment of the Hon'ble Supreme Court in Prem Jeevan's case (supra), the time of 02 months w.e.f. 08.04.2016, does not automatically result in extension of time merely by filing the execution application. Even otherwise, in the absence of any application filed by the respondent/judgment-debtor for

extension of time in view of Bhupinder Kumar's case (supra), the decree becomes inexecutable. It is worth noticing that the Executing Court has wrongly assumed that in the light of the judgments relied upon in the impugned judgment, the time stands extended once the execution application is filed and subsequently, the amount is deposited.

In fact, no such power lies with the Executing Court as in view of the judgment in Raman Kutty's case (supra) relied upon by the decree-holder himself, it is held that where there is default of making the balance sale consideration, the application for extension of time is maintainable before the Appellate Court where decree of trial Court merged. Admittedly, no application was filed after decision of the regular second appeal judgment on 08.02.2016, for extending the time and therefore, the Executing Court has wrongly assumed that merely by filing the execution, the time to deposit the balance amount stands extended as even otherwise, the Executing Court has no power to extend the time even if an application is filed."

4. Aggrieved by the judgment of the High Court, the appellant is before us. The question that arises is with respect to the two-month' time limit imposed by the Trial Court. Given that the execution application was filed beyond the said period, could action be taken pursuant thereto. It is also to be considered whether the judgment of the Trial Court would merge with that of the High Court and in the absence of any direction for executing the sale deed within a time bound period the High Court was justified in interpreting the direction issued by the Trial Court in decreeing the suit holding the period of two months within which the sale was to be executed.

5. The Specific Relief Act, 1963 provides for specific performance of a contract, etc. For our purposes, Section 28 is relevant, which reads as under:-

"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

6. It is important to take note of the scope of Section 28. Reference may be made to V.S. Palanichamy Chettiar Firm v. C. Alagappan9. The relevant part of Para 15 is extracted below:

"15. This Court observed that when the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay. The Court held, after noticing the conflict of decisions by the Bombay High Court and the Andhra Pradesh High Court, that when the court which passed the decree and the executing court is the same, application under Section 28 can be filed in the executing court.

However, where a decree is transferred for execution to a transferee executing court then certainly the transferee court is not the original court and the executing court is not the "same court" within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was

filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court."

7. Unquestionably, the power to extend the time granted within the decree for performance of its conditions can be extended on such terms as the Court may deem fit. However, it is a matter of record that in this case no such extension was granted. However, such non-grant of extension of time cannot, in our view, be the end of the transaction. Taking such a view would be a classic example of a hyper-technical approach which, this Court has observed, ought to be eschewed [see Ramankutty Gupta v. Avara10].

We are supported in such a view by a recent order of this Court in Ram Lal v. Jarnail Singh11, whereby it has been observed that, "the non-payment of balance sale consideration within the time period fixed by the Trial Court does not amount to abandonment of the contract and consequent rescinding of the same. The real test must be to see if the conduct of the plaintiff will amount to a positive refusal to complete his part of the contract."

8. In view of the above, the position that since the execution has been filed beyond the 60-day period on the 87th day and, therefore, the decree cannot be acted upon - is clearly contrary to law.

9. On the issue of merger of decree, we may notice the recent judgment of this Court in Balbir Singh & Anr. v. Baldev Singh12 wherein Pardiwala, J. discussed in detail, the application of the doctrine of merger as below :

"28. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in Surinder Pal Soni v. Sohan Lal (Dead) through Legal Representatives, (2020) 15 SCC 771.

29. In Kunhayammed v. State of Kerala, (2000) 6 SCC 359, while explaining the doctrine of merger, this Court held thus:

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy.

Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is

the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject 11 matter of challenge laid or which could have been laid shall have to be kept in view."

10. Relying upon Chandi Prasad v. Jagdish Prasad13, in Shanthi v. T.D. Vishwanathan14, this Court held that when a higher forum entertains an appeal on merits, the doctrine of merger would apply.

11. In Ram Lal (supra), this Court was seized of a matter wherein there was a delay of two years in filing the execution petition and four years in depositing the balance sale consideration.

12. In the present facts, it has been held by the Court below that the appellant was ready and willing to perform his part of the contract. The doctrine of merger, as we have already discussed, means that at one point in time, only one decree can subsist. If the order dismissing the objections has been set aside and the execution petition dismissed, there is no decree that could be executed, and as such, the question of extension of time would not arise. Even otherwise, given the finding of readiness and willingness, alluded to above, it would be justified to accept that the delay of 27 days would not strike at the heart of the agreement. The decree of the Trial Court would merge with the final decision of the High Court.

13. Given the above discussion, the judgment of the High Court is set aside, and that of the executing Court dismissing the objections filed by the respondent is restored to its original number and status. Let a copy of this judgment be sent to the Executing Court, which shall then proceed in accordance with law to execute the decree of specific performance passed by the Trial Court. With the above observations, the appeal is allowed. Pending application(s), if any, shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Manoj Misra)

New Delhi;

December 19, 2025.

1 Civil Suit No. 47 of 2006

2 Addl. Civil Judge (Sr. Divn.) Panchkula, by judgment dated 14th May 2011

3 RSA 4080 of 2013 (O&M); judgment dated 8th February 2016

4 Execution Application No.35 of 2016

5 Judgment dated 20th January 2018.

6 Annexure P-5 to the paperbook

7 Annexure P-7 to the paperbook

8 Civil Appeal No.94 of 2011 decided on 22.04.2013

9 (1999) 4 SCC 702

10 (1994) 2 SCC 642

11 2025 SCC OnLine SC 584

12 2025 SCC OnLine SC 103

13 (2004) 8 SCC 724

14 (2019) 11 SCC 419

IN THE SUPREME COURT OF INDIA

Mayankkumar Natwarlal Kankana Patel & Anr.
Vs.
State of Gujarat and Anr.

[Criminal Appeal Nos._____ of 2025
@ SLP (Crl.) Nos. 1167-1168/2025]

Head Note – The provisions of Section 311 Cr.P.C. must be invoked sparingly and only where the evidence is indispensable for discovering the truth.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. These appeals arise from the common judgment and order dated 27th November, 2024 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 5648 of 2024 and Special Criminal Application No. 10715 of 2024. By the impugned order, the High Court set aside the order dated 30th March, 2024 passed by the learned Sessions Judge in Sessions Case No. 22 of 2018 and allowed the application filed under Section 311 of the Code of Criminal Procedure, 19731, permitting the prosecution to examine the minor child, Aashvi, as a witness.

3. The facts necessary for adjudication of the present appeals are as follows:

3.1 The Appellant No.1 and the deceased were married in the year 2010. A daughter, Aashvi, was born from the wedlock in 2013. Respondent No. 2, the father of the deceased, is the complainant who lodged a complaint on 1st December, 2017, registered as FIR No. 224 of 2017, for offences punishable under Sections 498A, 306, 323, 504, 506(2) and 114 of the Indian Penal Code, 18602 and Sections 3 and 7 of the Dowry Prohibition Act, 1961.

3.2 The allegation in the FIR is that the complainant's daughter committed suicide on 5th November, 2017 by hanging herself with a dupatta. The FIR came to be registered nearly one month after the incident. It was alleged that the accused-appellants had subjected the deceased to mental and physical cruelty in connection with demands for money for purchase of a car, house, and motorcycle. It was further alleged that Appellant No. 1 had an extra-marital relationship, abused the deceased verbally, and threatened her, thereby driving her to commit suicide.

3.3 Upon completion of investigation, a chargesheet was filed on 23rd February, 2018. Charges were framed, and the trial commenced.

3.4 During the course of trial, after examination of 21 prosecution witnesses, the respondents filed an application dated 6th September, 2023 under Section 311 CrPC seeking permission to examine the minor daughter of the deceased, Aashvi, as a prosecution witness. The application was founded on the assertion that the child was present in the house at the time of the incident. At the relevant time, the child was approximately 4 years and 9 months old.

3.5 The Trial Court rejected the application. It held that at no earlier stage had the complainant disclosed that the minor child was present at the time of the incident. The Trial Court noted that neither the FIR nor the statements recorded during investigation, including the complainant's statement, contained any such averment. It was further observed that despite a delay of nearly one month in lodging the FIR, no such fact was disclosed. Considering the tender age of the child and the unexplained delay, the Trial Court declined to permit her examination.

3.6 Aggrieved thereby, the respondents approached the High Court.

4. The High Court, by the impugned common order, allowed the petitions. The order of the Trial Court was set aside, and the prosecution was permitted to examine the minor witness. The High Court directed the Trial Court to ensure adequate opportunity of cross-examination to the defence and to take due care of the mental and emotional well-being of the child during deposition.

5. The High Court proceeded on the basis that the minor could be treated as a material witness, and possibly an eyewitness, having regard to Section 118 of the Indian Evidence Act, 1872. It further observed that the complainant had attempted to have the child's statement recorded during investigation but was allegedly denied by the police. On these considerations, the Trial Court's order was interfered with. Aggrieved thereby, the Appellants are before this Court.

6. We have heard Mr. Mayank Kshirsagar, learned counsel for the Appellants; Mr. Pradhuman Gohil, learned counsel for Respondent No. 2-complainant; and Ms. Swati Ghildiyal, learned counsel for the Respondent-State.

7. Learned counsel for the Appellants submitted that the child was only 4 years old at the time of the incident and her statement was never recorded contemporaneously. It was argued that the child is now about 11 years old and has been residing with her maternal grandparents since the incident. Given the lapse of over seven years, it was contended that the child cannot be expected to recall the incident reliably. The possibility of tutoring was emphasized, particularly in view of her prolonged separation from Appellant No. 1, her father.

It was further urged that neither the FIR nor any prosecution witness has stated that the child was present at the time of the incident. According to the Appellants, permitting her examination at this stage would cause serious prejudice.

8. Per contra, learned counsel for the Respondents submitted that attempts were made to have the child's statement recorded during investigation but were ignored by the police. It was contended that the application under Section 311 CrPC was moved to bring the best available evidence on record and that the testimony of the child is necessary for a just decision of the case.

9. Having considered the rival submissions and examined the record, we are of the considered view that the High Court was not justified in interfering with the order of the Trial Court. The respondents have failed to establish that examination of the minor witness, at this belated stage, is essential for the just decision of the case.

10. Our conclusions rest on the following grounds:

10.1 First, there is no material on record to substantiate the claim that the minor child was present at the time of the incident. The FIR, statements recorded during investigation, and the testimony of the complainant do not disclose such presence. The reliance placed on a statement made during re-examination of the complainant does not establish that the child witnessed the incident. At best, it suggests that the child was in the house and not in the room where the incident occurred. The assumption that she is an eyewitness is, therefore, speculative.

10.2 Second, the child was of a very tender age at the time of the incident. More than seven years have elapsed since then. Memory at such a young age is vulnerable to distortion and external influence. The fact that the child has been residing with her maternal grandparents throughout this period raises a reasonable apprehension of tutoring. This significantly affects the reliability and evidentiary value of her proposed testimony.

10.3 Third, the application under Section 311 CrPC was filed after examination of 21 prosecution witnesses and at an advanced stage of trial. Though the power under Section 311 is wide, it is to be exercised sparingly and only when the evidence sought is indispensable for arriving at the truth. The present case does not satisfy this requirement. Allowing the examination of the child witness would only protract the trial and cause prejudice to the accused.

11. In view of the foregoing discussion, we hold that the High Court committed an error in law in setting aside the order of the Trial Court and permitting the examination of the minor witness.

12. Accordingly, the appeals are allowed. The impugned common order dated 27th November, 2024 passed by the High Court is set aside. The order dated 30th March, 2024 passed by the learned Trial Court in Sessions Case No. 22 of 2018 is restored.

13. The Trial Court shall proceed with the trial in accordance with law.

.....J. [Vikram Nath]

.....J. [Augustine George Masih]

New Delhi;

December 19, 2025

1 In short "CrPC"

2 In short "IPC"

IN THE SUPREME COURT OF INDIA

State of Uttar Pradesh & Anr.
Vs.
Mohd Arshad Khan & Anr.

[Criminal Appeal No. 5610__ of 2025
arising out of SLP (Crl.) No. 17272 of 2025]

[Criminal Appeal No. _5611__ of 2025
arising out of SLP (Crl.) No. 17579 of 2025]

[Criminal Appeal No. 5612__ of 2025
arising out of SLP (Crl.) No. 18150 of 2025]

Head Note – Granting "no arrest" or "no coercive steps" orders while dismissing a quashing petition is tantamount to granting anticipatory bail without applying the strict legal tests for it. Such orders are "inconceivable and unthinkable."

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

2. The State of Uttar Pradesh is in appeal against the judgments and orders passed by the High Court of Judicature at Allahabad in petitions for quashing preferred by accused persons in connection with common FIR dated 24th May 2025 in Case Crime No. 33 of 2025 registered at Police Station, Nai Ki Mandi, District Agra under Sections 420, 467, 468, 471 of the Indian Penal Code, 18601 and Sections 3/25/30 of the Arms Act 1959. Before us in Criminal Appeal @ SLP (Crl) No.17272 of 2025, is Mohd. Arshad Khan2, in Criminal Appeal @ SLP (Crl) No. 17579 of 2025 is Sanjay @Sanjay Kapoor3 and in Criminal Appeal @ SLP (Crl) No.18150 of 2025 is Muhammad Zaid Khan4. They shall be collectively referred to as the accused-respondents.

3. The case arises from an investigation directed by the Senior Superintendent of Police, STF Headquarters, Lucknow, pursuant to an anonymous petition which, during inquiry, culminated in a statutory complaint dated 31st July 2024. The complaint alleged that certain persons had procured and used arms licenses by submitting forged documents and false affidavits. Acting on these directions, the STF conducted an inquiry on the basis of documentary records, reports submitted by the Additional District Magistrate (City), Arms Section, Agra, statements of complainants and accused persons, and scrutiny of licence files and related documents.

The investigation found serious irregularities and in terms of report dated 31st January 2025, it was recommended that a criminal case be registered and further investigation be conducted hereinto. The FIR subject matter of these cases, thus came to be registered. Below is an encapsulation of the content of the FIR regarding the three accused-respondents before us. With respect to Zaid Khan, son of Sher Khan, it was found during the investigation that arms licence number 1227/03 had been obtained by submitting forged documents and false affidavits. In the licence records, his date of birth was shown as 25th November 1975, whereas his actual date of birth was found to be 25th November 1972.

This discrepancy was detected on the basis of documentary evidence examined during the inquiry, and it is alleged that the arms licence was issued on the strength of these false particulars. In relation to Arshad Khan, son of Ahmed Ali, the investigation revealed that he procured five arms licences bearing numbers 6365, 6491, 6415, 6316 and 6248 - all Tajganj, by using forged PAN card, Aadhaar card and driving licence. In these documents, his date of birth was shown as 15th January 1985, whereas official records indicate his year of birth as 1988. Prior to the issuance of the licences in the year 2006, his date of birth in the records was 15th January 1988.

It is alleged that the alteration in the date of birth was made deliberately to show a lower age, with the object of presenting himself as a skilled marksman, obtaining undue benefits, and enabling the import of arms and ammunition from abroad on the basis of multiple arms licences. During the investigation, despite repeated notices, he did not furnish purchase invoices, import documents or passport details and did not cooperate fully with the inquiry. It is further alleged that the arms licences were obtained by knowingly using forged documents.

As regards Sanjay Kapoor, who was serving at the relevant time as Arms Clerk in the office of the Additional District Magistrate, Agra, and who has since retired under the Voluntary Retirement Scheme, the investigation prima facie found that he, along with the concerned arms licence holders, was involved in acts relating to forgery, concealment of material facts and submission of false affidavits in connection with the processing and issuance of arms licences.

4. All three accused - respondents filed petitions before High Court under Article 226 of the Constitution of India which were, by orders dated 4th July 2025, 16th June 2025 and 4th July 2025 respectively, closed as disposed of, and not allowed, as was desired by them, it was directed that the investigating officer complete the investigation into the alleged offence within 90 days and that they would not be arrested till the concerned court takes cognizance of the matters. This was done by way of identically worded orders, relying on the same case, i.e., Shobhit Nehra v. State of U.P.5 For reference, one of the impugned orders is reproduced herein below:

"1. Heard learned counsel for the petitioner and learned AGA for State-respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 24.05.2025 registered as Case Crime No.33 of 2025, under sections 420, 467, 468, 471 of IPC and Section 3/25/30 of Arms Act, Police Station- Nai Ki Mandi, District Agra and for a direction to the respondents not to arrest the petitioner in pursuance of impugned First Information Report.

3. With regard to the allegations made in the F.I.R., investigating officer of the police is investigating the matter.

4. After hearing the rival contentions, totality of facts and circumstances of this case and in view of the judgment passed by Division Bench of this Court in Criminal Misc. Writ petition No. 7463/2024 (Shobhit Nehra Vs. State of U.P.), the above noted writ petition is disposed of directing the investigating officer to conclude the investigation of this case within period of 90 days.

5. During the period of investigation and till cognizance is taken on the police report by the court concerned, the petitioner shall not be arrested.

6. In case of non-cooperation with the police investigation by the petitioner, it shall be open for either of the respondents to file recall application of this order."

5. Shobhit Nehra (supra) was a case before the High Court, where, in a manner similar to the present case, the High Court had, a) refused quashing; b) directed time bound completion of investigation; and c) granted protection from arrest till the taking of cognizance by the concerned court. The background of the said case was a long-standing family dispute over property. One faction had filed a first information report against the other, and as such the other group went to Court seeking quashing and protection from arrest. On the three aspects regarding which this judgment was followed in the impugned orders, the reasoning can be summarized as under:-

The High Court explained that protection from arrest was justified because the case was still on the investigation stage and the allegations were not free from doubt, especially given the backdrop of an ongoing civil dispute. It noted that an FIR cannot be treated as unquestionable truth and that personal liberty under Article 21 of the Constitution of India cannot be curtailed merely because the allegations technically disclose cognizable offences.

The Court observed that forcing the accused to seek anticipatory bail, (which it alluded to was difficult in view of certain judgments of the High Court which necessitated that the trial Court must consider such applications first, only then

could the High Court do so,) such circumstances could lead to unnecessary harassment and would weaken constitutional protections. At the same time, it made clear that shielding the accused from arrest does not mean paralyzing the investigation and that liberty and investigation must coexist in a balanced manner.

On the question of limiting the duration of this protection, the Court reasoned that liberty cannot be protected in an openended way if it risks undermining the investigative process. It was observed that investigations must be conducted promptly and efficiently, and that any interim protection must therefore be structured in a manner that it does not become an obstacle to a timely investigation. Fixing a time frame was seen as a necessary safeguard to ensure that protection from arrest remains proportionate and does not turn into a means of delaying the process.

The Court underlined that protection from arrest is inherently conditional and depends on the accused acting in good faith. It observed that the right to liberty cannot be used as a shield to avoid or frustrate investigation, and that unconditional protection would risk abuse of the judicial process. It allowed the possibility of recall in cases of non-cooperation in the investigation.

6. The State is in appeal, opposing the protection from arrest, bring contrary to the law laid down by this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra6. It is further submitted that the imposition of timelines is not justified as its risks prejudice to the investigation of a serious offence, and neither is the reliance on Shobhit Nehra (supra) without reference to facts, among other grounds. The parties, through counsel, were heard.

7. The question before us is whether the direction for time bound investigation and protection from arrest while disposing of a petition for quashing without granting the relief actually prayed for, is justified, legally sustainable or not.

8. It is well settled that the writ jurisdiction of the High Courts under Article 226 of the Constitution is wide and extends to criminal matters as well. The most common example we see of writs being employed in the sphere of criminal justice is in cases where the High Courts are called upon to intervene to prevent abuse of the criminal process or to secure the ends of justice. In this context, this Court in State of Haryana v. Bhajan Lal7 recognized that High Courts may exercise writ jurisdiction to interdict criminal proceedings at the threshold in appropriate cases.

This approach was reiterated in Pepsi Foods Ltd. v. Special Judicial Magistrate8 and innumerable other judgments/orders. Beyond these commonly encountered instances, the writ jurisdiction has also been exercised in criminal matters for

purposes other than quashing. In cases involving illegal detention or custodial violations, the writ of habeas corpus has been invoked to protect personal liberty, as recognized in Sunil Batra v. Delhi Administration9 and Nilabati Behera v. State of Orissa10.

High Courts have also issued writs in the nature of mandamus to ensure fair investigation or to address police inaction, with the Supreme Court in Sakiri Vasu v. State of U.P.11 clarifying that while remedies under the CrPC should ordinarily be pursued, the constitutional jurisdiction of the High Court remains available in appropriate cases.

Further, writ jurisdiction has been used to enforce procedural safeguards during arrest and detention, as laid down in Joginder Kumar v. State of U.P.12 and D.K. Basu v. State of West Bengal13. These decisions indicate that Article 226 continues to operate as a constitutional remedy in criminal law, enabling High Courts to address questions of legality and protection of fundamental rights alongside the statutory criminal process.

9. In exercise of these wide-ranging powers - was it justified to direct time bound completion of investigation? The investigation of an offence is a long, winding road. It is full of ups and downs and is not, possibly, even for a moment, predictable in the true sense. There can be delays in the investigation, witnesses who at one point in time appeared confident, may begin to hesitate or completely resile from their statement, documentary evidence on which much hope was pinned, may turn out to be unusable or so many other such possibilities may occur. Legal proceedings frequently intersect with the investigation and affect its pace and direction. Applications for anticipatory bail, regular bail, or the like can result in temporary pauses or changes in strategy.

Courts may call for further investigation, ask for clarification on specific aspects or even direct a change of the investigating officer. Each such intervention requires the investigating agency to revisit its work and sometimes take a fresh path altogether. So, it can be seen that the investigative process is at times straight, at other times one of lots of twists, turn and recalibrations and in yet others, frustratingly round-about like, before it can come to a somewhat definitive conclusion to present the case for trial before the concerned, and sometimes, even at that time the definitive conclusion, at least from an investigator's standpoint, remains elusive.

While all this may undoubtedly be true, it is also unquestionably so that it cannot be an excuse for avoidable delay. Speedy trial, which necessarily includes timely and diligent investigation, has been recognized as an integral part of Article 21 of the Constitution and is essential to the fairness and credibility of the criminal justice system. Undue delay prejudices not only the accused, whose liberty and

reputation remain under a cloud, but also the victim and society at large, for whom justice loses meaning when it is endlessly deferred.

The challenge, therefore, lies in balancing the practical realities of investigation with the constitutional mandate that criminal proceedings, from investigation through trial, be conducted with reasonable promptitude and care. It is this balancing role that the judiciary plays. It is for those reasons that while on the one hand there is a statutorily laid down process in place which is generally followed, powers such as that of Article 226 of the Constitution and Section 482, Code of Criminal Procedure, 197314 have been kept open in their widest sense possible- to secure the ends of justice.

10. Courts have consistently recognized that directing a timebound investigation must remain the exception rather than the norm. Investigation is, as can be seen from the above discussion, a product of many factors and happenings apart from the crime itself, that lend to it a sense of uncertainty and the law therefore accords investigating agencies a reasonable degree of latitude. At the same time, the Constitution does not permit investigations to remain open-ended.

The Supreme Court has long held that the right to a speedy trial, which necessarily includes a timely and diligent investigation, forms an essential part of Article 21, as first recognized by a Constitution Bench in Hussainara Khatoon (1) v. State of Bihar15, and later elaborated by another Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak16. It is in this constitutional setting that courts have, in appropriate cases, intervened where delay itself begins to cause prejudice. Where there is evident stagnation, unexplained inaction, or a pattern of delay that cannot be justified by the nature or complexity of the case, judicial directions fixing timelines have been considered warranted.

In Vineet Narain v. Union of India17, the Court emphasized the need for prompt and effective investigation, particularly where delay risks allowing serious matters to drift without resolution. More recently, in Robert Lalchungnunga Chongthu v. State of Bihar18, the Court reaffirmed that investigations cannot be allowed to continue endlessly, and that prolonged and unexplained delay between the registration of an FIR and the filing of a chargesheet may itself infringe Article 21, especially where such delay keeps an individual under a continuing cloud of suspicion without meaningful progress. Courts have also been mindful of the impact of prolonged investigation on personal liberty, particularly where coercive measures or extended custody are involved.

In such cases, fixing timelines is viewed not as an intrusion into the investigative domain, but as a safeguard against inertia and arbitrariness. At the same time, the Supreme Court has cautioned against routine or mechanical directions for time-bound investigation, reiterating in Union of India v. Prakash P. Hinduja19, that

the manner and pace of investigation ordinarily lie within the investigator's domain. What emerges, therefore, is a balanced approach: courts respect the practical realities of investigation, yet intervene where delay itself threatens fairness, liberty, or the integrity of the criminal justice process.

11. The necessary conclusion to be drawn from the above discussion is that timelines are not drawn by the Court to be followed by the investigators/the executive right from the beginning, for that would clearly amount to stepping on the toes of the latter. Timelines are therefore imposed at a point where not doing so would have adverse consequences i.e., there is material on record demonstrating undue delays, stagnation, or the like. In sum, timelines are imposed reactively and not prophylactically. As such, the timelines imposed by the High Court need to be interfered with and set aside. Ordered accordingly.

12. The next aspect is the protection from arrest till the taking of cognizance by the concerned Court. On this count too, we are of the considered view that the High Court fell into error. The reason why the Court may have been justified in doing so in the factual context of Shobhit Nehra (supra) is that inter alia the criminal action therein, had the pretext of a long-standing civil dispute along with familial animosity.

The dispute in that case has already made its way up to this Court way back in 1998, and even today proceedings of one nature or another are on the docket of at least two courts. Given that background, arrest on the basis of FIR simpliciter, arguendo, may have had an impact on Article 21 rights of the accused therein. How the directions issued therein apply to the instant facts is unclear, for the impugned orders do not discuss the same.

13. What Earl of Halsbury L C said in Quinn v. Leathem20 is important for our purposes here. We quote:

"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."

This proposition has been referred to with approval in a number of judgments of this Court including State of Orissa v. Sudhansu Sekhar Misra21, Kalyan Chandra Sarkar v. Rajesh Ranjan22, All India Haj Umrah Tour Organisers Assn. v. Union of India23.

14. When a Court in its order or judgment, or when a counsel appears before a court reference to and reliance upon a judgment is made, it is not a mechanical exercise. It needs to and should reflect application of mind. This application of

mind is in connection with the evaluation of material facts of the two cases, since they are essential to decision making.

Only those facts that bear a direct nexus to the legal principle applied constitute the material factual substratum of the precedent. This exercise is ex facie absent in the impugned orders. The directions in Shobhit Nehra (supra), which were justified in the said factual context, have been applied without appropriate reference to the facts of this case. The same cannot be said to be in accordance with law.

15. Now, in so far as the protection from arrest is concerned, we find that Neeharika (supra) absolutely clarifies the position. It was observed by a Bench of three Judges therein, as follows:-

"24. This Court in Habib Abdullah Jeelani [State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] , as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482CrPC. In the aforesaid case before this Court, the High Court dismissed [Habib Abdullah Jeelani v. State of Telangana, 2014 SCC OnLine Hyd 1299] the petition filed under Section 482CrPC for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation.

While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438CrPC, albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation".

It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

26. We are at pains to note that despite the law laid down by this Court in Habib Abdullah Jeelani [State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] , deprecating such orders passed by the High Courts of not to arrest during the pendency of the investigation, even when the

quashing petitions under Section 482CrPC or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.

28. Thus, it has been found that despite absolute proposition of law laid down by this Court in Habib Abdullah Jeelani [State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482CrPC, as observed hereinabove, the High Courts have continued to pass such orders.

Therefore, we again reiterate the law laid down by this Court in Habib Abdullah Jeelani [State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] and we direct all the High Courts to scrupulously follow the law laid down by this Court in Habib Abdullah Jeelani [State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482CrPC and/or Article 226 of the Constitution of India."

(emphasis supplied)

16. The text of the order in no way provides or attempts to provide, as in Shobhit Nehra (supra), any justification for granting protection from arrest despite the position of law laid down in Neeharika (supra). Without going further into the issue, we set aside the condition.

17. The State's Appeals are allowed. Interim protection in favour of the respondents herein shall continue to operate for the next two weeks, after which, all actions as permissible in law will follow. Pending applications, if any, shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi

December 19, 2025

1 Hereinafter, referred to as 'IPC'

2 Impugned Judgment in Criminal Misc Writ Petition No. 12162 of 2025

3 Impugned Judgment in Criminal Misc Writ Petition No. 12526 of 2025

4 Impugned Judgment in Criminal Misc Writ Petition No. 12173 of 2025

5 Criminal Misc Writ Petition No. 7463 of 2024

6 (2021) 19 SCC 401

7 1992 Supp (1) SCC 335

8 (1998) 5 SCC 749

9 (1978) 4 SCC 494

10 (1993) 2 SCC 746

11 (2008) 2 SCC 409

12 (1994) 4 SCC 260

13 (1997) 1 SCC 416

14 Hereinafter, referred to as 'CrPC'

15 (1980) 1 SCC 81

16 (1992) 1 SCC 225

17 (1998) 1 SCC 226

18 2025 INSC 1339

19 (2003) 6 SCC 195,

20 [1901] AC 495

21 1967 SCC OnLine SC 17

22 (2005) 2 SCC 42

23 (2023) 2 SCC 484

IN THE SUPREME COURT OF INDIA

Syed Shanawaz Ali
Vs.
State of Madhya Pradesh

[Criminal Appeal Nos. 5589-5590 of 2025
arising out of SLP (Crl.) Nos. 1715-1716/2025]

Head Note - A criminal revision petition does not automatically abate upon the death of the revisionist, particularly when the revision is not filed by an accused but by an informant or victim. In such cases, the revisional court has the discretion to continue examining the legality and propriety of the impugned order and may permit a victim to assist the court in furtherance of justice.

Unlike appeals, where abatement is expressly governed by Section 394 CrPC, there is no statutory provision providing for abatement of criminal revisions. Revisional jurisdiction is discretionary in nature and is exercised to supervise the administration of criminal justice and to correct illegality, impropriety or jurisdictional error.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. These two appeals arise from a common proceeding and are directed against the orders of the High Court of Madhya Pradesh at Jabalpur1 dated 21.02.2024 and 31.08.2024 passed in Criminal Revision No. 1986 of 2020 and Misc. Criminal Case (MCRC) No. 36327 of 2024 respectively.

Facts

3. The father of the appellant, Shamshad Ali, filed an application under Section 156(3) of the Code of Criminal Procedure, 19732 for registering a first information report3 against respondents 2 to 5. The said application was allowed, an FIR was registered and investigated. After investigation, police report was submitted indicting respondents 2 to 5 for offences punishable under Sections 419, 420, 467, 468, 471, 120-B and 34 of Indian Penal Code, 18604.

However, vide order dated 07.03.2020, the Court of XVIIth Additional Sessions Judge, Bhopal, M.P. discharged the accused respondents from offences punishable under Sections 419, 467, 468, 471, 120-B and 34 IPC and directed the

trial to proceed under Section 420 IPC only. Aggrieved by the order dated 07.03.2020, the father of the appellant (i.e., the informant) filed Criminal Revision No. 1986 of 2020 before the High Court.

4. During pendency of the revision, on 05.05.2021 the father of the appellant i.e., the revisionist died. The appellant, who was arrayed as a witness in the police report, filed IA No. 19769 of 2021 to continue the revision proceedings. The High Court by the impugned order dated 21.02.2024 rejected the application holding that there is no provision for substitution in a Criminal Revision and, therefore, the Revision would abate.

5. Aggrieved by the aforesaid order, the appellant filed an application under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 20235 (corresponding to Section 482 of Cr.P.C.) for recall of the order dated 21.02.2024. This application was dismissed by the second impugned order dated 31.08.2024. Aggrieved by the aforesaid orders dated 21.02.2024 and 31.08.2024, the appellant is before this Court.

Submissions

6. In short, the submission on behalf of the appellant is that the appellant is a victim within the meaning of Section 2(wa)6 of Cr.P.C. and is, therefore, entitled to continue the revision proceedings. In the alternative, it is submitted that a revision cannot abate. Once the Court entertains a revision, the Court has to test the legality and propriety of the order impugned before it. Therefore, the appropriate course for the High Court was to decide the matter on merits and for an effective hearing to allow the appellant's counsel or an amicus to assist the Court.

7. On behalf of the State, written submissions have been filed accepting the rights of a victim to participate in the criminal justice process.

8. Per contra, on behalf of respondents 2 to 5, it has been contended that Section 3947 of Cr.P.C. applies to appeals. There is no corresponding provision for continuance of a revision by the legal heirs. No doubt, a victim may file an appeal but, in absence of an enabling provision, he cannot be substituted as a revisionist. In such circumstances, the impugned orders call for no interference.

9. In addition to above, on behalf of respondents 2 to 5, it was submitted that respondents 2 to 5 were discharged of certain offences for cogent reasons which do not suffer from any perversity or illegality.

Discussion

10. Before we set out to test the correctness of the orders impugned, it would be useful to first understand the concept of abatement. In Black's Law Dictionary abatement has been described as:

(1) the act of eliminating or nullifying;

(2) the suspension or defeat of a pending action for a reason unrelated to the merits of the claim;

(3) the act of lessening or moderating; diminution in amount or degree;

(4) the reduction of a legacy, general or specific, as a result of estate being insufficient to pay all debts and legacies;

(5) the act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters.

In P. Ramanatha Aiyar's Advanced Law Lexican, in the context of criminal law, abatement of proceedings connotes their termination without any decision on the merits and without the assent of the prosecutor; and abatement of the main action abates proceedings ancillary or collateral to it.

11. In the context of a civil proceeding, if, on death of any party, either the right to sue, or to be sued, does not survive on the surviving parties, the proceeding would abate. In a criminal action, trial is of the offender i.e., the person who is accused of committing an offence. Therefore, if the accused facing trial dies (or ceases to exist), the trial would abate and so would the appeal against his acquittal, as the person to be prosecuted or convicted, as the case may be, ceases to exist.

However, if the accused has been convicted and he files an appeal against his conviction, on his death, the proviso to sub-section (2) of Section 394 of Cr.P.C. enables a relative of the convict to pursue the appeal with the leave of the court. In absence thereof, the appeal abates. The purpose of such liberty is, inter alia, to save the convict's family's honour. There may be instances where the law requires that proceeding shall be instituted and prosecuted by a particular person and no one else. In such a case, if that person dies, in absence of law permitting some other person to continue the proceeding, the proceeding would abate.

12. Now, the issue which arises for our consideration is whether on death of the revisionist, the revision proceeding under Section 397 read with Section 401 of Cr.P.C. would abate. The answer to it would depend on the nature of the order under challenge in the revision. If, for example, an accused has invoked the revisional power for testing the correctness of an order rejecting his discharge application, on his death, the revision proceeding would abate because the main

trial would abate and, therefore, ancillary proceeding emanating therefrom would automatically abate. But where the main proceeding survives despite death of the revisionist, the revision may not abate owing to the nature of the revisional proceeding.

13. In Praban Kumar Mitra Vs. State of West Bengal & Another8, a Constitution Bench of this Court discussed the nature of revisional powers of a High Court under Section 439 of the old Code (i.e., Code of Criminal Procedure 1898), which is in pari materia Section 4019 of the 1973 Code, read with Section 435 of the old Code, which is in pari materia Section 39710 of the 1973 Code. In that regard, it was held that the revisional power is a discretionary power which is to be exercised in aid of justice.

Whether the High Court should exercise its revisional jurisdiction depends upon the facts and circumstances of that case and once it entertains an application for revision and issues a Rule, that Rule has to be heard and determined in accordance with law, whether or not the petitioner is alive or dead, or whether he is represented in court by a legal practitioner. For ready reference, the relevant portion of that judgment is extracted below:

"6. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Court. On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognized by the Courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court.

The legislature has, therefore, specifically provided, by Section 43111 of the Code, the rules governing the right of substitution in case of death of an appellant, but there is no corresponding provision in Chapter XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. We may assume that the Legislature was aware of the decision of the Bombay High Court, referred to above, when it enacted Section 431 for the first time in the Code of 1882. If the Legislature intended that all application in revision pending in a High Court, should be dealt with on the same footing as a pending appeal, it would have enacted accordingly.

But in the absence of any such enactment, we may infer that the power of revision vested in the High Court under Chapter XXXII of the Code, was left untouched - to be exercised according to the exigencies of each case. The High Court is not bound to entertain an application in revision, or having entertained

one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the single Judge decisions placed before us, would seem to indicate.

The High Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice. The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under s. 250 of the Code to pay compensation to an accused person upon his discharge or acquittal.

Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a Rule, that Rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner. In hearing and determining cases under Section 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may not apply to the case of revisional applications."

(Emphasis supplied)

14. In Honnaiah T.H. Vs. State of Karnataka & Others12 on the issue of locus to maintain a revision under Cr.P.C., it was observed:

"16. The challenge to the maintainability of the revision at the instance of the appellant impugning an order passed during the pendency of the trial must also be rejected. The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the CrPC, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court.

As the power of revision can be exercised by the High Court even suo moto, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen. Holding a revision petition instituted by a complainant maintainable, Justice Santosh Hegde writing for this Court in K Pandurangan v. SSR Velusamy and another13 observed:

"6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an out- sider would not make any

difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of Nadir Khan v. State (Delhi Admn)."

(Emphasis supplied)

15. The legal principles deducible from the afore-quoted extracts may be summarised thus:

(a) revisional power under Cr.P.C. is a discretionary power, the exercise of which cannot be claimed as of right;

(b) exercise of revisional power is not entirely dependent on who petitions the Court, inasmuch as it can be exercised suo motu;

(c) the role of the revisionist is essentially that of a person who invites attention of the Court that an occasion to exercise the revisional power has arisen;

(d) once a Rule is issued, ordinarily, that Rule has to be heard and determined in accordance with law, whether or not the petitioner is alive or dead, or whether he is represented in court by a legal practitioner; and

(e) the Court while exercising revisional power discharges a statutory function of supervising the administration of justice on the criminal side and in furtherance thereof examines the correctness, legality or propriety of an order passed by the court subordinate to it.

16. However, when a court is vested with discretionary power, discretion must be exercised judiciously, based on sound legal principles governing the scope of that power. Though the strict rule of locus may not apply for invocation of that power, the court must be circumspect in entertaining petitions at the behest of complete strangers to the dispute, otherwise the discretionary power may become a tool in the hands of those who, though have suffered no injury, have an axe to grind. Therefore, in our view, to ensure that revisional power is not abused by those who have an axe to grind, the definition of a victim, contained in Section 2(wa) of the Code, may be used as a guide to determine whether a revision should be entertained at the instance of the person who has invoked the revisional power.

17. Since strict rule of locus does not apply to a revision proceeding, on death of a revisionist, the law of abatement that applies to an appeal does not apply to a revision proceeding, more particularly when revision is not at the instance of an accused. However, where the revision is at the instance of an accused/convict, the

revisional court may refuse to continue the proceedings on his death, inter alia, where (a) the revisional proceeding emanates from an order passed during trial; or (b) the revisional proceeding is against an order of conviction, or affirmance of conviction. In situation (a) (supra), on death of accused the trial would abate and so would ancillary proceedings emanating therefrom.

In situation (b) (supra), the sentence or fine cannot be executed against a dead person, therefore, in absence of any application from a person seeking leave to pursue the revision, the court may terminate the proceedings as having abated. However, where the revision is at the instance of an informant or a complainant, on his death, the proceedings will not abate and, therefore, revisional court may exercise its discretion and proceed to test the correctness, legality or propriety of an order passed by the court subordinate to it.

18. In so far as substitution in place of the deceased revisionist is concerned, there is no specific provision in the Code for substitution. Therefore, no one can claim substitution as of right. However, what is important is that there is no provision for abatement as well, as is there for an appeal (see Section 394). Hence, once a revision is entertained, in our view, the Court exercising revisional power has discretion to proceed with the revision and test the correctness, legality or propriety of the order under challenge before it, regardless of the death of the person who had invoked the revisional jurisdiction.

However, while doing so, the Court may, in its discretion, allow a person to assist it in discharge of its statutory functions provided that person has no conflict of interest. In that context, a victim of the crime would ordinarily be the most suitable person to provide assistance because of his interest in overturning a decision that went against him. Therefore, when revisional powers are invoked by a victim of the crime, and he dies during pendency of the revision, other victims of that crime, who fall within the scope of its definition, as provided in Section 2 (wa) of Cr.P.C., may be allowed to assist the Court in effectively discharging its statutory function.

In that regard, the Court would be well within its jurisdiction in granting leave to such a person to pursue the revision. However, in absence of a provision for substitution, though a person may not have a legal right to claim substitution as a revisionist, there is no legal restriction on revisional court's power in allowing a person to assist the Court in furthering the cause of justice, more particularly, when strict rule of locus does not apply to a criminal revision.

19. In light of the discussion above, the impugned order of the High Court dismissing the revision as having abated on death of the revisionist is held unsustainable in law. More so, because the trial against the accused-respondents is pending.

20. As far as rejection of the application of the appellant to assist the Court as a substitute for the deceased revisionist is concerned, suffice it to say that the original revisionist (i.e., the informant) had alleged that the accused had set up a fabricated sale deed to stake a false claim to his property. Challenge in the revision was to an order of discharge of the accused from offences other than cheating. Since on revisionist's death, his son (i.e., the appellant herein) would inherit an interest in the property, in our view, the appellant is a victim of the crime and, therefore, has vital interest in the outcome of the proceeding. Hence, in our view, the revisional court could have allowed him to assist the court in the capacity of a victim of the crime.

21. For the foregoing reasons, the order of the High Court dismissing the revision as abated, and the order rejecting the application of the appellant, are liable to be set aside and are, hereby, set aside. The appeals are allowed. Revision No. 1986 of 2020 is restored on the file of the High Court. The appellant shall be at liberty to assist the revisional court in the capacity of a victim of the crime, and the revision shall be decided expeditiously, in accordance with the law.

22. It is made clear that we have not expressed any opinion on the merits of the order under challenge in the revision proceeding. The revision shall be decided on its own merit without being influenced by any observation made herein above.

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

.....J. (Sanjay Karol)

.....J. (Manoj Misra)

New Delhi;

December 19, 2025

1 The High Court

2 Cr.P.C.

3 FIR

4 IPC

5 BNSS

6 Section 2 (wa) of CrPC. - "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has

been charged and the expression "victim" includes his or her guardian or legal heir.

7

394. Abatement of appeals.

(1) Every appeal under Section 377 or Section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.- In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

8 1958 SCC OnLine SC 79: AIR 1959 SC 144: 1959 Cri LJ 256: 1959 Supp (1) SCR 63

9

401. High Court's powers of revision.

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2)

No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

10
397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

11 Section 431 of Old Code: Every appeal under section 417 or section 417A shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

12 (2022) SCC OnLine SC 1001

13 (2003) 8 SCC 625

IN THE SUPREME COURT OF INDIA

Tarachandra
Vs.
Bhawarlal & Anr.

[Civil Appeal No. 15077 of 2025
arising out of SLP (C) No. 22439/2024]

Head Note – Mutation does not confer any right, title or interest on a person. Mutation in the revenue records is only for fiscal purposes, therefore, where there is no serious dispute raised by any natural legal heir, if any, of the tenure holder, in absence of any legal bar, mutation based on a will should not be denied as it would defeat the interest of Revenue.

There is no legal bar on carrying out mutation of land records on the basis of a will, and that such mutation cannot be denied merely because the claim is founded on a testamentary document.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns judgment and order of the High Court of Madhya Pradesh at Indore1 dated 14.08.2024 passed in Misc. Petition No. 7284 of 20232 whereby the Misc. Petition of the first respondent was allowed and orders dated 27.09.2023, 17.12.2020 and 09.11.2020 passed by Additional Commissioner, Ujjain3, Sub- Divisional Officer (Revenue), Manasa4 and Tehsildar, Manasa, respectively, were set aside and a direction was issued to mutate the name of legal heirs of Roda alias Rodilal, as per Hindu Succession Act, 19565, and if they are not available, to enter the name of the State Government in the records.

FACTS

3. Roda alias Rodilal was recorded as tenure holder of Survey Nos. 148, 195, 218, 225, 229/Min-1, 230/Min- 1, 231, 234 located at Mouza Bhopali measuring 5.580 hectares. He died on 06.11.2019. The appellant claiming to be legatee under a registered will of Rodilal dated 01.05.2017 applied for mutation under Section 1106 of the M.P. Land Revenue Code, 19597. On the said application, Case No. 605/A/6/2019-2020 was registered before Tehsildar, Manasa. To the said application, an objection was filed by the first respondent claiming himself to be in possession of Survey No. 195 based on a written sale agreement executed by Rodi alias Rodilal.

4. Based on the will, the Tehsildar after recording the statement of witnesses including attesting witnesses ordered mutation. However, the mutation order was made subject to determination of rights of the parties in the pending civil suit.

5. Aggrieved by the order of the Tehsildar, the first-respondent preferred an appeal before the SDO. The appeal was dismissed. Thereafter, the first respondent preferred a second appeal before the Commissioner which too was dismissed. 6. Being aggrieved by the order(s) of the Tehsildar, SDO and the Commissioner, the first respondent filed Misc. Petition before the High Court under Article 227 of the Constitution of India.

7. The High Court by a short order, and by placing reliance on its earlier decision in Ranjit Vs. Smt. Nandita Singh and Others8, set aside the order of the revenue authorities and directed that names of legal heirs of Rodi alias Rodilal, as per 1956 Act, shall be mutated, and if they are not available then the land shall be recorded in the name of the State Government. The High Court, however, clarified that the above direction shall be subject to the outcome of the civil suit pending between the parties.

8. Aggrieved by the order of the High Court, this appeal has been filed.

9. We have heard learned counsel for the parties and have perused the record.

Submissions on behalf of the Appellant

10. On behalf of the appellant, it was submitted:

(i) The order of the High Court reflects non application of mind to the implementation of Madhya Pradesh Bhu-Rajasv Sanhita (Bhu-Abhilekhon Mein Namantaran) Niyam, 20189. The 2018 Niyam allows mutation based on a will. Therefore, the judgment in Ranjit (supra) that mutation cannot be based on a will is no longer a good law. Moreover, a full bench of the High Court in Anand Choudhary Vs. State of Madhya Pradesh and Others10 has held that an application seeking mutation based on a will cannot be rejected at the threshold.

(ii) There is no serious challenge to the execution of the will, which is a registered document, and the challenge led by the first respondent is not sustainable as he is not the legal heir of the testator. Besides, the first-respondent's claim is based on an unregistered sale agreement and on adverse possession, which cannot interdict an application for mutation based on a will.

(iii) The rights of the first respondent can only be determined in a regular suit whereas mutation proceedings are summary in nature. Moreover, a mutation entry by itself does not confer any title as it is purely for fiscal purpose.

(iv) The High Court has failed to consider a decision of this Court in Jitendra Singh Vs. State of MP and Others11 wherein this Court in a matter arising from a mutation proceeding under the 1959 Code had allowed mutation based on a will.

Submissions on behalf of first respondent

11. Per contra, on behalf of the first respondent, it was submitted:

(i) The appellant is not the natural heir of the deceased tenure holder, and the will is shrouded in suspicious circumstances, therefore, unless a competent Civil Court certifies the validity of the will, the same cannot be made basis of the mutation entry. Besides, the first respondent had led satisfactory evidence to demonstrate his possession over Plot No. 195. Therefore, in such circumstances, mutation in favour of the appellant cannot be allowed.

(ii) Otherwise also, the appellant has an efficacious remedy of filing a civil suit for declaration of rights based on the will and in such circumstances, this Court should not interfere with the order passed by the High Court.

Discussions/Analysis

12. We have considered the submission. Before we proceed to weigh the rival submissions an appraisal of the provisions of the 1959 Code would be appropriate.

13. Section 109 of the 1959 Code provides that any person lawfully acquiring any interest or right in land shall report his acquisition of such right within six months from the date of such acquisition in the form prescribed-

(a) to the Patwari or any person authorized by the State Government in this behalf or Tahsildar, in case of land situated in non-urban area;

(b) to the Nagar Sarvekshak or any person authorized by the State Government in this behalf or Tahsildar, in case of land situated in urban area. Section 110 of the 1959 Code provides for mutation in land records based on acquisition of right.

14. There are various modes by which rights may be acquired in an immovable property such as sale, gift, mortgage, lease etc., which are from one living person to another. Rights may also be acquired by devolution of interest through a will or inheritance/ succession on death of the title/ interest holder.

15. There is nothing in Section 109 or Section 110 of the 1959 Code limiting acquisition of rights to a particular mode. Rather, the 2018 Niyam recognizes acquisition through will as one of the modes of acquisition. Thus, there is nothing in the 1959 Code proscribing acquisition of rights in land through a will. As a

sequitur, if a will is set up, the application for mutation based thereupon will have to be considered on merits and it cannot be rejected merely because it is based on a will.

16. In the instant case, there is no dispute that the recorded tenure holder had expired. The appellant had claimed acquisition of right over the land of the tenure holder by setting up a registered will of the tenure holder. The Tehsildar after calling for report, inviting objections through publications and recording evidence concluded that there was a will in favour of the appellant duly executed by the recorded tenure holder. Consequently, the Tehsildar allowed mutation.

Thereafter, the appeals preferred by the first respondent were dismissed by the appellate authorities. In these circumstances, when those orders were impugned before the High Court in a petition under Article 227 of the Constitution of India, the High Court ought to have considered whether there was any jurisdictional error, or legal infirmity in the orders impugned warranting interference under the supervisory jurisdiction of the High Court.

17. The High Court, however, without going into the merits of the order and without examining whether there was any jurisdictional error or legal infirmity in the orders passed by the revenue authorities, set aside the order by placing reliance on an earlier decision of the High Court wherein mutation based on a will was considered impermissible.

18. In our view, the High Court fell in error there. More so, when there is nothing in the 1959 Code proscribing acquisition of rights under a will. We have also been taken through the decision of the full bench of the High Court in Anand Choudhary (supra) where the law was summarized thus:

"In view of the aforesaid discussion, we answer the question referred to us in the negative and hold that Tehsildar cannot reject the application for mutation at threshold on the ground that it is based upon will. However, in view of detailed discussion made by us above, it would be appropriate to summarize our conclusions serially as under:-

1) The Tehsildar while dealing with cases of mutation under sections 109 and 110 MPLRC between private parties, does not perform judicial or quasijudicial functions, but only performs administrative functions and therefore, he is not authorized to take any evidence for the purpose of deciding applications for mutation.

2) The Tehsildar can entertain application for mutation on the basis of will. However, it would be obligatory upon him to enquire about the legal heirs of the deceased and notice them in view of provisions of section 110(4) MPLRC.

3) Sections 109 and 110 have to be read along with Section 111 M.P.L.R.C. and a bare reading of Section 111 of M.P.L.R.C. leads to conclusion that where-ever rights of private parties are involved, then it will only be for the Civil Court to adjudicate the disputed cases. The jurisdiction of the Revenue Officers in the matters of mutation in Revenue records, is merely administrative.

4) A dispute as to validity of will, competence of testator to execute will or existence of two rival wills of testator, or a dispute as to validity of any other non-testamentary registered title document as enumerated in Form-1 of Mutation Rules of 2018 would create a dispute relating to any right which is recorded in the record of rights and arising during either mutation or correction of entry would be such a dispute.

5) In case any dispute as mentioned in para (4) above is raised between private parties, then the Tehsildar would not have any competence to decide the dispute and it would be for the parties to approach the civil court to get the dispute adjudicated, in terms of detailed discussion contained in para-74 above. Such matters will either be disposed or kept pending and reported to the Collector in terms of Section 110 (7) MPLRC by the Tehsildar, in the manner discussed in detail in this order.

6) The decision in disputed cases as contemplated under Section 110 (4) M.P.L.R.C. does not give any authority to the Tehsildar to decide such dispute and assume powers of Civil Court by going into the authenticity of will or of any non-testamentary registered title document and that outer time limit has to be read only to determine whether a dispute exists in the matter and granting opportunity to parties to approach the Civil Court.

If such approach to Civil Court is not made or despite approach no injunction is granted by Civil Court, then mutation will be carried out on basis of succession by ignoring disputed testamentary document and in case of non-testamentary registered title documents, by giving effect to such document. Once a dispute in the matter of competence of testator, validity of the will (whether registered or not) or into a non-testamentary registered title document or dispute as to title is raised before Civil Court and injunction is granted, then the only course open for the Tehsildar would be not to proceed further and to report the matter to the Collector under Section 110(7) of MPLRC.

7) In case no dispute is raised by any legal heirs of the testator or by any other person in the matter of competence of testator to execute the will and authenticity of the will, then it would be open for the Tehsildar to carry out the mutation in such undisputed cases. However, even in those cases subsequent Civil Suit will not be barred.

8) In case where issue of Government having interest in the land crops up in course of mutation, then the Tehsildar may decide that question in terms of Section 111 read with Section 257 (a) MPLRC by exercising jurisdiction which is wider than administrative one and may take evidence, but in those cases also, no enquiry as to validity of will or of any registered title document can take place before the Tehsildar."

The full bench decision makes it clear that there is no bar for seeking mutation based on a will. However, in a case of serious dispute regarding the validity/ genuineness of the will including competence of testator's capacity to execute it, or where there are two rival wills set up, it would be a dispute beyond the competence of the Tahsildar to decide, and in such a case the appropriate course for the parties would be to approach the Civil Court to get the dispute adjudicated.

19. But what is important is that mutation does not confer any right, title or interest on a person. Mutation in the revenue records is only for fiscal purposes12, therefore, where there is no serious dispute raised by any natural legal heir, if any, of the tenure holder, in absence of any legal bar, mutation based on a will should not be denied as it would defeat the interest of Revenue.

20. In Jitendra Singh (supra) this Court observed that if there is any dispute with respect to the title, more particularly when the mutation entry is sought on the basis of the will, the party who is claiming title/right will have to approach the appropriate Civil Court/ Revenue Court and get his rights adjudicated. However, in our view, this cannot be taken as a law proscribing mutation based on a will particularly where the legal heirs of the tenure holder raise no dispute.

21. In the present case, none of the legal heirs of the deceased tenure holder raised a dispute regarding the will. The will is a registered document. The objection, if any, is from the first respondent who claims himself to be in occupation of a particular piece of land held by the deceased tenure holder. Moreover, the claim of first respondent is based on an agreement for sale, and possession thereunder.

Admittedly, the same is not a registered document and there appears to be no decree of specific performance in his favour thus far. In such circumstances, if the Tehsildar and other revenue authorities had allowed mutation on the basis of the will by making it subject to regular civil proceedings, we do not find any such jurisdictional error or legal infirmity in the mutation order as may warrant interference in exercise of powers under Article 227 of the Constitution of India.

22. In our view, therefore, the High Court erred by interfering with the mutation order(s) passed in favour of the appellant. Accordingly, the appeal is allowed.

The impugned judgment and order of the High Court is set aside. The order of the revenue authorities stands restored. The mutation entry, however, shall be subject to any adjudication by a competent Civil Court/ Revenue Court.

23. Pending applications, if any, shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Manoj Misra)

New Delhi;

December 19, 2025

1 The High Court

2 Misc. Petition

3 Commissioner

4 SDO

5 1956 Act

6 **Section 110. Mutation of acquisition of right in land records-**

(1) The patwari or Nagar Sarvekshak or person authorised under Section 109 shall enter into a register prescribed for the purpose every acquisition of right reported to him under Section 109 or which comes to his notice from any other source.

(2) The Patwari or Nagar Sarvekshak or person authorised, as the case may be, shall intimate to the Tahsildar, all reports regarding acquisition of right received by him under sub-section (1) in such manner and in such Form as may be prescribed, within thirty days of the receipt thereof by him.

(3) On receipt of intimation under Section 109 or on receipt of intimation of such acquisition of right from any other source, the Tahsildar shall within fifteen days,-

(a) register the case in his Court;

(b) issue a notice to all persons interested and to such other persons and authorities as may be prescribed, in such Form and manner as may be prescribed; and

(c) display a notice relating to the proposed mutation on the notice board of his office, and publish it in the concerned village or sector in such manner as may be prescribed;

(4) The Tahsildar shall, after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry as he may deem necessary, pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matter, and make necessary entry in the village khasra or sector khasra, as the case may be, and in other land records.

(5) The Tahsildar shall supply a certified copy of the order passed under sub-section (4) and updated land records free of cost to the parties within thirty days, in the manner prescribed and only thereafter close the case:

Provided that if the required copies are not supplied within the period specified, the Tahsildar shall record the reasons and report to the Sub-Divisional Officer.

(6) Notwithstanding anything contained in Section 35, no case under this section shall be dismissed due to the absence of a party and shall be disposed of on merits.

(7) All proceedings under this section shall be completed within two months in respect of undisputed case and within six months in respect of disputed case from the date of registration of the case. In case the proceedings are not disposed of within the specified period, the Tahsildar shall report the information of pending cases to the Collector in such Form and manner as may be prescribed.

7 1959 Code

8 2021 SCC Online MP 3410

9 2018 Niyam

10 2025 SCC OnLine MP 977

11 2021 SCC OnLine SC 802

12 2021 SCC OnLine SC 802

4. Study Material-G.K.

ECONOMIC IMPACT OF BRITISH RULE IN INDIA

Introduction

From the establishment of British colonial rule in the mid-19th century until independence in 1947, India underwent significant changes in its economic structure and development. The economic impact of British rule included those related to trade, taxation, land ownership, and industrialization, profoundly influenced India's economy. The Britishers made structural changes in the Indian Economy and drained its wealth through various policies.

From 1757 to 1857, British economic policies in India drastically changed the country's economy to serve the interests of the British Empire. This period began with British control after the **Battle of Plassey in 1757** and ended with the first major Indian **revolt of 1857** against colonial rule. During these years, British policies transformed India's agriculture, industry, and trade in ways that benefited the Empire.

About British in India

- The British rule in India brought about profound changes in the country's economic structure, transforming it from a flourishing and self-sufficient economy to one subjugated by colonial exploitation.
- The economic impacts of British rule can be analysed in terms of phases of colonialism, changes in trade, agriculture, and industry, and their consequences on Indian society. All these have been discussed in detail below.

Pre-Colonial Economy

Before colonial rule, India had a **stable economy** characterised by **self-sufficient agriculture,** flourishing **handicrafts**, and **extensive trade** within and with other parts of the world.

- **Exports**: India exported high-quality goods like cotton textiles, silk, indigo, and spices, ensuring a **favourable trade balance** with other countries.
- **Imports**: Items such as pearls, tea, wool, dates, and metals were imported in limited quantities, reflecting India's self-sufficiency.

The Commercial Phase (1600–1757)

The establishment of the **East India Company (EIC)** marked the beginning of British economic interests in India.

- The EIC was primarily **trading**, exchanging Indian goods like textiles and spices for **gold and silver** from Europe.
- Indian goods gained immense popularity in Britain and Europe due to their superior quality. However, British manufacturers pressured their government to curtail the influx of Indian products to protect their domestic industries.
- By the mid-18th century, with the advent of the **English textile industry,** the demand for Indian goods began to decline.

Phases of Economic Colonialism

First Phase: Mercantilism (1757–1813)

- After the **Battle of Plassey (1757)** and the **Treaty of Allahabad (1765),** the British established political control over Bengal.
- The EIC extracted **land revenue** through the **Zamindari system,** using it to finance the export of Indian goods.
- **Weavers and artisans** were exploited through unfair trade practices, receiving low wages and forced to sell goods at cheaper rates.
- **The monopolisation of trade** disrupted India's internal and external markets, leading to the **decline of traditional industries.**

Second Phase: Industrial Capital (1813–1858)

- The **Industrial Revolution** in Britain transformed the economic relationship with India. The **Charter Act of 1813** ended the EIC's trade monopoly, opening Indian markets to British manufacturers.
- India became a **supplier of raw materials** like cotton, jute, and indigo and a **market for finished goods** from Britain.
- British policies exposed Indian handicrafts to **unequal competition** with machine-made goods, causing the **de-industrialization of traditional industries.**
- Infrastructure such as **railways, roads, and telegraphs** was developed not for India's benefit but to facilitate British trade.

Third Phase: Finance Capital (1860 Onwards)

- Post-1860, British policies encouraged **private investment** in Indian infrastructure, especially **railways and plantation agriculture** (tea and jute).

- British investors were guaranteed high returns, paid from the Indian treasury, leading to a **drain of wealth** from India to Britain.

Key Economic Impacts of British Rule in India

De-Industrialization

- India's traditional **cottage industries** collapsed due to competition from cheaper British goods.
- Skilled artisans and craftsmen lost their livelihoods as Indian markets were flooded with **machine-made imports.**
- India transitioned from an exporter of finished goods to an exporter of **raw materials.**

Impoverishment of Peasantry

- The British focused on extracting **maximum revenue** without considering the welfare of peasants.
- High land revenue rates, unfair eviction practices, and exploitation by **zamindars** forced many farmers into **debt and landlessness.**
- The shift to **commercial crops** like indigo and cotton worsened food scarcity, contributing to **famines**.

Development of Modern Industries

- The introduction of **machine-based industries** in the late 19th century led to limited industrialisation.
- Foreign capital flowed into **plantations, jute mills, and textile factories, but heavy industries** were neglected.
- Indian industrial growth primarily served British interests, providing minimal benefit to local people.

Stagnation of Agriculture

- Farmers were forced to grow commercial crops to meet British industrial needs, leading to **soil degradation** and reduced agricultural productivity.
- Traditional agriculture systems were replaced by policies favouring British profits, exacerbating rural poverty.

Infrastructure Development

- **Railways** (first line in 1853: Bombay to Thane) and **telegraphs** facilitated British economic exploitation.
- While infrastructure connected Indian regions, it was primarily aimed at transporting raw materials and finished goods.

Famines and Poverty

- The emphasis on cash crops led to chronic food shortages. Famines during British rule (1850–1900) resulted in the deaths of over **28 million people.**
- The widespread poverty among peasants, artisans, and laborers further weakened the Indian economy.

Effect of British Rule in India

- The effects of British rule in India were profound and multifaceted, influencing the country politically, economically, socially, and culturally.
- Politically, India was unified under a centralized administration, but traditional rulers lost their autonomy.
- Economically, colonial policies deindustrialized India, drained wealth through heavy taxation, and promoted dependence on British goods.
- Socially, British rule disrupted traditional structures but also introduced modern education, legal systems, and infrastructure like railways and telegraphs.
- Culturally, India saw a mix of Western influence and a resurgence of Indian nationalism, which eventually fueled the struggle for independence.
- While modernization was a significant impact, it came at the cost of widespread exploitation and inequality.

Economic Critique and Rise of Nationalism

- Thinkers like **Dadabhai Naoroji** (book: Poverty and Un-British Rule in India), **M.G. Ranade, and R.C. Dutt** exposed the exploitative nature of British economic policies.
- The **drain of wealth** theory highlighted how Indian resources were siphoned off to Britain, leading to political and economic stagnation.
- The **national movement** gained momentum as Indians united against oppressive economic policies.
- The **railways and English education** facilitated communication and awareness among Indians, fostering a sense of shared struggle.

Conclusion

The British economic policies were driven by the goal of maximizing profits and sustaining their industrial growth at the expense of India's development. India was systematically transformed into a **colonial economy,** exporting raw materials and importing British goods. This exploitation led to **widespread poverty, de-industrialization, and agrarian distress,** which fueled the rise of India's freedom struggle. While some infrastructure developments occurred, their primary aim was to serve British interests, leaving a legacy of economic stagnation and underdevelopment.

5. Study Material-Language

Precis Writing

Precis Writing is a part of the descriptive paper conducted for various competitive and Government exams under the English Language section. The important points that need to be kept in mind while writing a precis, the Dos and Don'ts, followed by some sample precis writing examples and questions.

What is Precis Writing?

Precis writing is summarising a comprehension in limited words, covering all the important aspects and details of the passage given.

Rules of Precis Writing

To avoid making any errors in writing a precis, follow a set of rules as mentioned below:

- Read the comprehension carefully
- Note down the important points
- Make a rough draft of the precis
- Make use of simple and precise language, as much as possible
- Draft the final precis once all the points have been included

Important Features of a Good Precis

There are various components that make a good precis. For candidates who have just started their preparation for the upcoming Government exams, knowing the features of a good precis is extremely vital. Discussed below are a few of the features which shall help you write a good precis:

- **Length of the Precis:** Do not write a lengthy precis. In most cases, the number of words must be almost one-third of the word count of the passage or comprehension.
- **It should be convenient to read:** Make sure that the precis you write does not have too complex a vocabulary or is too complicated to understand.
- **Cover all the essential points:** While reading the passage, make a note of the important points and ensure that no point is skipped.
- **Must be coherent:** The important terms with respect to the passage must be included in the precis as well.
- **Use an appropriate Title:** The precis needs to have a title. So, the candidates must ensure that the title is in sync with the comprehension.
- **Details in precis must match the details in the passage:** No other information apart from the one given in the passage must be included in

the precis and all the important information mentioned in the passage must certainly be included.

If a candidate keeps the above-mentioned points in consideration while writing the precis, he/she shall be successful in writing a good precis.

Dos & Don'ts in Precis Writing

Every year lakhs of candidates appear for the competitive exams conducted in our country. Out of those only a few are able to crack the exam and get appointed. Since most competitive exams have now become computer-based, the descriptive test is still checked offline.

Candidates must know that with thousands of entries that need to be checked, there are certain quick points which the examiner looks for and which may get the maximum marks for your precis writing.

Based on the same information, given below are a few Dos and Don'ts, which a candidate needs to understand before starting to write a precis.

Dos for Precis Writing

- Begin with the basic idea of the passage to make the precis convenient to read.
- Give a clear idea pertaining to what the reader is about to read.
- While reading the passage, make a note of all the important points and include them in the precis.
- Follow the main idea of the passage with the facts/points of improvement/ methods,, etc. as mentioned in the comprehension.
- Include all the important keywords and terms which are used in the passage.
- Keep a track of the tenses you use. Data related to historical events of the past must be described in the past tense only.
- There must be a relation between the data you are writing in the precis. It should have some common links.

Don'ts for Precis Writing

- The length of the precis must be shorter than the length of the passage.
- Do not overcomplicate the precis and use easy vocabulary.
- Do not make assumptions or add information in the precis as per your own imagination.
- Do not give your own opinion or criticism over the comprehension.
- Avoid using abbreviations.

- Do not enter statements in the question format in the precis.
- Don’t focus on any one point for very long. Keep the information as precise as possible.

6. Current Affairs

DECEMBER 2025

1. India will set up its first National Coral Reef Research Institute (NCRRI) at Chidiyatapu in South Andaman to boost coral research and climate resilience.
2. A 10,000-year-old, perfectly preserved Jomon-era pottery vessel discovered 64 metres beneath Japan's Lake Biwa is rewriting early Japanese prehistoric and ceramic history.
3. India emerged as a key architect at World Telecommunication Development Conference 2025 in Baku, driving global agendas on digital inclusion, innovation, cybersecurity and climate-friendly ICT development.
4. India B (Manipur) won the 15th Manipur Polo International Tournament by defeating Colombia 8–5.
5. India and the US signed a ₹7,995 crore deal to sustain the Navy's MH-60R Seahawks, boosting naval readiness and strengthening defence cooperation.
6. Vietnamese film "Skin of Youth" wins Golden Peacock at IFFI 2025, celebrating transgender identity and global cinema.
7. Chef Vijay Kumar, celebrated for elevating South Indian cuisine globally, has been honoured as the Global Indian of the Year 2025.
8. Baba Kalyani awarded Indian of the Year 2025 for pioneering India's defence manufacturing and boosting national self-reliance.
9. World AIDS Day 2025 calls for resilient, equitable, and community-led HIV responses worldwide.
10. Meghalaya launched the Northeast India Organic Week to expand global market access for the region's biodiversity-rich organic produce.
11. PM Modi unveils 77-foot Lord Ram statue at Partagali Math, celebrating 550 years of the spiritual institution.
12. India has been re-elected to the International Maritime Organisation (IMO) Council for 2025–26, securing the highest votes (154) in Category-B.
13. India launches Operation Sagar Bandhu, sending 27 tonnes of relief material and NDRF teams to aid Sri Lanka after Cyclone Ditwah.
14. India strengthens Afghanistan's healthcare by delivering 73 tonnes of medicines, vaccines, and essential supplies.
15. IMF retains C-grade for India's GDP data as MoSPI reports 8.2% growth and prepares a new 2022–23 base year.
16. India releases Basic Animal Husbandry Statistics 2025, showing record growth in milk, eggs, meat, and wool production.

17. PM Narendra Modi chaired a high-level deliberation session focusing on key national policy and governance priorities.
18. Vivek Chaturvedi appointed CBIC Chairman, succeeding Sanjay Kumar Agarwal after his retirement on November 28, 2025.
19. Jay Shah named "Indian of the Year 2025" for transforming Indian and global cricket, including WPL and gender pay parity reforms.
20. Nagaland celebrates its Statehood Day on 1st December, marking its 1963 formation and the start of the Hornbill Festival.
21. India updates seismic map, designating the entire Himalayas as the highest-risk Zone VI, highlighting earthquake preparedness and resilient infrastructure.
22. India re-elected to UNESCO Executive Board, strengthening its role in global education, culture, and sustainable development.
23. India mandates SIM-binding for all messaging apps to curb cyber fraud and strengthen digital security.
24. Darjeeling Mandarin Orange receives GI tag, ensuring fair prices for farmers and boosting regional economy.
25. The Trade Enablement and Marketing (TEAM) Scheme empowers Micro, Small, and Medium Enterprises (MSMEs) with digital tools, enhancing e-commerce access and market opportunities, especially for women-led enterprises.
26. India launches indigenous Hansa-3 (Next Generation) trainer aircraft, boosting aerospace self-reliance and pilot training capacity.
27. Taragiri, the fourth Nilgiri-class (Project 17A) stealth frigate with 75% indigenous content, was delivered to the Indian Navy by Mazagon Dock Shipbuilding Ltd (MDL).
28. NeVA is rapidly transforming India's legislatures into fully digital, paperless Houses through a unified "One Nation, One Application" platform with AI-enabled multilingual support.
29. Observed on 2 December, the International Day for the Abolition of Slavery highlights that modern slavery still traps 50 million people across the world.
30. India has rediscovered the bamboo shrimp Atyopsis spinipes after 72 years, correcting past misidentifications and highlighting urgent freshwater conservation needs.
31. IGI Airport becomes India's first water-positive airport, replenishing more water than it consumes and setting a benchmark in sustainable aviation.
32. Saudi Arabia and Russia sign a 90-day visa-free travel agreement to boost tourism, business, and cultural ties.
33. Sudan allows Russia to set up its first naval base in Africa, gaining a strategic foothold on the Red Sea.
34. Tamil Nadu adds five new GI tags, boosting artisan heritage, farmer incomes, and the state's cultural identity.

35. India launches the Credit Assessment Model (CAM) to make MSME loans faster, smarter, and fully digital.
36. Rohit Sharma made history by becoming the highest six-hitter in ODI cricket with 352 sixes, surpassing Shahid Afridi.
37. India and Maldives have launched the 14th edition of the India–Maldives Annual Bilateral Military Exercise 'Ekuverin', focusing on counterinsurgency and counterterrorism operations to strengthen defence cooperation and regional security.
38. Punjab National Bank appoints Harmanpreet Kaur as its first-ever female brand ambassador.
39. India's new AI-based monsoon forecasting pilot helped over 3.88 crore farmers make smarter sowing decisions using advanced blended weather models.
40. Karnataka launches upgraded e-Swathu 2.0 to digitise rural property management, regularise 95 lakh properties, and boost revenue up to ₹2,000 crore.
41. Ministry of Women & Child Development launches 100-day campaign to make India child marriage-free by mobilizing citizens and communities.
42. Poshan Tracker data shows that 34% of Indian children under five are stunted, highlighting ongoing challenges despite improved nutrition indicators.
43. India ranks 131st in the Women, Peace and Security Index 2025/26, highlighting gradual but uneven progress in women's empowerment.
44. India's TDPS boosts Assam's tea sector, increasing production, exports, and small grower empowerment.
45. India signs a $946 million sustainment deal for 24 MH-60R Seahawk helicopters, boosting naval capabilities and US-India defence ties.
46. Arun Kumar Singh has been granted a notable one-year extension as ONGC Chairman, ensuring leadership continuity during the company's production revival phase.
47. On December 3, 2025, India promotes disability inclusion and rights through initiatives like Accessible India Campaign, UDID, and PM-DAKSH on International Day of Persons with Disabilities.
48. Navy Day on December 4 honours the Indian Navy's valor, discipline, and pivotal role in safeguarding India's maritime security.
49. 84% of Jal Jeevan Mission complaints came from Uttar Pradesh, highlighting major quality and financial irregularities in rural piped water projects.
50. Government of India has designated South Kannad in Karnataka as a District Export Hub (DEH) under the 'Districts as Export Hubs' initiative, promoting marine products and cashews as potential export items.

51. WHO recommends GLP-1 therapies for obesity, while Samagra Shiksha Scheme promotes equitable and quality education under NEP 2020.
52. Passport Verification Records are now digitally accessible on DigiLocker, enhancing convenience, security, and paperless governance.
53. Victoria University lays foundation for its first India campus in Gurugram, bringing Australian education closer to Indian students.
54. Numaligarh Refinery Limited becomes the 27th CPSE to attain Navratna status, enhancing operational autonomy.
55. Luana Lopes Lara, at 29, becomes the world's youngest self-made woman billionaire.
56. Lok Sabha has passed the Central Excise (Amendment) Bill 2025, introducing a new tax regime on tobacco and pan masala to replace the GST compensation cess ending in March 2026.
57. SEBI has launched SWAGAT-FI, a single-window system allowing low-risk global investors to register simultaneously as FPIs and FVCIs, with extended registration validity of 10 years.
58. Armand Duplantis and Sydney McLaughlin-Levrone were crowned World Athletes of the Year at the World Athletics Awards 2025 in Monaco.
59. On December 5, 2025, World Soil Day emphasizes the role of healthy soils in building sustainable and resilient cities.
60. On 5 December 2025, International Volunteer Day marked the global launch of IVY 2026, emphasizing that every volunteer contribution is vital for sustainable development.
61. DigiLocker has introduced a new Passport Verification Record feature to enhance security and ease of access for passport-related verification.
62. ASI maintains 3,685 protected monuments, has retrieved 655 antiquities since 1976, and documented over 12.46 lakh antiquities under the NMMA mission.
63. The MGMD programme has identified 6,38,365 villages for cultural mapping and uploaded data for 6,23,449 villages to document India's tangible and intangible heritage.
64. Under PMKSY, FPOs receive special benefits including 50% project subsidy, 70% quality assurance subsidy, and reduced equity, credit, and net-worth requirements.
65. India is hosting UNESCO's 20th session on safeguarding intangible cultural heritage at Red Fort, with 800+ delegates and 15 Indian elements on the ICH list.
66. UPI payments will now be accepted across Cambodia via KHQR under the NPCI–ACLEDA partnership, with mutual acceptance of India and Cambodia's QR systems.

67. RBI has widened Gold Metal Loan eligibility from April 1, 2026, allowing more jewellers—including non-manufacturers—to access GML for domestic and export purposes.
68. The RBI MPC reduced the repo rate by 25 basis points to 5.25% and projected India's FY26 growth at 7.3%.
69. At Inno-Yoddha 2025, the Indian Army showcased 89 innovations, of which 32 were shortlisted for further development.
70. India and Malaysia began the 5th joint Exercise Harimau Shakti-2025 in Rajasthan to train for UN-mandated sub-conventional and counter-terror operations.
71. Scientists Discover New Non-Venomous Wolf Snake, Lycodon irwini, on Great Nicobar Island.
72. Government Extends PMGSY–III Timeline to March 2026; 1.01 Lakh km of Rural Roads Already Completed.
73. Indian Researchers Detect Ancient Galaxy 'Alaknanda' with Spiral Arms Formed Just 1.5 Billion Years After Big Bang.
74. LIC Signs New Bancassurance Agreement with Yes Bank to Offer Insurance Products through Its Network.
75. FIFA Confirms Full Match Schedule; World Cup 2026 Final to Be Held at MetLife Stadium on July 19.
76. Lando Norris Secures His First F1 World Championship in Abu Dhabi, Ending Verstappen's Four-Year Dominance.
77. Rohit Sharma Crosses 20,000 International Runs, Joining Tendulkar, Kohli and Dravid in Elite Indian List.
78. Actor Gaurav Khanna Emerges Victorious in Bigg Boss 19, Wins Trophy and ₹50 Lakh Prize.
79. Tourism Ministry to Hold 3rd Krishnaveni Sangeetha Neerajanam Carnatic Festival in Vijayawada on Dec 6–7, 2025.
80. CBFC Guarantees Half of All Members in Examining and Revising Film Panels Are Women as per 2024 Rules.
81. India Post opened Kerala's first Gen-Z–focused Post Office extension at CMS College, designed jointly by students and postal officials.
82. The US and Rwanda signed a $228 million five-year health partnership focusing on HIV, malaria, surveillance, and digital health systems.
83. Under the National Mission on Edible Oils, India has expanded oil palm coverage to 6.20 lakh hectares by November 2025, moving towards self-reliance in edible oil production.
84. Three-year-old Sarwagya Singh Kushwaha from Madhya Pradesh became the youngest player in history to receive a FIDE chess rating, debuting at 1572.
85. India sent four additional Navy ships carrying 1,000 tons of relief material to cyclone-hit Sri Lanka under Operation Sagar Bandhu.
86. Renowned labour rights activist Dr. Baba Adhav passed away at 95 after decades of work for unorganised sector workers in Maharashtra.

87. RBI announced ₹1,00,000 crore OMO purchases and a $5 billion USD/INR swap to ease liquidity pressure in the financial system.
88. IMF has recognized India's UPI as the world's largest real-time payment system, accounting for nearly 49% of global instant transactions.
89. International Anti-Corruption Day on 9 December marks global commitment to the UN Convention against Corruption, which came into force in 2005.
90. International Civil Aviation Day on 7 December highlights the global importance of air transport and ICAO's new 2026–2050 plan for safe and sustainable aviation as passenger numbers may reach 12.4 billion by 2050.
91. Belgium's top court has dismissed Mehul Choksi's appeal against India's extradition request in the ₹13,000-crore PNB fraud case.
92. President Zelenskyy again declared that Ukraine will not give up any territory to Russia while seeking stronger global support in meetings across Europe.
93. Cambodia has vowed a strong response as intensified border clashes with Thailand cause casualties and force thousands to flee.
94. Australia has enforced strict age-verification rules requiring major social media platforms to block users under 16, with penalties up to A$49.5 million for violations.
95. SEBI has launched PaRRVA, a system to verify past returns and prevent misleading performance claims by finfluencers and unregistered advisers.
96. DGCA has ordered IndiGo to reduce its winter flight schedule by 10% to curb delays and stabilise operations after major service disruptions.
97. India's panel has proposed mandatory royalties for creators whose content trains AI models, placing regulatory pressure on firms like OpenAI and Google.
98. Anant Ambani received the 2025 Global Humanitarian Award as Vantara's conservation efforts gain major global recognition.
99. PETA India has honoured Raveena Tandon as its 2025 Person of the Year for her wildlife protection efforts and compassionate lifestyle.
100. A three-member SIT has taken charge of investigating Uttar Pradesh's widespread illegal codeine syrup network spanning 128 FIRs in 28 districts.
101. India launches its first indigenous hydrogen-powered train, world's longest on Broad Gauge, running on green hydrogen with zero CO_2 emissions.
102. India strengthens its global maritime leadership by hosting the 3rd IALA Council Session and promoting safe, sustainable, and digital maritime practices.

103. India, Brazil, and MDL sign MoU to boost Scorpène-class submarine maintenance and bilateral naval cooperation.
104. India upgrades grain storage policies to strengthen PACS-based infrastructure under the world's largest cooperative storage plan.
105. Amrit Bharat Station Scheme fast-tracks India's railway modernisation with upgraded facilities, sustainable design and integrated urban connectivity.
106. India and Brunei launch Joint Working Group to strengthen defence cooperation, maritime security, and technology partnerships.
107. Andrej Babis returned as Czech Prime Minister after ANO's coalition secured 108 of 200 seats, signaling a shift toward EU-sceptic and Hungary–Slovakia aligned policies.
108. China and Brazil inaugurated a joint laboratory for space technologies, enhancing collaboration in radio astronomy, deep-space research, and the BINGO telescope project.
109. India proposes a new AI framework allowing default access to online content for training, with royalties managed by a non-profit body.
110. Meghalaya enriches India's biodiversity with the discovery of two rare jumping spider species, Asemonea dentis and Colyttus nongwar.
111. Bhartiya Bhasha Utsav 2025 showcased India's linguistic unity with the launch of Adi Vaani, the nation's first AI-powered tribal language translator.
112. The World Bank approved $305 million for Haryana's Clean Air Project, supporting electric mobility, industrial reforms, and sustainable agriculture to improve air quality by 2030.
113. Denmark plans to ban social media use for children under 15, enforcing age verification to protect minors from cyber risks.
114. Hanoi has become the world's second most polluted city after New Delhi, with PM2.5 levels far exceeding WHO limits, posing severe health risks.
115. Google co-founder Sergey Brin surpasses Jeff Bezos in global billionaire rankings, with his net worth reaching $240 billion thanks to Alphabet's AI-driven stock surge.
116. NITI Aayog's new report charts a reform-driven roadmap to deepen India's corporate bond market for Viksit Bharat @2047.
117. The World Inequality Report 2026, published by the World Inequality Lab, flags India as one of the most unequal large economies, urging wealth and inheritance taxes to reduce deepening disparities.
118. IAS officer Supriya Sahu earned global acclaim by winning the 2025 UN Champions of the Earth Award for her impactful climate and conservation initiatives.
119. CRPF officer Dinesh Khatak from Haryana was awarded the Union Home Minister's Efficiency Medal for his exemplary service in counter-insurgency and security operations.

120. A new shieldtail snake species, Rhinophis siruvaniensis, has been discovered in Kerala's Siruvani Hills, highlighting the region's rich biodiversity.
121. Varanasi becomes India's first city to launch a hydrogen-powered water taxi service, promoting sustainable inland transport along the Ganga.
122. India and Liberia signed an MoU to strengthen cooperation in pharmacopoeia and medicine quality standards.
123. Mexico imposes tariffs of up to 50% on over 1,400 products from India, China, and other Asian countries from January 2026 to protect domestic industries.
124. The US launches the Gold Card, an investor-linked residency scheme offering fast-track permanent residency and citizenship for wealthy individuals and corporations.
125. Google for Startups Hub at T-Hub Hyderabad offers AI-focused startups mentorship, coworking space, and investor access, boosting India's deep-tech entrepreneurship.
126. Punjab honours Yuvraj Singh and Harmanpreet Kaur with stadium stands named after them at Mullanpur.
127. TIME Magazine named the "Architects of AI" as the 2025 Person of the Year, honouring leaders driving global AI transformation.
128. Kolkata unveils the world's largest 70-foot iron statue of Lionel Messi ahead of the 2026 FIFA World Cup.
129. Maharashtra launched MahaCrimeOS AI, an advanced AI-powered platform to speed up cybercrime investigations.
130. Maharashtra has introduced a new regulatory framework to overhaul Mumbai's century-old Pagdi system and boost redevelopment of ageing buildings.
131. Siliserh Lake in Rajasthan's Alwar district has become India's 96th Ramsar site, highlighting its ecological and historical significance.
132. India's National Film Heritage Mission has digitised and restored 1,469 films, preserving 4.3 lakh minutes of cinematic heritage across all languages.
133. The Union Cabinet has approved the Census of India 2027 at a cost of ₹11,718.24 crore, marking India's first digital-first census exercise.
134. UNESCO has added Pakistan's ancient clay musical instrument Boreendo from Sindh to the Urgent Safeguarding List due to the risk of extinction.
135. India's forex reserves rise by USD 1.033 billion to USD 687.26 billion, strengthening rupee and macroeconomic stability.
136. India ranks among the world's most overworked nations, with employees averaging 45.7 hours per week, according to ILO 2024.

137. Lakshadweep hosted its first-ever investors' meet on fisheries and aquaculture to promote the blue economy, with investment proposals worth about ₹519 crore.
138. Andhra Pradesh wins the National Energy Conservation Award 2025 for the fourth consecutive year, leading in energy efficiency across sectors.
139. AIIMS Delhi conducted India's first domestic stroke device trial under the GRASSROOT study, approving the indigenous Supernova brain stent for routine use.
140. India has emerged as the world's third most competitive country in artificial intelligence, according to Stanford University's Global AI Vibrancy Tool.
141. Kavita Chand became the first Indian woman from Almora to summit Mount Vinson, advancing India's presence in the Seven Summits challenge.
142. University of Patanjali has been designated as India's first Yoga and Ayurveda-based Cluster Centre under the Ministry of Culture's Gyan Bharatam Mission.
143. Innoviti Technologies was recognised as a "Cheetah" in the Hurun India Unicorn & Future Unicorn Index 2025 for its leadership in SaaS-based retail payment solutions.
144. PM Modi's three-nation visit aims to strengthen India's economic and trade ties with Jordan, Ethiopia, and Oman.
145. Saudi Arabia and China sign a mutual visa exemption for diplomatic and official passport holders, strengthening their strategic partnership.
146. India excelled at the Odisha Masters 2025 with Unnati Hooda and Kiran George winning the women's and men's singles titles, respectively.
147. India and Brazil signed a tripartite MoU to strengthen cooperation in the maintenance and life-cycle support of Scorpene-class submarines.
148. Sangeeta Barooah Pisharoty became the first woman president of the Press Club of India, marking a historic milestone in gender representation in Indian journalism.
149. DHRUV64 is India's first indigenous 1.0 GHz, 64-bit dual-core microprocessor developed by C-DAC under the Digital India RISC-V programme.
150. Vijay Diwas, observed on 16 December, commemorates India's victory over Pakistan in the 1971 war and the creation of Bangladesh.
151. The Archaeological Survey of India (ASI) held a National Workshop to finalise Project Mausam's framework, promoting maritime heritage across Indian Ocean nations.
152. India has opened the historic Cho La and Dok La passes in Sikkim for battlefield tourism along the China border under the Bharat Ranbhoomi Darshan initiative.

153. India's first wildlife-safe road has been developed by NHAI on NH-45 in Madhya Pradesh to reduce animal-vehicle collisions in a tiger reserve area.
154. Italian cuisine has been recognised by UNESCO as an Intangible Cultural Heritage of Humanity, the first entire national cuisine to receive this honour.
155. Sahakar Sarathi is a Shared Service Entity set up in 2025 to provide digital banking infrastructure and technology support to Rural Cooperative Banks.
156. Shri Raj Kumar Goyal assumed charge as Chief Information Commissioner on 15 December 2025 and administered the oath to eight newly appointed Information Commissioners at the CIC.
157. PM Narendra Modi was awarded The Great Honour Nishan of Ethiopia during his first bilateral visit, strengthening India–Ethiopia ties.
158. Goa won second prize in the National Energy Conservation Awards 2025 for promoting energy efficiency and sustainability.
159. India launched its first AI-driven community screening programme for Diabetic Retinopathy using the MadhuNetrAI platform developed by AIIMS (RPC).
160. Punjab has declared Amritsar, Anandpur Sahib, and Talwandi Sabo as Holy Cities with restrictions on liquor, tobacco, meat, and intoxicants.
161. The US Congress repealed the 2019 Caesar Act, permanently lifting sanctions on Syria and signalling a major shift in Washington's Syria policy.
162. Tesla inaugurated its first EV charging station in India at Gurugram, featuring V4 Superchargers and destination chargers for rapid and convenient recharging.
163. The Ambani family is the only Indian entrant in Bloomberg's 2025 list of the world's 25 richest families, with an estimated wealth of $105.6 billion.
164. Google Pay, in partnership with Axis Bank, launched the FLEX credit card, enabling UPI-linked credit payments with instant rewards and digital issuance.
165. Manu Bhaker and Simranpreet Kaur Brar won gold medals in senior and junior women's 25m sports pistol events at the 68th National Shooting Championship.
166. India and the UAE conducted Desert Cyclone II, a joint military exercise focused on urban warfare and interoperability in Abu Dhabi.
167. Singapore's Changi Airport has been named the World's Best International Airport for 2025.
168. Neeraj Ghaywan's film Homebound has been shortlisted in the International Feature Film category for the Oscars 2026, marking a milestone for Indian cinema.

169. NCSM, under the Ministry of Culture, won two PRSI National Awards 2025 for Har Ghar Museum and Waste to Art initiatives.
170. INST Mohali has developed a multi-target nanoparticle-based therapy that shows promise in improving memory and slowing Alzheimer's disease progression.
171. On Vijay Diwas 2025, President Droupadi Murmu inaugurated the Param Vir Dirgha at Rashtrapati Bhavan, honouring India's 21 Param Vir Chakra awardees and celebrating supreme military bravery.
172. Jammu & Kashmir inaugurated its first Gen Z Post Office at AIIMS Vijaypur, making it the first AIIMS in India to host a youth-centric, tech-enabled postal hub.
173. India and Saudi Arabia signed a bilateral visa waiver agreement to facilitate visa-free short-term official travel for diplomatic and official passport holders.
174. India and Oman signed a landmark CEPA, granting zero-duty access to most Indian exports, opening key service sectors, and enhancing professional mobility.
175. José Antonio Kast has been elected Chile's president, marking a rightward political shift amid rising public concerns over crime, migration, and security.
176. PM Narendra Modi was conferred Oman's highest civilian honour, the First Class of the Order of Oman, becoming the first Indian leader to receive it and marking his 29th international award.
177. India is set to build Maitri II, a next-generation Antarctic research station, by 2032 to strengthen its polar science and climate research capabilities.
178. India has become the world's largest and most active market for AI model adoption, leading in users of apps like ChatGPT, Gemini, and Perplexity, according to Bank of America.
179. International Migrants Day, observed on 18 December, recognizes the contributions of migrants worldwide and highlights the challenges they face in an increasingly complex global environment.
180. Goa Liberation Day, observed on 19 December, marks the end of over 450 years of Portuguese rule with the success of Operation Vijay in 1961.
181. India assumed the BRICS presidency from Brazil, focusing on climate resilience, responsible AI, scientific collaboration, and global governance reforms in 2026.
182. The United States launched Operation Hawkeye Strike to carry out targeted airstrikes against ISIS in Syria after a deadly attack on American personnel.
183. India and NABARD unveiled a unified logo for all 28 Regional Rural Banks under the #OneRRBOneLogo initiative, symbolizing progress, support, and enlightenment in rural development.

184. Deepinder Goyal, founder and CEO of Eternal (formerly Zomato), topped the Hurun Rich List 2025 as India's leading self-made entrepreneur.
185. Under the India–Oman CEPA, Oman has increased the cap on Indian nationals in company workforces from 20% to 50%, boosting labour mobility and services trade.
186. Shashwat Sharma appointed MD & CEO of Airtel India effective 1 January 2026, with Gopal Vittal moving to Executive Vice Chairman.
187. PGIMER Chandigarh has won India's Best Health Technology Assessment (HTA) Institute award for the second consecutive year, recognising its leadership in evidence-based healthcare policymaking.
188. German aerospace engineer Michaela Benthaus is set to become the first wheelchair-bound person to travel to space aboard Blue Origin's New Shepard NS-37 mission.
189. International Human Solidarity Day is observed on 20 December to promote global unity, shared responsibility, and cooperation for poverty eradication and inclusive development.
190. Haryana commemorates the 350th martyrdom year of Guru Tegh Bahadur Ji with statewide events, processions, and social initiatives highlighting his legacy of truth, religious freedom, and human dignity.
191. PM Narendra Modi inaugurated the new terminal at Guwahati Airport, featuring the "Bamboo Orchids" design and an 80-foot statue of Gopinath Bardoloi, enhancing connectivity and regional growth.
192. The Securities Markets Code Bill 2025 was introduced in the Lok Sabha to consolidate key securities laws, reform SEBI, and ease compliance in India's financial markets.
193. Prime Minister Narendra Modi laid the foundation stone of a ₹10,601 crore urea plant at Namrup in Assam to boost fertilizer self-reliance and support farmers.
194. Smriti Mandhana became the first Indian woman and the fastest globally to score 4,000 runs in Women's T20 Internationals, achieving the milestone in just 3,227 balls.
195. B. Sairam was appointed as the Chairman-cum-Managing Director of Coal India Limited.
196. Jay Shah was awarded 'Transformational Leader of the Year' at NDTV Indian of the Year 2025 for reforms like pay parity, WPL launch, and record IPL media rights.
197. India hosted the 2nd WHO Global Summit on Traditional Medicine to promote global collaboration, digital innovation, and research in traditional healthcare systems.
198. ISRO launched RESPOND Basket 2025 to invite research proposals supporting its upcoming missions like Chandrayaan-4, Gaganyaan, and the human Moon landing.

199. National Mathematics Day is observed every year on December 22 to commemorate the birth anniversary of renowned Indian mathematician Srinivasa Ramanujan.
200. Tamil Nadu has launched a ₹20-lakh conservation programme to protect the vulnerable smooth-coated otter in the Cauvery delta, recognising it as a key bio-indicator of healthy freshwater ecosystems.
201. Supreme Court defines Aravalli Hills uniformly, emphasizing ecological and geological conservation across Gujarat, Rajasthan, Haryana, and Delhi.
202. India handed over three Quick Impact Projects (QIPs) to Myanmar's Mandalay Region to boost vocational education, women's training, and clean energy initiatives.
203. India has excluded the dairy sector from its free trade agreement with New Zealand to protect small domestic dairy farmers.
204. India exported 3 metric tonnes of GI-tagged Indi Lime from Karnataka to Oman, enhancing global market access under the India-Oman CEPA/FTA.
205. The NSSH Scheme of the MSME Ministry promotes SC/ST entrepreneurship by providing capacity building, market access and support for mandatory 4% public procurement.
206. Oman has introduced its first polymer one-rial banknote, issued by the Central Bank of Oman, to enhance currency durability and security.
207. US President Donald Trump announced a new 'Trump-class' of heavily armed warships to modernise and expand the US Navy amid concerns over China's growing naval power.
208. Advocate Shubham Awasthi was honoured with the 40 Under 40 Lawyer Award 2025 for his professional excellence and humanitarian contributions.
209. JNCASR researchers discover the exocyst protein complex, a key regulator of cellular autophagy, with implications for neurodegenerative diseases and cancer.
210. Kisan Diwas is celebrated on 23 December every year to honour farmers' contributions and mark the birth anniversary of Chaudhary Charan Singh.
211. NITI Aayog's report outlines strategies to make India a global higher education hub by 2047, emphasizing international collaborations, student mobility, and NEP 2020 implementation.
212. WHO and India's AYUSH Ministry collaborate to integrate Ayurveda, Siddha, and Unani into global health standards through ICHI.
213. Vice-President C. P. Radhakrishnan released Sanatan Sanskriti Ki Atal Drishti, highlighting Atal Bihari Vajpayee's leadership, good governance, and nation-building legacy.
214. India's eight core infrastructure industries grew by 1.8% in November 2025, led by strong performance in cement and steel.

215. IOL partners with Safran to manufacture advanced combat-proven defense systems in India, boosting Make-in-India and military readiness.
216. Indian Coast Guard inducted its first indigenous Pollution Control Vessel, Samudra Pratap, to strengthen marine environmental protection and maritime security.
217. President Droupadi Murmu conferred the Rashtriya Vigyan Puraskar 2025, honouring 24 scientists across four categories, with Vigyan Ratna awarded posthumously to Jayant Vishnu Narlikar.
218. ISRO launched the BlueBird Block-2 satellite on December 24, 2025, providing direct smartphone broadband connectivity and boosting global communication.
219. Indian Railways has deployed AI-based cameras and Distributed Acoustic Systems to detect wildlife near tracks and prevent train collisions in forest and elephant corridor regions.
220. National Consumer Day is observed on 24 December to promote consumer rights and mark the enactment of the Consumer Protection Act, 1986.
221. A recent study reveals that major floods buried the Keezhadi settlement in Tamil Nadu about 1,155 years ago, offering insights into ancient urban life, climate variability, and river dynamics.
222. Prime Minister Narendra Modi inaugurated the Rashtra Prerna Sthal in Lucknow to honour Atal Bihari Vajpayee and other nationalist leaders.
223. President Droupadi Murmu released the Constitution of India in Santhali, written in Ol Chiki script, to promote linguistic inclusion and tribal empowerment.
224. Dr Jitendra Singh inaugurated the National Workshop on Good Governance 2025 in Delhi, launching key initiatives under DoPT to strengthen citizen-centric, transparent, and future-ready governance.
225. Kuwait signs a $4.1 billion deal with China to complete the Mubarak Al-Kabeer Port on Boubyan Island, enhancing trade connectivity and diversifying its oil-dependent economy.
226. The first Khelo India Tribal Games 2026 in Chhattisgarh, featuring mascot ‘Morveer’, aims to identify and nurture tribal sporting talent while promoting inclusive sports development.
227. India’s Anti-Terror Conference 2025, organised by the NIA, will be inaugurated by Union Home Minister Amit Shah on 26 December in New Delhi to strengthen India’s counter-terror framework through a Whole of Government approach.
228. Gujarat leads India in rooftop solar energy with 1,879 MW capacity under the PM Surya Ghar scheme.
229. Veer Bal Diwas, observed on 26 December, honors the courage and sacrifice of Guru Gobind Singh Ji’s younger sons, Sahibzada Zorawar Singh and Fateh Singh.

230. A caste panchayat in Rajasthan's Jalore district banned smartphone use by married women of a section of the Jat community.
231. Thanjavur painting of Lord Ram, a classical art form from Tamil Nadu with GI tag, was transported from Bengaluru to Ayodhya, showcasing India's rich cultural heritage.
232. India's maternal mortality ratio drops to 97 per 1,00,000 live births as institutional deliveries rise to 89%.
233. Union Minister Manohar Lal inaugurated the second 250 MW unit of the Subansiri Lower Hydroelectric Project, boosting India's clean energy capacity and supporting North-East growth.
234. India witnesses record growth in IPR filings, led by trademarks and patents, reflecting a shift towards self-reliance in innovation.
235. RBI's Handbook of Statistics 2024–25 highlights that India's export growth is increasingly concentrated in a few developed coastal and industrial States, raising concerns over regional imbalance.
236. NTH and India Post signed an MoU to enable nationwide doorstep sample collection and faster, reliable testing through NTH laboratories.
237. MYAS launched a Comprehensive Internship Policy offering 452 annual internships to build a skilled, future-ready sports workforce in India.
238. DRDO successfully tests Akash-NG missile, enhancing India's air defence capabilities.
239. Jnanpith Award-winning Hindi writer Vinod Kumar Shukla, the first recipient from Chhattisgarh, passed away at the age of 88 in December 2025.
240. IIT Delhi has developed AILA, India's first autonomous agentic AI lab assistant capable of independently conducting real-world scientific experiments.
241. Supreme Court stays the operation of a Delhi High Court order which had suspended the life sentence awarded to Kuldeep Singh Sengar, a former MLA of the Bharatiya Janta Party, in the Unnao rape case
242. India's first medical colleges under the PPP model have been launched in Dhar and Betul districts of Madhya Pradesh.
243. The Delhi government launched Atal Canteens to provide nutritious meals at just ₹5 for workers and vulnerable groups across the capital.
244. Jayshree Ullal, CEO of Arista Networks, became the richest Indian-origin professional manager globally with a net worth of ₹50,170 crore in 2025.
245. Vice-President C. P. Radhakrishnan released the book "Economic Empowerment of Bharat in the Modi Era" highlighting India's economic transformation over the last decade.
246. India approved a ₹7,000 crore scheme to promote domestic manufacturing of sintered rare earth permanent magnets and reduce import dependence.

247. Two-time Olympic medallist P. V. Sindhu has been elected Chair of the BWF Athletes' Commission for 2026–2029, representing players globally.
248. 14-year-old cricket prodigy Vaibhav Suryavanshi received the PM Rashtriya Bal Puraskar for record-breaking achievements in domestic, Under-19, and IPL cricket.
249. China launched "Just Mission 2025," a large-scale military exercise around Taiwan, prompting the island to deploy its forces in response.
250. Rajasthan launched e-Swasthya Samvad, a digital platform to enhance transparency, coordination, and accountability in medical education.
251. After over 30 years, Gujarat has re-entered India's tiger map with NTCA confirming a settled tiger in Ratanmahal Wildlife Sanctuary.
252. China inaugurated the 22.13 km Tianshan Shengli Tunnel in Xinjiang, the world's longest expressway tunnel, reducing travel time across the Tianshan Mountains from seven hours to 20 minutes.
253. Israel became the first country to officially recognize Somaliland as an independent and sovereign state.
254. India ranks third globally in rare earth reserves but contributes less than 1% to global production due to regulatory and processing challenges.
255. India became the world's fourth-largest economy in 2025, overtaking Japan with a nominal GDP of $4.18 trillion.
256. R Praggnanandhaa and Anish Giri led Alpine SG Pipers to their first GCL 2025 title, defeating the defending champions Triveni Continental Kings.
257. Surya Charishma Tamiri won the Women's Singles title at the 87th Senior National Badminton Championships held in Vijayawada.
258. DRDO successfully tested India's Pinaka Long Range Guided Rocket (LRGR-120) with a 120 km range, demonstrating precision and operational reliability.
259. President Droupadi Murmu became the second Indian President to undertake an operational submarine sortie aboard INS Vaghsheer.
260. Khaleda Zia, Bangladesh's first female Prime Minister and longtime BNP leader, passed away at the age of 80.
261. Delhi government will soon launch the Intelligent Grievance Monitoring System (IGMS) with IIT Kanpur, integrating PGMS, LG Listening Post and CPGRAMS into a single AI-powered dashboard to speed up grievance redressal
262. Centre reviewing elevated NH 163 Corridor through Eturnagaram Sanctuary
263. DRDO conducts user trials of Pralay Short-Range Ballistic Missile off Odisha coast