V.D. BHANOT

v.

SAVITA BHANOT

(Special Leave Petition (Crl.) No. 3916 of 2010)

FEBRUARY 7, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

PROTECTION OF WOMEN FROM DOMESTICE VIOLENCE ACT, 2005:

ss. 3,12,18,19,20,31 and 33 - Domestic violence - Complaint by wife - Held: Looking into a complaint u/s 12, the conduct of the parties even prior to the coming into force of the Act, could be taken into consideration while passing an order u/ss 18, 19 and 20 thereof - High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the Act, - On facts, the couple has no children - The wife is residing with her old parents - After more than 31 years of marriage, the wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for the sum which the husband was directed by the Magistrate to give to her each month - The situation comes squarely within the ambit of s. 3 of the Act, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the order of High Court - However, considering the fact that the couple is childless and the wife has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, and keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High

Court modified and it is directed that the wife be provided with a right of residence where the husband is residing, by way of relief u/s 19 of the Act - Protection orders u/s 18 are also passed - It is further directed that in addition to providing the residential accommodation to the wife, the husband shall also pay a total sum of Rs.10,000/- per month to her towards her maintenance and day-to-day expenses.

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) No. 3916 of 2010.

From the Judgment & Order dated 22.3.2010 of the High Court of Delhi in CRMC No. 3959 of 2009.

Jitendra Mohan Sharma, Anjali Bhargva, Sandeep Singh for the Petitioner.

Anil Kumar Bakshi, Dr. Sushil Balwada, Rakesh Kumar, Rajeshwar Tyagi, Ashok Kumar Shukle for the Respondent.

The Order of the Court was delivered by

O R D E R

ALTAMAS KABIR, J. 1. The Special Leave Petition is directed against the judgment and order dated 22nd March, 2010, passed by the Delhi High Court in Cr.M.C.No.3959 of 2009 filed by the Respondent wife, Mrs. Savita Bhanot, questioning the order passed by the learned Additional Sessions Judge on 18th September, 2009, dismissing the appeal filed by her against the order of the Metropolitan Magistrate dated 11th May, 2009.

2. There is no dispute that marriage between the parties was solemnized on 23rd August, 1980 and till 4th July, 2005, they lived together. Thereafter, for whatever reason, there were misunderstandings between the parties, as a result whereof, on 29th November, 2006, the Respondent filed a petition before the Magistrate under Section 12 of the Protection of

Women from Domestic Violence Act, 2005, hereinafter referred to as the "PWD Act", seeking various reliefs. By his order dated 8th December, 2006, the learned Magistrate granted interim relief to the Respondent and directed the Petitioner to pay her a sum of Rs.6,000/- per month. By a subsequent order dated 17th February, 2007, the Magistrate passed a protection/ residence order under Sections 18 and 19 of the above Act, protecting the right of the Respondent wife to reside in her matrimonial home in Mathura. The said order was challenged before the Delhi High Court, but such challenge was rejected.

3. In the meantime, the Petitioner, who was a member of the Armed Forces, retired from service on 6th December, 2007, and on 26th February, 2008, he filed an application for the Respondent's eviction from the Government accommodation in Mathura Cantonment. The learned Magistrate directed the Petitioner herein to find an alternative accommodation for the Respondent who had in the meantime received an eviction notice requiring her to vacate the official accommodation occupied by her. By an order dated 11th May, 2009, the learned Magistrate directed the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, which she claimed to be her permanent matrimonial home. The learned Magistrate directed that if this was not possible, a reasonable accommodation in the vicinity of Nirman Vihar was to be made available to the Respondent wife. She further directed that if the second option was also not possible, the Petitioner would be required to pay a sum of Rs.10,000/- per month to the Respondent as rental charges, so that she could find a house of her choice.

4. Being dissatisfied with the order passed by the learned Metropolitan Magistrate, the Respondent preferred an appeal, which came to be dismissed on 18th September, 2009, by the learned Additional Sessions Judge, who was of the view that since the Respondent had left the matrimonial home on 4th July, 2005, and the Act came into force on 26th October, 2006, the

claim of a woman living in domestic relationship or living together prior to 26th October, 2006, was not maintainable. The learned Additional Sessions Judge was of the view that since the cause of action arose prior to coming into force of the PWD Act, the Court could not adjudicate upon the merits of the Respondent's case.

5. Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-à-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The learned Judge, accordingly, set aside the order passed by the Additional Sessions Judge and directed him to consider the appeal filed by the Respondent wife on merits.

6. As indicated hereinbefore, the Special Leave Petition is directed against the said order dated 22nd March, 2010,

passed by the Delhi High Court and the findings contained therein.

7. During the pendency of the Special Leave Petition, on 15th September, 2011, the Petitioner appearing in-person submitted that the disputes between him and the Respondent had been resolved and the parties had decided to file an application for withdrawal of the Special Leave Petition. The matter was, thereafter, referred to the Supreme Court Mediation Centre and during the mediation, a mutual settlement signed by both the parties was prepared so that the same could be filed in the Court for appropriate orders to be passed thereupon. However, despite the said settlement, which was mutually arrived at by the parties, on 17th January, 2011, when the matter was listed for orders to be passed on the settlement arrived at between the parties, an application filed by the Petitioner was brought to the notice of the Court praying that the settlement arrived at between the parties be annulled. Thereafter, the matter was listed in-camera in Chambers and we had occasion to interact with the parties in order to ascertain the reason for change of heart. We found that while the wife was wanting to rejoin her husband's company, the husband was reluctant to accept the same. For reasons best known to the Petitioner, he insisted that the mutual settlement be annulled as he was not prepared to take back the Respondent to live with him.

8. The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

9. On facts it may be noticed that the couple has no children. Incidentally, the Respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the Petitioner at Mathura, being his official residence, while in service. After more than 31 years of marriage, the Respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs.6,000/- which the Petitioner was directed by the Magistrate by order dated 8th December, 2006, to give to the Respondent each month. By a subsequent order dated 17th February, 2007, the Magistrate also passed a protection-cum-residence order under Sections 18 and 19 of the PWD Act, protecting the rights of the Respondent wife to reside in her matrimonial home in Mathura. Thereafter, on the Petitioner's retirement from service, the Respondent was compelled to vacate the accommodation in Mathura and a direction was given by the Magistrate to the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, and if that was not possible, to provide a sum of Rs.10,000/- per month to the Respondent towards rental charges for acquiring an accommodation of her choice.

10. In our view, the situation comes squarely within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court. However, considering the fact that the couple is childless and the Respondent has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, we are of the view that keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High Court requires to be modified. We, therefore, modify the order passed by the High Court and direct that the Respondent be provided with a

right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof. As far as any monetary relief is concerned, the same has already been provided by the learned Magistrate and in terms of the said order, the Respondent is receiving a sum of Rs.6,000/- per month towards her expenses.

11. Accordingly, in terms of Section 19 of the PWD Act, 2005, we direct the Petitioner to provide a suitable portion of his residence to the Respondent for her residence, together with all necessary amenities to make such residential premises properly habitable for the Respondent, within 29th February, 2012. The said portion of the premises will be properly furnished according to the choice of the Respondent to enable her to live in dignity in the shared household. Consequently, the sum of Rs.10,000/- directed to be paid to the Respondent for obtaining alternative accommodation in the event the Petitioner was reluctant to live in the same house with the Respondent, shall stand reduced from Rs.10,000/- to Rs.4,000/-, which will be paid to the Respondent in addition to the sum of Rs.6,000/- directed to be paid to her towards her maintenance. In other words, in addition to providing the residential accommodation to the Respondent, the Petitioner shall also pay a total sum of Rs.10,000/- per month to the Respondent towards her maintenance and day-to-day expenses.

12. In the event, the aforesaid arrangement does not work, the parties will be at liberty to apply to this Court for further directions and orders. The Special Leave Petition is disposed of accordingly.

13. There shall, however, be no order as to costs.

R.P. Special Leave Petition disposed of.

MANINDERJIT SINGH BITTA

v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 510 of 2005)

FEBRUARY 7, 2012

[S.H. KAPADIA, CJI, A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

MOTOR VEHICLES ACT, 1988:

ss. 41(6) and 109(3) - High Security Registration Plates (HSRP) Scheme - Implementation of - Held: Installation of HSRP is a statutory command which is not only in the interest of the security of State, but also serves a much larger public interest - Therefore, it is not only desirable, but mandatory, for every State Government and Union Territory to comply with the statutory provisions/orders of Supreme Court in terms of Art. 129 of the Constitution of India - All State Governments and Union Territories, therefore, are mandated to fully implement the scheme of fixation of HSRP in their entire territories, positively within the time specified - The orders of the Court are expected to be implemented without default and with a sense of urgency - Further, directions issued as regards costs for non-compliance with the orders of the Court - As regards unwarranted conduct and wilful disobedience of orders of the Court by the State concerned, notice to issue as directed in the judgment - Constitution of India, 1950 - Art. 129 - Contempt of Court - Motor Vehicles Rules, 1989 - r.5 - Costs.

In the case of *Association of Registration Plates*[1] **the challenge made to the provisions of the Motor Vehicles Rules, 1989 the statutory order of the Central Government and the terms and conditions of the tender process with**

1. 2004 (6) Suppl. SCR 496 = 2005 (1) SCC 679.

respect to implementation of the High Security Registration Plates (HSRP) Scheme was rejected by the Supreme Court. The Court also issued certain directions for appropriate implementation of the Scheme. However, persistent default and non-compliance by different State Governments and Union territories with regard to implementation of the scheme and the orders passed by the Supreme Court resulted in filing of the instant writ petition. The Court passed orders on 30.8.2011, 13.10.2011 and 8.12.2011, directing the defaulter State Governments and Union territories to implement HSRP Scheme within the specific time frame and file affidavits and undertakings. Non-Compliance of the said orders led to filing of contempt petitions and IAs. Despite specific orders of the Court, some of the State Governments and Union Territories failed to file the requisite affidavits and undertakings.

Disposing of Writ Petition No. 510 of 2005, IAs and Contempt Petitions filed therein, and remitting the other matters back, the Court

HELD: 1.1 Installation of HSRP is a statutory command which is not only in the interest of the security of State, but also serves a much larger public interest. Therefore, it is not only desirable, but mandatory, for every State to comply with the statutory provisions/ orders of this Court in terms of Art. 129 of the Constitution of India, 1950. All states, therefore, are mandated to fully implement the scheme of fixation of HSRP in their entire State, positively within the time specified by 30.4.2012 in relation to new vehicles, and 15.6.2012 for old vehicles. [para 11(c)] [885-H; 886-A-C]

1.2 The States of Himachal Pradesh, Manipur, Mizoram, Nagaland, Sikkim, Uttarakhand and Union Territory of Andaman & Nicobar Islands have, by and large, implemented the scheme and have commenced the

program for fixation of HSRPs in their respective States. The Court appreciates the effort put by these states and would direct that they should complete the entire program in all respects before 30-4-2012. [para 10] [885-B-C]

1.3 It is emphasized that the Court's time is spent on these cases, that too, at the cost of regular cases pending before it. The orders of the Court are expected to be implemented without default and with a sense of urgency. In the interest of justice and by way of last opportunity, the period for filing of the affidavits and/or undertakings is extended by two weeks, subject to payment of Rs. 10,000/- as costs by each State concerned. Costs for non-compliance with the directions of this Court, shall be paid by the State Governments at the first instance. The Court is of the considered view that the instant cases are not such where the Court should permit the public exchequer to be burdened by payment of costs. In fact, the costs paid should be recovered from erring or defaulting officers/officials. [para 9 and 18] [884-F-H; 885-A; 888-D-E]

1.4 The directions contained in the earlier judgments of this Court and more particularly, the orders dated 30.8.2011, 13.10.2011, 8.12.2011, and the instant order should be implemented within the extended period without default. In the event of default, the Secretary (Transport)/ Commissioner, State Transport Authority and/or any other person or authority responsible for such default shall be liable to be proceeded against under the provisions of the Contempt of Courts Act, 1971. [para 11(d) and (e)] [886-D-E]

2. The Court notices the unwarranted conduct and wilful disobedience of the orders of this Court by the State of Andhra Pradesh. This State was found to be a defaulter even in the earlier orders passed by this Court.

Despite specific directions contained in the order dated 30.8.2011, the affidavits filed on behalf of the said State do not even remotely suggest that any steps have been taken by the State for implementing the scheme of HSRP in compliance with the directions issued by this Court. The conduct and behaviour of the State administration has undermined the authority of this Court as well as the dignity of justice. Consequently, notice be issued to the Principal Secretary (Transport, Roads and Building Department), Andhra Pradesh and the Transport Commissioner, State of Andhra Pradesh to show cause, why they be not punished in accordance with the provisions of the Contempt of Courts Act for violating the orders of this Court. [para 13-15] [886-H; 887-F-G]

3. All the files that had been summoned by this Court for ensuring the complete implementation of the scheme shall revert back to the respective courts for their disposal in accordance with law. The High Courts concerned would deal with such matters on priority keeping in view the directions and orders of this Court. [para 21] [889-B-C]

Association of Registration Plates v. Union of India **(2004) 5 SCC 364;** *Association of Registration Plates v. Union of India* **2004 (6) Suppl. SCR 496 = (2005) 1 SCC 679; and** *Maninderjit Singh Bitta v. Union of India* **(2008) 7 SCC 328 - referred to.**

Case Law Reference:

(2004) 5 SCC 364	**referred to**	**para 2**
2004 (6) Suppl. SCR 496	**referred to**	**para 2**
(2008) 7 SCC 328	**referred to**	**para 3**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 510 of 2005.

WITH

SLP (C) Nos. 24497, 13485 of 13630-13631 2011 & 1894-1897 of 2012

AND

Writ Petition (C) No. 162 of 2010.

A. Mariarputham AG, Ashok H. Desai, Mukul Rohatgi, Harish N. Salve, Bhaskar Raj Pradhanm, Uday U. Lalit, T.S. Doabia, Brijender Chahar, R. Sundaravardhan, K.T.S. Tulsi, C.S. Rajan, P.N. Misram AAG. V. Madhukar, Manjit Singh, Dr. Manish Singhvi, Pradhuman Gohil, Vikash Singh, S. Hari Haran, Taruna Singh, Ajay Bansal, Charu Mathur, Arunabh Chowdhury, Anupam Lal Das, Gainilung Panmei, Raktim Gogoi, Vaibhav Tomar, Parthiv Goswami, Vikas Singh, S Hari Haran, Sunil Fernandes, S. Wasim A. Qadri, Gunwant Dara, Zaid Ali, Manpreet Singh Doabia, A. Deb Kumar, Anil Katiyar, B. Krishna Prasad, Sunita Sharma, S.S. Rawat, Rohitash S. Nagar, D.S. Mahra, Aruna Mathur, Yusuf Khan, Arputham, Aruna & Co., Preetesh Kapur, Hematika Wahi, V.G. Pragasam, S. Prabu Ramasubramanian, S.J. Aristotle, Vanita C. Giri, Krishnanand Pandeya, Sanjay R. Hegde, Radha Shyam Jena, Aruneshwar Gupta, Ranjan Mukherjee, S. Bowmick, S.C. Ghosh, R.P. Yadav, B.S. Banthia, Pradeep Purohit, Anip Sachethey, Mohit Paul, Shagun Matta, Avijit Bhattacharjee, K.N. Madhusoodhanan, R. Sathish, Gopal Singh, Rudreshwar SIngh, Rituraj Biswas, Rajesh Srivastava, Asha G. Nair, Anitha Bafna, Ramesh Babu M.R., B.V. Balaram Das, D. Bharathi Reddy, Kamini Jaiswal, Arun K. Sinha, Vikas Mehta, T.V. George, Anitha Shenoy, A. Subhashini, Khwairakpam Nobin Singh, Sapam Biswajit Metei, Ratan Kumar Choudhuri, Bharmajeet Mishra, Navnit Kumar, Vartika Sahay (for Corporate Law Group), Priyanka Agarwal, Zaid Ali, Kuber Boddh, Jatinder Kumar Bhatia, Anil Srivastav, Rituraj Biswas, Sudhir Walia, Jatinder Kumar Bhatia, Bina Madhavan, G. Prakash, R.K. Gupta, Rajeev Dubey, Kamlendra Mishra, S. Prasad, Shweta Majumdar, Atul Jha, Sandeep Jha, D.K. Sinha, Manmeet

Arora, Kuldip Singh, Tarjit Singh, Kamal Mohan Gupta, K. Enatoli Sema, Amit Kumar Singh, Edward Belho, Nimshim Vashum, Lhusisato Iralu, Balaji Srinivasan, D.K. Devesh, Irshad Ahmad, Asutosh Singh, Milind umar, T. Harish Kumar, P. Prasanth, G.N. Reddy, C. Kannan, Ravi Shankar, S. Chandra Shekhar, Manoj Kumar, Krishanu Adhikary, Astha Sharma, Naresh Bakshi, Rachna Gupta, Himinder Lal, Abhijit Sengupta, Rachana Srivastava, D.P. Singh, Shuchita Srivastava, Sonam Gupta, VInay Arora, Sanjay Jain, Suresh Chandra Tripathy, Jagjit Singh Chhabra for the appearing parties.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. The Government of India, on 28th March, 2001, issued a notification under the provisions of Section 41(6) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 50 of the Motor Vehicles Rules, 1989 (for short, 'the Rules') for implementation of the provisions of the Act. This notification sought to introduce a new scheme regulating issuance and fixation of High Security Number Plates. In terms of sub-section (3) of Section 109 of the Act, the Central Government issued an order dated 22nd August, 2001 which dealt with various facets of manufacture, supply and fixation of new High Security Registration Plates (hereinafter, 'HSRP'). The Central Government also issued a notification dated 16th October, 2001 for further implementation of the said order and the HSRP scheme. Various States had invited tenders in order to implement this scheme.

2. A writ petition being Writ Petition (C) No.41 of 2003 was filed in this Court challenging the Central Government's power to issue such notification as well as the terms and conditions of the tender process. In addition to the above writ petition before this Court, various other writ petitions were filed in different High Courts raising the same challenge. These writ petitions came to be transferred to this Court. All the transferred cases along with Writ Petition (C) No. 41 of 2003 were referred to a larger Bench of three Judges of this Court, by order of reference dated 26th May, 2005 in the case of *Association of*

Registration Plates v. Union of India [(2004) 5 SCC 364], as there was a difference of opinion between the learned Members of the Bench dealing with the case. The three Judge Bench finally disposed of the writ petitions vide its order dated 30th November, 2004 reported in *Association of Registration Plates v. Union of India* [(2005) 1 SCC 679]. While dismissing the writ petition and the connected matters, this Court rejected the challenge made to the provisions of the Rules, statutory order issued by the Central Government and the tender conditions and also issued certain directions for appropriate implementation of the scheme.

3. The matter did not rest there. Persistent default and non-compliance by the different States with regard to the statutory Rules, implementation of the schemes as well as the orders passed by this Court resulted in filing of the present writ petition being Writ Petition (C) No.510 of 2005. This writ petition also came to be disposed of by a three Judge Bench of this Court vide its judgment dated 8th May, 2008 titled as *Maninderjit Singh Bitta v. Union of India* [(2008) 7 SCC 328]. It will be appropriate to refer to the operative part of the said judgment:

> "5. Grievance of the petitioner and the intervener i.e. All India Motor Vehicles Security Association is that subsequent to the judgment the scheme of HSRP is yet not implemented in any State except the State of Meghalaya and other States are still repeating the processing of the tender. The prayer therefore is that the purpose of introducing the scheme should be fulfilled (sic-in) letter and spirit. The objective being public safety and security there should not be any lethargy. It is pointed out that most of the States floated the tenders and thereafter without any reason the process has been slowed down…
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> 9. Needless to say the scheme appears to have been introduced keeping in view the public safety and security of the citizens. Let necessary decisions be taken, if not

already taken, within a period of six months from today. While taking the decision the aspects highlighted by this Court in the earlier decision needless to say shall be kept in view."

4. Despite the above judgment of this Court, most of the States have failed to implement the scheme and the directions contained in the judgments of this Court. The matter remained pending before this Court for a considerable time and various orders passed by this Court directing implementation of the scheme were not complied with. On 7th April, 2011, by a detailed order, we had taken note of the intervening events and the fact that a large number of States had not even implemented the scheme and the directions contained in the judgments of this Court. Before invoking the extraordinary jurisdiction of this Court for initiation of contempt proceedings against the concerned authorities of the respective defaulting States, this Court considered it necessary to only require the presence of officers in Court and provided them with another opportunity to ensure compliance of the directions issued by this Court. Despite assurance of an effective implementation of the Court's orders, nothing substantial was done within the time of six weeks, granted by this Court vide its Order dated 7th April, 2011. Certain Interim Applications (I.A.s) were filed by some of the States for extension of time and in view of the assurance given in court, this Court had also dispensed with the personal appearance of the senior officers of those State Governments. However, with some regret, we noticed that still a few states had not complied with the directions of this Court and the casual attitude of the State Government of these States was obvious from their very conduct, inside and outside the Court. This attitude compelled us to pass a very detailed Order on 30th August, 2011, classifying the States into different categories. The first category of the States had taken steps and even awarded the contract for supplying HSRP. The second category was of the States/U.T.s which had not followed the correct procedure for selection and had approved all private vendors,

with 'Type Approval Certificate' (TAC) from the Central Government, to affix the 'HSRP' at their own premises or at the Office of the RTO. The third category was of the defaulting States who had filed affidavits, assuring the Court of taking steps and finalising the tender allotment within the specified dates. On the basis of the affidavits filed by them, they were granted further time and were required to file affidavits of compliance. The last category was of the States which had been persisting with the default and had not taken any effective steps to comply with the directions of this Court. Thus, vide Order dated 30th August 2011 we had passed the following directions in relation to this category :

"9. From the record before us, it is clear that there is apparent and intentional default on the part of the concerned officers of these defaulting States. Consequently, we issue notice to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated, if found guilty, why they be not punished in accordance with law and why exemplary costs, personally recoverable from the erring officers/officials, be not imposed. Notice shall be issued to:

Secretary (Transport) of the defaulting States.

b. Commissioner, State Transport Authority of the respective States."

5. Despite the above orders, a number of States failed to comply with the Court's directions as well as implement the provisions of the Act. In these circumstances, the Court was satisfied that there being willful violation of the orders of the Court, the default tantamount to contempt of Court.

6. Vide order dated 13th October, 2011, the Court while dealing with I.A. No. 10 of 2011, besides issuing certain directions, also punished the officers of the defaulting State by imposing a fine of Rs. 2,000/- each and even imposed

exemplary cost of Rs. 50,000/- on the State of Haryana, since it had failed to take any steps in furtherance to the previous order. The matter remained pending, the States were directed to invite tenders and sign agreements with the successful bidders in accordance with the Rules and to complete the work of affixation of HSRP in their entire State/Union Territory. Thereafter, this Court again passed a very detailed order dealing with the circumstance of each State on 8th December, 2011. All these orders, i.e., the Orders dated 30th August, 2011, 13th October, 2011 and 8th December, 2011 should be read as integral part of this final order.

7. In the Order dated 8th December, 2011, we had directed the States to file affidavits of compliance and undertakings that the implementation of the scheme and the provisions of the Act, read in conjunction with the orders of this Court, shall be completed within the specified timeframe. The undertakings were to be filed within four weeks from 25th November, 2011. Another significant direction contained in that order was that all the States, except some of the States, i.e., States of Assam, Chhattisgarh, Haryana, Jharkhand, Madhya Pradesh, Orissa, Punjab, Uttarakhand and Union Territory of Lakshadweep, should complete the implementation of the scheme by 31st March, 2012. States of Himachal Pradesh and Nagaland were granted further time for completing the implementation of the scheme in relation to old vehicles only upto 15th June, 2012.

8. Despite specific orders of the Court, the States of Arunachal Pradesh, Meghalaya, Chhattisgarh, Orissa, Tamil Nadu, West Bengal and Union Territory of Lakshadweep have failed to file the requisite affidavits and undertakings within the time granted. The learned counsel for some of these states justified the non-filing of the affidavit on different grounds like that the Registry of the Court was closed for winter vacations on the date when the period of four weeks for filing affidavit expired. This is factually incorrect inasmuch as the period of

four weeks would expire on 24th December, 2011 as per our order dated 8th December, 2011. Though the Supreme Court closed for winter vacation on 18th December, 2011, the Registry was opened till 25th December, 2011. Therefore, nothing prevented these States/Union Territories from filing affidavits/undertakings within the stipulated time i.e. 24th December, 2011. Secondly, the process of tenders had not been finalized by the States for one reason or the other and, therefore, they considered it unnecessary to file affidavits required by the Court's Order. We find these excuses without any substance. It was known to everybody as to when the Court was going to close and the affidavits could have been filed well in advance to 24th December, 2011. Even if the affidavits were not accepted on the re-opening of the Court after vacations, the counsel should have mentioned the matter before the Court, which was not done. The affidavits were to be filed stating what steps have been taken by the respective States and undertaking was to be given for compliance with the orders of the Court for implementation within the stipulated time. Both these steps were not dependant upon the completion of the tender process or other difficulties. The parties could have nevertheless filed applications, which, admittedly was not done. Therefore, we find that all these States have acted irresponsibly and with callousness.

9. It should be clearly understood by the hierarchy of the State as well as the learned counsel appearing for the respective States that the Court's time is spent on these cases, that too, at the cost of regular cases pending in the Court. The orders of the Court are expected to be implemented by the officers of the Government and the learned counsel appearing for the parties without default and with a sense of urgency. Though, we find no reason to grant further time to these states as no justifiable ground has been stated before us, however, in the interest of justice and by way of last opportunity, we extend the period for filing of such affidavits and/or undertakings by two weeks from today, on pronouncement of this order. It

shall be subject to payment of Rs. 10,000/- as costs by each State to the Supreme Court Legal Services Committee, costs being conditional.

10. There are States which have, by and large, implemented the scheme and have commenced the program for fixation of HSRPs in their respective States. These States are Himachal Pradesh, Manipur, Mizoram, Nagaland, Sikkim, Uttarakhand and Union Territory of Andaman & Nicobar Islands. We appreciate the effort put by these states and would direct that they should complete the entire program in all respects before 30th April, 2012 in their respective States.

11. In furtherance to our order dated 8th December, 2011, learned Registrar, Judicial-II, has submitted his Report pointing out that some of the states have not filed affidavits/undertakings. They have not taken effective steps for implementation of the scheme, in discharge of their statutory obligation and in compliance with the orders of the Court as well. Having perused the Report of the Registrar and the affidavits filed on behalf of different states, we issue the following directions:-

(a) All States which have invited tenders, have completed the process of finalizing the successful bidder and issued the Letter of Intent, but have not yet signed agreements with the successful bidder, shall sign such agreements within four weeks from today. These States are Assam, Bihar, Gujarat, Haryana, Jammu and Kashmir, Jharkhand, Punjab, Tripura and Uttar Pradesh.

(b) The States which have so far not even finalized the tender process, they should do so, again, within four weeks from today. Amongst others these States and Union Territories are Chhattisgarh, Madhya Pradesh, Chandigarh, Delhi (NCT) and Puducherry.

(c) Installation of HSRP is a statutory command which

is not only in the interest of the security of State, but also serves a much larger public interest. Therefore, it is not only desirable, but mandatory, for every State to comply with the statutory provisions/orders of this Court in terms of Article 129 of the Constitution of India, 1950. All states, therefore, are mandated to fully implement the scheme of fixation of HSRP in their entire state, positively by 30th April, 2012, in relation to new vehicles and 15th June, 2012 for old vehicles. We make it clear that they shall not be allowed any further extension of time for implementation of this direction.

(d) The directions contained in the earlier judgments of this Court and more particularly, the orders dated 30th August, 2011, 13th October, 2011, 8th December, 2011 and this order, should be implemented within the extended period without default.

(e) In the event of default, concerned Secretary (Transport)/Commissioner, State Transport Authority and/or any other person or authority responsible for such default shall be liable to be proceeded against under the provisions of the Contempt of Courts Act, 1971.

12. We grant liberty to the petitioner and/or any other person to take out contempt proceedings, if now there is any non-compliance of the orders of this Court and the statutory duty imposed upon the authorities concerned with regard to implementation and completion of the scheme and process of fixation of HSRP, in any State/Union Territory.

13. We cannot help but to notice the unwarranted conduct and willful disobedience of the orders of this Court by the State of Andhra Pradesh. This State was found to be a defaulter even in the earlier orders passed by this Court. In furtherance to our

order dated 8th December, 2011, an affidavit on behalf of the State was filed on 2nd January, 2012, in this Court. This affidavit has been filed by the Secretary (Transport), Government of Andhra Pradesh. This State had not even initiated any action or process to implement the scheme, as directed under the orders of this Court. To shirk its responsibility, it has been stated in this affidavit that after passing of the order of this Court dated 8th December, 2011, the Government of Andhra Pradesh reviewed the issue and issued an amendment to its original Government Order dated 8th March, 2011. Vide its Government Order dated 24th December, 2011, the Government entrusted the work of implementation of the HSRP in the State of Andhra Pradesh to the Andhra Pradesh State Road Transport Corporation. Strangely, the affidavit further claims that the scheme of HSRP is being implemented according to the direction issued by this Court. Still another affidavit was filed by the Transport Commissioner of the State of Andhra Pradesh on identical lines.

14. These affidavits or even the affidavits filed earlier on behalf of the State of Andhra Pradesh do not even remotely suggest that any steps had been taken by the State for implementing the scheme of HSRP in compliance with the directions issued by this Court. We are unable to appreciate this attitude of the State administration, with which they have persisted, despite specific directions contained in the Order dated 30th August, 2011 and even in the earlier orders passed by this Court. Their conduct and behaviour has undermined the authority of this Court as well as the dignity of justice.

15. Consequently, we issue notice to show cause to Smt. D.Lakshmi Parthasarathy, Principal Secretary (Transport, Roads and Building Department), Andhra Pradesh and Shri Hiralal Samaria, Transport Commissioner, State of Andhra Pradesh to show cause, why they be not punished in accordance with the provisions of the Contempt of Courts Act for violating the orders of this Court.

16. The Registry shall maintain a separate file for the

contempt proceedings initiated against these defaulting officers of Andhra Pradesh.

17. The State of West Bengal filed its affidavit (dated 12th May, 2011) of partial implementation in two districts only, on 24th May, 2011. Thereafter, no affidavit has been filed on behalf of this State. Despite orders of the Court dated 30th August, 2011, 13th September, 2011, 8th December, 2011 and this order, they have failed to file affidavit placing correct facts in regard to the further implementation of the scheme before this Court. In these circumstances and by way of last opportunity, we permit the Secretary (Transport)/ Commissioner, State Transport Authority, West Bengal to file their respective affidavits within two weeks from today subject to payment of Rs.10,000/- as costs.

18. Wherever we have imposed costs for non-compliance with the directions of this Court, the same shall be paid by the State Governments at the first instance. We are of the considered view that the present cases are not the ones where the Court should permit the public exchequer to be burdened by payment of costs. In fact, the costs paid should be recovered from erring or defaulting officers/officials.

19. The State of Arunachal Pradesh is again a State which has neither filed undertaking nor affidavit in terms of the orders of this Court. The learned counsel appearing for the State, however, submitted that they have already started the process and would be able to complete the implementation of the scheme within three months. According to the learned counsel, their predicament was that the successful tenderers had refused to deposit the requisite security amount as contemplated under the terms and conditions of the contract. Be that as it may, we have already granted extension of time, and we therefore, direct the State of Arunachal Pradesh now to implement the orders of this Court without fail within the time granted and subject to payment of Rs. 10,000/- as costs.

20. We make it clear that this order shall dispose of the

writ petition.

21. All the files that had been summoned by this Court for ensuring the complete implementation of the scheme shall now revert back to the respective courts for their disposal in accordance with law. Some of the learned counsel appearing for the parties before us had argued that because of certain directions passed by the Courts concerned in these ongoing cases, the concerned States may not be able to finally implement the scheme within the time bound schedule. We request the concerned High Courts to deal with such matters on priority keeping in view the afore-stated directions and orders. We further give liberty to the parties whose petitions are pending before this Court to make a mention before the concerned Bench for expeditious disposal. We have no doubt in our mind that such request of the petitioners would be examined on its own merits by the Hon'ble Judges in the larger interest of national security.

22. Since all aspects of this matter stand finally concluded vide our orders dated 30th August, 2011, 13th October, 2011 and 8th December, 2011 and ultimately by this Order, we see no reason to keep this petition pending on the Board of this Court.

23. Consequently, all I.As., contempt petitions in Writ Petition No. 510 of 2005 and Writ Petition (Civil) No. 510 of 2005 stand finally disposed of with no order as to costs.

24. However, SLP(C) No. 24497 of 2011, SLP(C) No. 13485 of 2011, Writ Petition (Civil) No. 162 of 2010, SLP(C) Nos. 13630-13631 of 2011 and SLP(C) No. 1894-1897 of 2012 shall now revert back to their respective Courts.

25. Application for impleadment as respondent filed by Ms. Shimnit Utsch India Pvt. Ltd., one of the successful tenderers in the matter relating to State of Maharashtra stands dismissed in view of this final order.

R.P. Matters disposed of.

ABSAR ALAM @ AFSAR ALAM
v.
STATE OF BIHAR
(Criminal Appeal No. 1436 of 2010)

FEBRUARY 07, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Sentence/sentencing - Imposition of death sentence - Propriety of - Appellant accused his mother to have been the cause of his wife running away from house and out of anger, appellant cutting neck of his mother and severing her head, fled away with the head - Conviction of appellant u/ss. 302 and 201 IPC and imposition of death sentence by courts below - On appeal held: Appellant was an illiterate rustic and a cultivator residing in a village with virtually no control over his emotions - He over-reacted impulsively to the situation and severed neck of his mother - Thus, conviction of the appellant upheld but sentence of death converted to life imprisonment - Penal Code, 1860 - ss. 302 and 201.

The trial court convicted the appellant under Sections 302 and 201 IPC and imposed death sentence for killing his mother by cutting her neck and severing her head and thereafter fleeing from the house with the head of his mother leaving behind her body. The High Court upheld the conviction and confirmed the death sentence. Therefore, the appellant filed the instant appeal.

Partly allowing the appeal, the Court

HELD: It is found on reading the FIR lodged by the brother of the appellant on the morning of the date of the incident that the appellant's wife had run away to her maternal house three or four days before the incident and the appellant had been accusing his mother to have been

the cause of his wife running away from this house and out of anger and excitement the appellant severed the neck of his mother and fled with the head. The appellant was an illiterate rustic and was a cultivator residing in a village with virtually no control over his emotions and has over-reacted impulsively to the situation and has severed the neck of his mother. On these facts, the appellant is no doubt guilty of the offence under Section 302 IPC, and has to suffer the punishment of imprisonment for life normally awarded for the offence, but should not be condemned to death. The sentence of death is converted to one of life imprisonment for the offence under Section 302 IPC, committed by the appellant. [Paras 5, 8] [893-H; 894-A-C; 895-C]

Machhi Singh and others v. State of Punjab **(1983) 3 SCC 470: 1983 (3) SCR 413;** *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka* **(2008) 13 SCC 767: 2008 (11) SCR 93;** *Prajeet Kumar Singh v. State of Bihar* **(2008) 4 SCC 434: 2008 (5) SCR 969;** *Surja Ram v. State of Rajasthan* **1996 (6) Suppl. SCR 783;** *Atbir v. Government of NCT of Delhi* **(2010) 9 SCC 1: 2010 (9) SCR 993;** *Lehna v. State of Haryana* **(2002) 3 SCC 76: 2002 (1) SCR 377;** *Gyasuddin Khan alias Md. Gyasuddin Khan v. State of Bihar* **(2003) 12 SCC 516: 2003 (5) Suppl. SCR 367;** *Shamshul Kanwar v. State of U.P.* **(1995) 4 SCC 430: 1995 (3) SCR 1197;** *Om Prakash v. State of Haryana* **(1999) 3 SCC 19: 1999 (1) SCR 794 - referred to.**

Case Law Reference:

1983 (3) SCR 413	**Referred to**	**Para 2**
2008 (11) SCR 93	**Referred to**	**Para 3**
2008 (5) SCR 969	**Referred to**	**Para 4**
1996 (6) Suppl. SCR 783	**Referred to**	**Para 4**
2010 (9) SCR 993	**Referred to**	**Para 4**

2002 (1) SCR 377	**Referred to**	**Para 6,7**
2003 (5) Suppl. SCR 367	**Referred to**	**Para 7**
1995 (3) SCR 1197	**Referred to**	**Para 7**
1999 (1) SCR 794	**Referred to**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1436 of 2010.

From the Judgment & Order dated 16.7.2009 of the High Court of Judicature at Patna, Bihar in Death Reference No. 7 of 2008 with Criminal Appeal (D.B) No. 169 of 2008.

Ramesh Chandra Mishra, Dr. Meena Agarwal for the Appellant.

Gopal Singh, Chandan Kumar for the Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution of India against the judgment and order dated 16.07.2009 of the Patna High Court in Death Reference No. 7 of 2008 with Criminal Appeal (DB) No.169 of 2008. On 18.01.2010, this Court issued notice in the Special Leave Petition confined to the question of sentence only and on 02.08.2010 after hearing learned counsel for the parties, granted leave. Hence, the only question that we have to decide in this appeal is whether the High Court was right in confirming the death sentence of the appellant imposed by the trial court.

2. For deciding this question, the relevant facts as have been found by the trial court are that in the midnight of 14/15.02.2007, the appellant killed his mother by cutting her neck and severing her head and thereafter fled from the house with the head of his mother leaving behind her body. The trial court, after convicting the appellant under Sections 302 and 201 of

the Indian Penal Code (for short 'IPC'), held that the appellant committed the murder of his mother in an extremely brutal, grotesque, diabolical and revolting manner and hence it is one of those rarest of the rare cases calling for a death sentence on the appellant. The High Court, while upholding the conviction, confirmed the death sentence relying on the decision of this Court in *Machhi Singh and others v. State of Punjab* [(1983) 3 SCC 470]. In the aforesaid case of *Machhi Singh*, this Court has *inter alia* held that the manner of commission of murder and the personality of the victim of murder have to be taken into consideration while making the choice of the sentence to be imposed for the offence under Section 302, IPC : life imprisonment or death sentence. The High Court has taken a view that considering the abhorrent, dastardly and diabolical nature of the crime committed by the appellant on none other than his mother, who had given birth to him, the penalty of death has been rightly awarded by the trial court.

3. At the hearing of this appeal, learned counsel for the appellant, relying on the decision of this Court in *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka* [(2008) 13 SCC 767], submitted that even if it is a case of a son beheading his mother, this is not one of the rarest of rare cases in which the death penalty should have been imposed because the offence had been committed by the appellant in a fit of passion and not after pre-meditation.

4. Learned counsel for the State, on the other hand, submitted that considering the law laid down by this Court in *Prajeet Kumar Singh v. State of Bihar* [(2008) 4 SCC 434], *Surja Ram v. State of Rajasthan* [(1996) 6 SCC 271] and *Atbir v. Government of NCT of Delhi* [(2010) 9 SCC 1], the imposition of death sentence on the appellant for the cruel act of beheading his mother was proper.

5. We find on reading the FIR lodged by the brother of the appellant on the morning of 15.02.2007 at 09:45 hours marked as Ext.2 that the appellant's wife Sakerun Nisha had run away

to her maternal house three or four days before the incident and the appellant had been accusing his mother to have been the cause of his wife running away from this house and out of anger and excitement the appellant severed the neck of his mother and fled with the head. The appellant was an illiterate rustic and was a cultivator residing in a village with virtually no control over his emotions and has over-reacted impulsively to the situation and has severed the neck of his mother. On these facts, the appellant is no doubt guilty of the offence under Section 302, IPC, and has to suffer the punishment of imprisonment for life normally awarded for the offence, but should not be condemned to death. We may cite a few authorities in support of this view.

6. In *Lehna v. State of Haryana* [(2002) 3 SCC 76], the facts were that there was a quarrel between the accused and other members of his family, namely, his father, his brother and sister-in-law, over a piece of land and in the assaults that followed the quarrel, the accused killed his mother, his brother and sister-in-law. While upholding the conviction of the accused under Section 302, IPC, this Court held that the mental condition of the accused, which led to the assault, cannot be lost sight of and while such mental condition of the accused may not be relevant to judge culpability, it is certainly a factor while considering the question of sentence. This Court further held that the factual scenario gave impressions of impulsive act of the accused and not of planned assaults and in this peculiar background, death sentence would not be proper.

7. In *Gyasuddin Khan alias Md. Gyasuddin Khan v. State of Bihar* [(2003) 12 SCC 516], the facts were that in the morning hours of 09.04.1996, in the precincts of a police camp stationed near a village in Bihar, a policeman deployed in the police picket to contain the terrorist activities, unleashed terror by indulging in a firing spree, killing three of his colleagues instantaneously and this Court, relying on *Shamshul Kanwar v. State of U.P.* [(1995) 4 SCC 430], *Lehna v. State of Haryana* (supra) and *Om Prakash v. State of Haryana* [(1999) 3 SCC

19], held that the mental condition or state of mind of the accused is one of the factors that can be taken into account in considering the question of sentence and in the facts of the case, the killing of two other policemen without premeditation and without any motive whatsoever was an act done out of panic reaction and in a state of frenzy and it was not one of the rarest of rare cases where death sentence could be awarded.

8. For the aforesaid reasons, we convert the sentence of death to one of life imprisonment for the offence under Section 302, IPC, committed by the appellant and allow the appeal in part.

N.J. Appeal partly allowed.

LOKESH SHIVAKUMAR

v.

STATE OF KARNATAKA

(Criminal Appeal No.1326 of 2005)

FEBRUARY 10, 2012

[AFTAB ALAM AND ANIL R. DAVE, JJ.]

Penal Code,1860: s.302 r/w s.34 - Death by fatal blow - A-1 had borrowed money from victim-deceased - On the fateful day, A-1 took the deceased out of the house on the pretext of payment of money - All the accused surrounded the deceased - A-2-appellant picked up a gobbaly tree wood piece lying nearby and struck on the head of deceased with it which caused his death - Conviction of appellant along with the other three accused - High Court while acquitting A-3 and A-4 affirmed the conviction of appellant and A-1 - On appeal, held: There was no discrepancy between the ocular evidence and the medical evidence - Since prosecution case was established by reliable ocular evidence coupled with medical evidence, the issue of motive was not of any significance - Common intention can form and develop even in course of the occurrence, therefore, the fact that appellant had not brought any weapon with him was of no relevance - It was the appellant who struck the first blow on the head of deceased and according to post-mortem report that blow itself caused his death - Appellant rightly convicted u/s.302 r/w s.34.

Criminal law: Motive - Relevance of - Held: If the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance.

The prosecution case was that the victim-deceased was engaged in the business of money lending. Accused No.1 had borrowed Rs.10,000/- from the deceased. The

deceased went to jail in connection with some case, authorizing his younger brother (informant-PW.1) to realise the money from his debtors in his absence. PW1 tried to realise the loan amount from accused No.1 but was unsuccessful. On a fateful day, when the deceased and his brother (PW.1) were in their house, accused No.1 came there and asked the deceased to go out with him saying that he wanted to pay back the money that he had borrowed from him. The deceased went along with him but did not return. After about half an hour, PW1 along with two of his associates PW.2 and PW.14 went looking for him. On reaching near the house of accused no.3, they saw the deceased surrounded by accused no.2-appellant and accused nos.1, 3 and 4. At that point, the appellant picked up one gobbaly tree wood piece which was lying there and swinging it like a club hit the deceased with it on the right side of his head. Accused No.1 then picked up a large stone and flung it on the head of the deceased. The deceased got severe bleeding injuries on his head, face and nose. He was taken to hospital where he was declared dead.

The trial court convicted all the four accused under section 302/34, IPC and sentenced them to life imprisonment and a fine of Rs.500/- each. On appeal, the High Court held that there was no evidence that accused Nos. 3 and 4 shared the common intention of causing the death of the deceased. It, accordingly, acquitted them of the charge but maintained the conviction and sentence of the appellant and accused No.1. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

Held: 1.1 As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue

of motive loses practically all relevance. In this case, the ocular evidence led in support of the prosecution case was wholly reliable and there was see no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of offence is not of any significance. All the three eye witnesses, namely, PWs.1, 2 and 14 deposed that the appellant picked up a gobbaly tree wood piece and struck on the right side of the head of the deceased with it. The first external injury recorded in the post-mortem report that caused the compound fracture of underlying frontal bone was on the right frontal region and according to the doctor, it could have been caused by the piece of wood (MO.2). There was no discrepancy between the medical evidence and the ocular evidence. On the contrary, the medical evidence corroborated the eye witness account of the occurrence. The third submission that the appellant had not brought any weapon with him was equally without substance, as it is well settled that common intention can form and develop even in course of the occurrence. It is true that the appellant had not brought with him any weapon but it is equally true that in the gobbaly tree wood piece lying at the place of occurrence he found one and used it with lethal effect. It was the appellant who struck the first blow on the right side of the head of the deceased and according to the post-mortem report that blow itself might have caused his death. Therefore, the facts of the case clearly attracted section 34, IPC in so far as the appellant is concerned. [Paras 8, 15] [902-F-H;. 903-A-C; 907-B-C]

Y. Venkaiah v. State of Andhra Pradesh **(2009) 12 SCC 126: 2009 (3) SCR 915;** *Jagannath v. State of Madhya Pradesh* **(2007) 15 SCC 378: 2007 (9) SCR 1097;** *Laxmanji and another v. State of Gujarat* **(2008) 17 SCC 48: 2008 (17) SCR 171; *State of Punjab v. Bakhshish Singh and others* (2008) 17 SCC 411: 2008 (14) SCR 742;** *Sripathi and others v. State of Karnataka* **(2009) 11 SCC 660: 2009 (5) SCR 309;**

Akaloo Ahir v. State of Bihar **(2010) 12 SCC 424: 2010 (4) SCR 604 - held inapplicable**

Case Law Reference:

2009 (3) SCR 915	**held inapplicable**	**Para 9**
2007 (9) SCR 1097	**held inapplicable**	**Para 9, 10**
2008 (17) SCR 171	**held inapplicable**	**Para 9, 11**
2008 (14) SCR 742	**held inapplicable**	**Para 9, 12**
2009 (5) SCR 309	**held inapplicable**	**Para 9, 13**
2010 (4) SCR 604	**held inapplicable**	**Para 9, 14**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1326 of 2005.

From the Judgment & Order dated 3.6.2004 of the High Court of Karanataka at Bangalore in Crl. A. No. 1129 of 2000.

Naresh Kumar for the Appellant.

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. The appellant who was accused No.2 before the trial court is convicted under section 302 read with section 34 of the Penal Code and is sentenced to rigorous imprisonment for life and a fine of Rs.500/- with the default sentence of rigorous imprisonment for a week.

2. According to the prosecution case, one Dharamaraj, the deceased was engaged in the business of money lending and accused No.1 Madhu @ Mahadeva had borrowed from him Rs.10,000/-. Dharamaraj went to jail in connection with some case, authorizing his younger brother Mallesha (informant-PW.1) to realise the money from his debtors in his absence. Mallesha tried to realise the loan amount from Madhu but was

unsuccessful. On July 18, 1997, when Dharamaraj came out from the jail, Mallesha told him that Madhu had not refunded the money due to him. Dharamaraj said that he would himself get back the money from Madhu. It is further the prosecution case that on July 21, 1997, there was a festival in the village and in the evening at about 5:45 PM, the deceased and his brother Mallesha (PW.1) were in their house. At that time Madhu came to them and asked Dharamaraj to go out with him saying that he wanted to pay back the money that he had borrowed from him. Dharamaraj went along with him but, as he did not return after about half an hour, Mallesha along with two of his associates (Mahesh PW.2) and (Mukunda PW.14) went looking for him in the direction of Madhu's house. On reaching near the house of Shivanna (accused No.3) they saw Dharamaraj surrounded by Madhu, the appellant and Shivanna and Thomas (accused nos.3 & 4 respectively). Shivanna and Thomas were hitting him with fists as a result of which he fell down. At that point, the appellant picked up one *gobbaly* tree wood piece which was lying there and swinging it like a club hit Dharamaraj with it on the right side of his head. Madhu then picked up a large stone and flung it on the head of Dharamaraj. Dharamaraj got severe bleeding injuries on his head, face and nose. He was taken to a hospital but was declared brought dead.

3. Before the trial court, PWs.1, 2 and 14 were examined as eye witnesses, who fully supported the prosecution case. The doctor who had conducted the post-mortem on the dead body of Dharamaraj was examined as PW.11. He proved the post-mortem report. According to the doctor, he found a number of external injuries on the body of Dharamaraj which he described as follows:-

> "1. Obliquely situated lacerated wound on the right frontal region measuring 2-1/2" x ½" x bone deep with the compound fracture of underlying frontal bone.

2. Obliquely situated lacerated wound on the lateral aspect of the right eye brow; 1-1/2" x ½" into bone deep with fracture of underlying bone.

3. Compromise at the root of the nose with fracture on nasal bone."

4. Lacerated wound on the right side of the lower lip ½" x ¼".

5. Abrasion on the anterior aspect of the right leg ½" x ¼"."

On dissection, the external injuries were found corresponding to the following internal injuries:

1. Fracture of right side of the frontal bone of the skull, fracture of right orbit, fracture of nasal bone with crushing of right eye ball.

2. The membrane of the frontal region was returned.

3. Brain matters of right anterior part of the brain was crushed.

4. The *gobbaly* tree wood piece used by the appellant and the stone piece that Madhu had flung on the head of the deceased were also produced before the court as MO.2 and MO.1 respectively. On being shown the two material objects, the doctor stated that the injuries found on the dead body were possible if the person was assaulted with the club MO.2 and the stone MO.1. Further, replying to a question in cross-examination the doctor said that injuries Nos.2 & 3 found on the external examination of the body as recorded in the post-mortem report could have been caused if the deceased was hit with a stone and the other injuries could have been caused with the club or on coming into contact with a hard surface.

5. The trial court convicted all the four accused under

section 302/34 of the Penal Code and sentenced them to life imprisonment and a fine of Rs.500/- each.

6. On appeal, the High Court found and held that there was no evidence that accused Nos. 3 & 4 shared the common intention of causing the death of Dharamaraj. It, accordingly, acquitted them of the charge but maintained the conviction and sentence of the appellant and accused No.1, Madhu.

7. Against the judgment of the High Court, the appellant has come in appeal. Mr. Naresh Kumar, learned counsel appearing for the appellant strenuously argued that like the other two accused acquitted by the High Court, there could be no application of section 34 of the Penal Code in the case of the appellant as well and his conviction under section 302 of the Penal Code with the aid of that section was wholly unsustainable. Learned counsel submitted that the appellant had no motive to commit the offence since he did not owe any money to the deceased and it was only Madhu who owed him Rs.10,000/- and, thus, could be said to have the motive to kill him. Secondly, according to the learned counsel, there was discrepancy between the ocular evidence and the medical evidence and thirdly the appellant had not brought any weapon for commission of the offence. All these circumstances cumulatively ruled out his sharing the common intention to kill Dharamaraj.

8. As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of offence is not of any significance. As to any discrepancy between the ocular evidence and the medical evidence, we find none. All the three eye witnesses, namely, PWs.1, 2 and 14 deposed that the appellant picked up a *gobbaly* tree wood piece and struck on

the right side of the head of Dharamaraj with it. It is seen above that the first external injury recorded in the post-mortem report that caused the compound fracture of underlying frontal bone was on the right frontal region and according to the doctor, it could have been caused by the piece of wood (MO.2). We, therefore, fail to see any discrepancy between the medical evidence and the ocular evidence. On the contrary, the medical evidence tends to corroborate the eye witness account of the occurrence. The third submission that the appellant had not brought any weapon with him is equally without substance, as it is well settled that common intention can form and develop even in course of the occurrence. It is true that the appellant had not brought with him any weapon but it is equally true that in the *gobbaly* tree wood piece lying at the place of occurrence he found one and used it with lethal effect.

9. In support of the submission that section 34 of the Penal Code shall have no application to the case of the appellant, learned counsel relied upon a number of decisions of this Court, namely, *Y. Venkaiah v. State of Andhra Pradesh*, (2009) 12 SCC 126, *Jagannath v. State of Madhya Pradesh*, (2007) 15 SCC 378, *Laxmanji and another v. State of Gujarat*, (2008) 17 SCC 48, *State of Punjab v. Bakhshish Singh and others*,(2008) 17 SCC 411, *Sripathi and others v. State of Karnataka*, (2009) 11 SCC 660 and *Akaloo Ahir v. State of Bihar* (2010) 12 SCC 424. Of the many cases cited by the learned counsel, *Venkaiah's* case has no application to the facts of the case in hand but the other decisions relied upon in support of the contention would need some explaining.

10. In *Jagannath* (supra), two brothers, namely, Dhoomsingh and Ramsingh (the deceased) had collected drift wood from a river that flowed by the side of their house. The appellant, Jagannath, and one Prabhudayal stole the wood collected by the two brothers on which an altercation took place between the two sides. In course of the altercation, Prabhudayal gave an axe blow on the head of Ramsingh that

led to his death. The appellant, Jagannath, according to the prosecution case, caused some injuries to the informant (PW-11) and another witness, Naval Singh (PW-2), who had come on the site of occurrence. The injuries caused by the appellant Jagannath to the two witnesses were all simple in nature. It is, thus, to be noted that the occurrence took place in course of an altercation. The appellant Jagannath did not cause any injury to the deceased and caused only some simple injuries to the two prosecution witnesses. It was in those facts and circumstances that this Court held that he could not be said to have shared the common intention with the other accused to cause the death of Ramsingh.

11. In *Laxmanji* (supra), the appellants before the Court were accused Nos. 2 and 3. According to the prosecution case, they along with accused No. 1, who was carrying a *Rampuri* knife and accused No. 4, who had a stick, went to the house of the deceased, Bhamraji. The two appellants (accused 2 and 3) caught hold of the deceased while accused No. 1, who was having a knife, inflicted knife blows on the right hand side region of the abdomen and the thigh region of the deceased. As a result of the injuries, he fell down and later died. The trial court convicted accused No. 1 under section 302 and the two appellants (accused 2 and 3) under section 302 read with section 34 of the Penal Code. It acquitted accused No. 4. The High Court maintained the appellants' conviction. This Court, in the facts of the case, held that no common intention can be attributed to the appellants to cause the murder of the deceased. Though, it is not clearly spelled out but what seems to have weighed with the Court is that the appellants had merely caught hold of the deceased and had caused no injury to him.

12. In *Bakhshish Singh* (supra), it was the case of the prosecution that while a certain Kabul Singh (PW-4) and his nephew, Mangal Singh (the deceased), were returning from the fields along with Swinder Kaur (PW-5), mother of Mangal Singh, they were accosted by the accused, namely, Bakhshish Singh

and Balbir Singh, both of them being armed with a dang and Balraj Singh, who was armed with a chhavi. Gurmeet Kaur, the mother of Balraj Singh, raised a *lalkara* saying that Kabul Singh and Mangal Singh should not be allowed to escape as they had damaged their crops. Bakhshish Singh and Balbir Singh caught Mangal Singh and threw him down on the ground while accused Balraj Singh, at the instigation of his mother Gurmeet Kaur, inflicted a chhavi blow on the head of Mangal Singh, causing a single injury that led to his death. The trial court relying upon the evidence of PW-4 and PW-5 convicted Bakhshish Singh and Balbir Singh under section 302 with the aid of section 34 of the Penal Code. In appeal, the High Court found that the evidence did not establish the role purportedly played by Gurmeet, Balbir and Bakhshish. The High Court also noted that one single blow was given by Balraj and that too in course of a sudden quarrel. It, accordingly, acquitted Gurmeet, Balbir and Bakhshish and modified the conviction of Balraj from section 302 to section 304 Part I of the Penal Code. In appeal, preferred by the State of Punjab against the judgment of the High Court, this Court declined to interfere.

13. In *Sripathi* (supra), once again in the course of an altercation accused No.4 inflicted a stab injury on the abdomen of the deceased while the other three accused held him at different parts of the body. This Court held against the applicability of section 34 of the Penal Code in so far as accused Nos.1 to 3 were concerned observing in Paragraph 8 of the judgment as follows:–

> "Coming to the plea regarding the applicability of Section 34 PC, we find that the evidence is not very specific as regards the role played by A-1, A-2 and A-3. It is prosecution version that *A-4 had the knife in his pocket which he suddenly brought out* and stabbed the deceased."
>
> (emphasis added)

14. In *Akaloo Ahir* (supra), the deceased Kishore Bhagat was fired upon first by one Garju, but the shot missed him. Thereafter, the appellant Akaloo Ahir came on the scene and he also fired a shot at Kishore Bhagat which too missed its target. Following that attack, two other accused came on the scene. One of them handed over a cartridge to the other who fired a shot with his gun which hit Kishore Bhagat on his chest and stomach killing him on the spot. Akaloo Ahir and Garju were convicted by the trial court and the High Court under section 302 read with section 34 of the Penal Code. This Court, however, acquitted Akaloo Ahir under section 302/34 and convicted him under section 307 of the Penal Code (Garju had died in the meanwhile). The reason why this Court held that section 34 was not applicable in the case of Akaloo Ahir appears to be that all the four accused who took shots on the deceased in turn had not come to the place of occurrence together and at the same time but they came there one after the other. In paragraphs 8 and 9 of the judgment this Court observed as follows:–

> "8. It has also to be noticed that the accused were all living in close proximity to each other and could have been attracted to the spot on account of the noise that had been raised on account of the first attack by Garju Ahir. It has come in evidence that both the parties were residents of Pokhra Tola which consisted only of 25 houses, all bunched up together. The possibility therefore, that they had been attracted to the place of incident on account of noise and had not come together with a pre-planned objective to commit murder cannot be ruled out.
>
> 9. It has been suggested by Mr. Chaudhary that Akaloo Ahir and Brij Mohan Ahir had come out from the same heap of straw which showed a pre-planned attack and a prior meeting of minds. We, however, see from the evidence of PW 5, Rama Shankar Yadav an eye witness, that there were two different heaps of straw near the place

and the two accused had come out from behind different heaps. In any way there is no evidence to suggest that there was any prior meeting of minds."

15. The facts of the case in hand are quite different. It is seen above that it was the appellant who struck the first blow on the right side of the head of Dharmaraj and according to the post-mortem report that blow itself might have caused his death. We have, therefore, no doubt that the facts of the case clearly attract section 34 of the Penal Code in so far as the appellant is concerned.

16. In light of the discussions made above, we find no merit in the appeal. It is, accordingly, dismissed.

17. This Court by its order dated October 7, 2005 granted bail to the appellant. His bail bonds shall stand cancelled. He shall be taken into custody forthwith to serve out his remainder sentence.

D.G. Appeal dimissed.

COMMNR. OF CENTRAL EXCISE, FARIDABAD

v.

M/S FOOD & HEALTHCARE SPECIALITIES & ANR.

(Civil Appeal Nos. 6539-6540 of 2010)

FEBRUARY 13, 2012

[D.K.JAIN AND ANIL R. DAVE, JJ.]

Central Excise Act, 1944:

Section 4(1) - Valuation of excisable goods for purposes of charging of excise duty - Contract between merchant-manufacturer and processor-assessee for blending and packing 'Glucon D' - Held: If the processor-assessee is not at arm's length with the merchant-manufacturer and is a related person, assessable value for the purpose of levy of excise duty will have to be determined in accordance with the procedure contemplated in s. 4(1)(b) of the Act read with the relevant valuation Rules - Since neither did the Tribunal address this aspect of the matter nor did it consider whether the merchant-manufacturer and the processor-assessee were related persons, the matter is remanded to it to examine in depth the agreement between the two and decide in accordance with law and observations made by Supreme Court in the instant judgment.

Respondent No.1 (assessee) was engaged in blending and packing of 'Glucon D' for respondent no.2, who was to supply raw material, packing material and technical know-how to the former. From March 2000 to September, 2000, the assessee paid excise duty on the basis of wholesale price of the product at the depots of respondent no.2. However, for the period commencing from October, 2000, the assessee filed price declarations seeking to modify the assessable value of the product as the aggregate of cost of raw material, packing material and

their job work charges, and started paying duty on the same. It was found that the said product was also being processed at the factory of respondent no.2 and duty on those clearance was being paid at the assessable value /depot sale price of respondent no.2. Consequently, notices were issued to the assessee for demand of differential duty with penalties. The Adjudicating Authority confirmed the demand and imposed the penalties. The Customs, Excise and Service Tax Appellate Tribunal set aside the order in original.

Allowing the appeals filed by the revenue, the Court

HELD: 1.1 In S. Kumars, it has been held that if the processor-assessee is not at arm's length with the merchant manufacturer and is a related person, the formula prescribed in Ujagar Prints (III) would not apply and assessable value for the purpose of levy of excise duty will have to be determined in accordance with the procedure contemplated in s. 4(1)(b) of the Central Excise Act, 1944 read with the relevant valuation Rules. In the instant case, neither did the Tribunal address this aspect of the matter, nor did it consider whether the assessee and respondent no.2 are related persons. It based its decision solely on the observation made by the Adjudicating Authority "that the status of the assessee was not better than that of a hired labour". Therefore, it would be necessary for the Tribunal to examine in depth the agreement between the assessee and respondent no.2 as also any other additional material, the parties may like to adduce and determine the question whether or not both of them are related persons. [para 11-12] [921-E-H; 922-A-C]

Commissioner of Central Excise, Indore Vs. S. Kumars Ltd. & Ors. **2005 (5) Suppl. SCR 370 = (2005) 13 SCC 266, relied on.**

M/s Ujagar Prints & Ors. (III) Vs. Union of India & Ors.

1988 (3) Suppl. SCR 770 = (1989) 3 SCC 531); M/s *Ujagar Prints & Ors. (II) Vs. Union of India & Ors.* **1989 (1) SCR 344 = (1989) 3 SCC 488),** *Empire Industries Limited & Ors. Vs. Union of India & Ors.* **1985 (1) Suppl. SCR 292 = (1985) 3 SCC 314 and** *Pawan Biscuits Co. Pvt. Ltd. Vs. Collector of Central Excise,* **Patna 2000 (1) Suppl. SCR 628 = (2000) 6 SCC 489, referred to.**

1.2 Resultantly, the matter is remanded back to the Tribunal for the purpose of determining the nature of relationship between the assessee and respondent no.2. If it is found that they are not related persons, then the decision of the Tribunal challenged in the instant appeals will stand affirmed. However, if the Tribunal finds that the assessee and respondent no.2 are related, it shall remit the matter to the Adjudicating Authority for determination of the assessable value of the goods in question afresh in accordance with law. [para 13] [921-D-E]

Case Law Reference:

2005 (5) Suppl. SCR 370	**referred to**	**para 3**
1988 (3) Suppl. SCR 770	**referred to**	**para 3**
1989 (1) SCR 344	**referred to**	**para 3**
1985 (1) Suppl. SCR 292	**referred to**	**para 3**
2000 (1) Suppl. SCR 628	**referred to**	**para 3**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6539-6540 of 2010.

From the Judgment & Order dated 12.1.2005 of the Customs, Ecise & Service Tax Appellate Tribunal West Block No. 2, R.K. Puram, New Delhi in Appeal No. E/5261-5262/ 2004-NB (A).

B. Bhattacharyya, ASG, Harish Chander, Aruna Gupta, Ajay Singh, A.K. Sharma, B. Krishna Prasad for the Appellant.

V. Lakshmi Kumaran, Alok Yadav, Krishan Mohan, M.P. Devanath for the Respondent.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. These appeals under Section 35L(b) of the Central Excise Act, 1944 (for short "the Act") are directed against a common final order, dated 2nd February 2005 in Appeal No. E/5261-62/04-NB(A), passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal"). By the impugned order the Tribunal has quashed the additional excise duty demand of Rs. 9,34,89,367/- under Section 11A of the Act; penalties of Rs. 1.5 crores each on respondent Nos.1 and 2 under Rule 173Q of the Central Excise Rules, 1944 (for short "the 1944 Rules") and Rule 25(1) of the Central Excise Rules, 2001 (for short "the 2001 Rules") read with Section 38A of the Act and a penalty of `2 crores under Rule 209A of the 1944 Rules and Rule 26 of 2001 Rules read with Section 38A of the Act on Respondent No. 2 as confirmed by the Deputy Commissioner of Central Excise.

2. Succinctly put, the material facts giving rise to the present appeals are as under:

Respondent No.1—M/s Food & Healthcare Specialities (for short "the Assessee") was engaged in the blending and packing of 'Glucon D' for M/s Heinz India Pvt. Ltd. (for short "Heinz"), respondent No.2 in these appeals, pursuant to an agreement commencing from 1st March 2000. Under the agreement, Heinz was to supply raw material, packing material and the technical know-how to the Assessee for the blending and packing of the said product. From March 2000 to September 2000, the Assessee paid excise duty on the basis of wholesale price of the product at the depots of Heinz. However, for the period commencing from October 2000, they filed price declarations seeking to modify the assessable value of the product as the aggregate of cost of raw material, packing material and their job work charges and started paying duty on

the same. During the course of investigations undertaken by the revenue, it was found that the said product was also being processed at the Aligarh factory of Heinz and the duty on those clearances was being paid at the assessable value/depot sale price of Heinz. Consequently, three notices were issued to the Assessee for the period October 2000 to December 2000; January 2001 to June 2001 and July 2001 to February 2002, to show-cause as to why the assessable value declared by them be not rejected and the price declarations submitted by them be not amended by determining the assessable value on the basis of the sale price fixed by Heinz at its depots and the duty so paid be not recovered along with penalty under Rule 173Q of the 1944 Rules.

Upon consideration of the cause shown by the Assessee, the Adjudicating Authority, by its order dated 31st August 2004, confirmed the differential demand indicated in the show cause notices and imposed the aforesaid penalties on the Assessee as also on Heinz. On appeals preferred against the said order, the Tribunal, by an exceptionally short order, set aside the order-in-original, concluding that since the Adjudicating Authority has itself given a specific finding that the status of the Assessee was not better than that of hired labour and Heinz is the manufacturer, the duty is leviable only on the manufacturer. Being aggrieved by the dismissal of its appeal under Section 35G of the Act by the High Court, as not maintainable, the revenue is before us in these appeals.

3. Mr. B. Bhattacharyya, learned Additional Solicitor General appearing for the appellant, referring to several clauses of the agreement between the Assessee and Heinz, in particular, clauses (d), (1), (2), (5), (7), (9),(13), (15) and (16), vehemently submitted that the relationship between the Assessee and Heinz was one of principal and agent and not of principal to principal and therefore, the price at which, Heinz sold 'Glocon-D' in the wholesale market must be taken as the assessable value. According to the learned counsel, Heinz had

complete control over the activities of the Assessee, who was merely a job worker. To bring home his point that the Assessee was merely an extended arm of Heinz, he laid emphasis on the fact that processed 'Glocon-D' was stored at the same premises from where Heinz was operating; Heinz had also taken an exemption from registration under Rule 9(2) of the erstwhile Central Excise (No.2) Rules, 2001, in terms of Notification No. 36/2001 dated 26th June 2001, which was available to a manufacturer who got his goods manufactured on his account from any other person, subject to the condition that the said manufacturer authorised the person, who actually manufactured or fabricated the said goods, to comply with all the procedural formalities under the Act and the rules made thereunder, in respect of the goods manufactured on behalf of the said manufacturer.

Relying heavily on the decision of this Court in *Commissioner of Central Excise, Indore Vs. S. Kumars Ltd. & Ors.*[1], wherein dealing with the question of assessable value of the processed goods in relation to the processor the earlier decisions of this Court in *M/s Ujagar Prints & Ors. (II) Vs. Union of India & Ors.* (for short "Ujagar Prints (II)"), *M/s Ujagar Prints & Ors.*[2] *(III) Vs. Union of India & Ors.*[3] (for short **"***Ujagar Prints (III)"), Empire Industries Limited & Ors. Vs. Union of India & Ors*[4]. and *Pawan Biscuits Co. Pvt. Ltd. Vs. Collector of Central Excise, Patna,*[5] were discussed. Learned counsel argued that the formula laid down in the *Ujagar Prints (II)* or (III) would not apply to the fact-situation. It was stressed that having failed to examine the relationship between the Assessee and Heinz, the Tribunal's order deserved to be set aside and the matter was fit to be remitted back to the Tribunal for fresh adjudication on the touchstone of the ratio of *S. Kumars*.

1. (2005) 6 SCC 211.
2. (1989) 3 SCC 488.
3. (1989) 3 SCC 531.
4. (1985) 3 SCC 314.
5 (2000) 6 SCC 489.

4. *Per Contra* Mr. V. Lakshmi Kumaran, learned counsel appearing on behalf of the respondents submitted that in the show cause notice there was no allegation that the Assessee and Heinz are related persons and therefore, Section 4 (1)(b) of the Act could not be invoked to determine the assessable value. It was asserted that in reply to the show cause notice, it was clearly stated that apart from the fact that dealings between the Assessee and Heinz were on principal to principal basis, the Assessee was also processing goods for other manufacturers. In support of this argument, learned counsel relied upon clause 22 of the agreement between the said parties, which stipulated that:

> "Nothing herein contained shall constitute or be deemed to or is intended to constitute F&HS as an agent of Heinz. It is hereby expressly agreed and declared that F&HS shall not at any time-
>
> (a) Enter into a contract in the name of or purporting to be made on behalf of Heinz.
>
> (b) ……."

It was argued that the clause clearly shows that the parties were at arm's length and the Assessee was processing 'Glucon-D' only on job-work basis. It was thus asserted that dealings between the Assessee and Heinz being on principal to principal basis, the principle laid down in *Ujagar Prints (II)*, as clarified in *Ujagar Prints (III),* for determining the assessable value, was on all fours with the fact-situation at hand and as such the ratio of the judgment in *S. Kumars* will not apply. In the compilation filed on behalf of the Assessee, reliance is also placed on Circular No.: 619/10/2002-CX dated 19th February 2002, which clarifies that even after the introduction of new valuation provisions with effect from 1st July 2000, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules,

2000 (for short "the 2000 Rules") and the decisions of this Court in *Ujagar Prints II* and *Pawan Biscuits.* According to the learned counsel, the issue raised by the revenue stands concluded by the ratio of *Pawan Biscuits*, and therefore, the appeals deserve to be dismissed.

5. The principles of valuation of excisable goods for the purpose of charging excise duty are contained in Section 4 of the Act (as amended with effect from 1st July 2000), which, insofar as it is relevant, reads as follows:

> *"4. Valuation of excisable goods for purposes of charging of duty of excise.*—(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—
>
> (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value;
>
> (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
>
> (2) ……..
>
> (3) For the purposes of this section,—
>
> (a) ……
>
> (b) persons shall be deemed to be "related" if—
>
> (i) they are inter-connected undertakings;
>
> (ii) they are relatives;

> (iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or
>
> (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.
>
> *Explanation.*—In this clause—
>
> (i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and
>
> (ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);
>
> (c) ……
>
> (d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

The new Section 4 of the Act, substituted w.e.f 1st July 2000, and material for our purpose, prescribes that the value of excisable goods shall be the transaction value subject to satisfying the conditions that: (i) the price must be the sole consideration; (ii) the buyer must not be a related person and (iii) the goods must be sold by the assessee for delivery at the

time and place of removal. The basic principle underlying Section 4(1)(a) of the Act is the transaction value as defined in clause (d) of sub-section 3 of Section 4 of the Act, which *inter-alia,* means the price actually paid or payable for the goods when sold, provided the assessee and the buyer of goods are not related. Clause (b) of sub-section (3) of Section 4 of the Act, *inter-alia*, stipulates that person shall be deemed to be "related" if they are so associated that they have interest, directly or indirectly, in the business of each other. It is clear that if the assessee and the buyer are related, valuation has to be under Section 4(1) (b) of the Act read with the 2000 Rules. We may, however, note that conceptually there is no significant change in the definition of "related person" in the new and repealed Section 4 of the Act.

6. Thus, the pivotal question on which learned counsel for both the parties addressed us, is whether the Assessee was merely a processor of 'Glucon-D', independent of Heinz or it was related to Heinz. In other words, whether the relationship between the Assessee and Heinz was one of principal to principal or that of an agent and principal. As aforesaid, the stand of the revenue is that the Assessee, as the processor, is not independent of Heinz and therefore, ratio of *Ujagar Prints (III)* would not apply. It is evident from the order of the Tribunal that it has not addressed this aspect of the matter in detail, and has not considered whether the Assessee and Heinz were related persons. Nevertheless, since the rival contentions urged before us mainly related to the question as to whether the formula laid down in *Ujagar Prints (III)* and reiterated in *Pawan Biscuits*, would apply or the principle enunciated in *S. Kumar* will govern the present case, it will be useful to notice the principle enunciated in *Ujagar Prints (II)* and *(III)* as also the ratio of *S. Kumar*.

7. In *Ujagar Prints (II)*, a Constitution Bench of this Court was called upon to consider the correctness of the view taken by this Court in *Empire Industries*. In *Empire Industries*, it was

held that the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980, by which, the processes of bleaching, dying and printing were brought within the definition of 'manufacture' for the purposes of the Central Excise and Salt Act, 1944 and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 were constitutionally valid. While upholding the validity of the Amendment Act, it was observed that when the textile fabrics are subjected to the processes like bleaching, dyeing and printing etc. by independent processes, whether on their own account or on job charges basis, the value for the purposes of assessment under Section 4 of the said Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time in the wholesale market. The principle enumerated in Section 4(1)(a) of the Act was applied to the processed goods. In other words, the assessable value of the processed goods, as far as the processor was concerned, had to be the same irrespective of the fact whether the processor manufactures the goods and then processes them itself or gives the goods and merely undertakes processing before returning the same to the manufacturer/owner. That common norm was the wholesale price.

8. On an application filed for clarification of the judgment in *Ujagar Prints (II)*, this Court by a short order in *Ujagar Prints (III)* clarified as follows:

> "1…it is made clear that the assessable value of the processed fabric would be the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and manufacturing expenses whatever these may be, which will either be included in the price at the factory gate or deemed to be the price at the factory gate for the processed fabric. The factory gate here means the "deemed" factory gate as if the processed fabric was sold by the processor…"

The Court went on to explain:

"2. If the trader, who entrusts cotton or man-made fabric to the processor for processing on job work basis, would give a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market, that would be taken by the excise authorities as the assessable value of the processed fabric and excise duty would be charged to the processor on that basis provided that the declaration as to the price at which he would be selling the processed goods in the market, would include only the price or deemed price at which the processed fabric would leave the processor's factory plus his profit..."

9. The decision in *Ujagar Prints (III)* was subsequently followed by this Court in *Pawan Biscuits*. In that case, the Tribunal had held that the assessee was, in reality, an agent of Britannia Industries Ltd. and, therefore, the price at which Britannia was selling the manufactured goods in the wholesale market was to be taken as the assessable value. The decision of the Tribunal was reversed by this Court. It was found that the agreement between Pawan Biscuits and Britannia indicated that their relationship was one of principal to principal and not that of principal and agent and also that the assessee (Pawan Biscuits) could manufacture biscuits of other brands and sell them. Observing that Pawan Biscuits had been established much prior to its agreement with Britannia, it was held that the decisions in *Ujagar Prints (II)* and *(III)* could not be factually distinguished. In short, it was held that for the purpose of determining assessable value, it is necessary to include the processor's expenses, costs, and charges plus profit, but it is not necessary to include the trader's profits who gets the fabrics processed, because those would be post-manufacturing profits.

10. A similar issue again came up for consideration of this Court in *S. Kumars*. In that case, the assessee was processing

grey fabrics. Sometimes the grey fabrics were processed on their own account and sometimes the grey fabrics were received for processing on job charge basis from others, referred to in the judgment as the merchant manufacturers. The assessee paid excise duty on the fabrics processed by it treating the value of the processed fabric as being that at which, the merchant manufacturers were selling the processed goods. This, according to the assessee was in accordance with the decision in *Empire Industries*. However, on the fabrics processed by it which had been received from the merchant manufacturers, the assessee valued the processed goods on the basis of the cost of grey fabrics plus the processing charges as well as its manufacturing expenses and profits. In other words, the price at which the merchant manufacturers were selling the processed goods was not taken into consideration. According to the assessee, this was done in light of the decision in *Ujagar Prints (II)* and *(III)*. A notice was issued to the assessee to show-cause as to why differential duty of Excise along with penalty be not recovered from it as the assessee and the merchant manufacturers were all firms and companies having a common management and control with some of them selling grey fabrics to the assessee, which after processing the fabrics was sold to some independent dealers. All such independent dealers as well as the merchant manufacturers were described as '*S. Kumars'* and the revenue asserted to treat the price charged by the merchant manufacturers from independent dealers as the assessable value of the processed fabrics and to levy excise duty thereon. The assessee denied that the merchant manufacturers were related persons and thus disputed the basis on which claim for additional excise duty was made. The stand of the assessee was that by virtue of the decision of this Court in *Ujagar Prints (III)*, they were liable to treat the notional sale by the assessee to the merchant manufacturers as the relevant point for determining the assessable value. Examining the provisions of Section 4 of the Act, as it existed at the relevant time, with reference to the Central Excise Valuation Rules, 1975 and the

decisions of this Court in *Ujagar Prints (II)* and *Ujagar Prints (III)* and *Pawan Biscuits*, the Court held as follows:

> "We, therefore, do not agree that *Ujagar Prints (III)* would apply even to a processor who is not independent and, as is alleged in this case, the merchant manufacturers and the purchasing traders are merely extensions of the processor. In the latter case, the processor is not a mere processor but also a merchant manufacturer who purchases/ manufactures the raw material, processes it and sells it himself in the wholesale market. In such a situation, the profit is not of a processor but of a merchant manufacturer and a trader. If the transaction is between related persons, the profit would not be "normally earned" within the meaning of Rule 6(b)(ii). *If it is established that the dealings were with related persons of the manufacturer, the sale of the processed fabrics would not be limited to the formula prescribed by Ujagar Prints (III) but would be subject to excise duty under the principles enunciated in Empire Industries as affirmed in Ujagar Prints (II), incorporating the arms length principle."*
>
> (Emphasis supplied by us)

11. It is manifest from the above that the only distinctive feature of *S. Kumars* in comparison with *Ujagar Prints (II)* and (III) is the emphasis on the factum of relationship between the parties viz., the processor and the merchant manufacturers/ traders, in the former. In short, *S. Kumars* holds that if the processor-assessee is not at arm's length with the merchant manufacturer and is a related person, the formula prescribed in *Ujagar Prints (III)* would not apply and assessable value for the purpose of levy of excise duty will have to be determined in terms of the ratio of *S. Kumar* i.e. in accordance with the procedure contemplated in Section 4(1)(b) of the Act read with the relevant valuation Rules. We deferentially concur with the ratio of *S. Kumars*.

12. In the present case, as aforesaid, neither did the Tribunal address this aspect of the matter, nor did it consider whether the Assessee and Heinz are related persons. It based its decision solely on the observation made by the Adjudicating Authority "that the status of the Assessee was not better than that of a hired labour". We are, therefore, of the opinion that in the light of the above discussion, it would be necessary for the Tribunal to examine in depth the agreement between the Assessee and Heinz as also any other additional material, the parties may like to adduce and determine the question whether or not both of them are related persons.

13. Resultantly, the appeals are allowed and the matter is remanded back to the Tribunal for the purpose of determining the nature of relationship between the Assessee and Heinz. If it is found that they are not related persons, then the present decision of the Tribunal will stand affirmed. However, if the Tribunal finds that the Assessee and Heinz are related, it shall remit the matter to the Adjudicating Authority for fresh determination of the assessable value of the goods in question in accordance with law. However, having regard to the facts and circumstances of the case, there will be no order as to costs.

R.P. Appeals allowed.

T.N. GODAVARMAN THIRUMALPAD

v.

UNION OF INDIA & OTHERS

I. A. Nos. 1287, 1570-1571, 1624-1625, 1978, 2395, 2795-2796

IN

(Writ Petition (C) No. 202 of 1995)

FEBRUARY 13, 2012

[K.S. RADHAKRISHNAN AND CHANDRAMAULI KR. PRASAD, JJ.]

WILD LIFE (PROTECTION) ACT, 1972:

Object of its enactment - Discussed.

s.2(27) - Whether sandalwood (Santalum album Linn) stated to be an endangered species, be declared as a "specified plant" within the meaning of s.2(27), and be included in the Schedule VI of the Act - Held: Indian sandalwood (Santalum album Linn) is not included in the species listed in Appendix-II of CITES, however red sandalwood (Pterocarpus Santalinus) is seen included in Appendix-II - At the same time International Union for Conservation of Nature (IUCN) has included Santalum album Linn in its Red List of threatened species as "vulnerable" and red sandalwood (Pterocarpus Santalinus) in the Red List as "endangered" - Red sandalwood is a species of Pterocarpus native of India found nowhere in the world and possesses medicinal properties - Following the ecocentric principle, the Central Government is directed to take appropriate steps to include Red Sanders in Schedule-VI of the Act - Sandalwood as such finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and, therefore, calls for serious attention by the Central Government, considering the fact that all the sandalwood growing States have stated that it faces

extinction - Central Government is, therefore, directed to examine the issue at length in consultation with NBWL and take a decision as to whether Sandalwood is to be notified as a specific plant and be included in Schedule VI of the Act - Central Government is also directed to formulate a policy for conservation of sandalwood including provisions for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood - Central Government should also formulate rules and regulations for effective monitoring, control and regulation of sandalwood industries - States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in States - Constitution of India, 1950 - Articles 51A(g), 48A - Environmental Protection Act, 1986.

Sandalwood - Legislative measures taken by some of the States - Discussed Kerala Forest (Amendment) Act, 2010 - ss.47A, 47C - Tamil Nadu Forest Act, 1882 - s.40G - Tamil Nadu Sandalwood Possession Rules, 1970 - Tamil Nadu Sandalwood Transit Rules, 1967 - Karnataka Forest Act, 1963 - s.83 - A.P. Forest Act, 1967 - A.P. Sandalwood Possession Rules, 1969 - A.P. Sandalwood and Red Sanderswood Transit Rules, 1969 - Felling of Trees (Regulation) Act, 1964 - Bombay Forest Rules 1942 - Madhya Pradesh Revenue Code - Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES), the Convention of Biological Diversity 1992 (CBD).

BIOLOGICAL DIVERSITY ACT, 2002:

Object of its enactment - Discussed.

DOCTRINES/PRINCIPLES:

Public trust doctrine - Held: Is meant to ensure that all humans have equitable access to natural resources treating

all natural resources as property and not life - The principle also has its roots in anthropocentric principle - Precautionary principle and polluter-pays principles are also based on anthropocentric principle since they also depend on harm to humans as a pre-requisite for invoking those principles - The principle of sustainable development and inter-generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between the present and future generations.

Anthropocentrism vis-à-vis ecocentric approach - Held: Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species - Resultantly, any species that are of potential use to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves - Further, that principle highlights human obligations towards environment arising out of instrumental, educational, scientific, cultural, recreational and aesthetic values that forests has to offer to humans - Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being - On the other hand, ecocentric approach to environment stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life - Ecocentrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth - The intrinsic value of the environment also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, the Protocol to Antarctic Treaty on Environmental Protection 1998, the Bern Convention on Conservation of European Wildlife and Natural Habitats 1982, CITES, and CBD.

ENVIRONMENTAL PROTECTION ACT, 1986:

Object of its enactment - Discussed.

INTERNATIONAL TREATIES:

Convention on Biological Diversity (CBD) and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) - Object of - Held: CBD mandates the contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein - CITES classifies species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard - Parties to the CITES are entitled to take (a) stricter domestic measures regarding conditions of trade, taking possession or transport of specimens of species included in Appendix-I, II and III, or the complete prohibition thereof or; (b) domestic measures restricting or prohibiting trade, taking possession or transport of species not included in Appendix I, II or III - Species listed in Appendix-II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival and other species which must be subject to regulation in order that trade in specimens of certain species referred to earlier may be brought under effective control - Environmental Protection Act, 1986 - Wild Life (Protection) Act, 1972.

Incorporation of provisions of treaties in domestic law - Held: The provisions of the Treaties/Conventions which are not contrary to Municipal laws would be deemed to have been incorporated in the domestic law.

The question which arose for consideration in the instant applications was whether sandalwood (Santalum album Linn) stated to be an endangered species, be declared as a "specified plant" within the meaning of

Section 2(27), and be included in the Schedule VI of the Wild Life (Protection) Act, 1972.

Disposing of the applications, the Court

HELD: 1. Sandalwood is an evergreen tree which generally grows in the dry, deciduous forests of the Deccan Plateau. Sandalwood is also mentioned in one of the oldest epics, the Ramayana. Descriptions are also made by Kalidasa of its use in his literary works as well. In short, it is part of Indian culture and heritage and its fragrance has spread not only in India but also abroad and its rich oil content led to its large scale exploitation as well. Exploitation of this rare endangered species went on unabatedly, especially in the southern States of India and on intervention of this Court, the State of Kerala has closed down 24 unlicensed sandalwood oil factories. Similar steps were being taken by other states as well. [Para 11] [944-E-F]

2. SOME OF THE LEGISLATIVE MEASURES TAKEN BY SOME OF THE STATES ARE AS UNDER:

2.1. State of Kerala:

In State of Kerala, best quality sandalwood trees are grown in the forest of Marayoor, spread over 93 Sq.Km which generate the best quality sandalwood oil in the world. Recently, the Kerala Forest (Amendment) Act, 2010 introduced a new chapter, Chapter 6A entitled "Provisions relating to sandalwood" which regulates cutting and possession of sandalwood. Section 47A provides that no individual shall cut, uproot, remove or sell any sandalwood tree without previous permission in writing from the forest officer. There is also absolute prohibition on transport and possession of sandalwood or sandalwood oil in excess of one Kilogram or 100 ml respectively without a license from the forest officer

under Section 47C of the Act. Under Section 47C(3) only the government or the public sector undertakings (PSU) owned by the government shall manufacture or distil, refine or sell sandalwood oil. Section 47F imposes restrictions on purchase and sale of sandalwood from any person other than government or authorised officer. Provision is also there for seizure of sandalwood and its oil under Section 47H and penalty for offences can be imposed. Act also provides for imprisonment for three years, extendable upto seven years and fine not less than Rs.10,000/- extendable upto Rs.25,000/-. [Para 12] [945-H; 945-A-D]

2.2. State of Tamil Nadu

The Tamil Nadu Forest Act, 1882 - Section 40G of the Act provides that teak, blackwood, ebony, sandalwood and also ivory and teeth of elephants, either grown or found on government land or private property are royalties and no trade shall be carried on in them unless they have been duly obtained from the government. Section 40G(2) places restrictions on felling of trees by any person without the permission of the Chief Conservator of Forest or any other person authorised by him. The State of Tamil Nadu has also enacted the Tamil Nadu Sandalwood Possession Rules, 1970 and also Tamil Nadu Sandalwood Transit Rules, 1967, and the Act also provides for imposing penalties and imprisonment. [para 13] [945-E-H]

2.3. State of Karnataka

The Karnataka Forest Act, 1963 and the Rules made thereunder have removed the restrictions on growing sandalwood trees in private lands. Section 83 of the Act provides that where a person is an owner of sandalwood trees before the commencement of 2001 Amendment Act, he shall not fell or sell such sandalwood tree or

convert or dress sandalwood obtained from such tree or possess or store or transport or sell the sandalwood except in accordance with the provisions of the Act. The Act also provides for imposition of penalty and imprisonment. [para 14] [946-A-C]

2.4. State of Andhra Pradesh

The A.P. Forest Act, 1967, A.P. Sandalwood Possession Rules, 1969, A.P. Sandalwood and Red Sanderswood Transit Rules, 1969 generally deal with the possession, control and transit of sandalwood and Red Sanders etc., but there is no restriction as such on the felling of sandalwood trees. The Act also provides for punishment for contravention of the provisions of the Act or the rules made thereunder. [para 15] [946-D]

2.5. State of Maharashtra has also enacted the Felling of Trees (Regulation) Act, 1964, The Bombay Forest Rules 1942, which deal with sandalwood as well.

2.6. State of Madhya Pradesh has also enacted Madhya Pradesh Revenue Code. States like Gujarat, Orissa have framed special provisions for dealing with sandalwood. [para 16] [946-F]

3. Article 48A of the Constitution introduced by the Constitution (42nd Amendment) Act 1976 states that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. Article 51A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. By the same constitutional amendment Entry 17A "forest" and 17B "protection of wild animals and birds" were included in List III - Concurrent List so that the Parliament as well as the States can enact laws to give effect to the Directive

Principles of State Policy as well as various international obligations. Earlier, by virtue of Entry 20 of the State List VII Schedule to the Constitution, namely protection of wild animals and birds, only the State had the power to legislate and Parliament had no power to make law in this regard applicable to the State unless the legislatures of two or more states passed a resolution in pursuance of Article 252 of the Constitution empowering the Parliament to pass necessary legislations on the subject. However, by virtue of (42nd Amendment) Act 1976 of the Constitution, the Parliament has got the power to legislate for the whole country. Consequently, the Wildlife (Protection Act) 1972 was enacted by the Parliament to provide for the protection to wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensure the ecological and environmental security of the country. The Act was later amended and Chapter-IIIA was inserted by Act 44 of 1991 enacting provisions for the protection of "specified plants". [para 17] [946-G-H; 947-A-E]

4. Biological Diversity Act, 2002 was also enacted by the Parliament with the object of conserving biological diversity, sustainable use of its components and for fair and equitable sharing of the benefits arising out of utilization of genetic resources. Biological diversity includes all the organisms found on our planet viz., the plants, animals and micro organisms. Environmental Protection Act, 1986 enacted by the Parliament empowers the Central Government under Section 3 to take such measures for the purpose of protecting and improving the quality of environment. The examination of all these legislations in the light of the constitutional provisions and various international conventions like Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES), the Convention of Biological Diversity 1992 (CBD) evidently shows that there is a shift

from environmental rights to ecological rights, though gradual but substantial. Earlier, the Rio Declaration on Earth Summit asserted the claim "human beings are the centre of concern". U.N. Conference on Environment and Development (UNCED-1992), was also based on anthropocentric ethics, same was the situation in respect of many such international conventions, that followed. [para 18] [947-F-H; 948-A-B]

5. The public trust doctrine developed in *M.C. Mehta vs. Kamalnath is also meant to ensure that all humans have equitable access to natural resources treating all natural resources as property and not life. That principle also has its roots in anthropocentric principle. Precautionary principle and polluter-pays principles in **Vellore Citizens Welfare Forum vs. Union of India are also based on anthropocentric principle since they also depend on harm to humans as a pre-requisite for invoking those principles. The principle of sustainable development and inter-generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between the present and future generations. Environmental ethics behind those principles were human need and exploitation, but such principles have no role to play while deciding the fate of an endangered species or the need to protect the same irrespective of its instrumental value. [para 19] [948-C-F]

M.C. Mehta v. Kamalnath* **1997 (1) SCC 388 : 1996 (10) Suppl. SCR 12; ***Vellore Citizens Welfare Forum v. Union of India and others* **1996 (5) SCC 647 : 1996 (5) Suppl. SCR 241 - relied on.**

6. Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species. Resultantly, any species that are of potential use

to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves. Further, that principle highlights human obligations towards environment arising out of instrumental, educational, scientific, cultural, recreational and aesthetic values that forests has to offer to humans. Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being. On the other hand ecocentric approach to environment stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Ecocentrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth. This principle had its roots in India, much before it was thought of in the Western world. Father of the Nation Mahatma Gandhi has also taught the same principle and all those concepts find their place in Article 51A(g) as well. The intrinsic value of the environment also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, the Protocol to Antarctic Treaty on Environmental Protection 1998, the Bern Convention on Conservation of European Wildlife and Natural Habitats 1982, CITES, and CBD etc. India is a signatory to CBD, which also mandates the contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein. CITES in its preamble also indicates that Fauna and Flora are irreplaceable part of the natural environment of the earth and international cooperation is essential for the protection of certain species against over exploitation and international trade. CITES, to which India is a signatory, classifies species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard. Parties to the CITES are also

entitled to take (a) stricter domestic measures regarding conditions of trade, taking possession or transport of specimens of species included in Appendix-I, II and III, or the complete prohibition thereof or; (b) domestic measures restricting or prohibiting trade, taking possession or transport of species not included in Appendix I, II or III. Species listed in Appendix - II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival and other species which must be subject to regulation in order that trade in specimens of certain species referred to earlier may be brought under effective control. CITES and CBD highlight the principles:- The State is bound to initiate measures to identify threatened species. The State is obliged to initiate measures to conserve and protect such threatened species. The State is also required to formulate policies, legislation and appropriate laws to curb those practices (including trade) that result in extinction of species. The State is obliged to undertake in-situ conservation of biological diversity as it is not sufficient that a species is cultivated elsewhere. It, ought to be protected in its natural habitat. Indian sandalwood (Santalum album Linn) is not seen included in the species listed in Appendix-II of CITES, however red sandalwood (Pterocarpus Santalinus) is seen included in Appendix-II. At the same time International Union for Conservation of Nature (IUCN) which is an international organization dedicated to finding pragmatic solutions of our most pressing environment and development challenges has included Santalum album Linn in its Red List of threatened species as "vulnerable" and red sandalwood (Pterocarpus Santalinus) in the Red List as "endangered". Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as "threatened with

extinction", "endangered". A taxon is critically endangered when the available evidence indicates that it meets with the criteria of extremely high risk of extinction. It is Endangered when it meets with the criteria of facing a very high risk of extinction. A taxon is vulnerable when it is considered to be facing a high risk of extinction. Near threatened, means a taxon is likely to qualify for a threatened category in the near future. [Paras 20-23] [948-G-H; 949-A-B; 950-B-D; 951-A-H; 952-A-E]

Environmental Ethics, Stanford Encyclopaedia of Philosophy **2002; Revised 2008 - referred to.**

7. Red sandalwood is a species of Pterocarpus native of India seen no where in the world. It is reported that the same is found only in South India, especially in Cuddapah and Chittoor in the States of Tamil Nadu and Andhra Pradesh border which is also known as Lal Chandan /Rakta Chandan in Hindi which is an endemic and endangered species. Red sandalwood possesses medicinal properties viz., an anticoagulant, improves local circulation and used on traumatic wounds, aberrations and bruises. Since the trading is mostly in South India, especially in Andhra Pradesh (AP) it is stated that A.P. Forest Corporation has been appointed as an agent to Govt. of A.P. for disposal of red sandalwood available with Forest Department. Red Sanders is an endemic and endangered species found only in the State of A.P. A.P. Government has banned the sale of Red Sanders even by private parties, the wood is of huge demand in Japan, China and Western world and is very costly and it is included in the negative list of plant species for export purposes, implemented by the Directorate General of Foreign Trade, Ministry of Commerce, placing restrictions on international trade of Red Sanders. Large scale smuggling of Red Sanders is however reported from various quarters. In order to protect the species, a

proposal was made by the State of A.P. to Government of India for its inclusion in Schedule VI of the Act which is justified. [Paras 24-25] [952-F-H; 953-A-C]

8. CITES as well as IUCN has acknowledged that Red Sandalwood is an endangered species. It is settled law that the provisions of the Treaties/Conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law. Following the ecocentric principle, the Central Government is directed to take appropriate steps under Section 61 of the Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P., within a period of six months from the date of this judgment. This direction is given, since, it is reported that nowhere in the world, this species is seen, except in India and it should be safeguarded for posterity. Power is also vested with the Central Government to delete from the Schedule if the situation improves, and a species is later found to be not endangered. [Para 26] [953-D-G]

Jolly George v. Bank of Cochin **(1980) 2 SCC 360 : 1980 (2) SCR 913;** *Gramaphone Company of India v. Birendra Baldev Pandey* **(1984) 2 SCC 534 : 1984 (2) SCR 664 - relied on.**

9. Sandalwood as such finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of National Board for Wildlife (NBWL) which is headed by the Prime Minister as Chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the National Board to

promote the conservation and development of wildlife and forests by such measures as it thinks fit. Section 5C(ii)(a) states that the measures may provide for promoting policies and advising Central Government and State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products and also for reviving from time to time the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto. Various other powers have also been conferred on the National Board which consists of experts in the field of environment. In such circumstances rather than giving a positive direction to include sandalwood in Schedule VI the Central Government is directed to examine the issue at length in consultation with NBWL and take a decision within a period of six months as to whether it is to be notified as a specific plant and be included in Schedule VI of the Act. The Central Government is also directed to formulate a policy for conservation of sandalwood including provision for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood. Central Government would also formulate rules and regulations under Section 3 and 5 of Environmental Protection Act 1986 for effective monitoring, control and regulation of sandalwood industries and factories and that it should also formulate rules to ensure that no imported sandalwood is sold under the name of Indian sandalwood and adequate labelling to this effect be mandated for products manufactured from or of import of sandalwood. States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in states. Time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States

which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within a foreseeable time". The term species includes species and sub-species of fish, wildlife and plants as well as geographically distinct populations of vertebrate wildlife even though the species as a whole may not be endangered. [paras 27-29] [953-H; 954-A-H; 955-A-C]

Case Law Reference:

1996 (10) Suppl. SCR 12	**relied on**	**Para 8**
1996 (5) Suppl. SCR 241	**relied on**	**Para 8**
1980 (2) SCR 913	**relied on**	**Para 26**
1984 (2) SCR 664	**relied on**	**Para 26**

CIVIL ORIGINAL JURISDICTION : I. A. Nos. 1287, 1570-1571, 1624-1625, 1978, 2395, 2795-2796

IN

WRIT PETITION (C) NO. 202 OF 1995

Under Article 32 of the Constitution of India

WITH

I.A. Nos. 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2966-2967, in I.A. No.1287 in W.P.(C) 202 of 1995.

Mohan Jain, ASG, P.S. Narasimha, Rajiv Dutta, Amarender Sharan, Basava Prabhu Patil, Gurukrishna Kumar, AAG, D.K. Thakur, Prabhat Kumar, Karthik Ashok, Sheethal Menon, Namrata Bhatia, S.N. Terdal, Gaurav Agarwal, K. Parmeswar, Haris Beeran, P.K. Manohar, Bina Madhavan, M.P. Maharia, Sangeeta Kumar, Anitha Shenoy, T.N. Rao, Balraj Dewan, Aruputham Aruna & Co., Parekh & Co., M.N. Krishma,

N. Ganapathy, Ajay K. Dutta, S. Prasad, D. Bharathi Reddy, A. Subhashini, Tarjit Singh, Manjit Singh (for Kamal Mohan Gupta), Bishwajeet Dueby, Anushree Tripathi, Suresh A. Shroff & Co., A. Deb Kumar, Mudrika Bansal, Sukhbir Kaur Bajwa, Zafar Sadique, Anil Vyas, Balraj Dewan, Subramonium Prasad, Bipin Kalappa, Sumit Goel, Rukhmini Bodbe (for Parekh & Co.), K.R. Sasiprabhu, N.P. Maharia, G. Prakash Sanjay R. Hegde, T.V. George for the appearing parties.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. We are in this case concerned with the question whether sandalwood (*Santalum album Linn*) stated to be an endangered species, be declared as a "specified plant" within the meaning of Section 2(27), and be included in the Schedule VI of The Wild Life (Protection) Act, 1972 (for short the Act). On going through the various international conventions, we thought it appropriate to examine the repeated requests made by the State of Andhra Pradesh to the Central Govt. to notify Red Sanders (*Pterocarpus santalinus)* as a 'specified plant' and be included in the Schedule VI of the Act.

2. A non-governmental organisation moved the Central Empowered Committee (CEC) to initiate steps for closure of all unlicensed sandalwood oil industries, particularly in the State of Kerala. CEC after conducting a detailed enquiry and hearing the state officials, representatives of the sandalwood industries and various other interested persons, submitted its report dated 24th February 2005 before this Court praying that all unlicensed sandalwood oil industries be also brought within the purview of this Court's order dated 30.12.2002 by which this Court had ordered the closure of all unlicensed saw mills, veneer and plywood industries in the country. Various other directions were also sought for. Report of the CEC was listed along with IA 1287 of 1995 which came up for hearing on 1.4.2005 and this Court issued notices to the States of Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, which are the major sandalwood growing

states of the country. This Court then passed an order on 10.2.2006 directing closure of all the unlicensed sandalwood oil extracting factories, operating in various parts of the country. Consequently, 24 unlicensed sandalwood oil factories functioning in the State of Kerala were closed down.

3. The State of Kerala and few other states submitted their reply to the reports submitted by the CEC and pointed out that no private sandalwood oil extracting units are now functioning in most of the sandalwood growing states but only the state owned public sector undertakings. The Karnataka Soaps and Detergent Ltd., a Karnataka State owned undertaking also submitted their views. MoEF also filed a detailed affidavit before this Court stating that they have no objection in the closure of all unlicensed sandalwood oil manufacturing factories in the country.

4. Indian Sandalwood Association got themselves impleaded and filed objections to the CEC Report. CEC later submitted three other reports dated 8.1.2008, 2.9.2009, 15.11.2010. CEC in the reports took the stand that the sandalwood oil industries could be permitted to function outside the sandalwood growing states and that import of sandalwood as such should not be banned. The Additional Principal Chief Conservator of Forests, Karnataka also submitted before the CEC that there are no matured sandalwood trees available in the State of Karnataka and the State has not approved any felling of sandalwood trees due to non-availability. State of Tamil Nadu also stated before the CEC that no felling of sandalwood tree was officially undertaken due to want of matured trees. State of Maharashtra and Andhra Pradesh have also filed affidavits stating that whatever little sandalwood growth was there in those states needs to be protected and that sandalwood species is under imminent threat. MoEF in its affidavit dated 24th October, 2010 has stated as follows:

> "The Ministry supports the contention that all illegal sandalwood oil units should be closed down. As far as

> closing of sandalwood units in non-sandalwood growing States is concerned the Ministry has "No Objection" in allowing the legal private entrepreneur from setting up sandalwood oil units in non-sandalwood producing States provided that only legally sourced sandalwood for which Certificate of Origin has been obtained, is used and the regulatory enforcement mechanisms, set up by the State for detection, control and action against proceedings of illegal units are well in place."

The CEC, however, in its report dated 2.9.2009 maintained the following stand:

> "In the light of the facts highlighted above the CEC is unable to agree with the contention of the Applicants that they should be permitted to establish /continue the sandalwood oil units in non-sandalwood producing States under appropriate supervision and regulations and that the imported sandalwood is a substitute for Indian sandalwood. The CEC is of the considered view that if the present state of affairs is allowed to continue, sandalwood, so unique and a special gift of nature to India would become extinct in the not too distant future. The protection of sandalwood forest is simply not possible without first ensuring that the establishment / functioning of sandalwood oil units are severely restricted / regulated in the country particularly when the sandalwood has become an almost extinct commodity. One is duty bound to protect in public interest whatever sandalwood forests are left. This is one instance where the public interest necessarily and unhesitatingly has to take precedence over private interest. However, sandalwood oil units, based exclusively on imported sandalwood may be permitted in identified locations subject to strict supervision and regulations by the Forest Department.

5. MoEF however in its affidavit dated 24.3.2011 stated that in the light of the non-availability of sandalwood, it would

review its policy about permitting the export of sandalwood chips and oil, particularly, with reference to its adverse effect on the production of sandalwood in the country and also would examine the imposition of complete ban on sale/auction of confiscated sandalwood in view of the alarming rate at which sandalwood is disappearing and may become extinct in not too distant future.

6. MoEF however in its latest affidavit dated 6.9.2011 expressed the apprehension that the inclusion of the sandalwood species in Schedule VI in the Wild Life Protection Act, 1972 would alienate people from growing the species on a large scale and hence it is of the view that an "All India Sandalwood Legislation" would be an adequate solution, in the event of which it was stated the species would be fully protected within the country and at the same time trade could also be regulated. Ministry has also expressed the view that sandalwood may be allotted to public sector units and that would ensure that the artisans dealing with sandalwood would get raw materials which would give them a greater impetus for taking up their traditional work/skills and also give them an economic boost as well as earn foreign revenue as sandalwood handicrafts have high demand for export.

7. The Sandalwood Oil Manufacturers Association expressed the apprehension that the inclusion of the sandalwood as a specified plant under the Act would not be conducive and beneficial for the cultivation and preservation of the trees. Reference was also made to the various provisions of Chapter IIIA of the Act and stated that the members of the Association who have cultivation of sandalwood in the State of Chhattisgarh, Madhya Pradesh and involved in the business of manufacturing products using sandalwood oil if covered by Section 17A(b) would be put to considerable difficulties. The Association also maintained the stand that if Chapter IIIA of the Act is fully implemented by declaring the sandalwood as a specified plant then it would adversely affect the interest of the

cultivators of sandalwood and would lead to further extinction of the species.

8. We have heard the learned amicus curiae, Mr. P.S. Narasimha, Senior Counsel Mr. Rajiv Dutta, and other counsels at length. Learned amicus curiae referred to the affidavits filed by the MoEF and other state governments and submitted that there is consensus among all major sandalwood growing states and the Union of India that the export of sandalwood would be of serious threat and may lead to the extinction of the species. Few of the states have maintained the stand that no matured sandalwood trees are available for felling which, according to the amicus curiae leads to the inescapable conclusion that Indian sandalwood is in fact endangered. Learned senior counsel highlighted the necessity of the inclusion of sandalwood in Schedule VI of the Act and submitted that the apprehension expressed by the MoEF that it would discourage the cultivation of sandalwood has no basis. Learned senior counsel extensively referred to the provisions of Chapter IIIA of Act and the provisions of Bio Diversity Act, and submitted that when we deal with the issue of an endangered species, the question to be examined is not whether the species is of any instrumental value to human beings, but its intrinsic worth. Learned senior counsel extensively referred to the anthropocentric and ecocentric approach and submitted that anthropocentric approach would depend upon the instrumental value of life forms to human beings while ecocentric approach stresses on the intrinsic value of all life forms. Learned senior counsel stressed that the bio-diversity law departs from the traditional anthropocentric character of environmental law and that our Constitution recognises ecocentric approach by obliging every citizen to have compassion for all living creatures, so also the preamble to Act. Learned counsel also submitted that public trust doctrine developed in *M.C. Mehta v. Kamalnath* 1997 (1) SCC 388 is based largely on anthropocentric principles and the precautionary and polluter-pay principle affirmed by this Court in *Vellore Citizens Welfare Forum v. Union of India and*

others 1996 (5) SCC 647 are also rooted in anthropocentric principle, since they too depend on harm to humans as a pre-requisite for invocation of those principles.

9. Learned senior counsel also highlighted the principle of sustainable development and inter-generational equity and stated that they too pre-suppose the higher needs of human beings and lays down that exploitation of natural resources must be equitably distributed between the present and future generation. Learned senior counsel also highlighted that the above principle would be of no assistance when a Court is called upon to decide as to when a species has become endangered, or the need to protect irrespective of its instrumental value. Learned senior counsel pointed out the CEC and the States of Tamil Nadu and Kerala have produced enough materials to show that the sandalwood trees are critically endangered and that illegal felling and trade go on unabated and regulation on cultivation and use of sandalwood would definitely be in public interest and therefore constitutional. Further it was also pointed out that Chapter IIIA altogether does not prohibit or abolish either the cultivation, possession or dealing in specified plants, but it merely regulates the cultivation and use of specified plants though a licensing system of the Chief Wildlife Warden. He therefore urged that this Court must interpret Chapter IIIA along with the constitutional provisions and international obligations in a holistic manner to ensure that the Central Government is duty bound to protect sandalwood by including the same in Schedule VI of the Act.

10. Learned senior counsel, Shri Rajiv Dutta also offered his suggestion/comments on the question of notifying sandalwood as a specified plant under Schedule VI of the Act. The apprehension voiced by learned senior counsel was that on such inclusion there would be blanket restrictions and conditions covering big and small private cultivators, to farmers, to menial vendors and hawkers who possess sandalwood and/or any part of and/or any derivative of sandalwood in any

product that uses a part of or derivative of sandalwood. Learned senior counsel also pointed that they have no objection in the prohibition of picking and uprooting sandalwood tree from forest area or any area specified by notification by the Central Government but they are more concerned with the applicability of Section 17A(b). Further it was pointed that once it is notified as a specified plant, Section 17B would be attracted that would only discourage the trade leading to the stoppage of many of the sandalwood oil industries in the country. Learned senior counsel also referred to Sections 17C, 17D, 17E, 17F and other relevant provisions and highlighted the difficulties that they would experience if sandalwood is declared as a specified plant. Learned senior counsel also pointed out that they have no objection in imposing proper regulation in the trade of sandalwood and all India legislation is a better option.

11. We have heard the arguments of learned senior counsel appearing on either sides and perused the affidavits filed by various state governments, MoEF and the reports of the CEC and other relevant materials. Sandalwood is an evergreen tree which generally grows in the dry, deciduous forests of the Deccan Plateau. Sandalwood is also mentioned in one of the oldest epics, the Ramayana. Descriptions are also made by Kalidasa of its use in his literary works as well. In short, it is part of Indian culture and heritage and its fragrance has spread not only in India but also abroad and its rich oil content led to its large scale exploitation as well. Exploitation of this rare endangered species went on unabatedly, especially in the southern states of India and on intervention of this Court, the State of Kerala has closed down 24 unlicensed sandalwood oil factories. Similar steps were being taken by other states as well. Before we refer to various contentions raised by counsel on either sides, we will refer to some of the legislative measures taken by some of the states, which are as under:

State of Kerala:

12. In State of Kerala best quality sandalwood trees are

grown in the forest of Marayoor, spread over 93 Sq.Km which generate the best quality sandalwood oil in the world. Recently, the Kerala Forest (Amendment) Act, 2010 introduced a new chapter, Chapter 6A entitled "Provisions relating to sandalwood" which regulates cutting and possession of sandalwood. Section 47A provides that no individual shall cut, uproot, remove or sell any sandalwood tree without previous permission in writing from the forest officer. There is also absolute prohibition on transport and possession of sandalwood or sandalwood oil in excess of one Kilogram or 100 ml respectively without a license from the forest officer under Section 47C of the Act. Under Section 47C(3) only the government or the public sector undertakings (PSU) owned by the government shall manufacture or distil, refine or sell sandalwood oil. Section 47F imposes restrictions on purchase and sale of sandalwood from any person other than government or authorised officer. Provision is also there for seizure of sandalwood and its oil under Section 47H and penalty for offences can be imposed. Act also provides for imprisonment for three years, extendable upto seven years and fine not less than Rs.10,000/- extendable upto Rs.25,000/-.

State of Tamil Nadu

13. Tamil Nadu Forest Act, 1882 — Section 40G of the Act provides that teak, blackwood, ebony, sandalwood and also ivory and teeth of elephants, either grown or found on government land or private property are royalties and no trade shall be carried on in them unless they have been duly obtained from the government. Section 40G(2) places restrictions on felling of trees by any person without the permission of the Chief Conservator of Forest or any other person authorised by him. The state of Tamil Nadu has also enacted the Tamil Nadu Sandalwood Possession Rules, 1970 and also Tamil Nadu Sandalwood Transit Rules, 1967, and the Act also provides for imposing penalties and imprisonment.

State of Karnataka

14. Karnataka Forest Act, 1963 and the Rules made thereunder have removed the restrictions on growing sandalwood trees in private lands. Section 83 of the Act provides that where a person is an owner of sandalwood trees before the commencement of 2001 Amendment Act, he shall not fell or sell such sandalwood tree or convert or dress sandalwood obtained from such tree or possess or store or transport or sell the sandalwood except in accordance with the provisions of the Act. The Act also provides for imposition of penalty and imprisonment.

State of Andhra Pradesh

15. A.P. Forest Act, 1967, A.P. Sandalwood Possession Rules, 1969, A.P. Sandalwood and Red Sanderswood Transit Rules, 1969 generally deal with the possession, control and transit of sandalwood and Red Sanders etc., but there is no restriction as such on the felling of sandalwood trees. The Act also provides for punishment for contravention of the provisions of the Act or the rules made thereunder.

16. State of Maharashtra has also enacted the Felling of Trees (Regulation) Act, 1964, The Bombay Forest Rules 1942, which deal with sandalwood as well. State of Madhya Pradesh has also enacted Madhya Pradesh Revenue Code. States like Gujarat, Orissa have framed special provisions for dealing with sandalwood. It is unnecessary to refer to the laws made by the various states in the country, suffice to say lack of uniform legislation, dealing with this endangered species, is clearly felt.

17. Article 48A of the Constitution introduced by the Constitution (42nd Amendment) Act 1976 states that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. Article 51A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes,

rivers and wildlife and to have compassion for living creatures. By the same constitutional amendment Entry 17A "forest" and 17B "protection of wild animals and birds" were included in List III – Concurrent List so that the Parliament as well as the States can enact laws to give effect to the Directive Principles of State Policy as well as various international obligations. Earlier, by virtue of Entry 20 of the State List VII Schedule to the Constitution, namely protection of wild animals and birds, only the State had the power to legislate and Parliament had no power to make law in this regard applicable to the State unless the legislatures of two or more states passed a resolution in pursuance of Article 252 of the Constitution empowering the Parliament to pass necessary legislations on the subject. However, by virtue of (42nd Amendment) Act 1976 of the Constitution, the Parliament has got the power to legislate for the whole country. Consequently, The Wildlife (Protection Act) 1972 was enacted by the Parliament to provide for the protection to wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensure the ecological and environmental security of the country. The Act was later amended and Chapter-IIIA was inserted by Act 44 of 1991 enacting provisions for the protection of "specified plants".

18. Biological Diversity Act, 2002 was also enacted by the Parliament with the object of conserving biological diversity, sustainable use of its components and for fair and equitable sharing of the benefits arising out of utilization of genetic resources. Biological diversity includes all the organisms found on our planet viz., the plants, animals and micro organisms. Environmental Protection Act, 1986 enacted by the Parliament empowers the Central Government under Section 3 to take such measures for the purpose of protecting and improving the quality of environment. When we examine all those legislations in the light of the constitutional provisions and various international conventions like Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES),

the Convention of Biological Diversity 1992 (CBD) evidently, there is a shift from environmental rights to ecological rights, though gradual but substantial. Earlier, the Rio Declaration on Earth Summit asserted the claim "human beings are the centre of concern". U.N. Conference on Environment and Development (UNCED-1992), was also based on anthropocentric ethics, same was the situation in respect of many such international conventions, that followed.

19. The public trust doctrine developed in *M.C. Mehta vs. Kamalnath* (1997) 1 SCC 388, is also meant to ensure that all humans have equitable access to natural resources treating all natural resources as property and not life. That principle also has its roots in anthropocentric principle. Precautionary principle and polluter-pays principles affirmed by our Court in *Vellore Citizens Welfare Forum vs. Union of India and Others* (supra) are also based on anthropocentric principle since they also depend on harm to humans as a pre-requisite for invoking those principles. The principle of sustainable development and inter-generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between the present and future generations. Environmental ethics behind those principles were human need and exploitation, but such principles have no role to play when we are called upon to decide the fate of an endangered species or the need to protect the same irrespective of its instrumental value.

20. Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species. Resultantly, any species that are of potential use to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves. Further, that principle highlights human obligations towards environment arising out of instrumental, educational, scientific, cultural, recreational and aesthetic values that forests has to offer to humans. Under this

approach, environment is only protected as a consequence of and to the extent needed to protect human well being. On the other hand ecocentric approach to environment stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Ecocentrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth. (See Environmental Ethics, Stanford Encyclopaedia of Philosophy 2002; Revised 2008.) The same book also gives a clear distinction between instrumental value and intrinsic value which reads as follows:-

> "In the literature on environmental ethics the distinction between instrumental value and intrinsic value (meaning "non-instrumental value") has been of considerable importance. The former is the value of things as means to further some other ends; they are also useful as means to other ends. For instance, certain fruits have instrumental value for bats who feed on them, since feeding on the fruits is a means to survival for the bats. However, it is not widely agreed that fruits have value as ends in themselves. We can likewise think of a person who teaches others as having instrumental value for those who want to acquire knowledge. Yet, in addition to any such value, it is normally said that a person, as a person, has intrinsic value, i.e., value in his or her own right independently for his or her prospects for serving the ends of others. For another example, a certain wild plant may have instrumental value because it provides the ingredients for some medicine or as an aesthetic object for human observers. But if the plant also has some value in itself independently of its prospects for furthering some other ends such as human health or the pleasure from aesthetic experience, then the plant also has intrinsic value. Because the intrinsically valuable is that which is good as an end in itself, it commonly agreed that something's possession of intrinsic value generates a prima facie direct moral duty

> on the part of morel agents to protect it or at least refrain from damaging it."

Above principle had its roots in India, much before it was thought of in the Western world. Isha-Upanishads (as early as 1500 – 600 B.C) taught us the following truth:-

> "The universe along with its creatures belongs to the Lord. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

21. Father of the Nation Mahatma Gandhi has also taught us the same principle and all those concepts find their place in Article 51A(g) as well. The intrinsic value of the environment as we have already indicated also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, The Protocol to Antarctic Treaty on Environmental Protection 1998, The Bern Convention on Conservation of European Wildlife and Natural Habitats 1982, CITES, and CBD etc.

CBD in its preamble states as follows:-

> "The Contracting Parties,
>
> Conscious of the intrinsic value of biological and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.
>
> Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.
>
> Affirming that the conservation of biological diversity is a common concern of humankind."

India is a signatory to CBD, which also mandates the

contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein. CITES in its preamble also indicates that Fauna and Flora are irreplaceable part of the natural environment of the earth and international cooperation is essential for the protection of certain species against over exploitation and international trade.

22. CITES, to which India is a signatory, classifies species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard.

23. Parties to the CITES are also entitled to take (a) stricter domestic measures regarding conditions of trade, taking possession or transport of specimens of species included in Appendix-I, II and III, or the complete prohibition thereof or; (b) domestic measures restricting or prohibiting trade, taking possession or transport of species not included in Appendix I, II or III. As indicated earlier species listed in Appendix – II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival and other species which must be subject to regulation in order that trade in specimens of certain species referred to earlier may be brought under effective control.

CITES and CBD highlight the following principles:-

(a) The State is bound to initiate measures to identify threatened species.

(b) The State is obliged to initiate measures to conserve and protect such threatened species.

(c) The State is also required to formulate policies, legislation and appropriate laws to curb those practices (including trade) that result in extinction of species.

(d) The State is obliged to undertake in-situ conservation of biological diversity as it is not sufficient that a species is cultivated elsewhere. It, ought to be protected in its natural habitat.

Indian sandalwood (*Santalum album Linn*) is not seen included in the species listed in Appendix-II of CITES, however red sandalwood (*Pterocarpus Santalinus*) is seen included in Appendix-II. At the same time International Union for Conservation of Nature (IUCN) which is an international organization dedicated to finding pragmatic solutions of our most pressing environment and development challenges has included *Santalum album Linn* in its Red List of threatened species as "vulnerable" and red sandalwood (*Pterocarpus Santalinus*) in the Red List as "endangered". Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as "threatened with extinction", "endangered". A taxon is *critically endangered* when the available evidence indicates that it meets with the criteria of extremely high risk of extinction. It is *Endangered* when it meets with the criteria of facing a *very high risk of extinction*. A taxon is *vulnerable* when it is considered to be facing *a high risk of extinction. Near threatened,* means a taxon is likely to qualify for a threatened category in the near future.

24. Red sandalwood is a species of *Pterocarpus* native of India seen no where in the world. It is reported that the same is found only in South India, especially in Cuddapah and Chittoor in the States of Tamil Nadu and Andhra Pradesh border which is also known as *Lal Chandan /Rakta Chandan* in Hindi which is an endemic and endangered species. Red sandalwood possesses medicinal properties viz., an anticoagulant, improves local circulation and used on traumatic wounds, aberrations and bruises. Since the trading is mostly in South India, especially in Andhra Pradesh (AP) it is stated that A.P. Forest Corporation has been appointed as an agent to Govt. of A.P. for disposal of red sandalwood available with Forest Department.

25. Red Sanders is an endemic and endangered species as already mentioned, found only in the State of A.P. A.P. Government has banned the sale of Red Sanders even by private parties, the wood is of huge demand in Japan, China and Western world and is very costly and it is included in the negative list of plant species for export purposes, implemented by the Directorate General of Foreign Trade, Ministry of Commerce, placing restrictions on international trade of Red Sanders. Large scale smuggling of Red Sanders is however reported from various quarters. In order to protect the species, a proposal was made by the State of A.P. to Government of India for its inclusion in Schedule VI of the Act which, in our view, is justified.

26. CITES as well as IUCN has acknowledged that Red Sandalwood is an endangered species. It is settled law that the provisions of the Treaties/Conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law. Ref. *Vellore Citizens* (Supra), *Jolly George vs. Bank of Cochin* (1980) 2 SCC 360, *Gramaphone Company of India vs. Birendra Baldev Pandey* (1984) 2 SCC 534. *Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to the Central Government to take appropriate steps under Section 61 of the Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P., within a period of six months from the date of this judgment.* We are giving this direction, since, it is reported that nowhere in the world, this species is seen, except in India and we owe an obligation to world, to safeguard this endangered species, for posterity. Power is also vested with the Central Government to delete from the Schedule if the situation improves, and a species is later found to be not endangered.

27. Sandalwood as such we have already indicated finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central

Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of National Board for Wildlife (NBWL) which is headed by the Prime Minister as Chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the National Board to promote the conservation and development of wildlife and forests by such measures as it thinks fit. Section 5C(ii)(a) states that the measures may provide for promoting policies and advising Central Government and State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products and also for reviving from time to time the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto. Various other powers have also been conferred on the National Board which consists of experts in the field of environment. *In such circumstances rather than giving a positive direction to include sandalwood in Schedule VI we are inclined to give a direction to the Central Government to examine the issue at length in consultation with NBWL and take a decision within a period of six months from today as to whether it is to be notified as a specific plant and be included in Schedule VI of the Act.*

28. We are also inclined to give a direction to the Central Government to formulate a policy for conservation of sandalwood including provision for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood. Central Government would also formulate rules and regulations under Section 3 and 5 of Environmental Protection Act 1986 for effective monitoring, control and regulation of sandalwood industries and factories and that it should also formulate rules to ensure that no imported sandalwood is sold under the name of Indian sandalwood and adequate labelling to this effect be mandated for products

manufactured from or of import of sandalwood. States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in states.

29. We are also of the view that time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within a foreseeable time". The term species includes species and sub-species of fish, wildlife and plants as well as geographically distinct populations of vertebrate wildlife even though the species as a whole may not be endangered. We hope the Parliament would bestow serious attention in this regard. With the above directions, all the applications are disposed of.

D.G. Interlocutory Applications disposed of.

KAPIL MUNI KARWARIYA
v.
CHANDRA NARAIN TRIPATHI
(Civil Appeal No. 2122 of 2012)

FEBRUARY 15, 2012

[ALTAMAS KABIR AND SURINDER SINGH NIJJAR, JJ.]

Representation of the People Act, 1951: ss.81, 86 - Election petition - Maintainability of - Election petition challenging the election of returning candidate on the ground that nomination papers of respondent were wrongly rejected by the returning officer - The ground of rejection of nomination papers was that the name of the second proposer was deleted from the electoral roll and, therefore, nomination was not subscribed by ten proposers as required u/s.33 - Returning candidate filed applications for dismissing election petition for non-compliance of s.81(1) and for non-disclosure of cause of action - Election Tribunal dismissed the applications - On appeal, held: The view taken by the Election Tribunal was correct that the Election Petition filed by the Respondent was required to be considered on evidence on account of the allegations made therein - The question regarding the right of the second proposer to be a subscriber to nomination paper filed by the respondent was the fundamental question which could only be decided on evidence - No interference called for with the order of the Election Tribunal.

The District Allahabad consists of two Parliamentary Constituencies, namely, 51-Phulpur Parliamentary Constituency and 52-Allahabad Parliamentary Constituency. The appellant filed his nomination paper as a candidate of the Bahujan Samaj Party. The Respondent filed his nomination paper for contesting the election to the said 51-Phulpur Parliamentary Constituency as a

candidate of Krantikari Jai Hind Sena. The nomination of the respondent for contesting election was rejected on the ground that the nomination was not subscribed by 10 proposers as per the requirement of Section 33 of the Representation of the People Act, 1951 since the name of the second proposer, 'PK' was found to have been deleted from the electoral roll. The appellant was declared elected.

The Respondent filed election petition for a declaration that the election of the appellant as a Member of Parliament from 51-Phulpur Parliamentary Constituency of District Allahabad be set aside and be declared null and void on the ground that his nomination paper which he had filed to contest the election were wrongly rejected.

The appellant filed an application under Section 86(1) of the 1951 Act, in election petition praying for dismissal of the election petition on the ground of non-compliance of the provisions of Section 81(1) of the 1951 Act. The appellant also filed another application under Order VII Rule 11, CPC in the said Election Petition for dismissal of the election petition for non-disclosure of the cause of action. In this application it was categorically indicated that the name of the proposer No.2, 'PK" had been struck off from the electoral roll and he was no more an elector from the said place and was not, therefore, entitled to propose the name of the Respondent for election to the 51-Phulpur Parliamentary Constituency. These applications were dismissed by the Election Tribunal. The Election Petition was, thereafter, directed to be listed for disposal of the amendment applications moved on behalf of the appellant and also for settlement of issues. The instant appeal was filed challenging the said interim order of the Election Tribunal.

Dismissing the appeal, the Court

HELD: Having considered the fact that the Election Petition is yet to be disposed of by the Election Tribunal, making any observations in this proceedings would certainly have an effect on the pending proceedings before the Election Tribunal. The view taken by the Election Tribunal was correct that the Election Petition filed by the Respondent was required to be considered on evidence on account of the allegations made therein. The question regarding the right of 'PK' to be a subscriber to the nomination paper filed by the Respondent is the fundamental question which is required to be considered in this case. Being the central question involved in the pending Election Petition, the allegations contained therein have to be decided before a decision can be rendered regarding the validity of the Respondent's Election Petition. Whether 'PK' was eligible to subscribe to the nomination paper of the Respondent is a question which can only be decided on evidence. The Election Tribunal did not commit any error in dismissing the applications filed by the Appellant for rejection of the Election Petition filed by the Respondent herein. No interference is called for with the order of the Election Tribunal and the Appeal is, therefore, liable to be dismissed. It is for the Election Tribunal to take up the matter and decide the same at an early date. [Paras 16, 17] [965-B-E]

Charan Lal Sahu v. K.R. Narayanan **(1998) 1 SCC 56; 1997 (5) Suppl. SCR 317;** *Charan Lal Sahu v. Giani Zail Singh* **(1984) 1 SCC 390: 1984 (2) SCR 6;** *J.H. Patel v. Subhan Khan* **(1996) 5 SCC 312:1996 (3) Suppl. SCR 864;** *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil* **(2009) 13 SCC 131: 2009 (9) SCR 538 - referred to.**

Case Law Reference:

1997 (5) Suppl. SCR 317	**referred to**	**Para 14**
1984 (2) SCR 6	**referred to**	**Para 14**
1996 (3) Suppl. SCR 864	**referred to**	**Para 14**
2009 (9) SCR 538	**referred to**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2122 of 2012.

From the Judgment & Order dated 5.5.2011 of the High Court of Judicature at Allahabad in Election Petition No. 1 of 2009.

Ranjit Kumar, Prashant Kumar, Anurag Sharma, K.R. Singh (for AP & J Chambers) for the Appellant.

Caveator-In-Person.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. On 2nd March, 2009, a Notification under Section 14 of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act", was issued by the Election Commission of India to constitute the 15th Lok Sabha by calling upon Parliamentary Constituencies of India to elect Members of the House of the People (Lok Sabha).

3. District Allahabad consists of two Parliamentary Constituencies, namely, 51-Phulpur Parliamentary Constituency and 52-Allahabad Parliamentary Constituency. The District Magistrate, Allahabad, was appointed by the Election Commission of India as the Returning Officer for 51-Phulpur Parliamentary Constituency. The Returning Officer notified the date of filing of nomination papers from 28th March, 2009, to 4th April, 2009, from 11.00 a.m. to 3.00 p.m. Separate dates

were given for the other stages of the election. The date of polling was fixed on 16th April, 2009 and the date of counting was fixed on 16th May, 2009, a month later, when the results were to be declared.

4. The Special Leave Petition is directed against the judgment and order dated 5th May, 2011, passed by the Allahabad High Court (Election Tribunal) in Election Petition No.1 of 2009, filed by the Respondent herein, Shri Chandra Narayan Tripathi @ Chandu Tripathi, in connection with the said election, under Sections 80, 80A/81 of the Representation of the People Act, 1951, for a declaration that the election of Shri Kapil Muni Karwaria as a Member of Parliament from 51-Phulpur Parliamentary Constituency of District Allahabad be set aside and be declared null and void. The said prayer was made in the background of the rejection of his nomination paper for election to the said Constituency by the Returning Officer. The said Chandra Narain Tripathi, who is the Respondent herein, filed his nomination paper for election to the said Lok Sabha constituency as a candidate of Krantikari Jai Hind Sena. He challenged the Appellant's election on the ground that the nomination papers which he had filed to contest the election had been wrongly rejected.

5. There is no dispute that the Appellant filed his nomination paper as a candidate of the Bahujan Samaj Party and the Respondent filed his nomination paper for contesting the election to the aforesaid 51-Phulpur Parliamentary Constituency as a candidate of Krantikari Jai Hind Sena, which is an unrecognized political party. Accordingly, under Section 33 of the Representation of the People Act, 1951, his nomination paper was required to be subscribed by ten (10) proposers. His nomination paper was found to be defective, inasmuch as, the name of the second proposer, Pramod Kumar was found to have been deleted from the electoral roll. According to the Appellant herein, Pramod Kumar, who was not a voter from 1st January, 2009, and had been declared

"Vilopit", had subscribed to the nomination paper of the Respondent, though he was not a voter from the aforesaid constituency. According to the Appellant, the name of the said proposer No.2 was deleted from the electoral roll and, hence, the Respondent's nomination fell short of the reasonable number of proposers in terms of the first proviso to Section 33 of the 1951 Act.

6. After scrutinizing the nomination papers, the Returning Officer found that the nomination paper filed by the Election Petitioner, the Respondent herein, was invalid and defective and he, accordingly, rejected the said nomination paper. After the votes were counted, on 16th May, 2009, the Returning Officer declared the Appellant elected from the 51-Phulpur Parliamentary Constituency, as having secured the highest number of votes polled for the said Lok Sabha seat. It is the said order of the Returning Officer which was challenged before the Election Tribunal by the Respondent herein by way of an Election Petition, being No.1 of 2009, on the ground that his nomination paper had been improperly rejected.

7. On 5th October, 2009, the Appellant filed an application under Section 86(1) of the 1951 Act, in Election Petition No.1 of 2009, praying for dismissal of the Election Petition on the ground of non-compliance of the provisions of Section 81(1) of the 1951 Act. One of the grounds taken by the Appellant in the application was that the Respondent was not an elector of 51-Phulpur Parliamentary Constituency within the meaning of Section 2(e) of the 1951 Act. It was urged that since the Respondent was not a duly elected candidate and did not also claim to be so, he was not entitled to file the Election Petition under Section 81(1) of the 1951 Act.

8. The Appellant also filed another application under Order VII Rule 11 of the Code of Civil Procedure in the said Election Petition before the Election Tribunal on 5th November, 2009, for dismissal of the Election Petition for non-disclosure of the

cause of action. In this application it was categorically indicated that the name of the proposer No.2, Mr. Pramod Kumar, had been struck off from the electoral roll and he was no more an elector from the said place and was not, therefore, entitled to propose the name of the Respondent for election to the 51-Phulpur Parliamentary Constituency.

9. The applications filed by the Appellant, the one under Section 86(1) of the 1951 Act and the other under Order VII Rule 11 of the Code of Civil Procedure, were heard together and were dismissed by the Election Tribunal on 5th May, 2011. The Election Petition was, thereafter, directed to be listed for disposal of the amendment applications moved on behalf of the Appellant and also for settlement of issues.

10. It is the said interim order of the Election Tribunal, based on the two applications filed by the Appellant herein, against which this Special Leave Petition has been filed.

11. Appearing for the Appellant herein, Mr. Ranjit Kumar, learned Senior Advocate, submitted that the Respondent had filed his nomination for contesting the election as an independent candidate. His nomination paper was, however, rejected by the Returning Officer on the ground that the nomination paper had not been subscribed by 10 proposers. The Respondent, thereafter, filed an Election Petition in the Election Tribunal challenging the election of the Appellant herein on the ground that his nomination paper had been wrongly rejected and that he had been prevented from contesting the polls. In the said Election Petition, the Appellant herein filed two separate applications, one for setting aside the order passed by the Returning Officer holding that the Election Petition filed by the Respondent was not maintainable and the other for dismissal of the Election Petition under Order VII Rule 11 of the Code of Civil Procedure since the name of one of the proposers, Pramod Kumar, had been deleted from the voters' list and he was, therefore, not an elector on the date of nomination in the electoral roll relating to 261 Allahabad West

Assembly Constituency. Accordingly, since he was not an elector of the said Constituency on the date of filing of the nomination papers, he was not eligible to subscribe the nomination paper of the Election Petitioner.

12. Both the objections taken by the Appellant herein were rejected by the Election Tribunal and the Election Petition filed by the Respondent herein, was held to be maintainable.

13. It was further submitted that Pramod Kumar's name having been deleted from the electoral roll, it would be clear from the electoral roll, which had been made an integral part of the Election Petition, that on the date of filing of nomination papers Pramod Kumar could not have been one of the 10 proposers of the Election Petitioner. Mr. Ranjit Kumar submitted that in the absence of the required number of proposers for the nomination paper of the Election Petitioner, as required under Section 33 of the 1951 Act, the Election Petitioner was not a duly nominated candidate and his nomination had been rightly rejected by the Returning Officer.

14. In support of his submissions, learned counsel referred to and relied upon the judgment of this Court in *Charan Lal Sahu Vs. K.R. Narayanan* [(1998) 1 SCC 56] and the decision in the case of *Charan Lal Sahu Vs. Giani Zail Singh*[(1984) 1 SCC 390] and a couple of other cases which do not say anything different from the other decisions. Mr. Ranjit Kumar urged that since the Election Petitions were original proceedings and not appealable, the Election Tribunal's jurisdiction cannot be confined to the grounds on which the Returning Officer rejected the nomination paper. In fact, it is not precluded from considering any other ground or fresh material having any relevance to the rejection of the Respondent's nomination paper. In this regard, reference was also made to the decision of this Court in *J.H. Patel Vs. Subhan Khan* [(1996) 5 SCC 312] and in the case of *Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite Patil* [(2009) 13 SCC 131]. Urging that his interlocutory applications had been

wrongly rejected, the Appellant prayed for setting aside the order passed by the Election Tribunal and to hold that the Election Petition was not maintainable.

15. The Respondent herein, whose nomination paper had been rejected, appeared and with the permission of the Court, was allowed to advance submissions in support of his case that the applications filed by the Appellant (the returned candidate) had been rightly rejected by the Election Tribunal. The Respondent urged that it has been wrongly held by the Returning Officer that the Respondent's nomination paper was not in order, since the name of Pramod Kumar was very much there in the voters' list, but may have been removed therefrom at a later stage. It was submitted that the said question is yet to be decided by the Election Tribunal in the pending Election Petition and, accordingly, no order is called for in the present Appeal. As far as the decisions cited by Mr. Ranjit Kumar are concerned, it was submitted that the same did not help the Appellant's case, inasmuch as, the same related to the question that as Election Petitions were original proceedings, the Court's jurisdiction to consider the matter could not be confined only to the grounds on which the Returning Officer had rejected the nomination paper. In the said decisions it was also held that the Returning Officer was not precluded from considering any other ground or fresh material having bearing on the question of rejection of the nomination paper. It was further held that it is not only the decision making process but the merit of the decision of the Returning Officer which has to be seen while trying an Election Petition.

16. Having carefully considered the submissions made on behalf of the respective parties and having considered the fact that the Election Petition is yet to be disposed of by the Election Tribunal, we are of the view that making any observations in this proceedings would certainly have an effect on the pending proceedings before the Election Tribunal. We are, however, inclined to agree with the view taken by the Election Tribunal

that the Election Petition filed by the Respondent herein was required to be considered on evidence on account of the allegations made therein.

17. The question regarding the right of Pramod Kumar to be a subscriber to the nomination paper filed by the Respondent herein is the fundamental question which is required to be considered in this case. Being the central question involved in the pending Election Petition, in our view, the allegations contained therein have to be decided before a decision can be rendered regarding the validity of the Respondent's Election Petition. Whether the above-mentioned Pramod Kumar was eligible to subscribe to the nomination paper of the Respondent is a question which can only be decided on evidence. The Election Tribunal, in our view, did not commit any error in dismissing the applications filed by the Appellant herein for rejection of the Election Petition filed by the Respondent herein. In our view, no interference is called for with the order of the Election Tribunal and the Appeal is, therefore, liable to be dismissed. It is for the Election Tribunal to take up the matter and decide the same at an early date.

18. The Appeal is, therefore, dismissed in view of the observations made hereinabove. We, however, make it clear that the views expressed in this judgment are only confined to the disposal of the two objections which have been filed by the Appellant herein before the Election Tribunal and the same should not influence the outcome of the pending Election Petition filed by the Respondent herein.

19. There shall, however, be no order as to costs.

D.G. Appeal dismissed.

NTPC LIMITED

v.

ANSALDO CALDAIE BOILERS INDIA P. LTD. & ANR.

(Civil Appeal No. 2134 of 2012)

FEBRUARY 16, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

Contract:

Tender - Bid for installation of Steam Generator Package - Rejected - Held: Evaporator being an integral part of Steam Generator, Qualified Steam Generator Manufacturer would have to be the manufacturer of evaporator itself and could not have outsourced the manufacture thereof - Evaporator being offered was one which had been manufactured not by Qualified Steam Manufacturer but by a third party, which was not contemplated in the condition of the tender document - Rejection of Bid upheld.

The appellant invited bids for supply and installation of Steam Generator Package for captive coal based Thermal Power Projects in different areas. The appellant, by letter dated 5.1.2011 informed respondent no.1 that its bid had been rejected as the same did not meet the minimum qualifying requirement set out in the Bid documents and the Qualified Steam Generator Manufacturer proposed by the respondent did not have the necessary minimum qualification as was required in terms of the Bid documents. Respondent no.1 filed a writ petition. The Division Bench of the High Court quashed the letter dated 5.1.2011.

In the instant appeal filed by the employer NTPC Ltd, the questions for consideration before the court were: (i) whether in the case of a joint venture undertaking it was essential that the Qualified Steam Generator Manufacturer

also had to be the manufacturer of the evaporator or whether it could function as a facilitator; and (ii) Whether the Steam Generator Manufacturer proposed by respondent no.1 could be said to be a Qualified Steam Generator Manufacturer within the definition set out in the Detailed Invitation Bids.

Allowing the appeal, the Court

HELD: 1.1 Respondent No.1 chose Route 4 of the qualifying routes while submitting its Tender Bid, in its capacity as an Indian Joint Venture Company for manufacturing Super-Critical Steam Generator in India between an Indian Company and a Qualified Steam Generator Manufacturer. The crucial condition for a Bidder of the said category to be considered, as contained in Clause 7.1.1 of the Tender Documents, provides that the Bidder should have designed, engineered, manufactured/got manufactured, erected/ supervised direction, commissioned/supervised commissioning of at least one Steam Generator having rated capacity of 1500 Tonnes of Steam per hour or above and that it should be provided with an Evaporator suitable for variable pressure operations for special category and supercritical pressure ranges. [para 22] [982-B-D]

1.2 Admittedly, the evaporator is an integral part of the Steam Generator. The MOU, while permitting manufacturing, erection or commissioning of the Steam Generator, provided that the same could be outsourced, but the "designing" and "engineering" of the Steam Generator had to be done by the Bidder himself and if the party proposed as Qualified Steam Generator Manufacturer and the Bidder had not designed and engineered the Steam Generator itself, it could not be said that the qualifying requirements for such manufacturer had been satisfied. [Para 24] [982-G; 983-B-C]

1.3 From the terms and conditions contained in the MOU, it appears that it was the intention of the appellant that the Qualified Steam Generator Manufacturer would have to be the manufacturer of the evaporator itself and could not have outsourced the manufacture thereof to a third party, since the evaporator controlling the pressure of the Steam generated is a vital and crucial component of the Steam Generator itself. The appellant, which will be the ultimate user of the Generator, must be presumed to be conscious of the competence of the tenderer to "provide" the evaporator in keeping with the required specifications. [Para 25] [983-D-E]

1.4 The importance of the condition is manifested in the functioning of the Steam Generator which handles High Pressure Steam for the purpose of turning the turbines for generating electricity. The design and engineering of the evaporator and the boiler itself has to be such as to withstand the very high temperatures and pressures generated. The variable pressure operations is of great importance as far as generation and wastage of energy is concerned. The importance of the evaporator in controlling pressure during operations is to automatically regulate the flow of water, generation of pressure and temperature of the steam to the desired level. The evaporator being offered by respondent no.1 was one which had been manufactured not by the Qualified Steam Generator Manufacturer, but by a third party, which was not contemplated in the condition of the Tender Documents. [Para 26 and 27] [984-A-D]

1.5 Therefore, the Division Bench of the High Court was not right in quashing the letter dated 5.1.2011 issued by the appellant informing respondent no.1 that its Techno-commercial Bid had been rejected on the ground that it did not meet the minimum requirement set forth in item No.4 of Section III of the Tender Documents. The

judgment of the Division Bench of the High Court is set aside. The writ petition filed by respondent No.1, therefore, stands dismissed. [Para 26 and 28] [983-F-G; 984-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2134 of 2012.

From the Judgment & Order dated 1.3.2011 of the High Court of Delhi at New Delhi in Writ Petition No. 296 of 2011.

G.E. Vahanvati, A.G., Parag Tripathi, ASG, Mukul Rohtagi, Rajiv Dhawan, Debol Banerjee, Kunal Bahri Swati Sharma, Bindu Saxena, Shailendra Swarup Devadatt Kamat, K.K. Patra, Aparijita Swarup, Neha Khattar, Mohit Kumar, Anoopam Prasad, Prasahant Kumar, Arnab Choudhary, Anurag Sharma, AP & J Chambers, T.A Khan B.K. Prasad for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. Following international competitive bidding procedures, the Appellant had invited bids for the supply and installation of Steam Generator package for captive coal-based Thermal Power Projects in different areas. The bid of the Respondent No.1 was rejected by the Appellant by its letter dated 5th January, 2011, as the same did not meet the minimum qualifying requirements set out in the Bid documents. Furthermore, the Qualified Steam Generator Manufacturer, Ansaldo Caldaie, Italy, proposed by the said Respondent, did not have the necessary minimum qualification, as was required in terms of the Bid documents.

3. The main issue which arises for consideration in this Appeal is whether Ansaldo Caldaie, Italy, can be said to be a Qualified Steam Generator Manufacturer within the definition set out in the detailed Invitation for Bids. The said invitation for

bid contained the qualifying requirement for Bidders in Clause 7 of the Tender Document. Clause 7.1.0 provided that the Bidder should meet the qualifying requirements of any one of the qualifying routes stipulated under Clause 1.1.0 or 1.2.0 or 1.3.0 or 1.4.0 or 1.5.0. In addition, the Bidder was also required to meet the requirements stipulated under Clause 7.6.0 and 7.7.0, together with the requirements stipulated under Section ITB.

4. Route 1 permits a Qualified Steam Generator Manufacturer to join the bidding process provided that it should meet the qualifying requirements of any of the qualifying routes indicated in Clause 7 of the tender documents. In Clause 7 of the tender documents, five different routes have been enumerated which could be taken by the tenderers, namely :-

(i) as a Qualified Steam Generator Manufacturer; or

(ii) as an Indian Steam Generator Manufacturer; or

(iii) as an Indian subsidiary company of a Qualified Steam Generator Manufacturer; or

(iv) as an Indian Joint Venture Company for manufacturing Super Critical Steam Generators in India between an Indian Company and a Qualified Steam Generator Manufacturer; or

(v) as an Indian Joint Venture Promoter holding at least 51% stake in a Joint Venture Company for manufacturing Super Critical Steam Generators in India between an Indian Company and a Qualified Steam Generator Manufacturer.

5. Indisputably, none of the parties which responded to the invitation adopted Routes 1 or 3. Bharat Heavy Electricals Ltd. adopted Route 2, while Route 4 found favour with Larsen & Toubro, MHI and the Appellant, while BGR took recourse to Route 5. Route 4 contained in Clause 7.4.0 relates to Indian

Joint Venture Companies for manufacturing of Super Critical Steam Generators in India between an Indian Company and a Qualified Steam Generator Manufacturer. For the sake of reference, Clauses 7.4.1 and 7.4.2 which formed part of Route 4 are extracted hereinbelow :-

"7.4.0 *Route 4 : Indian Joint Venture (JV) Company for manufacturing of Super Critical Steam Generator in India between an Indian Company and a Qualified Steam Generator Manufac-turer*

7.4.1 The Bidder shall be a Joint Venture (JV) Company incorporated in India under the Companies Act 1956 of India, as on the date of techno-commercial bid opening, promoted by (i) an Indian Company registered in India under the Companies Act 1956 of India and (ii) a Qualified Steam Generator Manufacturer meeting requirements of clause 7.1.1, created for the purpose of manufacturing in India supercritical steam generator sets covering the type, size and rating specified. If the JV Company is incorporated as a public limited Company then it should have obtained certificate for Commencement of Business in India as on the date of techno-commercial bid opening.

The Qualified Steam Generator Manu-facturer shall maintain a minimum equity participation of 26% in the JV Company for a lock-in period of 7 years from the date of incorporation of JV Company or up to the end of defect liability period of the contract whichever is later.

One of the promoters shall be a majority stakeholder who shall maintain a minimum equity partici-pation of 51% in the JV Company for a lock in period of 7 years from the date of incorporation of JV Company or up to the end of defect liability

period of the contract whichever is later.

In the event that the majority stake holder in the JV Company is an entity other than the Qualified Steam Generator Manufacturer, it should be an Indian Company and should have executed, in the last 10 years, large industrial projects on EPC basis (with or without civil works) in the area of power, steel, oil & gas, petrochemical, fertilizer and/or any other process industry with the total value of such projects being Rs.10,000/- million or more. At least one of such projects should have a contract value of Rs.4,000/- million or more. These projects shall be in successful operation for a period of not less than one year as on the date of techno-commercial bid opening.

7.4.2 The Bidder shall furnish a DJU executed by him, the Qualified Steam Generator Manufacturer and other JV promoter having 25% or higher equity participation in the JV Company, in which all the executants of DJU shall be jointly and severally liable to the Employer for successful performance of contract as per the format enclosed in the bidding documents. The joint deed of undertaking shall be submitted along with techno-commercial bid, failing which the Bidder shall be disqualified and his bid shall be rejected.

In case of award, each promoter having 25% or higher equity participation in the JV Company will be required to furnish an on demand bank guarantee for an amount of 0.5% of the total contract price of the Steam Generator Package in addition to the contract performance security to be furnished by the Bidder."

6. As mentioned hereinbefore, the bid filed by the

Respondent No.1 was rejected by the Appellant by its letter dated 5th January, 2011, as the same did not fulfil the qualifying requirements of Route 4, extracted hereinabove.

7. Appearing for the Appellant, the learned Attorney General, Mr. Goolam E. Vahanvati, submitted that Clause 7.1.1 prescribes the basic qualifying requirements for a Qualified Steam Generator Manufacturer and the same is applicable to all the routes permitted under the bidding documents, irrespective of the route which the Bidder would opt for, for seeking qualification. For the sake of convenience, Clause 7.1.1 is reproduced hereinbelow :-

> "7.1.1 The Bidder should have *designed, engineered,* manufactured/got manufactured, erected/supervised erection, commissioned/ supervised commissioning of at least one (1) number of coal fired supercritical Steam Generator having rated capacity of 1500 tonnes of steam per hour or above. Further, such Steam generator should be of the type specified, i.e. single pass (tower type) or two pass type using either spiral wound (inclined) or vertical plain or vertical rifled type water wall tubing, and should be in successful operation for a period of not less than one (1) year as on the date of Techno-commercial bid opening. In addition, the above Steam Generator should have been provided with *evaporator suitable for variable pressure operation* (sub-critical and supercritical pressure ranges). The Bidder shall offer only the type of Steam Generator and type of water wall tubing for which he is qualified."

8. The learned Attorney General submitted that Clause 7.1.1 is identical to Clause 1.1.2 of Item No.4 of Section III of the Tender Documents and under Clause 1.4.1 it has been clearly mentioned that the requirements of Clause 1.1.1 had to be met. The learned Attorney General urged that in view of Clause 7.1.1, the Bidder must have "designed" and "engineered" the entire Steam Generator himself and the same could not be outsourced. Accordingly, once it is submitted that

a Steam Generator is to be designed by the Qualified Steam Generator Manufacturer itself, all the integral parts of the Steam Generator like the furnace (evaporator), Superheaters 1, 2 and 3, Reheaters 1 and 2, connecting piping etc., have to be designed and engineered by the said manufacturer himself. The learned Attorney General also urged that Clause 7.1.1, however, permitted the manufacture, erection or commissioning to be outsourced by the Qualified Steam Generator Manufacturer, in view of the expressions used, such as, "got manufactured", "supervised erection" and "supervised commissioning".

9. The learned Attorney General also contended that Clause 7.1.1 also categorically states that the Steam Generator would have to be provided with an evaporator suitable for *variable pressure operation* (emphasis added). It was submitted that an evaporator is an integral and one of the most critical parts of any Supercritical Steam Generator. It was further urged that if the evaporator was not designed for variable pressure operation, conditions in Note 5 of the Notes in Clause 1.0.0 of the Bid documents would have to be complied with. For the sake of reference, Note 5 is reproduced hereinbelow:-

> *"Steam Generator Manufacturer with Technology Tie-up for Variable Pressure Design*
>
> In case a supercritical Steam Generator manufacturer meets all the requirements as specified in clause no. 1.1.1 above except that the evaporator in the reference steam generator is not designed for variable pressure operation and is designed for constant pressure (Universal Pressure) operation only, in such case, the Supercritical Steam Generator Manufacturer has an ongoing license agreement (which covers technology transfer), as on the date of Techno-commercial bid opening, with the original Technology Owner (Licensor) for design, manufacture, sell, use, service of once through variable pressure supercritical

steam generator technology (with evaporator suitable for variable pressure operation in sub-critical pressure ranges).

i. The licensor should have experience of providing such variable pressure design steam generator technology for at lease one (1) no. of coal fired supercritical steam generator for a 1500 T/hr or higher capacity using either spiral wound (inclined) or vertical plain or vertical rifled type water wall tubing with the evaporator suitable for variable pressure operation in sub-critical and super-critical pressure ranges and which should be in successful operation for a period of not less than one (1) year as on the date of bid opening.

ii. The Bidder shall offer only the type of steam generator i.e. single pass (tower type) or two pass type for which the Bidder is qualified and shall offer only the type of water wall tubing (either spiral wound (inclined) or vertical plain or vertical rifled type) for which his licensor is qualified.

iii. In such an event, the Bidder shall furnish a Deed of Joint Undertaking executed between the Bidder and the supercritical steam generator manufac-turer (as the case may be) and its Technology Owner (Licensor), as per the format enclosed in the Bidding Documents towards the Bidder and the licensor being jointly and severally liable to the Employer for successful performance of the Steam Generator along with an extended warranty of at least one (1) year over and above what is required as per tender documents.

iv. In case of award, Technology Owner (Licensor) will be required to furnish an on demand bank guarantee for an amount of 0.1% of the total contract

price of the Steam Generator Package in addition to the contract perfor-mance security to be furnished by the Bidder."

10. In addition to the above, the learned Attorney General submitted that in the event the provisions of Note 5 were to be followed, it would be necessary for the Bidder to provide a Deed of Joint Undertaking to be executed between the Bidder, the proposed Qualified Steam Generator Manufacturer, who possessed the experience of designing and engineering a Steam Generator with evaporator suitable for constant pressure operation. The very reason for the furnishing of a Deed of Joint Undertaking was to make the technology owner responsible for the successful operation of the plant along with the Bidder. It was submitted that only when such an undertaking was given by the licensor and the Qualified Steam Generator Manufacturer that the Bidder would be eligible for being considered as being qualified to participate in the bidding process. The learned Attorney General submitted that despite the fact that the Respondent No.1 had taken recourse to Note No.5 and the bid of the Respondent was non-responsive, no Deed of Joint Undertaking had been furnished by the Respondent. On the other hand, in the bid submitted by the Respondent No.1, it had been mentioned in Clause 1.2.0 that the evaporator in the reference Steam Generator, which was supplied to Enel, was for variable pressure operation. The Respondent claimed to have designed and engineered the reference Steam Generator, but when it came to the actual confirmation in reference to the experience, it was indicated as follows :-

1.5.0 We, confirm that M/s ANSALDO CALDAIE S.p.A. (Qualified Steam Generator Manufacturer) *meets all the requirement as per 1.1.1 of BDS except that the evaporator indicated in the reference steam generator is not designed for variable pressure operation and is designed for constant pressure (Universal Pressure) operation only and*

seeking qualification along with the original technology owner (Licensor) from which he has an ongoing license agreement (which covers technology transfer), as on the date of Techno-commercial bid opening, for design, manufacture, sell, use, service of once through variable pressure supercritical steam generator technology (with evaporator suitable for variable pressure operation in sub-critical and supercritical pressure ranges).

Further we confirm that original technology owner (Licensor) had experience of providing variable pressure design steam generator technology for at least one (1) no. of coal fired supercritical steam generator technology for at least one (1) no. of coal fired supercritical steam generator for a 1500 T/hr or higher capacity using either spiral wound (inclined) or vertical plain or vertical rifled typed water wall tubing with the evaporator suitable for variable pressure operation in sub-critical and super-critical pressure ranges and which should be in successful operation for a period of not less than one (1) year as on the date of techno commercial bid opening. The detail of Licensor and his experience detail are as follows:"

11. The learned Attorney General submitted that it was, therefore, clear that the evaporator for the Steam Generator, which the Respondent No.1 had agreed to provide, had not been designed for variable pressure operation and, accordingly, the experience of the licensor was relied upon. Furthermore, the Deed of Joint Undertaking referred to in Clause 1.01.00 was left blank, and Clause 1.6.0 which included the reference to the Deed of Joint Undertaking was expressly and consciously scored off. It was submitted that the failure to furnish the said undertaking made the bid of the Respondent No.1 completely non-responsive.

12. In support of his aforesaid submissions, the learned Attorney General submitted that the crucial aspects of the case

are :-

(i) Did the tender contemplate that the Evaporator is something separate from the Steam Generator?

(ii) Is the Evaporator not an integral part of the Steam Generator?

(iii) Could the Evaporator, if the tender contemplated that the Evaporator could be manufactured by a third party, be manufactured by a third party?

(iv) Did Ansaldo Caldaie indicate that the Evaporator would be supplied by it after having it manufactured by a third party?

13. The learned Attorney General submitted that as far as the first two questions are concerned, the Evaporator was very much an integral part of the Steam Generator and as far as the third and fourth questions are concerned, the Attorney General submitted that the answer was in the negative.

14. Learned Attorney General contended that the Respondent No.1 was ineligible to compete in the bid, since it did not satisfy one of the critical conditions of the tender document. It was submitted that in order to be eligible, a Bidder had to satisfy the conditions contained in Clause 7.1.1 of the Memorandum of Understanding, hereinafter referred to as 'MOU'. Although, manufacturing, erection or commissioning of the Steam Generator could be outsourced, the "designing" and "engineering" of the Steam Generator had to be done by the Bidder himself. The learned Attorney General submitted that if the party proposed as Qualified Steam Generator Manufacturer by the Bidder had not designed or engineered the Steam Generator himself, he could not be said to have met the qualifying requirements stipulated for a Qualified Steam Generator Manufacturer and consequently, the Bidder could not also be said to have fulfilled the requirements relating to meeting the minimum qualification requirements for his bid to

be accepted. The learned Attorney General submitted that the evidence on record clearly indicated that the Respondent No.1 had not designed or engineered the entire Steam Generator and that it transpired that in response to queries raised by the Appellant to Enel, the reference station owner had indicated that the work had been split up between the Respondent No.1 and BHK, but executed the contract for the reference station as part of a consortium. The detailed break-up which was provided, indicated that the Respondent No.1 had not done the designing and engineering of the boiler walls furnace. It was submitted that the failure to design and/or engineer the critical parts of the Steam Generator was fatal for qualification as a Qualified Steam Generator Manufacturer and hence the bid submitted by the Respondent No.1 had to be rejected.

15. The learned Attorney General submitted that there were various contradictions and inconsistencies in the bid submitted by the Respondent No.1 and while, on the one hand, it was mentioned that the reference Steam Generator was provided with evaporator suitable for variable pressure operation within sub-critical and super critical pressure ranges, it was also indicated in another part of the Tender Documents that the evaporator indicated in the reference Steam Generator was not designed for variable pressure operation, but for constant pressure operation. It was submitted that the said condition being one of the fundamental conditions of the bid, it could not be held to be substantially responsive.

16. The learned Attorney General submitted that the High Court had not applied itself to these aspects of the matter, which were essential in nature and had proceeded on the assumption that the bid of the Respondent No.1 was in order and that the rejection of the bid of the Respondent No.1 was liable to be quashed.

17. On behalf of the Respondent No.1 it was submitted by Mr. Mukul Rohatgi, learned Senior Advocate, that the Respondent No.1 Company is an Indian Company jointly

promoted by Gammon India Limited and Ansaldo Caldaie S.p.A., Italy, who has been in the business of manufacturing, designing, erecting and commissioning of boilers since 1853 and is a world leader in the manufacture of Supercritical Steam Generators and had engineered, designed and manufactured 24 Supercritical boilers with capacity of 1500 Tonnes of Steam per hour and above. Mr. Rohatgi submitted that the Respondent No.1 Company had installed boilers of various types all over the world and it also has a significant presence in India since 1960. Included amongst its major projects within India, are :-

(i) 3 x 200 MW for NTPC at Ramagundam, Andhra Pradesh, which was installed in 1980 and has been operating successfully since its installation;

(ii) 2 x 500 MW for NTPC, Farakkha in West Bengal, which has been in operation since 1992;

(iii) 230 MW at Smalkot for BSES, which was commissioned in 1999; and

(iv) 2 x 210 MW at Neyvelli Lignite Corporation at Tamil Nadu, which was the first of its kind in the State.

It was submitted that the consortium, of which the Respondent No.1 was a part, has the distinction of being the second largest company involved in the installation of boilers in India after Bharat Heavy Electricals Ltd. (BHEL).

18. Mr. Rohatgi submitted that the Respondent No.1 has vast experience in working with Steam Generators and was fully eligible to compete in the bids relating to Clause 7.4 of the detailed information for bids, which stipulated that the qualification of the Qualified Steam Generator Manufacturer would be considered if it owned at least 26% of the equity of the Bidder as per Clause 7.1.1. Accordingly, Respondent No.1 submitted its performance certificate. Mr. Rohatgi submitted that the Respondent No.1 submitted the Performance Certificate issued to Ansaldo Caldaie by Anel Tower for

Torranvaldaliga Nord Power Plant, to the Appellant to support its eligibility for participating in the Bid.

19. Mr. Rohatgi submitted that there were four Bidders, including the Respondent No.1, but ultimately on 5th January, 2011, the Respondent No.1 was informed that his technical bid had been rejected on the ground that it did not meet the qualification criteria. The Bank Guarantee furnished by the Respondent No.1 was returned to him. In the meantime, the Writ Petition filed by the Respondent, (WP (C) No.296 of 2011), came up for hearing on 17th January, 2011, when it was withdrawn with liberty to file a fresh petition based on the fact that the Respondent No.1 had in the interregnum period received the rejection letter dated 5th January, 2011, issued by the Appellant.

20. Mr. Rohatgi submitted that Clause 7.1.1 and Clause 7.4 clearly reflected the mind of the Bidder. Learned counsel urged that the use of the expression "provided" in dealing with the capability of the Bidder to deal with variable pressures merely indicated that the Steam Generator Manufacturer would have to provide technical tie-up for variable pressure design and in the absence of the same, the bid submitted would still qualify for being considered. It was urged that the use of the expression "provided" would have to be read along with the phrase "designed, engineered, manufactured/got manufactured" etc. The further usage of the words "in addition" indicated that the stipulation regarding the provision of an evaporator suitable for variable pressure operation was an additional, ancillary and peripheral requirement and not integral to the type of Steam Generator contemplated. Mr. Rohatgi urged that the submission made on behalf of the Appellant to the contrary was incorrect since it had been in no uncertain terms submitted that in the bid document and in the pleadings before the High Court and this Court noted that the evaporator provided with the Steam Generator at the reference plant at TNP was suitable for variable pressure operation.

21. It was submitted that the entire basis of the case made out by the Appellant was, therefore, non-est and the High Court did not commit any error in allowing the Writ Petition filed by the Respondents.

22. There is no dispute that the Respondent No.1 chose Route 4 while submitting its Tender Bid, in its capacity as an Indian Joint Venture Company for manufacturing Super-Critical Steam Generator in India between an Indian Company and a Qualified Steam Generator Manufacturer. The crucial condition for a Bidder of the said category to be considered is contained in Clause 7.1.1 of the Tender Documents, which has been extracted hereinbefore and provides that the Bidder should have designed, engineered, manufactured/got manufactured, erected/ supervised direction, commissioned/supervised commissioning of at least one Steam Generator having rated capacity of 1500 Tonnes of Steam per hour or above and that it should be provided with an Evaporator suitable for variable pressure operations for special category and supercritical pressure ranges.

23. The controversy which led to the rejection of the Technical Bid of the Respondent No.1 was with regard to the question as to whether in the case of a Joint Venture Undertaking it was essential that the Qualified Steam Generator Manufacturer also had to be the manufacturer of the evaporator or whether it could function as a facilitator. Furthermore, what appears to have weighed with the Appellant in rejecting the Technical Bid of the Respondent No.1 was that the Steam Generator had been designed for constant pressure and not variable pressure, as required by the Appellant.

24. Admittedly, the evaporator is an integral part of the Steam Generator. The question is whether the same could not be manufactured by a third party and supplied to the Qualified Steam Generator Manufacturer for use in the boiler. Although, the said proposition has been hotly contested on behalf of the Respondent, an attempt was also made to show that the

evaporator was in fact designed for variable pressure, but such a submission was contrary to the confirmation given by the Respondent No.1 which indicated that the evaporator had been designed for Constant Pressure (Universal Pressure) operation only. The MOU, while permitting manufacturing, erection or commissioning of the Steam Generator, provided that the same could be outsourced, but the "designing" and "engineering" of the Steam Generator had to be done by the Bidder himself and if the party proposed as Qualified Steam Generator Manufacturer and the Bidder had not designed and engineered the Steam Generator itself, it could not be said that the qualifying requirements for such manufacturer had been satisfied.

25. From the terms and conditions contained in the MOU, it appears to us that it was the intention of the Appellant that the Qualified Steam Generator Manufacturer would have to be the manufacturer of the evaporator itself and could not have outsourced the manufacture thereof to a third party, since the evaporator controlling the pressure of the Steam generated is a vital and crucial component of the Steam Generator itself. The Appellant, which will be the ultimate user of the Generator, must be presumed to be conscious of the competence of the tenderer to "provide" the evaporator in keeping with the required specifications.

26. In the aforesaid context, we are unable to uphold the decision of the Division Bench of the Delhi High Court quashing the letter dated 5th January, 2011, issued by the Appellant herein, informing the Respondent No.1 that its Techno-commercial Bid had been rejected on the ground that it did not meet the minimum requirement set forth in item No.4 of Section III of the Tender Documents. The High Court while interpreting the provisions of Clause 7.1.1 of the Tender Documents was influenced by the use of the phrase "manufactured/got manufactured" while considering the fact that although, Ansaldo Caldaie, Italy, was being projected as the Qualified Steam Generator Manufacturer, Siemens A.G. was shown as the

technology owner/licensor of the evaporator which was offered by the Respondent No.1. In other words, the evaporator being offered by the Respondent No.1 was one which had been manufactured not by the Qualified Steam Generator Manufacturer, but by a third party, which was not contemplated in the aforesaid condition of the Tender Documents.

27. The importance of the above condition is manifested in the functioning of the Steam Generator which handles High Pressure Steam for the purpose of turning the turbines for generating electricity. The design and engineering of the evaporator and the boiler itself has to be such as to withstand the very high temperatures and pressures generated. The importance of the variable pressure operations is of great importance as far as generation and wastage of energy is concerned. The importance of the evaporator in controlling pressure during operations is to automatically regulate the flow of water, generation of pressure and temperature of the steam to the desired level.

28. In that view of the matter, we allow the Appeal and set aside the impugned judgment of the Division Bench of the High Court allowing the Writ Petition filed by the Respondent No.1. The Writ Petition filed by the Respondent No.1, therefore, stands dismissed.

29. There shall, however, be no order as to costs.

R.P. Appeal allowed.

SUBRAMANIAN

v.

STATE OF TAMIL NADU & ANR.

(Criminal Appeal No. 417 of 2012)

FEBRUARY 21, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Preventive detention:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 - ss. 3 and 2(f) - Detention order u/s. 3, against the detenue - Habeas Corpus petition - Dismissed by the High Court - On appeal, held: Detaining Authority, on consideration of materials placed found that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a 'goonda' as contemplated u/s. 2(f) - Detenu armed with 'aruval', along with his associates armed with 'katta' came to the shop of the complainant, threatened him and also damaged the properties available in the shop - It cannot be said that there was non-application of the mind to the relevant material by the Detaining Authority; and that there was non-consideration of the representation of the detenu by the Detaining Authority which vitiates the entire detention order - Conclusion of the Detaining Authority that the detenu was a habitual offender cannot be considered to be based on stale instances - All the incidents mentioned in the grounds of detention clearly substantiate the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order - Thus, the High Court rightly upheld the detention order.

In the instant case, the ground case incident arose

out of the land dispute between the detenu and the complainant. The complaint was filed with the police that the detenu armed with aruval (sickle) along with his associates apart from threatening the complainant caused damages to the STD booth. Prior to the said incident the dentue was involved in cases in the years 2008 and 2010. Respondent No.2-Commissioner of Police passed a detention order against the detenu under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 holding him to be a goonda noticing his involvement in the said case as well as past cases. The appellant filed a representation and the same was rejected. Aggrieved, the appellant (father of detenu) filed a Habeas Corpus Petition and the High Court dismissed the same. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1 The court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not

practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion. [Para 11] [996-B-E]

1.2 The Detaining Authority, on consideration of materials placed found that the accused caused damage to both public and private properties, threatened the public and also created a situation of panic among the public. The Detaining Authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a 'goonda' as contemplated under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982. The Detaining Authority also found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order. [Paras 9 - 10] [994-D-F; 995-E-F]

1.3 The detenu, armed with 'aruval', along with his associates, armed with 'katta' came to the place of the complainant. The detenu abused the complainant in filthy language and threatened to murder him. His associates also threatened him. The detenu not only threatened the complainant with weapon like 'aruval' but also damaged the properties available in the shop. When the complainant questioned the detenu and his associates, the detenu slapped him on his face. When the complainant raised an alarm for rescue, on the arrival of general public in and around, they were also threatened by the detenu and his associates that they would kill them. It is also seen from the grounds of detention that

because of the threat by the detenu and his associates by showing weapons, the nearby shop keepers closed their shops out of fear and auto drivers took their autos from their stand and left the place. According to the Detaining Authority, the above scene created a panic among the public. In such circumstances, the scene created by the detenu and his associates cannot be termed as only law and order problem but it is public order as assessed by the Detaining Authority who is supposed to safeguard and protect the interest of public. [Para 13] [997-B-F]

1.4 The submission that the accused had obtained regular bail in all the criminal cases referred to in the detention order and not anticipatory bail, and thus, there is non-application of the mind to the relevant material by the Detaining Authority, is factually incorrect. The said submission was made only now before this Court as an afterthought. A perusal of the impugned order of the High Court clearly shows that the only contention before the High Court was that the detenu got regular bail in Crime No. 727 of 2010 but the Detaining Authority wrongly mentioned the same as anticipatory bail. Further, no specific ground was raised in the SLP. The only ground is that the copy of the anticipatory bail order in Crime No. 727 of 2010 was not given to the detenu which is also contrary to the record since it is specifically stated so in the detention order and averred in the counter affidavit that all the materials were duly furnished to the detenu. There is no denial of the same by filing rejoinder. Further, the detenu had obtained anticipatory bail in the cases referred to in the detention order including in Crime No. 727 of 2010. [Para 14] [997-G-H; 998-A-C][

1.5 The High Court arrived at a finding that the detenu being granted bail or anticipatory bail does not matter as far as the fact remains that he was not on remand in those

cases and there was no prejudice to the detenu by reason of the reference made in the detention order. The High Court rightly observed that the bail petition in respect of the ground case was pending before the Sessions Judge, at place 'T' and he was very likely to be released on bail and if he came out on bail, he would indulge in future activities which would be prejudicial to the maintenance of public order. [Para 15] [998-E-F]

1.6 The submission there was non-consideration of the representation of the detenu by the Detaining Authority which vitiates the entire detention order, is solely baseless since the detenu simultaneously made a representation to the Government and the Government had fully considered his representation and rejected the same on 12.08.2011. The Advisory Board also rejected the representation of the detenu by order dated 23.08.2011 thereby confirming the detention. [Para 16] [998-G-H; 999-A-D]

Sri Anand Hanumathsa Katare vs. Additional District Magistrate & Ors. **2006 (10) SCC 725: 2006 (7) Suppl. SCR 622 - referred to.**

1.7 The ground case relates to the occurrence dated 18.07.2011 and prior to that, the detenu was involved in two cases in the year 2010 and one case in the year 2008. The above details clearly show that the detenu was a habitual offender and as such instances shown are not stale. These aspects were taken note of by the High Court, in fact, the High Court found that the detenu had indulged in one case in the year 2008 and two cases in the year 2010 and the ground case in 2011. The particulars also show that in the year 2010, the detenu had indulged in two cases within a span of 6 months and again had indulged in the ground case in the year 2011, therefore, incident nos. 2 and 3 cannot be said to be stale and, in such circumstance, the conclusion of the

Detaining Authority that the detenu was a habitual offender cannot be considered to be based on stale instances. [Para 17] [999-E-H]

1.8 The incidents were highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which were precisely stated in the grounds of detention. All the incidents mentioned in the grounds of detention clearly substantiate the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order. All these aspects were considered by the High Court which rightly affirmed the detention order. [Paras 18, 19 and 20] [1000-A-E]

Commissioner of Police & Ors. vs. C. Anita (Smt) **2004 (7)SCC 467:2004 (3) Suppl. SCR 701;** *Union of India vs. Paul Manickam & Anr.* **(2003) 8 SCC 342: 2003 (4) Suppl. SCR 618;** *M. Ahamedkutty vs. Union of India and Anr.* **(1990) 2 SCC 1: 1990 (1) SCR 209 - distinguished.**

Pushpa Devi M. Jatia vs. M.L. Wadhawan & Ors. **1987 (3) SCC 367: 1987 (3) SCR 46;** *Ram Manohar Lohia vs. State of Bihar* **(1966) 1 SCR 709;** *Union of India vs. Arvind Shergill & Anr.* **2000 (7) SCC 601;** *Sunil Fulchand Shah vs. Union of India & Ors.* **2000 (3) SCC 409: 2000 (1) SCR 945 - relied on.**

Case Law Reference:

1987 (3) SCR 46	Relied on	Para 12
(1966) 1 SCR 709	Relied on	Para 12
2000 (7) SCC 601	Relied on	Para 12
2000 (1) SCR 945	Relied on	Para 12
2006 (7) Suppl. SCR 622	Referred to	Para 16
2004 (3) Suppl. SCR 701	Distinguished	Para 18

2003 (4) Suppl. SCR 618 Distinguished Para 18

1990 (1) SCR 209 Distinguished Para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 417 of 2012.

From the Judgment & Order dated 9.12.2011 of the High Court of Judicature at Madras in Habeas Corpus Petition No. 937 of 2011

A Sharan, Ashutosh Jha, Vivek Singh, Aseem Chandra, Amit Anand Tiwari for the Appelant.

Guru Krishna Kumar, AAG, Prasana Venkat, B. Balaji for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 09.12.2011 passed by the High Court of Judicature at Madras in Habeas Corpus Petition No. 937 of 2011 whereby the High Court dismissed the petition filed by the appellant herein.

3. **Brief facts:**

(a) The appellant is the father of the Detenu. The Detenu has a dispute regarding their land with one Kaliyamoorty for which a Civil Suit being O.S. No. 452 of 2008 is pending before the Subordinate Judge at Trichy. The said Kaliyamoorty filed a complaint with police on 18.07.2011 complaining that the detenu armed with aruval (sickle) along with his associates apart from threatening the de facto complainant Kaliyamoorty caused damage to the STD booth by damaging the glasses and chairs. Accordingly, an FIR being Crime No. 361 of 2011 was registered by the K.K. Nagar Police Station, Trichy. The

complainant – Kaliyamoorthy had already lodged a complaint before the City Crime Branch, Trichy, on 07.02.2010, which was registered by the Police as Case Crime No. 3 of 2010 which is still pending.

(b) On 21.07.2011, respondent No.2 - Commissioner of Police passed a detention order against the detenu under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (14 of 1982) while holding the detenu to be a 'goonda' noticing his involvement in the case of 18.07.2011 as well as three past cases of the years 2008 and 2010.

(c) Against the said order of detention, the appellant sent a representation to the Detaining Authority on 25.07.2011 for revoking the detention order. He also made a representation to the State Government, which is the approving authority, against the said order. After receiving the representation of the appellant on 28.07.2011, the Detaining Authority forwarded the same to the Government recommending rejection of the same. On 12.08.2011, the State Government after due consideration rejected the said representation.

(d) Aggrieved by the said decision of the State Government, the appellant herein filed Habeas Corpus Petition before the High Court. The High Court, by its impugned judgment dated 09.12.2011, dismissed the said petition.

(e) Challenging the said judgment of the High Court, the appellant has filed this appeal by way of special leave before this Court.

4. Heard Mr. A. Sharan, learned senior counsel for the appellant and Mr. Guru Krishnakumar, learned Additional Advocate General for the respondents.

5. Mr. A. Sharan, learned senior counsel for the appellant after taking us through the detention order and the impugned order of the High Court confirming the same submitted that from the materials placed, the Detaining Authority has not made out a case for preventive detention. He also submitted that even if the stand of the Detaining Authority is acceptable, the alleged action of the detenu, at the most, is only a law and order problem and not of public order as arrived at by the said Authority for invoking the T.N. Act 14 of 1982. He further submitted that the reference made by the Detaining Authority in all the three places in the grounds of detention that the accused obtained regular bail and not anticipatory bail shows non-application of mind by the Authority. He also submitted that failure on the part of the Detaining Authority to consider the representation of the detenu vitiates the entire order. Finally, he submitted that the cases relied on by the Detaining Authority are stale and there is no ground for invoking the provisions of T.N. Act 14 of 1982.

6. On the other hand, Mr. Guru Krishnakumar, learned Additional Advocate General for the State of Tamil Nadu, by taking us through the grounds of detention, reasoning of the High Court in confirming the same and the materials placed in the form of counter affidavit before this Court submitted that none of the arguments advanced by the senior counsel for the detenu is acceptable and there is no ground for interference by this Court.

7. Before considering the rival submissions, it is relevant to refer the definition of 'Goonda' as described in T.N. Act 14 of 1982 which reads thus:

> 2(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under section 153 or section 153-A under Chapter VIII or under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act XLV of 1860) or punishable under section 3 or section 4 or section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992).

The said Act was enacted by the State in the year 1982 and subsequently amended expanding the scope of the Act in order to prevent certain persons from dangerous activities which are prejudicial to the maintenance of public order. Since there is no dispute as to the power and execution, there is no need to refer other provisions.

8. We have carefully perused all the relevant materials and considered the rival submissions.

9. With regard to the first submission that no case is made out for preventive detention by invoking the provisions of T.N. Act 14 of 1982, though the ground case incident arose out of a land dispute between the detenu and the de facto complainant, however, the argument that it is only a law and order problem and that public order was not disturbed is contrary to the facts and equally untenable. As rightly pointed out by Mr. Guru Krishnakumar, the Detaining Authority, on consideration of materials placed has found that the accused caused damage to both public and private properties, threatened the public and also created a situation of panic among the public. In this regard, it is useful to refer the materials narrated in the grounds of detention which are as follows:

> "On 18.07.2011, at about 10:00 hours, while Kaliyamoorthy was available in the STD booth, Kajamalai Kadaiveethi, Kajamalai, Tiruchirapalli city, the accused Kajamalai Viji @ Vijay armed with aruval, his associates Manikandan, Uthayan, Sathiya, Sivakumar armed with Kattas came there. The accused Kajamalai Viji @ Vijay abused Kaliyamoorthy in a filthy language, threatened to murder him with aruval by saying "Have you become such a big

person to give complaints against me. You bastard, try giving a complaint, I will chop you down right here."

His associates threatened him with their respective kattas.

Thereafter, the accused Kajamalai Viji @ Vijay caused damage to the glasses, chair and stool available in the shop. While Kaliyamoorthy questioned them, the accused Kajamalai Viji @ Vijay slapped him on the face. Kaliyamoorthy raised alarm for rescue. The general public came there and they were threatened by the accused Kajamalai Viji @ Vijay and his associates by saying "if anyone turns up as witness, I will kill them." *The nearby shop-keepers closed their shops out of fear. Auto drivers took their autos from the stand and left the place. The situation created panic among the public. On the complaint of Kaliyamoorthy, a case in K.K. Nagar P.S. Cr. No. 361/2011 u/s 147, 148, 447, 448, 427, 294(b), 323, 506(ii) IPC and 3 P.P.D. Act was registered."*

10. From the above materials, the Detaining Authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a 'goonda' as contemplated under Section 2(f) of the T.N. Act 14 of 1982. The order further shows that the Detaining Authority found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order. After narrating the details of the ground case and after adverting to earlier instances commencing from the years 2008 and 2010, the Detaining Authority has concluded as under:-

"Hence, I am satisfied that the accused Kajamalai Viji @ Vijay is habitually committing crimes and also acting in a manner prejudicial to the maintenance of Public order and as such he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act No. 14 of 1982. By committing

the above described grave crime in a busy locality cum business area, he has created a feeling of insecurity in the minds of the people of the area in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order."

11. It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

12. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between 'law and order' and 'public order' cannot also be sustained since this Court in a series of decisions recognized that public order is the even tempo of life of the community taking the country as a whole or even a specified locality. [Vide *Pushpa Devi M. Jatia vs. M.L. Wadhawan & Ors.,* 1987 (3) SCC 367 paras 11 & 14; *Ram Manohar Lohia vs. State of Bihar* (1966) 1 SCR 709; *Union of India vs. Arvind Shergill & Anr.* 2000 (7) SCC 601 paras 4 & 6; *Sunil Fulchand Shah vs. Union of India & Ors.* 2000 (3) SCC 409 para 28

(Constitution Bench); *Commissioner of Police & Ors. vs. C. Anita (Smt),* 2004 (7) SCC 467 paras 5, 7 & 13].

13. We have already extracted the discussion, analysis and the ultimate decision of the Detaining Authority with reference to the ground case dated 18.07.2011. It is clear that the detenu, armed with 'aruval', along with his associates, armed with 'katta' came to the place of the complainant. The detenu abused the complainant in filthy language and threatened to murder him. His associates also threatened him. The detenu not only threatened the complainant with weapon like 'aruval' but also damaged the properties available in the shop. When the complainant questioned the detenu and his associates, the detenu slapped him on his face. When the complainant raised an alarm for rescue, on the arrival of general public in and around, they were also threatened by the detenu and his associates that they will kill them. It is also seen from the grounds of detention that because of the threat by the detenu and his associates by showing weapons, the nearby shop keepers closed their shops out of fear and auto drivers took their autos from their stand and left the place. According to the Detaining Authority, the above scene created a panic among the public. In such circumstances, the scene created by the detenu and his associates cannot be termed as only law and order problem but it is public order as assessed by the Detaining Authority who is supposed to safeguard and protect the interest of public. Accordingly, we reject the contention raised by learned senior counsel for the appellant.

14. The next contention relates to non-application of mind by the Detaining Authority in respect of the bail obtained by the detenu. Learned AAG, by drawing our attention to the factual details narrated in the grounds of detention and in the counter affidavit submitted that such argument is factually incorrect. A contention has been raised that the accused had obtained regular bail in all the criminal cases referred to in the detention order and not anticipatory bail as noted therein, and therefore,

there is non-application of the mind to the relevant material by the Detaining Authority. As rightly pointed out by learned counsel for the State, the said claim is factually incorrect. It is also brought to our notice that the said submission was made only now before this Court as an afterthought. A perusal of the impugned order of the High Court clearly shows that the only contention before the High Court was that the detenu got regular bail in Crime No. 727 of 2010 but the Detaining Authority has wrongly mentioned the same as anticipatory bail. Further, no specific ground has been raised in the SLP. The only ground is that the copy of the anticipatory bail order in Crime No. 727 of 2010 was not given to the detenu which is also contrary to the record since it is specifically stated so in the detention order and averred in the counter affidavit that all the materials were duly furnished to the detenu. There is no denial of the same by filing rejoinder. Further, it is pointed out that the detenu had obtained anticipatory bail in the cases referred to in the detention order including in Crime No. 727 of 2010, accordingly, the said contention is also liable to be rejected.

15. It is also relevant to refer the finding of the High Court that the detenu being granted bail or anticipatory bail does not matter as far as the fact remains that he was not on remand in those cases and there was no prejudice to the detenu by reason of the reference made in the detention order. The High Court has rightly observed that the bail petition in respect of the ground case was pending before the Sessions Judge, Tiruchirapalli and he was very likely to be released on bail and if he comes out on bail, he would indulge in future activities which will be prejudicial to the maintenance of public order.

16. Learned senior counsel for the detenu next submitted that there was non-consideration of the representation of the detenu by the Detaining Authority which vitiates the entire detention order. The representation was received only on 28.07.2011 by the Detaining Authority. It is pointed out that

within a day, i.e., on 29.07.2011 itself, the detention order was approved by the Government. In such circumstances, the Detaining Authority could not consider the representation. Further once the Government affirms the detention order, the Detaining Authority had become functus officio. [Vide Sri *Anand Hanumathsa Katare vs. Additional District Magistrate & Ors.* 2006 (10) SCC 725 paras 9 & 13]. Even otherwise, as rightly pointed out by the learned counsel for the State, this argument is solely baseless since the detenu simultaneously made a representation to the Government and the Government had fully considered his representation and rejected the same on 12.08.2011. Further, the Advisory Board has also rejected the representation of the detenu by order dated 23.08.2011 thereby confirming the detention. This is also clear from the information furnished in the counter affidavit filed on behalf of the respondent-State before this Court.

17. Finally, learned senior counsel for the appellant submitted that the cases relied on by the Detaining Authority are stale. In order to answer this contention, we once again perused the entire grounds of detention. The ground case relates to the occurrence dated 18.07.2011 and prior to that, the detenu was involved in two cases in the year 2010 and one case in the year 2008. The above details clearly show that the detenu was a habitual offender and as such instances shown are not stale as argued by the learned senior counsel for the appellant. These aspects have been taken note of by the High Court, in fact, the High Court has found that the detenu had indulged in one case in the year 2008 and two cases in the year 2010 and the ground case in 2011. The particulars also show that in the year 2010, the detenu had indulged in two cases within a span of 6 months and again had indulged in the ground case in the year 2011, therefore, incident nos. 2 and 3 cannot be said to be stale and, in such circumstance, the conclusion of the Detaining Authority that the detenu was a habitual offender cannot be considered to be based on stale instances.

18. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated in the grounds of detention mentioned above. All the incidents mentioned in the grounds of detention clearly substantiate the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order. All these aspects have been considered by the High Court which rightly affirmed the detention order.

19. In view of the above conclusion, while there is no quarrel as to the proposition of law in the decisions relied on by the learned senior counsel for the detenu, namely, *Commissioner of Police* (supra), *Union of India vs. Paul Manickam & Anr.,* (2003) 8 SCC 342, *M. Ahamedkutty vs. Union of India and Another,* (1990) 2 SCC 1, the same are inapplicable as being distinguished, more particularly, in view of the factual details stated in the impugned detention order, we are not referring to those decisions in detail.

20. In the light of the above discussion, we are unable to accept any of the submissions made on behalf of the appellant, on the other hand, we are in entire agreement with the conclusion arrived at by the High Court, consequently, the appeal fails and the same is dismissed.

N.J. Appeal dismissed.

STATE OF KERALA
v.
E.T.ROSE LYND & ORS.
(Civil Appeal No. 2229 of 2012)

FEBRUARY 22, 2012

[R.M. LODHA AND H.L. GOKHALE, JJ.]

Motor Vehicles Act, 1988: s.118 - Accident claim case - Award passed by Tribunal - On appeal, High Court passed certain directions including directions 3 and 5 relating to construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted and to provide sufficient parking space for vehicles on road side - Held: The directions 3 and 5 given by the High Court with which the Government of Kerala is aggrieved, could not have been issued in view of Rules of the Road Regulations - High Court was hearing an appeal from an award that was confined to the grievances raised by the aggrieved party - Such general directions of wide ramifications ought not to have been given in such proceeding - Moreover, the facts which were relevant and germane for issuance of such directions were not before the High Court - Directions 3 and 5 set aside - Rules of the Road Regulations, 1989 - Para 15.

An accident occurred on a national highway in which a motorcycle dashed against the rear side of a stationary lorry. The pillion rider of the motorcycle died on the spot. The legal representatives of the accident victim filed claim petition before the MACT. The Tribunal passed an award making the owner, driver and insurer of the truck as well as respondent no.2 who was riding the motorcycle liable to pay the award. The owner and rider of the motorcycle filed appeal before the High Court. The High Court issued certain directions to the State of Kerala and accordingly

directed its impleadment through its Chief Secretary as respondent no.9 in the appeal.

The State of Kerala was aggrieved by the directions 3 and 5. By direction 3, the High Court directed the State Government to take steps for construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted within one year from the date of the order. By direction 5, the State Government was directed to provide sufficient parking space for vehicles on road side, if required by acquiring land, which should also be done within a time frame, although no time frame was fixed by the Court.

Partly allowing the appeal, the Court

HELD: 1.1. Section 118 of the Motor Vehicle Act enables the Central Government to make regulations for the driving of motor vehicles by issuing notification in the Official Gazette. Pursuant to its power under Section 118 of the Act, the Central Government has prescribed the Rules of the Road Regulations, 1989. Para 15 of these Regulations deals with the parking of the vehicle. Sub-para (1) of Para 15 provides that every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, the driver is required to park his vehicle accordingly. Sub-para (2) of Para 15 is a prohibitory provision whereby a driver of a motor vehicle is prohibited not to park his vehicle at the places set out in clauses (i) to (xi). The High Court relied upon clause (iv) which provides that a driver of a motor vehicle shall not park his vehicle in a main road or one carrying fast traffic. [Para 9] [1007-C-E]

1.2. The directions given by the High Court,

particularly directions 3 and 5 with which the Government of Kerala is aggrieved, could not have been issued in view of Rules of the Road Regulations, 1989. Secondly, the High Court was hearing an appeal from an award that was confined to the grievances raised by the aggrieved party. Such general directions of wide ramifications ought not to have been given in such proceeding. Moreover, the facts which were relevant and germane for issuance of such directions were not before the Court. The observations by the Court, 'most of the container trucks seen on road are not fitted with proper indicators and the containers with their dull colours may not be visible from distance, more so in the night', 'similar accidents of the kind stated above are reported in this State on regular basis when vehicles driven in the night hit behind vehicles remaining parked on road' and 'inspite of repeated accidents, no steps are seen taken by the Police or Motor Vehicle authorities to seize or remove such parked vehicles from roads which can prevent accidents' are founded on general impressions. No material was available on record to support such observations. Howsoever well meaning the directions may be, yet in the absence of complete facts and materials, the exercise undertaken by the High Court was uncalled for and not necessary. As regards directions 3 and 5, certain aspects which were needed to be adverted to were not at all adverted to by the High Court. It was important to have regard to the aspect, whether it was at all feasible to construct the Bus Bays and make the roads double lane or four lane when these roads pass through major cities, towns and thickly populated areas. The financial aspect viz., the cost of land acquisition and the cost of construction of Bus Bays throughout the State's National Highways and other roads was also required to be kept in mind. None of these aspects were examined by the High Court. Directions 3 and 5 suffer from serious flaw

and cannot be sustained. [Paras 10-12] [1007-F-H; 1008-A-E, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2229 of 2012.

From the Judgment & Order dated 17.09.2008 of the High Court of Kerala at Ernakulam in M.F.A. No. 66 of 2003.

Ramesh Babu M.R., Shekhar Prasad Gupta for the Appellant.

B.V. Deepak, Dilip Pillai, T.T.K. Deepak & Co., A. Venayagam for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. The State of Kerala through its Chief Secretary is in appeal, by special leave, aggrieved by certain directions given by the High Court of Kerala in its order dated September 17, 2008.

3. A certain P.C. Krishnakumar was travelling on the pillion of a motorcycle bearing registration No. KRH-7599 which was ridden by Thomas John (respondent No. 2 herein) along Koimbatore-Palakkadu National Highway (East to West). On reaching Puthusserichellakkadu, the motorcycle dashed against the rear side of a stationary lorry which was parked at the national highway. The parking lights of the stationary lorry were not switched on and as a result of the impact Krishnakumar sustained serious injuries and he succumbed to those injuries on way to Palakkadu District Hospital. Legal heirs of the deceased Krishnakumar, who are respondent Nos. 3 to 5 herein, filed a claim petition before the Motor Accidents Claims Tribunal, Attingal (for short, 'the Tribunal') seeking compensation for the accidental death of Krishnakumar. In the claim petition, they alleged that the accident occurred due to the composite negligence of the owner, driver and insurer (respondents Nos. 8, 9 and 10 herein) of the truck as well as the respondent No. 2 who was riding the motorcycle.

4. The Tribunal, on consideration of the evidence on record, passed an award on June 3, 2002 in the sum of Rs. 4,76,500/- with interest at 9% per annum from November 8, 1997 till relisation in favour of the claimants. The liability was apportioned in the award as the accident was found to have occurred due to composite negligence of the two vehicles. The details of the liability are not relevant.

5. Aggrieved by the award, the present respondent Nos. 1 and 2 (owner and rider of the motorcycle) preferred appeal before the High Court of Kerala. The High Court proposed to issue some general directions to the State of Kerala and, accordingly, directed its impleadment through its Chief Secretary as respondent No. 9 in the appeal. The Division Bench of the High Court, on hearing the parties, issued the following general directions in its order dated September 17, 2008 :-

> "1) We direct the Government to issue instruction to the Police particularly handling Traffic and the Motor Vehicles Department to seize and remove vehicles seen parked on National Highways, State Highways and other important roads, whether during day time or during night, and release such vehicles only on collecting heavy fine in accordance with law besides prosecuting the drivers.
>
> 2) The Government should direct Police and Motor Vehicles Department to ensure that goods vehicles particularly, container lorries with unusual dimensions are operated on road with proper indicator lights, reflectors, etc. on all sides during day time and night so that drivers of other vehicles get an idea about the size and dimension of such vehicles and the care they have to take to avoid accidents. In fact, having regard to the unusual size of container trucks, the Government should consider roads in which they can be permitted to operate and narrow single line roads where they should not be permitted and orders should be issued and enforced restricting their movement.

> 3) Large number of accidents take place on account of stopping/parking of stage carriages on road for taking and releasing passengers. This should be prohibited by constructing Bus Bays in Bus stops so that stage carriages go out of the road and take passengers and release them only on bus bays without affecting road traffic. Since this requires time, and expenditure, we direct the Government to take steps at the earliest and complete construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted, within one year from now.
>
> 4) Since accidents commonly take place in road crossings, there will be direction to the Government to instruct PWD and local authorities in charge of the road, to construct hump with zeebra marking on the less important roads on all road crossings and also provide sign boards wherever required under the Rules, which should also be done within a period of one year from now.
>
> 5) Since parking of vehicles on road is prohibited by the Rules, the enforcement of which is directed above, there will be direction to the Government to provide sufficient parking space for vehicles on road side, if required by acquiring land, which should also be done within a time frame, even though we do not fix any specific time for this."

6. While giving the above directions, the High Court further observed that in order to ensure the compliance, Registry shall post the matter every three months for the Government to report periodical steps taken for compliance. The first report of the Government was required to be filed by January 1, 2009.

7. The State of Kerala is aggrieved by the directions 3 and 5 quoted above. By direction 3, the High Court has directed the State Government to take steps for construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted within one year from the date of the order. By direction 5, the State Government has been directed to provide sufficient parking space for vehicles on road side, if

required by acquiring land, which should also be done within a time frame, although no time frame was fixed by the Court.

8. The High Court heavily relied upon Section 118 of the Motor Vehicles Act, 1988 (for short, 'the Act') and Rule 15(2)(iv) of the Rules of the Road Regulations, 1989 (for short, '1989 Regulations') prescribed by the Central Government.

9. Section 118 of the Act enables the Central Government to make regulations for the driving of motor vehicles by issuing notification in the Official Gazette. Pursuant to its power under Section 118 of the Act, the Central Government has prescribed the 1989 Regulations. Para 15 of these Regulations deals with the parking of the vehicle. Sub-para (1) of Para 15 provides that every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, the driver is required to park his vehicle accordingly. Sub-para (2) of Para 15 is a prohibitory provision whereby a driver of a motor vehicle is prohibited not to park his vehicle at the places set out in clauses (i) to (xi). The High Court relied upon clause (iv) which provides that a driver of a motor vehicle shall not park his vehicle in a main road or one carrying fast traffic.

10. We are afraid, the directions given by the High Court, particularly directions 3 and 5 with which the Government of Kerala is aggrieved, could not have been issued. First, the provisions aforenoted upon which the High Court placed reliance hardly justified the above directions. Second, the High Court was hearing an appeal from an award that was confined to the grievances raised by the aggrieved party. Such general directions of wide ramifications ought not to have been given in such proceeding. Third, the facts which are relevant and germane for issuance of such directions were not before the Court. The observations by the Court, 'most of the container trucks seen on road are not fitted with proper indicators and the containers with their dull colours may not be visible from

distance, more so in the night', 'similar accidents of the kind stated above are reported in this State on regular basis when vehicles driven in the night hit behind vehicles remaining parked on road' and 'inspite of repeated accidents, no steps are seen taken by the Police or Motor Vehicle authorities to seize or remove such parked vehicles from roads which can prevent accidents' are founded on general impressions. No material is available on record to support such observations. Howsoever well meaning the directions may be, yet in the absence of complete facts and materials, the exercise undertaken by the High Court was uncalled for and not necessary. Fourth, as regards directions 3 and 5, we find that certain aspects which were needed to be adverted to have not at all been adverted to by the High Court. It was important to have regard to the aspect, whether it was at all feasible to construct the Bus Bays and make the roads double lane or four lane when these roads pass through major cities, towns and thickly populated areas. The financial aspect viz., the cost of land acquisition and the cost of construction of Bus Bays throughout the State's National Highways and other roads was also required to be kept in mind. None of these aspects has been examined by the High Court.

11. Mr. Ramesh Babu M.R., learned counsel for the appellant - State of Kerala, submits that the State Government has accepted directions 1, 2 and 4 and implemented the same although a ground has been taken that such directions ought not to have been issued. In view of this, we do not intend to say anything about directions 1, 2 and 4.

12. In view of the above, we are satisfied that directions 3 and 5 suffer from serious flaw and cannot be sustained. We set aside directions 3 and 5 accordingly.

13. The Appeal is allowed to the extent above with no order as to costs.

D.G. Appeal partly allowed.

AMIT

v.

STATE OF UTTAR PRADESH

(Criminal Appeal No. 1905 of 2011)

FEBRUARY 23, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Penal Code, 1860: ss.364, 376, 377, 302 and 201 - Rape followed by murder of minor girl - Allegation against the appellant that he took away the victim from her house in the presence of her mother and grandmother on the pretext of giving her biscuits and raped and murdered her - Courts below convicted the appellant u/ss.364, 376, 377, 302 and 201 - On appeal, held: There was no evidence to show that grandmother of the victim was interested in having the appellant convicted - As the appellant was neighbour and known to the grandmother of the victim, no Test Identification Parade was necessary for her to identify the appellant - Recovery of incriminating items made on disclosure statement made by appellant supported prosecution case - As per the post mortem report, the injuries on the body of victim proved that rape was committed on her and all the injuries together were cause of her death - The report of the Forensic Science Laboratory proved beyond all reasonable doubt that it was the appellant alone who committed rape on victim and killed her and thereafter caused disappearance of the evidence of the offences - Courts below rightly convicted the appellant.

Witness: Interested witness - Reliability of - Held: An interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness.

Sentence/Sentencing: Death sentence for offence of rape

*and murder - Held: In the instant case, when the appellant committed the offence he was a young person aged about 28 years only - There was no evidence that he had committed the offences of kidnapping, rape or murder on any earlier occasion - There was nothing to suggest that he is likely to repeat similar crimes in future - On the other hand, given a chance he may reform over a period of years - Following the judgment of the three-Judge Bench in *Rameshbhai Chandubhai Rathod, the death sentence awarded to the appellant is converted to imprisonment for life and the life sentence of the appellant is extended to his full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons.*

The prosecution case was that on the fateful day, the appellant came to the house of PW-1 and while mother of PW-1 and his wife were present in the house, the appellant took away daughter of PW-1 aged 3 years (victim) on the pretext of giving her biscuits. In the evening when the appellant returned home, he was asked about the whereabouts of the victim, but the appellant did not reply and ran away. PW-1 lodged police complaint and the appellant was apprehended. His shirt bore blood stains. On the statement of the appellant, the dead body of the victim was recovered from the field in the presence of PW-1 and another person. The trial court convicted the appellant under Sections 364, 376, 377, 302 and 201 IPC and awarded various sentences including death sentence for the offence under Section 302, IPC. The High Court confirmed conviction and the sentences awarded by the trial court.

In the instant appeal, it was contended for the appellant that PW-3 was the only person who was witness to the appellant taking away the victim from the house of PW-1, but PW-3 was an aged woman and had admitted in her cross-examination that she could not see with her right eye; that PW-3 was an interested witness

inasmuch as she was the grandmother of the victim and her evidence should not be relied on; that no Test Identification Parade was conducted during investigation for the witness to identify the appellant; that no independent witnesses were taken by the Police for recovery of the articles and instead PW-1 was made a witness to the recovery of various articles; and there was evidence to show previous enmity between PW-1 and the appellant due to which PW-1 planted the case against the appellant and that the weapon by which the victim was killed was not recovered and therefore there was no proof that the appellant committed the offence under Section 302 IPC.

Partly allowing the appeal, the Court

HELD: 1. PW-3 was no doubt the grandmother of the victim but she was not an interested witness. An interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness. There is no evidence to show that PW-3 was somehow interested in having the appellant convicted. PW-3, however, was an aged woman and she has admitted in her cross-examination that she could not see with her right eye but she had also stated in her cross-examination that she could see with her left eye and the sight of her left eye was not diminished on account of old age and she could fully see everything and could also pass a thread through the eye of the needle and that she did not use spectacles and could see without spectacles. Therefore, the evidence of PW-3 that the appellant came to her house and took away the victim from her lap on the pretext of giving biscuits to her cannot be disbelieved. [Para 6] [1018-C-G]

2. Test Identification Parade would have been

necessary if the appellant was unknown to PW-3 but as the appellant was the neighbour of PW-3 and known to her, no Test Identification Parade was necessary for PW-3 to identify the appellant. In fact, when PW-1 returned home, he was told by PW-3 that the appellant had taken away the victim on the pretext of giving her biscuits because PW-3 knew the appellant. Moreover, on such information received from PW-3, PW-1 lodged the FIR naming the appellant as the person who had taken away the victim on the pretext of giving her biscuits. [Para 7] [1018-H; 1019-A-C]

3. It is apparent from the memo Ex.Ka-10 recording the recovery of blood- stained shirt of the appellant that the recovery was made in presence of two Constables and PW-1 was not a witness to this recovery. Thereafter, the appellant made a confession that he had concealed the dead body of the victim in the wheat field and pursuant to this confession the dead body of the victim kept in a plastic bag was recovered in presence of not only PW-1 but also PW-4. The recovery memo (Ext.Ka-2) with regard to the dead body of the victim and the recovery memo Ext.Ka-3 with regard to plastic bag bear the signatures of PW-1 and PW-4. Pursuant to the statement made by the appellant, the chappals which the victim was wearing at the time of murder were also recovered from the house of the appellant in presence of PW-1 and PW-4 and the recovery memo with regard to the chappals (Ext.Ka-5) also bore the signatures of PW-1 and PW-4. Thus, it is not correct, that only PW-1 was a witness to the recovery of various articles and that this was a case which PW-1 had planted on the appellant on account of previous enmity. PW-4 was also a witness to the recovery of the articles which implicated the appellant in the offence and it was not the case of the appellant that PW-4 was in any way inimical to the appellant. [Para 8] [1019-D-H; 1020-A]

4. The evidence of the senior pathologist PW-5, who carried out the post mortem report on the body of the victim showed that there were swelling marks on her head and left side of the face which established that she was hit on her head and her left side of the face. PW-5 also stated in his evidence that there was a ligature mark all around her neck which indicated that she was also strangulated. PW-5 further deposed that there was a lacerated wound on the anterior part of arms anus and her vagina was inflamed and congested which proved that unnatural offence and rape was committed on her. PW-5 opined that all the injuries together are the cause of the death of the victim. The report of the Forensic Science Laboratory (Ex.A-23) confirmed human blood and human sperms on the underwear of the victim. Thus, even if the object with which the victim was hit was not identified and recovered, the evidence of PW-3, the recovery of various articles made pursuant to the confession of the appellant, the evidence of PW-5 and the report of the Forensic Science Laboratory Ex.A-23 proved beyond all reasonable doubt that it was the appellant alone who after having kidnapped the victim committed unnatural offence as well as rape on her and killed her and thereafter caused disappearance of the evidence of the offences. The High Court has, therefore, rightly confirmed the conviction of the appellant under Sections 364, 376, 377, 302 and 201 IPC. [Para 9] [1020-B-G]

5. When the appellant committed the offence he was a young person aged about 28 years only. There was no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There was nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three-Judge Bench in *Rameshbhai Chandubhai Rathod (2) v. State

of Gujarat, the death sentence awarded to the appellant is converted to imprisonment for life and the life sentence of the appellant is extended to his full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons. While therefore sustaining the conviction of the appellant for the different offences as well as the sentences of imprisonment awarded by the trial court for the offences, the sentence of death is converted to life imprisonment for the offence under Section 302 IPC and further the life imprisonment shall extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons. [paras 12, 13] [1022-C-H]

Rameshbhai Chandubhai Rathod (2) v. State of Gujarat* **(2011) 2 SCC 764: 2011 (1) SCR 829 - Followed.

State of Rajasthan v. Smt. Kalki and another **(1981) 2 SCC 752 : 1981 (3) SCR 504;** *Myladimmal Surendran and others v. State of Kerala* **(2010) 11 SCC 129 : 2010 (10) SCR 916;** *Takdir Samsuddin Sheikh vs. State of Gujarat and another* **(2011) 10 SCC 158;** *Sebastian Alias Chevithiyan v. State of Kerala* **(2010) 1 SCC 58;** *State of U.P. v. Satish* **(2005) 3 SCC 114 : 2005 (2) SCR 1132;** *Bantu v. State of Uttar Pradesh* **(2008) 11 SCC 113 : 2008 (11) SCR 184 - referred to.**

Case Law Reference:

1981 (3) SCR 504	**referred to**	**Para 6**
2010 (10) SCR 916	**referred to**	**Para 6**
(2011) 10 SCC 158	**referred to**	**Para 6**
(2010) 1 SCC 58	**referred to**	**Para 10**
2011 (1) SCR 829	**Followed**	**Para 10**

2005 (2) SCR 1132	**referred to**	**Para 11**
2008 (11) SCR 184	**referred to**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1905 of 2011.

From the Judgment & Order dated 29.07.2009 of the High Court of Judicature at Allahabad in Crl. A. No. 7361 of 2007 in Reference No. 26 of 2007.

P.C. Aggarwala, Revathy Raghavan for the Appellant.

R.K. Gupta, Rajeev Dubey, Kamlendra Mishra for the Respondent.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution of India against the judgment dated 29.07.2009 of the Allahabad High Court in Criminal Appeal No.7361 of 2007 and in Reference No.26 of 2007 confirming the conviction of the appellant under Sections 364, 376, 377, 302 and 201 of the Indian Penal Code (for short 'IPC') as well as the sentences of imprisonments and death awarded by the learned Additional Sessions Judge.

2. The facts very briefly are that on 19.03.2005, one Radhey Shyam lodged a First Information Report (for short 'FIR') at the Daurala Police Station in District Meerut at 21:15 hours alleging that while his mother Manno and wife Shakuntala were present at house, his neighbour Amit, the appellant herein, took away his daughter Monika, aged 3 years, from his house on the pretext that he would give biscuits to her but neither his daughter nor the appellant returned and when at about 5.00 p.m. the appellant came back to his house, he inquired about the whereabouts of Monika, but the appellant did not reply and ran away. Crime No.90 of 2005 for the offence under Section 364, IPC, was registered. The appellant was apprehended on 20.03.2005 near the Pawli Khas Railway

Station, Modipuram, P. S. Daurala in District Meerut and his shirt, which bore blood-stains on its right arm, was taken off from his person. On the statement of the appellant, the dead body of Monika kept in a plastic bag was recovered from the wheat field in the out skirts of village Palhara in the presence of Radhey Shyam and Iqbal Singh. A pair of green colour *chappals*, which were blood-stained, were also recovered from the corner of a room of the house of the appellant on the statement of the appellant in presence of Radhey Shayam and Iqbal Singh. The shirt of the appellant and the *chappals*, frock, underwear of Monika and a back thread were sent to the Forensic Science Laboratory Uttar Pradesh, Agra, which confirmed presence of human blood and human sperms on some of these materials. After investigation, chargesheet was filed against the appellant under Sections 364, 376, 377, 302 and 201, IPC, and charges were accordingly framed by the learned Additional Sessions Judge, Court No.12, Meerut, and Sessions Trial No.449 of 2005 was conducted.

3. At the trial, Radhey Shyam was examined as PW-1. His wife and mother were examined as PWs-2 and 3. Iqbal Singh, the witness to the seizures made pursuant to the statements of the appellant, was examined as PW-4. Dr. Vikrama Singh, Senior Pathologist, who carried out the post-mortem on the body of Monika, was examined as PW-5 and the Investigating Officer was examined as PW-6. In his statement under Section 313, Criminal Procedure Code (for short 'Cr.P.C.'), the appellant denied having committed the offences but no evidence was adduced by him in his defence. The trial court considered the evidence, heard the arguments and found the appellant guilty of the charges under Sections 364, 376, 377, 302 and 201, IPC. After hearing the appellant on the question of sentence, the trial court imposed the punishment of life imprisonment and a fine of Rs.5,000/- for the offence under Section 364, IPC, and a further sentence of six months if the appellant failed to pay the fine. For the offence under Section 376, IPC, the trial court also imposed the punishment of life imprisonment and a fine

of Rs.5,000/- and on failure to pay the fine, a further sentence of six months. For the offence under Section 377, IPC, the trial court also imposed the punishment of life imprisonment and a fine of Rs.5,000/- and on failure to pay the fine, an additional sentence of six months' imprisonment. For the offence under Section 201, IPC, the trial court imposed a sentence of five years imprisonment and a fine of Rs.2,000/- and on failure to pay the fine, an additional sentence of two months' imprisonment. The trial court took the view that this is one of those rarest of rare cases in which the appellant was not eligible for any sympathy of the Court and imposed the sentence of death and a fine of Rs.5,000/- on the appellant for the offence under Section 302, IPC. The High Court, as we have already noted, has not only confirmed the convictions under Sections 364, 376, 377, 302 and 201, IPC, but also the sentences awarded by the trial court.

4. At the hearing of the appeal, learned counsel for the appellant submitted that PW-3 was the only person who was witness to the appellant taking away Monika from the house of PW-1, but PW-3 was an aged woman and she has admitted in her cross-examination that she cannot see with her right eye. He submitted that PW-3 was an interested witness inasmuch as she was the grandmother of Monika and her evidence should not be relied on. He argued that no Test Identification Parade was conducted during investigation for the witness to identify the appellant. He further submitted that no independent witnesses were taken by the Police for recovery of the articles and instead the father of Monika (PW-1) was made a witness to the recovery of various articles and there is evidence to show previous enmity between PW-1 and the appellant and PW-1 has planted this case against the appellant. He also argued that the weapon by which Monika was killed has not been recovered and hence there is no proof that the appellant has committed the offence under Section 302 IPC.

5. Learned counsel for the State, on the other hand, took us through the evidence of PWs-1, 2, 3 and 4 as well as the

three memoranda of recovery made on 20.03.2005 pursuant to the confessional statements of the appellant admissible under Section 27 of the Evidence Act as well as the report of the Forensic Science Laboratory to show that the trial court rightly convicted the appellant and the High Court rightly confirmed the conviction under Sections 364, 376, 377, 302 and 201, IPC.

6. We may first consider the contention of the learned counsel for the appellant that the evidence of PW-3 who saw the appellant taking away Monika from her lap should not be relied on. PW-3 is no doubt the grandmother of Monika but she is not an interested witness. As has been held by this Court in *State of Rajasthan v. Smt. Kalki and another* [(1981) 2 SCC 752], *Myladimmal Surendran and others v. State of Kerala* [(2010) 11 SCC 129] and *Takdir Samsuddin Sheikh vs. State of Gujarat and another* [(2011) 10 SCC 158], an interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness. There is no evidence to show that PW-3 was somehow interested in having the appellant convicted. PW-3, however, is an aged woman and she has admitted in her cross-examination that she cannot see with her right eye but she has also stated in her cross-examination that she can see with her left eye and the sight of her left eye has not diminished on account of old age and she can fully see everything and can also pass a thread through the eye of the needle and that she does not use spectacles and can see without spectacles. Hence, the evidence of PW-3 that the appellant came to her house and took away Monika from her lap on the pretext of giving biscuits to her cannot be disbelieved.

7. We may now deal with the contention of the learned counsel for the appellant that no Test Identification Parade was conducted during investigation for the witness to identify the appellant as the person who had taken away the child from her lap. Test Identification Parade would have been necessary if

the appellant was unknown to PW-3 but as the appellant was the neighbour of PW-3 and known to her no Test Identification Parade was necessary for PW-3 to identify the appellant. In fact when PW-1 returned home, he was told by PW-3 that the appellant had taken away Monika on the pretext of giving her biscuits because PW-3 knew the appellant. Moreover, on such information received from PW-3, PW-1 lodged the FIR naming the appellant as the person who had taken away Monika on the pretext of giving her biscuits. Hence, the argument of learned counsel for the appellant that no Test Identification Parade was conducted for PW-3 to identify the appellant is misconceived in the facts of this case.

8. Regarding the contention of learned counsel for the appellant that no independent witnesses were taken by the police for recovery of the articles and PW-1, who was the father of Monika and who was inimical to the appellant was made a witness to the recovery of the articles, we find from the memo Ex.Ka-10 recording the recovery of blood- stained shirt of the appellant that the recovery was made in presence of two Constables, namely, Harender Singh and Jasbir Singh, and PW-1 was not a witness to this recovery. Thereafter, the appellant made a confession that he had concealed the dead body of Monika in the wheat field and pursuant to this confession the dead body of Monika kept in a plastic bag was recovered in presence of not only PW-1 but also PW-4 (Iqbal Singh). The recovery memo (Ext.Ka-2) with regard to the dead body of Monika and the recovery memo Ext.Ka-3 with regard to plastic bag bear the signatures of the two witnesses PW-1 and PW-4. Pursuant to the statement made by the appellant, the *chappals* which Monika was wearing at the time of murder were also recovered from the house of the appellant in presence of PW-1 and PW-4 and the recovery memo with regard to the *chappals* (Ext.Ka-5) also bears the signatures of PW-1 and PW-4. Thus, it is not correct, as has been submitted by learned counsel for the appellant, that only PW-1 was a witness to the recovery of various articles and that this was a

case which PW-1 had planted on the appellant on account of previous enmity. PW-4 was also a witness to the recovery of the articles which implicate the appellant in the offence and it is not the case of the appellant that PW-4 was in any way inimical to the appellant.

9. Coming to the argument of the counsel for the appellant that the weapon with which Monika was killed has not been recovered, it appears from the evidence of the senior pathologist Dr. Vikrama Singh, PW-5, who carried out the post mortem report on the body of Monika that there were swelling marks on her head and left side of the face which established that she has been hit on her head and her left side of the face. PW-5 has also stated in his evidence that there was a ligature mark all around her neck which indicates that she was also strangulated. PW-5 has further deposed that there was a lacerated wound on the anterior part of arms anus and her vagina was inflamed and congested which prove that unnatural offence and rape was committed on her. PW-5 has opined that all the injuries together are the cause of the death of Monika. The report of the Forensic Science Laboratory (Ex.A-23) confirms human blood and human sperms on the underwear of Monika. Thus, even if the object with which Monika was hit has not been identified and recovered, the evidence of PW-3, the recovery of various articles made pursuant to the confession of the appellant, the evidence of PW-5 and the report of the Forensic Science Laboratory Ex.A-23 prove beyond all reasonable doubt that it is the appellant alone who after having kidnapped Monika committed unnatural offence as well as rape on her and killed her and thereafter caused disappearance of the evidence of the offences. The High Court has, therefore, rightly confirmed the conviction of the appellant under Sections 364, 376, 377, 302 and 201 IPC.

10. We may now consider the contentions of the learned counsel for the parties on the sentence for the offence under Section 302, IPC. Learned counsel for the appellant submitted that the appellant was a young person aged about 28 years

when he committed the offences and may reform in future. He cited the judgments of this Court in *Sebastian Alias Chevithiyan* v. *State of Kerala* [(2010) 1 SCC 58] and *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat* [(2011) 2 SCC 764] in which this Court in similar cases of murder of a child after rape by a young person has held that imprisonment for life and not death sentence is the appropriate punishment. He submitted that the appellant, therefore, should not be awarded death sentence.

11. Learned counsel for the State, on the other hand, submitted that the trial court has held that kidnapping and raping a three years old daughter of a neighbour by another neighbour on the pretext of offering biscuit is a heinous and inhuman act and comes under the category of rarest of rare cases as has been held by this Court in several decisions. He submitted that the view taken by the trial court is consistent with the decisions of this Court in *State of U.P. v. Satish* [(2005) 3 SCC 114] and *Bantu v. State of Uttar Pradesh* [(2008) 11 SCC 113]. According to him, death sentence is the appropriate punishment for rape of a child followed by murder.

12. We find that the trial court has relied on the decision of a two Judge Bench of this Court in *State of U.P. v. Satish* (supra) in which the offence of rape of a child followed by brutal murder of a child has been held to fall in the rarest of rare category for which death sentence is appropriate. In *Bantu v. State of Uttar Pradesh* (supra), a two-Judge Bench has similarly awarded death sentence to the accused for having committed murder after rape of a young girl of 5 years. In the subsequent decision in the case of *Sebastian Alias Chevithiyan v. State of Kerala* (supra), however, a two-Judge Bench of this Court in a similar case of a rape followed by murder of a young child by a young man of 24 years has taken a different view and has modified the sentence of death to one imprisonment for the rest of his life. In *Rameshbhai Chandubhai Rathod (2) v. State of Gujarat* (supra), which was also a case of a rape followed by murder of a girl child by a

young man, while Dr. Arijit Pasayat, J. took the view that death sentence is the appropriate punishment, A.K. Ganguly, J. was of the view that as the accused was young in age and may be rehabilitated in future, death sentence is not the appropriate punishment. The difference between the two Judges was referred to a three-Judge Bench of this Court and the three-Judge Bench held that in such cases of rape followed by murder by a young man, instead of death sentence a life imprisonment should be awarded with a direction that life sentence imposed will extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons. In the present case also, we find that when the appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three-Judge Bench in *Rameshbhai Chandubhai Rathod (2) v. State of Gujarat* (supra), we convert the death sentence awarded to the appellant to imprisonment for life and direct that the life sentence of the appellant will extend to his full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

13. While therefore sustaining the conviction of the appellant for the different offences as well as the sentences of imprisonment awarded by the trial court for the offences, we allow the appeal in part and convert the sentence of death to life imprisonment for the offence under Section 302 IPC and further direct that the life imprisonment shall extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons. The appeal stands disposed of.

D.G. Appeal partly allowed.

K.B. NAGUR M.D. (AYU.)

v.

UNION OF INDIA

(Writ Petition (Civil) No. 33 of 2009)

FEBRUARY 24, 2012

[S.H. KAPADIA, CJI, A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

CONSTITUTION OF INDIA, 1950:

Arts. 14 and 16 - Held: The concept of equality has to be patently infringed by a provision before that provision or any part thereof, can be declared as unconstitutional - The mere fact that there is some inconvenience arising from the language of a provision and its due implementation cannot be a ground for declaring a provision violative of fundamental rights - Besides, presumption of constitutionality is always in favour of a legislation, unless the contrary is shown - For the proper interpretation and examination of a provision of a statute, all bodies must be presumed to act effectively and in accordance with law - In the instant case, s.7 of the Indian Medicine Central Council Act, 1970, is neither ultra vires nor violative of Arts. 14 and/or 16 - Indian Medicine Central Council Act, 1970 - s.7.

INDIAN MEDICINE CENTRAL COUNCIL ACT, 1970:

ss.3(1)(a)(b), 4 and 7 - Central Council of Indian Medicine - Term of office of the members and other office bearers - Held: Is five years - Elections are expected to be held within the said period of five years to ensure that immediately after expiry of the specific term, the members holding the office quit and the newly elected members assume charge - To extend beyond a regular term the tenure of members, would not only be impermissible in law but would also be illegal.

s.7 - Continuance by members of Central Council of Indian Medicine after expiry of specified period of 5 years - Clause, "or until his successor shall have been duly elected or nominated, whichever is longer" - Connotation of - Held: The clause has been provided to protect a situation where elections cannot be held within the prescribed time for valid reasons - Since no outer limit has been specified by the Legislature for which such previously elected members can continue in office, the concept of reasonable time would come into play - Courts in the process of interpretation can supply the lacuna - Thus, a period of three months would be sufficient for completing the election process, if the fresh election could not be held within the five years' term of office of previously elected members - No elected person shall hold the office of President, Vice President or Member beyond the period of three months from the expiry of his term - s.7 or any part thereof is neither ultra vires nor violative of Arts.14 and/or 16 of the Constitution - Constitution of India, 1950 - Arts. 14 and 16 - Maxim, 'ut res valeat potius quam pereat' - Applicability of.

ss.3, 4 and 7 - Central Council of Indian Medicine - Obligations of Central Government - Held: Central Government has a major role to play in the constitution, establishment and activities of the Council - It is expected of the Central Government to discharge its functions and duties without failure and on time - It is the obligation of Central Government to hold election to the Central Council before expiry of the term of the Members and other office bearers of the Council as provided u/s 7 - Judicial notice.

The petitioner, an Ayurvedic doctor, filed the instant writ petition in public interest alleging that elections to the Central Council of Indian Medicines were not held for the last 20-25 years. It was stated that as per s.7 of the Indian Medicine Central Council Act 1970, though the term of members of the Council was five years from the date of election/nomination, the latter part of the section

stipulating, "or until a successor shall have been duly elected or nominated, whichever is longer", caused serious impediment in the proper functioning of the Council; that the Central Government did not take proper steps to hold fresh elections and the persons who had been elected, took advantage of the provision and continued in office far beyond five years as nobody was duly elected to replace them. It was, therefore, prayed, inter alia, that the Union of India be directed to hold elections to the Council and that the last clause of s.7 of the Act as pointed out, be struck down. During the pendency of the writ petitions some other cases stood transferred to the Court; and Writ Petition No. 249 of 2011 and a number of IAs were also filed.

Disposing of the matters, the Court

HELD: 1.1 Art.14 of the Constitution of India, 1950, guarantees equality before law whereas Art.16 talks of equal opportunities in matters of public employment. This concept of equality has to be patently infringed by a provision before that provision or any part thereof, can be declared as unconstitutional. The mere fact that there is some inconvenience arising from the language of a provision and its due implementation cannot be a ground for declaring a provision violative of fundamental rights. Besides, presumption of constitutionality is always in favour of a legislation, unless the contrary is shown. Furthermore, a Legislature, in enacting a law, operates on a presumption, in law and practice, both, that all other forums and entities constituted under one or other Act would, in their functioning, act in accordance with law and expeditiously. For the proper interpretation and examination of a provision of a statute, all bodies must be presumed to act effectively and in accordance with law. [Para 7-8] [1034-A-C-H; 1035-A]

1.2 A statute is construed so as to make it effective and operative as per the principle expressed in ut res

valeat potius quam pereat. The term of the Members of the Central Council, as prescribed u/s 7 of the Indian Medicine Central Council Act, 1970, is five years. Elections are expected to be held within that period of five years to ensure that immediately after expiry of the specific term, the members holding the office quit and the newly elected members assume the charge. However, there can be situations where the elections in the entire country or in any part thereof cannot be held within the prescribed time and for valid reasons. It is this situation which is intended to be protected by the challenged words of s.7 of the Act. The legislative intent is clear that there cannot be a vacuum in the working of a statutory body and it cannot be rendered non-existent even for a short period by lapse of membership term or otherwise. Thus, to provide a safeguard for the interregnum period, of the earlier members of the Central Council vacating their office and newly elected members assuming their office, the provisions of s. 7 have been enacted by the Legislature. Whatever be the methods adopted, by whichever agency including the Government, to extend beyond a regular term the tenure of members, would not only be impermissible in law, but would also be illegal. [para 7, 9 and 21] [1034-C-G; 1035-C; 1041-D]

1.3 It cannot be said that the provisions of s.7 of the Act, or any part thereof, suffer from any legal infirmity, excessive legislative power or violate any legal right of any person, including the petitioner, much less a constitutional right. Keeping the principle of strict necessity in mind, the courts do not venture to examine the constitutional validity of a provision and even strike down such provisions, if they are constitutional and a court does so only if the situation created by such legislation is irremediable or unredeemable. None of these circumstances exist in the present case. [para 11] [1036-B-C]

1.4 Section 7 of the Indian Medicine Central Council Act, 1970 or any part thereof is neither ultra vires nor violative of Arts. 14 and/or 16 of the Constitution. [para 25(A)] [1043-B-C]

Dental Council of India and Anr. v. Dr. H.R. Prem Sachdeva & Ors. **1999 (4) Suppl. SCR 1 = (1999) 8 SCC 471 - followed.**

2. The Central Government is responsible for nominating such number of members not exceeding 30 per cent of the total members elected u/s 3(1)(a) and 3(1)(b) of the Act to the Central Council. The Central Government has a major role to play in the constitution, establishment and carrying on of activities by the Central Council. This is an onerous and significant duty. There is no reason for the Central Government not to perform its statutory duties. The Court would take judicial notice of the fact that a large number of people depend upon these systems of medicine for treatment of various diseases. The Court mandates the Central Government shall discharge all its duties and functions as contemplated u/ss 3, 4 and 7 of the Indian Medicine Central Council Act, 1970, without default, delay and within the required intervals. It is the obligation of the Central Government to hold election to the Central Council within the period of five years i.e., before expiry of the term of office of the President/Vice-President and Member of the Central Council, as provided u/s 7 of the Act. [para 17 and 25-B] [1039-C-E; 1043-C-E]

Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Others **2006 (7) Suppl. SCR 454 = (2006) 8 SCC 352 - relied on.**

2.1 The provisions of ss. 3, 4, and 7 read together, make it clear that the legislative intent is that election to the Central Council should be held within the period of

five years which is the term of office prescribed for the elected and/or nominated members. However, if for any reason, the elections are not held and newly elected members do not join their office immediately after expiry of five years, then the latter part of s.7 comes into play. This is an extra-ordinary situation that the elected members continue beyond their prescribed term because the elections had not been held and newly elected members cannot join the Central Council. [para 22] [1041-E-G]

2.2 Though, no outer limit has been specified by the Legislature for which such previously elected members can continue in office, but this certainly cannot be for indefinite period. For whatever reason, once recourse to this exceptional situation becomes necessary, then the concept of reasonable time would come into play. It is a settled rule of statutory interpretation that wherever no specific time limit is prescribed, the concept of reasonable time shall hold the field for completing such an action. The courts in the process of interpretation can supply the lacuna, which would help to achieve the object of the Act and the legislative intent and make the provisions effective and operative. [para 22] [1041-H; 1042-A-B]

2.3 Neither the Government, nor the Central Council can abjure their obligation to complete the election process within five years, or in any case, within a reasonable time thereafter. A period of three months would be more than sufficient for completing the election process in accordance with law. This time limit shall operate only and as and when the Central Government and the Central Council jointly and severally are not able to hold the fresh elections within the term of office of the previously elected members, i.e., five years from the date on which the members first assumed office. [para 23] [1042-C-D]

2.4 In the eventuality of exceptional circumstances, if the Central Government is not able to hold elections within the period of the prescribed term, it shall complete the process within a reasonable time thereafter and in no case, exceeding three months from the date on which the term of the members in office expires. [para 25-C] [1043-F]

2.5 No elected Member, under any of the three systems of medicine, Ayurveda, Unani or Siddha shall hold the office of the President, Vice President or Member, beyond a period of three months from the expiry of their term. [para 25-D] [1043-G-H]

Case Law Reference:

1999 (4) Suppl. SCR 1	**followed**	**Para 12**
2006 (7) Suppl. SCR 454	**relied on**	**Para 5**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 33 of 2009 etc.

Under Article 32 of the Constitution of India.

WITH

I.A. Nos. 1, 3, 4, 6, 7, 8, 9, 10 & 11, W.P. (C) No. 249 of 2011.

T.P. (C) Nos. 736, 737 & 738-739 of 2011.

H.P. Raval, ASG. Umapathy, S. Gowthaman, S. Selvaraj, Rakesh K. Sharma, S. Ramasubramanian, R.K. Rathore, Sunita Sharma, D.S. Mahra, R.K. Rathore, A. Deb Kumar, Rakesh U. Upadhyay, Aarti Upadhyay, D. Mahesh Babu, Mayur Shah, Savita Devi, Amit K. Nair, D. Bharathi Reddy, Hemantika Wahi, Rojalin Pradhan, Riku Sharma, Navnit Kumar, Deepika Ghatowar (for Corporate Law Gruop), Praveen Kumar Pandey, P. Vijaya Kumar, C.S.N. Mohan Rao, Ajay Veer Pundir, Gouri Karuna Das Mohanti, Sanjeev Sharma, Anu Gupta, Anish Kumar Gupta, Deep Shikha Bharati, R.D. Gupta for the

appearing parties.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. The Central Council of Indian Medicine (for short 'the Central Council') is a statutory body, constituted in terms of Section 3 of the Indian Medicine Central Council Act, 1970 (for short 'the Act'). Section 4 of the Act mandates that election under clause (a) or clause (b) of sub-Section (1) of Section 3 of the Act shall be conducted by the Central Government in accordance with the rules as may be made in this behalf. Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final. Sub-section (1)(a) of Section 3 provides that the Central Council shall consist of such number of members, not exceeding five, as may be determined by the Central Government in accordance with the provisions of the First Schedule of the Act for each of the Ayurveda, Siddha and Unani systems of medicine, from each State, in which a State Register of the Indian Medicine is maintained, to be elected from amongst themselves, by the persons enrolled on that Register as registered practitioners of the respective systems. Section 3(1)(b) of the Act states that one member each of the Ayurveda, Siddha and Unani systems of medicine from each University were to be elected from amongst themselves by the members of the Faculty or Department of the respective system of medicine of that University. The Central Government could also nominate such number of members, not exceeding thirty percent of the total members elected, under the above mentioned clauses (a) and (b) to the Central Council, from amongst persons having special knowledge or practical experience in respect of Indian medicine, in accordance with Section 3(1)(c) of the Act. These elected members are to elect their President, to be known as President of the Central Council and a Vice-President for each of the systems of medicine.

2. This elected Central Council, so constituted, is to discharge various functions and duties as contemplated under the provisions of the Act, which include the grant of recognition to medical colleges/courses, maintenance of education standards, appointment of Inspectors, conduct and supervision of examinations, and even the withdrawal of recognition, if necessary. A register is to be maintained of the persons possessing requisite qualification in the type of medicine which the member is eligible to practice and who have been registered by the State Board and which register has to be updated with regard to the qualification attained by members of the respective professions subsequently.

3. As is evident from the above narrated provisions, the Central Council discharges very significant and important functions which would affect not only education in these three systems but even their practice and treatment of thousands of patients under these systems. The statute places an obligation upon the Central Government to hold these elections and ensure that the Central Council works smoothly and in accordance with the provisions of the Act. Section 7 of the Act refers to the tenure that an elected member is entitled to enjoy, upon his election to the Central Council. This Section deals with the term of the Office of the President, Vice-President and the members of the Central Council. The term of office for all these persons is five years from the date of election or nomination, as the case may be, or until a successor has been duly elected or nominated, whichever is longer. The latter part of this Section caused serious impediment in the proper functioning of the Central Council primarily for two reasons : (a) the Central Government did not take appropriate steps to hold fresh elections and (b) the persons who were elected and were interested in continuing as such, took advantage of this provision and continued in office far beyond five years as nobody was duly elected to replace them.

4. The petitioner is an Ayurvedic doctor and holds the

degree of Ayurvedic Medicine, namely BAMS, has done his post graduation MD (Ayurvedic) degree subsequently. The petitioner claims that he held and still holds various offices in different organizations dealing with Ayurveda system of medicine. He claims to be the General Secretary of the Medical Association of India and member of the Governing Body of All India Ayurvedic Congress Committee, New Delhi and Indian Association of Blood Bank, Delhi. His aim is to ensure proper functioning of the Central Council, which has not been properly constituted and for which elections have not been held for the last 20-25 years. The petitioner, having failed to achieve any results at the hands of the Central Government or the Central Council, despite the fact that he was holding various offices directly connected with the functioning of the Central Council, filed a petition under Article 32 of the Constitution of India, 1950 (hereafter, 'the Constitution') with the following prayers :

> "(a) An appropriate writ, order or direction directing the Union of India to hold elections to the Central Council of Indian Medicines and to constitute the same in accordance with law;
>
> (b) further direct the Union of India to fill up the posts of any member who has completed five years within one month;
>
> (c) Strike down and quash the last clause in section 7 of Indian Medicine Central Council Act, 1970 reading as "or until his successor shall have been duly elected or nominated, whichever is longer" as contrary to the very Act, unconstitutional and undemocratic and violative of Articles 14 and 16 of the Constitution of India."

5. Obvious from the above prayers is that the petitioner, firstly, wants a direction to the Union of India to discharge its statutory duty in terms of Section 3 of the Act, to fill up the membership of the Governing Body of the Central Council with

regard to the members who have completed the term of five years within the stipulated period and secondly, the striking down of provision of Section 7 of the Act as unconstitutional, undemocratic and violative of Articles 14 and 16 of the Constitution. It is the contention of the petitioner that the elected members of the Central Council are adopting delaying tactics and even invoking the jurisdiction of the High Courts to stop the holding of elections or the declaration of result of the elections wherever held, notwithstanding the fact that there is an alternative remedy available to them of filing an election petition. The inaction on the part of the Government borders on complicity and with the passage of time vested interests have developed. There is a specific averment in the petition that the Union of India and even the members of the Central Council are not evincing any interest in the functioning of the Central Council and a few unelected members, whose term expired long back, are squatting for an inordinately long period as being erstwhile elected members of the Central Council with the aid of language of Section 7 of the Act. To contend that the delay is prejudicial to the working of the Central Council and is also opposed to the spirit of Section 3 of the Act, they rely on the decision of this Court in the case of Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Others [(2006) 8 SCC 352], which held that the Election Commission should take steps by following due process of law, but that too should be done in a timely manner and in no circumstances, shall such elections be delayed, so as to cause gross violation of mandatory provisions contained in Articles 243-U of the Constitution. This buttresses their submission that timeliness in conduct of elections is mandatory.

6. Lastly, challenge has been raised to the following portion of Section 7 of the Act as unconstitutional, violative of Articles 14 and 16 of the Constitution:-

> "or until his successor shall have been duly elected or nominated, whichever is longer"

7. First and foremost, we will deal with the contention of the provision being ultra vires of Articles 14 and 16 of the Constitution of India, raised on behalf of the petitioner. Article 14 guarantees equality before law whereas Article 16 talks of equal opportunities in matters of public employment. This concept of equality has to be patently infringed by a provision before that provision or any part thereof, can be declared as unconstitutional. The mere fact that there is some inconvenience arising from the language of a provision and its due implementation, cannot be a ground for declaring a provision violative of fundamental rights. The impugned part of Section 7 of the Act is intended to ensure that there is no vacuum in the membership of the Central Council. The term, as prescribed under Section 7 of the Act, is five years. Elections are expected to be held within that period of five years to ensure that immediately after expiry of the specific term, the members holding the office quit and the newly elected members assume the charge. However, there can be situations where the elections in the entire country or in any part thereof cannot be held within the prescribed time and for valid reasons. It may even be because of the situation that is created by the people who are holding the office of the members of the Central Council for their personal ends. In such cases also, the elections may be delayed. It is the former situation which is intended to be protected by the challenged words of Section 7 of the Act. The legislative intent is clear that there cannot be a vacuum in the working of a statutory body and it cannot be rendered non-existent even for a short period by lapse of membership term or otherwise. Thus, to provide a safeguard for the interregnum period, of the earlier members of the Central Council vacating their office and newly elected members assuming their office, the provisions of Section 7 have been enacted by the Legislature.

8. Still another aspect is that presumption of constitutionality is always in favour of a legislation, unless the contrary is shown. Furthermore, a Legislature, in enacting a

law, operates on a presumption, in law and practice, both, that all other forums and entities constituted under one or other Act would, in their functioning, act in accordance with law and expeditiously. As it is a settled precept in the application of economic principles, that all other things will remain the same i.e., ceteris paribus, similarly, for the proper interpretation and examination of a provision of a statute, all bodies must be presumed to act effectively and in accordance with law.

9. A statute is construed so as to make it effective and operative as per the principle expressed in ut res valeat potius quam pereat. There is, therefore, a presumption that the Legislature does not exceed its jurisdiction and the burden of establishing that the Act is not within the competence of Legislature or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vagaries.

10. Here, we may also notice that there are two rules, of most general application, in construing a written instrument which are pari materia, applicable to statutes as well. First, if possible, the written instrument shall be interpreted in light of the above mechanism and secondly, such a meaning shall be given to it, as may carry out and effectuate, to the fullest extent, the intention of the parties or the framers of law. Of course, such interpretation will be subject to the limitations of uniformity in the meaning given to such expressions etc.

11. It is also a settled and deeply rooted canon of constitutional jurisprudence, that in the process of constitutional adjudication, the courts ought not to pass decisions on questions of constitutionality unless such adjudication is unavoidable. In this sense, the courts have followed a policy of strict necessity in disposing of a constitutional issue. In dealing with the issues of constitutionality, the courts are slow to embark upon an unnecessary, wide or general enquiry and should confine their decision as far as may be reasonably practicable, within the narrow limits required on the facts of a case. From the above discussion, it is clear that question of

constitutionality of a provision is a matter which the courts would venture to examine only for valid, proper and sustainable grounds. We do not see that the provisions of Section 7 of the Act, or any part thereof, suffer from any legal infirmity, excessive legislative power or violate any legal right of any person, including the petitioner, much less a constitutional right. Keeping the principle of strict necessity in mind, the courts do not venture to examine the constitutional validity of a provision and even strike down such provisions, if they are constitutional and a Court does so only if the situation created by such legislation is irremediable or unredeemable. None of these circumstances exist in the present case.

12. In fact, it is not necessary for us to deliberate on this issue at any greater length to notice that in a case under Regulation 23 of the Dental Council (Election) Regulations, 1952, where it was provided that the President shall, no later than 60 days before the date of occurrence of vacancy/ vacancies, forward a notice by registered post to the Registrar of each University concerned, requesting him to hold an election not later than the date specified in the notice. These regulations are framed under the Dentists Act, 1948. Sections 6 and 7 of that Act deal with the tenure and election of the President, Vice President and the Members of the Dental Council of India. Section 6(1) of the Dentists Act further provides that, subject to the provisions of that Section, an elected or a nominated member would hold the office for a term of five years from the date of his election or nomination, or until his successor has been duly elected or nominated, whichever was longer. The language of that Section is pari materia with that of Section 7 of the Act. Challenge was raised to the constitutional validity of Section 6(1) of the Dentists Act, read with Regulation 23 of the Dental Council (Election) Regulations, 1952, framed thereunder. A Constitution Bench of this Court repelled the said challenge in the case of *Dental Council of India and Anr. v. Dr. H.R. Prem Sachdeva & Ors.* (1999) 8 SCC 471 and held as under:-

"7. A conjoint reading of the various provisions of the Act and the Regulations referred to above go to show that the term of office of the members of the Council is five years from the date of the election or nomination, as the case may be. Section 6(1), however, also provides that a nominated or elected member, after the expiry of the term, may continue "until his successor has been duly elected or nominated, whichever is longer". The expression "whichever is longer" does suggest the continuation after the expiry of the term. Can it, however, be construed to mean that if the authorities fail to act as per clauses (a) to (f) of Section 3, the member concerned can continue to remain in office till perpetuity? In our opinion that could not be the intention of the law-makers. Regulation 23 (supra) does give an indication of what we have said above.

8. A reasonable interpretation of the provisions of the Act and the Regulations would be that elections/nominations to the Council should normally be held/made once in five years. However, if for some valid reasons the elections cannot be held during the term of five years, the same should be held within a reasonable time thereafter and the continuance in office of the elected/nominated members should not go on for perpetuity. The continuance in office, after the expiry of the term, should only be a stopgap arrangement to avoid a vacuum. The obligation to nominate/hold elections is of various authorities obliged to elect/nominate members to the Council under clauses (a) to (f). The Act and the Regulations are silent about the period during which elections/nominations should be made/held as also about the consequences of not holding the elections or making nominations within the five-year term or soon thereafter and this lacuna gives rise to unnecessary litigation. We hope that the authorities concerned shall take appropriate measures by amending the provisions of the statute or the Regulations or frame

appropriate rules so that the ambiguity regarding the maximum period, after the expiry of the five-year term during which election/nomination should be held/made is removed."

13. For the reasons recorded above, we follow the view expressed by the Constitution Bench. Therefore, we have no hesitation in repelling the challenge raised by the petitioner regarding the constitutionality of Section 7 of the Act.

14. Now, we shall proceed to deal with the other contention, that the Central Government is liable to be directed to hold the elections to the Central Council, as well as to promptly fill up the vacancies occurring in the Central Council due to efflux of time. This relief, to a large extent, has become infructuous. During the pendency of this writ petition, various orders had been passed by this Court, directing the Central Government as well as the Central Council to conduct elections in accordance with the provisions of the Act. On 3rd July, 2010, both the Central Council and the Union of India had agreed to complete the election process within a period of six months from that date. It took some more time to complete the process, but when the matter came up before us for hearing on 18th July, 2011, and on subsequent dates, we were informed that elections to the Central Council have been completed in all the States.

15. The election process in regard to Siddha system of medicine in the States of Andhra Pradesh, Himachal Pradesh and Jammu & Kashmir had not been completed, though elected candidates under the Unani and Ayurvedic systems had been notified. This was because there were no Siddha practitioners in those states. In all other States, the election process in regard to the three medicine systems i.e., Ayurveda, Unani and Siddha had been completed and the elected candidates duly notified.

16. It was also pointed out before us that the Central Government had not made its nomination in terms of Section 3(c) of the Act, under all the three systems of medicine.

17. We may notice that this petition has been rendered infructuous, though to a limited extent. Section 3 of the Act imposes a statutory obligation upon the Central Government to hold elections to the Central Council, in accordance with the statutory provisions, which we have discussed above. Furthermore, the Central Government is responsible for nominating such number of members not exceeding 30 per cent of the total members elected under Sections 3(1)(a) and 3(1)(b) of the Act to the Central Council. In other words, the Central Government has a major role to play in the constitution, establishment and carrying on of activities by the Central Council. This is an onerous and significant duty. We cannot understand any reason whatsoever for the Central Government not to perform its statutory duties, particularly when it concerns with the systems of medicine catering to a country of one billion people. The Court would take judicial notice of the fact that a large number of people depend upon these systems of medicine for treatment of various diseases. The standards of education as well as the professionalism in practice of medicine in these fields is bound to suffer a setback, if the Central Government fails to exercise its powers and discharge its functions and duties in accordance with law. As already indicated, the Central Council exercises supervisory, administrative and regulatory powers in relation to education and practice of all these three systems. If the Central Government wishes to exercise such control over statutory bodies discharging important and diverse functions in the field of medicine, then it is undoubtedly expected of the Central Government to discharge its functions and duties without failure and on time. It cannot justify its conduct in unduly delaying the proper constitution of such bodies in accordance with the provisions of the statutes and create faux pas which shall prejudicially affect all concerned, including the people at large.

18. We are conscious of the fact that this Court has to adopt a purely judicial approach. The Constitution and the Rule of Law are the only supreme powers in any democracy and no higher duty rests upon this Court, than to enforce, by its decree, the will of the Legislature, as expressed in a statute, unless such statute is plainly and unmistakably in violation of the Constitution or Rule of Law.

19. In the case of Kishansing Tomar (supra), this Court while dealing with the question of revision of electoral rolls by the State Election Commission, noticed that the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (9) of Article 243-U of the Constitution and not yield to situations that may be created by vested interests to postpone elections beyond the stipulated time. The State Election Commission shall take steps to prepare the electoral rolls, by following due process of law, but that too, should be done in a timely manner and in no circumstances, shall the elections be delayed so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution. Further, while drawing a distinction between severe man-made calamities such as rioting, breakdown of law and order or natural calamities, which could distract the authorities from holding elections to the Municipality and other reasons for delay, this Court noted that the former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. This Court laid significant emphasis on the independence of the State Election Commission and expected all other authorities to fully cooperate, and in default, granted liberty to the State Election Commission to approach the High Court and/or the Supreme Court, as the case may be for relief/directions. However, no final or time-bound directions were issued, in the petition above-referred, because election to the Ahmedabad Municipal Corporation in that case had already been held in the meanwhile.

20. Statutory or constitutional independence is a pre-requisite to the proper functioning of such statutory bodies. Their appropriate constitution, in accordance with the provisions of the statute is mandatory. All concerned, including the Central and State Governments have the onus to discharge their duties and functions effectively and expeditiously, in coordination and within the time specified. No Court can permit any authority, much less the Central or State Government to frustrate the statutory requirements of a provision and also the very object of an Act.

21. The language of Section 7 of the Act is intended to provide for a situation which is interregnum by its very existence. Whatever be the methods adopted, by whichever agency including the Government, to extend beyond a regular term the tenure of members, would not only be impermissible in law, but would also be illegal.

22. As already referred above, the provisions of Section 3 are concerned with the constitution of the Central Council by election and nomination. Section 4 requires the Central Government to conduct elections in accordance with the Rules. Section 7 provides the term of office. Once these provisions are read together, it is clear that the legislative intent is that election to the Central Council should be held within the period of five years which is the term of office prescribed for the elected and/or nominated members. However, if for any reason, the elections are not held and newly elected members do not join their office immediately after expiry of five years, then the latter part of Section 7 comes into play. This is an extra-ordinary situation that the elected members continue beyond their prescribed term because the elections had not been held and newly elected members cannot join the Central Council. Though, no outer limit has been specified by the Legislature for which such previously elected members can continue in office, but this certainly cannot be for indefinite period. For whatever reason, once recourse to this exceptional

situation becomes necessary, then the concept of reasonable time would come into play. It is a settled rule of statutory interpretation that wherever no specific time limit is prescribed, the concept of reasonable time shall hold the field for completing such an action. The courts in the process of interpretation can supply the lacuna, which would help to achieve the object of the Act and the legislative intent and make the provisions effective and operative.

23. Neither the Government, nor the Central Council can abjure their obligation to complete the election process within five years, or in any case, within a reasonable time thereafter. Thus, in our considered opinion, a period of three months would be more than sufficient for completing the election process in accordance with law. This time limit shall operate only and as and when the Central Government and the Central Council jointly and severely are not able to hold the fresh elections within the term of office of the previously elected members, i.e., five years from the date on which the members first assumed office.

24. The words of Section 7 of the Act are intended to operate in an extra-ordinary situation, as the normal course should be that the Central Government hold the elections within a period of five years from the date of notification of the elected candidates for the previous tenure. Even where recourse to this exceptional situation becomes necessary, even there, the concept of reasonable time would come into play, in a situation where no definite period has been prescribed by the Legislature itself. The courts can always supply such lacuna in the interpretation of provisions of a law so as to achieve the object of the Act particularly when such interpretation would be in consonance with the legislative object of the statute. Thus, in our considered opinion, a period of three months would be more than sufficient time for completing the election process, in the event of exceptional circumstances and if the elections had not been commenced and completed within the period of previous tenure of five years, as is the requirement of law, and

the Government cannot abjure its obligation to do so within a maximum period of three months.

25. For the reasons afore-recorded, we partially allow this Public Interest Litigation, with the above observations and the following directions:-

(A) Section 7 of the Indian Medicine Central Council Act, 1970 or any part thereof is neither ultra vires nor violative of Articles 14 and/or 16 of the Constitution of India.

(B) We hereby mandate that the Central Government shall discharge all its duties and functions as contemplated under Sections 3, 4 and 7 of the Indian Medicine Central Council Act, 1970, without default, delay and within the required intervals. We make it clear that it is the obligation of the Central Government to hold election to the Central Council within the period of five years i.e., before expiry of , the term of office of the President/Vice-President and Member of the Central Council, as provided under Section 7 of the Act.

(C) In the eventuality of exceptional circumstances, if the Central Government is not able to hold elections within the period of the prescribed term, it shall complete the process within a reasonable time thereafter and in no case, exceeding three months from the date on which the term of the members in office expires.

(D) No elected Member, under any of the three systems of medicine, Ayurveda, Unani or Siddha shall hold the office of the President, Vice President or Member, beyond a period of three months from the expiry of their term.

(E) We direct the Secretary, Ministry of Health and Family Welfare and the President of the Central Council to circulate copies of this judgment, for strict compliance by all concerned.

26. During the pendency of this writ petition, another writ petition being Writ Petition (Civil) No. 249 of 2011, was filed with identical prayers. In view of this judgment, that writ petition has been rendered infructuous and is liable to be dismissed as such.

27. I.A. No. 8 is an application for intervention in the present writ petition, by one Dr. Vinod Kumar Chauhan. I.A. No. 9 is an application by the same party, with the prayer that the election to Central Council, held from the State of Uttarakhand be set aside and that fresh selection process be ordered. I.A. No. 9 is dismissed, with the liberty to that petitioner to approach the court of competent jurisdiction, seeking appropriate relief and in accordance with law.

28. In view of the order of I.A. No. 9, I.A. No. 8 does not survive and is dismissed as such.

29. Transfer Petition (Civil) No. 736 of 2011 is also dismissed, with liberty to the petitioner to pursue his remedy, if the cause of action survives, before the concerned High Court.

30. All Transfer Petitions and Interlocutory Applications for impleadment are hereby dismissed. Other applications do not survive for consideration.

31. Before we part with this judgment, we would like to place on record our appreciation for the valuable and able assistance rendered by the learned ASG and all counsel and assisting counsel appearing in the present PIL.

R.P. Matters disposed of.

OFFICE OF THE CHIEF POST MASTER GENERAL & ORS.

v.

LIVING MEDIA INDIA LTD. & ANR.

(Civil Appeal No. 2474-2475 of 2012)

FEBRUARY 24, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

APPEAL: Appeal by Government Department - Delay in filing - Condonation of - Delay of 427 days in filing SLPs by the Government Department - Held: The law of limitation binds everybody including the Government - The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment - Condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments - In the instant case, the certified copy of the impugned judgment was applied by the Department after a period of nearly four months - There was no explanation for not applying for certified copy within reasonable time - There was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there was no explanation as to why such delay had occasioned - The persons concerned were well conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition - The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available -Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Department miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Respondent no.1 was aggrieved by the decision of the appellant-Postal Department regarding the denial of concessional rate of postage on certain issue of the magazine. Respondent no.1 filed writ petitions before the High Court. The High Court allowed the writ petitions. The special leave petitions (SLPs) were filed challenging the order of the High Court.

The respondents raised objection on the conduct of the appellants in approaching the Supreme Court after enormous and inordinate delay of 427 days in filing these SLPs. In view of the fact that the application for condonation of delay in filing the SLPs did not contain acceptable and plausible reasons, the Supreme Court permitted the appellant-Postal Department to file a "better affidavit" explaining the reasons for the same. Pursuant to the same, an affidavit was filed on 26.12.2011. It was contended for the appellant that it being a Government Department, delay be condoned and an opportunity be given to put-forth their stand as to the impugned judgment of the High Court.

Dismissing the appeal, the Court

HELD: 1. In the "better affidavit" sworn by 'AP', SSRM, Air Mail Sorting Division, the Department has itself mentioned and is aware of the date of the impugned judgment of the High Court as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing

adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps. [Para 11] [1063-E-G; 1064-A-C]

2. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, there is no reason why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before this Court. Though in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the government bodies, their agencies and

instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. [Paras 12-13] [1064-D-H; 1065-A-D]

Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others, **(1987) 2 SCC 107 : 1987 (2) SCR 387;** *G. Ramegowda, Major and Others vs. Special Land Acquisition Officer, Bangalore,* **(1988) 2 SCC 142 : 1988 (3) SCR 198;** *State of Haryana vs. Chandra Mani and Others,* **(1996) 3 SCC 132: 1996 (1) SCR 1060;** *State of U.P. and Others vs. Harish Chandra and Others,* **(1996) 9 SCC 309: 1996 (1) Suppl. SCR 260;** *National Insurance Co. Ltd. vs. Giga Ram and Others,* **(2002) 10 SCC 176;** *State of Nagaland vs. Lipok Ao and Others,* **(2005) 3 SCC 752 : 2005 (3) SCR 108;** *Commissioner of Wealth Tax, Bombay vs. Amateur Riders Club, Bombay,* **1994 Supp (2) SCC 603;** *Pundlik Jalam Patil (dead) by LRS. vs. Executive Engineer, Jalgaon Medium Project and Another,* **(2008) 17 SC 448 - referred to.**

Case Law Reference:

1987 (2) SCR 387 referred to Para 7(i)

1988 (3) SCR 198	**referred to**	**Para 7(ii)**
1996 (1) SCR 1060	**referred to**	**Para 7(iii)**
1996 (1) Suppl. SCR 260	**referred to**	**Para 7(iv)**
(2002) 10 SCC 176	**referred to**	**Para 7(v)**
2005 (3) SCR 108	**referred to**	**Para 7(vi)**
1994 Supp (2) SCC 603	**referred to**	**Para 10(i)**
(2008) 17 SC 448	**referred to**	**Para 10(ii)**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2474-2475 of 2012.

H.P. Raval, ASG. Anoop G. Choudhary, Ashok K. Srivastava, B.K. Prasad, Arvind Kumar Sharma for the Appellants.

Soli J. Sorabji, Darpan Wadhwa, M.R. Shamshad, Ahmad S.A., Jaishree Shukla for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. The following issues arise for consideration:

a) Whether the Office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court.

Depending on the outcome of the above issue, other issues to be considered are:

b) Whether the impugned advertisement inserted in the Reader's Digest issue of December, 2005 is in conformity with the requirement of law.

c) Whether the Department has made out a case for interference under Article 136 of the Constitution of India

to reopen concurrent findings of fact rendered by the High Court.

3. These appeals have been filed against the common final judgment and order dated 11.09.2009 passed by the High Court of Delhi at New Delhi in LPA Nos. 418 and 1006 of 2007 whereby the Division Bench while upholding the judgment and order dated 28.03.2007 passed by the learned single Judge of the same High Court in Writ Petition (C) Nos. 22679-80 of 2005 and Writ Petition (C) No. 4985 of 2006 dismissed the appeals filed by the appellants herein.

4. **Brief Facts:**

(a) Living Media India Ltd.-Respondent No. 1 is a company incorporated under the Companies Act, 1956 which publishes the magazines "Reader's Digest" and "India Today". These magazines are registered newspapers vide Registration Nos. DL 11077/03-05 and DL 11021/01-05 respectively issued by the Department of Posts, Office of the Chief Post Master General, Delhi Circle, New Delhi (in short 'Postal Department')-appellant herein under the provisions of the Indian Post Office Act, 1898 (in short 'the Act') read with the Indian Post Office Rules, 1933 (in short 'the Rules') and the Post Office Guide and are entitled for transmission by post under concessional rate of postage.

(b) On 14.10.2005, the Manager (Circulation), Living Media India Ltd., submitted an application to the Postal Department seeking permission to post December, 2005 issue of Reader's Digest magazine containing the advertisement of Toyota Motor Corporation in the form of book-let with Calendar for the year 2006 at concessional rates in New Delhi. By letter dated 08.11.2005, the Postal Department denied the grant of permission for mailing the said issue at concessional rates on the ground that the book-let containing advertisement with calendar is neither a supplement nor a part and parcel of the publication. On 17.11.2005, the Director

(Publishing), Living Media India once again submitted an application seeking the same permission which was also denied by the Postal Department by letter dated 21.11.2005.

(c) In the same way, the Postal Department also refused to grant concessional rate of postage to post the issue dated December 26, 2005 of "India Today' magazine containing a book-let of Amway India Enterprises titled "Amway" vide their letters dated 18.02.2006 and 17.03.2006 stating that the said magazine was also not entitled to avail the benefit of concessional rate available to registered newspapers.

(d) Respondent No. 1, being aggrieved by the decision of the Postal Department filed Writ Petition (C) Nos. 22679-80 of 2005 and Writ Petition (C) No. 4985 of 2006 before the High Court. Learned single Judge of the High Court, by order dated 28.03.2007 allowed both the petitions filed by Respondent No. 1 herein.

(e) Being aggrieved, the Postal Department filed LPA Nos. 418 and 1006 of 2007 before the High Court. The Division Bench of the High Court, vide common final judgment and order dated 11.09.2009, while upholding the judgment of the learned single Judge, dismissed both the appeals. Challenging the said order, the Postal Department has preferred these appeals by way of special leave before this Court.

5. Heard Mr. H. P. Raval, learned Additional Solicitor General for the appellants-Department of Posts and Mr. Soli J. Sorabjee, learned senior counsel for the respondents.

Delay in filing the SLPs:

6. Since learned senior counsel for the respondents seriously objected to the conduct of the appellants in approaching this Court after enormous and inordinate delay of 427 days in filing the above appeals, we intend to find out whether there is any "sufficient cause" for the condonation of such a huge delay. In view of the fact that the application for

condonation of delay in filing the SLPs dated 10.02.2011 does not contain acceptable and plausible reasons, we permitted the appellant-Postal Department to file a better affidavit explaining the reasons for the same. Pursuant to the same, an affidavit has been filed on 26.12.2011. After taking us through the same, learned Additional Solicitor General submitted that in view of series of decisions of this Court and the appellant being a Government Department, delay may be condoned and an opportunity may be given to put-forth their stand as to the impugned judgment of the High Court.

7. Before going into the reasons furnished by the Department for the delay, let us consider various decisions of this Court relied on by Mr. Raval, learned ASG.

i) In *Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others,* (1987) 2 SCC 107, while considering "sufficient cause" in the light of Section 5 of the Limitation Act, 1963, this Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in this Court. Learned ASG heavily relied on the following principles:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

By showing the above principles, learned ASG submitted that there is no warrant for according step-motherly treatment when the "State" is the applicant. It is relevant to mention that in this case, the delay was only for four days.

ii) In *G. Ramegowda, Major and Others vs. Special Land Acquisition Officer, Bangalore,* (1988) 2 SCC 142, the principles enunciated in paras 15 & 17 are heavily relied on by the learned ASG. They are:-

"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

17. Therefore, in assessing what, in a particular case,

constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making."

Considering the peculiar facts, namely, the change of government pleader who had taken away the certified copy after he ceases to be in office, the High Court condoned the delay which was affirmed by this Court.

iii) In *State of Haryana vs. Chandra Mani and Others,* (1996) 3 SCC 132, while condoning the delay of 109 days in filing the LPA before the High Court, this Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic setup involving red-tapism. In the same decision, this Court directed the State to constitute legal cells to examine whether any legal principles are involved for decision by the courts or whether cases required adjustment at governmental level.

iv) In *State of U.P. and Others vs. Harish Chandra and Others,* (1996) 9 SCC 309, by giving similar reasons, as mentioned in *Chandra Mani's case* (supra) this Court, condoned the delay of 480 days in filing the SLP.

v) In *National Insurance Co. Ltd. vs. Giga Ram and Others,* (2002) 10 SCC 176, this Court, after finding that the High Court was not justified in taking too technical a view of the facts and refusing to condone the delay, accepted the case of the appellant-Insurance Company by protecting the interest of the claimant and condoned the delay. It is relevant to point out that while accepting the stand of the Insurance Company for the delay, this Court has safeguarded the interest of the claimant also.

vi) In *State of Nagaland vs. Lipok Ao and Others,* (2005) 3 SCC 752, this Court, while reiterating the principle that latitude be given to government's litigation, allowed the appeal filed by the State of Nagaland. It is also relevant to note here that this matter relates to criminal jurisdiction and delay in filing the SLP was only 57 days.

8. Though the learned ASG heavily relied on the above said decisions and the principles laid down, on going through all the factual details, we are of the view that there is no quarrel about the propositions inferred therein. However, considering the peculiar facts and circumstances of each case, this Court either condoned the delay or upheld the order of the High Court condoning the delay in filing appeal by the State. While keeping those principles in mind, let us consider the reasonings placed by the Postal Department with regard to the same.

9. In view of the stand taken by the Postal Department as to the reasons for the delay and the serious objections of the respondents, it is desirable to extract the entire statement as placed in the form of "better affidavit" by the officer of the appellant-Department:-

"I, Aparajeet Pattanayak presently posted as SSRM, Air Mail Sorting Division, New Delhi, do hereby solemnly affirm and state as under:-

1) In the official capacity mentioned above, I am acquainted with the facts of the case on the basis of the information derived from the record.

2) On the last date of hearing i.e. 05.12.2011 this Hon'ble Court was pleased to allow the petitions to file better affidavit in support of the application for condonation of delay in filing Special Leave Petition.

3) It is submitted that the delay is not intentional but is on account of the departmental/administrative procedures involved in for filing the petition for Special Leave Petition.

It is submitted that unlike the private litigant the matters relating to government are required to be considered at various levels and then only a decision is taken.

4) In the present case it would be evident from the following that delay has been caused due to unavoidable circumstances:-

11.09. 2009	Date of judgment in LPA Nos. 418/ 2007 and 1006/2007
29.10.2009	Certified copy of judgment not received from the Government counsel and hence copy of judgment was downloaded from the web site of Delhi High Court and office note was put by ASP (Court) proposing to refer the matter to Postal Directorate for opinion and further course of action for approval of the Chief Postmaster General, Delhi.
12.11.2009	Chief Postmaster General Delhi approved to refer the matter to Directorate.
16.12.2009	Directorate desired to submit legal opinion and certified copy of judgment.
08.01.2010	The counsel appearing on behalf of the petitioner had applied for the certified copy of the impugned judgment and order and the same was received by the Department on 08.01.2010.
11.01.2010	The desired documents supplied to

	Directorate.
25.01.2010	Directorate desired to submit copies of original writ petition filed by the party, counter affidavit thereto, copies of appeals filed by DOP & counter reply thereto.
12.02.2010	The desired documents supplied to Directorate.
17.02.2010	Directorate desired to send an official/officer well conversant with the case.
15.03.2010	Directorate asked to depute an officer well conversant with the case to collect the UO Note along with other documents to pursue the matter with Mr. Suresh Chandra Additional Legal Advisor.
06.04.2010	Shri Suresh Chandra, Additional Legal Advisor was contacted on 06.04.2010 and the matter was briefed thoroughly by ASP (Court).
25.06.2010	Case file collected from Directorate and handed over to Central Agency Section on 25.06.2010 under diary No. 1865/2010 dated 25.06.2010 as per advice of Additional Legal Advisor.
26.06.2010 to	Central Agency Section sent the file back
30.06.2010	to the Postal Department with directions to send the same through Ministry of Law and Justice.
01.07.2010 to 10.09.2010	After receiving the file through proper channel. Central Agency Section sent the file to Ld ASG for his considered opinion and Ld. Additional Solicitor General opined that it is a fit case for filing the Special Leave Petition.
11.09.2010 to	On receiving the opinion of Ld. ASG the 30.09.2010 file was sent to Central Agency for drafting the Special Leave Petition.
01.10.2010	Directorate informed that ASG had considered the case and found it fit for Special Leave Petition.
15.11.2010	The panel counsel prepared the draft of Special Leave Petition and submitted the draft Special Leave Petition with file to Central Agency Section for further steps. The draft Special Leave Petition was forwarded to the Department by Central Agency Section for vetting.
	After factual verification, the draft Special Leave Petition was returned to Central Agency Section for typing and preparation of Paper Book which also took some time.
04.01.2011	Special Leave Petition remained pending due to non-availability of disputed magazines of Reader's Digest and India Today. Hence,

	ASG was requested to intervene and direct Shri Akash Pratap who handled the case to provide the magazines.
14.01.2011	Shri A.K. Sharma was requested to arrange to collect the above magazines from the record of Delhi High Court.
31.01.2011	SSRM Delhi Sorting Division was authorized to sign the affidavit on behalf of the respondent.
10.02.2011	Special Leave Petition filed in Supreme Court.

5. It is submitted that it is evident from the foregoing reasons that the delay caused in filing the petition was result of all the necessary and unavoidable office formalities and was bonafide and not deliberate or intentional and the petitioner was prevented by sufficient cause from filing the petition within the period of limitation.

6. It is further submitted that the petitioner humbly seeks leave to draw the kind attention of this Hon'ble Court to the views expressed by this Hon'ble Court that liberal approach may be adopted and that the Court should not take too strict and pedantic stand which will cause injustice while considering the application for condonation of delay, in terms of its judgments in the case of *Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.* and *Bhag Singh & Anr. Vs. Major Daljeet Singh & Ors.* It is submitted that the principles for condonation of delay laid down in the above cited cases may therefore be adopted in the present case also.

7. This Hon'ble Court in *G. Ramegowda Vs. Special Land Acquisition Officer,* (1998) 2 SCC 142 laid down that the

expression sufficient cause in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice where no gross negligence or deliberate inaction of lack of bonafide is imputable to the party seeking condonation of delay.

8. In the matter of *State of Haryana vs. Chandra Mani,* reported in (1996) 3 SCC 132, this Hon'ble Court observed and laid down as follows:-

> "when the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note- making, file-pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand but more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/ agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

9. This Hon'ble Court in *Union of India vs. Manager, Jain and Associates,* 2001 (3) SCC 277 decided on 06.02.2011 has held that delay ought to be condoned

when sufficiently explained particularly where party seeking condonation is the Government. It is further submitted that the Hon'ble High Court ought to have condoned the delay in considering the public revenue involved and also because of the genuine difficulties and circumstances beyond the control of the petitioner, on account of which Special Leave Petition could not be filed within the time."

10. Before considering whether the reasons for justifying such a huge delay are acceptable or not, it is also useful to refer the decisions relied on by Mr. Soli J. Sorabjee, learned senior counsel for the respondents.

i) In *Commissioner of Wealth Tax, Bombay vs. Amateur Riders Club, Bombay,* 1994 Supp (2) SCC 603, there is a delay of 264 days in filing the SLP by the Commissioner of Wealth Tax, Bombay. The explanation for the delay had been set out in petitioner's own words as under:

".....2 (g) The Advocate-on-Record got the special leave petition drafted from the drafting Advocate and sent the same for approval to the Board on June 24, 1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on July 9, 1993 who re-sent the same to the Board on September 20, 1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on October 1, 1993."

After incorporating the above explanation, this Court refused to condone the delay by observing thus:

"3. … …. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily

bogged down by the proverbial red-tape. *But there are limits to this also*. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

[Emphasis supplied]

ii) In *Pundlik Jalam Patil (dead) by LRS. vs. Executive Engineer, Jalgaon Medium Project and Another,* (2008) 17 SC 448, the question was whether the respondent-Executive Engineer, Jalgaon Medium Project had shown sufficient cause to condone the delay of 1724 days in filing appeals before the High Court. In para 17, this Court held:

".....The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights".

After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under:-

"29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

11. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact

remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/ persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

14. In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.

D.G. Appeal dismissed.

LALITA KUMARI
v.
GOVERNMENT OF U.P. & OTHERS
(Writ Petition (Criminal) No. 68 of 2008)

FEBRUARY 27, 2012

[DALVEER BHANDARI, T.S. THAKUR AND DIPAK MISRA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 154 - Information in cognizable cases - Officer in charge of police station concerned - Obligation of, to register the FIR - The issue: whether u/s 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR - Referred to Constitution Bench.

Writ Petition (Crl.) No. 68 of 2008 was filed praying for a writ in the nature of habeas corpus to produce a girl aged about six years who had been kidnapped from her house and in spite of her father complaining of the incident to the police station concerned, his FIR was registered after one month from the date of the incident. Even after registration of the FIR against the named persons, the police did not take any action to trace the minor girl.

In the instant matters, the issue for consideration before the Court was: "whether under Section 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR?"

The Court passed a comprehensive order showing

its concern in respect of the matter of non-registration of FIR in a case of cognizable offence and directed notice to issue to Chief Secretaries of the States and Administrators of the Union Territories. Consequently, various State Governments and Union Territories filed comprehensive affidavits and advanced divergent arguments as regards the interpretation of s.154 of the Code of Criminal Procedure, 1973.

Referring the matters to a Constitution Bench, the Court

HELD: 1.1 On a careful analysis of various judgments delivered by this Court in the last several decades, it is quite evident that different Benches of this Court have taken divergent views in different cases. In the instant case also, after this Court's notice, the Union of India, the States and the Union Territories have taken or expressed totally divergent views about the interpretation of s.154 Cr.P.C. This Court also carved out a special category in the case of medical doctors where preliminary enquiry had been postulated before registering an FIR. It has been submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR. The issue which has arisen for consideration in these cases is of great public importance. [Para 108-111] [1116-F-H; 1117-A-D]

1.2 In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned - the courts, the investigating agencies and the citizens. Consequently, these matters be referred to a Constitution Bench of at least five Judges of this Court for an authoritative judgment. [Para 112-113] [1117-D-F]

State of M.P. v. Santosh Kumar **2006 (3) Suppl. SCR 548 = 2006 (6) SCC 1;** *Dr. Suresh Gupta v. Govt. of NCT of Delhi and Another* **2004 (3) Suppl. SCR 323 = 2004(6) SCC 422;** *Aleque Padamsee and Others v. Union of India and Others* **2007 (8) SCR 390 = (2007) 6 SCC 171;** *Ramesh Kumari v. State (NCT of Delhi) and Others* **2006 (2) SCR 403 = (2006) 2 SCC 677;** *Hiralal Rattanlal etc.etc. v. State of U.P. and Another etc.etc.* **1973 (2) SCR 502 =1973(1) SCC 216;** *B. Premanand and Others v. Mohan Koikal and Others* **2011 (3) SCR 932 = (2011) 4 SCC 266;** *Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra and Others* **1976 (1) SCR 451 = 1975 (2) SCC 482;** *M/s Amar Nath Om Prakash and others etc. v. State of Punjab and Others* **1985 (2) SCR 72 = (1985) 1 SCC 345;** *Hameed Joharan (dead) and others v. Abdul Salam (dead) by Lrs. and Others* **2001 (1) Suppl. SCR 469 = (2001) 7 SCC 573;** *The State of Uttar Pradesh v. Bhagwant Kishore Joshi* **1964 SCR 71 = AIR 1964 SC 221;** *H.N. Rishbud and Inder Singh v. The State of Delhi* **1955 SCR (1) 1150;** *Damodar v. State of Rajasthan* **2003 (3) Suppl. SCR 904 = 2004(12) SCC 336;** *Ramsinh Bavaji Jadeja v. State of Gujarat* **1994 (2) SCR 239 1994 (2) SCC 685;** *Binay Kumar Singh v. The State of Bihar* **1996 (8) Suppl. SCR 225 = 1997(1) SCC 283;** *Madhu Bala v. Suresh Kumar and Others* **1997 (3) Suppl. SCR 32 = 1997 (8) SCC 476;** *Hallu and others v. State of Madhya Pradesh* **1974 (3) SCR 652 = 1974 (4) SCC 300;** *Rajinder Singh Katoch v. Chandigarh Administration and others* **2007 (11) SCR 246 = 2007 (10) SCC 69;** *Superintendent of Police, CBI and Others v. Tapan Kumar Singh* **2003 (3) SCR 485 = AIR 2003 SC 4140;** *State of Haryana and Others v. Bhajan Lal and Others* **1990 (3) Suppl. SCR 259 = 1992 Suppl. (1) SCC 335;** *Tarachand and Another v. State of Haryana* **1971 (2) SCC 579;** *Sandeep Rammilan Shukla v. State of Maharashtra and Others* **2009 (1) Mh.L.J. 97;** *Sakiri Vasu v. State of Uttar Pradesh and Others* **2007 (12) SCR 1100 = 2008 (2) SCC 409;** *Nasar Ali v. State of Uttar Pradesh* **1957 SCR 657;** *Union of India and*

Another v. W.N. Chadha **1992 (3) Suppl. SCR 594 = 1993 (Suppl.) 4 SCC 260;** *State of West Bengal v. S.N. Basak* **1963 (2) SCR 52;** *Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab* **1955 (2) SCR 225; State (Anti-Corruption Branch),** *Govt. of NCT of Delhi and Another v. Dr. R.C. Anand and Another* **2004 (1) Suppl. SCR 161 = 2004 (4) SCC 615;** *Maneka Gandhi v. Union of India and Another* **1978 (2) SCR 621 = 1978 (1) SCC 248;** *S.M.D. Kiran Pasha v. Government of Andhra Pradesh and Others* **1989 (2) Suppl. SCR 105 = 1990 (1) SCC 328;** *P.T. Rajan v. T.P.M. Sahir and Others* **2003 (4) Suppl. SCR 84 = 2003(8) SCC 498;** *Shivjee Singh v. Nagendra Tiwary and Others* **2010 (7) SCR 667 = 2010 (7) SCC 578;** *Sarbananda Sonowal (II) etc. v. Union of India* **2006 (10) Suppl. SCR 167 = 2007 (1) SCC 174;** *Animireddy Venkata Ramana and Others v. Public Prosecutor, High Court of Andhra Pradesh* **2008 (3) SCR 1078 = 2008 (5) SCC 368;** *Uma Shankar Sitani v. Commissioner of Police, Delhi and Ors.* **1996 (11) SCC 714;** *Preeti Gupta and Another v. State of Jharkhand and Another* **2010 (9) SCR 1168 = (2010) 7 SCC 667;** *Francis C. Mullin v. Administrator, Union Territory of Delhi* **1981 (2) SCR 516 =1981 (1) SCC 608;** *Mona Panwar v. High Court of Judicature of Allahabad* **2011 (2) SCR 413 = (2011) 3 SCC 496;** *Apren Joseph alias current Kunjukunju and Others v. State of Kerala* **1973 (2) SCR 16 = 1973 (3) SCC 114;** *State of Maharashtra and Others v. Sarangdharsingh Shivdassingh Chavan and Another* **(2011) 1 SCC 577;** *Sainik Motors, Jodhpur and Others v. State of Rajasthan* **1962 SCR 517 = AIR 1961 SC 1480;** *State of Uttar Pradesh and Others v. Babu Ram Upadhya* **1961 SCR 679 = AIR 1961 SC 751;** *State of Madhya Pradesh v. M/s Azad Bharat Finance Co. and Another* **1966 SCR 473 = AIR 1967 SC 276;** *Parkash Singh Badal and Another v. State of Punjab and Others* **2006 (10) Suppl. SCR 197 = (2007) 1 SCC 1;** *P. Sirajuddin etc. v. State of Madras etc.* **1970 (3) SCR 931 = 1970 (1) SCC 595;** *Sevi and Another etc. v. State of Tamil Nadu and Another* **1981 (Suppl.) SCC 43 - referred to.**

Emperor v. Khwaza Nazim Ahmad **AIR 1945 PC 18 - referred to.**

Case Law Reference:

2007 (8) SCR 390	**referred to**	**Para 10**
2006 (2) SCR 403	**referred to**	**Para 10**
1973 (2) SCR 502	**referred to**	**Para 13(d)**
2011 (3) SCR 932	**referred to**	**Para 13(d)**
1976 (1) SCR 451	**referred to**	**Para 13(e)**
1985 (2) SCR 72	**referred to**	**Para 13(e)**
2001 (1) Suppl. SCR 469	**referred to**	**Para 13(e)**
AIR 1945 PC 18	**referred to**	**Para 14**
1964 SCR 71	**referred to**	**Para 15**
1955 SCR (1) 1150	**referred to**	**Para 16**
2003 (3) Suppl. SCR 904	**referred to**	**Para 19**
1994 (2) SCR 239	**referred to**	**Para 19**
1996 (8) Suppl. SCR 225	**referred to**	**Para 22**
1997 (3) Suppl. SCR 32	**referred to**	**Para 24**
1974 (3) SCR 652	**referred to**	**Para 27**
2007 (11) SCR 246	**referred to**	**Para 28**
2003 (3) SCR 485	**referred to**	**Para 31**
1990 (3) Suppl. SCR 259	**referred to**	**Para 35**
1971 (2) SCC 579	**referred to**	**Para 46**
2009 (1) Mh.L.J. 97	**referred to**	**Para 46**
2007 (12) SCR 1100	**referred to**	**Para 46**

1957 SCR 657	**referred to**	**Para 46**
1992 (3) Suppl. SCR 594	**referred to**	**Para 46**
1963 (2) SCR 52	**referred to**	**Para 46**
2006 (3) Suppl. SCR 548	**referred to**	**Para 47**
2004 (3) Suppl. SCR 323	**referred to**	**Para 47**
1955 (2) SCR 225	**referred to**	**Para 49**
2004 (1) Suppl. SCR 161	**referred to**	**Para 49**
1978 (2) SCR 621	**referred to**	**Para 50**
1989 (2) Suppl. SCR 105	**referred to**	**Para 50**
2003 (4) Suppl. SCR 84	**referred to**	**Para 52**
2010 (7) SCR 667	**referred to**	**Para 52**
2006 (10) Suppl. SCR 167	**referred to**	**Para 52**
2008 (3) SCR 1078	**referred to**	**Para 54**
1996 (11) SCC 714	**referred to**	**Para 63**
2010 (9) SCR 1168	**referred to**	**Para 64**
1981 (2) SCR 516	**referred to**	**Para 65**
2011 (2) SCR 413	**referred to**	**Para 71**
1973 (2) SCR 16	**referred to**	**Para 75**
(2011) 1 SCC 577	**referred to**	**Para 78**
1962 SCR 517	**referred to**	**Para 85**
1961 SCR 679	**referred to**	**Para 86**
1966 SCR 473	**referred to**	**Para 87**
2006 (10) Suppl. SCR 197	**referred to**	**Para 96**

1970 (3) SCR 931	**referred to**	**Para 97**
1981 (Suppl.) SCC 43	**referred to**	**Para 97**

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 68 of 2008.

Under Article 32 of the Constitution of India.

WITH

Crl. A. No. 1410 of 2011, SLP (Crl.) No. 5200 of 2009 & 5986 of 2010 & Contempt Petition (C) No. arising out of D. 26722 of 2008 in W.P. (Crl.) No. 68 of 2008.

A. Mariarputham, A.G. H.P. Raval, ASG. S.B. Upadhyay, Shekhar Naphade, T.S. Doabia, Ratnakar Dash, Dr. Manish Singhvi, S. Gurukrishankumar AAG Mona K. Rajvanshi, B.K. Shahi, B.P. Gupta, Ashwani Kumar, P.K. Mittal, Ram Naresh, Abhijat P. Medh (for Mahalakshmi Balaji & Co.), Debasis Misra, Dr. Monika Gosain, Aman Vachher, Ashutosh Dubey, P.N. Puri, Shreenivas Khalap, Anando Mukherjee, Harsh N. Parekh, Reena Singh, Sadhana Sandhu, Anirudh Sharma, S. Dave, Varuna Bhandari Gugnani, B.V. Balaram Das, D. Bharathi Reddy, Rituraj Biswas, Anil Shrivastav, Deepika Ghotowar (for Corporate Law Group), Gopal Singh, Manish Kumar, Atul Jha, Dharmendra Kumar Sinha, A. Subhashini, HemantikaWahi, Rojalin Pradhan, Suveni Banerjee, Tarjit Singh, Kamal Mohan Gupta, Naresh Kumar Sharma, Sunil Fernandes, Suhass Joshi, Anil Kumar Jha, Chhaya Kumari, S.K. Divakar, Anitha Shenoy, M.T. George, Kavitha K.T., P.V. Dinesh, Vibha Datta Makhija, Shubhangi Tuli, Sanjay V. Kharde, Sachin J. Patil, Ajit Wagh, Asha G. Nair, Khwairkpam Nobin Singh, Sapan Biswajit Meitei, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, M.K. Mishael, Edward Belho, K. Enatoli Sema, Amit Kumar Singh, Priya Hingorani, S. Wasim A. Qadri, B.V. Balaram Das, Anil Katiyar, Rituraj Biswas, Zaid Ali, Manpreet Singh, D.S. Mahra, Jana Kalyan Das, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey, Mohit Mudgil, Abhinav Ramakrishna, Irshad Ahmed, Milind Kumar, Aruna Mathur,

Yusuf Khan (for Arputham, Aruna & Co.), Akshat Hansaria, B. Balaji, Gopal Singh, Rituraj Biswas, S.S. Shamshery, Jatinder Kumar Bhatia, Rajeev Dubey, Kamlendra Mishra, Abhijit Sengupta, B.P. Yadav, Anima Kujur, Shantanu Bhardwaj, Satish Vig, Rituraj Biswas, H.S. Sachdeva, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Ramshwar Prasad Goyal, Kuldip Singh, B. Balaji, Subramonium Prasad for the appearing parties.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. We propose to deal with the abovementioned writ petition, the criminal appeals and the contempt petition by this judgment. The question of law involved in these cases is identical, therefore, all these cases are being dealt with by a common judgment. In order to avoid repetition, only the facts of the writ petition of Lalita Kumari's case are recapitulated.

2. The petition has been filed before this Court under Article 32 of the Constitution of India in the nature of habeas corpus to produce Lalita Kumari, the minor daughter of Bhola Kamat.

3. On 5.5.2008, Lalita Kumari, aged about six years, went out of her house at 9 p.m. When she did not return for half an hour and Bhola Kamat was not successful in tracing her, he filed a missing report at the police station Loni, Ghaziabad, U.P.

4. On 11.5.2008, respondent no.5 met Bhola Kamat and informed him that his daughter has been kidnapped and kept under unlawful confinement by the respondent nos.6 to 13. The respondent-police did not take any action on his complaint. Aggrieved by the inaction of the local police, Bhola Kamat made a representation on 3.6.2008 to the Senior Superintendent of Police, Ghaziabad. On the directions of the Superintendent of Police, Ghaziabad, the police station Loni,

Ghaziabad registered a First Information Report (F.I.R.) No.484 dated 6.6.2008 under Sections 363/366/506/120B IPC against the private respondents.

5. Even after registration of the FIR against the private respondents, the police did not take any action to trace Lalita Kumari. According to the allegation of Bhola Kamat, he was asked to pay money for initiating investigation and to arrest the accused persons. Ultimately, the petitioner filed this petition under Article 32 of the Constitution before this Court.

6. This Court on 14.7.2008 passed a comprehensive order expressing its grave anguish on non-registration of the FIR even in a case of cognizable offence. The Court also issued notices to all Chief Secretaries of the States and Administrators of the Union Territories. In response to the directions of the Court, various States and the Union Territories have filed comprehensive affidavits.

7. The short, but extremely important issue which arises in this petition is whether under Section 154 of the Code of Criminal Procedure Code, a police officer is bound to register an FIR when a cognizable offence is made out or he has some latitude of conducting some kind of preliminary enquiry before registering the FIR.

8. Mr. S.B. Upadhyay, learned senior advocate appearing for the petitioner has tried to explain the scheme of Section 154 Cr.P.C. with the help of other provisions of the Act. According to him, whenever information regarding cognizable offence is brought to the notice of the SHO, he has no option but to register the First Information Report.

9. This Court also issued notice to the learned Attorney General for India to assist the Court in this matter of general public importance. Mr. Harish P Raval, the learned Additional Solicitor General appeared before the Court and made comprehensive submissions. He also filed written submissions

which were settled by him and re-settled by the learned Attorney General for India.

10. Learned Additional Solicitor General submitted that the issue which has been referred to this Court has been decided by a three-Judge Bench of this Court in the case of *Aleque Padamsee and Others v. Union of India and Others* (2007) 6 SCC 171. In this case, this Court while referring to the judgment in the case of *Ramesh Kumari v. State (NCT of Delhi) and Others* (2006) 2 SCC 677 in paragraph 2 of the judgment has observed as under:-

> "Whenever cognizable offence is disclosed the police officials are bound to register the same and in case it is not done, directions to register the same can be given."

11. The State of Gujarat, the respondent in the above case, on the facts thereof, contended that on a bare reading of a complaint lodged, it appears that no offence was made and that whenever a complaint is lodged, automatically and in a routine manner an FIR is not to be registered. This Court after considering Chapter XII and more particularly Sections 154 and 156 held (paragraphs 6 and 7) that "whenever any information is received by the police about the alleged commission of offence which is a cognizable one, there is a duty to register the FIR." There could be no dispute on that score as observed by this Court. The issue referred to in the reference has already been answered by the Bench of three Judges. The judgment in *Aleque Padamsee and Others* (supra) is not referred in the reference order. It is therefore prayed that the present reference be answered accordingly.

12. It was submitted on behalf of the Union of India that Section 154 (1) provides that every information relating to the commission of a cognizable offence if given orally, to an officer incharge of a police station shall be reduced in writing by him or under his directions. The provision is mandatory. The use of the word "shall" by the legislation is indicative of the statutory

intent. In case such information is given in writing or is reduced in writing on being given orally, it is required to be signed by the persons giving it. It is further provided that the substance of commission of a cognizable offence as given in writing or reduced to writing "shall" be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-section (2) provides that a copy of such information as recorded in sub-section (1) shall be given forthwith free of cost to the informant.

13. In light of the provisions contained in Section 154 (1) and the law laid by this Court on the subject, the following submissions were placed by the Union of India for consideration of this Court.

(a) The statutory intention is manifest on a bare reading of provisions of Section 154(1) to the effect that when an officer incharge of a police station to whom information relating to commission of cognizable offence has been disclosed, he has no discretion save and except to reduce the said information in writing by him or under his direction.

(b) Section 154(1) does not have ambiguity and is in clear terms.

(c) The use of expression "shall" clearly manifest the mandatory statutory intention.

(d) In construing a statutory provision, the first and the foremost rule of construction is the literal construction. It is submitted that all that the Court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision, the legislative intent is clear, the Court need not call into it the other rules on construction of statutes. [Para 22 of *Hiralal Rattanlal etc.etc. v. State of U.P. and Another*

etc.etc. 1973(1) SCC 216]. This judgment is referred to and followed in a recent decision of this Court in *B. Premanand and Others v. Mohan Koikal and Others* (2011) 4 SCC 266 paras 8 and 9. It is submitted that the language employed in Section 154 is the determinative factor of the legislative intent. There is neither any defect nor any omission in words used by the legislature. The legislative intent is clear. The language of Section 154(1), therefore, admits of no other construction.

(e) The use of expression "shall" is indicative of the intention of the legislature which has used a language of compulsive force. There is nothing indicative of the contrary in the context indicating a permissive interpretation of Section 154. It is submitted that the said Section ought to be construed as preemptory. The words are precise and unambiguous (*Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra and Others* 1975 (2) SCC 482). It is submitted that it is settled law that judgments of the courts are not to be construed as statutes [para 11 of three-Judge Bench decision of this court in the case of *M/s Amar Nath Om Prakash and others etc. v. State of Punjab and Others* (1985) 1 SCC 345]. The abovesaid decision is followed by a judgment of this Court in the case of *Hameed Joharan (dead) and others v. Abdul Salam (dead) by Lrs. and Others* (2001) 7 SCC 573.

(f) The provision of Section 154(1) read in light of statutory scheme do not admit of conferring any discretion on the officer in charge of the police station of embarking upon an preliminary enquiry prior to registration of an FIR. A preliminary enquiry is a term which is alien to the Code of Criminal

Procedure, 1973 which talks of (i) investigation (ii) inquiry and (iii) trial. These terms are definite connotations having been defined under Section 2 of the Act.

(g) The concept of preliminary enquiry as contained in Chapter IX of the CBI (Crime) Manual, first published in 1991 and thereafter updated on 15.7.2005 cannot be relied upon to import the concept of holding of preliminary enquiry in the scheme of the Code of Criminal Procedure.

(h) The interpretation of Section 154 cannot be depended upon a Manual regulating the conduct of officers of an organization, i.e., CBI.

(i) A reference to para 9.1. of the said Manual would show that preliminary enquiry is contemplated only when a complaint is received or information is available which may after verification as enjoined in the said Manual indicates serious misconduct on the part of the public servant but is not adequate to justify registration of a regular case under provisions of Section 154 Cr.P.C. Such preliminary inquiry as referred to in para 9.1 of the CBI Manual as also to be registered after obtaining approval of the competent authority. It is submitted that these provisions cannot be imported into the statutory scheme of Section 154 so as to provide any discretion to a police officer in the matter of registration of an FIR.

(j) The purpose of registration of an FIR are manifold –that is to say

(i) To reduce the substance of information disclosing commission of a cognizable offence, if given orally, into writing

(ii) if given in writing to have it signed by the complainant

(iii) to maintain record of receipt of information as regards commission of cognizable offences

(iv) to initiate investigation on receipt of information as regards commission of cognizable offence

(v) to inform Magistrate forthwith of the factum of the information received.

14. Reference has also been made to the celebrated judgment of the Privy Council in the case of *Emperor* v. *Khwaza Nazim Ahmad* AIR 1945 PC 18 in which it is held that for the receipt and recording of an information, report is not a condition precedent to the setting in motion of a criminal investigation. It is further held, that no doubt, in the great majority of cases criminal prosecution are undertaken as a result of the information received and recorded in this way. (As provided in Sections 154 to 156 of the earlier Code). It is further held that there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. It is further held that Section 157 of the Code when directing that a police officer, who has a reason to suspect from information or otherwise, that an offence which he is empowered to investigate under Section 156 has been committed, he shall proceed to investigate the facts and circumstances of the case. It is further held in the said judgment that, in truth the provisions as to an information report (commonly called a First Information Report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when

the informant is examined, if it is desired to do so. It is further held in the said judgment that there is a statutory right on part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

15. On behalf of the Union of India reference was made to the judgment of this Court delivered in *The State of Uttar Pradesh v. Bhagwant Kishore Joshi* AIR 1964 SC 221 wherein it has been held vide para 8 that Section 154 of the Code prescribed the mode of recording the information received orally or in writing by an officer incharge of a police station in respect of commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though, ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation.

16. It is further held that Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is also held that it is clear from the said provision that an officer in charge of a police station can start investigation either on information or otherwise. The judges in the said judgment referred to a decision of this Court in the case of *H.N. Rishbud and Inder Singh v. The State of Delhi* 1955 SCR (1) 1150 at pp.1157-58 that the graphic description of the stages is only a restatement of the principle that a vague information or an irresponsible rumour would not by itself constitute information within the meaning of Section 154 of the Code or the basis of an investigation under Section 157 thereof. The said case was in respect of an offence alleged under Prevention of Corruption Act, 1947. The said case was under the old Code which did not define the term 'investigation' (paragraph 18 of the concurring judgment of Justice Mudholkar at page 226). It is also observed that the main object of investigation mean to

bring home the offence to the offender. The essential part of the duty of an investigating officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation "against" the offender.

17. The following observations in the concurring judgment of *Bhagwant Kishore Joshi* (supra) were found in paragraph 18 :

> "In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, s. 5A of the Prevention of Corruption Act was enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualise how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person."

18. In case of *H.N. Rishbud* (supra), in the case under the Prevention of Corruption Act, 1947, it is observed as under:-

> "Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the

> case and if necessary to take measures for the discovery and arrest of the offender."

It is further held :-

> "Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer".

It is further held in the said judgment that :

> "Thus, under the Code investigation consists generally of the following steps:(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173."

19. It was further submitted that this Court in the case of *Damodar v. State of Rajasthan* reported in 2004(12) SCC 336 referred to the observations of the judgment of this Court rendered in case of *Ramsinh Bavaji Jadeja v. State of Gujarat* 1994 (2) SCC 685 and observed that the question as to at what stage the investigation commence has to be considered and examined on the facts of each case especially when the information of alleged cognizable offence has been given on telephone. The said case deals with information received on

telephone by an unknown person. In paragraph 10 it is observed thus "in order to constitute the FIR, the information must reveal commission of act which is a cognizable offence."

20. It is further observed in paragraph 11 in the case of *Damodar* (supra) that in the context of the facts of the said case, that any telephonic information about commission of a cognizable offence, if any, irrespective of the nature and details of such information cannot be treated as an FIR. It is further held that if the telephonic message is cryptic in nature and the officer incharge proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence, if any, then it cannot be said that the information which had been received by him on telephone shall be deemed to be an FIR.

21. It is also observed that the object and purpose of giving such telephonic message is not to lodge an FIR, but to make the officer incharge of the police station reach the place of occurrence. It is further held that if the information given on telephone is not cryptic and on the basis of that information the officer incharge is prima facie satisfied about commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence, then any statement made by any person in respect of the said offence including the participants shall be deemed to be statement made by a person to the police officer in the course of investigation covered by Section 162 of the Code.

22. This Court in the case of *Binay Kumar Singh v. The State of Bihar* 1997(1) SCC 283 observed as under:-

> "…..It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. Under Section 154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next

> requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto."

23. It is submitted that in the said judgment what fell for consideration of the Court was the conviction and sentence in respect of the offence under Sections 302/149 of the IPC in respect of a murder which took place in a Bihar village wherein lives of 13 people were lost and 17 other were badly injured along with burning alive of large number of mute cattle and many dwelling houses. It is also submitted that the interpretation of Section 154 was not directly in issue in the said judgment.

24. Reliance is placed on a decision of this Court in the case of *Madhu Bala v. Suresh Kumar and Others* reported as 1997 (8) SCC 476 in the context of Sections 156(3) 173(2), 154 and 190(1) (a) and (b) and more particularly upon the following paragraphs of the said judgment. The same read as under:-

> "Coming first to the relevant provisions of the Code, Section 2(*d*) defines "complaint" to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Under Section 2(*c*) "cognizable offence" means an offence for which, and "cognizable

case" means a case in which a police officer may in accordance with the First Schedule (of the Code) or under any other law for the time being in force, arrest without a warrant. Under Section 2(*r*) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. Chapter XII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia, that the officer in charge of a police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code with which we are primarily concerned in these appeals reads as under:

> "(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

On completion of investigation undertaken under Section 156(1) the officer in charge of the police station is required

under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate. Under sub-section (1) of Section 190 appearing in that Chapter any Magistrate of the First Class and any Magistrate of the Second Class specially empowered may take cognizance of any offence (*a*) upon receiving a "complaint" of facts which constitutes such offence; (*b*) upon a "police report" of such facts; or (*c*) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Chapter XV prescribes the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under Section 190(1)(*a*).

25. Learned counsel for the Union of India relied on the following passage from *Madhu Bala* (supra) :-

> "From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(*a*) of the Code *and* proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under Section 156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(*b*) — but not under 190(1)(*a*). Since a complaint filed before a Magistrate cannot be a "police report" in

view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police under Section 156(1) has to culminate in a "police report" the "complaint" — as soon as an order under Section 156(3) is passed thereon — transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the first information report (FIR). As under Section 156(1), the police can only investigate a cognizable "case", it has to formally register a case on that report."

26. Mr. Raval also relied on the following passage from *Madhu Bala' s case:-*

"From the foregoing discussion it is evident that whenever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to "register a case" makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same".

27. This Court in the case of *Hallu and others v. State of Madhya Pradesh* 1974 (4) SCC 300 in the context of Section 154 of the Code held (para 7) that Section 154 of the Code does not require that the Report must be given by a person who has personal knowledge of the incident reported. It is further held that the said Section speaks of an information relating to the commission of a cognizable offence given to an officer incharge of a police station.

28. Mr. Raval placed reliance on para 8 of the judgment of this Court in the case of *Rajinder Singh Katoch v. Chandigarh Administration and others* 2007 (10) SCC 69, wherein this Court observed as under:-

"8.Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them give rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned, the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made investigations into the matter. In fact, the Superintendent of Police himself has, pursuant to the directions issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house."

29. While referring to the decision of this Court in *Ramesh Kumari* (supra) in para 11 of the judgment in *Rajinder Singh's case*, it is observed as under:-

"11. We are not oblivious to the decision of this Court in

Ramesh Kumari v. State (NCT of Delhi) wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

30. It is further submitted that the above observations run concurrently to the settled principles of law and more particularly the three judge Bench decision of this Court in *Aleque Padamsee and Others* (supra).

31. In the context of the statutory provisions, the learned counsel for the Union of India drew the attention of this Court to the decision of this Court in the case of *Superintendent of Police, CBI and Others v. Tapan Kumar Singh* AIR 2003 SC 4140, paragraph 20 at page 4145 as under:-

"It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At

this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

32. This Court in its decision in the case of *Ramesh Kumari* (supra) has observed as under in paragraphs 3, 4 and 5 :-

"3. Mr Vikas Singh, the learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined

by the respondent and found that no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer.

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no more res integra. The point of law has been set at rest by this Court in *State of Haryana v. Bhajan Lal***.** This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under: (SCC pp. 354-55)

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is

empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression '*information*' without qualifying the same as in Section 41(1)(*a*) or (*g*) of the Code wherein the expressions, '*reasonable complaint*' and '*credible information*' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(*a*) and (*g*) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had

purposely thought it fit to employ only the word 'information' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that '*every complaint or information*' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(*c*) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

33. Finally, this Court in *Ramesh Kumari* (supra) in para 33 said :-

"33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

34. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence.

35. In the case of *Ramesh Kumari* (supra), this Court has

held that the views expressed by this Court in the case of *State of Haryana and Others v. Bhajan Lal and Others* 1992 Suppl. (1) SCC 335 leave no matter of doubt that the provisions of Section 154 of the Code is mandatory and the officer concerned is duty bound to register the case on the basis of such information disclosing a cognizable offence.

36. Mr. Raval while concluding his arguments reiterated that Section 154 of the Code it is mandatory for the officer concerned to register the case on the basis of such information including cognizable offence. According to Union of India, the police officer has no discretion in the matter and this is according to the legislative intention behind enacting Section 154 of the Code of Criminal Procedure.

37. Mr. Ratnakar Das, learned senior advocate appearing for the State of U.P. adopted the arguments addressed by Mr. Raval on behalf of the Union of India and submitted that the word 'shall' appearing in Section 154 mandates the police to enter the information about commission of a cognizable offence in a book in such form commonly known as "First Information Report'. At that stage, the police cannot go into the question about the truth or otherwise of the information and make a roving enquiry.

38. It was also submitted by Mr. Das that the word 'information' is not qualified by credible information. It has to be recorded with utmost dispatch and if its recording is dependent upon any type of preliminary enquiry, then there would be a great temptation to incorporate the details and circumstances advantageous to the prosecution which may be lacking in the earlier information. Similarly, if the police is given the power to hold a preliminary inquiry before registration of an FIR it may benefit the wrongdoer because by afflux of time, the evidence would be obliterated or destroyed and thereby justice would be denied to the victim of crime.

39. Mr. Das gave an example that in a bride burning case,

when a person makes a complaint that the husband and the in-laws of his daughter have doused her with kerosene and set her ablaze and arrangements were being made to cremate the dead body, in that case, if the police instead of taking immediate steps to register an FIR proceeds to the spot to seize the dead body and the burnt clothes etc. on the plea that he is required to make preliminary enquiry to ascertain the truth, then during the interregnum, no evidence would be available to bring the offenders to book. It needs to mention that power is conferred upon the police under the Code to make seizure in course of investigation and not during the enquiry. So, the police being in connivance with the accused may permit them to cremate the dead body in order to cause disappearance of the evidence.

40. It is further submitted by Mr. Das that now-a-days custodial violence is on the rise. Horror of Bhagalpur blinding case and the Maya Tyagi case in Uttar Pradesh are still in the minds of the people. It is complained that the police do not take action against their own brethren who commit crimes. Most of the times the Court intervenes and it is only then that the person wronged gets justice. In such cases if the police is given handle to hold a preliminary enquiry the offender will get a scope to fabricate evidence and ultimately the police will deny registration of an FIR on the ground that the preliminary enquiry does not reveal any such offence having been committed at all.

41. It was submitted on behalf of the Union of India and the State of U.P. that in the Code the Legislature never intended to incorporate any provision for conducting any 'preliminary enquiry' before registering an FIR when a report regarding commission of a cognizable offence is made. The specific question on this issue was never raised or agitated earlier before this Court at any point of time whether as a general rule the police should hold a preliminary enquiry before registering an FIR and take further steps in the investigation. Only in two cases in respect of the offence under Prevention of Corruption

Act which was to be investigated by the Central Bureau of Investigation (CBI) this Court taking note of the peculiar facts and circumstances of those cases, made an observation that where public servant is charged with acts of dishonesty amounting to serious misdemeanor, registering an FIR should be preceded by some suitable preliminary enquiry. In another case in which dispute regarding property between the brothers was involved, this Court in the peculiar facts of that case made an observation that though the officer in charge of a police station is legally bound to register a First Information Report in terms of Section 154 of the Code, if the allegations give rise to an offence which can be investigated without obtaining permission from the Magistrate, the same however, does not take away the right of the competent officer to make a preliminary enquiry in a given case in order to find whether the FIR sought to be lodged has any substance or not.

42. According to him, the grievance of the appellant in the said case was that his report which revealed commission of a cognizable case was not treated as an FIR by the concerned police. It was not the issue nor was any argument advanced as to whether registering of an FIR as provided under Section 154 of the Code should be preceded by some sort of preliminary enquiry or not. In such view of the matter, the observation of this Court that it does not take away the right of the competent officer to make a preliminary enquiry in a given case is nothing but a passing observation.

43. According to Mr. Das, the provision of law about registration of an FIR is very clear and whenever information relating to cognizable offence is received by the police, in that event the police had no option but to register the FIR.

44. Mr. Shekhar Naphade, learned Senior counsel appearing for the State of Maharashtra on the other hand has taken a different view as taken by the Union of India and submitted that before registering an FIR under Section 154 Cr.P.C. it is open to the SHO to hold a preliminary enquiry to

ascertain whether there is prime facie case of commission of cognizable offence or not.

45. Mr. Naphade has comprehensively explained the statutory scheme of Section 154 Cr.P.C.. According to him, Sections 41, 57 154(3) 156(1) and 156(3), 157, 167, 190 and 202 are an integral part of the statutory scheme relating to investigation of crimes. These provisions clearly contemplate that the police officer can exercise powers under the aforesaid provisions provided he is prima-facie satisfied that there are reasonable grounds to believe that the accused is guilty of commission of the cognizable offence.

46. Section 154 of Cr.P.C. forms a part of a chain of statutory provisions relating to investigation, and therefore, it must follow that the provisions of Sections 41, 157, 167 etc. have a bearing on the interpretation of Section 154 of Cr.P.C. The said judgments have interpreted Section 154 of Cr.P.C. purely on the literal interpretation test and while doing so, the other important tests of statutory interpretation, like a statute must be read as a whole and no provision of a statute should be considered and interpreted de-hors the other provisions, the rule of purposive construction etc. are lost sight of. He referred to the following cases - *Tarachand and Another v. State of Haryana* 1971 (2) SCC 579, *Sandeep Rammilan Shukla v. State of Maharashtra and Others* 2009 (1) Mh.L.J. 97, *Sakiri Vasu v. State of Uttar Pradesh and Others* 2008 (2) SCC 409, *Nasar Ali v. State of Uttar Pradesh* 1957 SCR 657, *Union of India and Another v. W.N. Chadha* 1993 (Suppl.) 4 SCC 260, *State of West Bengal v. S.N. Basak* 1963 (2) SCR 52.

47. Mr.Naphade submitted that in the case of allegations relating to medical negligence on the part of doctors, this Court has clearly held that no medical professional should be prosecuted merely on the basis of the allegations in the complaint. There should be an in-depth enquiry into the allegations relating to negligence and this necessarily postulates a preliminary enquiry before registering an FIR or before

entering on investigation. He reported to *State of M.P. v. Santosh Kumar* - 2006 (6) SCC 1 and *Dr. Suresh Gupta v. Govt. of NCT of Delhi and Another* 2004(6) SCC 422.

48. He also submitted that the same principle can also be made applicable to the people of different categories. The literal interpretation of Section would mean the registration of an FIR to a mechanical act. The registration of an FIR results into serious consequences for the person named as accused therein. It immediately results in loss of reputation, impairment of his liberty, mental anguish, stigma, etc. It is reasonable to assume that the legislature could not have contemplated that a mere mechanical act on the part of SHO should give rise to such consequences.

49. He submitted that the registration of an FIR under Section 154 of Cr.P.C. is an administrative act of a police officer. In the case of *Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab* 1955 (2) SCR 225, this Court has explained what is administrative function and has said that ordinarily the executive power connotes the residue of Government functions that remain after legislative/judicial functions are taken away. Every administrative act must be based on application of mind, scrutiny and verification of the facts. No administrative act can ever be a mechanical one. This is the requirement of rule of law. Reference was made to paras 12 and 13 of *State (Anti-Corruption Branch), Govt. of NCT of Delhi and Another v. Dr. R.C. Anand and Another* 2004 (4) SCC 615.

50. According to Mr. Naphade, these judgments have not considered the impact of Article 21 on Section 154 of Cr.P.C. After and beginning with *Maneka Gandhi v. Union of India and Another* 1978 (1) SCC 248, this Court has applied Article 21 to several provisions relating to criminal law. This Court has also said that the expression “law” contained in Article 21 necessarily postulates law which is reasonable and not merely a statutory provision irrespective of its reasonableness or

otherwise. In the light of Article 21, provisions of Section 154 of Cr.P.C. must be read down to mean that before registering an FIR, the Station House Officer must have a prima-facie satisfaction that there is commission of cognizable offence as registration of an FIR leads to serious consequences for the person named as accused and for this purpose, the requirement of preliminary enquiry can be spelt out in Section 154 and can be said to be implicit within the provisions of Section 154 of Cr.P.C. Reliance was placed on *Maneka Gandhi* (supra) and *S.M.D. Kiran Pasha v. Government of Andhra Pradesh and Others* 1990 (1) SCC 328.

51. The fact that Sections 154 (3), 156(3), 190, 202 etc. clearly provide for remedies to a person aggrieved by refusal on the part of the SHO to register an FIR, clearly show that the statute contemplates that in certain circumstances the SHO can decline to register an FIR.

52. To require SHO to register an FIR irrespective of his opinion that the allegations are absurd or highly improbable, motivated etc. would cause a serious prejudice to the person named as accused in the complaint and this would violate his rights under Article 21. This Court has recognized the concept of pre-violation protection implicit in Article 21. The said judgments while relying upon the literal interpretation test have not considered the rule of statutory interpretation that in certain situations the expression "shall" does not convey mandatory character of the provisions. For example, proviso to Section 202 (2) has been held using the expression "shall" not to be mandatory but directory. After all, Section 154 of Cr.P.C. is a part of the procedural law and in respect of procedural law, the expression "shall" may not always necessarily convey that the provision is mandatory. Mr. Naphade placed reliance on the following cases - *P.T. Rajan v. T.P.M. Sahir and Others* 2003(8) SCC 498, *Shivjee Singh v. Nagendra Tiwary and Others* 2010 (7) SCC 578 and *Sarbananda Sonowal (II) etc. v. Union of India* 2007 (1) SCC 174. The said judgments have

also not considered the rule of purposive interpretation and also that the statute must be considered as a whole and no provision can be interpreted in isolation.

53. The non-registration of an FIR does not result in crime going unnoticed or unpunished. The registration of an FIR is only for the purpose of making the information about the cognizable offence available to the police and to the judicial authorities at earliest possible opportunity. The delay in lodging an FIR does not necessarily result in acquittal of the accused. The delay can always be explained.

54. Mr. Naphade also submitted that this Court has also held that registration of an FIR is not a condition precedent for initiating investigation into the commission of a cognizable offence. Section 154 Cr.P.C. clearly imposed a duty on the police officer. When an information is received, the officer in charge of the police station is expected to reach the place of occurrence as early as possible. It is not necessary for him to take steps only on the basis of an FIR. It is the duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in his implicit duty and responsibility. This has been held in the case of *Animireddy Venkata Ramana and Others v. Public Prosecutor, High Court of Andhra Pradesh* 2008 (5) SCC 368.

55. Mr. Naphade further submitted that ordinarily the SHO should record an FIR upon receiving a complaint disclosing the ingredients of a cognizable offence, but in certain situations he should have the discretion of holding a preliminary enquiry and thereafter if he is satisfied, register an FIR.

56. The provisions contained in Section 154 Cr.P.C. of 1973 were also there in the 1898 Cr.P.C. and even the earlier one of 1877. The interpretation that was placed by the High Courts and the Privy Council on these provisions prior to *Maneka Gandhi* (supra) rested principally on the words used

in the Section de-hors the other provisions of the Act and also de-hors the impact of Article 21 of the Constitution on the criminal jurisprudence. In other words, the courts have followed the test of literal interpretation without considering the impact of Article 21.

57. It is a trite proposition that a person who is named in an FIR as an accused, suffers social stigma. If an innocent person is falsely implicated, he not only suffers from loss of reputation but also mental tension and his personal liberty is seriously impaired. After *Maneka Gandhi's case*, the proposition that the law which deprives a person of his personal liberty must be reasonable, both from the stand point of substantive aspect as well as procedural aspect is now firmly established in our constitutional law. This warrants a fresh look at Section 154 of Cr.P.C. Section 154 Cr.P.C. must be read in conformity with the mandate of Article 21. If it is so interpreted, the only conclusion is that if a Police Officer has doubts about the veracity of the complaint, he can hold preliminary enquiry before deciding to record or not to record an FIR.

58. It is the mandate of Article 21 which requires a Police Officer to protect a citizen from baseless allegations. This, however, does not mean that before registering an FIR the police officer must fully investigate the case. A delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. Therefore, what should be the precise parameters of a preliminary enquiry cannot be laid down in abstract. The matter must be left open to the discretion of the police officer.

59. A proposition that the moment the complaint discloses ingredients a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever, is an extreme proposition and is contrary to the mandate of Article 21. Similarly, the extreme point of view is that the police officer must investigate the case substantially before registering an FIR

is also an argument of the other extreme. Both must be rejected and a middle path must be chosen.

60. Mr.Naphade mentioned about *Maneka Gandhi's case* and observed that the attempt of the Court should be to expand the reach and ambit of the fundamental rights, rather than to attenuate their meaning and contents by a process of judicial construction. The immediate impact of registration of an FIR on an innocent person is loss of reputation, impairment of personal liberty resulting in mental anguish and, therefore, the act of the police officer in registering an FIR must be informed by reason and it can be so only when there is a prima facie case against the named accused.

61. According to Mr. Naphade, the provisions of Article 14 which are an anti-thesis of arbitrariness and the provisions of Articles 19 and 21 which offer even a pre-violation protection require the police officer to see that an innocent person is not exposed to baseless allegations and, therefore, in appropriate cases he can hold preliminary enquiry. In *Maneka Gandhi's case* this Court has specifically laid down that in *R.C. Cooper's case* it has been held that all fundamental rights must be read together and that Articles 14, 19 and 21 overlap in their content and scope and that the expression 'personal liberty' is of the widest amplitude and covers a variety of rights which go to constitute personal liberty of a citizen. (Reliance was particularly placed on paras 5,6 and 7 on pages 278-284).

62. Mr. Naphade further argued that this Court has held that in order to give concrete shape to a right under Article 21, this Court can issue necessary directions in the matter. If directions as regards arrest can be given, there is no reason why guidelines cannot be framed by this Court as regards registration or non-registration of an FIR under Section 154 Cr.P.C.

63. Mr. Naphade also submitted that the importance of the need of the police officer's discretion of holding a preliminary

inquiry is well illustrated by the judgment of this Court in the case of *Uma Shankar Sitani v. Commissioner of Police, Delhi and Ors.* 1996 (11) SCC 714. In that case the complaint was lodged by one Sarvjeet Chauhan against one Uma Shankar relating to alleged cognizable offence. Uma Shankar was arrested and upon investigation it was found that the complainant was a fictitious person. Somebody else had filed the false complaint. The residential address of the fictitious complainant was also fictitious. In the whole process Uma Shankar went through serious mental turmoil as not only the allegation was found to be false, but he was arrested by the police and had to undergo humiliation and loss of reputation. Such incidents can happen and must have happened in scores of cases as filing of false cases due to personal, political, business rivalry, break-down of matrimonial relationship etc. are rampant.

64. Mr. Naphade submitted that Section 498-A of I.P.C. which was meant to be a measure of protection, turned out to be an instrument of oppression. Judicial notice of this has been taken by this Court in the case of *Preeti Gupta and Another v. State of Jharkhand and Another* (2010) 7 SCC 667. In the said case, this Court has referred to rapid increase in filing of complaints which are not bona fide and are filed with oblique motives. Such false complaints lead to insurmountable harassment, agony and pain to the accused. This Court has observed that the allegations of the complainant in such cases should be scrutinized with great care and circumspection. Is it, therefore, not advisable that before registering an FIR, a preliminary inquiry at least to verify the identity of the complainant and his residential address should be carried out. This case illustrates how on a false complaint, a person's right to life and liberty under Article 21 of the Constitution can be put to serious jeopardy.

65. This Court in its judgment in *Francis C. Mullin v. Administrator, Union Territory of Delhi* 1981 (1) SCC 608

[paras 4 and 5) has held that Article 21 requires that no one shall be deprived of his life and personal liberty except by procedure established by law and this procedure must be reasonable, fair and just. If the procedure is not reasonable, fair and just, the Court will immediately spring into action and run to the rescue of the citizen. From this it can be easily deduced that where the police officer has a reasonable doubt about the veracity of the complaint and the motives that prompt the complainant to make the complaint, he can hold a preliminary inquiry. Holding of preliminary inquiry is the mandate of Article 21 in such cases. If the police officer mechanically registers the complaint involving serious allegations, even though he has doubts in the matter, Article 21 would be violated. Therefore, Section 154 must be read in the light of Article 21 and so read preliminary inquiry is implicit in Section 154. In paras 7 and 8 of the said judgment, this Court has made an unequivocal declaration of the law that any act which damages or injures or interferes with use of any limb or faculty of a person, either permanently or even temporarily, would be within the ambit of Article 21.

66. Not only this, every act which offends against and imperils human dignity, would constitute deprivation *pro tanto* of this right to live and it would have to be in accordance with the reasonable, just and fair procedure established by law which stands the test of other fundamental rights. A baseless allegation is a violation of human dignity and despite the police officer having doubts about the allegation, he being required to register an FIR, would be a clear infringement of Article 21.

67. Mr. Naphade further submitted that it is settled principle of law that no single provision of a statute can be read and interpreted in isolation. The statute must be read as a whole. In the present case, the provisions of Sections 41,57, 156, 157, 159, 167, 190, 200 and 202 of Cr.P.C. must be read together. These provisions constitute the statutory scheme relating to investigation of offences and, therefore, no single provision can

be read in isolation. Both, Sections 41 and 154 deal with cognizable offence. Section 41 empowers the police to arrest any person without warrant from the Magistrate if such person is concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exits of such person having been so concerned with the cognizable offence. Section 41 also specifically refers to a cognizable complaint about commission of a cognizable offence.

68. The scheme of the Act is that after the police officer records an FIR under Section 154 Cr.P.C., he has to proceed to investigate under Section 156 Cr.P.C. and while investigating the police officer has power to arrest. What is required to be noted is that for the purpose of arresting the accused, the police officer must have a reasonable ground to believe that the accused is involved in the commission of a cognizable offence. If Sections 41 and 154 are so read together, it is clear that before registering an FIR under Section 154 the police officer must form an opinion that there is a prima facie case against the accused. If he does not form such an opinion and still proceeds to record an FIR, he would be guilty of an arbitrary action. Every public authority exercising any powers under any statute is under an obligation to exercise that power in a reasonable manner. This principle is well settled and it forms an integral part of the legal system in this country.

69. Mr. Naphade submitted that the provisions of Section 154(3) enable any complainant whose complaint is not registered as an FIR by the SHO to approach the higher police officer for the purpose of getting his complaint registered as an FIR and in such case, the higher police officer has all the powers of recording an FIR and directing investigation into the matter. Apart from this power under Section 36 any police officer senior in rank to an officer in charge of the police station can exercise the same powers as may be exercised by such officer in charge of the police station. Provisions of Section

154 (3) and Section 36 are clear indication that in an appropriate case a police officer can either decline to register the FIR or defer its registration. The provisions of Section 154(3) and Section 36 is a sufficient safeguard against an arbitrary refusal on the part of a police officer to register the FIR. The very fact that a provision has been made in the statute for approaching the higher police officer, is an indication of legislative intent that in appropriate cases, a police officer may decline to register an FIR and/or defer its registration.

70. In addition to the remedy available to the aggrieved person of approaching higher police officer, he can also move the concerned Magistrate either under Section 156(3) for making a complaint under Section 190. If a complaint is lodged, the Magistrate can examine the complainant and issue process against the accused and try the case himself and in case triable by Sessions Court, then he will commit the case to Sessions under Section 209.

71. The Magistrate can also on receipt of a complaint, hold an enquiry or direct the police to investigate. In addition to the above, the Magistrate also has a power to direct investigation under Section 159 Cr.P.C. In the case of *Mona Panwar v. High Court of Judicature of Allahabad* (2011) 3 SCC 496 in paras 17 and 18 on page 503 this Court has, inter alia, held that if the complaint relating to a cognizable officer is not registered by the police, then the complainant can go the Magistrate and then the Magistrate has the option of either passing an order under Section 156(3) or proceeding under Section 200/202 of the Code.

72. It was also submitted by Mr. Naphade that an order under Section 156(3) of the Code is in the nature of a preemptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the vital report either under Section 169 or

submission of a charge-sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance, direct investigation by the police by order under Section 156(3) of the Code.

73. Mr. Naphade also submitted that the very fact that the Legislature has provided adequate remedies against refusal to register an FIR and hold investigation in cognizable offences is indicative of legislative intent that the police officer is not bound to record an FIR merely because the ingredients of cognizable offences are disclosed in the complaint if he has doubt about the veracity of the complaint.

74. In further support of the proposition that a police officer is not bound to register an FIR on mere disclosure of existence of ingredients of cognizable offence, it is submitted that the statute does not contemplate that for the purpose of investigation, recording of an FIR is a condition precedent. Section 156 empowers the police to do so. Similarly, Section 157 clearly lays down that if from information received or otherwise an officer in charge of the police station has reason to suspect the commission of an offence, he can investigate into the same. In Section 157(1) the expression "from information received" obviously refers to complaint under Section 154 Cr.P.C. registered as an FIR. The word "otherwise" in Section 157 Cr.P.C. clearly indicates that recording of an FIR is not a condition precedent to initiation of investigation. The very fact that the police have a power of investigation independent of registration of an FIR is a clear pointer to the legislative intent that a police officer is not bound to register an FIR in each and every case.

75. Mr. Naphade relied on the case of *Apren Joseph alias current Kunjukunju and Others v. State of Kerala* 1973 (3) SCC 114 wherein in para 11 this Court has held that recording of an FIR is not a condition precedent for setting in motion criminal investigation. In doing so, this Court has approved the

observation of Privy Council made in the case of *Khwaja Nazim Ahmad* (supra).

76. Mere recording of an FIR under Section 154 Cr.P.C. is of no consequence unless the alleged offence is investigated into. For the purpose of investigation after registration of the FIR, the police officer must have reason to suspect commission of an offence. Despite registration of the FIR, the police officer may not have a reasonable ground to suspect that an offence has been committed and in that situation he may decline to carry out investigation and may come to the conclusion that there is no sufficient ground for carrying out investigation. If under the proviso (b) to Section 157 Cr.P.C. the police officer has such discretion of not investigating, then it stands to reason that registration of an FIR should not result into an empty formality.

77. The registration of an FIR should be effective and it can be effective only if further investigation is to be carried out and further investigation can be carried out only if the police officer has reasonable ground to suspect that the offence is committed. If, therefore, there is no reasonable ground to suspect the commission of cognizable offence, the police officer will not investigate and if that is a situation, then on the same footing he may decline to register the FIR. This is clearly implicit in the provisions of Section 154(1). It is, submitted that if the provisions of Section 154 are read with Sections 41,57,156,157,159,167,190,200 and 202 Cr.P.C., the only possible conclusion is that a police officer is not bound to register each and every case.

78. Mr. Naphade placed reliance on *State of Maharashtra and Others v. Sarangdharsingh Shivdassingh Chavan and Another* (2011) 1 SCC 577 wherein in paragraphs 29 and 30, this Court has observed as follows:-

"29. The legal position is well settled that on information being lodged with the police and if the said information discloses the commission of a cognizable offence, the

police shall record the same in accordance with the provisions contained under Section 154 of the Criminal Procedure Code. The police officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 of the Code. Thus the police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence.

30. This is subject to provisos (*a*) and (*b*) to Section 157 of the Code which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-in-charge that there does not exist sufficient ground, he shall not investigate. This legal framework is a very vital component of the rule of law in order to ensure prompt investigation in cognizable cases and to maintain law and order."

79. He submitted that if the police officer is of the opinion that the complaint is not credible and yet he is required to register the FIR, then he would be justified in not investigating the case. In such a case the FIR would become a useless lumber and a dead letter. The police officer would then submit a closure report to the Magistrate. The Magistrate then would issue notice to the complainant and hear him. If the Magistrate is of the opinion that there is a case, then he may direct police to investigate.

80. Mr. Napahde submitted that the aforesaid analysis of various provisions of Criminal Procedure Code clearly bring out that the statutory provisions clearly maintain a balance between the rights of a complainant and of the Society to have a wrongdoer being brought to book and the rights of the accused against baseless allegations.

81. The provisions have also to be read in the light of the principle of malicious prosecution and the fundamental rights guaranteed under Articles 14, 19 and 21. Every citizen has a right not to be subjected to malicious prosecution and every police officer has an in-built duty under Section 154 to ensure that an innocent person is not falsely implicated in a criminal case. If despite the fact that the police officer is not prima facie satisfied as regards commission of a cognizable offence, and proceeds to register an FIR and carry out investigation and thereby putting the liberty of a citizen in jeopardy, he would expose himself to the charge of malicious prosecution and against the charge of malicious prosecution the doctrine of sovereign immunity will not protect him. There is no law protecting a police officer who takes part in the malicious prosecution.

82. Mr. Naphade also submitted that the word "shall" used in the statute does not always mean absence of any discretion in the matter.

83. The word "shall" does not necessarily lead to provision being imperative or mandatory.

84. The use of word "shall" raises a presumption that the particular provision is imperative. But, this presumption may be rebutted by other considerations such as, object and scope of the enactment and other consequences flowing from such construction. There are numerous cases where the word "shall" has, therefore, been construed as merely directory.

85. In the case of *Sainik Motors, Jodhpur and Others v. State of Rajasthan* AIR 1961 SC 1480, Hidayatullah, J. has held that the word "shall" is ordinarily mandatory, but it is sometimes not so interpreted if the context of intention otherwise demands.

86. Further, Subba Rao, J. in the case of *State of Uttar Pradesh and Others v. Babu Ram Upadhya* AIR 1961 SC 751, has observed that when the statute uses the word "shall"

prima facie it is mandatory, but the Court may ascertain the real intention of the legislature carefully attending to the whole scope of the statute.

87. In the case of *State of Madhya Pradesh v. M/s Azad Bharat Finance Co. and Another* AIR 1967 SC 276 it has been held that the word "shall" does not always mean that the provision is obligatory or mandatory. It depends upon the context in which the word "shall" occur and the other circumstances.

88. In the case of *Shivjee Singh* (supra) it has been held that the use of word "shall" in proviso to Section 202 (2) of Cr.P.C. prima facie is indicative of mandatory character of the provision contained therein. But, a close and critical analysis thereof along with other provisions show that the same is not mandatory. Further, it has been observed that by its very nomenclature, Cr.P.C. is a compendium of law relating to criminal procedure. The provisions contained therein are required to be interpreted keeping in view the well recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of procedural provisions does not result in denial of a fair hearing or causes prejudice to the party, the same has to be treated as directly notwithstanding the use of the word "shall".

89. In *P.T. Rajan* (supra), this Court has discussed the principles as to whether a statute is mandatory or directory. The Court has observed that a statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the use of the word "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve. It has further been held that a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. The analysis of various provisions of Cr.P.C. clearly shows that no prejudice is caused if police officer does not

register an FIR. The complainant has effective remedies under Sections 154(3), 156, 190 Cr.P.C. etc.

90. Mr. Naphade, the learned senior counsel submitted that it is impossible to put the provisions of Section 154 Cr.P.C. in any straight jacket formula. However, some guidelines can be framed as regards registration or non-registration of an FIR. According to him, some such guidelines are as follows:-

1. Normally in the ordinary course a police officer should record an FIR, if the complaint discloses a cognizable offence. However, in exceptional cases where the police officer has reason to suspect that the complaint is motivated on account of personal or political rivalry, he may defer recording of the FIR, and take a decision after preliminary enquiry.

2. In case of complaints which are a result of vendetta like complaints under Section 498A Cr.P.C. (IPC), the police officer should be slow in recording an FIR and he should record an FIR only if he finds a prima facie case.

3. The police officer may also defer recording of an FIR if he feels that the complainant is acting under a mistaken belief.

4. The police officer may also defer registering an FIR if he finds that the facts stated in the complaint are complex and complicated, as would be in respect of some offences having financial contents like criminal breach of trust, cheating etc.

91. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant deferment of an FIR.

92. The second aspect of the matter is what test should the police officer take in case he is of the opinion that

registration of an FIR should be deferred. He suggested the following measures :-

1. The police officer must record the complaint in the Station/General Diary. This will ensure that there is no scope for manipulation and if subsequently he decides to register an FIR, the entry in Station/ General Diary should be considered as the FIR.

2. He should immediately report the matter to the superior police officer and convey him his reasons or apprehensions and take his permission for deferring the registration. A brief note of this should be recorded in the station diary.

3. The police officer should disclose to the complainant that he is deferring registration of the FIR and call upon him to comply with such requisitions the police officer feels necessary to satisfy himself about the prima facie credibility of the complaint. The police officer should record this in the station diary. All this is necessary to avoid any charge as regard to the delay in recording the FIR. It is a settled law that a mere delay in registering an FIR is not harmful if there are adequate reasons to explain the delay in filing an FIR.

93. According to him, in the light of the above discussion in respect of the impact of Article 21 on statutory provisions, it must be held that Section 154 of Cr.P.C. must be interpreted in the light of Article 21. The requirement of Article 21 is that the procedure should be just and fair. If, therefore, the police officer himself has doubts in the matter, it is imperative that he should have the discretion of holding a preliminary inquiry in the matter. If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness.

94. Learned counsel appearing for the State of Tamil Nadu adopted the arguments submitted by Mr. Naphade, the learned senior counsel for Maharashtra and submitted that ordinarily a police officer has to register an FIR when a cognizable offence is made out, but in exceptional cases he must have some discretion or latitude of conducting some kind of preliminary inquiry before recording of the FIR.

95. Learned counsel for the parties have drawn our attention to two sets of cases decided by this Court expressing totally divergent judicial opinions. We deem it appropriate to briefly summarise them in the following paragraphs.

96. This Court in the case of *Bhajan Lal and Others* (supra), *Ramesh Kumari* (supra), *Parkash Singh Badal and Another v. State of Punjab and Others* (2007) 1 SCC 1 and *Aleque Padamsee and Others* (supra) held that if a complaint alleging commission of cognizable offence is received in the Police Station, then the S.H.O. has no option but to register an F.I.R. under Section 154 Cr.P.C..

97. On the other hand, this Court in following cases, namely, *Rajinder Singh Katoch* (supra), *P. Sirajuddin etc. v. State of Madras etc.* 1970 (1) SCC 595, *Bhagwant Kishore Joshi* (supra), *Sevi and Another etc. v. State of Tamil Nadu and Another* 1981 (Suppl.) SCC 43 have taken contrary view and held that before registering the FIR under Section 154 of Cr.P.C., it is open to the SHO to hold a preliminary enquiry to ascertain whether there is a prima facie case of commission of cognizable offence or not.

98. We deem it appropriate to give a brief ratio of these cases.

99. In *Bhajan Lal* (supra), this Court observed as under:-

"It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements

of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

100. In *Ramesh Kumari* (supra), this Court observed that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence.

101. In *Parkash Singh Badal* (supra), this Court observed as under:-

"It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

102. In *Aleque Padamsee* (supra), this Court observed as under :-

"The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out."

103. There is another set of cases where this Court has taken contrary view.

104. In *Rajinder Singh Katoch* (supra), this Court observed as under:-

"We are not oblivious to the decision of this Court in *Ramesh Kumari v. State (NCT of Delhi)* wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police

officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

105. In *Bhagwant Kishore Joshi* (supra), Mudholkar, J. in his concurring judgment has observed as under:-

"I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it."

106. In *P. Sirajuddin etc.* (supra), this Court quoted the observations of the High Court as under:-

"(*a*) "substantial information and evidence had been gathered before the so-called first information report was registered"."

107. In *Sevi and Another* (supra), this Court observed as under:-

"If he was not satisfied with the information given by PW 10 that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any FIR."

108. It is quite evident from the ratio laid down in the aforementioned cases that different Benches of this Court have taken divergent views in different cases. In this case also after this Court's notice, the Union of India, the States and the Union Territories have also taken or expressed divergent views about the interpretation of Section 154 Cr.P.C.

109. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue whether under Section 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made

out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR.

110. Learned counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of *Santosh Kumar* (supra) and *Dr. Suresh Gupta* (supra) where preliminary enquiry had been postulated before registering an FIR.

111. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR. The issue which has arisen for consideration in these cases is of great public importance.

112. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned – the courts, the investigating agencies and the citizens.

113. Consequently, we request Hon'ble the Chief Justice to refer these matters to a Constitution Bench of at least five Judges of this Court for an authoritative judgment.

R.P. Matters referred to Constitution Bench.

"IN RE : NETWORKING OF RIVERS"
(Writ Petition (Civil) No. 512 of 2002)

FEBRUARY 27, 2012

[S.H. KAPADIA, CJI, A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

CONSTITUTION OF INDIA, 1950:

Art. 32 - Writ petitions seeking directions to Central and State Governments for effective management of water by nationalisation and inter-linking of rivers - Held: Government of India has framed National Water Policy - Further, a National Perspective Plan has been formulated for optimum utilization of water resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit areas - River linking plan in its ultimate stage of development will also enable flood moderation - 30 links have been identified - Huge amounts of public money have been spent - These projects are to be completed with a sense of sincerity and a desire for its completion - Keeping in view the relative economic and social needs of interested States, volume of stream and its uses, land not watered, and other relevant considerations, it will be for the expert bodies alone to examine on such issues and their impact on the project - Courts have their limitations to undertake such an exercise within the scope of its power of judicial review and even on the basis of expanded principles of public interest litigation - It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter-linking of rivers program for the benefit of the nation as a whole - Union of India directed to constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' with the composition as suggested in the judgment - The Committee so constituted shall take such steps as specified in the judgment and submit reports to the

Cabinet of the Government of India - Central and the State Governments concerned directed to comply with the directions contained in the judgment effectively and expeditiously - Inter-State Water Disputes Act, 1956 - River Boards Act, 1956 - Public interest litigation - Judicial review - Sepration of powers.

Art. 262, Seventh Schedule, List I, Entries 56, and 97, List II, Entry 17 and List III, Entry 20 - Adjudication of disputes relating to waters of inter-State rivers - Inter-linking of rivers - Held: By and large, there is unanimity in accepting interlinking of rivers but the reservations of the States concerned can also not be ignored, being relatable to their particular economic, geographical and socio-economic needs - These are matters which squarely fall within the domain of general consensus and, thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution - By virtue of Art. 262 read with Entries 56 and 97 of List I Entry 17 of List II and Entry 20 of List III, Parliament gets wide field of legislation relatable to various subjects, including regulation and development of inter-State rivers and to create adjudicatory mechanism.

In the instant writ petitions filed in public interest, directions were sought against the Central Government and the State Governments concerned for effective management of water resources by nationalization and interlinking of rivers in the country. Notice was issued to all the States and the Attorney General for India inviting their stance on the issue of networking of rivers. On 31.10.2002, the Court recorded that there was, in principle, consensus amongst all the States to go ahead with the project of interlinking of rivers. A high level Task Force was set up. Feasibility Reports (FRs) were prepared for the intended links. A total number of 30 links were identified: 16 under the peninsular river development component and 14 under the Himalayan river development component. FRs of 16 links were placed on

the website. The status report filed on behalf of the Government of India showed that a committee of environmentalists, social activists and other experts would be constituted to be involved in the consultative process of formulation and execution of the entire project. The status reports filed from time to time were considered by the Court.

Disposing of the writ petitions, connected IAs and the contempt petitions, the Court

HELD: 1.1 The Government of India has always shown considerable concern regarding the management of water resources in the country and had framed, for this purpose, the National Water Policy, which seeks to make available water supply to those areas which face shortages. This aspect of the matter could be effectively dealt with, only if the various rivers in the country are linked and are nationalized. The Ministry of Irrigation, along with the Central Water Commission, had formulated in the year 1980 a National Perspective Plan (NPP) for optimum utilization of water resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit areas. Apart from diverting water from rivers which are surplus, to deficit areas, the river linking plan in its ultimate stage of development will also enable flood moderation. [para 8-9] [1130-E-H; 1131-A-B]

1.2 It is significant to notice that till date no minor or major project has been actually implemented at the ground level despite the fact that this case has been pending before this Court for more than ten years. Only the DPR of the Ken-Betwa link has been prepared and its implementation is awaiting the approval of the State Governments as well as the allocation of funds, even to begin the work. This does not speak well of the desire on the part of any of the concerned Governments to implement these projects, despite the fact that there is

unanimity of views among all that this project is in the national interest. Though, it is not difficult to visualize the difficulties in preparation, execution, financing and consensus building, still, it is the need of the hour to carry out these projects more effectively and with greater sensitivity. [paras 26 and 34] [1138-F-H; 1139-A; 1141-B]

1.3 The National Council for Applied Economic Research (NCAER) report clearly opines that interlinking of river projects will prove fruitful for the nation as a whole and would serve a greater purpose by allowing higher returns from the agricultural sector for the benefit of the entire economy. This would also result in providing of varied benefits like control of floods, providing water to drought-prone States, providing water to a larger part of agricultural land and even power generation. However, when coming to the financial aspect of the programme, two concepts are of great relevance: firstly, the investment strain and secondly, the scope of financial investment and its recoupment. Primarily, it is clear from the records that this is a programme/project on which the nation and the States should have a rational but liberal approach for financial investment. [para 39 and 43] [1142-E; 1143-A-B]

1.4 From the facts, recommendations, and principles, it is clear that primarily there is unanimity between all authorities concerned including the Centre and a majority of the State Governments that implementation of river linking will be very beneficial. In fact, the expert opinions convincingly dispel all other impressions. There shall be greater growth in agricultural and allied sectors, prosperity and stimulus to the economy potentially causing increase in per capita income, in addition to the short and long term benefits likely to accrue by such implementation. These would accrue if the expert recommendations are implemented properly and within a timeframe. Then there shall be hardly any financial

strain on the economy. On the contrary, such implementation would help advancement of India's GDP and bring greater wealth and prosperity to the nation as a whole. Besides actual benefits accruing to the common man, the Governments also benefit from the definite possibility of saving the States from drought on the one hand and floods on the other. This project, when it becomes a reality, will provide immeasurable benefits. There is no reason as to why the Governments should not take appropriate and timely interest in the execution of this project, particularly when, in the various affidavits filed by the Central and the State Governments, it has been affirmed that the governments are very keen to implement this project with great sincerity and effectiveness. [para 47] [1148-F-H; 1149-A-C]

2.1. The stand taken by the respective States shows that, by and large, there is unanimity in accepting interlinking of rivers but the reservations of these States can also not be ignored, being relatable to their particular economic, geographical and socio-economic needs. These are matters which squarely fall within the domain of general consensus and thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution. However, the national interest must take precedence over the interest of the individual States. The State Governments are expected to view national problems with a greater objectivity, rationality and spirit of service to the nation and ill-founded objections may result in greater harm, not only to the neighbouring States but also to the nation at large. [para 50 and 52] [para 51] [1149-H; 1150-A-F]

2.2 Under Article 262, Parliament, by law, can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of water of any inter-state river or river valley. Further, Parliament

may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint as referred to in Article 262(1). Thus, Parliament can reserve to itself, the power to oust the jurisdiction of the courts, including the highest Court of the land, in relation to a water dispute as stated under this Article. The jurisdiction of the Court will be ousted only with regard to the adjudication of the dispute and not all matters incidental thereto. Once a specific adjudicatory mechanism is created, that machinery comes into operation with the creation of the Tribunal and probably, then alone will the Court's jurisdiction be ousted. [para 53-55] [1151-A-C-D-G]

Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India & Ors., **1990 (3) SCR 83 = AIR 1990 SC 1316 - relied on.**

2.3 Entry 56 of List I empowers Parliament to enact laws in relation to the regulation and development of inter-State rivers and river valleys, to the extent that such regulation and development is declared by Parliament, by law, to be expedient in the public interest. Entry 17 relates to water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I. Entry 20 of List III deals with economic and social planning. Thus, with the aid of the residual powers under Entry 97, List I, Parliament gets a very wide field of legislation, relatable to various subjects. [para 56-57] [1152-B-C, E]

3.1. Coordination is required to be generated at all levels to implement the inter-linking of rivers program, as proposed. Huge amounts of public money have been spent, at the planning stage itself and it will be travesty of good governance and the epitome of harm to public

interest, if these projects are not carried forward with a sense of sincerity and a desire for its completion. [para 59] [1152-H; 1153-A]

State of Karnataka v. State of Andhra Pradesh & Ors. **2000 (3) SCR 301 = (2000) 9 SCC 572 - relied on.**

3.2. A greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter se on the other. It will be very difficult for the courts to undertake such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of public interest litigation. A public interest litigation before this Court has to fall within the contours of constitutional law, as no jurisdiction is wider than this Court's constitutional jurisdiction under Article 32 of the Constitution. [para 62] [1153-H]

3.3. The tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction of river linking channels under that program essentially should be left for the Central Government and the States concerned. Such an attempt by the Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal. The requirements in the instant case have different dimensions. The planning, acquisition, financing, pricing, civil construction, environmental issues involved are policy decisions affecting the legislative competence and would squarely fall in the domain of the Government of States and Centre. Keeping in view the relative economic and social needs of interested states, volume of stream and its uses, land not watered, and other relevant considerations, it will be for the expert bodies alone to examine on such

issues and their impact on the project. [para 51 and 62] [1154-B-E; 1150-E]

3.4. This Court would recommend that these projects are in the national interest, as is the unanimous view of all experts, most State Governments and particularly, the Central Government. But this Court may not be a very appropriate forum for planning and implementation of such a programme having wide national dimensions and ramifications. It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for the benefit of the nation as a whole. [para 63] [1154-F-H]

3.5. Union of India and, particularly, the Ministry of Water Resources, Government of India, is directed to forthwith constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' with the composition as suggested in the judgment. The Committee so constituted shall take such steps as specified in the judgment and submit reports to the Cabinet of the Government of India. [para 64] [1155-A-B]

3.6. The Central and the State Governments concerned are directed to comply with the directions contained in the judgment effectively and expeditiously and without default. This is a matter of national benefit and progress. There is no reason why any State should lag behind in contributing its bit to bring the Inter-linking River Program to a success, thus saving the people living in drought-prone zones from hunger and people living in flood-prone areas from the destruction caused by floods. [para 65] [1159-E-F]

Case Law Reference:

1990 (3) SCR 83	**relied on**	**para 54**
2000 (3) SCR 301	**relied on**	**para 59**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 512 of 2002.

Under Article 32 of the Constitution of India.

WITH

Writ Petition (C) No. 668 of 2002.

A. Mariarputham, Ranjit Kumar (Amicus Curiae), R.S. Suri, T.S. Doabia, R.S. Khosla, Sr. AAG, S. Gurukrishna Kumar, Dr. Manish Singhvi, AAG, Nikhil Nayyar (Amicus Curiae), Sudarsh Menon, Sanjay R. Hegde, A. Subhashini, CHadra Prakash Pandey, G. Prakash, Gopal Singh, Ravi Bhushan, Manish Kumar, Gopal Singh, Rituraj Biswas, Guntur Prabhakar, Hemantika Wahi, Rojalin Pradhan, Manik Karanjawala, Naresh K. Sharma, Tara Chandra Sharma, Kuldip Singh, R.K. Pandey, H.S. Sandhu, Mohit Mudgil, Jagjit Chhabra, Ashok K. Mahajan, G. Umapathy, B. Balaji, R. Ayyam Perumal, Shreekant N. Terdal, Ranjan Mukherjee, S.C. Ghose, S. Bhowmick, Ramesh Babu M.R., Shekhar Prasad Gupta, D. Bharathi Reddy, Vikas Upadhyay, B.S. Banthia, Khwairakpam Nobin Singh, Sapam Biswajit Meitei, Shankar Chillarge, Asha Gopalan Nair, Soumitra G. Chaudhuri, B.P. Yadav, Anima Kujur, Sampa Sengupta, Abhijit Sengupta, Sumita Hazarika, Alok Gupta, Abhinav Ramakrishnan, Milind Kumar, Devanshu K. Devesh, Irshad Ahmad, G.N. Reddy, R. Nedumaran, D.N. Goboursdhan, Prabal Bagchi, Shiv Kant Arora, Atin Shanker Rastogi, Abhishek Agarwal, Sheil Mohini Sethi, Navneet Kumar, Riku Sarma (for Corporate Law Group), Anil Shrivastav, K.N. Madhusoodhanan, R. Sathish, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha (for Rajesh Srivastava), Pradeep Misra, Amit Singh, Kamlendra Mishra, Aruna Mathur, Yusuf Khan, Kaustubh Sinha, D.D. Kamat, S.W.A. Qadri, D.K. Thakur, D.S. Mahra, Rupansh Purohit, Manjit Singh, Kamal Mohan Gupta, Edward Belho, C.M. Kennedy, K. Enatoli Sema, Amit Kumar Singh, Pardeep Kumar Rapria, Ramesh K. Mishra, Prashant Bhushan, Bhavanishankar V. Gadnis, B. Sunita Rao,

C.K. Sucharita, Runi Chanda, Anisha Panicker, Rachana Srivastava, Ruchi Daga for the appearing parties.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. Nearly ten years back, the petitioner in Writ Petition (Civil) No. 668 of 2002, a practicing advocate, instituted the petition based on some study that there was a need to conserve water and properly utilize the available resources. Thus, the present petition has been instituted with the following prayers:-

"a. Issue an appropriate writ order or direction, more particularly a writ in the nature of Mandamus directing the respondent no. 1 to take appropriate steps/action to nationalize all the rivers in the country.

b. Issue an appropriate writ order or direction, more particularly a writ in the nature of Mandamus, directing the respondent No. 1 to take appropriate steps/action to inter link the rivers in the southern peninsula namely, Ganga, Kaveri, Vaigai and Tambaravani.

c. Issue an appropriate writ order or direction in the nature of mandamus directing the respondents to formulate a scheme whereby the water from the west flowing rivers could be channelized and equitably distributed."

2. The above directions were sought by the petitioner against the Central Government as well as against various State Governments, for effective management of the water resources in the country by nationalization and inter-linking of rivers from Ganga - Cauveri, Vaigai-Tambaravarmi up to Cape Kumari. According to him, as early as in 1834, Sir Arthur Cotton, who had constructed the Godavari and Krishna dams, suggested a plan called the 'Arthur Cotton Scheme' to link the

Ganga and Cauveri rivers. In 1930, Sir C.P. Ramaswamy Aiyar also suggested and supported such a scheme. Thereafter, various political leaders of the country have supported the cause; but no such schemes have actually been implemented. It is the case of the petitioner that the Inter-State Water Disputes Act, 1956 (for short 'the Act') and the River Boards Act, 1956 were enacted by the Parliament under Article 262 read with Entry 56 of List-I of the Seventh Schedule to the Constitution of India, 1950 (hereafter, 'the Constitution'). Due to reluctance of water-rich States, the National Water Development Agency (hereafter, 'nwda') has not been allowed to undertake detailed survey and it is argued that only by nationalization of the rivers, by the Government of India, this problem can be resolved to some extent. The petitioner had filed a writ before the High Court of Judicature at Madras, being Writ Petition No. 6207 of 1983, praying for various reliefs. This Writ Petition was disposed of without any effective orders by the High Court. Persisting with his effort, the petitioner earlier filed writ petitions before this Court, being Writ Petition (C) No. 75 of 1998 and Writ Petition (C) no. 15 of 1999, praying inter alia for nationalized navigation and inter-linking of all the rivers in the country.

3. We must notice, to put the records straight, that on 29th September, 1994, a Bench of this Court took suo motu notice of a write-up that had appeared in the Hindustan Times newspaper, dated 18th July, 1994, titled "And quiet flows the maili Yamuna". Notice was issued to the Central Pollution Control Board, Municipal Corporation of Delhi, Irrigation and Flood Department of the Government of India, National Capital Territory of Delhi and the Delhi Administration. Since then, the writ petition is being continuously monitored by this Court, till date. During the pendency of this writ petition, I.A. No. 27 came to be filed, wherein the learned Amicus Curiae in that case referred to the address of Dr. A.P.J. Abdul Kalam, the then President of India, on the eve of the Independence Day. This, inter alia, related to creating a network between various rivers

in the country, with a view to deal with the paradoxical situation of floods in one part of the country and droughts in other parts. In other words, it related to the inter-linking of rivers and taking of other water management measures. On 16th September, 2002, this Court, while considering the said I.A., directed that the application be treated as an independent writ petition and issued notice to the various State Governments as well as the Attorney General for India and passed the following order:-

> "Based on the speech of the President on the Independence Day Eve relating to the need of networking of the rivers because of the paradoxical phenomenon of flood in one part of the country while some other parts face drought at the same time, the present application is filed. It will be more appropriate to treat to treat it as independent Public Interest Litigation with the cause title "IN RE : NETWORKING OF RIVERS -- v. ---" Amended cause title be filed within a week.
>
> Issue notice returnable on 30th September, 2002 to the respondents as well as to the Attorney General.
>
> Serve notice on the standing counsel of the respective States.
>
> Dasti service, in addition, is permitted."

4. This is how I.A. No. 27 in Writ Petition (Civil) No. 725 of 1994 was converted into Writ Petition (Civil) No. 512 of 2002. The Writ Petition (Civil) No. 512 of 2002 was taken up for hearing and notice was issued to all the States, inviting affidavits regarding their stance on the issue of networking of rivers.

5. In view of the above order, the petitioner in Writ Petition (Civil) No. 668 of 2002 withdrew Writ Petition (C) No. 75 of 1998 as well as Writ Petition (C) 15 of 1999, which leave was granted by this Court.

6. As already discussed above, the petitioner had filed Writ Petition (Civil) No. 668 of 2002 with somewhat similar prayers as contained in I.A. No. 27. In that writ petition, the petitioner has averred that no prayer with regard to inter linking of rivers covering the southern part of the Peninsular Region had been claimed and it was also his contention that the southern part was most drought prone and had been witnessing more inter-state water disputes. Thus, he had filed Writ Petition (Civil) No. 668 of 2002 and prayers made therein were liable to be allowed.

7. In the present case, we are concerned with Writ Petition (C) No.668 of 2002, Writ Petition (C) No. 512 of 2002 as well as the I.A.s and the contempt petitions filed in these two petitions. Accordingly, this order shall dispose of all these matters but we make it clear that presently, we are not dealing with Writ Petition (C) No. 725 of 1994.

8. It has also been averred by the petitioners and the intervenors in these petitions that the need to conserve water resources and assuring their optimum consumption can be seen from the steps taken in this regard, not only by the developed countries but also by developing and under-developed countries. The Government of India has always shown considerable concern regarding the management of water resources in the country and had framed, for this purpose, the National Water Policy which is being updated on a yearly basis. The National Water Policy seeks to make available water supply to those areas which face shortages. This aspect of the matter could be effectively dealt with, only if the various rivers in the country are linked and are nationalized. This has been a matter of public debate and discussion for a considerable time and still continues to be so, without showing any reflection of ground reality.

9. The Ministry of Irrigation, along with the Central Water Commission, had formulated in the year 1980 a National Perspective Plan (NPP) for optimum utilization of water

resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit areas. Apart from diverting water from rivers which are surplus, to deficit areas, the river linking plan in its ultimate stage of development will also enable flood moderation. It was comprised of two components: Peninsular Rivers Development and Himalayan Rivers Development. The first involved major inter-linking of the river systems and the latter envisaged the construction of storage reservoirs on the principal tributaries of rivers Ganga and Brahmaputra in India, Bhutan and Nepal. This was to help transfer surplus flows of the eastern tributaries of the Ganga to the West, apart from linking the main Brahmaputra and its tributaries with the Ganga and Mahanadi rivers. The scheme is divided into four major parts:

(i) Interlinking of Mahanadi-Godavari-Krishna-Cauvery rivers and building storages at potential sites in these basins.

(ii) Interlinking of West flowing rivers north of Bombay and south of Tapi.

(iii) Interlinking of rivers Ken & Chambal.

(iv) Diversion of other west flowing rivers from Kerala.

10. The petitioners have also made several suggestions which have been appreciated by the competent authorities on consideration. It is emphasized that the cost is negligible when compared to the potential benefits which may be bestowed on the nation. The petitioners rely upon Article 262 of the Constitution, read along with Entry 17, List II and Entry 56 of List I of the Seventh Schedule to the Constitution to substantiate their submissions. Finally, the petitioners submit that the preservation of water resources is a part of the right to life and livelihood, enshrined in Article 21 of the Constitution and that the Central Government should take immediate and urgent steps to nationalize the rivers, so that equitable and proper

distribution of water can be ensured for the betterment of the population. According to them, the Central Government should also adopt all necessary measures, both scientifically and naturally, to increase the usable water resources and to preserve whatever resources the Union of India has already been naturally gifted with.

11. As a result and because of the inaction on the part of the Central Government and the State Governments, it is submitted that grant of the reliefs as prayed for in the writ petition would be in consonance with the constitutional spirit and in the larger public interest.

12. The learned Amicus Curiae, who had been pursuing this public cause for a number of years, in furtherance to the request of this Court, has also submitted a detailed note with regard to the background and summary of the proceedings in these petitions.

13. As per the learned Amicus Curiae, on 14th August, 2002, the then President of India, Dr. APJ Abdul Kalam, in his address to the nation on the eve of Independence Day, had observed that the need of the hour was the creation of a Water Mission which, inter alia, would look into the question of networking of rivers with a view to deal with the paradoxical situation of floods in one part of the country and drought in the other. Based on this and as afore-recorded, a notice was issued, on 16th September, 2002, to the States and the Attorney General for India as respondents. In response to the said notice, none of the States or Union Territories, except the State of Tamil Nadu, had filed affidavits supporting/opposing the prayers made in the writ petition. The time for filing of affidavits was again extended up to 30th September, 2002, but no further affidavits were received by that time.

14. The learned then Attorney General for India, on behalf of the Union of India, stated that the Government had accepted the concept of interlinking of rivers and a High Powered Task

Force would be formed. Therefore, this Court, vide Order dated 31st October, 2002, recorded that there is in-principle consensus amongst all States to go ahead with the project of interlinking of rivers.

15. Vide Order dated 30th August, 2004, it was noticed by this Court that, though there had been a change in the Government, the then Solicitor General, appearing for the Government, informed this Court that a decision had been taken, in principle, to continue with interlinking of rivers.

16. A high level Task Force was set up. However, vide order dated 5th May, 2003, this Court observed that inputs from other experts, in many fields, were necessary and that the Task Force was to give due consideration to such inputs. Feasibility Reports (hereafter, 'FR') were prepared for the intended links. Subsequently, vide its order dated 8th April, 2005, this Court made it absolutely clear that the orders of the Court in these respects have to be complied with in letter and spirit. The FR of all links were to be put on the website after their completion. This Court had also made observations that the prior consent of any State Government was not necessary for placing the FRs on the website and directed them to be so placed. With great persuasion and efforts, the FRs of 16 links had been placed on the website. At the request of the Amicus, the website was ordered to be made interactive so that people could submit their response thereto.

17. The status report filed on behalf of the Government of India also showed that a committee of environmentalists, social activists and other experts would be constituted to be involved in the consultative process of formulation and execution of the entire project.

18. The status reports filed, from time to time, have been considered by this Court.

19. Now, we may deal with the response of various States,

as they appear from the record before us. The response affidavits have been filed on behalf of ten States. However, the remaining States have not responded, despite the grant of repeated opportunities to do so. While the States of Rajasthan, Gujarat and Tamil Nadu have supported the concept of inter-linking of rivers, the State of Madhya Pradesh had stated that networking of rivers is a subject falling under the jurisdiction of the Central Government and the Central Government should consider the matter. The States of Karnataka, Bihar, Punjab, Assam and Sikkim have given their approval to the concept in-principle, but with definite reservations, i.e., a kind of qualified approval, arguing that the matters with regard to the environmental and financial implications, socio-economic and international aspects, such as inter-basin water transfer, need to be properly examined at the appropriate levels of the Government. For example, all the rivers in Bihar originate from Nepal and it may be necessary or desirable to take consent of neighbouring countries, is a matter which would require consideration of the appropriate authority in the Central Government. According to the State of Punjab, inter-linking of rivers should be started only from water-surplus States to States facing water deficit. The States of Assam, Sikkim and Kerala had raised their protests on the grounds that they should have exclusive right to use their water resources and that such transfer should not affect any rights of these States. The State of Sikkim was concerned with particular reference to tapping of the hydro power potential in the State and the State of Kerala entirely objected to long distance, inter-basin, water transfer.

20. The Union of India filed three different affidavits dated 25th October, 2002, 5th May, 2003 and 24th December, 2003. From these affidavits, the stand of the Union of India appears to be that networking of rivers had been considered with great seriousness even after the 1972 Rao Committee Report. Surveys and studies were underway. The 1980 National Perspective Plan of the erstwhile Ministry of Irrigation, presently the Ministry for Water Resources, envisaged inter-basin transfer

from water-surplus to deficit areas. It would have direct benefits, like the irrigation of 35 million hectares (Mha), full exploitation of existing irrigation projects of 140 Mha, power generation of 34 million Kilowatt (KW); besides the indirect benefits like flood control, navigation, water supply, fisheries, pollution control, recreation facilities, employment generation, infrastructure and socio-economic development etc. With regard to the approvals required, it is submitted that the Ministry of Environment and Forests, Union of India had given some clearances, while refusing the same in other cases. The consent of some of the States had not been received. The expected financial implication as far back as in 2002 was Rs.5,60,000 crores.

21. However, the Union of India has submitted that there is no necessity for formation of a high-powered committee as prayed for in the petitions. The high-level task force is to be set up for considering the modalities of state-wise consensus. The NWDA was set up as autonomous registered society under the aegis of Ministry of Water Resources, in new Delhi in 1992, for the purposes of preparation of FRs, conduct of water-balance and other scientific studies, etc. for Peninsular Region rivers (and for Himalayan Region rivers also, since 1990) and is headed by the Union Minister of Water Resources. The Chief Ministers and/or the Ministers and the Secretaries as their nominees for Water Resources/Irrigation of the State governments are its members. The pre-feasibility reports of all 30 identified links had been completed by the nwda.

22. The Union of India and some states have shown their concerns and their apprehensions about these projects, including questioning the reliability of water supply from distant sources, distribution of water given the existing tribunal awards and the continued availability of existing water surpluses.

23. In another affidavit, the Union of India referred to the Terms of Reference to the Task Force and the appointment of its Members. Action Plan I was prepared, which was expected

to be implemented by 2016. Out of the independent links to be pursued for discussion, the first were the links in the States of Gujarat, Maharashtra, Chattisgarh; secondly, the States of Karnataka, Madhya Pradesh, Uttar Pradesh and Rajasthan were to be included in discussions and thirdly, the States of Andhra Pradesh, Tamil Nadu and Orissa were to be invited for discussion. The Detailed Project Reports (hereafter, 'DPR') were expected to be completed by December, 2006. However, from the record, it appears that these DPRs have not been completed even till today. The scheme of inter-linking of rivers/ preparation of DPRs is stated to be under review by different groups and authorities.

24. The Union of India also intended that these project reports should encompass water sector schemes, rainwater harvesting schemes etc., as these cannot be implemented independent of the inter-linking scheme. The last of the affidavits filed on behalf of the Union of India was in December, 2003. This affidavit gives details of the States, with which a dialogue was to be held as also the details of constitution of sub-committees. The Terms of Reference of the Task Force included the approval of all links. With the intention to arrive at a general consensus, before entering into agreements, the Union of India has discussed details with Maharashtra and Gujarat and preliminary discussion has taken place with the States of Andhra Pradesh, Chattisgarh, Karnataka, Orissa, Tamil Nadu and Pondicherry. According to the Union of India, invoking the matter internationally, at this stage, was not advisable as the matter was premature. The nwda was to begin the DPR for the first link, i.e., the Ken-Betwa project, which itself was expected to take 30 months time. In this, the DPR has now been prepared; however, the implementation is yet to begin. We must notice that in all other links even the DPRs are not ready, as of now. The draft Memorandum of Understanding (hereafter, 'MoU') had been circulated for conduct of DPR of three more Peninsular links. The Standing Committee of the Parliament on Water Resources, (hereafter,

'the Standing Committee'), in its report for the year 2004-05 has commented that for the purpose of preparation of DPRs for the Ken-Betwa link and the Parbati-Kalisindh-Chambal link projects, a sum of Rs.14 crores had been earmarked, out of the total Rs.35 crores allocated for NWDA. However, the Standing Committee had been constrained to observe that, though the FR of the Ken-Betwa link was completed in November, 1996, the project was still at a nascent stage. At the time of the report in 2004-05, the basic MoU between the Governments of Uttar Pradesh and Madhya Pradesh, for preparation of DPR, still remained to be signed, on the ground that the State of Uttar Pradesh required more water to be allocated to it. They further observed that, if the Ministry of Water Resources, Government of India had set a time frame for finalization of issues like this, the precious time of eight years would not have been lost. The matter still rests at that stage. Today, though DPR has been prepared for this link alone, no link project has reached the implementation stage.

25. The report of the Standing Committee which, inter alia, had examined the river inter-linking proposal was presented to the Parliament of India on 23rd August, 2004. It was strongly recommended that the Government should take firm steps and fix a definite time frame to lay down the guidelines for completion of FRs, preparation of DPRs and completion of projects so that they may be completed and the benefits accrued within reasonable time and costs. It was the opinion of the Standing Committee that the inter-linking of Himalayan and Southern region rivers, if done within a definite schedule, would save the nation from the devastating ravages of chronic droughts and floods. The recommendations of the Standing Committee deal primarily with two kinds of States; the States having water shortage and the States having surplus water. Still, there would be a third category of States, which would be comprised of those States which have just sufficient water and therefore, do not fall in either the flood-affected or the drought-affected categories of States. The role of such States may not

be very project-related; but, their consent/concurrence is needed for complete implementation of the programme. Their role is relevant as some canal projects, linking different rivers, may pass through such States. But as already noticed, except one, no other DPR has so far been finalized and in fact, none put into implementation. Thus, this question would remain open and has to be examined at the appropriate stage by the competent forum.

Projection of Status Reports:-

26. Different Status Reports have been filed in this case. The last of the Status Reports have been filed by the Union of India on 18th March, 2011. It has been pointed out that the NWDA, which was to complete the task relating to preparation of FRs and DPRs of link projects, has completed 208 preliminary water-balance study of basins, sub-basins and diversion points, 74 toposheets and storage capacity studies of reservoirs, 37 toposheet studies of link alignments and 32 pre-feasibility reports of links, towards the implementation of inter-linking of rivers in the country. Based on these studies, this agency identified 30 links (16 under the peninsular river development component and 14 under the Himalayan river development component) for preparation of FRs. The process of consensus building is on-going, in regard to the feasibility of implementing other interlinking projects. These reports have shown that a significant effort and attempts have been made and the unquestionable benefits that would accrue on the implementation of the interlinking projects will be to benefit the country at large. One aspect that needs to be noticed is that, till today, no minor or major project has been actually implemented at the ground level despite the fact that this case has been pending before this Court for more than ten years. Only the DPR of the Ken-Betwa link has been prepared and its implementation is awaiting the approval of the State Governments as well as the allocation of funds, even to begin the work. This does not speak well of the desire on the part of

any of the concerned Governments to implement these projects, despite the fact that there is unanimity of views among all that this project is in the national interest.

27. The Committee of Environmentalists, Social Scientists and other Experts on inter-linking of rivers, had met after the submission of the Status Report dated 5th March, 2010. They discussed various aspects of different projects. In the Himalayan region, FRs of two remaining links were completed, i.e., the Sarda-Yamuna link and Ghagra-Yamuna Link. The field survey and investigation for Sone Dam on the southern tributaries of the Ganga link, was still in progress. The Ministry of Environment and Forests had refused permission for survey and investigation of the Manas-Sankosh-Tista-Ganga link, but the toposheet study for the alternative Jogigopa-Tista-Farakka link has been completed. In the Peninsular region, the projects relating to Bedti-Varada and netravati-Hemavati-Tapi are awaiting Karnataka Government's consent. In Netravati-Hemvati-Tapi link, the Karnataka Government has refused to consent even to the preparation of FR until decision of related cases, pending in the Courts.

28. In the Dhadun dam, relating to the Ken-Betwa link, two power houses and a link canal will be taken up in Phase I and the Betwa basin will be completed in Phase-II. Upper Betwa Sub-Basin will receive priority completion and minor projects are proposed to be completed first. Phase-II will be commenced after survey and investigation. However, this project is still at the survey and planning stage and even comprehensive clearances, from the Uttar Pradesh Government, have not been received. The State of Rajasthan refuses to consider the MoU for another priority link, Parbati-Kalisindh-Chambal, until the updation of its hydrology project.

29. Similarly, there are other projects where public hindrances are caused against carrying out of survey and investigation. In the Par-Tapi-Narmada and Damanganga-Pinjal links, residents have shown concern about the extent of

land to be submerged on the construction of the proposed dam. In response, the State Governments of Gujarat and Maharashtra have set up Committees to take up the matters with the panchayats and to commence the projects.

30. The NWDA had also, in the course of framing of its policies, proposed intra-state links. Except for six States and four Union Territories, all other States and Union Territories have interest in these intra-State links. There are eight inter-linking projects which are under review by different State authorities. However, the details of the divergence between the State Governments are not clearly spelt out, even as of now.

31. An additional study was undertaken by the National Council for Applied Economic Research (hereafter, 'ncaer') and the revised final report, published in April 2008, assessed the economic impact of the rivers interlinking program and suggested an investment roll out plan, i.e., a practical implementation schedule, for the same. A copy of this report was submitted in the year 2011, before this Court.

32. As already noticed, the Task Force was constituted by the Central Government for interlinking of river projects in December 2002. It submitted its Action Plans I and II for implementation of the project and also finalized the terms of reference for the purposes of the DPRs. Action Plan I, submitted in April 2003, envisages completion of 30 FRs by the authorities by December 2005.

33. Action Plan II, submitted in April 2004, mainly envisaged the appraisal of individual projects, in respect of their economic viability, socio-economic and environmental impacts, preparation of resettlement plans and reaching speedy consensus among States. The reports have been submitted to the Central Government and are under consideration. With this completion of work, the Task Force had completed its object and stood dissolved. After winding up of the Task Force, a Special Cell on interlinking of rivers was created under the

Ministry of Water Resources. However, what happened to the two Action Plan reports submitted by the Task Force is a matter left to the imagination of anyone.

34. From the above, it is not difficult to visualize the difficulties in preparation, execution, financing and consensus building, still, it is the need of the hour to carry out these projects more effectively and with greater sensitivity.

Economic Aspect :

35. As per the report of the Standing Committee for the year 2004-05, which was presented to the Parliament of India, the planned budgetary allocation was made under NWDA as follows :

36. Actual allocation for 2002-03 was Rs.15.30 crores, the budget estimate for 2003-04 was 20 crores, the revised estimate for the same year was Rs.21.95 crores and for 2004-05, the budget estimate was Rs.35 crores.

37. The Amicus Curiae, in his report, has noted that the new aggregated cost of the entire program varies between Rs. 4,44,331.20 crores, at 2003-04 prices, and Rs.4,34,657.13 crores, at 2003-04 prices, depending on the implementation of the proposed Manas-Sankosh-Tista-Ganga link or the Jogigopa-Tista-Farakka link respectively.

38. As already noticed, the NCAER had been assigned the work of assessing the economic impact of river interlinking programmes, which in turn, suggested an investment roll-out plan for the same. The report of the NCAER was prepared in April, 2008. This report considers various financial aspects and the impact of various river interlinking projects in India. They point out that after independence, irrigation was viewed as infrastructure for agricultural development rather than as a commercial enterprise. In 1983, the Nitin Desai Committee forwarded the idea of Internal Rate of Return (hereinafter

referred to as 'IRR'), suggesting that projects should normally earn a minimum IRR of 9 per cent. However, for drought-prone and hilly areas and in areas with only 75 per cent of dependable flows in the basin, a lower IRR of 7 per cent was recommended. Successive Finance Commissions also stressed on recovery of a certain percentage of the capital investment apart from working expenses. The Eleventh Finance Commission has recognized that this would have to be done in a gradual manner. Receipts should cover not only maintenance expenditure but also leave some surplus as return on the capital invested.

39. This NCAER report, with some significance, noticed that until 2003-04, it was only in four years that the economy grew at more than 8 per cent per annum. Each of these years coincided with very high rate of growth in the agricultural sector. In contrast, industry and services sectors have, at best, pulled up the Gross Domestic Product (GDP) growth to 7.3 per cent per annum when there was no significant contribution from the agricultural sector. The report clearly opines that interlinking of river projects will prove fruitful for the nation as a whole and would serve a greater purpose by allowing higher returns from the agricultural sector for the benefit of the entire economy. This would also result in providing of varied benefits like control of floods, providing water to drought-prone States, providing water to a larger part of agricultural land and even power generation. Besides annuring to the benefit of the country, it will also help the countries like Nepal etc., thus uplifting India's international role. Importantly, they also point out to a very important facet of interlinking of rivers, i.e., it may result in reduction of some diseases due to the supply of safe drinking water and thus serve a greater purpose for humanity.

40. The Bhakra dam has also been cited as an example in this report as having enabled the States of Punjab and Haryana to register faster growth as compared to the rest of the country. This project provided an additional irrigated area

to the extent of 6.8 million hectares over 35 years. Increased irrigation intensity led to increased usage of High Yielding Variety (HYV) seeds which at present constitute more than 90 per cent of the area under wheat and 80 per cent of area under paddy cultivation. The region uses some of the most advanced agricultural technologies in India. NCAER, while depicting the poverty ratio vis-à-vis these States and the other States all over India, has provided the following tables:

States	**Rural**		**Urban**		**All Areas**	
	1973-74	1999-00	1973-74	1999-00	1973-74	1999-00
Punjab	28.21	6.35	27.96	5.75	28.15	6.16
Haryana	34.23	8.27	40.18	10.00	35.36	8.74
All India	56.44	27.09	49.01	23.62	54.88	26.10

41. Thus, they conclude that the Bhakra Dam was instrumental in helping India achieve food security, in reducing volatility of food grain prices and declining the incidence of poverty in those regions.

42. Besides pointing out the benefits of Bhakra Dam, the NCAER Report also states that the link canals have both short and long term impacts on the economy. Short term impact of link canals is in the form of increased employment opportunities and the growth of the services sector. In the medium to long term, the major impact of link canals is through increased and assured irrigation. Although the major and direct gainers from the interlinking of rivers (ILR) programme will be agriculture and agriculture-dependant households, the entire economy will benefit because of increased agricultural production and other benefits.

43. The Report of the NCAER has pointed out various benefits of rivers interlinking programme at the State and

National levels. However, when coming to the financial aspect of the programme, two concepts are of great relevance: firstly, the investment strain and secondly, the scope of financial investment and its recoupment. Primarily, it is clear from the records before us that this is a programme/project on which the nation and the States should have a rational but liberal approach for financial investment. Referring to the financial strain, the NCAER Report projects two sets of investment rollout plan. At the start of the programme, investment would be small, but would increase gradually peaking in the year 2011-2012. It will then start falling. Investment rollout from the year 2008-2009 to 2014-2015 will have considerable strain on the Central Government finances, especially after the passage of Fiscal Responsibility and Budget Management Rules (FRBMR). The Government is now committed to reducing fiscal deficit by 0.3 percentage points of GDP every year and was to reduce the fiscal deficit down to 3 per cent of GDP by the fiscal year 2007-2008. The FRBMR also put a restriction on Government borrowings. In each subsequent financial year, the limit on borrowings of 9 per cent of GDP was to progressively reduced by at least 1 percentage point of GDP, a commitment which is to be adhered to by all Governments. The investment plan prepared by the NCAER was intended to help in clearing doubts in the minds of the people and opponents of the programme that investment is not going to take place in a single or couple of years, but over a period of at least ten years. Since the impact analysis undertaken by the NCAER assumes that the Interlinking of Rivers (ILR) programme is entirely financed by the Central Government, a longer rollout plan would also help in reducing the impact on public finances.

44. The NCAER has also suggested changes which are necessary for the effective implementation of the river networking programme. Inter alia, it includes the pricing of irrigation benefits and improvement in the quality of service. It will be useful to notice at this stage, these suggested

changes termed as 'Changes necessary' which are as under:

"A revision of water rates is necessary in the interest of efficiency. However, it should go hand in hand with improvement in the quality of service (Government of India 1992). Specific recommendations were made by the Committee on Pricing of Irrigation Water (Government of India, 1992) with regards to pricing:

1. Water rates are a form of user charges, and not a tax. Users of public irrigation must meet the cost of the irrigation service.

2. As irrigation is one of the key inputs similar to seeds and fertilizer, its pricing should be addressed in the first step.

3. Under-pricing of irrigation is mainly responsible for the deteriorating quality of irrigation services. A revision of water rates is necessary in the interest of efficiency. However, it should go hand in hand with improvement in the quality of service.

4. Rates for non-agricultural users (domestic and industrial) should also be revised so that full cost is recovered.

5. Rates should be based on O&M norms and capital charges (interest and depreciation).

6. Averaging of rates by region and/or categories of projects is desirable. Categorisation could be:

   - major and medium storage system,
   - major and medium projects based exclusively on barrages/diversion works,
   - minor surface irrigation works,

   - lift irrigation canals, and
   - lift irrigation from groundwater.

7. Distinction of rates in terms of tail and head reaches of a system, soil quality, and other criteria for rate determination should be approached with caution due to complexities involved with it.

8. Water rates should be applied on two-part tariff. All lands in command area should pay a flat annual fee on a per hectare basis for membership of the system and a variable fee linked to the actual extent of service (volume or area) used by each member.

9. The move to full-fledged volumetric pricing cannot be introduced immediately. The proposed rationalization of water pricing will have to be accomplished in three phases.

10. In the first phase, rationalization and simplification of the existing system of assessment (based on crop-wise irrigated area on an individual basis) to a system of season-specific areas rates should be taken up. The level of cost recovery to be aimed during the first phase should at least cover O&M costs and 1 per cent interest on capital employed. The irrigated area under a crop which spreads over to more than one season should be charged at the rates applicable to different seasons. However, in each season, distinction should be made between paddy, sugarcane, and perennial crops.

11. In the second phase, the aim should be on volumetric measure for irrigation water charging.

12. In third phase, the focus should be on people participation for improving water use and, thus, productivity.

13. The recommendations of the Committee on Pricing of Irrigation (also known as the Vaidynathan Committee Report) were further studied by the Group of Officers formed by the Planning Commission in October, 1992. It recommended that the irrigation water rates should cover the full annual O & M cost in phases in the next five years. These recommendations and the Vaidyanathan Committee Report were, in February 1995, sent to all the States/union territories that had started taking action with several states revising water rates upwards."

To sum up the short comings and their analysis, the report states as under :

"One shortcoming of the above analysis is that it has not considered the issue of cost of resettlement of displaced people due to ILR Project. A draft National Rehabilitation Policy was prepared with the objective of minimizing development induced displacement of people by promoting non-displacing or least displacing alternatives for meeting development objectives. The draft policy is yet to be finalized by the National Advisory Council (NAC). The NAC intends to finalise a rehabilitation package that includes, inter alia, providing land for all agricultural families, implementing special employment guarantee programmes, providing homesteads and dwelling houses, bearing transportation cost, providing training and other support services, instituting a rehabilitation grant in order to compensate loss of income/livelihood. The ILR project has to consider displacement costs on the basis of norms stipulated in the national Rehabilitation Policy as and when it gets finalized."

45. Besides making the above observations and recommendations, the NCAER also suggests that after completion of the linking of rivers programme, the different river

links should be maintained by separate river basin organizations, which would all be functioning under the direct control of the Central Water Commission or such other appropriate central body.

46. In the summing up of its Report, the NCAER has stated that water is essential for production of food, economic growth, health and support to environment. Its main contribution to economic well-being is through its use of agriculture to improve food security. Water is essential to increase agricultural productivity under modern technology. Nearly 64 per cent of the population in rural area and 4 per cent in urban area depends on agriculture as their principal source of income. The analysis carried out in the State shows that the ILR programme has the potential to increase the growth rate of agriculture, which declined from 4.4 per cent in 1980s to 3.0 per cent in 1990s and which is still susceptible to the vagaries of rainfall. In order to put our economy on the high growth path and improve the quality for life of people in the rural areas, a mixed policy of both increased availability of irrigation and increasing non-farm activity is required.

Principles Applied:

47. From the above narrated facts, stated recommendations and principles, it is clear that primarily there is unanimity between all concerned authorities including the Centre and a majority of the State Governments, with the exception of one or two, that implementation of river linking will be very beneficial. In fact, the expert opinions convincingly dispel all other impressions. There shall be greater growth in agricultural and allied sectors, prosperity and stimulus to the economy potentially causing increase in per capita income, in addition to the short and long term benefits likely to accrue by such implementation. These would accrue if the expert recommendations are implemented properly and within a timeframe. Then there shall be hardly any financial strain on

the economy. On the contrary, such implementation would help advancement of India's GDP and bring greater wealth and prosperity to the nation as a whole. Besides actual benefits accruing to the common man, the Governments also benefit from the definite possibility of saving the States from drought on the one hand and floods on the other. This project, when it becomes a reality, will provide immeasurable benefits. We see no reason as to why the Governments should not take appropriate and timely interest in the execution of this project, particularly when, in the various affidavits filed by the Central and the State Governments, it has been affirmed that the governments are very keen to implement this project with great sincerity and effectiveness.

48. The States of Rajasthan, Gujarat, Tamil Nadu have fully supported the concept. Madhya Pradesh has also supported the Scheme, but believes that it must be implemented by the Central Government. The States of Karnataka, Bihar, Punjab and Sikkim have given some qualified approvals. Their main concern is, with regard to inter basin transfer, which must involve quid pro quo, as with any other resources inter-linking must be from water surplus to water deficit States and in regard to environmental and financial implications. Some of the other States are not connected with these projects as they have no participation in inter-linking of rivers. The State of Kerala has protested to some extent, to the long distance inter basin water transfer on the basis that the State needs water to supply their intricate network of natural and man-made channels.

49. It is also the case of the State of Kerala that their rivers are monsoon-fed and not perennial in nature, therefore, Kerala experiences severe water scarcity during summer or off-monsoon months.

50. The stand taken by the respective States, as noticed above, shows that, by and large, there is unanimity in accepting interlinking of rivers but the reservations of these States can also not be ignored, being relatable to their particular economic,

geographical and socio-economic needs. These are matters which squarely fall within the domain of general consensus and thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution.

51. The National Commission for Review of the Working of the Constitution (NCRWC) 2002 in its Report also dealt with another important facet of river interlinking i.e. sharing of river waters. Explaining the doctrines of river sharing, it described Doctrine of Riparian Rights, Doctrine of Prior Appropriation, Territorial Integrity Theory, Doctrine of Territorial Sovereignty, English Common Law Principle of Riparian Right, Doctrine of Community Interest, Doctrine of Equitable Apportionment. It also explained that when determining what a reasonable and equitable share is, the factors which should be taken into consideration. In that behalf, it specifically referred to agreements, judicial decisions, awards and customs that already are in place. Furthermore, relative economic and social needs of interested states, volume of stream and its uses, land not watered were other relevant considerations. Thus, it will be for the expert bodies alone to examine on such issues and their impact on the project.

52. Be that as it may, we have no hesitation in observing that the national interest must take precedence over the interest of the individual States. The State Governments are expected to view national problems with a greater objectivity, rationality and spirit of service to the nation and ill-founded objections may result in greater harm, not only to the neighbouring States but also to the nation at large.

53. Now, we may refer to certain constitutional provisions which have bearing on the matters in issue before us. Under the constitutional scheme, there is a clear demarcation of fields of operation and jurisdiction between the Legislature, Judiciary and the Executive. The Legislature may save unto itself the power to make certain specific legislations not only governing

a field of its legislative competence as provided in the Seventh Schedule of the Constitution, but also regarding a particular dispute referable to one of the Articles itself. Article 262 of the Constitution is one of such powers. Under this Article, the Parliament, by law, can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of water of any inter-state river or river valley.

54. Article 262(2) of the Constitution opens with a non-obstante expression, that 'notwithstanding anything contained in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any dispute or complaint as referred to in Article 262(1)'. In other words, the Parliament can reserve to itself, the power to oust the jurisdiction of the courts, including the highest Court of the land, in relation to a water dispute as stated under this Article. The jurisdiction of the Court will be ousted only with regard to the adjudication of the dispute and not all matters incidental thereto. For example, the Supreme Court can certainly direct the Central Government to fulfill its statutory obligation under Section 4 of the Act, which is mandatory, without deciding any water dispute between the States. [See : *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India & Ors.,* AIR 1990 SC 1316].

55. One of the possible views taken with regard to Article 262 is that the use of expression 'may' in the Constitution does not indicate a clear legislative intent, thus, it may be possible that Section 11 of the Act could refer only to such disputes as are already referred to a Tribunal and which are outside the purview of the courts. Once a specific adjudicatory mechanism is created, that machinery comes into operation with the creation of the Tribunal and probably, then alone will the Court's jurisdiction be ousted.

56. The Seventh Schedule to the Constitution spells out

different fields of legislation under the Union List (List I), State List (List II) and Concurrent List (List III). Entry 56 of List I empowers the Union Parliament to enact laws in relation to the regulation and development of inter-state rivers and river valleys, to the extent that such regulation and development is declared by the Parliament, by law, to be expedient in the public interest. Entry 57 deals with fishing and fisheries beyond territorial waters. Entry 97 is a residual entry, which confers those legislative fields upon the Union Parliament which are not specifically provided for under List II and/or List III. Entry 17 relates to water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I. Agriculture is again a State subject. The Concurrent List (List III) does not contain any entry in regard to water and agriculture, as such.

57. Entry 42 of List III is the law relating to acquisition and requisition of property by the Union and the State Parliaments. The result is that, in relation to acquisition, the Centre and the State, both, have power to legislate. Entry 20 of List III deals with economic and social planning. Thus, with the aid of the residual powers under Entry 97, List I, the Union Parliament gets a very wide field of legislation, relatable to various subjects.

58. The River Boards Act, 1956 was enacted by the Parliament under Entry 56 of List I. The Inter-State Water Disputes Act was also enacted with reference to the same Entry. Whereas the mandate of the latter is to provide a machinery for the settlement of disputes, the former is an Act to establish Boards for the regulation and development of inter-State river basins, through advice and coordination, and thereby to reduce the friction amongst the concerned States.

59. It is this kind of coordination which is required to be generated at all levels to implement the inter-linking of rivers program, as proposed. Huge amounts of public money have been spent, at the planning stage itself and it will be travesty

of good governance and the epitome of harm to public interest, if these projects are not carried forward with a sense of sincerity and a desire for its completion.

60. In a more recent judgment of this Court in the case of *State of Karnataka v. State of Andhra Pradesh & Ors.* [(2000) 9 SCC 572], a Constitution Bench of this Court took the view that in Section 11 of the Act, the expression 'use, distribution and control of water in any river' are the key words in determination of the scope of power conferred on a Tribunal constituted under Section 3 of the Act. If a matter fell outside the scope of these three crucial words, the power of Section 11 in ousting the jurisdiction of the courts in respect of any water dispute, which is otherwise to be referred to Tribunal, would not have any manner of application. The test of maintainability of a legal action initiated by a State in a Court would thus be, whether the issues raised therein are referable to a Tribunal for adjudication of the manner of use, distribution and control of water.

61. Further, this Court while declining to issue a mandamus directing the States of Karnataka, Andhra Pradesh and Maharashtra to constitute a common Tribunal, held:

> "168. ……It is settled law that such a direction cannot possibly be granted so as to compel an authority to exercise a power which has a substantial element of discretion. In any event the mandamus to exercise a power which is legislative in character cannot be issued and I am in full agreement with the submission of Mr. Solicitor General on this score as well. At best it would only be an issue of good governance but that by itself would not mean and imply that the Union Government has executive power even to force a settlement upon the State."

62. The above stated principles clearly show that a greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter

se on the other. It will be very difficult for the Courts to undertake such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of Public Interest Litigation. A Public Interest Litigation before this Court has to fall within the contours of constitutional law, as no jurisdiction is wider than this Court's constitutional jurisdiction under Article 32 of the Constitution. The Court can hardly take unto itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction of river linking channels under that program. The Court is not equipped to take such expert decisions and they essentially should be left for the Central Government and the concerned State. Such an attempt by the Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal. The requirements in the present case have different dimensions. The planning, acquisition, financing, pricing, civil construction, environmental issues involved are policy decisions affecting the legislative competence and would squarely fall in the domain of the Government of States and Centre. We certainly should not be understood to even imply that the proposed projects of inter-linking of rivers should not be completed.

63. We would recommend, with all the judicial authority at our command, that these projects are in the national interest, as is the unanimous view of all experts, most State Governments and particularly, the Central Government. But this Court may not be a very appropriate forum for planning and implementation of such a programme having wide national dimensions and ramifications. It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for the benefit of the nation as a whole.

64. Realizing our limitations, we would finally dispose of this Public Interest Litigation with the following directions:-

(I) We direct the Union of India and particularly the Ministry of Water Resources, Government of India, to forthwith constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' (hereinafter referred as 'the Committee') of which, the following shall be the Members:-

(a) The Hon'ble Minister for Water Resources.

(b) Secretary, Ministry for Water Resources.

(c) Secretary, Ministry of Environment and Forests.

(d) Chairman, Central Water Commission.

(e) Member-Secretary, National Water Development Authority.

(f) Four experts to be nominated, one each from the following Ministries/bodies:

(i) One Expert from the Ministry of Water Resources

(ii) One Expert from the Ministry of Finance

(iii) One Expert from the Planning Commission

(iv) One Expert from the Ministry of Environment & Forests.

(g) Minister for Water and/or Irrigation from each of the concurring States, with the Principal Secretary of the concerned Department of the same State.

(h) The Chief Secretary or his nominee not below the rank of the Principal Secretary of the concerned

Department in case of any other State involved directly or indirectly in the water linking river project.

(i) Two social activists to be nominated by each of the concerned Ministries.

(j) Mr. Ranjit Kumar (Amicus Curiae).

(II) The Committee shall meet, at least, once in two months and shall maintain records of its discussion and the Minutes.

(III) In the absence of any person from such meeting, irrespective of his/her status, the meeting shall not be adjourned. If the Hon'ble Minister for Water Resources is not available, the Secretary, Ministry of Water Resources, Government of India, shall preside over the Meeting.

(IV) The Committee would be entitled to constitute such sub-committees, as it may deem necessary for the purposes of carrying on the objects of the Inter-Linking of River Program, on such terms and conditions as it may deem proper.

(V) The Committee shall submit a bi-annual report to the Cabinet of the Government of India placing before it the status-cum-progress report as well as all the decisions required to be taken in relation to all matters communicated therewith. The Cabinet shall take all final and appropriate decisions, in the interest of the countries as expeditiously as possible and preferably within thirty days from the date the matters are first placed before it for consideration.

(VI) All the reports of the expert bodies as well as the status reports filed before this Court during the pendency of this petition, shall be placed before the Committee for its consideration. Upon due analysis of the Reports and expert opinions, the Committee shall prepare its plans for implementation of the project.

(VII) The plans so prepared shall have different phases, directly relatable to the planning, implementation, construction, execution and completion of the project.

(VIII) We are informed that large sums have been spent on preparation of initial and detailed project reports of the project 'Ken-Betwa Project'. The DPR is now ready. The States of Madhya Pradesh and Uttar Pradesh and also the Central Government had already given their approval and consent. The clarifications sought will be discussed by the Committee. We would direct the Committee to take up this project for implementation at the first instance itself.

(IX) Keeping in view the expert reports, we have no hesitation in observing and directing that time is a very material factor in the effective execution of the Interlinking of Rivers project. As pointed out in the Report by NCAER and by the Standing Committee, the delay has adversely affected the financial benefits that could have accrued to the concerned parties and the people at large and is in fact now putting a financial strain on all concerned.

(X) It is directed that the Committee shall take

firm steps and fix a definite timeframe to lay down the guidelines for completion of feasibility reports or other reports and shall ensure the completion of projects so that the benefits accrue within reasonable time and cost.

(XI) At the initial stages, this program may not involve those States which have sufficient water and are not substantially involved in any inter-linking of river programme and the projects can be completed without their effective participation.

(XII) However, the Committee may involve any State for effective completion of the programme at any subsequent stage.

(XIII) There are projects where the paper work has been going for the last ten years and at substantial cost to the public exchequer. Therefore, we direct the Central and the State Governments to participate in the program and render all financial, administrative and executive help to complete these projects more effectively.

(XIV) It is evident from the record that the Reports submitted by the Task Force have not been acted upon. Thus, the entire effort put in by the Task Force has practically been of no use to the concerned governments, much less the public. The Task Force has now been wound up. Let the reports of the Task Force also be placed before the Committee which shall, without fail, take due note of the suggestions made therein and take decisions as to how the same are to be

implemented for the benefit of the public at large.

(XV) The Committee constituted under this order shall be responsible for carrying out the inter-linking program. Its decisions shall take precedence over all administrative bodies created under the orders of this Court or otherwise.

(XVI) We grant liberty to the learned Amicus Curiae to file contempt petition in this Court, in the event of default or non-compliance of the directions contained in this order.

65. We would fail in our duty if we do not place on record the appreciation for the valuable and able assistance rendered by the learned Amicus Curiae and all other senior counsel and assisting counsel appearing in the present PIL.

66. We not only express a pious hope of speedy implementation but also do hereby issue a mandamus to the Central and the State Governments concerned to comply with the directions contained in this judgment effectively and expeditiously and without default. This is a matter of national benefit and progress. We see no reason why any State should lag behind in contributing its bit to bring the Inter-linking River Program to a success, thus saving the people living in drought-prone zones from hunger and people living in flood-prone areas from the destruction caused by floods.

67. With the observations and directions recorded supra, Writ Petition (Civil) No.512 of 2002, Writ Petition (Civil) No.668 of 2002 and all the applications filed in both these writ petitions are hereby finally disposed of with no order as to costs.

R.P. Writ Petitions disposed of.

OM KR. DHANKAR

v.

STATE OF HARYANA & ANR.

(Criminal Appeal No. 464 of 2012)

FEBRUARY 28, 2012

[R.M. LODHA AND H. L. GOKHALE, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.397 - Revision - Order of Magistrate directing issuance of summons - Held: Is open to challenge under the revisional jurisdiction.

s.197 - Prosecution of public servant - Requirement of previous sanction - Held: offence of cheating u/s 420 IPC cannot be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty - Therefore, sanction of competent authority u/s 197 CrPC was not required - Trial court shall proceed as per the summoning order - Penal Code, 1860 - ss.420, 406 and 161.

The appellant, a transporter, filed a criminal complaint against respondent no. 2 alleging that the latter with mala fide intention issued directions to the Inspector not to accept passengers tax at tax collection points; that when three of the buses of the appellant were impounded and he visited the office of respondent no. 2, the latter told him that he had not paid Rs. 2 lakhs which was due towards the passengers tax and asked him to deposit the amount at his residence. The appellant paid the amount to respondent no. 2 at his residence and the buses were released. The appellant alleged that respondent no. 2 cheated him, embezzled the public money and also received illegal gratification. The trial court held that sufficient grounds existed to proceed against respondent

no. 2 to be summoned to stand trial for offences punishable u/ss 420, 406 and 161 IPC. Respondent no. 2 challenged the summoning order by filing a criminal revision which was allowed by the Addl. Sessions Judge holding that in the absence of sanction by competent authority the summoning order could not have been issued. The High Court dismissed the criminal revision filed by the appellant.

In the instant appeal filed by the complainant, the questions for considerations before the Court were: (i) whether the criminal revision petition against the order of summoning is maintainable, and (ii) whether in the facts and circumstances of the case, the sanction u/s 197 of the Code of Criminal Procedure was required.

Allowing the appeal, the Court

HELD: 1. The revisional jurisdiction u/s 397 Cr.P.C. was available to respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. [para 10] [1166-A]

Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another **1999 (1) SCR 580 = 1999 (3) SCC 134 ;** *Madhu Limaye Vs. State of Maharashtra* **1978 (1) SCR 749 = 1977 (4) SCC 551;** *V.C. Shukla Vs. State* **1980 SCR 380 = 1980 Suppl. SCC 92;** *Amar Nath Vs. State of Haryana* **1978 (1) SCR 222 = 1977 (4) SCC 137;** *K.M. Mathew Vs. State of Kerala* **1991 (2) Suppl. SCR 364 = 1992 (1) SCC 217 - relied on.**

Rakesh Kumar Mishra Vs. State of Bihar **2006 (1) SCR 124 = 2006 (1) SCC 557 - held inapplicable.**

2. In the case of Prakash Singh Badal, this Court has held that the offence of cheating u/s 420 IPC or for that matter offences relateable to ss. 467, 468, 471 and

120-B IPC can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In view of the legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority u/s 197 Cr.P.C. was required. [para 13-14] [1166-E-F; 1167-D-E]

Prakash Singh Badal and Another Vs. State of Punjab and Others **2006 (10) Suppl. SCR 197 = 2007 (1) SCC 1 - relied on.**

2.2 The orders of the High Court and the Additional Sessions Judge are set aside. The order passed by the Judicial Magistrate in the criminal complaint is restored. The trial court shall proceed against respondent No. 2 as per the summoning order. [para 15] [1167-F-G]

Case Law Reference:

1999 (1) SCR 580	**relied on**	**para 9**
1978 (1) SCR 749	**relied on**	**para 9**
1980 SCR 380	**relied on**	**para 9**
1978 (1) SCR 222	**relied on**	**para 9**
1991 (2) Suppl. SCR 364	**relied on**	**para 9**
2006 (1) SCR 124	**held inapplicable**	**para 10**
2006 (10) Suppl. SCR 197	**relied on**	**para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 464 of 2012.

From the Judgment & Order dated 17.05.2007 of the High Court of Judicature of Punjab & Haryana at Chandigarh in Criminal Revision Petition No. 1583 of 2002.

Dr. Sushil Balwada for the Appellant.

Anis Ahmed Khan, Shoaib Ahmad Khan, S.P. Singh, Chowdhari, Ramesh Kumar, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. The complainant is in appeal, by special leave, aggrieved by the order dated May 17, 2007 of the High Court of Punjab and Haryana whereby the single Judge of that Court dismissed the Criminal Revision Petition filed by the appellant and affirmed the order dated February 1, 2002 passed by the Additional Sessions Judge, Gurgaon. The Additional Sessions Judge by his order allowed the Criminal Revision filed by the present respondent No. 2 and quashed the order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon, summoning him to face trial under Sections 420, 406 and 161 of the Indian Penal Code (IPC).

3. The appellant (hereinafter referred to as 'the complainant') filed a criminal complaint against the respondent No. 2 in the court of duty Magistrate, Gurgaon. In his complaint, the complainant stated that he was a transporter and operating buses on the contract basis in the name of M/s Chaudhary Bus Service. On May 1, 2000, his two buses bearing registration Nos. DL-1P-7077 and DL-1PA-3927 were impounded. On that date, the third bus bearing registration No. DL-1PA-4007 belonging to the complainant was also impounded. The respondent No. 2 at the relevant time was working as Deputy Excise and Taxation Commissioner, Gurgaon. The complainant visited his office and enquired about the impounding of his three buses. He was told that he (complainant) had not paid the passenger taxes in respect of these three buses. The respondent No. 2 told the complainant that Rs. 2 Lakhs were due towards the passenger taxes in relation to these three

buses and asked the complainant to deposit that amount at his residence if he wanted the buses to be released. The complainant arranged Rs. 1,50,000/- and paid this amount to respondent No. 2 at his residence at about 1.45 p.m. on May 1, 2000. The respondent No. 2, according to the complainant, promised him to issue receipts from the office. The complainant visited the office of the accused at about 4 p.m., but there was no one in the office except one office clerk who told him that two buses have been released and the third bus would be released on payment of Rs. 50,000/- at the residence of the respondent No. 2. The complainant paid Rs. 50,000/- at about 9.30 p.m. at the residence of the respondent No. 2 and the third bus was also released. In the complaint, the complainant alleged that the respondent No. 2 had cheated him and the public money has been embezzled and the accused also received illegal gratification; the intention of the respondent No. 2 was malafide while issuing directions to Inspector posted at different tax collection points not to accept passengers tax at tax collection points. It was thus alleged that the accused had committed offences under Sections 420, 409 and 427 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The complainant appeared before the Magistrate in support of his complaint and examined himself. Two other witnesses were also examined on his behalf. Certain documents were also placed before the Magistrate.

5. The Magistrate vide order dated June 2, 2001 found that sufficient grounds existed to proceed against respondent No. 2 to be summoned to stand trial under Sections 420, 406 and 161 IPC.

6. The respondent No. 2 challenged the summoning order in Criminal Revision before the Sessions Judge, Gurgaon which was finally heard and disposed of by the Additional Sessions Judge, Gurgaon on February 1, 2002. The Additional Sessions Judge, *inter alia,* held that in the absence of sanction by the competent authority, the summoning order could not

have been issued. The Additional Sessions Judge, accordingly, vide order dated February 1, 2002 set aside the summoning order.

7. As noted above, the complainant challenged the order of the Additional Sessions Judge before the High Court but was not successful there.

8. The counsel for the appellant is not present. However, from the special leave petition, it transpires that two questions have been raised, namely, (one) whether Criminal Revision Petition against the order of summoning is maintainable, and (two) whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure (Cr.P.C.) is required.

9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in the case of *Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another*[1]. In *Rajendra Kumar Sitaram Pande* case (supra) this Court considered earlier decisions of this Court in the cases of *Madhu Limaye Vs. State of Maharashtra*[2], *V.C. Shukla Vs. State*[3], *Amar Nath Vs. State of Haryana*[4] *and K.M. Mathew Vs. State of Kerala*[5] and it was held as under :-

> "6... This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same...."

1. (1999) 3 SCC 134.
2. (1977) 4 SCC 551.
3. 1980 Supp.SCC 92.
4. (1977) 4 SCC 137.
5. (1992) 1 SCC .

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C. was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.

11. The second question, is whether sanction under Section 197 Cr.P.C. is mandatorily required for the prosecution of respondent No. 2 for the offences under Sections 420, 406 and 161 IPC as he happened to be Deputy Excise and Taxation Commissioner at the time of incident.

12. Mr. Anis Ahmed Khan, learned counsel for the respondent No. 2, heavily relied upon the decision of this Court in *Rakesh Kumar Mishra Vs. State of Bihar*[6] while supporting the view of the High Court.

13. In our view, the controversy with regard to the second question is concluded by the decision of this Court in *Prakash Singh Badal and Another Vs. State of Punjab and Others*[7]. *Rakesh Kumar Mishra* case (supra) was considered in *Prakash Singh Badal* case (supra) in para 49 of the report. This Court thus held that the offence of cheating under Section 420 or for that matter offences relateable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. This Court stated in paragraphs 49 and 50 of the report thus:

> "49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under Sections 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in *Rakesh Kumar Mishra case*. That decision has no relevance because ultimately this Court

6. (2006) 1 SCC 557.
7. (2007) 1 SCC 1.

has held that the absence of search warrant was intricately (*sic* linked) with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

14. In view of the above legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting the respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority under Section 197 Cr.P.C. is required. The view of the Additional Sessions Judge and the High Court is bad in law being contrary to the law laid down by this Court in *Prakash Singh Badal* case (supra). The second question is answered in the negative and in favour of the appellant.

15. As a result of the above discussion, the Appeal is allowed. The order dated May 17, 2007 of the Punjab and Haryana High Court and the order dated February 1, 2002 of the Additional Sessions Judge, Gurgaon are set aside. The order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon in the criminal complaint filed by the present appellant is restored. Trial court shall now proceed against the respondent No. 2 as per the summoning order.

R.P. Appeal allowed.

SURENDRA AND OTHERS

v.

STATE OF U.P.

(Special Leave Petitoin (Crl.) No. 2874 of 2008)

FEBRUARY 28, 2012

[R.M. LODHA AND H.L. GOKHALE, JJ.]

Penal Code, 1860:

s.302/149 - 'Common object' to cause the death - Held: Inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result - The prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to cause the death of the victim.

Four petitions in the instant special leave petitions along with another accused were prosecuted for commission of offences punishable u/ss 147, 148 and 302/149 IPC. The prosecution case was that a criminal litigation was pending between the three accused (appellants in SLP(Crl) No. 2874 of 2008) and the deceased. On the date of occurrence, they along with the accused (appellant in SLP(Crl.) No. 3354 of 2008), who was their brother-in-law, and another accused waylaid the victim and assaulted him with 'burri', knife and 'lathis', as a result of which the victim died the following day. The trial court convicted all the five accused and sentenced them to imprisonment for life u/s 302/149 IPC. Orders of conviction and sentence u/ss 147 and 148 were also passed. The appeals filed by all the five accused were dismissed.

In the instant SLPs, it was contended for the petitioners that from the injuries sustained by the deceased which cumulatively resulted in his death, it was evident that the accused did not act in prosecution of the common object to commit murder of the victim. It was further contended for the petitioner in SLP (Crl.) no. 3354 of 2008 that he was a resident of a different village and there was no enmity between the deceased and him and it could not be said that he acted in furtherance of the common object with the other accused to kill the victim.

Dismissing the special leave petitions, the Court

HELD:

In the first place, the motive for the crime has been established. There was criminal litigation pending between the deceased and accused 'S', 'N' and 'Y'. The other accused 'A' is the bother-in-law of these three accused. The enmity between the deceased and the accused party stands proved. Secondly, all the five accused were armed with deadly weapons. Accused 'S' and 'N' were armed with 'burri' and 'knife', respectively, and the other three with lathis. Accused 'S' at the time of incident, exhorted the other accused, to Kill the victim The attack by the accused party on the victim has been established to be pre-planned and pre- meditated. Thirdly, the evidence of the doctor (PW-5), who conducted the autopsy on the dead body, would show that the deceased had fractured ribs - left 9th, 10th and right 10th and both the lungs of the deceased were lacerated and were found ruptured. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. The prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful

assembly acted in furtherance of the common object to cause the death of the victim. The case of accused 'A' is not at all distinct from the case of the other accused. There is no error in consideration of the matter by the High Court. [para 13, 15 and 17] [1175-F-H; 1176-A-D-G]

Case Law Reference:

1979 (1) SCR 383	**held inapplicable**	**para 7**
1993 (2) Suppl. SCC 515	**held inapplicable**	**para 7**

CRIMINAL APPELLATE JURISDICTION : SLP (crl.) No. 2874 of 2008.

From the Judgment & Order dated 14.11.2007 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1123 of 1982.

WITH

SLP (crl.) No. 3354 of 2008.

Nagendra Rai, P.H. Parekh, Subodh Markandeya, Baldev Atreya, J.N.S. Tyagi, R.K. Rathore, Renu Tyagi Rajiv Tyagi, Rajeev . Dubey, (for Kamlendra Mishra) for the appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Five persons namely; Surendra, Narendra, Yogesh all s/o Anoop Singh, Amar Pal s/o Jagpal Singh and Anil Kumar s/o Roopchand Tyagi were tried for the murder of Ramchandra Singh under Sections 147,148,302 read with Section 149 of the Indian Penal Code, 1860 (IPC).

2. The incident occurred on May 19, 1980 at 1.30 p.m. According to the prosecution case, Ramchandra Singh (deceased) who was on his way on that day to Siana in a buffalo cart with a cement permit and some money was waylaid

by the accused persons; Surendra and Narendra were armed with burri and knife respectively and other three were having lathis with them. There was a criminal litigation pending between the deceased Ramchandra Singh and the accused Surendra, Narendra and Yogesh. These three accused are real brothers. Accused Anil Kumar happens to be their brother-in-law. Surendra, at the time of incident, exhorted the other accused to kill Ramchandra Singh. In the incident, Ramchandra Singh sustained 21 injuries. He died on the next day.

3. On conclusion of the trial, the IVth Additional Sessions Judge, Bulandshahar convicted the accused for the offence punishable under Section 302 read with Section 149 IPC. Accused Surendra and Narendra were convicted under Section 148 IPC additionally while accused Yogesh, Amar Pal and Anil Kumar were convicted under Section 147 IPC in addition to the offence under Section 302 read with Section 149 IPC. All of them were sentenced to suffer life imprisonment for commission of offence punishable under Section 302 read with Section 149 IPC. Accused Surendra and Narendra were sentenced to rigorous imprisonment for two years for the offence punishable under Section 148 IPC while accused Yogesh, Amar Pal and Anil Kumar were sentenced to rigorous imprisonment for one year for the offence punishable under Section 147 IPC.

4. Aggrieved by their conviction and sentence, the four convicts namely; Surendra, Narendra, Yogesh and Amar Pal filed one appeal while the fifth convict Anil Kumar filed a separate appeal before the High Court. Both the appeals were heard together. The Division Bench of the Allahabad High Court, vide its judgment dated November 14, 2007, dismissed both the appeals.

5. Special Leave Petition (Crl.) No. 2874 of 2008 is at the instance of accused Surendra, Narendra and Yogesh. The other Special Leave Petition (Crl.) No. 3354 of 2008 is at the instance of accused Anil Kumar.

6. This Court on October 3, 2008, in both the matters, issued notice limited to the nature of offence. The controversy is confined to this aspect only.

7. Mr. Nagendra Rai, learned senior counsel for the petitioners in S.L.P. (Crl.) No. 2874 of 2008 submitted that the injuries sustained by the Ramchandra Singh which cumulatively resulted in his death leave no manner of doubt that the accused persons did not act in prosecution of the common object to commit the murder of Ramchandra Singh. Had the intention been to commit the murder of Ramchandra Singh, learned senior counsel submitted, accused Surendra would not have used burri as lathi and the other accused would not have caused injuries on the non-vital parts of the deceased Ramchandra Singh. In support of his contentions, Mr. Nagendra Rai, learned senior counsel heavily relied upon the decision of this Court in *Sarwan Singh and others vs. State of Punjab*[1] and *Kusum Chandrakant Khaushe vs. Hmlingliana and others*[2].

8. Mr. P.H. Parekh, learned senior counsel appearing for the petitioner Anil Kumar in S.L.P. (Crl.) No. 3354 of 2008 adopted the arguments of Mr. Nagendra Rai, learned senior counsel. He further submitted that accused Anil Kumar was not the resident of the village where the incident occurred and there was no enmity between him and the deceased Ramchandra Singh. Accused Anil Kumar had come to the village to take his wife and merely because he was armed with a lathi, it can not be said that he acted in furtherance of the common object with other accused to kill the victim Ramchandra Singh.

9. Mr. Subodh Markandeya, learned senior counsel for the State of U.P. highlighted the injuries sustained by the deceased and the consideration of the matter by the High Court with regard to the nature of offence.

1. (1978) 4 SCC 111.
2. AIR 1993 SC 401.

10. Dr. Inder Sen (PW4) was the doctor who attended to the deceased Ramchandra Singh immediately after the incident when he was brought to the Primary Health Cente, Siana. He has proved the injury report (Ex. Ka-2). The following injuries were found on the person of the deceased:

"1. Bruise 7 cm x 4 cm on the top of right shoulder.

2. Multiple bruises over lapping each other in an area 10cm x 11cm on the upper 3rd of right upper arm in front outer aspect.

3. Peeling of skin in its entire thickness 5 cm x 3 cm on the back of right forearm, 6 cm below the elbow.

4. Bruise 5 cm x 2 cm on the inner back aspect of the middle of right forearm.

5. Abrasion 7 cm x 1 ½ cm on the inner aspect of right forearm, 3cm above the wrist.

6. Incised wound 1 cm x 1/5 cm x ½ cm on front aspect of right forearm, just above the wrist, with clean cut margins and fresh bleeding.

7. 2 abrasions ½ cm x 1cm on the back aspect of the middle right of the middle ring finger of right hand.

8. Swelling with tenderness 6cm x 5cm on the inner side of right hand to the top of thumb and above the index finger. Fracture suspected.

9. Swelling on first digit of right little finger.

10. Bruise 6 cm x 3 cm on the outer aspect of left upper arm 6 cm below the shoulder.

11. Multiple deep bruises 12cm x 8cm with the peeling of skin in an area 4 cm x 4 cm on the middle of left upper arm front and outer aspect.

12. Bruise below the nail of left thumb with blood oozing from nail band.

13. Bruise 16 cm x 2 cm on the right side of back oblique from axilla to lower angle of shoulder wing.

14. Bruise 8 cm x 3 ½ cm on outer aspect of back along 10 to 12th rib right side.

15. Bruise 20 cm x 3 cm in horizontal plane on left side of back just above renal angle.

16. Multiple bruise over lapping 12 cm x 10 cm on the outer of right thigh above the knee.

17. Abrasion 2 cm x 1 cm below the left knee.

18. Abrasion 3 cm x 1 cm in front of right leg 11 cm below the knee.

19. Lacerated wound 2 cm x ½ cm x 1 cm on the front of right leg 11 cm above ankle.

20. Bruise 8 cm x 2 cm on the front of the left thigh, 6 cm below the groin.

21. Bruise 10 cm x 2 cm on the lower and of left thigh above the knee."

Dr. Inder Sen (PW4) further stated that the injury Nos. 1,2,4,8,9 to 16, 19 & 20 were caused by blunt object; injury No. 6 was from a sharp weapon and rest were by friction.

11. The post-mortem of the dead body was conducted by Dr. P.C. Agarwal (PW5). He had noted as follows:

"A stitched wound 1 ½ long on the right forearm, incised wound on the medial aspect of right wrist, abraded contusion 1/4" x 1/4" on the dorsal aspect of right middle and ring fingers, contusion 12" x 4" on the outer aspect of right arm and top of shoulder, contusion 2 1/2" x 2" on the right back in the lower 3rd, 3 contusions 1/2" x 1/4", 3/4" x 1/4", 1 ½ " x ½ " on the right knee and the 3rd of front of right leg, stitched wound 3/4" on the upper lower third of front of right leg, abraded contusion 1" x 3/4" on the middle of left leg, abraded contusion 1 ½ " x 1/2" on the front side of the left arm, abraded contusion 2" x 1 3/4" on the outer aspect of left arm, contusion 6" x 2" on the front and left side of chest, contusion 3" x 1 1/2" on the left upper thigh

and contusion 3 1/2" x 1 1/2" on the outer aspect of left middle leg."

12. In Sarwan Singh1, this Court observed that when the injuries caused were cumulatively sufficient to cause death, it was necessary for the Court before holding each of the accused guilty under Section 302 read with Section 149 IPC to find that the common object of the unlawful assembly was to cause death or that the members of the unlawful assembly knew it to be likely that an offence under Section 302 IPC would be committed in furtherance of the common object. The Court then examined the above question in light of the injuries sustained by the deceased. In paragraph 8 of the report, the injuries have been noticed. The Court then noticed the circumstances of the case particularly that an unexpected quarrel took place between the members of the same family over a dispute as to water rights. Consequently, the Court held that the common object of the assembly was not to cause bodily injury sufficient in the ordinary course of nature to cause death. The Court held that the common object of the assembly, in the circumstances, could only be said to cause injuries which were likely to cause death. In Sarwan Singh1, accordingly, it was held that the offence would be under Section 304 Part-I IPC.

13. *Sarwan Singh*[1] has no application to the facts of the present case for more than one reason. In the first place, the motive for the crime in the present case has been established. There was criminal litigation pending between the deceased Ramchandra Singh and the accused Surendra, Narendra and Yogesh. The other accused Anil Kumar is the bother-in-law of these three accused. The enmity between the deceased and the accused party stands proved. Secondly, all the five accused were armed with deadly weapons. Accused Surendra and Narendra were armed with burri and knife respectively and other three accused were armed with lathis. Accused Surendra, at the time of incident, exhorted the other accused, "Kill him. He is the bone of contention". The attack by the accused party on the victim has been established to be pre-planned and pre-

meditated. Thirdly; the evidence of Dr. P.C. Agarwal (PW5) who conducted the autopsy on the body of the deceased would show that the deceased had fractured ribs – left 9th, 10th and right 10th and both the lungs of the deceased were lacerated and were found ruptured. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. We are satisfied that the prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to cause the death of Ramchandra Singh.

14. In, what we have indicated above, the decision of this Court in the case of Kusum Chandrakant Khaushe2 also has no application to the facts of the present case.

15. The case of the accused Anil Kumar is not at all distinct from the case of the other accused as has been sought to be canvassed by Mr. P.H. Parekh, learned senior counsel.

16. The High Court, while dealing with the question of nature of offence, observed:

> "The last point argued by learned counsel for the appellants was that this was not the case under Section 302 IPC but circumstances and nature of injuries show that this was a case under Section 304 Part-I of Indian Penal Code. But we see no force in this contention because there was enmity between the parties and the attack was well planned. This was not a case of sudden provocation. The injury report Ex. Ka-2 shows that deceased was brutally and badly assaulted by the accused persons and cumulative effect of injuries was the cause of death."

17. We find no error in consideration of the matter by the High Court.

18. Special Leave Petitions are, accordingly, dismissed.

R.P. Special Leave Petitions dismissed.