DR. MEHMOOD NAYYAR AZAM
v.
STATE OF CHATTISGARH AND ORS.
(Civil Appeal Noo. 5703 of 2012)

AUGUST 03, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Constitution of India, 1950 - Article 21 - Right to life - Custodial torture - Compensation for - Appellant-doctor arrested in respect of alleged criminal offences and sent to police custody - Self-humiliating words were written on a placard and the appellant was asked to hold it and photographs were taken - The photographs were circulated in general public and were also filed by one of the respondents in a revenue proceeding - Appellant sought public law remedy for grant of compensation - High Court arrived at the finding that appellant was indeed subjected to custodial torture and accordingly directed him to submit representation to the State Government for grant of compensation - Appellant submitted such representation, but the State Government rejected the same - Appellant thus did not receive any compensation for number of years - On appeal, held: The precious right guaranteed by Article 21 of the Constitution cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as permitted by law - When an accused is in custody, his Fundamental Rights are not abrogated in toto - Any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity - On facts, clearly the appellant underwent mental torture at the hands of insensible police officials and was subjected to social humiliation - The inhuman treatment can be well visualized when the appellant came out from custody and witnessed his

photograph being circulated with the self-condemning words written on it - This withers away the very essence of life as enshrined under Article 21 of the Constitution - In the facts and circumstances of the case, appellant entitled to Rs.5 lakhs as compensation - Respondent-State directed to grant such amount and later recover it from the salary of the erring officials - Human Rights - Universal Declaration of Human Rights, 1948 - Article 5 -Police - Duty of the police authorities.

Constitution of India, 1950 - Articles 32 and 226 - Writ proceedings seeking enforcement or protection of fundamental rights - Grant of 'compensation' in such proceedings - Nature of - Held: When the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen - The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen - The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law - Public Law remedy.

Words and Phrases - "harassment" and "torture" - Meaning of.

The appellant, an Ayurvedic Doctor with a B.A.M.S.

degree, used to raise agitations and spread awareness against exploitation of people belonging to weaker and marginalized sections of the society which apparently hurt the vested interests of the local coal mafia, trade union leaders, police officers and other groups. He was arrested in respect of the alleged offence under Indian Penal Code, 1860 and the Electricity Act, 2003. There was a direction by the Magistrate for judicial remand but thereafter instead of taking him to jail, the next day he was brought to the police station. In police custody, self-humiliating words were written on a placard and the appellant was asked to hold it and photographs were taken. The photographs were circulated in general public and were also filed by one of the respondents in a revenue proceeding.

The appellant filed writ petition before the High Court with a prayer for punishing the erring officials on the foundation that their action was a complete transgression of human rights which affected his fundamental right especially his right to live with dignity as enshrined under Article 21 of the Constitution. In the writ petition, prayer was also made for awarding him compensation to the tune of Rs.10 lakhs.

The High Court found that the appellant was harassed at the hands of police officers and thereby it did tantamount to custodial torture and eventually directed the appellant to submit a representation to the State Government for grant of compensation. It is an admitted position that the State authorities had taken cognizance of the harassment meted out to the appellant by the erring personnel of the police department and initiated departmental enquiry against them in which they were found guilty and punishment had also been awarded to them.

Subsequently, the appellant submitted a representation but the State Government rejected the same stating that the appellant had put forth the claim of compensation on the ground of defamation; and being a case of defamation, the issue of compensation could only be determined by a court of competent jurisdiction, and the State Government could not take any decision in this regard.

The question which therefore arose for consideration in the instant appeal was whether the appellant should be asked to initiate a civil action for grant of damages on the foundation that he was defamed or he should be granted compensation on the bedrock that he was harassed in police custody.

Allowing the appeal, the Court

HELD:1.1. The reverence of life is insegragably associated with the dignity of a human being who is basically divine, not servile. The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of "creative intelligence". When a dent is created in the reputation, humanism is paralysed. Living with dignity has been enshrined in our Constitutional philosophy and it has its ubiquitous presence, and the majesty and sacrosanct dignity cannot be allowed to be crucified in the name of some kind of police action. The aforesaid prologue gains signification since in the case at hand, a doctor, humiliated in custody, sought public law remedy for grant of compensation and the High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite proceedings available to him under

law. This is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise. [Paras 2, 3] [662-E-H; 663-A-D]

1.2. As a social activist, the appellant ushered in immense awareness among the down-trodden people which caused discomfort to the people who had vested interest in the coal mine area. The powerful coal mafia, trade union leaders, police officers and other persons who had fiscal interest felt disturbed and threatened him with dire consequences and pressurized him to refrain from such activities. Embedded to his committed stance, the appellant declined to succumb to such pressure and continued the activities. When the endeavor failed to silence and stifle the agitation that was gaining strength and momentum, a consorted maladroit effort was made to rope him in certain criminal offences. [Para 4] [663-F-H]

2. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen, for a citizen does not shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot be put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. [Para 22] [672-E-H]

D.K. Basu v. State of W.B. **AIR 1997 SC 610 : (1997) 1**

SCC 416 and *Joginder Kumar v. State of U.P.* **(1994) 4 SCC 260 - relied on.**

3. The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. [Para 23] [673-D]

P. Ramanatha Aiyar's Law Lexicon, Second Edition **- referred to.**

4. When an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiorari, it includes the right to live with human dignity and all that goes along with it. Inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience. A man's reputation forms a facet of right to life as engrafted under Article 21 of the Constitution. There is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the

Constitution springs up to action as a protector. That is why, an investigator to a crime is required to possess the qualities of patience and perseverance. It is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. A balance has to be struck. [Paras 26, 28, 30, 36 and 38] [675-D-G; 676-A-B-C; 677-C-E; 678-E-F]

Sunil Gupta and others v. State of Madhya Pradesh and others **(1990) 3 SCC 119: 1990 (2) SCR 871;** *Bhim Singh, MLA v. State of J & K* **(1985) 4 SCC 677;** *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others* **(1981) 1 SCC 608: 1981 (2) SCR 516;** *D.K. Basu v. State of W.B.* **AIR 1997 SC 610 : (1997) 1 SCC 416;** *Kharak Singh v. State of U. P.* **(1964) 1 SCR 332;** *Arvinder Singh Bagga v. State of U.P. and others* **AIR 1995 SC 117: 1994 (4) Suppl. SCR 310;** *Smt. Kiran Bedi v. Committee of Inquiry and another* **(1989) 1 SCC 494: 1989 (1) SCR 20;** *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others* **(1983) 1 SCC 124: 1983 (1) SCR 828;** *Smt. Selvi and others v. State of Karnataka* **AIR 2010 SC 1974: 2010 (5) SCR 381;** *Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal* **2012 (6) SCALE 190;** *Nandini Sathpaty v. P. L. Dani* **AIR (1978) SC 1025: 1978 (3) SCR 608 and** *Delhi Judicial Services Association v. State of Gujarat* **(1991) 4 SCC 406: 1991 (3) SCR 936 - relied on.**

Munn v. Illinois **(1877) 94 US 113 and** *D. F. Marion v. Davis* **55 ALR 171 - referred to.**

5.1. In the case at hand, the appellant, while in custody, was compelled to hold a placard in which condemning language was written. He was photographed with the said placard and the photograph was made public. It was also filed in a revenue proceeding by the 5th respondent. The High Court recorded that the competent authority of the State has conducted an enquiry and found the erring officers to be guilty. The High Court recorded the findings in the favour of the appellant but left him to submit a representation to the concerned authorities. This Court granted an opportunity to the State to deal with the matter in an appropriate manner but it rejected the representation. This Court is really concerned how in a country governed by rule of law and where Article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected. [Para 39] [679-D-G]

5.2. As perceived from the admitted facts borne out on record, the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. In the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. [Para 40] [679-H; 680-A-E]

Jennison v. Baker **(1972) 1 All ER 997 1006 - referred to.**

"Kaplan & Sadock's Synopsis of Psychiatry" **- referred to.**

6.1. It is clear that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy. [Para 41] [680-G-H]

6.2. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. [Para 43] [681-G-H; 682-A-D]

6.3. On a reflection of the facts of the case, it is luculent that the appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted out to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to cause torment and insult and tyrannize the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get activated. The inhuman treatment can be well visualized when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects and taking note of the totality of facts and circumstances, a sum of Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant and, accordingly, it is so directed. The said amount shall be paid by the respondent State within a period of six weeks and be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State. [Para 46] [684-C-H; 685-A]

Nilabati Behera v. State or Orissa **(1993) 2 SCC 746: 1993 (2) SCR 581;** *Sube Singh v. State of Haryana* **AIR 2006**

SC 1117: 2006 (2) SCR 67 and *Hardeep Singh v. State of Madhya Pradesh* **(2012) 1 SCC 748 - relied on.**

Case Law Reference:

(1997) 1 SCC 416	**relied on**	**Para 19, 21, 26, 38**
(1994) 4 SCC 260	**relied on**	**Para 21, 22**
1990 (2) SCR 871	**relied on**	**Para 24**
(1985) 4 SCC 677	**relied on**	**Para 25**
1981 (2) SCR 516	**relied on**	**Para 26**
(1964) 1 SCR 332	**relied on**	**Para 27**
(1877) 94 US 113	**referred to**	**Para 27**
1994 (4) Suppl. SCR 310	**relied on**	**Para 29**
1989 (1) SCR 20	**relied on**	**Para 31**
55 ALR 171	**referred to**	**Para 31**
1983 (1) SCR 828	**relied on**	**Para 32**
2010 (5) SCR 381	**relied on**	**Para 33**
2012 (6) SCALE 190	**relied on**	**Para 34**
1978 (3) SCR 608	**relied on**	**Para 36**
1991 (3) SCR 936	**relied on**	**Para 37**
1972 1 All ER 997 1006	**referred to**	**Para 40**
1993 (2) SCR 581	**relied on**	**Para 42**
2006 (2) SCR 67	**relied on**	**Para 44**
(2012) 1 SCC 748	**relied on**	**Para 45**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5703 of 2012.

From the Judgment & Order dated 3.8.2010 of the High Court of Chhattisgarh at Bilaspur in W.P. No. 1156 of 2001.

Niraj Sharma for the Appellant.

Dr. Rajesh Pandey, Mahesh Pandey, Mridula Ray Bharadwaj, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Arvind Kumar, Jogy Scaria for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. Albert Schweitzer, highlighting on Glory of Life, pronounced with conviction and humility, "the reverence of life offers me my fundamental principle on morality". The aforesaid expression may appear to be an individualistic expression of a great personality, but, when it is understood in the complete sense, it really denotes, in its conceptual essentiality, and connotes, in its macrocosm, the fundamental perception of a thinker about the respect that life commands. The reverence of life is insegragably associated with the dignity of a human being who is basically divine, not servile. A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, 'a brief candle', or 'a hollow bubble'. The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of "creative intelligence". When a dent is created in the reputation, humanism is paralysed. There are some megalomaniac officers who conceive the perverse notion that they are the `Law' forgetting that law is the science of what is good and just and, in very nature of things, protective of a civilized society. Reverence for the nobility of a human being has to be the corner stone of a body polity that believes in orderly progress. But, some, the

incurable ones, become totally oblivious of the fact that living with dignity has been enshrined in our Constitutional philosophy and it has its ubiquitous presence, and the majesty and sacrosanctity dignity cannot be allowed to be crucified in the name of some kind of police action.

3. The aforesaid prologue gains signification since in the case at hand, a doctor, humiliated in custody, sought public law remedy for grant of compensation and the High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise.

4. The factual matrix as uncurtained is that the appellant, an Ayurvedic Doctor with B.A.M.S. degree, while practising in West Chirmiri Colliery, Pondi area in the State of Chhattisgarh, used to raise agitations and spread awareness against exploitation of people belonging to weaker and marginalized sections of the society. As a social activist, he ushered in immense awareness among the down-trodden people which caused discomfort to the people who had vested interest in the coal mine area. The powerful coal mafia, trade union leaders, police officers and other persons who had fiscal interest felt disturbed and threatened him with dire consequences and pressurized him to refrain from such activities. Embedded to his committed stance, the petitioner declined to succumb to such pressure and continued the activities. When the endeavor failed to silence and stifle the agitation that was gaining strength and momentum, a consorted maladroit effort was made to rope him in certain criminal offences.

5. As the factual narration further unfolds, in the initial stage, cases under Section 110/116 of the Criminal Procedure Code were initiated and thereafter crime No. 15/92 under Section 420 of the Indian Penal Code (for short 'the IPC') and crime No. 41/92 under Sections 427 and 379 of the IPC were registered. As the activities gathered further drive and became more pronounced, crime No. 62/90 was registered for an offence punishable under Section 379 of the IPC for alleged theft of electricity. In the said case, the appellant was taken into custody.

6. Though he was produced before the Magistrate on 22.9.1992 for judicial remand and was required to be taken to Baikunthpur Jail, yet by the time the order was passed, as it was evening, he was kept in the lock up at Manendragarh Police Station. On 24.9.1992, he was required to be taken to jail but instead of being taken to the jail, he was taken to Pondi Police Station at 9.00 a.m. At the police station, he was abused and assaulted. As asseverated, the physical assault was the beginning of ill-treatment. Thereafter, the SHO and ASI, the respondent Nos. 3 and 4, took his photograph compelling him to hold a placard on which it was written :-

> "Main Dr. M.N. Azam Chhal Kapti Evam Chor Badmash Hoon". (I, Dr. M. N. Azam, am a cheat, fraud, thief and rascal).

7. Subsequently, the said photograph was circulated in general public and even in the revenue proceeding, the respondent No. 5 produced the same. The said atrocities and the torture of the police caused tremendous mental agony and humiliation and, hence, the petitioner submitted a complaint to the National Human Rights Commission who, in turn, asked the Superintendant of Police, District Koria to submit a report. As there was no response from the 2nd respondent the Commission again required him to look into the grievances and take proper action. When no action was taken by the

respondent or the police, the petitioner was compelled to invoke the extraordinary jurisdiction of the High Court of Judicature at Bilaspur, Chattisgarh with a prayer for punishing the respondent Nos. 4, 5 & 7 on the foundation that their action was a complete transgression of human rights which affected his fundamental right especially his right to live with dignity as enshrined under Article 21 of the Constitution. In the Writ Petition, prayer was made for awarding compensation to the tune of Rs. 10 lakhs.

8. After the return was filed, the learned single Judge passed a detailed order on 3.1.2003 that the Chief Secretary and the Director General of Police should take appropriate steps for issue of direction to the concerned authorities to take appropriate action in respect of the erring officers. Thereafter, some developments took place and on 24.3.2005, the Court recorded that the writ petitioner was arrested on 22.9.1992 and his photograph was taken at the police station. The learned single Judge referred to Rule 1 of Regulation 92 of Chhattisgarh Police Regulations which lays down that no Magistrate shall order photograph of a convict or other person to be taken by the police for the purpose of Identification under Prisoners Act, 1920, unless he is satisfied that such photograph is required for circulation to different places or for showing it for the purpose of identification to a witness who cannot easily be brought to a test identification at the place where the investigation is conducted or that photograph is required to be preserved as a permanent record. Thereafter, the learned single Judge proceeded to record that not only the photograph of the writ petitioner had been taken with the placard but had also been circulated which had caused great mental agony and trauma to his school going children. Thereafter, he referred to Regulation 737 of the Chhattisgarh Police Regulations which relates to action to be taken by the superior officer in respect of an erring officer who ill-treats an accused.

9. After referring to various provisions, the learned single

Judge called for a report from the Chief Secretary. On 18.11.2005, the Court was apprised that despite several communications, the Chief Secretary had not yet sent the report. Eventually, the report was filed stating that the appellant was involved in certain cases including grant of bogus medical certificate and regard being had to the directions issued in 1992 that the photograph of the offender should be kept on record, the same was taken and affixed against his name and after 7.9.1992, it was removed from the records. It was also stated that the Sub-Inspector had been imposed punishment of "censure" by the Superintendent of Police on 19.11.2001. It was also set forth that on 3.5.2003, a charge-sheet was served on all the erring officers and a departmental enquiry was held and in the ultimate eventuate, they had been imposed major penalty of withholding of one annual increment with cumulative effect for one year commencing 27.5.2004. That apart, on 19.7.2005, a case had been registered under Section 29 of the Police Act against the erring officers.

10. It is apt to note here that when the matter was listed for final hearing for grant of compensation, the learned single Judge referred the matter to be heard by a Division Bench.

11. The Division Bench referred to the prayer clause and various orders passed by the learned single Judge and eventually directed the appellant to submit a representation to the Chief Secretary for grant of compensation. We think it appropriate to reproduce the relevant paragraphs of the order passed by the Division Bench: -

> "4. Learned counsel for the petitioner submits that during the pendency of the writ petition, Relief Clause No. 7.3 was fulfilled under the directions of this court and now only the compensation part, as claimed in Relief Clause No. 7.5A, remained there.
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> 5. In the instant case, it is an admitted position that the respondent State authorities have taken cognizance of the

harassment meted out to the petitioner by the erring personnel of the police department and initiated departmental enquiry against them in which they were found guilty and punishment has also been awarded to them."

12. After issuing notice, this Court, on 17.2.2012, thought it apposite that the appellant should submit a representation within a week which shall be considered by the respondents within four weeks therefrom.

13. In pursuance of the aforesaid order, the appellant submitted a representation which has been rejected on 19.3.2012 by the OSD/Secretary, Government of Chhattisgarh, Home (Police) Department. In the rejection order, it has been stated as follows: -

"In the aforesaid cases, the arrest and the action regarding submission of chargesheet in the Hon'ble Court was in accordance with law.

(2) On 24.9.92 the police officers taking your photograph and writing objectionable words thereon was against the legal procedure. Considering this, action was taken against the concerned guilty police officers in accordance with law and two police officers were punished.

(3) In your representation, compensation has been demanded on the following two grounds:

A. Defamation was caused due to the police officers taking photograph.

B. Your wife became unwell mentally. She is still unwell.

C. Difficulty in marriage of daughter.

Regarding the aforesaid grounds, the actual position is as follows:

A. Defamation is such a subject, the decision on which is within jurisdiction of the competent court. No decision pertaining to defamation has been received from the court of competent jurisdiction. Therefore, it would not be proper for the State Government to take a decision in this regard.

B. Regarding mental ailment of your wife, no such basis has been submitted by you, on the basis of which any conclusion may be drawn.

C. On the point of there being no marriage of children also no such document or evidence has been produced by you before the Government along with the representation, on the basis of which any decision may be taken.

Therefore, in the light of the above, the State Government hereby rejects your representation and accordingly decides your representation."

14. Mr. Niraj Sharma, learned counsel appearing for the appellant, submitted that when the conclusion has been arrived at that the appellant was harassed at the hands of the police officers and in the departmental enquiry they have been found guilty and punished, just compensation should have been awarded by the High Court. It is further urged by him that this Court had directed to submit a representation to grant an opportunity to the functionaries of the State to have a proper perceptual shift and determine the amount of compensation and grant the same, but the attitude of indifference reigned supreme and no fruitful result ensued. It is canvassed by him that it would not only reflect the non-concern for a citizen who has been humiliated at the police station, but, the manner in which the representation has been rejected clearly exhibits the imprudent perception and heart of stone of the State. It is argued that the reasons ascribed by the State authority that defamation is such a subject that the issue of compensation

has to be decided by the competent court and in the absence of such a decision, the Government cannot take a decision as regards the compensation clearly reflects the deliberate insensitive approach to the entire fact situation inasmuch as the High Court, in categorical terms, had found that the allegations were true and the appellant was harassed and thereby it did tantamount to custodial torture and there was no justification to adopt a hyper-technical mode to treat it as a case of defamation in the ordinary sense of the term and requiring the appellant to take recourse to further adjudicatory process and obtain a decree from the civil court.

15. Mr. Atul Jha, learned counsel appearing for the State, has supported the order of the High Court as well as the order passed by the competent authority of the State who has rejected the representation on the foundation that when the appellant puts forth a claim for compensation on the ground of defamation, he has to take recourse to the civil court and, therefore, no fault can be found with the decision taken either by the High Court or the subsequent rejection of the representation by the authority of the State.

16. The learned counsel appearing for the private respondents has submitted that they have already been punished in a disciplinary proceeding and, therefore, the question of grant of compensation does not arise and even if it emerges, the same has to be determined by the civil court on the base of evidence adduced to establish defamation.

17. At the very outset, we are obliged to state that five aspects are clear as day and do not remotely admit of any doubt. First, the appellant was arrested in respect of the alleged offence under Indian Penal Code, 1860 and the Electricity Act, 2003; second, there was a direction by the Magistrate for judicial remand and thereafter instead of taking him to jail the next day he was brought to the police station; third, self-humiliating words were written on the placard and he was asked to hold it and photographs were taken; and fourth, the

photographs were circulated in general public and were also filed by one of the respondents in a revenue proceeding; and five, the High Court, in categorical terms, has found that the appellant was harassed.

18. In the aforesaid backdrop, the singular question required to be posed is that whether the appellant should be asked to initiate a civil action for grant of damages on the foundation that he has been defamed or this Court should grant compensation on the bedrock that he has been harassed in police custody.

19. At this juncture, it is condign to refer to certain authorities in the field. In *D.K. Basu v. State of W.B.*[1] it has been held thus: -

> "10. "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word torture today has become synonymous with the darker side of human civilization.
>
> "Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."
>
> -Adriana P. Bartow
>
> 11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" - all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the

1. AIR 1997 SC 610 : (1997) 1 SCC 416

fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward - flag of humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."

20. We have referred to the aforesaid paragraphs to highlight that this Court has emphasized on the concept of mental agony when a person is confined within the four walls of police station or lock-up. Mental agony stands in contradistinction to infliction of physical pain. In the said case, the two-Judge Bench referred to Article 5 of the Universal Declaration of Human Rights, 1948 which provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Thereafter, the Bench adverted to Article 21 and proceeded to state that the expression "life or personal liberty" has been held to include the right to live with human dignity and thus, it would also include within itself a guarantee against torture and assault by the State or its functionaries. Reference was made to Article 20(3) of the Constitution which postulates that a person accused of an offence shall not be compelled to be a witness against himself.

21. It is worthy to note that in the case of *D.K. Basu* (supra), the concern shown by this Court in *Joginder Kumar v. State of U.P*[2]. was taken note of. In *Joginder Kumar's* case, this Court voiced its concern regarding complaints of violation of human

2. (1994) 4 SCC 260.

rights during and after arrest. It is apt to quote a passage from the same: -

> "The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?
>
> A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider…"

22. After referring to the case of *Joginder Kumar* (supra), A.S. Anand, J. (as his Lordship then was), dealing with the various facets of Article 21, stated that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen, for a citizen does not shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

23. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment". In *P. Ramanatha Aiyar's Law Lexicon,* Second Edition, the term "harass" has been defined, thus: -

> **"Harass.** "injure" and "injury" are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word "harass" excluding the latter from being comprehended within the word "injure" or "injury". The synonyms of "harass" are: To weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit."

The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.

24. At this juncture, we may refer with profit to a two-Judge Bench decision in *Sunil Gupta and others v. State of Madhya Pradesh and others*[3]. The said case pertained to handcuffing where the accused while in judicial custody were being escorted to court from jail and bound in fetters. In that context, the Court stated that the escort party should record reasons for doing so in writing and intimate the court so that the court, considering the circumstances may either approve or disapprove the action of the escort party and issue necessary directions. The Court further observed that when the petitioners who had staged 'Dharna' for public cause and voluntarily submitted themselves for arrest and who had no tendency to escape, had been subjected to humiliation by being handcuffed, such act of the escort party is against all norms of decency and is in utter violation of the principle underlying Article 21 of the Constitution

3. (1990) 3 SCC 119

of India. The said act was condemned by this Court to be arbitrary and unreasonably humiliating towards the citizens of this country with the obvious motive of pleasing 'someone'.

25. In *Bhim Singh, MLA v. State of J & K*[4], this Court expressed the view that the police officers should have greatest regard for personal liberty of citizens as they are the custodians of law and order and, hence, they should not flout the law by stooping to bizarre acts of lawlessness. It was observed that custodians of law and order should not become depredators of civil liberties, for their duty is to protect and not to abduct.

26. It needs no special emphasis to state that when an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiorari, it includes the right to live with human dignity and all that goes along with it. It has been so stated in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others*[5] and *D.K. Basu* (supra).

27. In *Kharak Singh v. State of U. P.,*[6] this court approved the observations of Field, J. in *Munn v. Illinois*[7] :-

> "By the term "life" as here [Article 21] used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed."

28. It is apposite to note that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted

4. (1985) 4 SCC 677.
5. (1981) 1 SCC 608.
6. (1964) 1 SCR 332.
7. (1877) 94 US 113.

that causes humiliation and compels a person to act against his will or conscience.

29. In *Arvinder Singh Bagga v. State of U.P. and others*[8], it has been opined that torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the police.

30. At this stage, it is seemly to refer to the decisions of some of the authorities relating to a man's reputation which forms a facet of right to life as engrafted under Article 21 of the Constitution.

31. In *Smt. Kiran Bedi v. Committee of Inquiry and another*[9], this Court reproduced an observation from the decision in *D. F. Marion v. Davis* [10]:-

> "The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property."

32. In *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others*[11], it has been ruled that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

33. In *Smt. Selvi and others v. State of Karnataka*[12], while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile test for the purpose of

8. AIR 1995 SC 117.
9. (1989) 1 SCC 494.
10. 55 ALR 171.
11. (1983) 1 SCC 124.
12. AIR 2010 SC 1974.

improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitute 'cruel, inhuman or degrading treatment' in the context of Article 21. Thereafter, the Bench adverted to what is the popular perception of torture and proceeded to state as follows: -

> "The popular perceptions of terms such as 'torture' and 'cruel, inhuman or degrading treatment' are associated with gory images of blood-letting and broken bones. However, we must recognize that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, 'Criminal Defence in the Age of Terrorism - Torture', 48 New York Law School Law Review 201-274 (2003/2004)]."

After so stating, the Bench in its conclusion recorded as follows: -

> "We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms."

34. Recently in *Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal*[13], although in a different context, while dealing with the aspect of reputation, this Court has observed as follows: -

> "……..reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of

13. 2012 (6) SCALE 190.

the grave. It is a revenue generator for the present as well as for the posterity."

35. We have referred to these paragraphs to understand how with the efflux of time, the concept of mental torture has been understood throughout the world, regard being had to the essential conception of human dignity.

36. From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator to a crime is required to possess the qualities of patience and perseverance as has been stated in *Nandini Sathpaty v. P. L. Dani*[14].

37. In *Delhi Judicial Services Association v. State of Gujarat*[15] , while dealing with the role of police, this Court condemned the excessive use of force by the police and observed as follows:-

"The main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above

14. AIR 1978 SC 1025.

15. (1991) 4 SCC 406.

all to ensure law and order to protect citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

38. It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from *D. K. Basu* (supra): -

"There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's

right to personal liberty. …….The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated-indeed subjected to sustain and scientific interrogation-determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplishes, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal."

39. In the case at hand, the appellant, while in custody, was compelled to hold a placard in which condemning language was written. He was photographed with the said placard and the photograph was made public. It was also filed in a revenue proceeding by the 5th respondent. The High Court has recorded that the competent authority of the State has conducted an enquiry and found the erring officers to be guilty. The High Court has recorded the findings in the favour of the appellant but left him to submit a representation to the concerned authorities. This Court, as has been indicated earlier, granted an opportunity to the State to deal with the matter in an appropriate manner but it rejected the representation and stated that it is not a case of defamation. We may at once clarify that we are not at all concerned with defamation as postulated under Section 499 of the IPC. We are really concerned how in a country governed by rule of law and where Article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected.

40. As we perceive, from the admitted facts borne out on

record, the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. In *"Kaplan & Sadock's Synopsis of Psychiatry",* while dealing with torture, the learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As Pithily stated in *Jennison v. Baker*[16]:-

> "The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope."

41. Presently, we shall advert to the aspect of grant of compensation. The learned counsel for the State, as has been indicated earlier, has submitted with immense vehemence that the appellant should sue for defamation. Our analysis would clearly show that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy.

16. (1972) 1 All Er 997, 1006.

42. In this regard, we may fruitfully refer to *Nilabati Behera v. State or Orissa*[17] wherein it has been held thus: -

> "A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

43. Dr. A.S. Anand J., (as his Lordship then was), in his concurring opinion, expressed that the relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which

17. (1993) 2 SCC 746.

aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

44. In *Sube Singh v. State of Haryana*[18], a three-Judge Bench of the Apex Court, after referring to its earlier decisions, has opined as follows: -

> "It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Code of Civil Procedure."

18. AIR 2006 SC 1117.

45. At this stage, we may fruitfully refer to the decision in *Hardeep Singh v. State of Madhya Pradesh*[19]. The appellant therein was engaged in running a coaching centre where students were given tuition to prepare for entrance test for different professional courses. On certain allegation, he was arrested and taken to police station where he was handcuffed by the police without there being any valid reason. A number of daily newspapers published the appellant's photographs and on seeing his photograph in handcuffs, the appellant's elder sister was so shocked that she expired. After a long and delayed trial, the appellant, Hardeep Singh, filed a writ petition before the High Court of Madhya Pradesh at Jabalpur that the prosecution purposefully caused delay in conclusion of the trial causing harm to his dignity and reputation. The learned single Judge, who dealt with the matter, did not find any ground to grant compensation. On an appeal being preferred, the Division Bench observed that an expeditious trial ending in acquittal could have restored the appellant's personal dignity but the State instead of taking prompt steps to examine the prosecution witnesses delayed the trial for five long years. The Division Bench further held there was no warrant for putting the handcuffs on the appellant which adversely affected his dignity. Be it noted, the Division Bench granted compensation of Rs. 70,000/-. This Court, while dealing with the facet of compensation, held thus:-

> "Coming, however, to the issue of compensation, we find that in light of the findings arrived at by the Division Bench, the compensation of Rs. 70,000/- was too small and did not do justice to the sufferings and humiliation undergone by the appellant. In the facts and circumstances of the case, we feel that a sum of Rs. 2,00,00/- (Rupees Two Lakhs) would be an adequate compensation for the appellant and would meet the ends of justice. We, accordingly, direct the State of Madhya Pradesh to pay to

19. (2012) 1 SCC 748.

> the appellant the sum of Rs. 2,00,000/-(rupees Two Lakhs) as compensation. In case the sum of Rs.70,000/- as awarded by the High Court, has already been paid to the appellant, the State would naturally pay only the balance amount of Rs.1,30,000/- (Rupees One Lakh thirty thousand)".

Thus, suffering and humiliation were highlighted and amount of compensation was enhanced.

46. On a reflection of the facts of the case, it is luculent that the appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted out to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to cause torment and insult and tyrannize the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get activated. The inhuman treatment can be well visualized when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects which we have analysed and taking note of the totality of facts and circumstances, we are disposed to think that a sum of Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant and, accordingly, we so direct.

The said amount shall be paid by the respondent State within a period of six weeks and be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State.

47. Consequently, the appeal is allowed to the extent indicated above. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B. Appeal allowed.

STATE OF UTTARAKHAND (PREVIOUSLY STATE OF UTTAR PRADESH)

v.

MOHAN SINGH & OTHERS

(Civil Appeal No. 6479 of 2012 etc.)

SEPTEMBER 12, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 – ss. 210 and 331(4) – Suit by respondent-plaintiff for their declaration as Bhumidhars being in adverse possession of the land – Suit dismissed on the ground that plaintiff could not obtain Bhumidhar right being a non-tribe person, as the land belonged to a tribe – Appeal against the order also dismissed – Second appeals u/s. 331(4) before Board of Revenue – Board allowed appeals and decreed the suit holding that plaintiffs perfected their title u/s. 210 by continuous possession for 20 years – Writ petition by State dismissed – On appeal, plea interalia that order of the Board was illegal as it failed to frame substantial question of law as per s. 331(4) and u/s. 100(4) CPC as amended – Held: The Act was enacted prior to the amendment of s. 100 CPC whereby sub-section (4) was incorporated therein – Therefore, the unamended s. 100 CPC was incorporated in s. 331(4) – Thus the right of second appeal was limited to the grounds set out in the then existing s. 100 CPC – The Board of Revenue has not examined the provisions of the land record, and whether the land belonged to the tribe – Therefore, the matter remanded to the Board of Revenue for fresh consideration – Code of Civil Procedure, 1908 – s. 100.

U.P. Avas Evam Vikas Parishad vs. Jainul Islam and Anr. **(1998) 2SCC 467:1998 (1) SCR 254 ;** *Mahindra and Mahindra Ltd. v. Union of India and Anr.* **(1979) 2 SCC**

529: 1979 (2) SCR 1038 ; *Secretary of State of India in Council v. Hindustan Co-operative Insurace Society Ltd.* **58 I.A. 259;** *Ramswarup v. Munshi and Ors*. **(1963) 3 SCR 858;** *Bolani Ores Ltd. v. State of Orissa* **(1974) 2 SCC 777: 1975 (2) SCR 138 – referred to.**

Case Law Reference:

1998 (1) SCR 254	**Referred to**	**Para 18**
1979 (2) SCR 1038	**Referred to**	**Para 19**
58 I.A. 259	**Referred to**	**Para 22**
1963 (3) SCR 858	**Referred to**	**Para 23**
1975 (2) SCR 138	**Referred to**	**Para 24**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6479 of 2012.

From the Judgment and Order dated 21.11.2008 of the High Court of Uttarakhand at Nainital in Writ Petition (C) No. 4037 of 2011.

WITH

Civil Appeal No. 6480 and 6481 of 2012.

Rachana Srivastava, Utkarsh Sharma for the Appellant.

Somnath Padhan, Satyajit A. Desai, Anagha S. Desai for the Respondent.

The following Order of the Court was delivered

O R D E R

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel on either side.

4. Respondents herein had filed a suit, being Revenue Case No. 22/45 Year 1989-90, before the Sub Divisional Magistrate/Assistant Collector (SDM), under Section 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short 'U.P. Act') stating that they were in continuous cultivation and in possession of land measuring 0.515 hectare in Plot No. 137 of Khata No. 44 in village Itawa Tehsil Sitargunj, District Nainital, for over 20 years. Despite having adverse possession, their names had not been recorded as Bhumidars in the Revenue Records and hence a declaration was sought for to that effect.

5. The Court of the SDM, however, dismissed the suit vide judgment dated 19.03.1991 holding that the respondents could not establish adverse and continuous possession over the disputed land and that the land in question belonged to Tharu tribe and the Bhumidar right could not be obtained by non-Tharu tribe persons. Aggrieved by the said judgment, the respondents took up the matter in appeal before the Additional Commissioner (Judicial), Kumaon Division, Nainital under Section 331 of the U.P. Act.

6. The appeal was elaborately considered by the Additional Commissioner, on law as well as on facts, and he recorded a finding that the land in dispute belonged to original 'Kashtkar' (tillers) of the land, members of Tharu tribe and on their land the respondents could not claim any Bhumidar rights. Further, it was also held that the adverse possession of the respondents for prescribed period before 3.6.1981 could not be proved. Holding so, the appeal was dismissed vide judgment dated 12.07.1991 and the order of the SDM was confirmed.

7. The respondents again took up the matter in two separate appeals before the Board of Revenue under Section

331(4) of the U. P. Act and both the appeals were heard together. The respondents claimed that their rights had been perfected before the Act 20 of 1982 came into force by which the provision prohibiting the perfection of title on the land belonging to Scheduled Tribe was added.

8. The Board of Revenue took the view that the Lakhpal, examined on behalf of the State, had admitted the possession of the respondent's land and they were in continuous possession for over twenty years on the date of the institution of the suit and had perfected their title under Section 210 of the U.P. Act, before incorporation of the proviso by Act No. 20 of 1982. The Board of Revenue, therefore, allowed the appeals and decreed the suit vide its order dated 29.1.1992 and set aside the orders passed by the SDM and the Additional Commissioner.

9. State of Uttarakhand (previously State of Uttar Pradesh), through the District Collector, preferred Writ Petition (M/S) Nos. 4031 of 2001 and 4034 of 2001 etc., before the High Court of Uttarakhand at Nainital. The High Court dismissed both the writ petitions vide order dated 21.11.2008 following its earlier order dated 07.08.2008 passed in Writ Petition No. (M/S) 4035 of 2001. Aggrieved by the same, these appeals have been preferred by the State of Uttarakhand.

10. Smt. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand, submitted that the High Court and the Board of Revenue have committed an error in reversing the well considered judgments of the SDM and the Additional Commissioner. Learned counsel pointed out that they had come to the definite conclusion on facts that the respondents had not established any right under Section 210 of the U.P. Act. The Revenue record produced would clearly establish that the respondents had not perfected their title by adverse possession or otherwise. Further, it was also pointed that the Board of Revenue had failed to frame any substantial question of law as

per Section 331(4) of the U. P. Act and under Section 100 C.P.C. as amended, consequently, committed a grave error in reversing the concurrent findings rendered by the SDM and the Additional Commissioner.

11. Shri Somnath Padhan, learned counsel appearing for the respondents, on the other hand, contended that the Board of Revenue had come to the right conclusion that the respondents had perfected their title over the disputed land, since the documents produced by them had established that they were in possession for more than 20 years, but their names were not recorded in the Revenue records as Bhumidars. Further, it was also stated that the appeals filed by the respondents before the Board of Revenue were not properly contested by the defendants. Learned counsel also pointed out that Lakhpal, who was examined on behalf of the State, had also admitted the possession of the respondents and that the respondents had perfected their title under Section 210 of the U.P. Act before the incorporation of the proviso by Act 20 of 1982. Learned counsel also pointed out that the High Court has, therefore, rightly dismissed the writ petitions filed by the State.

12. Let us first examine whether the Board of Revenue has correctly appreciated the nature and scope of its power while entertaining a second appeal under Section 331(4) of the U. P. Act. Learned counsel appearing for the State, as already indicated, submitted that the Board of Revenue ought to have framed questions of law, if it was satisfied that the case involved substantial questions of law. Since the Board of Revenue failed to frame any substantial question of law, as per Section 100(4) C.P.C., the order passed by the Board of Revenue was illegal, consequently, the writ petitions filed by the State should have been allowed. Learned counsel appearing for the respondents submitted that though the Board of Revenue did not frame any question of law as such, it had considered all aspects of the matter and came to the correct conclusion that the respondents had proved their possession for more than 20 years and,

therefore, entitled to get the benefit of Section 210 of the U.P. Act.

13. In order to examine the contentions raised by the counsel on either side, it is necessary to first examine the scope of Section 331 (3) and (4) and those provisions are extracted below for our easy reference:

"331. Cognizance of suits, etc. under this Act.-

xxx xxx xxx

xxx xxx xxx

(3) An appeal shall lie from any decree or from an order passed under Section 47 of an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order XLIII, Rule 1 of the First Schedule to that Code passed by a court mentioned in column No. 4 of Schedule II to this Act in proceedings mentioned in column No. 3 thereof to the court or authority mentioned in column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Scheduled aforesaid."

14. Sub-section (4) of Section 331 also refers to Column 6 of Schedule II. Hence, the relevant portion of the Schedule is also extracted hereunder:

"SCHEDULE II
(Section 331)

Serial No.	Section	Description of proceedings	Court of original jurisdiction	Court of First Appeal	Court of Second Appeal
1	2	3	4	5	6
xxx	xxx	xxx	xxx	xxx	xxx
34.	229, 229-B, 229-C	Suit for declaration of rights	Assistant Collector, 1st Class	Commissioner	Board

15. Sub-section (4) of Section 331 of U.P. Act states that a second appeal shall lie on "any of the grounds" specified in Section 100 C.P.C., 1908.

Section 100 C.P.C., as it stood prior to 1.2.1977, reads as follows:

"(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

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

After Section 100 was substituted by the Act 104 of 1976 with effect from 1.2.1977, it reads as follows:

> *"100. Second appeal.*-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
>
> (2) An appeal may lie under this section from an appellate decree passed *ex-parte*.
>
> (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
>
> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
>
> (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
>
> Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

16. U.P. Act received the assent of the President on 24.1.1951. It was published in the U.P. Gazette (Extraordinary) dated 26.1.1951. Sub-section (4) of Section 331 has incorporated the unamended Section 100 C.P.C. The question that calls for consideration is whether sub-section (4) of Section

331 carries with it the amended Section 100 C.P.C. as well, consequently, making it obligatory for the Board of Revenue to frame substantial questions of law.

17. The question, therefore, calls for consideration is whether reference to Section 100 in sub-section (4) of Section 331 is by way of referential legislation or legislation by incorporation. A subsequent legislation often makes a reference to earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference.

18. The question how the above two principles operate came up for consideration in *U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another* (1998) 2 SCC 467 before a three-judge Bench of this Court and it was held as follows:

> "17. A subsequent legislation often makes a reference to an earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i), a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words,

any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statue which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statue which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation. In the words of Lord Esher, M.R., the legal effect of such incorporation by reference "is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all." [See: *Wood's Estate*, Re, Ch D at 615.] As to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances. The legal position has been thus summed up by this Court in *State of Madhya Pradesh v. M. V. Narasimhan*: (SCR p. 14 : SCC p. 385, para 15)

> "where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:
>
> (a) Where the subsequent Act and the previous Act

> are supplemental to each other,
>
> (b) where the two Acts are in pari materia;
>
> (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
>
> (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

19. Law is, therefore, clear that a distinction has to be drawn between a mere reference or citation of one statute into another and incorporation. In the case of mere reference of citation, a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute.

20. We need not further elaborate this point, since almost identical question came up for consideration before a three-judge Bench of this Court in *Mahindra and Mahindra Ltd. v. Union of India and Another* (1979) 2 SCC 529, wherein this Court dealt with the scope of Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 read with Section 100 C.P.C., which reads as follows:

> *"55. Appeals.-* Any person aggrieved by any decision on any question referred to in clause (a), clause (b) or clause (c) of section 2A, or any order made by the Central Government under Chapter III or Chapter IV, or, as the case may be, or the Commission under section 12A or section 13 or section 36D or section 37, may, within sixty days from the date of the order, prefer an appeal to the Supreme Court on one or more of the grounds specified

in section 100 of the Code of Civil Procedure, 1908 (5 of 1908)."

21. This Court in the above mentioned case examined the scope of Section 55 read with Section 100 CPC, both amended and unamended. Section 55 provides *inter alia* that any person aggrieved by an order made by the Commissioner under Section 13 may prefer an appeal to this Court on "one or more of the grounds" specified in Section 100 C.P.C., 1908. When Section 55 was enacted, namely, 27.12.1969, being the day of coming into force of the Act, Section 100 C.P.C. specified three grounds on which a second appeal could be brought to the High Court on one of those grounds was that the decision appealed against was contrary to law. Therefore, if the reference in Section 55 was to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. The above aspects have been elaborately dealt with in *Mahindra and Mahindra* (supra). The relevant portion of the judgment is as follows:

"8. ……. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from 1st February, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one

ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides:

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law. We do not think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily letting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the

provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in the *Collector of Customs, Madras v. Nathella Sampathu Chetty* (1962) 3 SCR 786 and the *New Central Jute Mills Co. Ltd. v. The Assistant Collector of Central Excise and Ors.* (1970) 2 SCC 820. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. Lord Esher, M.R., while dealing with legislation in incorporation in In re. Wood's Estate (1886) 31 Ch.D. 607 pointed out at page 615 :

> If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.

Lord Justice Brett, also observed to the same effect in *Clark v. Bradlaugh* (1881) 8 Q.B.D. 63, 69 :

> ...there is a rule of construction that, where a statute

> is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.

22. The Judicial Committee of the Privy Council in *Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd.* 58 I.A. 259 also applied the same rule. The Judicial Committee pointed out that the provisions of the Land Acquisition Act, 1894 having been incorporated in the Calcutta Improvement Trust Act, 1911 and become an integral part of it, the subsequent amendment of the Land Acquisition Act, 1894 by the addition of Sub-section (2) in Section 26 had no effect on the Calcutta Land Improvement Trust Act, 1911 and could not be read into it. Sir George Lowndes delivering the opinion of the Judicial Committee observed at page 267:

> In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second : see the cases collected in Craies on Statute Law, 3rd edn. pp. 349, 350. ……. The independent existence of the two Acts is, therefore, recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. x x x
>
> It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.

23. This Court in *Ramswarup v. Munshi and Others* (1963) 3 SCR 858, held that since the definition of "agricultural land' in the Punjab Alienation of Land Act, 1900 was bodily incorporated in the Punjab Pre-emption Act, 1913, the repeal of the former Act had no effect on the continued operation of

the latter. Rajagopala Ayyangar, J., speaking for the Court observed at pages 868-869 of the Report:

> Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.
>
> In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the latter Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it.

24.In *Bolani Ores Ltd. v. State of Orissa* (1974) 2 SCC 777, this Court proceeded on the same principle. There the question arose in regard to the interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as the Taxation Act). This section when enacted adopted the definition of 'motor vehicle' contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced before the Court was that the definition in Section 2(c) of the Taxation Act was not a definition by incorporation but only a definition by reference and the meaning of 'motor vehicle' in Section 2(c) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. This argument was negatived by the Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939 as then existing was incorporation in Section 2(c) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. It is,

therefore, clear that if there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not effect the provision as incorporated in the latter statute. The question is to which category the present case belongs.

25. In *Mahindra and Mahindra* (supra), after referring to the above mentioned judgment, this Court held as follows:

> "We have no doubt that Section 55 is an instance of legislation by incorporation and not legislation by reference. Section 55 provides for an appeal to this Court on "one or more of the grounds specified in Section 100". It is obvious that the legislature did not want to confer an unlimited right of appeal, but wanted to restrict it and turning to Section 100, it found that the grounds there set out were appropriate for restricting the right of appeal and hence it incorporated them in Section 55. The right of appeal was clearly intended to be limited to the grounds set out in the existing Section 100. Those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to restrict the right of appeal. The Legislature could never have intended to limit the right of appeal to any ground or grounds which might from time to time find place in Section 100 without knowing what those grounds were. The grounds specified in Section 100 might be changed from time to time having regard to the legislative policy relating to second appeals and it is difficult to see any valid reason why the Legislature should have thought it

necessary that these changes should also be reflected in Section 55 which deals with the right of appeal in a totally different context. We fail to appreciate what relevance the legislative policy in regard to second appeals has to the right of appeal under Section 55 so that Section 55 should be inseparably linked or yoked to Section 100 and whatever changes take place in Section 100 must be automatically read into Section 55. It must be remembered that the Act is a self-contained Code dealing with monopolies and restrictive trade practices and it is not possible to believe that the Legislature could have made the right of appeal under such a code dependent on the vicissitudes through which a section in another statute might pass from time to time. The scope and ambit of the appeal could not have been intended to fluctuate or vary with every change in the grounds set out in Section 100. Apart from the absence of any rational justification for doing so, such an indissoluble linking of Section 55 with Section 100 could conceivably lead to a rather absurd and startling result. Take for example a situation where Section 100 might be repealed altogether by the Legislature-a situation which cannot be regarded as wholly unthinkable. It the construction contended for on behalf of the respondents were accepted, Section 55 would in such a case be reduced to futility and the right of appeal would be wholly gone, because then there would be no grounds on which an appeal could lie. Could such a consequence ever have been contemplated by the Legislature? The Legislature clearly intended that there should be a right of appeal, though on limited grounds, and it would be absurd to place on the language of Section 55 an interpretation which might, in a given situation, result in denial of the right of appeal altogether and thus defeat the plain object and purpose of the section. We must, therefore, hold that on a proper interpretation the grounds specified in the then existing Section 100 were incorporated in Section 55 and the substitution of the new Section 100 did not affect or

restrict the grounds as incorporated and since the present appeal admittedly raises questions of law, it is clearly maintainable under Section 55. We may point out that even if the right of appeal under Section 55 were restricted to the ground specified in the new Section 100, the present appeal would still be maintainable, since it involves a substantial question of law relating to the interpretation of Section 13(2). ……..…"

26. We are of the view that the principle laid down in *Mahindra and Mahindra* and the judgments referred to earlier clearly apply when we interpret sub-section (4) of Section 331 of the U.P. Act. Sub-section (4), as we have already indicated, has used the expression "on any of the grounds" specified in Section 100 of the C.P.C. Consequently, the then existing Section 100 (i.e. section 100, as it existed in 1908 unamended) was incorporated in sub-section (4) of Section 331 and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right of appeal to the Board of Revenue under sub-section (4) of Section 331 clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to limit the right of appeal.

27. The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High Court. Further, we also notice that the Board of Revenue has not examined the provisions of the land record and Lekhpal Diary No., date and P.A. 10. The Additional Commissioner had specifically noticed that P.A.10 which had been filed pertaining to year 1976 did not bear any signature and the same was found to be doubtful, as to whether the original 'Kashtkar' (tillers) of the land in dispute belonged to Tharu tribe, was also not

properly examined. Further, the Board of Revenue also should have examined whether the land belonged to Tharu tribe and the plaintiff could claim the benefit of Section 210 of the U.P. Act. All these aspects are very vital for a proper and just adjudication of the dispute, which has not been done.

28. In such circumstances, we are inclined to allow the appeals and set aside the order passed by the High Court as well as that of the Board of Revenue and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. However, we are not expressing any opinion on the merits of the case, since we are remitting the matter to the Board of Revenue. The Board of Revenue will pass the final orders within a period of three months from the date of receipt of this order.

K.K.T. Appeals allowed.

KUNAL MAJUMDAR

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 407 of 2008)

SEPTEMBER 12, 2012

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Code of Criminal Procedure, 1973 – s. 366(1) – Death reference – Manner in which to be dealt with – Held: High Court is bound to examine the death reference with particular reference to ss. 367 and 371 Cr.P.C. – High Court cannot short-circuit the process of reference by merely relying upon any concession made by the counsel for the convict or that of the State – In the instant case, the High Court dealt with the reference in a very casual and callous manner and did not exercise its jurisdiction vested in it u/s. 366(1) – Matter remitted to High Court to decide the reference in the manner it ought to have been decided.

The appellant-accused was convicted by trial court for the offences u/ss.302 and 376/511 and was sentenced to death with fine for the offence u/s. 302 IPC and was sentenced to 7 years RI with fine for the offences u/ss. 376/511 IPC. The case was referred u/s. 366 Cr.P.C. for confirmation of death sentence.

The High Court while dealing with the reference, alongwith the appeal, confirmed the conviction but altered the death sentence to life imprisonment u/s. 302 IPC while maintaining the sentence u/ss. 376/511 IPC. Hence the present appeal.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: 1. In a case for consideration for confirmation of death sentence under Section 366 (1) Cr.P.C., the High Court is bound to examine the Reference with particular reference to the provisions contained in Sections 367 to 371 Cr.P.C. In a Reference made u/s. 366 (1) Cr.P.C., there is no question of the High Court short-circuiting the process of Reference by merely relying upon any concession made by the counsel for the convict or counsel for the State. A duty is cast upon the High Court to examine the nature and the manner in which the offence was committed, the *mens rea* if any, of the culprit, the plight of the victim as noted by the trial Court, the diabolic manner in which the offence was alleged to have been performed, the ill-effects it had on the victim as well as the society at large, the mindset of the culprit vis-à-vis the public interest, the conduct of the convict immediately after the commission of the offence and thereafter, the past history of the culprit, the magnitude of the crime and also the consequences it had on the dependants or the custodians of the victim. There should be very wide range of consideration to be made by the High Court dealing with the Reference in order to ensure that the ultimate outcome of the Reference would instill confidence in the minds of peace loving citizens and also achieve the object of acting as a deterrent for others from indulging in such crimes. [Paras 15 and 17] [715-F; 717-C-F]

2. In the impugned order, the Division Bench of the High Court merely recorded to the effect that the counsel for the appellant pleaded for sympathy to commute the death sentence into one for life for the offence falling u/s. 302 IPC while praying for maintaining the sentence imposed for the offence u/ss. 376/511 IPC and that there was no opposition from the Public Prosecutor. The Division Bench of the High Court did not bother to exercise its jurisdiction vested in it u/s. 366(1) Cr.P.C. r/

w. Sections 368 to 370 and 392, Cr.P.C. in letter and spirit and thereby, shirked its responsibility while deciding the Reference in the manner it ought to have been otherwise decided under Cr.P.C. [Para 16] [716-E-H; 717-A-B]

3. If the matter is considered on merits by this Court, it would only result in dealing with the issue in such a manner which in the normal course should have been considered and examined by the Division Bench of High Court while dealing with the Reference u/s. 366 (1) Cr.P.C. Since the said exercise ought to have been carried out by the Division Bench while dealing with a Reference along with the appeal preferred by the appellant, in fitness of things the, Division Bench is allowed to carry out that exercise as ordained upon it. Therefore, the judgment impugned in this appeal is set aside and the matter is remitted back to the High Court for deciding the Reference u/s. 366 Cr.P.C. in the manner it ought to have been decided. [Paras 18 and 19] [717-H; 718-A-B, D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 407 of 2008.

From the Judgment & Order dated 11.7.2007 of the High Court of Judicature for Rajasthan at Jodhpur in DB Cri. Appeal No. 243 of 2007.

R.K. Das, Suchit Mohanty, Anshuman Patnaik, Anupam Lal Das for the Appellant.

Sonia Mathur, Milind Kumar for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. This appeal at the instance of the sole accused is directed against the judgment of the Division Bench of the High Court of Rajasthan at Jodhpur dated 11.7.2007 in Criminal

Murder Reference under Section 366(1), Cr.P.C. along with Criminal Appeal No.1/2007 as well as Criminal Appeal No.243 of 2007 and Jail Appeal No.313 of 2007 under Section 374(2) Cr.P.C. against the judgment and conviction dated 09.3.2007 passed by learned Additional Sessions Judge (Fast Track) No.1, Jodhpur in Sessions Case No.2 of 2006. The appellant was proceeded against for charges under Sections 376 and 302, IPC.

2. According to the prosecution, on 18.1.2006, a complaint (Exhibit P-6) was preferred by one Laltu Manjhi before the SHO, police station Shastri Nagar, Jodhpur wherein it was alleged that his daughter Bharti (the deceased) was employed as a housemaid in the residence of the appellant and that 25 days prior to the date of complaint, one Sudip De, through whom his daughter came to be employed with the appellant, informed him over phone that his daughter wanted to speak to him, that when he talked to his daughter, he could sense the plight of his daughter in the residence of the appellant, that though his daughter wanted to explain her ordeal at the instance of the appellant, she was prevented from talking to him in detail and that on the morning of 16.1.2006 at about 5 O' clock, he received an information through Sudip De that the appellant informed him over phone that his daughter fell unconscious due to Vertigo and was admitted to hospital. On such information, when the father of the deceased reached Jodhpur, the appellant informed him through Sudip De that his daughter was dead and that he could only see the body of his daughter in the Mortuary of the M.G.Hospital on 18.01.2006 where he noted the injuries all over the body of his daughter. According to him, he received information through the neighbours of the appellant that the appellant was constantly torturing the deceased during the preceding two months during which period she was employed at the house of the appellant apart from his immoral behaviour towards his daughter. It was his further allegation that his daughter was killed by the appellant by strangulation.

3. Based on the above report, the case was registered as Crime No.31 of 2006 and after investigation, the final report came to be filed pursuant to which charges were leveled against the appellant for offences under Sections 302 and 376, IPC.

4. Before the trial Court, PWs-1 to 17 were examined in support of the prosecution apart from Exhibits P-1 to P-20. On the 313 questioning, the appellant denied the offences alleged against him. According to him, he did not commit rape on the deceased, that the deceased was a patient of Epilepsy and on the date of incident, she developed the fit of Epilepsy due to which she developed breathlessness, became restless and, thereafter, fell down due to which she sustained injuries, that in order to give artificial respiration, the appellant and his wife took efforts to open her teeth to pour water and subsequently took her to the hospital in a three wheeler taxi where she was declared dead. It was further stated by the appellant that he intimated the parents of the deceased, that the complaint was false and he was innocent.

5. One factor which is relevant to be noted at the very outset is that as per the post mortem report, there were as many as 27 injuries almost on all parts of the body of the deceased and, in particular, injury Nos.19, 20 and 21 which were in the private parts of the deceased. The doctor who conducted the post mortem, namely, PW-9, in the post mortem report specifically mentioned to the effect- *'on dissection of neck – ante mortem reddish coloured haematoma present on Lt. side neck underneath the skin & in underlying soft tissues. On further examination, patchy antemortem reddish dark haematoma present below epiglottis on both sides & also in soft tissues at upper part of trachea. Hyoid bone, thyroid & corticord cartilages found intact, mucosa of trachea also congested in upper half. Opinion: Cause of death is ante-mortem injuries to neck, which are sufficient to cause death.*

6. The further report of the doctor was that there was pressure above the Larynx Trachea of the deceased. In the further report under Exhibits P-14 and P-15, it was noted that many sections in trachea cut and congestion of vessels were found apart from haemorrhage at many places and acute inflammatory infiltrate was present. PW-9 further noted that there was pressure on the layering trachea of the deceased and the injuries were inflicted. PW-9 was the doctor who was a member of the medical board constituted by the Superintendent of Gandhi Hospital Jodhpur who conducted the post-mortem on the body of the deceased.

7. PW-9 in his evidence stated as under:

> "Ante mortem reddish coloured haematoma present on left side of neck underneath the skin and in underling soft tissues. On further examination patchy ante mortem reddish dark coloured haematoma present below epiglottis on both sides and also in soft tissues at upper part of trachea. Hyoid bone, Thyroid and Cricoid cartilages found intact. Mucosa of trachea also congested in upper half.
>
> After internal examination of the dead body it was found that there was sub sculp haematoma in area of 2 x 2 centimetres dark reddish in colour on left frontal region and 3 x 2 centimetres dark reddish on left occipital region near underline. Brain, both lungs, lever, spleen and kidney were found congested. Membrane of abdomen was yellowish and abdomen contained about 100 m.l. yellowish fluid. On examination of sexual organ-the hymen showed old healed tears and the vaginal orifice admitted two fingers easily. The uterus was found small in size and healthy and empty."

8. The trial Court based on the medical evidence stated as under:

> "Here it is worth mentioning that injury No.14 caused to the deceased has come in the portion opposite the chest, in the middle portion and on the right side and in the above said injury No.14, many scratches between 2 x 2 cms to 4 x 2 cm being there has been mentioned.
>
> Similarly the injuries No.15, 19, 20, 21, 25, 26 respectively caused to the deceased in the portion below the chest of the deceased, above the left nipple, towards four sides of the left nipple, in circular shape, on the right side, on the side portion of the chest, in one third portion, on the neval has appeared in the form of multiple scratches.
>
> All the above said injuries probably are not possible to be sustained during the course of getting restlessness in the attack of Epilepsy.
>
> xxx xxx xxx xxx xxx
>
> From the evidence of PW-9, Dr. P.C. Vyas, it is proved in clear manner that the cause of death of the deceased was the injury that came on the internal part of her neck and the above injury was sustained as a result of an external pressure. Hence it is clear that the death of the deceased was due to strangulation on account of injury caused on the neck and above said injury was sufficient to cause death. The confirmation of the above statement of PW-9 of Dr. P.C. Vyas in the context of the internal parts of the neck is done from the Histo Pathology report Ex.P-14 also. In the internal Larynx and in the Trachea protion abraided wounds have been found.
>
> Hence from the singular evidence of PW-9, Dr.P.C. Vyas this fact is proved beyond doubt that the death of deceased Kumari Bharti was not due to suffocation of breath as result of fit of epilepsy. No possibilities have appeared about sustaining above said 27 injuries during

the course of attack of Epilepsy of the deceased."

(emphasis added)

9. After detailed analysis of the evidence, the trial Court concluded that the appellant was guilty of the charges falling under Sections 302, 376/511 IPC. On the question of sentence, after hearing the appellant as well as the learned Public Prosecutor and after referring to the various decisions of this Court regarding the principles to be applied for imposing the capital punishment, ultimately held as under:

"This position is proved from the evidence clearly that the accused Kumari Bharti was a minor girl of 14 years and this position is also proved from the evidence that the father of the girl PW-3 Laltu Manjhi had sent her from West Bengal to the residential place located at Vyas Colony in Jodhpur, the above said girl as maid servant, for working at the place of the accused. Laltu Manjhi, father of the deceased has relations with an extremely poor family and he due to his financial circumstances by having trust on the accused that he will maintain his daughter as his own daughter, sent her from West Bengal to such a distance in Rajasthan. Accused Kunal Majumdar at the time of the incident was working in Air Force Station Jodhpur. *The accused being the guardian, had done extremely inhuman act with her and during the course of committing the rape with deceased Bharti, inflicted total 27 injuries on different parts of her body and thereafter by strangulating her throat, committed her murder. The accused on the private physical parts of the deceased i.e. on both of breast, inflicted injuries, along with that close to the breast also of the deceased, inflicted many physical injuries. In this way the accused, with the minor girl who was unable to object herself, committed this type of ill act with her."*

(emphasis added)

10. The trial Court, therefore, imposed the punishment of death sentence apart from a fine of Rs.5,000/- for the offence found proved under Section 302, IPC and sentence of seven years' RI and Rs.25,000/- fine for the offence under Sections 376/511 IPC and in default of payment of fine, to undergo two more years of imprisonment. Since death sentence was imposed, the case was referred for confirmation under Section 366 (1) Cr.P.C. to the High Court and ordered to await for the confirmation of the High Court before its execution.

11. We heard Mr. R.K. Das, learned senior counsel for the appellant and learned counsel for the State. We have also perused the written submissions filed on behalf of the appellant. For the reasons stated herein, we do not find any scope to consider the submissions of the learned senior counsel for the appellant on the merits of the case. Having perused the judgment of the trial Court, when we examine the judgment of the High Court, we are shocked to note that the case of Reference of death sentence for confirmation was dealt with by Division Bench of the High Court of Rajasthan at Jodhpur in a casual and callous manner by merely stating that the counsel for the appellant prayed for sympathetic consideration in commuting the death sentence into sentence for life and there being no serious support from the Public Prosecutor of the State and the injuries sustained resulting into death did not suggest use of severe force in order to conclude the same as one of brutal and inhuman, the death sentence can be altered as one for life imprisonment under Section 302, IPC while maintaining the sentence awarded for offences under Sections 376 read with 511 IPC.

12. By filing this appeal against the said judgment of the High Court, the learned Counsel for the appellant submitted that the evidence available on record does not call for conviction and consequently the sentences imposed cannot be sustained.

13. We also heard learned counsel for the State as to the correctness of the judgment of the Division Bench of the High

Court. The respective counsel were not in a position to make submission as to the correctness or otherwise of the judgment of the Division Bench inasmuch as there was absolutely no consideration of the relative merits and demerits of the conviction and the sentence imposed in the Reference under Section 366 (1), Cr.P.C. in the manner in which it was required to be considered.

14. If the submissions of learned counsel for the appellant were to be considered in detail, that would, on the face of it, conflict with the stand of the appellant himself before the Division Bench of the High Court, where it has been recorded that the counsel who represented on behalf of the appellant stated to have made only one submission to the effect that the Court may sympathetically consider the case of the appellant for commuting the death sentence into the sentence for life and that no seriousness was attached to the sentences passed for offence under Sections 376/511, IPC while praying for life imprisonment for the principal offence. Even assuming such a statement stated to have been made on behalf of the appellant as recorded in the impugned judgment can be taken to be true for its face value, we are at a loss to understand as to how the learned Public Prosecutor could have submitted that the Court may consider the case of the appellant sympathetically as recorded by the Division Bench in the order impugned herein.

15. In a case for consideration for confirmation of death sentence under Section 366 (1) Cr.P.C., the High Court is bound to examine the Reference with particular reference to the provisions contained in Sections 367 to 371 Cr.P.C. Under Section 367, Cr.P.C., when Reference is submitted before the High Court, the High Court, if satisfied that a further enquiry should be made or additional evidence should be taken upon, any point bearing upon the guilt or innocence of the convict person, it can make such enquiry or take such evidence itself or direct it to be made or taken by the Court of Sessions. The ancillary powers as regards the presence of the accused in

such circumstances have been provided under sub-Clauses (2) and (3) of Section 367, Cr.P.C. Under Section 368, while dealing with the Reference under Section 366, it inter alia provides for confirmation of the sentence or pass any other sentence warranted by law or may annul the conviction itself and in its place convict the accused for any other offence of which the Court of Sessions might have convicted the accused or order for a new trial on the same or an amended charge. It may also acquit the accused person. Under Section 370, when such Reference is heard by Bench of Judges and if they are divided in their opinion, the case should be decided in the manner provided under Section 392 as per which the case should be laid before another Judge of that Court who should deliver his opinion and the judgment or order should follow that opinion. Here again, under the proviso to Section 392, it is stipulated that if one of the Judges constituting the Bench or where the appeal is laid before another Judge, either of them, if so required, direct for rehearing of the appeal for a decision to be rendered by a larger Bench of Judges.

16. When such a special and onerous responsibility has been imposed on the High Court while dealing with a Reference under Section 366 (1), Cr.P.C., we are shocked to note that in the order impugned herein, the Division Bench merely recorded to the effect that the counsel for the appellant pleaded for sympathy to commute the death sentence into one for life for the offence falling under Section 302, IPC while praying for maintaining the sentence imposed for the offence under Sections 376/511, IPC and that there was no opposition from the learned Public Prosecutor. The Division Bench on that sole ground and by merely stating that there was no use of force of severe nature on the victim at the hands of the appellant and that the commission of offence of murder cannot be held to be brutal or inhuman and consequently the death sentence was liable to be altered as one for life for the offence under Section 302, IPC. The Division Bench of the High Court did not bother to exercise its jurisdiction vested in it under Section 366(1)

Cr.P.C. read with Sections 368 to 370 and 392, Cr.P.C. in letter and spirit and thereby, in our opinion, shirked its responsibility while deciding the Reference in the manner it ought to have been otherwise decided under the Code of Criminal Procedure. We feel that less said is better while commenting upon the cursory manner in which the judgment came to be pronounced by the Division Bench while dealing with the Reference under Section 366 (1) while passing the impugned judgment.

17. We are, however, duty bound to state and record that in a Reference made under Section 366 (1) Cr.P.C., there is no question of the High Court short-circuiting the process of Reference by merely relying upon any concession made by the counsel for the convict or that of counsel for the State. A duty is cast upon the High Court to examine the nature and the manner in which the offence was committed, the mens rea if any, of the culprit, the plight of the victim as noted by the trial Court, the diabolic manner in which the offence was alleged to have been performed, the ill-effects it had on the victim as well as the society at large, the mindset of the culprit vis-à-vis the public interest, the conduct of the convict immediately after the commission of the offence and thereafter, the past history of the culprit, the magnitude of the crime and also the consequences it had on the dependants or the custodians of the victim. There should be very wide range of consideration to be made by the High Court dealing with the Reference in order to ensure that the ultimate outcome of the Reference would instill confidence in the minds of peace loving citizens and also achieve the object of acting as a deterrent for others from indulging in such crimes.

18. It is unfortunate that the Division Bench of the High Court of Rajasthan was oblivious of the above vital factors while disposing of the Reference in such a cursory manner. It will have to be stated that if the submissions of the counsel for the appellant before us are to be considered on merits, they would

only result in dealing with the issue in such a manner which in the normal course should have been considered and examined by the Division Bench while dealing with the Reference under Section 366 (1). Since the said exercise ought to have been carried out by the Division Bench while dealing with a Reference along with the appeal preferred by the appellant, in fitness of things the Division Bench is allowed to carry out that exercise as ordained upon it. To emphasize upon the duty cast upon the Division Bench in such cases of Reference, we reiterate that resorting to any such shortcut course would reflect very badly upon the concerned Court.

19. We are convinced that it is the bounden duty of the Division Bench to carry out such exercise in the manner set out above and we feel it appropriate, therefore, to set aside the judgment impugned in this appeal for that reason and remit the matter back to the High Court for deciding the Reference under Section 366 Cr.P.C. in the manner it ought to have been decided. Inasmuch as the conviction and sentence imposed on the appellant was by the judgment dated 09.03.2007 of the trial Court and the offence alleged was dated 16.01.2006, while remitting the matter back to the High Court, we direct the High Court to dispose of the Reference along with the Appeals expeditiously and in any case within three months from the date of receipt of the records sent back to the High Court. The appeal stands disposed of with the above directions to the High Court.

K.K.T. Appeal disposed of.

CHAIRMAN & CEO, NOIDA & ANR.
v.
MANGE RAM SHARMA (D) THR. LRS & ANR.
I.A. No. 10 of 2012
IN
(Civil Appeal No. 10535 of 2011)

SEPTEMBER 13, 2012

[SWATANTER KUMAR AND RANJANA PRAKASH DESAI, JJ.]

Urban Development – Supreme Court order dated 30.7.2012 directing NOIDA (Authority) to float 'Special Scheme' – In para 4 of the order stating that the allottees of land by NOIDA in previous schemes would not be eligible to the benefit of the 'Special Scheme' – Special Scheme floated as per the order of Supreme Court – Clause 3 thereof making the tenderers eligible to bid for two plots whose turnover exceeds aggregate net worth required for both the plots, applied for by the tenderer – Interlocutory application for modification of Para 4 of the order dated 30.7.2012 – Plea that the condition in the Special Scheme framed under order of Supreme Court is leaving the applicant as ineligible to apply for two plots – Held: Court declined to modify Para 4 of order dated 30.7.2012 – Turnover of a company has no connection with number of plots allotted to an applicant – Clause 3 of Special Scheme is quashed as two plots cannot be allotted under the Scheme – Direction to delete clause 3 with retrospective effect – Any plot if left unallotted under the Special Scheme, relating to nursing homes, NOIDA would be at liberty to formulate a General Scheme for auctioning such plots – The applicant if eligible in terms of that policy, can participate in the auction.

CIVIL APPELLATE JURISDICTION : I.A. No. 10 of 2012

IN

Civil Appeal No. 10535 of 2011.

From the Judgment & Order dated 9.10.2002 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 15934 of 1995.

Ranjit Kumar, Ravindra Kumar, Sanjai Kr. Pathak, Aditya Kr. Choudhary, Sashi Pathak for the Appellants.

Bijoy Kumar Jain, Saurabh Mishra, Praveen Chaturvedi for the Respondent.

The following Order of the Court was delivered

O R D E R

1. By this order, we will dispose of the above Interlocutory Application filed on behalf of Dr. G.P. Pathak. The prayer in this application is that this Court should modify para 4 of the directions contained in the order dated 30th July, 2012. While making the above prayer, it is submitted that the New Okhla Industrial Development Authority (NOIDA) has published a policy in furtherance to order of this Court and in clause 3 made a criteria which renders the applicant ineligible for obtaining a second plot under the same scheme. The contention is that under the general schemes floated by the NOIDA, a person is entitled to get two plots and can even take two adjacent plots. Such allotment is required to be made by the authority and there is no restriction. However, the scheme framed under the orders of the Court is placing the applicant at a disadvantageous position. Para 4 of the directions contained in order dated 30th July, 2012 reads as under :

> "4. The persons who have been allotted lands by the NOIDA previously under any Scheme, would not be eligible to the benefit of the Special Scheme floated by the NOIDA in furtherance of the order of this Court."

Clause 3 of the 'Special Scheme' reads as under :

"3. The tenderer can Bid for a maximum of 2 (two) plots out of all plots offered in above Scheme. However, in that case net worth of the tenderer should exceed aggregate net worth required for both the plots applied for by the tenderer taken together. In case the two adjoining plots are allotted to any successful bidder, amalgamation of the said two plots shall be permissible."

2. There is no dispute to the fact that the applicant was running a clinic in the residential area and has to close the same activity in furtherance to the orders of this Court. He would be entitled to apply under the 'Special Scheme' formulated by the NOIDA under the order of the Court. The question is as to whether under the 'Special Scheme', the applicant can claim two plots? We have no hesitation in answering the said question in the negative. This is a 'Special Scheme' floated by NOIDA as per the directions of this Court. It is not a 'General Scheme' floated by NOIDA of its own. The terms and conditions applicable under 'General Scheme' floated by NOIDA will have such eligibility criteria and terms and conditions that NOIDA in its wisdom finds suitable and in consonance with its policy. Such 'General Scheme' may permit grant of double benefit i.e. the party may be a successful bidder even in two plots. To the contrary under the 'Special Scheme' no person can be permitted to derive double benefit even if a person was running two clinics or two small nursing homes in the hospital area. He can easily club both such clinics or nursing homes and build a common hospital just by raising additional construction as may be permissible. It is not disputed before us that the applicant has already got a plot for establishing a nursing home and in fact he has already built a nursing home there. We see no reason why he should get double benefit under the court directed 'Special Scheme'. We do not see any necessity to alter or modify para 4 of the directions contained in the order dated 30th July, 2012. Consequentially, there is also no

requirement for modification of clause 3 of the 'Special Scheme' floated by the NOIDA which debars a person who has already been given a plot. We do not think that there was any occasion for the NOIDA even to introduce clause 3. In fact, we direct its deletion. Nobody would get two plots under this 'Special Scheme'.

3. We make it clear that the net worth of a tenderer would be of no consideration for giving such applicant two plots as the plots are being allotted in furtherance of the orders of the Court and, thus, could not be used as an instrument for providing state largesse in a manner not contemplated in terms of the judgment.

4. We also make it clear that if, for any reason, the plots declared by NOIDA for construction of nursing homes are not sold under this 'Special Scheme', the NOIDA would be free to formulate its general policy for allotment of such plots for nursing homes and the present applicant can apply under that scheme as per the terms and conditions of that policy, if such policy does not put any embargo or restriction upon grant of another plot.

5. In view of the above discussion, we dispose of this application with the following order :

(a) We decline to modify para 4 of the directions contained in the order of this Court dated 30th July, 2012.

(b) We are of the considered view that turnover of a company has no connection with the number of plots that could be allotted to an applicant under the scheme formulated in furtherance to the said order of the Court. Suffice it to note that two plots cannot be allotted under this Scheme. Thus, we quash clause 3 of the brochure. The same shall stand deleted with retrospective effect.

(c) Any plots which remain unallotted under the 'Special Scheme' relating to nursing homes, the NOIDA will be at liberty to formulate a 'General Scheme' for auctioning such plots in terms of its policy and the applicant, if eligible in terms of that policy, can participate in the auction for buying the plot.

6. The Interlocutory Application is accordingly dismissed. There shall be no order as to costs.

K.K.T. I.A. dismissed.

BABA TEK SINGH

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 376 of 2012)

SEPTEMBER 17, 2012

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Constitution of India, 1950 – Article 32 – Writ petition – Maintainability – Petitioner filing petition under Article 226 of Constitution alleging threat to his life and personal liberty – Withdrawing the petition feeling that the proceeding before High Court were not effective – Subsequently filing petition under Article 32 for the same remedies – Held: The petition under Article 32 is not maintainable – The action of the petitioner in withdrawing the Petition pending before High Court simply to file the petition under Article 32 is not acceptable – The petitioner is wrong in his belief that proceedings before High Court are not effective or that he would not get full protection from High Court – High Courts have wide powers and possess as much authority as Supreme Court to protect and safeguard the constitutional rights – Since the matter relates to the right to life and personal liberty and since the allegations prima facie do not appear to be unfounded and baseless, the petitioner is not left remediless – Request to the High Court to restore the petition under Article 226 to its original file and to proceed further in the matter in accordance with law.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 376 of 2012.

Under Article 32 of the Constitution of India.

P.N. Misra, M.L. Saggar, Rajinder Mathur for the Petitioner.

The following Order of the Court was delivered by

O R D E R

1. In this petition filed under Article 32 of the Constitution, the petitioner states that he apprehends threat to his life, personal liberty and property at the hands of the respondents. It is alleged that the respondents want to remove him from his positions as Mohatmim of Gurudwara Gurusar Sahib, Patshahi Nauvin, Dhanaula, District Barnala (Punjab) and the President of the Baba Gandha Singh Trust (Registered) and to take over the control of the trust and its properties, including three schools at Barnala being run by the Trust. It is further alleged that the respondents hold very important positions in the Government and wield great political influence. At their behest, the petitioner is being constantly hounded by the police and he has been taken in illegal custody on completely false charges on a number of occasions. The petitioner apprehends that he may even be eliminated at the instance of the respondents.

2. There may be some substance in the allegations made in the writ petition but we do not wish to comment upon the merits of the petitioner's case, as we are not inclined to entertain the writ petition because we disapprove the manner in which the matter is brought to this Court.

3. The petitioner has instituted a number of proceedings (criminal and of the nature of contempt and writs) before the Punjab and Haryana High Court and in those cases he has also been getting orders in his favour. One such writ petition filed by the writ petitioner before the Punjab and Haryana High Court was CWP No.21234/2011. The petitioner seems to have felt that the other side was delaying the matter and the case was not proceeding efficaciously before the High Court. He, therefore, filed a petition (CM No.8619 of 2012) for withdrawal of the writ petition. On July 18, 2012, the High Court allowed the application and permitted the petitioner to withdraw his writ petition before the High Court and to seek any other remedy available in law.

4. Having, thus, withdrawn his writ petition before the High

Court, the petitioner has come to this Court in this petition under Article 32 of the Constitution.

5. We take exception to the manner in which this petition has been filed before the Court. The petitioner is completely wrong in his belief that the proceeding before the High Court was not effective or that he would not have got full and complete protection from the High Court, if the High Court found the need to give him the protection. The petitioner must realise that the High Courts have wide powers and possess as much authority as this Court to protect and safeguard the constitutional rights of any person within their jurisdiction. We find the action of the petitioner in withdrawing the proceedings pending before the High Court simply to file this petition before this Court unacceptable and for this reason alone, we refuse to entertain this writ petition.

6. Had it been any ordinary civil case, we might have left the petitioner to face consequences of his action in withdrawing the proceedings before the High Court. But, since the matter relates to the right to life and personal liberty, and further since the allegations made in the writ petition *prima facie* do not appear to be unfounded and baseless, we cannot leave the petitioner completely remediless. We, therefore, request the High Court to restore the aforesaid CWP No.21234/2011 to its original file and to proceed further in the matter, in accordance with law. We hope and trust that the High Court will completely dispel any impression that the other side may delay the proceedings and take up the matter without any undue delay.

7. We, once again, make it clear that we are not expressing any opinion on the merits of the case and it is for the High Court to judge the matter independently and to pass appropriate orders in accordance with law.

8. The writ petition is disposed of with the aforesaid observations and directions.

K.K.T. Writ Petition disposed of.

PUSHPANJALI SAHU
v.
STATE OF ORISSA & ANR.
(Criminal Appeal No. 1439 of 2012)

SEPTEMBER 18, 2012

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860 – s. 376 – Rape – Conviction and sentence of seven years by trial court – Conviction and sentence confirmed by appellate court – In revision, High Court confirming the conviction, but reducing the sentence to the period already undergone i.e. one year – On appeal held: Under s. 376 court can award imprisonment for not less than seven years and reduction thereof to be on giving appropriate reasons – Reasons assigned by High Court in reducing the sentence not convincing – Accused liable to be convicted and sentenced to 7 years imprisonment – Sentence/Sentencing – Reduction of Sentence.

State of Madhya Pradesh v. Pappu **(2008) 16 SCC 758: 2008 (11)SCR 793;** *M.P. v. Ghanshyam Singh* **(2003) 8 SCC 13: 2003 (3) Suppl. SCR 618;** *State of M.P. v. Babbu Barkare* **(2005) 5 SCC 413: 2005 (1) Suppl. SCR 381 – relied on.**

Crime Against Women – Rape – Courts are expected to deal with crime against women with utmost sensitivity – Such cases need to be dealt with sternly and severely.

State of Madhya Pradesh v. Sheikh Shahid **(2009) 12 SCC 715: 2009(5) SCR 1038;** *State of M.P. v. Munna Choubey* **(2005) 2 SCC 710: 2005 (1) SCR 781;** *State of H.P. v. Shree Kant Shekari* **(2004) 8 SCC 153: 2004 (4) Suppl. SCR 380;** *Bodhisattwa Gautam v. Subhra Chakraborty* **(1996) 1 SCC 490: 1995 (6) Suppl. SCR 731 – relied on.**

Case Law Reference:

2008 (11) SCR 793	**Relied on**	**Para 10**
2003 (3) Suppl. SCR 618	**Relied on**	**Para 10**
2005 (1) Suppl. SCR 381	**Relied on**	**Para 10**
2009 (5) SCR 1038	**Relied on**	**Para 11**
2005 (1) SCR 781	**Relied on**	**Para 11**
2004 (4) Suppl. SCR 380	**Relied on**	**Para 13**
1995 (6) Suppl. SCR 731	**Relied on**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1439 of 2012.

From the Judgment & Order dated 28.9.2010 of the High Court of Orissa at Cuttack in Criminal Revision No. 676 of 1999.

J.K. Das, Sandeep Devashish Das, Avijeet Bhujabal (for Parmanand Gaur) for the Appellant.

Shibashish Misra, Nidhi for the Respondents.

The following Order of the Court was delivered

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature of Orissa at Cuttack in Criminal Revision No.676 of 1999, dated 28.09.2010. By the impugned judgment and order, the High Court, while confirming the order passed by the learned Sessions Judge, Keonjhar, Orissa in Criminal Appeal No.59 of 1995, has modified the sentence awarded to the accused to the period already undergone by him. It is this portion of the order which is taken exception to by the complainant in this appeal. The only issue

that arises for our consideration and decision in this appeal is: whether the High Court was justified in altering/modifying the quantum of sentence awarded by the learned Trial Judge and confirmed by the Sessions Court.

3. The complainant was employed as a Matron in a Government Women's College Hostel. The accused was a chowkidar/night watchman in that hostel. The offence that was alleged against the appellant was that he committed an offence of rape under Section 376 of the Indian Penal Code on the complainant. The prosecution had led its evidence. The Trial Court, after analysing the evidence on record, concluded that the prosecution has proved its case and accordingly, convicted the accused and awarded the sentence directing the accused to undergo imprisonment for a period of 7 years.

4. Being aggrieved by the aforesaid order passed by the Trial Court, the accused had filed an appeal before the learned Sessions Judge, Keonjhar, Orissa. The appellate court, after considering the entire evidence on record has confirmed the order passed by the Trial Court.

5. The accused, being aggrieved by the aforesaid two orders, had filed a Revision Petition before the High Court. The High Court once again has considered the entire issue in detail and thereafter has come to the conclusion that the Trial Court was justified in coming to the conclusion that the accused has committed the offence of rape against the matron of the hostel. However, taking a lenient view of the matter, has reduced the sentence awarded by the Trial Court from 7 years to the period already undergone by the accused i.e. about a year.

6. We had issued notice against the accused confining to the issue regarding the sentence. The accused could not be served through the regular process. Therefore, we had issued non-bailable warrants against the accused to secure his presence. The police authorities have secured the presence of the accused and he is present before us today.

7. We have heard learned counsel for the appellant, the State and also for the accused person and have also looked into the provisions of Section 376 of the Indian Penal Code, 1860. The said provision reads as under :

"376. Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever: -

(a) Being a police officer commits rape-

(i) Within the limits of the police station to which he is appointed; or

(ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) On a woman is his custody or in the custody of a police officer subordinate to him; or

(b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape when she is under twelve years of age; or

(g) Commits gang rape,

Shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2

"Women's or children's institution "means an institution, whether called an orphanage or home for neglected women or children or a widows' home or by any other

name, which is established and maintained for the reception and care of women or children.

Explanation: 3

"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation]."

8. A reading of the above provisions would clearly indicate that if a person is convicted under Section 376 of the I.P.C., the Court can award imprisonment for not less than 7 years which may also extend for life. The provision also makes it abundantly clear that, if for any reason, the sentence has to be reduced, the Court ought to give appropriate reasons.

9. In the instant case, we have gone through the judgment of the High Court reducing the sentence from 7 years to the period already undergone. We are not convinced with the reasons assigned by the High Court.

10. This Court in State of Madhya Pradesh v. Pappu, (2008) 16 SCC 758, considered the similar question of validity and justifiability of reduction of sentence, awarded by the Trial Court to the accused convicted under Section 376(1) read with Section 511 of the Indian Penal Code, 1860 (in short "IPC") and Sections 324 and 452 IPC, by the High Court. This Court relying upon its earlier observations in *State of M.P. v. Ghanshyam Singh,* (2003) 8 SCC 13 and *State of M.P. v. Babbu Barkare,* (2005) 5 SCC 413 observed that undue sympathy towards the accused by imposition of inadequate sentence would do more harm to the justice system by undermining the confidence of society in the efficacy of law and society could not long endure under such serious threats. The Courts therefore are duty bound to award proper sentence having regard to the nature and manner of execution or commission of the offence. This Court, highlighted the dangers

of imposition of sentence without due regard to its effects on the social order and opined as follows:

> "9. "17. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.
>
> 19. … The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. If for the extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.""

11. This Court in *State of Madhya Pradesh v. Sheikh Shahid,* (2009) 12 SCC 715, relying upon its earlier judgment in *State of M.P. v. Munna Choubey,* (2005) 2 SCC 710 has recorded its observations on the yardstick of determining sentence as the nature and gravity of the offence and has cautioned against placing reliance upon reasons such as

accused being from a rural background or length of time.

> 8. "6… "8. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of some deathless shame.
>
> 9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: 'State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.' Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation the sentencing process should be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh v. State of M.P.*

this Court while refusing to reduce the death sentence observed thus: (SCC p. 82, para 6)

'6. ... it will be a mockery of justice to permit these appellant-accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellant-accused would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.'

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.*

11. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and

widespread.

12. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. ... Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

13. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *McGautha v. California* that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

14. In *Jashubha Bharatsinh Gohil v. State of Gujarat* it has been held by this Court that in the matter of death sentence, the courts are required to answer new challenges and mould the sentencing system to meet these

challenges. The object should be to protect the society and to deter the criminal from achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

15. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

16. In *Dhananjoy Chatterjee v. State of W.B.* this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in

view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

17. Similar view has also been expressed in *Ravji v. State of Rajasthan.* It has been held in the said case that it is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. If for an extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, the most deterrent punishment is not given, the case of deterrent punishment will lose its relevance."

12. Learned counsel for the accused has taken us through the reasons assigned by the High Court. The case on hand, in our considered opinion, does not fall within the category of exceptional cases and as we have already observed, we are not convinced with the reasons assigned by the High Court for reducing the sentence. In this view of the matter, while allowing this appeal, we set aside that portion of the order passed by the High Court reducing the period of sentence from 7 years to the period already undergone by the accused. We now direct that the accused be convicted and sentenced for a period of 7 years. It is needless to mention that the period already undergone by the accused shall be set off.

13. Before parting, we wish to reflect upon the dehumanizing act of physical violence on women escalating in

the society. Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience— offending her self-esteem and dignity. This Court in *State of H.P. v. Shree Kant Shekari,* (2004) 8 SCC 153 has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. It destroys, as noted by this Court in *Bodhisattwa Gautam v. Subhra Chakraborty,*(1996) 1 SCC 490 the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

14. In the light of the above discussion, we allow this appeal. The impugned order is set aside. We restore the order passed by the Trial Court.

Ordered accordingly.

K.K.T. Appeal allowed.

PUDHU RAJA & ANR.

v.

STATE, REP. BY INSPECTOR OF POLICE

(Criminal Appeal No. 1517 of 2008)

SEPTEMBER 19, 2012

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 – ss. 302 r/w. s. 34, 304(b) and 201 – Prosecution under – Death caused of a woman by her husband (A-2) and mother-in-law – By putting her on fire – Circumstantial evidence – Demand of dowry by accused alleged as motive – Trial court acquitting the accused on the grounds of contradictions in the deposition of eye-witnesses, delay in lodging FIR and concluding that it was a case of suicide – High Court convicting the accused – On appeal, held: High court rightly convicted the accused – There was sufficient evidence to indicate possibility of dowry harassment and death – Theory of suicide negated by the medical evidence – Delay in lodging FIR would not materially affect prosecution case in the facts of the case – The discrepancies were not material and did not go to the root of the case.

Evidence – Circumstantial evidence – Appreciation of – Held: In a case of circumstantial evidence, prosecution must establish each instance of incriminating circumstance by clinching evidence – Circumstances so proved must form a complete chain of events on the basis of which, no conclusion other than one of guilt of accused can be reached – Court can take note of explanation u/s. 313 Cr.P.C. in a case of circumstantial evidence in order to decide whether the chain of circumstances is complete – Suspicion, however grave cannot be treated as substitute for proof – Motive assumes great significance in a case of circumstantial evidence – Code of Criminal Procedure, 1973 – s. 313 – Motive.

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The Transport Commissioner, A.P. Hyderabad and Anr. v. Sardar Ali and Ors. **AIR 1983 SC 1225;** *State of Maharashtra v. Suresh* **(2000) 1 SCC 471: 1983 (3) SCR 729;** *Musheer Khan v. State of Madhya Pradesh* **(2010) 2 SCC 748: 2010 (2) SCR 119 – referred to.**

Criminal Trial – Contradictions and omissions in evidence – Held: Minor contradictions, inconsistencies, embellishments or improvements, which do not affect the core of the prosecution case, must not be made ground for rejection of evidence in its entirety.

State v. Saravamam **AIR 2009 SC 152: 2008 (14) SCR 405 – relied on.**

Appeal – Appeal against acquittal – Power of appellate court – Held: Appellate court can interfere with the order of acquittal only in exceptional cases, where the order is found to be perverse – Interference in a routine manner should be avoided.

Case Law Reference:

AIR 1983 SC 1225	**Referred to**	**Para 10**
1983 (3) SCR 729	**Referred to**	**Para 10**
2010 (2) SCR 119	**Referred to**	**Para 10**
2008 (14) SCR 405	**Relied on**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1517 of 2008.

From the Judgment & Order dated 21.8.2008 of the High Court of Judicature at Madras in Criminal Appeal No. 337 of 2005.

Dr. A. Francis Julean, Sumit Kumar, Danish Zubair Khan for the Appellants.

S. Gurukrishnakumar, AAG, B. Balaji A. Prasanna Venkat, Krishnamoorthy for the Respondent.

The following Order of the Court was delivered

O R D E R

1. This appeal has been preferred against the final judgment and order dated 21.8.2008, passed by the High Court of Judicature at Madras in Criminal Appeal No.337 of 2005, by way of which, the High Court has allowed the State appeal against the judgment and order dated 22.12.2004 in Sessions Case No.618 of 2003 passed by the Additional District & Sessions Judge, (Fast Track Court No.1), Chengalpet, Kachipuram District, by which, the Trial Court had acquitted the appellants of the charges under Sections 302 r/w 34, 304(b) and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

2. The facts and circumstances giving rise to this appeal as per prosecution are as follows:

A. Padhu Raja (A-1), son of Smt. Angammal (A-2), got married to one Jayalakshmi (deceased), on 6.9.1998 at Gudalur. At the time of marriage the appellant (A-1) demanded 50 Sovereigns of jewels and Rs.2 lacs in cash, however the parents of the deceased gave 35 sovereigns of jewels and cash to the tune of Rs.50,000/-. Thereafter, there were persistent demand for dowry by the appellants from time to time, particularly on festive occasions. Those demands were even met. Appellant (A-1) made a demand for a motor bike which was also met by the parents of the deceased in the presence of several villagers, including the village Head, namely Bose, (PW.6). However, even after this, the demands continued. In July 2000, Jayalakshmi came to her parent's house and told them that a demand had been made by the husband for 15 sovereigns of jewels, without fulfilling which, she must not return.

B. A Panchayat was convened and thereupon, the appellant (A-1), and Jayalakshmi (deceased), started living separately in a house belonging to Chandran (PW.2), at 9, C.N. Krishna Street, Bharathi Nagar, Perianatham. Karthikeyan (PW.4) and his wife Mrs. Malliga (PW.3) were living in close proximity to the appellants. Jayalakshmi had told Mrs. Malliga (PW.3) on certain occasions, that the appellants had been torturing her.

C. On 17.4.2001, at about 1 A.M., Mrs. Malliga (PW.3), noticed smoke rising up from the ground floor where the appellants and deceased were living. She immediately informed Karthikeyan (PW.4) and then also came out to ascertain the cause for the smoke alongwith her husband, Karthikeyan (PW.4). Chandran (PW.2) and his wife also came out of their house. Chandran (PW.2) found the appellants standing outside the gate. On being asked by Chandran (PW.2) about the key of the house, as the same was locked from the outside, the appellant (A-1), replied that the second appellant had thrown away the key. Chandran (PW.2) went upstairs, brought a duplicate key and opened the door of their house. Chandran (PW.2) found the room full of smoke and Jayalakshmi lying dead on the bed, with burn injuries. The Fire Brigade was informed. Mr. Mahalingam, Station Officer, Fire Department Chengalpet, (PW.8) arrived at the spot with his personnel, at 1.45 A.M. and extinguished the fire. Mr. Ezhamparuthi (PW.1), a close relative of the deceased came to the spot upon being informed, and thereafter went to the Police Station at 8.30 A.M. on 18.4.2001 and made a complaint to Mr. Kotteswaran (PW.12), on the basis of which, a case in Crime No.157 of 2001 was registered. The said FIR was handed over to Mr. Durairaj (PW.13), the Investigating Officer who then took up the investigation.

D. Durairaj (PW.13) recovered the dead body of Jayalakshmi (deceased), after taking photographs of the place of occurrence and also of the dead body of the deceased,

through the photographer Balaji (PW.11). Durairaj (PW.13) also recovered all material objects and prepared the mahazar.

E. As Jayalakshmi had died within 2-1/2 years of her marriage, the matter was reported to the Sub-Collector, Ms. Pila Rajesh, IAS (PW.10) who came to the spot and conducted inquest on the dead body in the presence of witnesses and a panchnama was prepared. Ms. Pila Rajesh (PW.10) also recorded the statements of the witnesses after which, the dead body was sent for post-mortem.

F. Prof. Muguesan (PW.9), who is attached to the Govt. Hospital Chengalpet, conducted the post-mortem and opined that the deceased had died of smothering and burn injuries.

G. The case was converted into one under Section 302 IPC and both the appellants were arrested and sent into judicial remand. After completing the investigation, a charge sheet was filed. Before the trial court, both the appellants pleaded not guilty and, therefore, claimed trial. In the course of the trial, the prosecution examined 13 witnesses, and relied upon 14 exhibits and 3 material objects. The defence also examined one witness, and relied upon 4 documents for the purpose of their defence. The Trial Court after the conclusion of the trial, upon considering the material on record, and after appreciating the available evidence, acquitted both the appellants vide judgment and order dated 22.12.2004.

H. Aggrieved, the State preferred an appeal before the High Court and the High Court vide its impugned judgment and order, convicted and sentenced both the appellants, thereby reversing the judgment of the Trial Court, as referred to hereinabove.

Hence, this appeal.

3. Dr. A. Francis Jullian, learned Senior counsel appearing on behalf of the appellants has submitted that the High Court

committed an error by interfering with the order of acquittal as was recorded by the Trial Court. While reversing the judgment of acquittal, the High Court has not complied with the parameters laid down by this Court in such matters. This is because there is no direct evidence on any issue, and the case is one of circumstantial evidence wherein, several links are missing in the chain of events. The Trial Court recorded acquittal, as it came to the conclusion that there were a large number of material inconsistencies that went to the root of the case. There is also considerable embellishment/improvement in the depositions of the prosecution witnesses. There was also an inordinate delay after the incident, in lodging the FIR. The appellant (A-1), had been arrested immediately, however, such arrest was shown to have taken place at 9 A.M. on 18.4.2001. There could have been absolutely no motive on the part of the appellants, to commit the murder of the deceased. Thus, the present appeal deserves to be allowed.

4. Shri Rakesh Sharma with Shri B. Balaji, learned counsel appearing on behalf of the respondent-State, opposed the appeal contending that, the High Court had most certainly appreciated the evidence as a whole and dealt with the case in the correct perspective. The deceased had died in the house where only the appellants were residing with her. Despite this, they were unable to furnish any reasonable explanation with respect to the circumstances under which Jayalakshmi had died. The conduct of the appellants, therefore, points only towards their guilt. At the relevant time when the deceased was burning, both the appellants were found standing outside their house. The gate was locked from the outside. The appellants did not even produce the key of the house upon being asked to do so. It was Mr. Chandran (PW.2), who brought a duplicate key from his house and opened the door to the said house. The appellants did not inform the police, or the fire brigade when the deceased was burning. No attempt was made by either of them, to extinguish the said fire and they made no efforts to inform the family members of the deceased. Had the

prosecution witnesses not come out after noticing the smoke coming from the house of the appellants, they would have walked away scot free, as they had already locked the house, from the outside. The appellants had further, also been demanding dowry and harassing the deceased in this context. Thus, they most definitely had a very strong motive to get rid of the deceased. The inconsistencies on the basis of which, the trial Court had accorded acquittal to the appellants, were all trivial in nature and none of them could be so material, that it could be termed to go to the root of the case. The impugned judgment of the High Court, therefore, does not warrant any interference and thus, the present appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The following injuries were found on the person of the deceased:

Scratches:

1. An injury on the right side of the upper lip measuring 1 x 0.5 c.m.

2. An injury on the central part of the upper lip measuring 1 x 0.5 c.m. The cells below these injuries were with clots and there was also swelling.

Clotted injuries:

1. A clotted injury on the centre part of the lower lip and its surrounding, measuring 2 x 1 x 0.5 c.m.

2. A clotted injury on the right cheek, on the upper part of the right jaw, measuring 3 x 2 x 0.5 c.m.

3. A clotted injury on the left cheek, on the upper part of the left jaw, measuring 2 x 1 x 0.5 c.m.

4. A clotted injury on the central part to the upper part of the breast, measuring 6 x 5 x 0.5 c.m.

5. A clotted injury on the front side and the outer part of the left leg 3 c.m. above the left heel, measuring 6 x 4 x 0.5 c.m.

Injuries by fire:

The upper skin, inner skin and two types of fire injuries. The body skin was burnt and the fat and cells under the skin appeared to be red and heated. All over the body, including the upper side of the neck, the lower side of the neck, the upper part of both hands, palms, both legs in entirety, the back portion of the breast, the entire front and back portions of the stomach, and the female organ bore injuries by fire. All these injuries by fire, were suffered by her while she was alive.

7. The law on the issue of interference with an order of acquittal is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

8. In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved, must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take

utmost precaution whilst finding an accused guilty, solely on the basis of the circumstances proved before it.

9. Furthermore, in such a case, motive assumes great significance and importance, as the absence of motive puts the court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. The evidence regarding existence of motive which operates in the minds of assailants is very often, not known to any other person. The motive may not even be known, under certain circumstances, to the victim of the crime. It may be known only to the accused and to none other. It is therefore, only the perpetrator of the crime alone, who knows as to what circumstances prompted him to adopt a certain course of action, leading to the commission of the crime.

10. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, in order to decide, as to whether or not, the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (See : *The Transport Commissioner, A.P., Hyderabad & Anr. v. S. Sardar Ali & Ors.,* AIR 1983 SC 1225; *State of Maharashtra v. Suresh,* (2000) 1 SCC 471; and *Musheer Khan v. State of Madhya Pradesh,* (2010) 2 SCC 748).

11. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or

improvements in relation to trivial matters, which do not effect the core of the case of the prosecution, must not be made a ground for rejection of evidence, in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same again, without providing justifiable reasons for the same. (Vide: *State v. Saravanan,* AIR 2009 SC 152).

12. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witness also makes material improvements before the court, in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence available or with a statement that has already recorded, then, in such a case it cannot be held that the prosecution has proved its case beyond reasonable doubt.

13. The present case requires to be examined in light of the aforesaid settled legal propositions.

The trial Court decided in favour of the accused, and acquitted them on ground of material contradictions in the deposition of the eye-witnesses, as Karthikeyan (PW.4) had deposed that he had gone along with Mr. Chandran (PW.2) to inform the police and also the fire service station. On the contrary, Mr. Chandran (PW.2), deposed that at the time of occurrence he did not accompany Karthikeyan (PW.4), to the police station. According to the deposition of Karthikeyan (PW.4), regarding the opening of the door of the house of the deceased, the statements of Mr. Chandran (PW.2), and Karthikeyan (PW.4), were found to be contrary to the statement of Mr. Mahalingam (PW.8), Fire Service Officer as he stated

that, he reached the place of occurrence at about 1.45 A.M. and found the house to be locked. Mr. Chandran (PW.2), brought the key, opened the door and it was then that the fire was put out. Mr. Mahalingam (PW.8) has further deposed that the body of the deceased was on the cot and the fire had burnt the said cot also. However, the photographs taken by the police proved to be contrary to the said deposition. The photograph revealed that the body was lying on the floor while the cot was lying upside down. The trial court further relied upon the statement of Devaraj (DW.1) who deposed, that after the said incident, Kodirasu, father of the deceased Jayalakshmi, had fraudulently taken away land from the father of the appellant (A-1) by filing Suit No. 14/2002 in the Civil Court and further that Jayalakshmi had been in love with one Selvam and further that, her marriage to the appellant (A-1), was against her wishes and was the reason for her committing suicide. More so, the trial court doubted the time taken for recording FIR, and found the explanation furnished for the delay regarding the same, totally unacceptable. The explanation so furnished by the prosecution was that, Ezhamparuthi (PW.1), was informed by the incident and, thereafter, he went to the place of occurrence and upon seeing the place, he then went to the police station and lodged the said FIR.

14. The High Court noted that it is an admitted fact that, at the time of occurrence of the incident, the appellants were in the said house. Mr. Chandran (PW-2), saw them both standing outside the house of the deceased. Appellant (A-2) even tried to explain the situation by stating that, they were watching TV in an adjoining room and came out to find fumes coming from the next room, and also further stated that the deceased had committed suicide.

The High Court did not accept the story of suicide, saying that the same was not plausible, in the given situation. It stated that as the appellants were present at the place of occurrence, they should have been able to give a reasonable answer

regarding the manner in which the deceased died, but failed to do so. Instead, they all attempted to screen the offence.

15. The trial court did not take note of the fact that there was sufficient evidence on record, to indicate the possibility and the likelihood of dowry harassment and death, caused due to failure to give dowry, as demanded.

16. The trial court did not consider that, if the deceased had in fact committed suicide, the natural reaction of the co-accused would not have been to rush out of the house, after locking her inside, but to make an attempt to rescue her. Further, when Mr. Chandran (PW-2) asked for the house key, the same was not provided, stating that the appellant (A-2) had thrown it away. Mr. Chandran (PW-2), had to then fetch a duplicate key to enter the house. This is a clear indication of the fact that the accused were trying to lock up the house and leave.

17. The theory of suicide can further be negated by the fact that the doctor who conducted the post-mortem, did not mention the possibility of suicide at all.

18. All the circumstances, therefore, clearly indicate that the deceased did not die a natural death, nor was she the victim of an accident and neither did she commit suicide. She was therefore killed and no one except the accused could have committed the said offence.

19. A delay in the registration of the case would not materially affect the case of the prosecution in any way, as PW-1 was first summoned, then he went to the spot of the incident, after which he went to the police station. Such a delay was therefore, natural and acceptable.

20. So far as the discrepancies and contradictions pointed out by the trial court are concerned, the same are not material and none of them can be held to go to the root of the case. Further, even if there has been a transfer of property in favour

of Kodirasu, father of Jayalakshmi, the deceased, from the father of the appellant (A-1), as the same is a transaction, subsequent to the incident, it can have no bearing on the case. The trial court unnecessarily gave advantage to the appellants in this regard, even though the vendor himself was not examined. Thus, no motive can be attributed to the complainant on this count. Furthermore, had Jayalakshmi been in love with Selvam, the same could not have been a ground for her to commit suicide 2 ½ years from the date of her marriage, as she would have in all likelihood, attempted the said act, either at the time of her marriage, or immediately thereafter.

21. In view of the above, we do not see any cogent reason to interfere with the impugned judgment of the High Court. The appeal has no merit and is, therefore, accordingly dismissed.

The appellant no.2 is on bail. Her bail bonds are cancelled. She is directed to surrender within a period of four weeks from today before the Chief Judicial Magistrate. In case she does not surrender, we direct the Chief Judicial Magistrate to take her into custody and send her to jail to serve out the remaining sentence.

A copy of the order may be sent to the Chief Judicial Magistrate, Chengalpet, Tamil Nadu, by the Registry of this Court for compliance.

K.K.T. Appeal dismissed.

GIAN SINGH
v.
STATE OF PUNJAB & ANOTHER
(Special Leave Petition (Crl.) No. 8989 of 2010 etc.)

SEPTEMBER 24, 2012

[R.M. LODHA, ANIL R. DAVE AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Code of Criminal Procedure, 1973:

ss. 482 and 320 – Quashing of criminal proceedings in a case where offender has settled his dispute with the victim of crime, but the said crime is not compoundable – Ambit and scope of ss. 482 and 302 – Explained – Held: Power of compounding of offences given to a court u/s 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction – In compounding of offences, power of a criminal court is circumscribed by the provisions contained in s. 320 and the court is guided solely and squarely thereby; whreas the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment – The words "nothing in this Code" occurring in s.482 means that it is an overriding provision and none of the provisions of the Code limits or restricts the inherent power – Decisions in the cases of B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji alias Pappu do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power u/s 482 of the Code, and s. 320 does not limit or affect the powers of the High Court u/s 482 – It cannot be said that by quashing criminal proceedings in the said cases, the Court has

compounded the non-compoundable offences indirectly **– *Principles emerging from various decisions culled out.***

s.482 – Inherent power of High Court – Quashing of criminal proceedings – Held: Before exercise of the power, High Court must have due regard to the nature and gravity of the crime – Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute – Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. cannot provide any basis for quashing criminal proceedings involving such offences – But, as has been explained in the instant judgment, the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing.

Maxim:

Quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest – Explained.

The petitioner was convicted u/ss 420 and 120-B IPC. During the pendency of the appeal before the Sessions Judge, the petitioner filed a petition u/s 482 CrPC before the High Court seeking to quash the FIR on the ground of compounding the offence. The petition was dismissed.

When the instant petition was listed before a two-Judge Bench, it felt that the decisions in *B.S. Joshi*[1], *Nikhil Merchant*[2] **and** *Manoj Sharma*[3] **required reconsideration and, therefore, referred the matter to a larger Bench**[4]**.**

1. 2003 (2) SCR 1104.
2. 2008 (12) SCR 236.
3. 2008 (14) SCR 539.
4. 2010 SCR 1034.

The issue for consideration before the Court was with regard to inherent powers of the High Court in quashing the criminal proceedings against an offender who had settled his dispute with the victim of the crime but the crime in which he was involved was not compoundable u/s 320 of the Code of Criminal Procedure, 1973.

Answering the reference, the Court

HELD: 1.1. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court u/s 320 of the Code of Criminal Procedure, 1973, is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in s. 320 and the court is guided solely and squarely thereby. The consequence of the composition of an offence is acquittal of the accused. Sub-s. (9) of s. 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with s. 320 and in no other manner. On the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands

that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. [para 47 and 53-54] [806-E-F; 808-C-H]

1.2. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that it is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in s. 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated, s. 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power u/s 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non. [para 49-50] [806-G-H; 807-A-E]

1.3. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is

founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest,* **the full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. E*x debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court u/s 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection. [para 51] [807-E-H; 808-A]**

1.4. *B.S. Joshi*, *Nikhil Merchant*, *Manoj Sharma* and *Shiji alias* ***Pappu*** **do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power u/s 482 of the Code and s. 320 does not limit or affect the powers of the High Court u/s 482. It cannot be said that by quashing criminal proceedings in the said cases, this Court has compounded the non-compoundable offences indirectly. There is no incongruity in this principle of law and the decisions of this Court in** *Simrikhia*, *Dharampal*, *Arun Shankar Shukla*, *Ishwar Singh*, *Rumi Dhar (Smt.)* and *Ashok Sadarangani*.**Therefore, it cannot be said that *B.S. Joshi*, Nikhil *Merchant* and *Manoj Sharma* were not correctly decided. [para 55,56 and 58] [809-F-H; 810-A-B-C; 812-F-G]**

B.S. Joshi and others v. State of Haryana and another **2003 (2) SCR 1104 = (2003) 4 SCC 675,** *Nikhil Merchant v. Central Bureau of Investigation and another* **2008 (12) SCR 236 = (2008) 9 SCC 677;** *Manoj Sharma v. State and others* **2008 (14) SCR 539 = (2008) 16 SCC 1; and** *Shiji alias Pappu and others vs. Radhika and another* **2011 (13) SCR 135 =(2011) 10 SCC 705 – upheld.**

Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and another **1990 (1) SCR 788 = (1990) 2 SCC 437;** *Dharampal & Ors. v. Ramshri (Smt.) and others* **1993 Crl. L.J. 1049;** *Arun Shankar Shukla v. State of Uttar Pradesh and ors.* **1999 (3) SCR 1060 = AIR 1999 SC 2554;** *Ishwar Singh v. State of Madhya Pradesh* **2008 (14) SCR 574 = (2008) 15 SCC 667;** *Rumi Dhar (Smt.) v. State of West Bengal and another* **2009 (5) SCR 553 = (2009) 6 SCC 364;** *Ashok Sadarangani and Anr. vs. Union of India and others* **JT 2012 (3) SC 469;** *CBI v. Duncans Agro Industries Limited* **1996 (3) Suppl. SCR 360 = (1996) 5 SCC 591,** *State of Haryana v. Bhajan Lal* **1990 (3) Suppl. SCR 259 = (1992) 4 SCC 305,** *State of Bihar v. P.P. Sharma* **1991 (2) SCR 1 = 1992 Supp (1) SCC 335,** *Janata Dal v. H.S. Chowdhary* **1992 (1) Suppl. SCR 226 = (1992) 4 SCC 305;** *Rajiv Saxena and oth*ers v. *State (NCT of Delhi) and another* **(2012) 5 SCC 627;** *Jayrajsinh Digvijaysinh Rana* v. St*ate of Gujarat and another* **JT 2012 (6) SC 504;** *Y. Suresh Bab*u v. State *of A. P.* **(2005) 1 SCC 347;** *Ram Lal and Anr. v. State of J & K* **1999 (1) SCR 230 = (1999) 2 SCC 213 ;** *Kulwinder Singh and others v. State of Punjab and another* **(2007) 4 CTC 769;** *Abasaheb Yadav Honmane v. State of Maharashtra* **2008 (2) Mh.L.J.856– referred to.**

1.5. The position that emerges from the decisions of this Court can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences u/s 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would

depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly, the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may, within the frame work of its inherent power, quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. The High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and

wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the questions is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding. [para 57] [811-D-H; 812-A-F]

Central Bureau of Investigation and others v. Keshub Mahindra and others **2011 (6) SCR 384 = (2011) 6 SCC 216** State *of Madhya Pradesh v. Rameshwar and others* **2009 (5) SCR 510 = (2009) 11 SCC 424;** *Emperor v. Khwaja Nazir Ahmed* **(1945) 47 Bom. L.R. 245;** *Khushi Ram v. Hashim and others* **AIR 1959 SC 542;** *State of Uttar Pradesh. v. Mohammad Naim* **1964 SCR 363 = AIR 1964 SC 703;** *Pampathy v. State of Mysore* **1966 (Suppl) SCR 477;** *State of Karnataka v. L. Muniswamy and others* **1977 (3) SCR 113 = (1977) 2 SCC 699;** *Madhu Limaye v. The State of Maharashtra* **1978 (1) SCR 749 = (1977) 4 SCC 551;** *Raj Kapoor and others v. State an d others* **1980 (1) SCR 1081 = (1980) 1 SCC 43;** *G. Sagar Suri and another v. State of U.P. and others* **2000 (1) SCR 417 = (2000) 2 SCC 636;** *State of Karnataka v. M. Devendrappa and another* **2002 (1) SCR 275 = (2002) 3 SCC 89;** *Central Bureau of Investigation v. A. Ravishankar Prasad and others* **(2009) 6 SCC 351;** *Devendra and others v. State of Uttar Pradesh and another* **2009 (7) SCR 872 = (2009) 7 SCC 495** *Sushil Suri v. Central Bureau of Investigation and another* **2011 (8) SCR 1 = (2011) 5 SCC 708;** *Madan Mohan Abbot v. State of Punjab* **2008 (5) SCR 526 = (2008) 4 SCC 582;** *Jetha Ram v. State of Rajasthan* **(2006) 9 SCC 255;** *Murugesan v. Ganapathy Velar* **(2001) 10 SCC 504;** *Ishwarlal v. State of M.P.* **(2008) 15 SCC 671 and** *Mahesh Chand & another v. State of Rajasthan* **1990 (supp) SCC 681 – referred to**

Lala Jairam Das & Ors. v. Emperor **AIR 1945 PC 94– referred to**

Case Law Reference:

2003 (2) SCR 1104	**upheld**	**para 1**
2008 (12) SCR 236	**upheld**	**para 1**
2008 (14) SCR 539	**upheld**	**para 1**
2011 (6) SCR 384	**referred to**	**para 16**
2009 (5) SCR 510	**referred to**	**para 16**
(1945) 47 Bom. L.R. 245	**referred to**	**para 18**
AIR 1959 SC 542	**referred to**	**para 19**
AIR 1945 PC 94	**referred to**	**para 20**
1964 SCR 363	**referred to**	**para 20**
1966 (Suppl) SCR 477	**referred to**	**para 21**
1977 (3) SCR 113	**referred to**	**para 22**
1978 (1) SCR 749	**referred to**	**para 24**
1980 (1) SCR 1081	**referred to**	**para 25**
1990 (1) SCR 788	**referred to**	**para 26**
1993 Crl. L.J. 1049	**referred to**	**para 27**
1999 (3) SCR 1060	**referred to**	**para 28**
2000 (1) SCR 417	**referred to**	**para 29**
2002 (1) SCR 275	**referred to**	**para 30**
2009 (6) SCC 351	**referred to**	**para 31**
2009 (7) SCR 872	**referred to**	**para 32**
2011 (8) SCR 1	**referred to**	**para 33**
2008 (5) SCR 526	**referred to**	**para 35**
2008 (14) SCR 574	**referred to**	**para 36**

2006 (9) SCC 255	**referred to**	**para 37**
2001 (10) SCC 504	**referred to**	**para 37**
(2006) 9 SCC 255	**referred to**	**para 37**
2001 (10) SCC 504	**referred to**	**para 37**
(2008) 15 SCC 671	**referred to**	**para 37**
1990 (supp) SCC 681	**referred to**	**para 38**
2009 (5) SCR 553	**referred to**	**para 38**
1996 (3) Suppl. SCR 360	**referred to**	**para 38**
1990 (3) Suppl. SCR 259	**referred to**	**para 38**
1991 (2) SCR 1	**referred to**	**para 38**
1992 (1) Suppl. SCR 226	**referred to**	**para 38**
2011 (13) SCR 135	**upheld**	**para 39**
2012 (3) JT 469	**referred to**	**para 40**
2012 (5) SCC 627	**referred to**	**para 41**
JT 2012 (6) SC 504	**referred to**	**para 42**
(2005) 1 SCC 347	**referred to**	**para 43**
1999 (1) SCR 230	**referred to**	**para 43**
(2007) 4 CTC 769	**referred to**	**para 45**
2008 (2) Mh.L.J.856	**referred to**	**para 46**

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl) No. 8989 of 2010.

From the Judgment & Order dated 17.9.2010 of the High Court of Punjab and Haryana at Chandigarh in CRM No. M-27367 of 2010.

WITH

SLP (Crl) Nos. 6138 of 2006, 5203 and 259 of 2011, 5921, 7148 and 6324 of 2009 and Criminal Appeal No. 2107-2125 of 2011.

P.P. Malhotra, ASG, P.P. Rao, Dr. Abhishek Manu Singhvi, V. Giri, Rajiv Kataria, (for Delhi Law Chambers), P. Parmeswaran, Rajiv Nanda, T.A. Khan, Ranjana Narayan, Priyanka Mathur, Arvind Kumar Sharma, B.K. Satija, Sameer Sodhi, Amit Bhandari, Ashok Jain, Pankaj Jain, Bijoy Kumar Jain, Pragati Neekhra, Suryanarayana Singh, Yashoda Sharma, Sushil Karanjkar, Nikhilesh Kumar, Mohammed Sadique T.A., K.N. Rai, A.V. Rangam, Buddy Ranganadhan, Richa Bharadwaj, V. Prabhakar, R. Chandrachud, Jyoti Prashar, Yasir Rauf, Vishwaaman Kandwal, Dr. Kailash Chand, Sunil Kumar Verma, Asha Gopalan Nair, Praveen Swarup, Nikhil Jain, Atishi Dipankar, Manu Beri, Ashish Agarwal, Yash Pal Dhingra, Deepak Dhingra, Partha Sil, Rajesh Tyagi, Anil Kumar Bakshi, Pawan Kumar, Sheel Kumar, Ravi Bassi for the Appearing Parties.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. When the special leave petition in Gian Singh v. State of Punjab and another came up for hearing, a two-Judge Bench (Markandey Katju and Gyan Sudha Misra, JJ.) doubted the correctness of the decisions of this Court in *B.S. Joshi and others v. State of Haryana and another*[1], *Nikhil Merchant v. Central Bureau of Investigation and another*[2] *and Manoj Sharma v. State and others*[3] and referred the matter to a larger Bench. The reference order reads as follows :

"Heard learned counsel for the petitioner.

The petitioner has been convicted under Section 420

1. (2003) 4 SCC 675.
2. (2008) 9 SCC 677.
3. (2008) 16 SCC 1.

and Section 120B, IPC by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the learned Sessions Judge for compounding the offence, which, according to the learned counsel, was directed to be taken up along with the main appeal. Thereafter, the petitioner filed a petition under Section 482, Cr.P.C. for quashing of the FIR on the ground of compounding the offence. That petition under Section 482 Cr.P.C. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court.

Learned counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are *B.S. Joshi vs. State of Haryana* (2003) 4 SCC 675; *Nikhil Merchant vs. Central Bureau of Investigation and Another* (2008) 9 SCC 677; and *Manoj Sharma vs. State and Others* (2008) 16 SCC 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Hon'ble Mr. Justice Markandey Katju, was a member to the last two decisions.

Section 320, Cr.P.C. mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide Section 320(7).

Section 420, IPC, one of the counts on which the petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of Section 320, Cr.P.C. but Section 120B IPC, the other count on which the petitioner has been convicted, is a non-compoundable offence. Section 120B (Criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.

The Court cannot amend the statute and must maintain judicial restraint in this connection. The Courts should not try to take over the function of the Parliament or executive. It is the legislature alone which can amend Section 320 Cr.P.C.

We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench."

2. This is how these matters have come up for consideration before us.

3. Two provisions of the Code of Criminal Procedure, 1973 (for short, 'Code') which are vital for consideration of the issue referred to the larger Bench are Sections 320 and 482. Section 320 of the Code provides for compounding of certain offences punishable under the Indian Penal Code, 1860 (for short, 'IPC'). It reads as follows :

"S. 320. *Compounding of offences*.—(1) The offences punishable under the sections of the Indian Penal Code, (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:—

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3

(3) When an offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section."

4. Section 482 saves the inherent power of the High Court and it reads as follows :

"S. 482. Saving of inherent power of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

5. In *B.S. Joshi*[1], the undisputed facts were these : the husband was one of the appellants while the wife was respondent no. 2 in the appeal before this Court. They were married on 21.7.1999 and were living separately since 15.7.2000. An FIR was registered under Sections 498-A/323 and 406, IPC at the instance of the wife on 2.1.2002. When the criminal case registered at the instance of the wife was pending, the dispute between the husband and wife and their family members was settled. It appears that the wife filed an affidavit that her disputes with the husband and the other members of his family had been finally settled and she and her husband had agreed for mutual divorce. Based on the said affidavit, the matter was taken to the High Court by both the parties and they jointly prayed for quashing the criminal proceedings launched against the husband and his family members on the basis of the FIR registered at the wife's instance under Sections 498-A and 406 IPC. The High Court dismissed the petition for quashing the FIR as in its view the offences under Sections 498-A and 406, IPC were non-compoundable and the inherent powers under Section 482 of the Code could not be invoked to by-pass Section 320 of the Code. It is from this order that the matter reached this Court. This Court held that the High Court in exercise of its inherent powers could quash criminal proceedings or FIR or complaint and Section 320 of the Code did not limit or affect the powers under Section 482 of the Code. The Court in paragraphs 14 and 15 (Pg. 682) of the Report held as under :

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian

Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

6. In *Nikhil Merchant*[2], a company, M/s. Neemuch Emballage Ltd., Mumbai was granted financial assistance by Andhra Bank under various facilities. On account of default in repayment of loans, the bank filed a suit for recovery of the amount payable by the borrower company. The bank also filed a complaint against the company, its Managing Director and the officials of Andhra Bank for diverse offences, namely, Section 120-B read with Sections 420, 467, 468, 471 of the IPC read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The suit for recovery filed by the bank against the company and the Managing Director of the Company was compromised. The suit was compromised upon the defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms. Clause 11 of the consent terms read, "agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter-allegations made against each other". Based on clause 11 of

the consent terms, the Managing Director of the Company, the appellant who was accused no. 3 in charge sheet filed by CBI, made application for discharge from the criminal complaint. The said application was rejected by the Special Judge (CBI), Greater Bombay, which came to be challenged before the Bombay High Court. The contention before the High Court was that since the subject matter of the dispute had been settled between the appellant and the bank, it would be unreasonable to continue with the criminal proceedings. The High Court rejected the application for discharge from the criminal cases. It is from this order that the matter reached this Court by way of special leave. The Court having regard to the facts of the case and the earlier decision of this Court in *B.S. Joshi*[1], set aside the order of the High Court and quashed the criminal proceedings by consideration of the matter thus:

"28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 CrPC with the leave of the court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in *B.S. Joshi case* becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What,

however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in *B.S. Joshi case* and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

7. In *Manoj Sharma*[3], the Court was concerned with the question whether an F.I.R. under Sections 420/468/471/34/120-B IPC can be quashed either under Section 482 of the Code or under Article 226 of the Constitution when the accused and the complainant have compromised and settled the matter between themselves. Altamas Kabir, J., who delivered the lead judgment referred to *B.S. Joshi*[1] and the submission made on behalf of the State that *B.S. Joshi*[1] required a second look and held that the Court was not inclined to accept the contention made on behalf of the State that the decision in *B.S. Joshi*[1] required reconsideration, at least not in the facts of the case. It was held that what was decided in *B.S. Joshi*[1] was the power and authority of the High Court to exercise jurisdiction under Section 482 of the Code or under Article 226 of the Constitution to quash offences which were not compoundable. The law stated in *B.S. Joshi*[1] simply indicated the powers of the High

Court to quash any criminal proceeding or first information report or complaint whether the offences were compoundable or not. Altamas Kabir, J. further observed, "The ultimate exercise of discretion under Section 482 CrPC or under Article 226 of the Constitution is with the court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 CrPC. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction under Section 482 CrPC legally and correctly." Then in paragraphs 8 and 9 (pg. 5) of the Report, Altamas Kabir, J., inter alia, held as under :

"8. .....Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case.

9. ……In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility……."

8. Markandey Katju, J. although concurred with the view of Altamas Kabir, J. that criminal proceedings in that case deserved to be quashed but observed that question may have to be decided in some subsequent decision or decisions (preferably by a larger Bench) as to which non-compoundable cases can be quashed under Section 482 of the Code or Article 226 of the Constitution on the basis that the parties have entered into compromise. In paragraphs 27 and 28 (pg. 10) of the report he held as under:

"27. There can be no doubt that a case under Section 302

IPC or other serious offences like those under Sections 395, 307 or 304-B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger Bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.

28. I am expressing this opinion because Shri B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in *B.S. Joshi case* should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual."

9. Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner in SLP(Crl.) No. 6324 of 2009 submitted that the inherent power of the High Court to quash a non-compoundable offence was not circumscribed by any of the provisions of the Code, including Section 320. Section 482 is a declaration of the inherent power pre-existing in the High Court and so long as the exercise of the inherent power falls within the parameters of Section 482, it shall have an overriding effect over any of the

provisions of the Code. He, thus, submitted that in exercise of its inherent powers under Section 482, the High Court may permit compounding of a non-compoundable offence provided that in doing so it satisfies the conditions mentioned therein. Learned senior counsel would submit that the power to quash the criminal proceedings under Section 482 of the Code exists even in non-compoundable offence but its actual exercise will depend on facts of a particular case. He submitted that some or all of the following tests may be relevant to decide whether to quash or not to quash the criminal proceedings in a given case; (a) the nature and gravity of case; (b) does the dispute reflect overwhelming and pre-dominantly civil flavour; (c) would the quashing involve settlement of entire or almost the entire dispute; (d) the compromise/settlement between parties and/or other facts and the circumstances render possibility of conviction remote and bleak; (e) not to quash would cause extreme injustice and would not serve ends of justice and (f) not to quash would result in abuse of process of court.

10. Shri P.P. Rao, learned senior counsel for the petitioner in Special Leave Petition (Crl.) No. 5921 of 2009 submitted that Section 482 of the Code is complete answer to the reference made to the larger Bench. He analysed Section 482 and Section 320 of the Code and submitted that Section 320 did not limit or affect the inherent powers of the High Court. Notwithstanding Section 320, High Court can exercise its inherent power, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. To secure the ends of justice is a wholesome and definite guideline. It requires formation of opinion by High Court on the basis of material on record as to whether the ends of justice would justify quashing of a particular criminal complaint, FIR or a proceeding. When the Court exercises its inherent power under Section 482 in respect of offences which are not compoundable taking into account the fact that the accused and the complainant have settled their differences amicably, it cannot be viewed as permitting compounding of offence which is not compoundable.

11. Mr. P.P. Rao, learned senior counsel submitted that in cases of civil wrongs which also constitute criminal offences, the High Court may pass order under Section 482 once both parties jointly pray for dropping the criminal proceeding initiated by one of them to put an end to the dispute and restore peace between the parties.

12. Mr. V. Giri, learned senior counsel for the respondent (accused) in Special Leave Petition (Crl.) No. 6138 of 2006 submitted that the real question that needs to be considered by this Court in the reference is whether Section 320(9) of the Code creates a bar or limits or affects the inherent powers of the High Court under Section 482 of the Code. It was submitted that Section 320(9) does not create a bar or limit or affect the inherent powers of the High Court in the matter of quashing any criminal proceedings. Relying upon various decisions of this Court, it was submitted that it has been consistently held that the High Court has unfettered powers under Section 482 of the Code to secure the ends of justice and prevent abuse of the process of the Court. He also submitted that on compromise between the parties, the High Court in exercise of powers under Section 482 can quash the criminal proceedings, more so the matters arising from matrimonial dispute, property dispute, dispute between close relations, partners or business concerns which are predominantly of civil, financial or commercial nature.

13. Learned counsel for the petitioner in Special Leave Petition (Crl.) No. 8989 of 2010 submitted that the court should have positive view to quash the proceedings once the aggrieved party has compromised the matter with the wrong doer. It was submitted that if the court did not allow the quashing of FIR or complaint or criminal case where the parties settled their dispute amicably, it would encourage the parties to speak lie in the court and witnesses would become hostile and the criminal proceeding would not end in conviction. Learned counsel submitted that the court could also consider the two questions (1) can there be partial quashing of the FIR qua

accused with whom the complainant/aggrieved party enters into compromise. (2) can the court quash the proceedings in the cases which have not arisen from the matrimonial or civil disputes but the offences are personal in nature like grievous hurt (S.326), attempt to murder (S.307), rape (S.376), trespassing (S.452) and kidnapping (S.364, 365) etc.

14. Mr. P. P. Malhotra, learned Additional Solicitor General referred to the scheme of the Code. He submitted that in any criminal case investigated by police on filing the report under Section 173 of the Code, the Magistrate, after applying his mind to the chargesheet and the documents accompanying the same, if takes cognizance of the offences and summons the accused and/or frames charges and in certain grave and serious offences, commits the accused to be tried by a court of Sessions and the Sessions Court after satisfying itself and after hearing the accused frames charges for the offences alleged to have been committed by him, the Code provides a remedy to accused to challenge the order taking cognizance or of framing charges. Similar situation may follow in a complaint case. Learned Additional Solicitor General submitted that power under Section 482 of the Code cannot be invoked in the non-compoundable offences since Section 320(9) expressly prohibits the compounding of such offences. Quashing of criminal proceedings of the offences which are non-compoundable would negative the effect of the order of framing charges or taking cognizance and therefore quashing would amount to taking away the order of cognizance passed by the Magistrate.

15. Learned Additional Solicitor General would submit that when the Court takes cognizance or frames charges, it is in accordance with the procedure established by law. Once the court takes cognizance or frames charges, the method to challenge such order is by way of appropriate application to the superior court under the provisions of the Code.

16. If power under Section 482 is exercised, in relation to

non-compoundable offences, it will amount to what is prohibited by law and such cases cannot be brought within the parameters 'to secure ends of justice'. Any order in violation and breach of statutory provisions, learned Additional Solicitor General would submit, would be a case against the ends of justice. He heavily relied upon a Constitution Bench decision of this Court in *Central Bureau of Investigation and others v. Keshub Mahindra and others*[4] wherein this Court held, 'no decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code.' With reference to *B.S. Joshi*[1], learned Additional Solicitor General submitted that that was a case where the dispute was between the husband and wife and the court felt that if the proceedings were not quashed, it would prevent the woman from settling in life and the wife had already filed an affidavit that there were temperamental differences and she was not supporting continuation of criminal proceedings. As regards, *Nikhil Merchant*[2], learned Additional Solicitor General submitted that this Court in *State of Madhya Pradesh v. Rameshwar and others* held that the said decision was a decision under Article 142 of the Constitution. With regard to *Manoj Sharma*[3], learned Additional Solicitor General referred to the observations made by Markandey Katju, J. in paragraphs 24 and 28 of the Report.

17. Learned Additional Solicitor General submitted that the High Court has no power to quash criminal proceedings in regard to offences in which a cognizance has been taken by the Magistrate merely because there has been settlement between the victim and the offender because the criminal offence is against the society.

18. More than 65 years back, in *Emperor v. Khwaja Nazir Ahmed*[6], it was observed by the Privy Council that Section 561A (corresponding to Section 482 of the Code) had not

4. (2011) 6 SCC 216.
5. (2009) 11 SCC 424.
6. (1945) 47 Bom. L.R. 245.

given increased powers to the Court which it did not possess before that section was enacted. It was observed, 'The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code'.

19. In *Khushi Ram v. Hashim and others*[7], this Court held as under :

> "It is unnecessary to emphasise that the inherent power of the High Court under Section 561A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code…"

20. The above view of Privy Council in *Khwaja Nazir Ahmed*[6] and another decision in *Lala Jairam Das & Ors. v. Emperor*[8] was expressly accepted by this Court in *State of Uttar Pradesh. v. Mohammad Naim*[9]. The Court said :

> "7**.** It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code……."

21. In *Pampathy v. State of Mysore*[10], a three-Judge

7. AIR 1959 SC 542.
8. AIR 1945 PC 94.
9. AIR 1964 SC 703.
10. 1966 (Suppl) SCR 477.

Bench of this Court stated as follows :

> " The inherent power of the High Court mentioned in Section 561A, Criminal Procedure Code can be exercised only for either of the three purposes specifically mentioned in the section. The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that s. 561A can come into operation……."

22. In *State of Karnataka v. L. Muniswamy and others*[11], a three-Judge Bench of this Court referred to Section 482 of the Code and in paragraph 7 (pg. 703) of the Report held as under :

> "7. …….. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the

11. (1977) 2 SCC 699.

> object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

23. The Court then observed that the considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the straitjacket of a rigid formula.

24. A three-Judge Bench of this Court in *Madhu Limaye v. The State of Maharashtra*[12], dealt with the invocation of inherent power under Section 482 for quashing interlocutory order even though revision under Section 397(2) of the Code was prohibited. The Court noticed the principles in relation to the exercise of the inherent power of the High Court as under:

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
>
> (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
>
> (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

25. In *Raj Kapoor and others v. State and others*[13], the Court explained the width and amplitude of the inherent power of the High Court under Section 482 vis-à-vis revisional power under Section 397 as follows:

> "10. …….The opening words of Section 482 contradict this

12. (1977) 4 SCC 551.

13. (1980) 1 SCC 43.

contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye's case* this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution

> "would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power

> by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction".

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid*, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)

> "The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

I am, therefore clear in my mind that the inherent power is

not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

26. In *Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and another*[14], the Court considered the scope of Section 482 of the Code in a case where on dismissal of petition under Section 482, a second petition under Section 482 of the Code was made. The contention before this Court was that the second petition under Section 482 of the Code was not entertainable; the exercise of power under Section 482 on a second petition by the same party on the same ground virtually amounts to review of the earlier order and is contrary to the spirit of Section 362 of the Code and the High Court was in error in having quashed the proceedings by adopting that course. While accepting this argument, this Court held as follows:

"3. ……The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its

14. (1990) 2 SCC 437.

inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in *Sooraj Devi v. Pyare Lal*, that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has

grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage."

27. In *Dharampal & Ors. v. Ramshri (Smt.) and others*[15], this Court observed as follows :

"……It is now well settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code……."

28. In *Arun Shankar Shukla v. State of Uttar Pradesh and Ors.*[16], a two-Judge Bench of this Court held as under :

"….It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled

15. 1993 Crl. L.J. 1049.

16. AIR 1999 SC 2554.

the course of justice at a very crucial stage of the trial."

29. In *G. Sagar Suri and another v. State of U.P. and others*[17], the Court was concerned with the order of the High Court whereby the application under Section 482 of the Code for quashing the criminal proceedings under Sections 406 and 420 of the IPC pending in the Court of Chief Judicial Magistrate, Ghaziabad was dismissed. In paragraph 8 (pg. 643) of the Report, the Court held as under:

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

30. A three-Judge Bench of this Court in *State of Karnataka v. M. Devendrappa and another*[18] restated what has been stated in earlier decisions that Section 482 does not confer any new powers on the High Court, it only saves the inherent power which the court possessed before the commencement of the Code. The Court went on to explain the exercise of inherent power by the High Court in paragraph 6 (Pg.94) of the Report as under :

"6. ……It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give

17. (2000) 2 SCC 636.

18. (2002) 3 SCC 89.

effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice……."

The Court in paragraph 9 (Pg. 96) further stated :

"9. ……the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage……"

31. In *Central Bureau of Investigation v. A. Ravishankar Prasad and others*[19], the Court observed in paragraphs 17,19,20 and 39 (Pgs. 356, 357 and 363) of the Report as follows :

"17. Undoubtedly, the High Court possesses inherent powers under Section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.

19. This Court time and again has observed that the extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is

19. (2009) 6 SCC

imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power under Section 482 CrPC it has become necessary to recapitulate the ratio of the decided cases.

20. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice."

32. In *Devendra and others v. State of Uttar Pradesh and another*[20], while dealing with the question whether a pure civil dispute can be subject matter of a criminal proceeding under Sections 420, 467, 468 and 469 IPC, a two-Judge Bench of this Court observed that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence.

33. In *Sushil Suri v. Central Bureau of Investigation and another*[21], the Court considered the scope and ambit of the

20. (2009) 7 SCC 495.

21. (2011) 5 SCC 708.

inherent jurisdiction of the High Court and made the following observations in para 16 (pg. 715) of the Report:

> "16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (*i*) to give effect to an order under CrPC; (*ii*) to prevent an abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

34. Besides *B.S. Joshi*[1], *Nikhil Merchant*[2] and *Manoj Sharma*[3], there are other decisions of this Court where the scope of Section 320 vis-à-vis the inherent power of the High Court under Section 482 of the Code has come up for consideration.

35. In *Madan Mohan Abbot v. State of Punjab*[22], in the appeal before this Court which arose from an order of the High Court refusing to quash the FIR against the appellant lodged

22. (2008) 4 SCC 582.

under Sections 379, 406, 409, 418, 506/34, IPC on account of compromise entered into between the complainant and the accused, in paragraphs 5 and 6 (pg. 584) of the Report, the Court held as under :

> "5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has on 11-1-2004 passed away and the possibility of a conviction being recorded has thus to be ruled out.
>
> 6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

36. In *Ishwar Singh v. State of Madhya Pradesh*[23], the Court was concerned with a case where the accused – appellant was convicted and sentenced by the Additional

23. (2008) 15 SCC 667.

Sessions Judge for an offence punishable under Section 307, IPC. The High Court dismissed the appeal from the judgment and conviction. In the appeal, by special leave, the injured – complainant was ordered to be joined as party as it was stated by the counsel for the appellant that mutual compromise has been arrived at between the parties, i.e. accused on the one hand and the complainant – victim on the other hand during the pendency of the proceedings before this Court. It was prayed on behalf of the appellant that the appeal be disposed of on the basis of compromise between the parties. In para 12 (pg. 670) of the Report, the Court observed as follows :

> "12. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence."

37. The Court also referred to the earlier decisions of this Court in *Jetha Ram v. State of Rajasthan*[24]*, Murugesan v. Ganapathy Velar*[25]*, Ishwarlal v. State of M.P*[26]*.* and *Mahesh Chand & another v. State of Rajasthan*[27] and noted in paragraph 13 (pg. 670) of the Report as follows:

> "13. In *Jetha Ram v. State of Rajasthan*, *Murugesan v. Ganapathy Velar* and *Ishwarlal v. State of M.P.* this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were

24. (2006) 9 SCC 255.

25. (2001) 10 SCC 504.

26. (2008) 1 SCC 671.

27. 1990 (supp) SCC 681.

not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan* such offence was ordered to be compounded."

Then, in paragraphs 14 and 15 (pg. 670) the Court held as under :

"14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused 1) is reduced to the period already undergone."

38. In *Rumi Dhar (Smt.) v. State of West Bengal and another*[28], the Court was concerned with applicability of Section 320 of the Code where the accused was being prosecuted for commission of offences under Sections 120-B/420/467/468/471 of the IPC along with the bank officers who were being

28. (2009) 6 SCC 364.

prosecuted under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal. The accused prayed for her discharge on the grounds (i) having regard to the settlement arrived at between her and the bank, no case for proceeding against her has been made out; (ii) the amount having already been paid and the title deeds having been returned, the criminal proceedings should be dropped on the basis of the settlement and (iii) the dispute between the parties were purely civil in nature and that she had not fabricated any document or cheated the bank in any way whatsoever and charges could not have been framed against her. The CBI contested the application for discharge on the ground that mere repayment to the bank could not exonerate the accused from the criminal proceeding. The two-Judge Bench of this Court referred to Section 320 of the Code and the earlier decisions of this Court in *CBI v. Duncans Agro Industries Limited*[29], *State of Haryana v. Bhajan Lal*[30], *State of Bihar v. P.P. Sharma*[31], *Janata Dal v. H.S. Chowdhary*[32] and *Nikhil Merchant*[2] which followed the decision in *B.S. Joshi*[1] and then with reference to Article 142 of the Constitution and Section 482 of the Code refused to quash the charge against the accused by holding as under:

"24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a

29. (1996) 5 SCC 591.

30. 1992 Supp (1) SCC 335.

31. 1992 Supp (1) SCC 222.

32. (1992) 4 SCC 305.

case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing the charge."

39. In *Shiji alias Pappu and others vs. Radhika and another*[33] this Court considered the exercise of inherent power by the High Court under Section 482 in a matter where the offence was not compoundable as the accused was already involved in commission of the offences punishable under Sections 354 and 394 IPC. The High Court rejected the prayer by holding that the offences with which appellants were charged are not 'personal in nature' to justify quashing the criminal proceedings on the basis of a compromise arrived at between the complainant and the appellants. This Court considered earlier decisions of this Court, the provisions contained in Sections 320 and 394 of the Code and in paragraphs 17, 18 and 19 (pgs. 712 and 713) of the Report held as under:

"17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the

33. (2011) 10 SCC 705.

offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC.

18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

19. Coming to the case at hand, we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each other. It was not a case of broad daylight robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising

out of some "misunderstanding and misconception" will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eyewitnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 CrPC could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below".

40. In *Ashok Sadarangani and Anr. vs. Union of India and others*[34], the issue under consideration was whether an offence which was not compoundable under the provisions of the Code could be quashed. That was a case where a criminal case was registered against the accused persons under Sections 120-B, 465, 467, 468 and 471 of IPC. The allegation was that accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening Letters of Credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the Bank to negotiate the Letters of Credit in favour of foreign suppliers and also by misusing the cash credit facility. The Court considered the earlier decisions of this Court including *B.S. Joshi*[1], *Nikhil Merchant*[2], *Manoj Sharma*[3], *Shiji alias Pappu*[33], *Duncans Agro Industries Limited29*, *Rumi Dhar (Smt.)28* and *Sushil Suri*[21] and also referred to the order of reference in one of the cases before us. In paragraphs 17, 18, 19 and 20 of the Report it was held as under:-

"17. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ

34. JT 2012 (3) SC 469.

with the views that had been taken in Nikhil Merchant's case or *Manoj Sharma's* case (supra) or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimately, may conclude in a decision which may be of any consequence to any of the other parties. Even in Sushil Suri's case on which the learned Additional Solicitor General had relied, the learned Judges who decided the said case, took note of the decisions in various other cases, where it had been reiterated that the exercise of inherent powers would depend entirely on the facts and circumstances of each case. In other words, not that there is any restriction on the power or authority vested in the Supreme Court in exercising powers under Article 142 of the Constitution, but that in exercising such powers the Court has to be circumspect, and has to exercise such power sparingly in the facts of each case. Furthermore, the issue, which has been referred to a larger Bench in *Gian Singh's* case (supra) in relation to the decisions of this Court in B.S. Joshi's case, Nikhil Merchant's case, as also Manoj Sharma's case, deal with a situation which is different from that of the present case. While in the cases referred to hereinabove, the main question was whether offences which were not compoundable, under Section 320 Cr.P.C. could be quashed under Section 482 Cr.P.C., in Gian Singh's case the Court was of the view that a non-compoundable offence could not be compounded and that the Courts should not try to take over the function of the Parliament or executive. In fact, in none of the cases referred to in Gian Singh's case, did this Court permit compounding of non-compoundable offences. On the other hand, upon taking various factors into consideration,

including the futility of continuing with the criminal proceedings, this Court ultimately quashed the same.

18. In addition to the above, even with regard to the decision of this Court in *Central Bureau of Investigation v. Ravi Shankar Prasad and Ors. :* [(2009) 6 SCC 351], this Court observed that the High Court can exercise power under Section 482 Cr.P.C. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such power. Once the circumstances in a given case were held to be such as to attract the provisions of Article 142 or Articles 32 and 226 of the Constitution, it would be open to the Supreme Court to exercise its extraordinary powers under Article 142 of the Constitution to quash the proceedings, the continuance whereof would only amount to abuse of the process of Court. In the instant case the dispute between the petitioners and the Banks having been compromised, we have to examine whether the continuance of the criminal proceeding could turn out to be an exercise in futility without anything positive being ultimately achieved.

19. As was indicated in *Harbhajan Singh's* case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in *Gian Singh's* case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.

20. In the present case, the fact situation is different from that in *Nikhil Merchant's* case (supra). While in Nikhil Merchant's case the accused had misrepresented the financial status of the company in question in order to avail of credit facilities to an extent to which the company was not entitled, in the instant case, the allegation is that as part

of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loans obtained. Apart from the above, the actual owner of the property has filed a criminal complaint against *Shri Kersi V. Mehta* who had held himself out as the Attorney of the owner and his family members. The ratio of the decisions in B.S. Joshi's case and in *Nikhil Merchant's* case or for that matter, even in *Manoj Sharma's* case, does not help the case of the writ petitioners. In *Nikhil Merchant's* case, this Court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facets. This is not so in the instant case, where the emphasis is more on the criminal intent of the Petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out."

The Court distinguished *B.S. Joshi*[1] and *Nikhil Merchant*[2] by observing that those cases dealt with different fact situation.

41. In *Rajiv Saxena and others v. State (NCT of Delhi) and another*[35], this Court allowed the quashment of criminal case under Sections 498-A and 496 read with Section 34 IPC by a brief order. It was observed that since the parties had settled their disputes and the complainant agreed that the criminal proceedings need not be continued, the criminal proceedings could be quashed.

42. In a very recent judgment decided by this Court in the month of July, 2012 in *Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another*[36], this Court was again concerned with the question of quashment of an FIR alleging offences punishable under Sections 467, 468, 471, 420 and 120-B IPC. The High Court refused to quash the criminal case under Section 482 of the Code. The question for consideration was

35. (2012) 5 SCC 627.

36. JT 2012 (6) SC 504.

that inasmuch as all those offences, except Section 420 IPC, were non-compoundable offences under Section 320 of the Code, whether it would be possible to quash the FIR by the High Court under Section 482 of the Code or by this Court under Article 136 of the Constitution of India. The Bench elaborately considered the decision of this Court in *Shiji alias Pappu*[33] and by invoking Article 142 of the Constitution quashed the criminal proceedings. It was held as under:-

> "10. In the light of the principles mentioned above, inasmuch as Respondent No. 2 - the Complainant has filed an affidavit highlighting the stand taken by the Appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the Appellant herein (Accused No. 3) is concerned.
>
> 11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable Under Sections 467, 468, 471, 420 and 120-B of IPC insofar as the Appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above".

43. In *Y. Suresh Babu v. State of A. P.*[37] decided on April 29, 1987, this Court allowed the compounding of an offence under Section 326 IPC even though such compounding was not permitted by Section 320 of the Code. However, in *Ram Lal and Anr. v. State of J & K*[38], this Court observed that *Y. Suresh Babu*[37] was *per incuriam*. It was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court.

37. (2005) 1 SCC 347.

38. (1999) 2 SCC 213.

44. Having surveyed the decisions of this Court which throw light on the question raised before us, two decisions, one given by the Punjab and Haryana High Court and the other by Bombay High Court deserve to be noticed.

45. A five-Judge Bench of the Punjab and Haryana High Court in *Kulwinder Singh and others v. State of Punjab and another*[39] was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in *Madhu Limaye*[12], *Bhajan Lal*[30], *L. Muniswamy*[11], *Simrikhia*[14], *B.S. Joshi*[1] *and Ram Lal*[38] and framed the following guidelines:

> "a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.
>
> b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.
>
> c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.
>
> d. Minor offences as under Section 279, IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which

39. (2007) 4 CTC 769.

remains non- compoundable is Section 506 (II), IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148, IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148, IPC compoundable offences by amending the schedule under Section 320, Cr.P.C.

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

It was further held as under :

"23. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

25. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice. The power under Section 482 of the Cr.P.C. is to be exercised ex-debito Justitiae to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined parameters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate

and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery."

46. A three-Judge Bench of the Bombay High Court in *Abasaheb Yadav Honmane v. State of Maharashtra*[40] dealt with the inherent power of the High Court under Section 482 of the Code vis-à-vis the express bar for compounding of the non-compoundable offences in Section 320(9) of the Code. The High Court referred to various decisions of this Court and also the decisions of the various High Courts and then stated as follows :

"The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter-changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order."

47. Section 320 of the Code articulates public policy with

40. 2008 (2) Mh. L.J. 856.

regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 of the IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.

48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of

the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest.* The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. E*x debito justitiae* is inbuilt in such exercise; the whole idea is to do real,

complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts

which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

55. *B.S. Joshi*[1], *Nikhil Merchant*[2], *Manoj Sharma*[3] and *Shiji alias Pappu*[33] do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in *B.S. Joshi*[1], *Nikhil Merchant*[2], *Manoj Sharma*[3] and *Shiji alias Pappu*[33], this Court has compounded

the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

56. We find no incongruity in the above principle of law and the decisions of this Court in *Simrikhia*[14], *Dharampal*[15], *Arun Shankar Shukla*[16], *Ishwar Singh*[23], *Rumi Dhar (Smt.).*[28] and *Ashok Sadarangani*[34]. The principle propounded in *Simrikhia*[14] that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In *Dharampal*[15], the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in *Arun Shankar Shukla*[16]. In *Ishwar Singh*[23], the accused was alleged to have committed an offence punishable under Section 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Rumi Dhar (Smt.)*[28] although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. *Ashok Sadarangani*[34] was again a case where the accused persons were charged of having committed

offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in *B.S. Joshi*[1], *Nikhil Merchant*[2] and *Manoj Sharma3* and it was held that *B.S. Joshi*[1], and *Nikhil Merchant*[2] dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in *Ashok Sadarangani*[34] was more on the criminal intent than on a civil aspect. The decision in *Ashok Sadarangani*[34] supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private

in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

58. In view of the above, it cannot be said that *B.S. Joshi*[1], *Nikhil Merchant*[2] and *Manoj Sharma*[3] were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es).

R.P. Reference Answered.

TEHRI HYDRO DEV. CORPN. LTD.& ANR.
v.
JAI PRAKASH ASSO. LTD.
(Civil Appeal No. 3682 of 2007)

SEPTEMBER 25, 2012

[R.M. LODHA, ANIL R. DAVE AND RANJAN GOGOI, JJ.]

Arbitration – Maintainability – Contract for execution of works contained an arbitration clause – Grievance of respondent–contractor that though the works had been completed, the final bill was not prepared – Arbitration proceedings initiated, in course of which, final bill prepared and placed before the arbitrators by the appellant-corporation – Subsequently, another process of arbitration initiated for the specific claims of respondent-contractor – Maintainability of the second round of arbitration proceedings – Held: The entitlement of respondent–contractor was not the subject matter of the earlier proceedings before the arbitrators – The claim of respondent-contractor got crystallized once the final bill was prepared and placed before the arbitrators – It is these specific claims, after quantification, that were referred to the arbitrators in the subsequent arbitration proceedings – Thus, it cannot be said that the arbitration proceeding in respect of the specific claims of respondent-contractor stood barred in view of the earlier arbitration proceedings between the parties.

Arbitration – Arbitral award – Challenge to – Power of the Court – Contract for execution of works – Disputes arising therefrom – Matter referred to arbitration in terms of the arbitration clause contained in the contract – Claim of respondent–contractor for refund of security deposit not adjudicated upon by the arbitrators on the ground that it was not arbitrable – Held: In such a situation, it was clearly beyond the power of the trial court to decree the claim – The High

Court was justified in setting aside the claim, however, it erred in directing adjudication of the claim by an arbitrator nominated by it – The issue should have been left for determination in accordance with the procedure agreed upon by the parties.

Arbitration – Arbitral award – Grant of interest pendente lite – Justification – Held: Not justified, in view of the express bar contained in the contract between the parties.

Arbitration – Arbitral award – Grant of interest for the post-award period – Justification – Held: Justified.

The appellants and the respondent-contractor had entered into a contract for execution of certain works in connection with the Tehri Hydro Dam Project. Though the works in question were completed, the final bill of respondent-contractor was not prepared and security money, furnished by way of bank guarantee was not released. The parties went to arbitration in accordance with the arbitration clause under the contract/agreement. In course of the arbitration proceedings, the appellant-Corporation submitted the final bill.

Subsequently, another arbitration proceeding commenced between the parties for the specific claims of respondent-contractor. The arbitral award passed in the aforesaid arbitration proceeding held the respondent–contractor entitled to Rs.10.17 lakhs on account of the work done with interest @ 6% p.a. from the date of invocation of the claim till the date of the award and @ 12% p.a. from the date of the award till payment or till the award was made Rule of court, whichever was earlier. Insofar as the claim of respondent–contractor of Rs.12.50 lakhs lying in deposit with the appellant-Corporation, the Arbitrators held the same to be beyond the scope of the dispute raised in the arbitration proceeding.

Objections against specific parts of the award by which the respective parties felt aggrieved were filed before the District Judge. The District Judge (trial court) held the respondent-contractor entitled to both the amounts- Rs.10.17 lakhs as also Rs.12.50 lakhs and thereafter passed a decree in respect of the two amounts alongwith interest thereon at the rate of 12% *pendente lite* and 6% for the post award period. In appeal, the High Court maintained the award of Rs.10.17 lakhs, however, as regards the claim of Rs.12.50 lakhs, it took the view that the said amount could not have been awarded by the trial court as the said entitlement was not gone into by the Arbitrators, and remanded such claim to be settled by an Arbitrator appointed by it. The High Court did not deal with the question of interest.

In the instant appeal, the appellants contended that the respondent-contractor resorted to another process of arbitration without seeking such leave in the first arbitration proceeding; and thus the arbitration proceeding leading to the impugned award was without any authority of law. In regard to the claim of Rs.12.50 lakhs, the appellants contended that the said claim was not adjudicated upon by the arbitrators and in such a situation it was beyond the power of the trial court to hold the said claim in favour of the respondent-contractor; that though the High Court was justified in setting aside the claim of Rs.12.50 lakhs, it could not have directed adjudication of the said issue by an arbitrator nominated by it. Further, the appellants relied on Clauses 1.2.14 and 1.2.15 of Part II of the contract to contend that thereunder there was a specific bar to grant of interest and thus the award of interest in favour of respondent-contractor was wholly untenable.

Partly allowing the appeal, the Court

HELD: 1.1. The entitlement of the respondent –

contractor to the two amounts –Rs.10,17,461/- and Rs.12.50 lakhs was not the subject matter of the earlier proceeding before the Arbitrators which arose out of the grievance of the respondent–contractor that though the execution of the work had been completed, the final bill had not been prepared and further that certain amounts lying in deposit as security had not been refunded. Once the final bill was prepared and placed before the Arbitrators the claim of the respondent-contractor got crystallized. It is these specific claims, after quantification, that had been referred to the Arbitrators in the proceeding in which the award has been passed. It will, therefore, not be correct to say that the arbitration proceeding in respect of the specific claims of the contractor stood barred in view of the earlier arbitration proceeding between the parties. That apart, from an order passed by the Arbitrators on 15th January, 1994, it appears that the arbitrators in the aforesaid order had clearly recorded that the ". . . .both the parties agree that we should adjudicate both the disputes relating to refund of deposit of Rs.12.5 lakhs and payment of final bill to the tune of Rs.10.00 lakhs and odd . . . ." In these circumstances, the award insofar as the claim of Rs.10,17,461/- made by the Arbitrator and affirmed by the courts below does not require any further scrutiny by this Court. [Para 9] [824-C-H]

1.2. Insofar as the claim in respect of the sum of Rs.12.50 lakhs is concerned, the entitlement of the respondent – contractor to the said amount had not been adjudicated upon by the Arbitrators on the ground that the said issue was not an arbitrable issue and the same ought be resolved either by an amicable process or by way of a suit for recovery. If the aforesaid claim was not adjudicated upon by the Arbitrators the trial court (District Judge) was patently wrong in decreeing the said claim. Therefore, the High Court was perfectly justified in

reversing the said part of the decree. However, there is no reasonable basis for the view taken by the High Court that the entitlement of the respondent-contractor to the said amount should now be determined by the Arbitrator nominated by it. Rather, the aforesaid issue should have been left for determination in accordance with the procedure agreed upon by the parties, if the parties are, at all, inclined to go into a further round of adjudication at this stage. The aforesaid part of the order of the High Court is, therefore, interfered with and, subject to the observations made by this Court, the parties are permitted to work out their remedies as may be considered best and most appropriate in the facts and circumstances of the case. [Para 10] [825-A-E]

2.1. Clauses 1.2.14 and 1.2.15 of the contract agreement between the parties clearly reveal that despite some overlapping of the circumstances contemplated by the two Clauses, no interest is payable to the contractor for delay in payment, either, interim or final, for the works done or on any amount lying in deposit by way of guarantee. The aforesaid contemplated consequence would be applicable both to a situation where withholding of payment is on account of some dispute or difference between the parties or even otherwise. Since the said Clauses 1.2.14 and 1.2.15 imposed a clear bar on either entertainment or payment of interest in any situation of non payment or delayed payment of either the amounts due for work done or lying in security deposit, the grant of *pendente lite* interest on the claim of Rs.10,17,461/- is not justified. The award as well as the orders of the courts below are accordingly modified to the aforesaid extent. [Paras 11, 12 and 17] [825-F; 826-E-F; 829-G-H-; 830-A-B]

2.2. However, the grant of interest for the post-award period would stand on a somewhat different footing. The grant of interest on the amount of Rs.10,17,461/-from the

date of the award till the date of the decree or date of payment, whichever is earlier, is upheld. In the facts of the case, the rate of interest should be 12% per annum as determined in the arbitration proceeding between the parties. [Para 18] [830-B-D-E]

Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy and anr. **(1992) 1 SCC 508: 1991 (3) Suppl. SCR 417;** *Executive Engineer, Dhenkalal Minor Irrigation Division, Orissa and others vs. N.C. Budhraj (deceased) By lrs. And others* **(2001) 2 SCC 721: 2001 (1) SCR 264;** *Union of India vs Krafters Engineers and Leasing Private Limited* **(2011) 7 SCC 279: 2011 (8) SCR 196;** *Sayeed Ahmed & Co. vs. State of Uttar Pradesh & Ors.* **(2009) 12 SCC 26: 2009 (10) SCR 841;** *Sree Kamatchi Amman Constructions* vs. *Divisional, Railway manager (Works), Palghat and others* **(2010) 8 SCC 767: 2010 (10) SCR 487 and** *State of Orissa vs. B.N. Agarwalla* **(1997) 2 SCC 469: 1997 (1) SCR 704 – relied on.**

Board of Trustees for the Port of Calcutta vs. Engineers-De-Space-Age **(1996) 1 SCC 516: 1995 (6) Suppl. SCR 327;** *Madnani Construction Corporation Private Limited vs. Union of India and others* **(2010) 1 SCC 549: 2009 (16) SCR 216;** *Asian Techs Limited vs. Union of India and others* **2009 10 SCC 354: 2009 (14) SCR 182 and** *Executive Eningeer (Irrigation), Balimela and others vs Abhaduta Jena and others* **(1988) 1 SCC 418: 1988 (1) SCR 253 – referred to.**

Indian Oil Corporation Ltd. vs. *Amritsar Gas service and others* **(1991) 1 SCC 533: 1990 (3) Suppl. SCR 196 – cited.**

Case Law Reference:

1990 (3) Suppl. SCR 196	**cited**	**Para 7**
1997 (1) SCR 704	**relied on**	**Para 7**
2009 (14) SCR 182	**referred to**	**Para 7**

1991 (3) Suppl. SCR 417	**relied on**	**Para 13**
2001 (1) SCR 264	**relied on**	**Para 13**
2011 (8) SCR 196	**relied on**	**Para 13**
1995 (6) Suppl. SCR 327	**referred to**	**Para 14**
2009 (16) SCR 216	**referred to**	**Para 14**
2009 (10) SCR 841	**relied on**	**Para 14**
2010 (10) SCR 487	**relied on**	**Para 14**
1988 (1) SCR 253	**referred to**	**Para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3682 of 2007.

From the Judgment & Order dated 20.07.2006 of the High Court of Uttaranchal at Nainital in Appeal from Order No. 879 of 2001.

Puneet Taneja, Gurpreet S. Parwanda, Monika Tyagi, Shail Kumar Dwivedi for the Appellants.

S.B. Upadhyay, Pawan Upadhyay, Pawan Kishor, Sharmila Upadhyay for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. This appeal is directed against the judgment and order dated 20th July, 2006 passed by the High Court of Uttaranchal at Nainital whereby the decree passed by the learned trial court under the Arbitration Act, 1940 (hereinafter referred to as 'the Act') has been modified. The terms of award as passed by the learned Arbitrator and the decree passed by the learned trial court as well as the modification thereof by the High Court will now have to be noticed :

2. The appellants and the respondent herein had entered into a contract for execution of certain works in connection with the Tehri Hydro Dam Project. The agreement between the parties was executed on 29th March, 1978 and the works in question were completed on 31st December, 1985. The completion certificate was issued by the competent authority of the appellant-Corporation on 27th April, 1986. As the final bill of the respondent-contractor had not been prepared and security money, furnished by way of bank guarantee was not released, the parties went to arbitration in accordance with the Arbitration clause under the contract/agreement. In the course of the aforesaid Arbitration proceeding the appellant-Corporation submitted a final bill which according to the respondent-Contractor entitled it to receive a sum of Rs.10,17,461.09 on account of work done besides a sum of Rs. 12..50 lakhs that was lying in deposit with the Corporation. As the amounts due. according to the respondent-contractor, had become crystallized, another arbitration proceeding between the parties for the aforesaid specific claims commenced in accordance with the arbitration clause of the agreement.

3. The award in the aforesaid arbitration proceeding was passed on 29th January, 1996 holding the respondent – contractor to be entitled to the sum of Rs. 10,17,461/- with the interest at the rate of 6% per annum from the date of invocation of the claim till the date of the award and at the rate of 12% per annum from the date of the award till payment or till the award is made Rule of court, whichever is earlier. Insofar as the claim of the respondent – contractor to the sum of Rs. 12.50 lakhs lying in deposit with the Corporation, the Arbitrators held the said amount to be beyond the scope of the dispute raised in the arbitration proceeding. Accordingly, the respondent – contractor was left with the option of settling the said claim in an amicable manner or by resorting to a civil suit for recovery of the same.

4. Objections against the specific parts of the award by which the respective parties felt aggrieved were filed before the

learned District Judge, Tehri, Garhwal. The learned District Judge by his order dated 15th October, 1997 upheld the claim of the respondent – contractor to the sum of Rs.10,17,461/- lakhs as awarded. In so far as the claim of Rs.12.50 lakhs is concerned, the learned trial court, notwithstanding the fact that the arbitrator did not decide the said claim, went into the issue and held the respondent – contractor to be entitled to the said amount also. Thereafter, a decree was passed in respect of the two amounts alongwith interest thereon at the rate of 12% *pendente lite* and 6% for the post award period. Aggrieved by the aforesaid order passed by the learned District Judge, Tehri Garhwal, the appellant moved the High Court of Uttaranchal by filing an appeal under the provisions of the Act. The High Court by its order dated 20th July, 2006 allowed the appeal in part. While the claim of Rs.10,17,461/- awarded in favour of the respondent-contractor was maintained in so far as the claim of Rs. 12.50 lakhs is concerned, the High Court took the view that the aforesaid amount could not have been awarded by the learned trial court as the said entitlement was not gone into by the learned Arbitrators. Accordingly, the High Court remanded the aforesaid claim to be settled by an Arbitrator appointed by it. Insofar as the question of interest is concerned, the High Court did not deal with the said aspect of the matter at all. Aggrieved, the Corporation is before this court challenging the judgment and order dated 20th July, 2006 passed by the High Court of Uttaranchal.

5. We have heard Mr. Puneet Taneja, learned counsel for the appellants and Mr. S.B. Upadhyay, learned senior counsel for the respondent.

6. Learned counsel for the appellants has contended that the claims of the respondent - contractor for the unpaid amounts under the final bill as well as for return/refund of security deposit, including amounts furnished by way of bank guarantee, was the subject matter of an earlier arbitration between the parties. In the course of the said arbitration the final bill was placed before

the arbitrators by the Corporation. On scrutiny of the aforesaid final bill the respondent-contractor claimed the two specific amounts in question and resorted to another process of arbitration without seeking leave in the first arbitration proceeding to have recourse to a second round of arbitration. The arbitration proceeding leading to the award is, therefore, without any authority of law. Specifically, insofar as the amount of Rs.12.50 lakhs is concerned, according to the learned counsel for the appellants, the said amount was not adjudicated upon by the Arbitrators and the same was to be recovered by an amicable process or by resorting to a civil suit. In such a situation it was clearly beyond the power of the learned trial court to hold the said claim in favour of the respondent-contractor. Though the High Court was justified in setting aside the said claim of Rs.12.50 lakhs for the aforesaid reason, it could not have directed adjudication of the said issue by an Arbitrator nominated by it as has been done by the impugned order of the High Court. According to the learned counsel, the adjudication of the said claim of the respondent – contractor, if at all, should have been directed by a process contemplated by the specific provisions of the Arbitration agreement between the parties.

Insofar as the grant of interest is concerned, learned counsel for the appellants has relied on Clauses 1.2.14 and 1.2.15 of Part II of the contract agreement between the parties to contend that under the aforesaid clauses of the agreement governing the parties there was a specific bar to grant of interest. Relying on several judgments of this court, details of which will be noticed in the discussions that will follow, learned counsel has contended that the award of interest in favour of the respondent-contractor being clearly contrary to the terms of the agreement between the parties is wholly untenable and therefore needs to be interfered with by this court.

7. Controverting the submissions advanced on behalf of the appellants, learned counsel for the respondent – contractor has contended that the appellants had actively participated in

the proceeding before the Arbitrators and therefore, cannot, at this stage, question the jurisdiction of the Arbitrators to make the award in question. It is contended that the claim of the respondent to the amount of Rs.10,17,461/- having been held in its favour all along, the same does not disclose any basis for interference. In so far as the amount of Rs.12.50 lakhs is concerned the only issue that will require deterimination is the manner in which the de novo adjudication is required to be carried out. So far as the question of interest is concerned, learned counsel has placed before the court the UP Civil Laws (Reforms and Amendment) Act, 1976 by which certain provisions of the Arbitration Act of 1940 have been amended in its application to the State of UP. The attention of the court has been drawn to Paragraph 7A which has been added after Para 7 of the First Schedule to the Act. According to the learned counsel, Paragraph 7A authorized and empowered the arbitrator as well as the courts below to grant interest. Learned counsel has also relied on the decisions of this court *in Indian oil Corporation Ltd. vs. Amritsar Gas service and others*[1]*, State of Orissa vs. B.N. Agarwalla*[2] and *Asian Techs Limited vs. Union of India and others*[3] 2009 10 SCC 354 (para 21) in support of the contentions advanced.

8. Para 7A of the U.P. Civil Laws (Reforms and Amendment) Act, 1976 referred to above may now be reproduced :

> "7A. Where and in so far as an award is for the payment of money, the arbitrators of the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration as defined in sub-section (3) of section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of the award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, but in no case beyond the date of the decree to be passed on the award."

1. [(1991) 1 SCC 533.
2. [(1997) 2 SCC 469.
3. 2009 10 SCC 354 (para 21).

9. Insofar as the jurisdiction of the Arbitrator to adjudicate on the two claims of Rs.10,17,461/- and Rs.12.50 lakhs are concerned, the dispute is capable of resolution within a short compass. The entitlement of the respondent – contractor to the aforesaid two amounts was not the subject matter of the earlier proceeding before the Arbitrators which arose out of the grievance of the respondent – contractor that though the execution of the work had been completed, the final bill had not been prepared and further that certain amounts lying in deposit as security had not been refunded. Once the final bill was prepared and placed before the Arbitrators the claim of the respondent-contractor got crystallized. It is these specific claims, after quantification, that had been referred to the Arbitrators in the proceeding in which the award has been passed. It will, therefore, not be correct to say that the arbitration proceeding in respect of the specific claims of the contractor stood barred in view of the earlier arbitration proceeding between the parties. That apart, from an order passed by the Arbitrators on 15th January, 1994, which is available on record as an enclosure to the counter affidavit of the respondent, it appears that the arbitrators in the aforesaid order dated 15th January, 1994 had clearly recorded that the ". . . .both the parties agree that we should adjudicate both the disputes relating to refund of deposit of Rs.12.5 lakhs and payment of final bill to the tune of Rs.10.00 lakhs and odd . . . ."

In these circumstances, the award insofar as the claim of Rs.10,17,461/- made by the learned Arbitrator and affirmed by the learned courts below will not require any further scrutiny by us.

10. Insofar as the claim in respect of the sum of Rs.12.50 lakhs is concerned, it has already been noticed that the entitlement of the respondent – contractor to the said amount had not been adjudicated upon by the Arbitrators on the ground that the said issue was not an arbitrable issue and the same ought be resolved either by an amicable process or by way of a suit for recovery. If the aforesaid claim was not adjudicated upon by the Arbitrators the learned trial court was patently wrong in decreeing the said claim. Therefore, the High Court was perfectly justified in reversing the said part of the decree. However, we do not find any reasonable basis for the view taken by the High Court that the entitlement of the respondent-contractor to the said amount should now be determined by the Arbitrator nominated by it. Rather, according to us, the aforesaid issue should have been left for determination in accordance with the procedure agreed upon by the parties, if the parties are, at all, inclined to go into a further round of adjudication at this stage. We, therefore, interfere with the aforesaid part of the order of the High Court and, subject to our observations above, we leave the parties to work out their remedies as may be considered best and most appropriate in the facts and circumstances of the case.

11. This will lead the court to a consideration of what is the principal bone of contention between the parties in the present case, namely, the issue with regard to payment of interest. Clauses 1.2.14 and 1.2.15 on which much arguments have been advanced by learned counsel for both sides may now be extracted below :

"PART – II

CONDITIONS OF CONTRACT

1.2.14 NO CLAIM FOR DELAYED PAYMENT DUE TO DISPUTE ETC.

The contractor agrees that no claim for interest of damages

will be entertained or payable by the Government in respect of any money or balances which may be lying with Government owing to any disputes, differences or misunderstandings between the parties or in respect of any delay or omission on the part of the Engineer-in-charge in making immediate or final payments or in any other respect whatsoever.

1.2.15 INTEREST ON MONEY DUE TO THE CONTRACTOR :

No omission on the part of the Engineer-in-charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his accounts be due to him."

12. A reading of the aforesaid two Clauses of the contract agreement between the parties clearly reveal that despite some overlapping of the circumstances contemplated by the two Clauses, no interest is payable to the contractor for delay in payment, either, interim or final, for the works done or on any amount lying in deposit by way of guarantee. The aforesaid contemplated consequence would be applicable both to a situation where withholding of payment is on account of some dispute or difference between the parties or even otherwise.

13. Of the several decisions of this Court referred to by the learned counsel for the appellant the judgments of the Constitution Bench of this Court in *Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy and anr*[4]. and *Executive Engineer, Dhenkalal Minor Irrigation Division, Orissa and others vs. N.C. Budhraj (deceased) By lrs. And others*[5] will require specific notice. The true ratio laid

4. (1992) 1 SCC 508.

5. (2001) 2 SCC 721.

down in the aforesaid two judgments have been elaborately considered in a more recent pronouncement of this court in the case of *Union of India vs. Krafters Engineers and Leasing Private Limited.*[6] In *Krafters Engineers's* case (supra) the ratio of the decision in *G.C. Roy's* case (supra) was identified to mean that if the agreement between the parties does not prohibit grant of interest and the claim of a party to interest is referred to the arbitrator, the arbitrator would have the power to award the interest. This is on the basis that in such a case of silence (where the agreement is silent) it must be presumed that interest was an implied term of the agreement and, therefore, whether such a claim is tenable can be examined by the arbitrator in the reference made to him. The aforesaid view, specifically, is with regard to *pendente lite* interest. In the subsequent decision of the Constitution Bench in *N.C. Budhraj's* case (supra) a similar view has been taken with regard to interest for the pre reference period.

14. In *Krafters Engineers'* case (supra) the somewhat discordant note struck by the decisions of this court in *Board of Trustees for the Port of Calcutta vs. Engineers-De-Space-Age*[7] and *Madnani Construction Corporation Private Limited vs. Union of India and others*[8] were also taken note of. Thereafter, it was also noticed that the decision in *Engineers-De-Space-Age's case (supra)* was considered in *Sayeed Ahmed & Co. vs. State of Uttar Pradesh & Ors*[9]. and the decision in *Madnani Construction* case (supra) was considered in *Sree Kamatchi Amman Constructions vs. Divisional, Railway manager (Works), Palghat and others*[10]. In *Sayeed Ahmed's* case (supra) (para 24) it was held that in the light of the decision of the Constitution bench in *GC Roy's*

6. (1992) 1 SCC 508.
7. (1996) 1 SCC 516.
8. (2010) 1 SCC 549.
9. (2009) 12 SCC 26.
10. (2010) 8 SCC 767.

case and N*C Budhraj's* case it is doubtful whether the observations in *Engineers-de-Space-Age's case* (supra) to the effect that the Arbitrator could award interest *pendente lite, i*gnoring the express bar in the contract, is good law. In *Sree Kamatchi Amman Constructions's* case(Supra) while considering *Madnani's* case (supra) this court noted that the decision in Madnani's case follows the decision in *Engineers-de-Space-Age's case* (supra).

15. From the above discussions, it is crystal clear that insofar as *pendente lite* interest is concerned, the observations contained in Para 43 and 44 of the judgment in *GC Roy's case (supra)* will hold the field. Though the gist of the said principle has been noticed earlier it would still be appropriate to set out para 44 of the judgment in *G.C. Roy's* case (supra) which is in the following terms :

> " 44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf.
>
> Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendent elite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes – or refer the dispute as to interest as such – to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendent elite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

16. The provisions of the UP Civil (Reforms and

Amendment) Act amending the First Schedule to the Arbitration Act, 1940 does not assist the respondent - contractor in any manner to sustain the claim of award of interest *pendente lite,* inasmuch, as paragraph 7A to the First Schedule, as amended, is only an enabling provision which will have no application to a situation where there is an express bar to the entertainment or payment of interest on the delayed payment either of an amount due for the work done or of an amount lying in deposit as security. The decision in *BN Agarwalla's* case *(*supra*)* on which reliance has been placed by the learned counsel for the respondent, once again, does not assist the claim of the respondent to interest *pendente lite* inasmuch as in *BN Agarwalla's* case (supra) the views of the Constitution Bench in *GC Roy's* case (supra) with regard to interest *pendente lite* could not have been and, infact, were not even remotely doubted. The observation of the bench in *B.N. Agarwalla's* case that in *G.C.Roy's* case (supra) the decision in *Executive Eningeer (Irrigation), Balimela and others vs . Abhaduta Jena and others*[11] was not overruled was only in the context of the issue of award of interest for the pre reference period. The decision in *Asian Techs Limited case (supra)* also relied on by the respondent takes note of the decision in *Engineers-De-Space-Age* case (supra) to come to the conclusion the prohibition on payment of interest contained in clause 11 of the agreement between the parties was qua the department and did not bar the Arbitrator from entertaining the claim. It has already been noticed that the correctness of the propositions laid down in *Engineers-De-Space-Age* case (supra) have been doubted in the subsequent decisions of this court, reference to which has already been made.

17. Clauses 1.2.14 and 1.2.15, already extracted and analysed, imposed a clear bar on either entertainment or payment of interest in any situation of non payment or delayed payment of either the amounts due for work done or lying in

11. (1988) 1 SCC 418.

security deposit. On the basis of the discussions that have preceded we, therefore, take the view that the grant of *pendente lite* interest on the claim of Rs.10,17,461/- is not justified. The award as well as the orders of the courts below are accordingly modified to the aforesaid extent.

18. However, the grant of interest for the post-award period would stand on a somewhat different footing. This very issue has been elaborately considered by this Court in *B.N. Agarwalla (supra)* in the light of the provisions of Section 29 of the Arbitration Act, 1940. Eventually this Court took the view that in a situation where the award passed by the arbitrator granting interest from the date of the award till the date of payment is not modified by the Court ".....the effect would be as if the Court itself had granted interest from the date of the decree till the date of payment..." In view of the above, the grant of interest on the amount of Rs.10,17,461/-from the date of the award till the date of the decree or date of payment, whichever is earlier, is upheld. In the facts of the case we are of the view that the rate of interest should be 12% per annum as determined in the arbitration proceeding between the parties.

19. In view of the foregoing discussions we allow this appeal in part and modify the order of the High Court dated 20th July, 2006 as indicated above.

B.B.B. Appeal partly allowed.

HUKUM CHAND GUPTA
v.
DIRECTOR GENERAL, ICAR & ORS.
(Civil Appeal No. 3580 of 2009)

SEPTEMBER 25, 2012

[SURINDER SINGH NIJJAR AND H.L.GOKHALE, JJ.]

Service Law – Pay scale – Revision in – Tribunal rejected appellant's claim for upgradation in pay scale – Propriety – Held: Proper – The appellant failed to establish that the action of the respondents was either discriminatory or beyond the purview of the Service Rules.

Service Law – Pay scale – Equation of posts / pay scales – Distinction in pay scales between the employees working at the Headquarters and the employees working at the institutional level – Propriety – Held: On facts, it was a matter of record that the employees working at the Headquarters and at the institutional level were governed by completely different set of rules – Even the hierarchy of the posts and the channels of promotion were different – Also, merely because any two posts at the Headquarters and the institutional level had the same nomenclature, did not necessarily require that the pay scales on such two posts should also be the same – Prescription of two different pay scales would not violate the principle of equal pay for equal work – Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution – Even though, the two posts were referred to by the same name, it would not lead to the necessary inference that the posts were identical in every manner – There cannot be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale – Constitution of India, 1950 – Articles 14, 16 and 39D.

Service Law – Pay scale – Prescription of – Held:

Prescription of pay scales on particular posts is a very complex exercise – It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts – These matters are to be assessed by expert bodies like the employer or the Pay Commission – Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts.

Service Law – Pay scale – Assured Career Progression Scheme – Object and features of – Discussed.

The appellant was initially appointed as a Laboratory Assistant in Group D in the National Dairy Research Institute ('NDRI'). Later, he was promoted as a Lower Division Clerk (Junior Clerk) and thereafter further promoted as a Senior Clerk. Subsequently, on 15th June, 1988, he was promoted to the post of Superintendent in the pay scale of Rs.1640-2900/-. On 17th March, 1994, he was promoted as Assistant Administrative Officer (AAO) on the basis of seniority-cum-fitness. The respondent revised the pay scale of Assistants on 17th June, 1995 to Rs.1640-2900/- w.e.f. 1st January, 1986. However, the pay scale of Superintendent was not revised. At that stage, the appellant submitted a representation requesting that his pay scale may be revised on the ground that in the Headquarters of Indian Council of Agricultural Research (ICAR), the post of Superintendent was a promotional post from that of Assistant which carried the pay scale of Rs.1640-2900/-. The representation not having been decided, the appellant filed OA before the Central Administrative Tribunal. The Tribunal declined to entertain the claim of the appellant. Subsequently, the Screening Committee of respondent institute recommended the case of one Shri J.I.P. Madan for financial upgradation in the scale of Rs.8000-13500/-

on the basis of the instructions of the ICAR by which the post of Superintendent was merged with the post of Assistant as the post of Superintendent was treated as 'dying cadre'. In the meanwhile, the appellant reached the age of superannuation and retired from service. Thereafter, Shri J.I.P. Madan was granted second financial upgradation w.e.f. 8th February, 2001 in the pay scale of Rs.8000-13500. At this stage, the appellant again moved the Tribunal claiming that Shri J.I.P. Madan being junior to him could not be put in a higher pay scale. The Tribunal held that the post at the Headquarters could not be compared with the post at Institutional level as both were governed by different sets of Service Rules and rejected the prayer with regard to the higher pay scale given to Shri J.I.P. Madan on the ground that he had been given the benefit of second upgradation in pay since he had earned only one promotion throughout his professional career. Aggrieved, the appellant filed a writ petition which was dismissed by the High Court and therefore the instant appeal.

Dismissing the appeal, the Court

HELD: 1. The claim made by the appellant is wholly misconceived. There is no comparison between the appellant and Shri J.I.P. Madan. The appellant had duly earned promotion in his cadre from the lowest rank to the higher rank. Having joined in Group D, he retired on the post of AAO. On the other hand, Shri J.I.P. Madan had been working in the same pay scale till his promotion on the post of AAO. Therefore, he was held entitled to the second upgradation after 24 years of service. He had joined as an Assistant by Direct Recruitment and promoted on 24th August 1990 as a Superintendent. After the merger of the post of Assistant with the Superintendent, the earlier promotion of Shri Madan was nullified, as Assistant was no longer a feeder post for the promotion on the post of Superintendent. Thus, a

financial upgradation, in view of Assured Career Progression (ACP) Scheme, was granted to him since he had no opportunity for the second promotion. [Para 15] [843-F-H; 844-A]

Union of India v. P.V. Hariharan & Anr. **(1997) 3 SCC 568 1997 (2) SCR 1050 – referred to.**

2.1. The ACP Scheme for the civilian employees was introduced on the recommendations of the Vth Central Pay Commission. It was introduced with a view to provide a 'Safety Net' to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Under this scheme, it was decided to grant two financial upgradations on completion of 12 years and 24 years of regular service respectively. It was further provided that isolated posts in Group A, B, C and D categories which have no promotional avenues shall also qualify for similar benefits. Grant of financial upgradations under the ACP Scheme was, however, made subject to the conditions mentioned in Annexure-I of the Office Memorandum No.35034/1/97-Estt(D) dated 9th August, 1999. The conditions in Annexure-I indicate that ACP Scheme envisages only a placement in the higher pay-scale/grant of financial benefits (through financial upgradation). This is given to the Government servant concerned, on personal basis only. It neither amounts to functional/ regular promotion nor requires creation of new posts for the purpose. The aforesaid clarification makes it abundantly clear that the financial upgradation was granted to Shri Madan strictly in conformity with the aforesaid scheme. Therefore, the objections raised by the appellant were without any basis and wholly misconceived. [Para 16] [844-B-F]

2.2. The ACP Scheme was introduced in the ICAR by making the necessary provision in the statutory Service

Rules. Admittedly, Shri J.I.P. Madan has been given the benefit under the ACP Scheme. Therefore, the decision taken by the respondent was within the purview of the Service Rules and can not be said to be arbitrary. That being so, the claim made by the appellant is clearly misconceived. [Para 19] [845-G-H; 846-A]

Council of Scientific and Industrial Research & Anr. v. K.G.S. Bhatt & Anr. **(1989) 4 SCC 635;** *State of Tripura & Ors. v. K.K. Roy* **(2004) 9 SCC 65: 2003 (6) Suppl. SCR 781 – referred to.**

3.1. It cannot be said that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. The prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There cannot be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be

assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales. [Para 20] [846-B-G]

3.2. The doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 of the Constitution permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. *A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation.....A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service.* The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make

a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. [Para 20A] [847-B-H; 848-A-B]

3.3. In the instant case, the appellant has failed to establish that the action of the respondents is either discriminatory or beyond the purview of the rules. [Para 11] [842-A]

State of Punjab v. Surjit Singh **(2009) 9 SCC 514: 2009 (12) SCR 394 – relied on.**

Case Law Reference:

1997 (2) SCR 1050	**referred to**	**Para 5**
(1989) 4 SCC 635	**referred to**	**Para 17**
2003 (6) Suppl. SCR 781	**referred to**	**Para 18**
2009 (12) SCR 394	**relied on**	**Para 20A**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3580 of 2009.

From the Judgment & Order dated 8.8.2008 of the High Court of Punjab and Hayana at Chandigarh in C.W.P.No. 9595-CAT of 2004.

Hukam Chand Gupta (In-Person)

B. Sunita Rao, Anindita Popli for the Respondents.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. On 25th September, 2012, we passed the following order:

> "Having heard the appellant-in-person and the counsel for the respondent, we find no merit in the appeal and the same is hereby dismissed. The detailed reasons with conclusions shall follow."

2. Here are the reasons.

3. This appeal is directed against the judgment of the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.9595-CAT of 2004 decided on 8th August, 2008.

4. The appellant was initially appointed as a Laboratory Assistant in Group D on 29th December, 1961 in the National Dairy Research Institute (hereinafter referred to as 'NDRI'). On 13th January, 1966, he was promoted as a Lower Division Clerk (Junior Clerk) after qualifying limited departmental competitive examination. He was further promoted on 10th May, 1973 as a Senior Clerk, again after qualifying limited departmental competitive examination. At that stage, his pay scale was Rs.1200-2040/-. Subsequently, on 15th June, 1988, he was promoted to the post of Superintendent in the pay scale of Rs.1640-2900/- after passing the departmental examination. On 17th March, 1994, he was promoted as Assistant Administrative Officer on the basis of seniority-cum-fitness. The respondent revised the pay scale of Assistants on 17th June, 1995 from Rs.1400-2600 to Rs.1640-2900/- w.e.f. 1st January, 1986. However, the pay scale of Superintendent was not revised.

5. At that stage, the appellant submitted a representation on 24th October, 1995 requesting that his pay scale may be revised on the ground that in Headquarters of Indian Council

of Agricultural Research (ICAR), the post of Superintendent is a promotional post from that of Assistant which carries the pay scale of Rs.1640-2900/-. The representation not having been decided, the appellant filed OA No.567-HR-96 before the Chandigarh Bench of Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). By order dated 20th May, 1997 the Tribunal disposed of OA with the following observations :-

> "In this application, the agitation is for revision of pay scale of the applicant who is Superintendent in the scale of Rs.1640-2900/- to that of Rs.2000-3500/- on the ground that the duties and responsibilities of Superintendent are much higher than the Assistants working at Headquarters office of ICAR and he should be given the higher pay scale. As per the recent judgment of the Hon'ble Supreme Court in the case of UOI and Anr. vs. P.V.Hariharan and Anr. O.A.No.7127 of 1993 arising out of OA 391/91, has precluded the Tribunals from adjudicating the matters of parity of pay or pay scales in the Government Department unless some discrimination is brought to the notice of the Court. This is a matter regarding parity of pay scales between two sets of posts, therefore, it is squarely covered by the directions of Hon'ble Supreme Court. In view thereof, this matter cannot be adjudicated by this Tribunal.
>
> 2. However, it was also brought to our notice that the matter is engaging the attention of the authority concerned and the representation filed by the applicant on 24.10.1995 (A-3) is under active consideration.
>
> 3. In view thereof, the OA is disposed of with a direction that respondents shall expedite the decision in the matter. OA disposed of accordingly."

A perusal of the aforesaid shows that the Tribunal declined to entertain the claim of the appellant by relying upon the judgment rendered by this Court in *Union of India Vs.*

P.V.Hariharan & Anr.[1] The Tribunal, however, directed that the respondent shall expedite the decision on the representation submitted by the appellant. Subsequently, NDRI sent a copy of the memorandum to the appellant on 2nd April, 1998 which reads as under:

MEMORANDUM

> "With reference to the Court Case filed by Sh.Hukum Chand Gupta Asstt. Administrative Officer, NDRI, Karnal, under OA No.567/HR/96 in the Central Administrative Tribunal, Chandigarh, regarding upgradation of the post of Superintendent in the higher scale of that the proposals based upon the recommendations of Dr. Raman Committee involving upgradation of posts including the Superintendent/Superintendent (A &A) and Sr. Stenographer in the existing pay scale of RS.1640-2900 (revised to Rs.5500-175-9000) to the next higher grades, the same have not yet been concurred to by the Ministry of Finance. Deptt. of Expenditure. Thus the decision in the matter is pending.
>
> This issue with reference to the ICAR letter No.9-16/96 Law dated the 11-March-1998.
>
> Sd/-
> (J.K.Kewalramani)
> Senior Administrative Officer Admn.)"

6. On 4th August, 2000, the appellant was further informed that ICAR, on the basis of the recommendation of the Cadre Review Committee, had directed for upgradation of seven posts of Superintendents to the post of AAO, by letter dated 17th December, 1998. Therefore, no further decision was required to be taken by the respondent on the representation of the appellant.

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1. (1997) 3 SCC 568.

7. It appears that on 12th December, 2000, the Screening Committee of respondent institute recommended the case of Shri J.I.P. Madan for financial upgradation in the scale of Rs.8000-13500/-. The aforesaid decision was taken on the basis of the instructions of the ICAR by which the post of Superintendent was merged with the post of Assistant as the post of Superintendent was treated as 'dying cadre'. In the meantime, the appellant reached the age of superannuation on 31st July, 2001 and duly retired from service. On 17th April, 2002, Shri J.I.P. Madan was granted second financial upgradation w.e.f. 8th February, 2001 in the pay scale of Rs.8000-13500. At this stage, the appellant again moved the Tribunal through OA No.299/HR/2003. The appellant claimed that Shri J.I.P. Madan being junior to him cannot be put in a higher pay scale. The OA was dismissed on 2nd December, 2003.

8. By a detailed order, the Tribunal rejected both the claims. It was observed that the post at Headquarters cannot be compared with the post at Institutional level as both are governed by different sets of Service Rules. The second prayer with regard to the higher pay scale given to Shri J.I.P. Madan was rejected on the ground that he had been given the benefit of second upgradation in pay since he had earned only one promotion throughout his professional career.

9. Aggrieved by the aforesaid, the appellant filed a writ petition C.W.P. No. 9595 CAT of 2004 before the High Court. The writ petition has also been dismissed by judgment dated 8th August, 2008. This judgment is impugned in the present appeal.

10. We have heard the appellant, in person, and Mrs. Sunita Rao, on behalf of the respondents.

11. We see no reason to differ with the conclusion reached by the High Court. It is a matter of record that the claim of the appellant had been negated way back in 1997, when the

Tribunal rejected the claim. The aforesaid order of the Tribunal was not challenged by the appellant. However, leaving aside the question of laches, we are of the opinion that the appellant has failed to establish that the action of the respondents is either discriminatory or beyond the purview of the rules.

12. According to the appellant, the decisions rendered by the Tribunal as well as the High Court are based on a misconception. According to him, there can be no distinction in the pay scales of the posts in Headquarters on one hand and at institutional level on the other. He claims that the persons holding identical posts performing identical and similar duties under the same employer cannot be treated differently in the matter of pay and allowances, depending on whether the employees are posted at Headquarters or at the Institution level. This, according to the appellant, violates Article 14, 16 and 39D of the Constitution of India.

13. Mrs. Sunita Rao, learned counsel appearing for the respondent has submitted that Shri J.I.P. Madan was appointed as a Lab Assistant w.e.f. 3rd May, 1976 at NDRI. He was directly recruited thereafter on 9th February, 1977 as an Assistant in the pay scale of Rs.425-700. This was not a case of promotion from the post of Lab Assistant, a technical post to the post of Assistant which is in the general cadre. She, however, accepts that Shri Madan was further promoted as Superintendent on 24th August, 1990 in the pay scale of Rs.1640-2900 revised to Rs.5500-9000 with effect from 1st January, 1996. He was further promoted to the post of AAO on 1st November, 1996 in the pay scale of Rs.6500-10500. She, however, points out that there was a merger of the post of Superintendent and Assistant in 1998. Therefore, the post of Superintendent was declared a dying cadre. Assured Career Progression Scheme (hereinafter referred to as 'ACP Scheme') was introduced in 1999. Some institutes had raised a point of doubt as to whether the promotion of Assistant to Superintendent may be ignored in terms of DOPT's clarification

vide O.M. dated 10th February, 2000. Reference was, therefore, made to the DOPT for the necessary clarification. The clarification given by the DOPT was communicated to the respondent institute by letter dated 1st March, 2002. Learned counsel brought to our notice the relevant extract of the aforesaid letter, which is as under : -

> "In the given facts, the post of Assistant and Superintendent have been brought at par as incumbents of both are eligible for promotion directly to the grade of AAO and Assistant is no longer the feeder grades for Superintendent. Since, financial upgradation under AGP schemes are to be allowed as per the hierarchy available as on 9.8.1999, the promotion earned to the grade of Superintendent prior to 9.8.99 may have to be ignored in terms of clarification to point of doubt No.1 in O.M. dated 10.2.2002."

14. According to the learned counsel, the promotion of Shri Madan from the post of Assistant to the post of Superintendent had to be ignored on the basis of the above clarification. Consequently, he had been given the second upgradation under the ACP on 26th March, 2000.

15. In our opinion, the explanation given by Mrs. Sunita Rao does not leave any room for doubt that the claim made by the appellant is wholly misconceived. There is no comparison between the appellant and Shri J.I.P. Madan. The appellant had duly earned promotion in his cadre from the lowest rank to the higher rank. Having joined in Group D, he retired on the post of AAO. On the other hand, Shri J.I.P. Madan had been working in the same pay scale till his promotion on the post of AAO. Therefore, he was held entitled to the second upgradation after 24 years of service. He had joined as an Assistant by Direct Recruitment and promoted on 24th August 1990 as a Superintendent. After the merger of the post of Assistant with the Superintendent, the earlier promotion of Shri Madan was nullified, as Assistant was no longer a feeder post for the

promotion on the post of Superintendent. Thus, a financial upgradation, in view of ACP Scheme, was granted to him since he had no opportunity for the second promotion.

16. The Assured Career Progression Scheme for the civilian employees was introduced on the recommendations of the Vth Central Pay Commission. It was introduced with a view to provide a 'Safety Net' to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Under this scheme, it was decided to grant two financial upgradations on completion of 12 years and 24 years of regular service respectively. It was further provided that isolated posts in Group A, B, C and D categories which have no promotional avenues shall also qualify for similar benefits. Grant of financial upgradations under the ACP Scheme was, however, made subject to the conditions mentioned in Annexure-I of the Office Memorandum No.35034/1/97-Estt(D) dated 9th August, 1999. The conditions in Annexure-I indicate that ACP Scheme envisages only a placement in the higher pay-scale/grant of financial benefits (through financial upgradation). This is given to the Government servant concerned, on personal basis only. It neither amounts to functional/regular promotion nor requires creation of new posts for the purpose. The aforesaid clarification makes it abundantly clear that the financial upgradation was granted to Shri Madan strictly inconformity with the aforesaid scheme. Therefore, the objections raised by the appellant were without any basis and wholly misconceived.

17. We may notice here that the provisions contained in ACP Scheme are inconsonance with the observations made by this Court in *Council of Scientific and Industrial Research & Anr. Vs. K.G.S. Bhatt & Anr.*[2] in the following words:

> "It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs

2. (1989) 4 SCC 635.

a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See *Principles of Personnel Management*, Flipo Edwin B., 4th Edn., p. 246) Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See *Personnel Management*, Dr. Udai Pareek, p. 277) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. (See *Management of Personnel in Indian Enterprises*, Prof. N.N. Chatterjee, Ch. 12, p. 128)"

18. In the case of *State of Tripura & Ors. Vs. K.K. Roy,*[3] this Court again observed that "it is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues."

19. As noticed earlier, the ACP Scheme was introduced in the ICAR by making the necessary provision in the statutory Service Rules. Admittedly, Shri J.I.P. Madan has been given the benefit under the ACP Scheme. Therefore, the decision

3. (2004) 9 SCC 65.

taken by the respondent was within the purview of the Service Rules and can not be said to be arbitrary. That being so, the claim made by the appellant is clearly misconceived.

20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales.

20-A. In expressing the aforesaid opinion, we are fortified

by the observations made by this Court in *State of Punjab Vs. Surjit Singh.*[4] In this case, upon review of a large number of judicial precedents relating to the principle of 'equal pay for equal work', this Court observed as follows:

> "19…Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. *A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation…..A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service.* The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof."

(Emphasis supplied)

4. (2009) 9 SCC 514.

21. In our opinion, the aforesaid observations would be a complete answer to all the submissions made by the appellant.

22. For the aforesaid reasons, we see no merit in this appeal and the same is dismissed.

B.B.B. Appeal dismissed.

PRICE WATERHOUSE COOPERS PVT. LTD.

v.

COMMISSIONER OF INCOME TAX, KOLKATA-I AND ANR.

(Civil Appeal No. 6924 of 2012)

SEPTEMBER 25, 2012

[S.H. KAPADIA, CJI AND MADAN B. LOKUR, J.]

INCOME TAX ACT, 1961:

s.271(1)(c) read with s.40A(7) - Penalty proceedings - Computation error - Provision for payment of gratuity - Not added to total income - Held: Contents of Tax Audit Report filed along with the return stating that the provision for payment was not allowable u/s 40A(7) suggest that it was a bona fide and inadvertent computation error, as the assessee while submitting its return, failed to add the provision for gratuity to its total income - It cannot be said that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income - In view of the peculiar facts of the case, the imposition of penalty on the assessee being not justified, is set aside.

The assessee, engaged in providing multi-disciplinary management consultancy services, filed its return of income on 30.11.2000 u/s 139(6) read with s.139(6A) of the Income Tax Act, 1961, accompanied by its Tax Audit Report as required u/s 44AB of the Act. The Statement of Particulars filed by the assessee was in Form 3CD as required by r.6G (2) of the Income Tax Rules, 1962. In Column 17(i) of the Statement, though it was stated that the provision for payment of gratuity was not allowable u/s 40A(7), the assessee claimed a deduction thereon amounting to Rs.23,70,306/- in its return of income and, accordingly, the assessment order was

passed u/s 143(3) of the Act on 26.03.2003. However, on 22.1.2004, the Assessing Officer issued a notice to the assessee u/s 148 of the Act for reopening the assessment and, ultimately, the assessee filed a revised return. A re-assessment was passed and the assessee paid the tax due on the said amount of Rs.23,70,306/- as well as interest thereon. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the Act and imposed a penalty at 300% on the tax sought to be evaded by the assessee for furnishing inaccurate particulars. The appeal of the assessee was dismissed by the Commissioner of Income Tax (Appeals). The Income Tax Appellate Tribunal reduced the penalty to 100%. The appeal filed by the assessee was dismissed by the High Court.

Allowing the appeal, the Court

HELD: 1.1 The facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as the High Court. It has further been explained in the affidavit filed before this Court. [para 16, 17] [856-D]

1.2 The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment of gratuity was not allowable u/s 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not noticed even by the Assessing Officer who framed the assessment order. It appears that all that has happened in the instant case is that through a bona fide and inadvertent error, the assessee while submitting its

return, failed to add the provision for gratuity to its total income. This can only be described as a human error. That the assessee should have been careful cannot be doubted, but the absence of due care, in such a case does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income. [para 18-19] [856-E-H; 857-A-B]

1.3 In view of the peculiar facts of the case, the imposition of penalty on the assessee is not justified. This Court is satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. [para 20] [857-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6924 of 2011.

From the Judgment and Order dated 18.12.2008 of the High Court at Calcutta in ITA No. 120 of 2006.

Harish N. Salve, Pawan Sharma, Ekta Kapil, Kuber deewan, B. Vijayalakshmi Menon for the Appellant.

R.P. Bhatt, Rupesh Kumar, Nishant Patil, Anil Katiyar (For B.V. Balaram Das) for the Respondents.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Leave granted.

2. The assessee is aggrieved by a judgment and order dated 18.12.2008 passed by the High Court of Calcutta in ITA No.120 of 2006. By the impugned judgment, a penalty imposed on the assessee under Section 271(1)(c) of the Income Tax Act, 1961 was upheld, though the quantum was reduced. We are of the view that on the facts of the case the imposition was not justified.

3. We are concerned with the assessment year 2000-

2001. The assessee provides multi-disciplinary management consultancy services and has a worldwide reputation. It filed its return of income on 30.11.2000 under Section 139(6) read with Section 139(6A) of the Income Tax Act (for short, 'the Act'). As statutorily required by Section 139(6A) of the Act, the assessee also filed its tax audit report under Section 44AB of the Act. The Statement of Particulars filed by the assessee was in Form 3CD as required by Rule 6G(2) of the Income Tax Rules, 1962 and is, in a sense, an integral part of the return.

4. In Column 17(i) of the Statement, it was stated as follows: -

17.	Amounts debited to the profit and loss account being:-	
(a)	xx xx xx	xx xx xx
(b)	xx xx xx	xx xx xx
(c)	xx xx xx	xx xx xx
(d)	xx xx xx	xx xx xx
(e)	xx xx xx	xx xx xx
(f)	xx xx xx	xx xx xx
(g)	xx xx xx	xx xx xx
(h)	xx xx xx	xx xx xx
(i)	provision for payment of gratuity not allowable under section 40A(7);	Rs.23,70,306/- (Liability provided for payment of gratuity)

5. Even though the Statement indicated that the provision towards payment of gratuity was not allowable, the assessee

claimed a deduction thereon in its return of income. On the basis of the return and the Statement, an assessment order was passed under Section 143(3) of the Act on 26.03.2003. According to the assessee, the claim for deduction was inadvertent and it also seems to have been overlooked by the Assessing Officer.

6. Much later, the Assessing Officer issued a notice to the assessee under Section 148 of the Act on 22.01.2004 for reopening the assessment. The notice did not indicate any reason why it was issued except to state that income for the assessment year 2000-2001 had escaped assessment.

7. In response to the notice, the assessee filed its return under protest on 16.02.2004 and also requested for the grounds for reopening the assessment.

8. By a letter dated 16.12.2004, the assessee was furnished the reasons for reopening the assessment, which read as under:-

"A. Reasons for-opening u/s 147 relevant to A.Y. 2000-01

In this case, regular assessment was completed under Section 143(3) on 26.03.03 at a total income of Rs.24,42,91,550/-.

On perusal of the assessment records, it is seen from Clause 17(i) of the Tax Audit Report that Rs.23,70,306/- being liabilities provided for payment of gratuity, was provided for during the year. This provision is not allowable u/s 40A(7) and was required to be added back. However, the same has not been added by the assessee in its computation, thereby leading to underassessment of income by Rs.23,70,306/-."

9. Soon after the assessee was communicated the reasons for re-opening the assessment, it realized that a mistake had been committed and accordingly by a letter dated

20.01.2005 the Assessing Officer was informed that there was no willful suppression of facts by the assessee but that a genuine mistake or omission had been committed which also appears to have been overlooked by the Assessing Officer before whom the Tax Audit Report was placed. Accordingly, the assessee filed a revised return on the same day. A re-assessment was passed on the same day and the assessee then paid the tax due as well as the interest thereon.

10. Unfortunately for the assessee, the Assessing Officer thereafter initiated penalty proceedings under Section 271(1)(c) of the Act.

11. After obtaining a response from the assessee, the Assessing Officer saddled the assessee with penalty at 300% on the tax sought to be evaded by the assessee by furnishing inaccurate particulars. The quantum of the penalty was determined at Rs.27,37,689/-.

12. Feeling aggrieved, the assessee preferred an appeal, but the Commissioner of Income Tax (Appeals) rejected the appeal and upheld the penalty imposed on the assessee. In a further appeal, the Income Tax Appellate Tribunal (for short the Tribunal) upheld the imposition. Significantly, the Tribunal mentions that the assessee had made a mistake, which could be described as a silly mistake, but since the assessee is a high-calibre and competent organization, it was not expected to make such a mistake. Accordingly, the Tribunal reduced the penalty to 100%.

13. Against the order of the Tribunal, the assessee approached the Calcutta High Court which dismissed its appeal filed under Section 260-A of the Act by the impugned order. The only reason given by the High Court for dismissing the appeal reads as under:-

"After analysing the facts of this case, considering the submissions made by the learned Advocates for the

parties and the materials placed before us, we cannot brush aside the fact that the assessee company is a well known and reputed Chartered Accountant firm and a tax consultant. We also do not find any substance in the submissions made by Dr. Pal; on the contrary, in our considered opinion, we find that Section 271(1)(c) of the Act has specifically stated about the concealment of the particulars of income or furnishing of inaccurate particulars of such income which has to be read "either" - "or" and on the given facts of this case would automatically come within the four corners of Section 271(1)(c) of the Act and we come to the conclusion that the appellant have failed to discharge their strict liability to furnish their true and correct particulars of accounts while filing the return. We are also of the opinion that the penalty under that provision is a civil liability and wilful concealment is not an essential ingredient for attracting civil liability as in the matter of prosecution under section 276C, as has been held by the Hon'ble Supreme Court. We also find that the mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities. We, therefore, accept the contention of Mr. Shome and dismiss the appeal answering the questions in the negative."

14. During the course of hearing this appeal against the judgment and order of the Calcutta High Court, we had required the assessee to explain to us how and why the mistake was committed.

15. The assessee has filed an affidavit dated 14th September, 2012 in which it is stated that the assessee is engaged in Multidisciplinary Management Consulting Services and in the relevant year it employed around 1000 employees. It has a separate accounts department which maintains day to day accounts, pay rolls etc. It is stated in the affidavit that perhaps there was some confusion because the person preparing the return was unaware of the fact that the services

of some employees had been taken over upon acquisition of a business, but they were not members of an approved gratuity fund unlike other employees of the assessee. Under these circumstances, the tax return was finalized and filled in by a named person who was not a Chartered Accountant and was a common resource.

16. It is further stated in the affidavit that the return was signed by a director of the assessee who proceeded on the basis that the return was correctly drawn up and so did not notice the discrepancy between the Tax Audit Report and the return of income.

17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.

18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under Section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be

described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.

21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside. No costs.

R.P. Appeal allowed.

STATE OF MADHYA PRADESH
v.
SURENDRA KORI
(Criminal Appeal No. 1508 of 2012)

SEPTEMBER 26, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.482 – Exercise of inherent power by High Court – Explained.

s.482 – Petition seeking to quash FIR – FIR against respondents for offences punishable u/ss.420, 467, 468, 471 r/w ss.34 and 120B IPC and ss.34 and 81 of Registration Act – Allegations of registration of fake sale deeds on fictitious documents to avail of the Special Rehabilitation Package meant for oustees of Sardar Sarovar Project – FIR quashed by High Court – Held: Respondent was functioning as Deputy Registrar during the relevant period when more than 102 sale deeds relating to the same transaction were executed and all those documents were prima facie found to be forged so as to get the benefit of the Package which was meant for the Project affected persons/oustees displaced from the land – Respondent was alleged, to have registered various documents relating to the Project without verifying the credentials of the purchasers and sellers and without examining that the land covered by the sale deeds was in existence or not or the lands belonged to the State Government – Further it was noticed that certain deeds were executed in respect of the lands which were not wholly situated in his own sub-districts and that the provisions of s.64 of the Registration Act were not followed – It was noticed, prima facie, that vendors and vendees were not the Project affected persons/oustees, but they wanted to avail of the benefit of the

Package and thereby deceived the State Government as well as the Project affected persons/oustees – Respondent was suspended from the service noticing that he was also instrumental and abetted in the commission of the crime – Allegation is that the forged sale deeds were executed for unlawful gain for which the respondent has also conspired and abetted the crime – In view of the magnitude of the crime, the number of documents alleged to have been executed fraudulently, the reports referred to in the charge-sheets and the involvement of the respondent etc. could be decided only if an opportunity is given to the prosecution – High Court, in such circumstances, was not justified in quashing all the First Information Reports and the charge-sheets in exercise of its powers u/s. 482 – Judgments of High Court are set aside.

M.M.T.C. Ltd. & Anr. vs. Medchl Chemicals & Pharma (P) Ltd. & Anr. **2001 (5) Suppl. SCR 265 = 2002 (1) SCC 234;** *State of Orissa and Another v. Saroj Kumar Sahoo* **2005 (5) Suppl. SCR 548 =(2005) 13 SCC 540** ***and*** *Eicher Tractors Ltd. v. Harihar Singh* **(2006) 12 SCC 763 relied on.**

Jambu Prasad v. Mohammad Nawab Aftab Ali Khan **AIR 1941 PC 16 referred to.**

Case Law Reference:

2001 (5) Suppl. SCR 265	**relied on**	**para 13**
2005 (5) Suppl. SCR 548	**Relied on**	**para 13**
(2006) 12 SCC 763	**Relied on**	**para 13**
AIR 1941 PC 16	**Referred to**	**para 16**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1508 of 2012.

From the Judgment & Order 22.01.2009 of the High Court of Madhya Pradesh, Jabalpur Bench at Indore in Miscellaneous Criminal Case No. 1073 of 2008.

WITH

C.A. Nos. 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560 and 1561 of 2012.

Sidharth Dave, Abhimanyu Singh, C.D. Singh for the Appellant.

Ardhendumauli Kumar Prasad for the Respondent.

The following Order of the Court was delivered

O R D E R

1. Leave granted.

2. Heard learned counsel on either side.

3. We are disposing of all these fifty four appeals by a common order since the identical issues arise for consideration in all these appeals. For the purpose of disposal of these appeals, we may refer to the facts in Criminal Appeal arising out of SLP (Crl.) No. 3149 of 2010, treating the same as the leading case.

4. The respondent herein, who was functioning as the Deputy Registrar, Khargone, was charge-sheeted for offences punishable under Sections 420, 467, 468, 471 read with Sections 34 and 120B of the Indian Penal Code (for short 'IPC') and under Sections 34 and 81 of the Registration Act. The High Court of Madhya Pradesh, Jabalpur Bench, in exercise of its powers conferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), quashed the First Information Reports and the charge-sheets filed against the respondent and also quashed the criminal case No. 2500 of 2007 and other

connected matters. In order to properly appreciate the correctness or otherwise of the orders passed by the High Court, it is necessary to refer to few facts.

5. State of Madhya Pradesh had introduced a Special Rehabilitation Package (for short 'Package') for those persons who were displaced from their lands, submerged while implementing the Sardar Sarovar Project (for short 'the Project'). As per the Package, for the Project affected persons/ oustees, cash benefit in two installments was provided to enable them to purchase land of their choice. The amount would be deposited in bank accounts of the oustees and the first installment would be released when the oustees submits an affidavit intending to purchase land and the second and final installment would be released when both the seller and the purchaser would get their sale deed registered and submit the proof of such registration of sale deed. For availing of the benefit of that Package it was alleged, various fake sale deeds were got registered in the Registrar's Office at Khargone. Complaints were raised about the manner in which the benefit of the Package was availed of by persons who were not affected by the Project. Narmada Bachao Andolan also filed a complaint before the Narmada Valley Development Authority regarding registration of fake sale deeds for claiming the benefit of the Package.

6. The Collector, District Khargone, vide its letter dated 23.7.2007, directed the Deputy Collector, Khargone to conduct an inquiry and submit a report. The Deputy Collector submitted the report on 11.9.2007. The operative portion of the report reads as follows:

> "Because the detailed enquiry of these sale transactions do not seem to be possible without the police action; therefore registering of the Criminal Case and sending this initial enquiry report to the Narmada Valley Development Authority for the proceedings of sentencing the guilty persons after detailed enquiry and getting the case registered for the police action by the land acquisition officer through the Collector of the concerned district are proposed."

Further, referring to several sale deeds, it was specifically pointed out that some of the vendees and vendors of the documents were fictitious persons and deeds were executed and registered fraudulently.

7. Several FIRs were registered on the complaints filed by the Rehabilitation Officer of the Project, District Khargone before the Kotwali Police Station. In the FIR No.496 dated 18.9.2007 the report of the Deputy Collector dated 11.9.2007 was specifically referred. The operative portion of the FIR reads as follows:

> "12. …….Reference: - received the letter no. 791 dated 11.9.2007 of the Collector, Khargon for necessary action. Regarding the aforesaid subject, it is said that name – displaced (Vendee) Naniya s/o Hariya r/o Gangli has received amount of Rs.3,39,857/- as the special rehabilitation grant after submitting the registration serial no. A-1/2575 dated 25/3/2006. The additional Collector, Khargon has found this in the enquiry of the said registration that in the sale deed the survey no. is wrong. The vendor is neither the resident of village nor there is any existence of the vendor in the village. Therefore prima facie the sale transaction has been found to be illegal. In this regard the vendee has submitted after preparing the said forged registration fraudulently in conspiracy after being in agreement with the vendor Amar Singh s/o Chandar Singh Caste- Rajput, r/o Bamhnala and with the witnesses (1) Ashiq s/o Alabali Pinjara, r/o Sondul Dist. Barbani (2) Jagdish s/o Pataliya r/o Dehdala and with the deed writer, B. L. Gupta, Ravindra Nagar Baheti near the tower Khagon with the purpose of receiving improper and illegal benefit from the land of khasra no. 76 of the village Pokharbujurg, tehsil Bhikhangaun, dist. Khargon. On the

basis of the said forged registration he has committed offence after putting the government in financial loss of Rs.3,39,857/- improperly. Therefore the essential legal acation may be taken against the vendee Naniya s/o Hariya r/o Gangli, tehsil Manawar Dist. Dhar, against the vendor Amar Singh s/o Chandar Singh Caste – Rajput, r/o Bamhnala and against the witnesses (1) Ashiq s/o Alabali Pinjara, r/o Sondul dist. – Barbani (2) Jagdish s/o Pataliya r/o Dehdala and against the deed writer, B.L. Gupta, Ravindra Nagar Baheti near the tower Khargon. The report regarding the forged registration in the sub registrar office Khargon has been submitted.

Annexure:-

1. The letter no. 791 dated 11/9/07 of the Collector Khargon, with the photocopy of the enquiry report.

2. The photocopy of the registration no. A-1/2575 dated 25/3/2006 - signature Ashok Kumar Modi, rehabilitation officer, Sardar Sarobar Project, Manbaj, Dist. Dhar.

13. The action taken in connection with the aforesaid description u/ss 420, 467, 468, 469, 471, 34. After registering the case it was taken for investigation/not taken and the case was handed over to Om Prakash Mishra (inspector/sub inspector) or in the light of the jurisdiction it was transferred to the P.S. ——dist."

8. We find that the Department of Registration of the State of Madhya Pradesh, after having come to know about the registration of sale deeds on large scale between 1.4.2005 and 31.3.2007, also ordered for an enquiry after placing the respondent who was the Deputy Registrar, Khargone at the relevant point of time under suspension. Detailed enquiry was conducted by the District Registrar, Khargone and he submitted the report on 27.10.2007 to the Inspector General

(Registration), State of Madhya Pradesh. In the enquiry following procedural irregularities were found:

"1. Even the photocopies of the copy of Khasara of five years have been accepted. Detailed description is mentioned in the annexed list.

2. Under the section 30(1) of the Registratin Act the sub Registrar, Head Quarter, has not realized the additional fee of Rs.200/- under the Article -7 of the Registration Fee Table in the registration of the concerned deeds related to the property situated in other tehsils of the district and Rs.10/- under the article-10 of the said table.

3. Under the section-30(1) of the Registration Act 1908 the Sub Registrar, head quarter, has not sent memos to the concerned sub registrars under the section-64 of the said Act in the registration of the concerned deeds related to the properties situated in other tehsils of the district.

4. Affidavits have not been sworn and filed in the deeds related to the agricultural land in compliance of the Circular No. 2822/tak/one/2005 dated 21.11.2005 of the Inspector General-Registration; Bhopal. Detailed description is available in the annexed list.

5. According to the Circular No.3610/tak/one/2004 dated 15.12.04 of the Inspector General, Registration, Bhopal, the P.A.N. Card nos. of the vendors and vendees have not been got mentioned at the time of registration of the deeds of the valuation of Rs. Five lacs or of more than that according to the provisions of sections 139A of the Income Tax Act 1961 and of Rules 114 kh and 114 gh framed there under. According to the report received from the sub registrar, Khargon, dated 26.10.2007 the draft nos 60 and 61 have not been received. The concerned deeds have been mentioned in the annexed list.

6. In the deeds the photo copies of the certificates of the

Land Acquisition Officer have been accepted instead of originals, the description of which has been in the annexed list.

7. The information regarding the loan book has been shown in the annexed list."

9. The Investigating Officer took note of the above mentioned reports and a final report (charge-sheet No. 546 of 2007) was submitted under Section 173(8) Cr.P.C. before the Court against the respondent and also against persons who got the sale deeds executed on 25.3.2006 and the charge was laid under Sections 420, 467, 468, 469, 471 read with Sections 34 and 120-B of the IPC and under Sections 34 and 81 of the Registration Act, 1908. The operative portion of the charge-sheet reads as follows:

"The brief description of the occurrence is like this that on 18/9/07 one written application with the deed for enquiry was brought and submitted. Naniya, s/o Hariya, r/o Gangli has received the amount of Rs.339857/- as the special rehabilitation grant after submitting the registration no. A-1/2575 dated 25/5/3006 the additional collector, Khargaon, has found this in the enquiry of said registry that the survey no. of the sale deed is wrong. *The vendor is not the resident of the village nor has the vendor got any existence in the village. Therefore prima facie itself the sale transaction was found to be illegal.* In this regard, the vendee has submitted after preparing the said forged registration fraudulently & in conspiracy after being in agreement with the vendor – Amar Singh s/o Chandar Sikngh Caste- Rajput, r/o Bamhnala and with the witnesses (1) Ashiq s/o Alabali Pinjara, r/o Sondul dist. Barbani (2) Jagdish s/o Pataliya r/o Dehdala and with the deed write, B. L. Gupta, Ravindra Nagar Baheti near the tower Khargon with the purpose of receiving improper and illegal benefit from the land of khasra no. 76 of the village Pokharbujurg, tehsil Bhikhangaun, dist. Khargon. On the basis of the said forged registration he has committed offence after putting the government in financial loss of Rs.339857/- improperly. In the case the accused B.L. Gupta and Surendra Kori also have been arrested. In the case the document of the bank has remained to be received and the proceeding of the comparison of the thumb impression of the accused Naniya is yet to be done, regarding the accused B.L. Gupta evidence is to be collected. *Regarding the accused Surendra Kori the certified hand writing examination report and the necessary documents and the statement of the district registrar are to be taken. The accused Surendra Kori has abetted in committing the offence of criminal conspiracy in the crime and he has misused his position. In this regard also investigation is being done and permission is being sought for submitting the charge sheet against the accused.* In this case the comparison of the impressions of the fingers and the arrest of the rest accused persons are to be done. The enquiry report of the additional collector, Khargon and his statement are yet to be taken. In spite of the attempts made till now they could not be taken up till now. In this case the offence against the accused Naniya on being found confirmed after preparing the charge sheet 546/07 u/s 173(8) is yet to be submitted. In the case investigation is still going on, after finishing which the full charge sheet will be submitted separately."

10. Respondent herein then approached the High Court to quash the FIRs as well as various charge-sheets filed against him. It was contended before the High Court that the respondent, under the Registration Act, was bound to register the sale deeds in the capacity of the Sub-Registrar. Further, it was also pointed out that he had no obligation or duty to ascertain about the correctness or genuineness of the documents which were brought before him for registration. Further, it was also pointed out that the respondent had no

knowledge about the alleged forgery or the fraudulent manner in which the sale deeds were sought to be registered. The Deputy Government Advocate appearing for the State contended that it was after conducting a detailed enquiry through the District Registrar, Khargon it was found that the respondent was also involved in the fraudulent transactions and had abated the parties in getting those sale deeds executed.

11. The High Court took the view that the respondent, in the capacity of the Sub-Registrar and functioning under the Registration Act, was bound to register the documents brought before him and was not expected to ascertain about the correctness and genuineness of the title of the property and also whether there was any conspiracy between the vendors and vendees in getting those sale deeds executed. Further, it was also pointed out that the enquiry reports revealed that there were only procedural irregularities in the registration of sale deeds and there was nothing to show respondent's involvement in getting those sale deeds executed. The Court held that on the basis of the provisions of Section 34 of the Registration Act, the respondent could not be held liable on the ground that he had not verified the title of the vendor of the property alleged to have been sold. The High Court, therefore, in exercise of its powers conferred under Section 482 of the CrPC, allowed the revision petitions and set aside the FIRs and the charge-sheets filed against the respondent in all the cases and the criminal cases registered against him were quashed. Aggrieved by the same, these criminal appeals have been filed by the State.

12. Shri Sidharth Dave, learned counsel appearing for the State, submitted that the High Court has committed an error in holding that the duty of the Registrar is only to register the sale deeds. Learned counsel further submitted that, in a given case, if it is established, *prima facie*, that the Registrar is also instrumental in aiding the execution of several sale deeds by fictitious persons so as to appropriate the benefit under the Package resulting loss to the State Exchequer, he is also

liable, if found to have been abetted in committing the crime. Learned counsel pointed out that it was after conducting a detailed enquiry by the District Collector and the Registrar of the Registration Department that charges were leveled against the respondent. Learned counsel pointed out that such a large number of sale deeds could not have been executed without the knowledge or active connivance of the respondent. Learned counsel appearing for the respondent submitted that there is no illegality in the order passed by the High Court which calls for interference by this Court in these appeals.

13. The High Court in exercise of its powers under Section 482 CrPC does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material. In *M.M.T.C. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another* (2002) 1 SCC 234, this Court held as follows:

> "The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage, the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice….."

In *State of Orissa and Another v. Saroj Kumar Sahoo* (2005) 13 SCC 540, this Court held as follows:

> "Exercise of power under Section 482 of the. Cr.P.C.

in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliauid alicui concedit, concedered videtur et id sine guo resipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself….."

This Court, again, in *Eicher Tractors Ltd. v. Harihar Singh* (2006) 12 SCC 763, held as follows:

"When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an

enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge."

14. We are of the view that the principles laid down by this Court in the above mentioned judgments would squarely apply to the facts and circumstances of the present case. We are in these cases concerned with the execution of several fictitious sale deeds the purpose of which was to make unlawful gain. Special Rehabilitation Project as already indicated was introduced to give cash compensation to the oustees and Project affected families which are an inter-state Project of four States involving Madhya Pradesh, Rajasthan, Maharashtra and Gujarat. The Rehabilitation and resettlement is governed by the Narmada Water Disputes Tribunal (NWBT) Award. The respondent, it was alleged, registered various documents relating to the Project without verifying the credentials of the purchaser and seller and without examining that the land covered by the sale deeds is in existence or not or the lands belongs to the State Government. Office of the Registrar, it was pointed out, had issued an O.M. dated 28.4.2005 to all the Sub-Registrars stating that while registering the sale deeds in order to prevent registration of fake sale deeds to verify the identity of the seller for which he has to ask for photo identification proof from the seller such as PAN Card or Passport, which was not done. Further it was noticed that certain deeds were executed in respect of the lands which were not wholly situated in his own sub-districts and that the provisions of Section 64 of the Registration Act was not followed.

15. The respondent herein was functioning as Deputy Registrar at Khargone during the period from 1.4.2005 to 31.3.2007 when more than 102 sale deeds relating to the same transaction were executed and all those documents were *prima facie* found to be forged so as to get the benefit of the Package which was meant for the Project affected persons/oustees

displaced from the land. It was noticed, *prima facie,* that vendors and vendees were not the Project affected persons/ oustees, but they wanted to avail of the benefit of the Package, thereby deceived the State Government as well as the Project affected persons/oustees. The respondent was suspended from the service noticing that he was also instrumental and abetted in the commission of the crime. The allegations raised in the charge-sheets are *prima facie* allegations and the question of involvement of respondent has to be finally decided depending upon the evidence in the case and, at this moment, we are only concerned with the indications raised in the First Information Reports and charge-sheets. Allegation is that the forged sale deeds were executed for unlawful gain for which the respondent has also conspired and abetted the crime. Further the charge-sheet also refers to Section 34 of the Registration Act which reads as follows:

> 34. Enquiry before registration by registering officer
>
> (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:
>
> PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.
>
> (2) Appearances under sub-section (l) may be simultaneous or at different times.

> (3) The registering officer shall thereupon-
>
> (a) enquire whether or not such document was executed by the person by whom it purports to have been executed;
>
> (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
>
> (c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.
>
> (4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.
>
> (5) Nothing in this section applies to copies of decrees or orders.

16. In *Jambu Prasad v. Mohammad Nawab Aftab Ali Khan* AIR 1941 PC 16 states that the object of this Section is to make it difficult for persons to commit frauds by means of registration under Act. Further there is a presumption under Section 114 of the Evidence Act that official acts have been performed in accordance with the procedure laid down under the Registration Act. Therefore, when a document has been duly executed there will be a presumption that it has been registered in accordance with law and the onus is on the prosecution to show that the respondent has abetted in committing the offence of criminal conspiracy in the crime and has misused his position and was a party to the fraud.

17. Section 81 of the Registration Act deals with penalties which reads as follows:

> *"81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure* Every

registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

18. The question is whether the respondent was aware that such deeds were executed for getting unlawful gain, which may cause injury to another person as defined under Section 44 of the Indian Penal Code is a matter which can be established only on adducing evidence.

19. We are of the considered opinion that in view of the magnitude of the crime, the number of documents alleged to have been executed fraudulently, the reports referred to in the charge-sheets and the involvement of the respondent etc. could be decided only if an opportunity is given to the prosecution. The High Court, in such circumstances, was not justified in quashing all the First Information Reports and the charge-sheets in exercise of its powers under Section 482 CrPC.

20. We make it clear that whatever we have stated above are only *prima facie* observations which would not bind the trial Court while deciding the criminal cases. The criminal appeals are accordingly allowed and the judgments of the High Court are set aside.

R.P. Appeals allowed.

M/S NEW HORIZON SUGAR MILLS LTD.

v.

GOVT. OF PONDICHERRY TH. ADDL. SEC. & ANR.

(Civil Appeal Nos. 6673-6674 of 2009)

SEPTEMBER 27, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

CONSTITUTION OF INDIA, 1950:

Art. 254 (2), Seventh Schedule, List-II - Entries 1, 30 and 32 read with List I, Entries 43, 44, 45 and 97, and List III, Entries 1, 8, 13 and 21 - Validity of Pondicherry Protection of Interest of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005) - Held: The power to enact the Pondicherry Act, the Tamil Nadu Act, and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involve the business of unincorporated trading and money-lending - Since the object of Tamil Nadu Act, Maharashtra Act and Pondicherry Act are same and/or similar in nature, and the validity of Tamil Nadu Act and Maharshtra Act having been upheld by Supreme Court, validity of Pondicherry Act must also be affirmed - One has to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, from unscrupulous individuals and companies, both incorporated and unincorporated - Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 - Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 2005.

Art. 254(2) - Rule of repugnancy - Exception - Held: Clause (2) provides that in a given situation where a law of a State is in conflict with the law made by Parliament, the law so made by the State Legislature shall, if it has received the assent of the President, prevail in that State - In the instant case, the Pondicherry Act had received the assent of the

President attracting the provisions of Art. 254(2) of the Constitution.

Pondicherry Protection of Interest of Depositors in Financial Establishments Act, 2004 (Act of 2005) - s.2(d) - 'Financial establishment' - Held: The expression 'any person' in s.2(d) would also include a company incorporated under the Companies Act, 1956 and, consequently, would also include a company such as the appellant Mill, which accepts deposits from investors, not as shareholders of such company, but merely as investors for the purpose of making profit - Accordingly, the expression 'person' in the Act includes both incorporated as well as unincorporated companies - Companies Act, 1956 - ss.58A, 58AA and 58AAA - Banking Regulation Act, 1949 - s.15.

The appellant-Mill' two Directors, namely 'VK' and 'VB', who were brothers, were also the Directors of M/s PNL Nidhi Limited ('PNL'), a concern accepting the deposits of investors under various schemes. The appellant availed credit facilities from the Indian Bank and when it failed to make the payments, the Bank initiated recovery proceedings wherein the properties offered as security were auctioned. One of the depositors filed a complaint alleging that the said two Directors had misappropriated the money belonging to 'PNL' and diverted the same for their own trade. The Chief Judicial Magistrate attached various properties standing in the names of 'VK' and 'VB'. The Government also issued GOMs. No.12 dated 18.2.2006 under the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005), ordering attachment of the properties acquired by 'PNL'. A criminal revision petition and various writ petitions were filed challenging the order of the Chief Judicial Magistrate. The Single Judge of the High Court lifted the order of attachment and directed the Registrar, Registration

Department to register the sale Certificate issued in favour of the auction purchaser. The appellant-Mill was directed to approach the Debts Recovery Tribunal regarding its claim of refund of the access amount retained by the Bank. It was also made clear that as far as the properties included in the impugned orders were concerned, it would be open to third parties to approach the Designated Court under Act 1 of 2005. However, while upholding the validity of Act 1 of 2005, the Single Judges limited its operation to Unincorporated Institutions. Aggrieved, the appellant-Mills and its Directors filed Writ Appeal Nos.1142 to 1144 of 2006 and the Government of Pondicherry filed Writ Appeal No.293 of 2007. Writ Appeal No.1142 of 2006 was dismissed with liberty to the appellant Mills to approach the Debt Recovery Tribunal for appropriate relief. It was further held that the entire provisions of Pondicherry Act 1 of 2005 were in pari materia with the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, and the latter having been upheld, the challenge to the legislative competency and jurisdiction of the Government of Pondicherry enacting Act 1 of 2005 was untenable.

In the instant appeals filed by the Mill, the questions for consideration before the Court were : (i) "whether the subject matter covered by the Pondicherry Act is relatable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List" and (ii) "whether the decision of this Court in K.K. Baskaran's case, upholding the validity of the Tamil Nadu Act, would also be applicable for determining the validity of the Pondicherry Act."

Dismissing the appeals, the Court.

HELD: 1.1 The object of the Pondicherry Protection of Interest of Depositors in Financial Establishments Act,

2004 (Act 1 of 2005) was to protect the interests of depositors in financial establishments in the Union Territory of Pondicherry. The Entries 1, 30 and 32 of the State List (List II of Seventh Schedule to the Constitution of India, 1950) and in particular Entry 32, appear to be more appropriate source of legislative authority of the State Assembly for enacting laws in furtherance of such Entry. The power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involve the business of unincorporated trading and money-lending. [para 11 and 39-40] [887-A-B; 904-E-F]

K.K. Baskaran Vs. State of Tamil Nadu **(2011) 3 SCC 793 - relied on.**

Vijay C. Puljal vs. State of Maharashtra **(2005) 4 CTC 705 - stood reversed.**

1.2 Even if it is to be accepted that the Pondicherry Act is relatable to Entries 43, 44 and 45 of List I, it can be equally said that the said enactment is also relatable to Entries 1, 30 and 32 of List II, thereby leaving the field of legislation open, both to the Central Legislature as well as the State Legislature. In such a situation, unless there is anything repugnant in the State Act in relation to the Central Act, the provisions of the State Act will have primacy in determining the lis in the instant case. [para 43] [905-D-E]

1.3 Besides, the provisions of the Pondicherry Act are also saved by virtue of Art. 254(2) of the Constitution of India. Clause (1) of Art. 254 provides that when there are two laws enacted by Parliament and the State Legislature in which certain inconsistencies occur, then subject to the provisions of clause (2), the law made by the Parliament would prevail and the law made by the State Legislature to the extent it is repugnant to the

Central law, shall be void. Clause (2), however, also provides that in a given situation where a law of a State is in conflict with the law made by Parliament, the law so made by the State Legislature shall, if it has received the assent of the President, prevail in that State. In the instant case, the Pondicherry Act had received the assent of the President attracting the provisions of Art. 254(2) of the Constitution. [para 43-44] [906-E-G]

1.4 It may also be worthwhile to consider that the power to enact the Pondicherry Act could be traced to Entries 1, 8, 13 and 21 of the Concurrent List. This has to be considered in view of the provisions of ss.58A, 58AA and 58AAA of the Companies Act, 1956, which all deal with deposits invited and accepted by Companies. In this regard one cannot overlook the amendment to the definition of "financial establishment" included in the Tamil Nadu Act and as defined in the Pondicherry Act. [para 45] [906-H; 907-C-D]

2.1 The definition of the expression "financial establishment" in s.2(d) of the Pondicherry Act, includes any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner, but does not include a Corporation or a cooperative society owned or controlled by either the Central Government or the State Government or a banking company as defined u/s 5 of the Banking Regulation Act, 1949. The expression "any person" is wide enough to cover both a natural person as also a juristic person, which would also include a Company incorporated under the Companies Act, 1956. In that view of the matter, the definition in s.2(d) of the Pondicherry Act would also include a Company such as the appellant Mill, which accepts deposits from investors, not as shareholders of such Company, but merely as investors for the purpose of making profit. In this regard,

reference may also be made to s.11 of the Indian Penal Code which defines a "person" to include a Company or Association or body of persons, whether incorporated or not. Accordingly, the expression "person" in the Pondicherry Act includes both incorporated as well as unincorporated companies. [para 45] [907-E-H; 908-A]

2.2 It has also to be noticed that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to safeguard the interests of the common citizens against exploitation by unscrupulous financial establishments mushrooming all over the country. That is, in fact, the main object indicated in the Statement of Objects and Reasons of the three different enactments. It is significant to note that the decision of the Bombay High Court declaring the Maharashtra Act to be ultra vires, has been set aside by this Court, so that there is now a parity between the judgments relating to the Maharashtra Act and the Tamil Nadu Act. [para 41-42] [905-A-C]

2.3 The decision rendered by the Madras High Court in K.K. Baskaran's case so far as it relates to protection of interests of depositors, cannot be ignored, and would be equally applicable to the facts of the instant case. It has to be borne in mind that the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld by the Madras High Court and this Court. The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and the validity of the Tamil Nadu Act and the Maharashtra Act having been upheld, the decision of the Madras High Court in upholding the validity of the Pondicherry Act must also be affirmed. One has to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both

incorporated and unincorporated. More often than not, the investors end up losing their entire deposits. [para 46] 908-B-E]

K.K. Baskaran Vs. State of Tamil Nadu **(2011) 3 SCC 793 - relied on.**

Vijay C. Puljal vs. State of Maharashtra **(2005) 4 CTC 705 - stood reserved.**

2.4 The plea that it was not the appellant Company which had accepted the deposits, but 'PNL' which had changed its name five times, cannot prima facie be accepted. This appears to be one of such cases where funds have been collected from the gullible public to invest in projects other than those indicated by the front company. It is in fact the specific case of the respondents that the funds collected by way of deposits were diverted to create the assets of the appellant-Mill. Like the Tamil Nadu Act, the Pondicherry Act is to protect the interests of depositors who stand to lose their investments on account of the diversion of the funds collected by 'PNL' for the benefit of the appellant Mill, which is privately owned by the two Directors of 'PNL'. [para 46-47] [908-F-H; 909-A-B]

S. Bagavathy Vs. State of Tamil Nadu **(2007) 1 LW 892;** *Delhi Cloth and General Mills Vs. Union of India* **(1983) 4 SCC 166;** *Ramji and others vs. State of U.P. & others* **(1956) SCR 393;** *R.C. Cooper vs. Union of India* **(1970) 3 SCR 530;** *Greater Bombay Co-op Bank vs. United Yarn* **(2007) 6 SCC 236;** *Romesh Thapar Vs. State of Madras* **(1950) SCR 594;** *Ram Manohar Lohia* **(1991) 1 SCR 709;** *Rev. Stainislaus Vs. State of M.P.* **(1977) 2 SCR 611;** *Arun Ghosh Vs. State of West Bengal* **(1970) 3 SCR 288;** *S. Pushpa and others Vs. Sivachanmugavelu and others* **(2005) 3 SCC 1;** *New Delhi Municipal Council Vs. State of Punjab & Others* **(1997) 7 SC 339; and** *T.M. Kanniyan Vs. I.T.O. Pondicherry* **(1968) 2 SCR**

103; *Charan Lal Sahu Vs. Union of India* **(1990) 1 SCC 613 - cited.**

Case Law Reference:

(2005) 4 CTC 705	**stood reserved**	**para 11**
(2011) 3 SCC 793	**relied on**	**para 14**
(2007) 1 LW 892	**cited**	**para 19**
(1983) 4 SCC 166	**cited**	**para 19**
(1956) SCR 393	**cited**	**para 26**
(1970) 3 SCR 530	**cited**	**para 29**
(2007) 6 SCC 236	**cited**	**para 31**
(1950) SCR 594	**cited**	**para 32**
(1991) 1 SCR 709	**cited**	**para 32**
(1977) 2 SCR 611	**cited**	**para 32**
(1970) 3 SCR 288	**cited**	**para 32**
(2005) 3 SCC 1	**cited**	**para 34**
(1997) 7 SC 339	**cited**	**para 34**
(1968) 2 SCR 103	**cited**	**para 34**
(1990) 1 SCC 613	**cited**	**para 35**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. : 6673-6674 of 2009.

From the Judgment and Order dated 27.03.2007 of the High Court of Judicature at Madras in W.A. No. 1144 of 2006 and 293 of 2007.

A.K. Ganguli, V. Ramasubramanian, Chaitanya Safaya, A. Lakshmi Narayanan for the Appellant.

R. Venkataramani, V.G. Pragasam, S.J. Aristotle, Praburamasubramanian, Aljo K. Joseph, Subramonium Prasad for the Respondents.

The Judgment of Court was delivered by

ALTAMAS KABIR, J. 1. Several Special Leave Petitions (now Civil Appeals) were filed in this Court against the common judgment and order dated 27th March, 2007, passed by the Madras High Court, including Writ Appeal Nos.1788 & 1919 of 2005, 1142 to 1144, 1209, 1342 to 1345 of 2006, 293 of 2007 and W.P.Nos.44991, 45805 of 2006 & 1460 of 2007. Of the said appeals, we are concerned with Writ Appeal Nos.1144 of 2006 and 293 of 2007, which are the subject matter of Civil Appeal Nos.6673-6674 of 2009, filed by M/s New Horizon Sugar Mills Ltd.

2. As will be evident from the various writ petitions and writ appeals filed by the various parties, there are several skeins running through the fabric of the matter before us. The main issue, however, relates to the challenge thrown to G.O.Ms.No.12 dated 18.2.2006 issued by the Department of Revenue and Disaster Management, Government of Pondicherry, under powers conferred under the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005), ordering attachment of properties acquired by Pondicherry Nidhi Ltd.

3. For a proper understanding of the background in which the said G.O. came to be issued, it is necessary to set out, in brief, the facts of the case.

4. The lis between the parties to these appeals can be traced back to the credit facilities availed of by the Appellant, M/s New Horizon Sugar Mills Pvt. Ltd., from the Indian Bank, Pondicherry, to the tune of Rs.26,50,00,000/-. The Directors of the Mill, viz., Shri V. Kannan and Shri V. Baskaran, stood as guarantors for repayment of the loan and offered their personal

properties as collateral securities. As the Appellant Mill defaulted in payment of the loan amount, the Bank, after declaring the loan account of the Mill to be a "non-performing asset", initiated proceedings for recovery by issuing notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("SARFAESI Act"). The said notice was challenged by the Appellant by filing Writ Appeal No.33700 of 2004, before the Madras High Court. By order dated 6th December, 2004, the said Writ Appeal was disposed of with a direction to the Appellant Mill to repay the entire loan amount in three instalments.

5. In the same order, the Court also indicated that in case the Appellant defaulted in payment of the instalments, the Bank could proceed against the Appellant Mill, in accordance with law. Since the Appellant Mill committed default even in payment of the first instalment, the Bank proceeded further and under the provisions of Sub-Sections (2) and (4) of Section 13 of the SARFAESI Act took possession of the property offered as security and also initiated steps for sale of the same by auction. In the auction proceedings, M/s E.I.D. Parry (India) Ltd. ("Parry Ltd.") was the successful bidder. The said auction was challenged by several other banks and financial agencies to safeguard and protect their respective claims against the Mill. On 12th July, 2005, all the Writ Petitions, including the one filed by the workers/employees of the Appellant Mill, were dismissed. In respect of the Writ Petition filed by Pondicherry Nidhi Ltd. (PNL) Depositors Welfare Association, the High Court directed the Association to work out their remittance under the provisions of the Reserve Bank of India Act ("RBI Act") as also Act 1 of 2005.

6. On receiving the Sale Confirmation Letter from the Bank, Parry Ltd. remitted their entire balance amount and fulfilled all other formalities for getting the Sale Certificate registered in its favour. At the same time, on the basis of a

complaint received from one of the depositors, alleging that Shri V. Kannan and Shri V. Baskaran, said to be the major shareholders of M/s PNL Nidhi Ltd. as well as being the Directors of the Appellant Mill, had misappropriated a sum of Rs.12.5 crores belonging to M/s PNL Nidhi Ltd. and diverted the same for their own trade, the Chief Judicial Magistrate, Pondicherry, ordered attachment of various properties standing in their names and in the name of one Sivapriyal. This was followed by the Government Order, being G.O.Ms.No.12 dated 18.2.2006, ordering attachment of the properties acquired by M/s PNL Nidhi Ltd. Inasmuch as, by virtue of the said orders of attachment, M/s Parry Ltd. could not get the Sale Certificate registered in respect of the property auctioned, it filed Writ Petition No.6453 of 2006 for quashing the said G.O.Ms.No.12 dated 18.2.2006 and for a direction to the District Registrar, Registration Department, Pondicherry, to register the Sale Certificate in their favour with regard to the properties in which they had succeeded in the auction sale. The Indian Bank also filed Writ Petition No.5389 of 2006 for the same relief so that they could comply with the provisions of the SARFAESI Act for registering the Sale Certificate in favour of M/s Parry Ltd. The Appellant Mill filed Writ Petition No.1897 of 2006 for an appropriate direction to the Indian Bank to return to them such sums as would be due from out of the total sale consideration after deducting the dues of the Bank incurred as on 1st January, 2005, the date on which possession of the property in question was taken over and for return of the remaining documents pertaining to the movable and immovable properties belonging to the Appellant after satisfying the Bank's charge. The Appellant Mill filed another Writ Petition No.8797 of 2006 challenging the validity of G.O.Ms.No.12 dated 18.2.2006. Several other Writ Petitions were filed by Shri V. Kannan and Shri V. Baskaran and M/s Indian Renewable Energy Development Agency Ltd. ("IREDA"), New Delhi, and M/s Arunachalam Sugar Mills Ltd., Pondicherry, also filed several Writ Petitions challenging the validity of the aforesaid Government Order.

7. A learned Single Judge of the Madras High Court took up the Criminal Revision Petition No.1352 of 2005 filed by the Bank questioning the Order dated 18th February, 2005, passed by the Chief Judicial Magistrate in Crime No.31 of 2004, along with various Writ Petitions filed by different parties, and by his order dated 23rd August, 2006, the learned Judge lifted the order of attachment passed in respect of the properties in question and also directed the District Registrar, Registration Department, Pondicherry, to register the Sale Certificate issued in favour of M/s Parry Ltd. The learned Single Judge further directed the Appellant (Writ Petitioner in Writ Petition No.1897 of 2006) to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act regarding their claim of refund of the excess amount alleged to have been retained by the Bank. The learned Judge also made it clear that as far as the properties included in the impugned orders were concerned, it would be open to third parties to approach the Designated Court under Act 1 of 2005 for appropriate relief.

8. Questioning the said common order, the Appellant Mill and its Directors filed Writ Appeal Nos.1142 to 1144 of 2006 and the Pondicherry Non-Banking Investors Protection Association preferred Writ Appeal Nos.1342 to 1345 of 2006. However, while upholding the validity of Act 1 of 2005, the learned Judge limited its operation to Unincorporated Institutions. Aggrieved by the said decision, the Government of Pondicherry preferred Writ Appeal No.293 of 2007.

9. Yet another facet of the issues involved in these Appeals is the Writ Petitions filed by the Banks and Financial Institutions to safeguard their interests in regard to attachment and sale of the properties of the Appellant Mill. The said Writ Petitions were considered by another learned Judge of the Madras High Court, who by his order dated 12th July, 2005, in PNL Investors' Welfare Association Versus Union of India, with reference to the SARFAESI Act, the Sick Industrial Companies (Special Provision) Act, 1958, Act 1 of 2005 and the provisions of the

Industrial Disputes Act, 1947, and in particular, Section 25FF thereof, disposed of the Writ Petitions upon holding that the members of the workers' association/workers, either individually or through their respective Unions, were entitled to the benefit available under Section 25FF of the 1947 Act from the Appellant Mill and Parry Ltd., in view of Section 13(6) of the SARFAESI Act. In the same order, the learned Judge directed the members of the Depositors' Association and others to avail of the remedies provided under the SARFAESI Act, as well as Act 1 of 2005, for necessary reliefs. The said decision of the learned Single Judge was questioned by Parry Ltd. and the Commissioner of Central Excise, Pondicherry, who filed W.A. Nos.1787 of 2005 and 1999 of 2005 respectively, claiming that the Department's claims were superior to those of others against the Appellant Mill and its properties.

10. A third set of Writ Petitions was filed by Puduvai Pradesa Sarkarai Aalai Thozhilalar Sangam; Indian Bank and the Ariyur Sugar Mills Staff Welfare Union being W.P. Nos.24834, 30532 and 36900 all of 2005, praying for appropriate directions. By a common order dated 7th December, 2005, another learned Judge of the Madras High Court appointed Justice K.P. Sivasubramaniam, a retired Judge of the Madras High Court, as Commissioner to go into the claims of the workmen. By the same order the learned Judge directed the Indian Bank to deposit Rs.6 crores in a no-lien account in the Indian Bank, Pondicherry Main Branch, on 8th December, 2005. Questioning the said order, the Appellant Mill filed Writ Appeal No.1209 of 2006. All the said matters were taken up for consideration together by the Division Bench. In its impugned judgment, the Division Bench agreed with the conclusion arrived at by the learned Single Judge with leave to the parties to approach the Tribunal to protect their interests. Writ Appeal No.1142 of 2006 was, accordingly, dismissed, with liberty to the Appellant Mill to approach the Debts Recovery Tribunal for appropriate relief.

11. Apart from the submissions relating to Section 25FF of the Industrial Disputes Act, 1947, what we are really concerned with in these appeals is with regard to the validity of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005) and G.O.Ms.No.12 dated 18.2.2006 issued by the Department of Revenue and Disaster Management. As indicated hereinbefore, the object of the Act was to protect the interests of depositors in financial establishments in the Union Territory of Pondicherry. The Division Bench of the High Court observed that, inasmuch as, the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, were in pari materia with the provisions of the Pondicherry Act of 2005 and the provisions of the Tamil Nadu Act had been upheld, nothing further was required to be gone into in that regard. However, after the decision of a Full Bench of the Bombay High Court in the case of *Vijay C. Puljal vs. State of Maharashtra* [(2005) 4 CTC 705], by which the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, was struck down, a batch of Writ Petitions came to be filed before the Madras High Court challenging the provisions of the Tamil Nadu Act. Since the provisions of the Maharashtra Act had been struck down by a Full Bench of the Bombay High Court, the Writ Petitions were also contested before a Full Bench, which considered the contentions relating to the jurisdiction of the State Government, with reference to various Entries in the Seventh Schedule to the Constitution, provisions of the Companies Act, Reserve Bank of India Act and the Maharashtra Act and after examining the challenge thrown to the vires of the Act, came to the conclusion that the Tamil Nadu Act did not suffer from any legislative incompetency, nor was it arbitrary, unreasonable, or violative of the principles of natural justice. The Writ Petitions were, accordingly, dismissed. The Division Bench after considering the pronouncement of the Full Bench in regard to the Tamil Nadu Act and finding that the entire provisions of the Pondicherry Act 1 of 2005 were in pari materia with the provisions of the Tamil Nadu Act, held that the

challenge to the legislative competency and jurisdiction of the Government of Pondicherry in enacting the impugned Act, was liable to be rejected.

12. A question of considerable importance also came up for consideration in the appeal filed by the Government of Pondicherry with regard to the observations of the learned Single Judge in Writ Petition No.1897 of 2006, wherein the learned Single Judge while upholding the validity of the enactment, went on to observe that the impugned enactment was made only in relation to unincorporated trade establishments and the State Legislature of Pondicherry had legislative competence to legislate in respect of unincorporated financial establishments only. In this regard, a submission was made on behalf of the Government of Pondicherry to the effect that Entry 32 of List II of the Seventh Schedule to the Constitution was only a residue of Entry 42 in the Central List and that Entry 32 also covered incorporated companies. It was submitted that the learned Single Judge had erroneously held that Pondicherry Act 1 of 2005 only governed unincorporated trade establishments.

13. In this regard, it was submitted before the Madras High Court by the learned Government Pleader that on a complaint received by the Pondicherry Police from one Boothanathan, alleging that the amount deposited by him in PNL Nidhi Ltd. had not been returned, the Pondicherry Police registered a case in Crime No.31 of 2004 on the file of the C.I.D., Pondicherry, which took up the investigation. Subsequently, about 3000 complaints were received from mostly aged people and retired Government servants who had invested their savings in the various financial establishments. On inquiry it was found that PNL Nidhi Ltd. had changed its name five times. It was initially a company known as "Pondicherry Mutual Fund Ltd." incorporated under the Companies Act, 1956. The name of the Company was later changed to Prasanan Narayanan Laxmi Nidhi Ltd. The name of the Company was again changed

to PNL Nidhi Ltd. The Company floated various schemes, such as Fixed Akshaya Deposit and Locker facility and accepted deposits under the said scheme. It was also discovered that PNL Nidhi Ltd. was an unregistered and unrecognized financial establishment and that the promoters of PNL Nidhi Ltd. were Kannan and Baskaran, who were brothers and were also the Directors of the Appellant Mill. It also transpired that the funds of the PNL Nidhi Ltd. were utilized for the purchase of properties in the name of the Appellant, New Horizon Mills, Pondicherry, and Arunachala Sugar Mills, Thiruvannamalai, and also for purchase of land at Kumbakonam, and land and buildings in Pondicherry and Chennai. The investigation conducted by the C.I.D., Pondicherry, revealed that the deposits collected from the depositors of PNL Nidhi Ltd. had been channelised to New Horizon Sugar Mills, wherein also Kannan and Baskaran were the Directors. It was on account of the bogus cheques which had been issued and dishonoured for want of funds, that the Chief Judicial Magistrate, Pondicherry, ordered attachment of the properties of the Appellant Mill and its Directors and in order to save the innocent investors from such companies and firms, the Government of Pondicherry introduced the Pondicherry Protection of Interests of Depositors (in Financial Establishments) Bill, 1997, which ultimately became an Act in 2004.

14. Appearing for the Appellant, Mr. A.K. Ganguli, learned Senior Advocate, submitted that the primary question for determination in these appeals is whether the subject matter covered by the Pondicherry Act is referable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List. The other question for determination is whether the decision of this Court in *K.K. Baskaran Vs. State of Tamil Nadu* [(2011) 3 SCC 793], rendered in the context of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, could be regarded as a precedent for determining the questions which have arisen in relation to the Pondicherry Act.

15. Mr. Ganguli urged that the Tamil Nadu Act dealt with the protection of deposits made by the public in the financial establishments. Section 2(3) of the said Act defines "financial establishments" not to include a Company registered under the Companies Act, 1956, or a Banking Company as defined under Section 5(c) of the Banking Regulations Act, 1949, ("the 1949 Act"), or a non-banking financial company as defined in clause (f) of Section 45(1) of the Reserve Bank of India Act, 1949. Mr. Ganguli urged that in 2003, Section 2(3) of the Tamil Nadu Act was amended omitting the words "a company registered under the Companies Act, 1956" and inserting the words "a non-banking financial company" as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1949, after the words "does not include". By the same amendment, the words "a company registered under the Companies Act, 1956" were introduced into Sub-Section (3) of Section 2. The amended provision now reads as follows :-

> "(3)'financial establishment' means an individual, an association of individuals, a firm or *a company registered under the Companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in Section 5 (c) of the Banking Regulation Act, 1949 (Central Act 10 of 1949)."*

16. Mr. Ganguli urged that in contrast, the Pondicherry Act defined the expression "financial establishment" in Section 2(d) to mean :-

> "…. Any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by the Government, any State Government or the Central

Government, or a banking company as defined under Section 5 of the Banking Regulation Act, 1949."

17. Referring to the Statement of Objects and Reasons in the enactment of the Pondicherry Act, 2004, Mr. Ganguli pointed out that it had been specifically indicated that there had been a mushroom growth of non-banking financial establishments and deposit-taking unincorporated bodies not covered under the Reserve Bank of India Act, 1934, in different parts of the country. Accordingly, it was proposed to undertake a legislation which sought to protect the deposits made by the public in financial establishments not being companies registered under the Companies Act, 1956, or a Corporation or a Cooperative Society owned or controlled by the State Government or the Central Government or a Banking Company under the Banking Regulation Act. The Division Bench of the Madras High Court in the impugned judgment has referred to the Full Bench decision of the said Court from which the appeals in *K.K. Baskaran's* case arose. In paragraph 13-g of the said judgment, it was recorded that it was also useful to refer to the stand taken by the Advocate General who defended the Tamil Nadu Act before the Full Bench by stating that the Act was intended to realize the deposits made by the public in the financial establishments, whether they were incorporated or not. The Division Bench went on to hold further that the entire reasoning of the Full Bench was applicable to the impugned Act of the Government of Pondicherry. Accordingly, the Division Bench held that the financial establishments referred to in Section 2(d) of the impugned Act covered both unincorporated and incorporated trading establishments.

18. Mr. Ganguli tried to impress upon us that in view of the aforesaid decisions in the language adopted in the definition of "financial establishments" in the two Acts, the Court would be required to examine the issue carefully to determine as to whether the decision in *K.K. Baskaran's* case (supra) relating to the Tamil Nadu Act could ipso facto be made applicable to

determine the scope and ambit of the Pondicherry Act.

19. Coming to the next question as to whether the State enactments as well as the Parliamentary enactments covered the same field, namely, "investor's protection", Mr. Ganguli submitted that the decision of the Full Bench of the Madras High Court in the case of *S. Bagavathy Vs. State of Tamil Nadu* [2007) 1 LW 892] dealing with the Tamil Nadu Act and other Parliamentary legislations prohibiting and regulating acceptance of deposits by financial establishments, held the same to be a valid piece of legislation. The Full Bench, inter alia, observed that the existing laws, namely, Section 58A of the Companies Act, 1956, regulates the acceptance of the deposits and Section 45S of the Reserve Bank of India Act, 1934, prohibits the acceptance of deposits and also prescribes suitable punishments and penalties for contravening the same, but neither of the existing laws provide for regulating the activities of the financial establishments, which not only duped the innocent depositors and accepted deposits from them, but also siphoned off, diverted or transferred the funds for their own use in a mala fide manner. Mr. Ganguli submitted that the existing laws did not provide for the attachment of the properties that were procured either in the name of the financial establishments or in the name of any other person from and out of the deposits collected by the financial establishments. Mr. Ganguli also urged that the Full Bench further observed that in the absence of any effective remedy in the Central legislation to regulate control of either unincorporated or incorporated companies in the matter of depositors, who have deposited their hard-earned money with the financial establishments, the State Government was fully competent to bring out legislation to suit the needs of the public and to protect the interests of the depositors as well as in the public interest. Mr. Ganguli submitted that even though the Reserve Bank of India Act, 1934, prohibits acceptance of deposits and prescribes a penalty on any violation of the provisions of the Act, no provision or mechanism had been included for attaching the

properties of the financial establishments and the properties of mala fide transferees. Referring to paragraph 91 of the Full Bench judgment, Mr. Ganguli submitted that it had been clearly indicated therein that the mere absence of exercise of such power conferred under Section 58B (5A) or 58G of the Reserve Bank of India Act, could not by itself validate the impugned legislation where the Government had proposed to protect the interests of depositors, in the public interest and in order to regulate the activities of such financial institutions, which power could be traced to the field of legislation under Entries 1 and 32 of List II of the Seventh Schedule to the Constitution. It was categorically observed by the Full Bench that where no licence had been obtained from the Reserve Bank of India to commence and continue operations, the question of applicability as well as violation of the directions issued under Section 45S of the Reserve Bank of India Act by the Reserve Bank of India remains unanswered. The Full Bench had also observed that concededly none of the Petitioners had obtained licence from the Reserve Bank of India nor can the business of financial establishments in accepting deposits be strictly construed to be "banking", as defined under the Banking Regulations Act, 1949. Mr. Ganguli urged that since none of the Petitioners are companies registered under the Companies Act, 1956, the provisions of the said Act would not be applicable to them. It was also observed that the impugned legislation was enacted in the public interest to regulate the activities of the financial establishments falling under Entries 1 and 32 of the State List. Mr. Ganguli urged that it is in such background that the Full Bench concluded that the Tamil Nadu Act could be traced to the field of legislation under Entries 1 and 32 of List II of the Seventh Schedule, without analyzing the full scope of the said Entries on the one hand and Entries 43, 44 and 45 of the Union List, on the other.

20. Referring to the decision of the Full Bench of the Bombay High Court in *Vijay C. Puljal's* case (supra), which had declared the Maharashtra Protection of Interests of Depositors

(in Financial Establishment) Act, 1999, to be ultra vires for want of legislative competence of the State legislature, Mr. Ganguli contended that the Full Bench had relied upon the decision of this Court in *Delhi Cloth and General Mills Vs. Union of India* [(1983) 4 SCC 166] in which the validity of Section 58A of the Companies Act, 1956, which regulated deposits accepted by companies, was questioned on the ground that the subject matter of the enactment, in pith and substance, fell within the subject matter of Entry 30 of the State List. This Court had, however, upheld the validity of Section 58 of the Companies Act, upon holding that the subject matter of the legislation could be referred to Entries 43 and 44 of the Union List and the Parliament was, therefore, alone competent to enact the said law. Mr. Ganguli pointed out that the subsequent enactment of Section 58AA which made special provisions in relation to small depositors and declared non-compliance with the provisions thereof as a criminal offence punishable with imprisonment of three years and fine, was also referable to Entries 43 and 44 of the Union List, being an amendment to the Companies Act which was a central enactment.

21. Several other decisions on the same lines were referred to by Mr. Ganguli which need not, however, detain us as the Full Bench of the Bombay High Court had held that the Maharashtra Act fell within the exclusive jurisdiction of the Parliament being referable to Entries 43, 44, 45 and 97 of List I of the Seventh Schedule.

22. Reference was then made to the decision of this Court in *K.K. Baskaran's* case (supra). Mr. Ganguli urged that in the said case it was the validity of the Tamil Nadu Act alone which was considered by this Court and this Court took note of the fact that the "financial companies" had not obtained any licence from the Reserve Bank of India and hence they were not governed by the Reserve Bank of India Act, nor the Banking Regulation Act, 1949. In the context of the above, this Court observed that the Tamil Nadu Act is not focused on the transactions of banking or the acceptance of deposits, but is

focused on remedying the situation of the depositors who were deceived by the fraudulent financial establishments. Applying the doctrine of pith and substance, this Court held that the said Act was referable to Entries 1, 30 and 31 of List II of the Seventh Schedule to the Constitution and not Entries 43, 44 and 45 of List I thereof. Mr. Ganguli urged that the decision of the Full Bench of the Bombay High Court was the subject matter of the pending appeal when the decision in *K.K. Baskaran's* case (supra) was rendered. The appeal from the decision of the Full Bench of the Bombay High Court came to be considered subsequently on 29th September, 2011, when the constitutional validity of the Maharashtra Act was upheld with the rider that if any party wished to submit that it was not covered by the Maharashtra Act or the Tamil Nadu Act, it would be open to them to take appropriate proceedings before the forum concerned.

23. Mr. Ganguli lastly urged that the decision in *K.K. Baskaran's* case (supra) was rendered ex-parte without any representation from either the State or the Union Government and while the judgment may be binding between the parties, it had no precedence value. Submitting that there were several other similar matters pending with regard to the acceptance of deposits by companies and regulation thereof with a view to providing protection to investors, Mr. Ganguli urged that the appeals were liable to be allowed.

24. Concluding his submissions, Mr. Ganguli reiterated that it was evident that the subject matter of the Pondicherry Act is referable to various Parliamentary laws in existence which deal with investors' protection and provide measures for recovery, which were covered under Entries 43, 44, 45 and 97 of the Union List : Mr. Ganguli submitted that the attempt to make the said Entries referable to Entries 1, 30 and 32 of the State List, was erroneous and the appeals were liable to be allowed upon the setting aside of the judgment and order passed by the Division Bench of the Madras High Court.

25. At the very initial stage of his submissions, Mr. R. Venkataramani, learned Senior Advocate appearing for the Government of Pondicherry, submitted that the present litigation was, in fact, a proxy litigation since the companies which had received the deposits from the various depositors had not come to the High Court, but were being represented by a sister concern, namely, M/s New Horizon Sugar Mills Ltd. It was submitted that the State Government had acted in accordance with the Entries in List II as there was no occupied field to oust the competence of the State Government to legislate in regard to Entries 1 and 30 of List II. According to Mr. Venkataramani, the question of repugnancy of the Central legislation having an overriding effect on the State legislation, did not arise in the facts of the case. In the light of his aforesaid submissions, Mr. Venkataramani contended that the issues which arose for consideration in these appeals were : (i) Whether the judgment of this Court in Baskaran's case has any relevance for disposal of the appeal? (ii) Even if the said judgment was not to be relied upon, whether the Pondicherry Act of 2005 is constitutionally valid being protected by the provisions of Section 18 and 21 of the Government of Union Territories Act, 1963? and (iii) Whether the Appellant not being an "establishment" which has received the deposits in question and not being one of the class of establishments within the meaning of Section 2(d) of the Act, could be permitted to challenge the validity of the Act as a proxy for the defaulting establishment?

26. Mr. Venkataramani urged that the second question indicated hereinabove involved the interpretation of Articles 246 and 254 of the Constitution and the Government of Union Territories Act, 1963. It was urged further that having regard to the distinction between the position of States and Union Territories in the Scheme of the Constitution and under the provisions of the Government of Union Territories Act, 1963, this Court would have to consider the said issue as a pure question of law relevant for determination of the vires of the law. Mr. Venkataramani submitted that regardless of the submissions

made by the Appellant with regard to the judgment in *K.K. Baskaran's* case (supra), the Pondicherry Act of 2005 deserves to be upheld for special reasons and on other grounds emerging from the provisions of the aforesaid Act. Mr. Venkataramani also contended that the challenge thrown to G.O.Ms.No.12 dated 18.2.2006 being beyond the scope of the Act, was not acceptable, since the Appellant neither received any deposits directly from the depositors nor did it directly engage in the business of granting financial loans, and would not, therefore, fall under Section 2(d) of the Act which deals with financial establishments. It was further urged that since the Appellant was a stranger to the legislation, its locus could be confined only to infringing actions taken under the Act.

27. Mr. Venkataramani submitted that the Appellant Company had been set up primarily to lend support to the challenge to the G.O.Ms.No.12 dated 18.2.2006. Mr. Venkataramani submitted that M/s PNL Nidhi Ltd., the offending establishment, had not filed any petition relating either to the Act or the Government order. As a consequence, the actual establishment which would fall under Section 2(d) of the Act was not before the Court. It was contended that M/s PNL Nidhi Ltd. has been shown as the Respondent in both the two writ petitions, while Writ Appeal Nos.1142 and 1143 of 2006 were filed by M/s Kannan and others, with M/s PNL Nidhi Ltd. as the second respondent. In the absence of appeals by the parties directly covered by the Act, the Appellant could not, as an alter ego of such parties, claim any locus to challenge the validity of the Pondicherry Act of 2005. Interestingly, it was also pointed out that the licence granted to Pondicherry Nidhi Ltd. by the Reserve Bank of India in terms of Section 45 IA of the Reserve Bank of India Act, 1934, stood cancelled on 14th September, 2005. Mr. Venkataramani submitted that it was also required to be taken into consideration that the licence granted to Pondicherry Nidhi Ltd. by the Reserve Bank of India in terms of Section 45 IA of the Reserve Bank of India Act, 1934, stood cancelled on 14.9.2005 and technically there is, therefore, no

company licenced or registered to carry on the non-banking financial activities, which were pending before this Court.

28. On the Scheme of the legislative powers of Union Territories and the Parliament, Mr. Venkataramani submitted that the absence of Parliamentary legislation on a Union List subject does not clothe the State Legislature with the competence to enact a legislation and that deficiency in Parliamentary legislation, referable to the Union List, could not also confer competence on the State Legislature to fill in the gaps, having regard to the Scheme of the Union Territories Act, 1963. It was submitted that the judgments cited on behalf of the Appellant in support of his two-fold submissions referred to above, all relate to conflicts between Parliamentary and State Legislations referable to Lists I and II of the Seventh Schedule and the Scheme of Article 246 of the Constitution. In such cases, overlapping of Parliamentary and State Legislations, referable to Entries in the Concurrent List, stand on a different footing and the threshold embargo on the State Legislature to enact laws relatable to Union List, does not exist. In such cases, the only issue which could at all arise would be with regard to repugnancy and that too provided the legislations contained conflicting provisions. Referring to the decision of this Court in *Ramji and others vs. State of U.P. & Others* [(1956 SCR 393], Mr. Venkataramani submitted that the doctrine of pith and substance could not be applied to the facts of this case on account of the fact that when both the Central, as well as the State Legislatures, were operating in the concurrent field, there was no question of trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I. The only question which, therefore, survived was whether putting both the pieces of legislations enacted by the Centre and the State together, any repugnancy could be traced, in which event a different set of consequences will follow. In the instant case there being no question of any inconsistency, any further question relating to the overriding effect of the Central provision, would not arise. The question which necessarily arises is whether the Parliament

and the State Legislature exercised their powers over the self-same subject matter, or whether the laws enacted by Parliament were intended to be a complete and exhaustive code in themselves.

29. Mr. Venkataramani submitted that the law in question is not in substance a matter relating to incorporation, regulation or winding-up of either incorporated or unincorporated entities and Entries 43 and 44 of List I would have to be seen in the context of laws relating to corporations and different modes of incorporation. It was submitted that Entry 33 in the Federal List of the Government of India Act, 1935, combined Entries 43 and 44 under List I of the Seventh Schedule to the Constitution, as they are concerned with incorporation and regulations and providing for measures regulating the business of corporations. Reliance was placed on the decision of this Court in *R.C. Cooper vs. Union of India* [(1970) 3 SCR 530], wherein the fine distinction between regulation of the business activities of and regulation of a corporation was noticed. In fact, Sections 58A and 58AA of the Companies Act, 1956, and Section 45S of the Reserve Bank of India Act, 1934, could well fall within the scope of Entries 43 and 44 of List I. Mr. Venkataramani argued that an offence whether committed by individuals or other legal entities would fall within the scope of Entry I List III viz. "criminal law". It is for that purpose that Entry I List III provides for an exclusion from "offences against laws with respect to any of the matters specified in List I and List II".

30. It was further pointed out that Entries 93 in List I and 64 in List II are similarly worded and do not refer to offences against laws with respect to any of the matters in the List. In that context, it was submitted that the Pondicherry Act is not a new law within the scope of Entry 93 of List I. It was further submitted that the Pondicherry Act of 2005 not being a law falling within the scope of Entries 43 and 44 of the Union List and falling within the Entries in List III, the question of threshold lack of competence or invasion of a forbidden territory does

not arise. Whether or not the Parliament could effect any further expansion of the provisions of Sections 58A or 58AA, could not, therefore, occupy the field relating to offences or crimes which are questions that can only be raised in the context of List I and List II controversies, and are irrelevant for the purposes of the present case.

31. According to Mr. Venkataramani, one of the other reasons for enacting the Pondicherry Act of 2005 was to protect the interests of depositors and the Pondicherry Act of 2005 has primarily made the retention of deposits as a wrongful and fraudulent act and thus constituting a crime and an actionable wrong. It was further submitted that the Act provides for a special procedure and machinery for retrieval of the deposits or such property as may answer and satisfy the claims of the depositors. The law, therefore, essentially provides for tracing the source of the monies and the deposits in the hands of third parties and make it available to satisfy the claims of the depositors. According to Mr. Venkataramani, the aforesaid legislation would fall under Entry I (criminal law); Entry 8 (actionable wrong), Entry 13 (civil procedure) and Entry 21 (commercial and industrial monopolies) of List II of the Seventh Schedule to the Constitution. According to Mr. Venkataramani, none of the measures under the Act could be said to relate to regulation of the business activities of any corporation and even if such submission is taken to be correct, the Pondicherry Act of 2005 could not be traced to Entries 43 or 93 of List I. Reference was also made to the decision of this Court in *Greater Bombay Co-op Bank vs. United Yarn* [(2007) 6 SCC 236].

32. Going a step further, Mr. Venkataramani urged that even if the reference to Entries 1 and 30 of List II could be open to question, Entry 32 of List II, insofar as it permitted any law relating to incorporated or unincorporated establishments, would be available not as a law regulating the business activities of the establishments, but as a law dealing with

actionable wrongs committed by establishments. Consequently, no interference was called for with the decision of the Madras High Court as the law in question had been enacted to deal with securing the public order, which is a concept of wide amplitude. It was contended that apart from the decision of this Court in *Romesh Thapar Vs. State of Madras* [(1950) SCR 594] and Ram Manohar Lohia (1991) 1 SCR 709], this Court had also considered the question in *Rev. Stainislaus Vs. State of M.P.* [(1977) 2 SCR 611] and *Arun Ghosh Vs. State of West Bengal* [(1970) 3 SCR 288] and has in no uncertain terms held that certain deviations could be resorted to in order to deal with securing public order. Furthermore, security of transactions and their integrity are equally and deeply relevant to public order. The reference to and reliance placed upon Entry 97 of List I was, therefore, misconceived.

33. It was then submitted that the submissions made on behalf of the Appellant that Section 2(d) of the Pondicherry Act does not include incorporated entities, as distinct from the corresponding provisions of the Tamil Nadu Act, is misconceived. While the definition of "financial establishment" in the Tamil Nadu Act was apparently different, the ultimate result was the same. Furthermore, the Pondicherry Act uses the expression "person" in wide terms to include natural persons (as individuals) and companies. Mr. Venkataramani submitted that the expression "person" has been exhaustively dealt with in P. Ramanatha Ayyar's "Advanced Law Lexicon" and did not require any further elucidation. Referring to Section 11 of the Indian Penal Code, Mr. Venkataramani submitted that the same defines a person to include a company or association or body of persons whether incorporated or not. Accordingly, the use of the expression "person" in the Pondicherry Act also included both unincorporated as well as incorporated companies.

34. Mr. Venkataramani urged that there was no repugnancy at all between the provisions of the Pondicherry Act

or the Companies Act, 1956 and/or the Reserve Bank of India Act and in the absence of any occupied legislation enacted under the provisions of the Companies Act and the Reserve Bank of India Act, the question as to whether the Pondicherry Act was subservient to the Central legislation was no longer relevant, particularly when the said Act had received the assent of the President and was, therefore, protected under Article 254(2) of the Constitution. Consequently, the law being traceable to Entry 32 of List II and Entries 1, 8, 13 and 21 of List I and the same having received the assent of the President, stands fully protected by the provisions of Section 31 of the 1963 Act. In support of his submissions Mr. Venkataramani referred to the decisions of this Court in *S. Pushpa and others Vs. Sivachanmugavelu and others* [(2005) 3 SCC 1], *New Delhi Municipal Council Vs. State of Punjab & Others* [(1997) 7 SC 339] and *T.M. Kanniyan Vs. I.T.O. Pondicherry* [(1968) 2 SCR 103]. In the first of the said three decisions, this Court had the occasion to consider the question of reservation in regard to recruitment of Scheduled Caste candidates in the Union Territory of Pondicherry. It was held that those Scheduled Caste candidates who had migrated from other States would be eligible for selection and appointment to posts reserved for the Scheduled Caste candidates in the Union Territory of Pondicherry, since it had consistently followed the policy of the Central Government where all candidates irrespective of the State/Union Territory were given the benefit of reservation and the selections made pursuant to such policy were valid. The second decision in the case of New Delhi Municipal Council was with regard to the powers of the Central Government to make laws with respect to Union Territories under Article 246(4) of the Constitution of India. While deciding the said issue, it was held by this Court that where the enactment could be related to and upheld with reference to some constitutional value, its validity should be upheld. The third decision is also on the same lines.

35. Mr. Venkataramani ended on the note that since the

Parliamentary Act had received the assent of the President, it would have effect irrespective of the Central legislation and as decided in *Charan Lal Sahu Vs. Union of India* [(1990) 1 SCC 613] conceptually and jurisprudentially there is no bar on the State to assume responsibilities analogous to parens patria to discharge the State's obligations under the Constitution. Learned counsel also referred to the Bhopal Gas Leak Disaster Act, which has been traced to Entry 13 of the Concurrent List. Mr. Venkataramani urged that the Appeals were entirely misconceived and were liable to be dismissed.

36. From the case made out on behalf of the Appellant Mill and the submissions in support thereof, what emerges for decision is whether the subject matter covered by the Pondicherry Act is relatable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List. Coupled with the aforesaid question is the other question as to whether the decision of this Court in *K.K. Baskaran's* case (supra), upholding the validity of the Tamil Nadu Act, would also be applicable for determining the validity of the Pondicherry Act, having particular regard to Mr. Ganguli's submissions that there were major differences in the two enactments.

37. As far as the first question is concerned, on a scrutiny of the Seventh Schedule to the Constitution, it will be seen that Entries 43, 44 and 45 of List I of the Seventh Schedule to the Constitution deal with the following matters, namely,

> "43. Incorporation, regulation and winding up of trading Corporations, including banking, insurance and financial corporations, but not including Co-operative Societies.
>
> 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
>
> 45. Banking."

38. In other words, each of the above-mentioned Entries deal with matters relating to trading corporations, which include banking, insurance and financial corporations, whereas Entries 1, 30 and 32 of List II deal with the following :-

> "1. Public order (but not including [the use of any naval, military or air force or any other armed force or the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).
>
> 30. Money-lending and money-lenders; relief of agricultural indebtedness.
>
> 32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

39. The Entries relating to the State List referred to above, and in particular Entry 30, appear to be a more appropriate source of legislative authority of the State Assembly for enacting laws in furtherance of such Entry. The power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money-lending which falls within the ambit of Entries 1, 30 and 32 of the State List.

40. In addition to the above, it has also to be noticed that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust.

41. However, coming back to the constitutional conundrum that has been presented on account of the two views expressed

by the Madras High Court and the Bombay High Court, it has to be considered as to which of the two views would be more consistent with the constitutional provisions. The task has been simplified to some extent by the fact that subsequently the decision of the Bombay High Court declaring the Maharashtra Act to be ultra vires, has been set aside by this Court, so that there is now a parity between the judgments relating to the Maharashtra Act and the Tamil Nadu Act.

42. The three enactments referred to hereinabove, were framed by the respective legislatures to safeguard the interests of the common citizens against exploitation by unscrupulous financial establishments mushrooming all over the country. That is, in fact, the main object indicated in the Statement of Objects and Reasons of the three different enactments.

43. Even if it is to be accepted that the Pondicherry Act is relatable to Entries 43, 44 and 45 of List I, it can be equally said that the said enactment is also relatable to Entries 1, 30 and 32 of List II, thereby leaving the field of legislation open, both to the Central Legislature as well as the State Legislature. In such a situation, unless there is anything repugnant in the State Act in relation to the Central Act, the provisions of the State Act will have primacy in determining the lis in the present case. Apart from the above, the provisions of the Pondicherry Act are also saved by virtue of Article 254(2) of the Constitution. For a proper understanding of the legal position, the provisions of Article 254 are extracted hereinbelow :-

> *"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States* - (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament,

> whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void;
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

44. As will be evident from the above, clause (1) of Article 254 provides that when there are two laws enacted by the Parliament and the State Legislature in which certain inconsistencies occur, then subject to the provisions of clause (2), the law made by the Parliament would prevail and the law made by the State Legislature to the extent it is repugnant to the Central law, shall be void. Clause (2), however, also provides that in a given situation where a law of a State is in conflict with the law made by Parliament, the law so made by the State Legislature shall, if it has received the assent of the President, prevail in that State. In the instant case, the Pondicherry Act had received the assent of the President attracting the provisions of Article 254(2) of the Constitution.

45. At this stage, it may also be worthwhile to consider Mr. Venkataramani's submissions that the power to enact the Pondicherry Act could be traced to Entries 1, 8, 13 and 21 of

the Concurrent List. Entry 1 of List III deals with criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power. Entry 8 deals with actionable wrongs. Entry 13 deals with civil procedure while Entry 21 deals with Commercial and Industrial monopolies, combines and trusts. Such submission has been advanced by Mr. Venkataramani in view of the provisions of Section 58A, 58AA and 58AAA of the Companies Act, 1956, which all deal with deposits invited and accepted by Companies. The said submission is, however, subject to the condition that the provisions of the Companies Act are also attracted to the provisions of the Pondicherry Act. Although, it has been argued by Mr. Ganguli that the provisions of the Companies Act would not be attracted, we cannot overlook the amendment to the definition of "financial establishment" included in the Tamil Nadu Act and as defined in the Pondicherry Act. The definition of the expression "financial establishment" in Section 2(d) of the Pondicherry Act, which has been extracted in paragraph 14 hereinbefore, includes any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner, but does not include a Corporation or a cooperative society owned or controlled by either the Central Government or the State Government or a banking company as defined under Section 5 of the Banking Regulation Act, 1949. In our view, the expression "any person" is wide enough to cover both a natural person as also a juristic person, which would also include a Company incorporated under the Companies Act, 1956. In that view of the matter, the definition in Section 2(d) of the Pondicherry Act would also include a Company such as the Appellant Mill, which accepts deposits from investors, not as shareholders of such Company, but merely as investors for the purpose of making profit. In this regard, reference may also be made to Section 11 of the Indian

Penal Code which defines a "person" to include a Company or Association or body of persons, whether incorporated or not. Accordingly, we are inclined to accept Mr. Venkataramani's submissions that the expression "person" in the Pondicherry Act includes both incorporated as well as unincorporated companies.

46. The decision in *K.K. Baskaran's* case (supra) so far as it relates to protection of interests of depositors, cannot be ignored. In our view the decision rendered by the Madras High Court in *K.K. Baskaran's* case (supra) would be equally applicable to the facts of this case. We have to bear in mind that the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld by the Madras High Court and this Court. The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and since the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld, the decision of the Madras High Court in upholding the validity of the Pondicherry Act must also be affirmed. We have to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated. More often than not, the investors end up losing their entire deposits. We cannot help but observe that in the instant case although an attempt has been made on behalf of the Appellant to state that it was not the Appellant Company which had accepted the deposits, but M/s PNL Nidhi Ltd., which had changed its name five times, such an argument is one of desperation and cannot prima facie be accepted. This appears to be one of such cases where funds have been collected from the gullible public to invest in projects other than those indicated by the front company. It is in fact the specific case of the Respondents that the funds collected by way of deposits were diverted to create the assets of the Appellant Mill.

47. In such circumstances, we are not inclined to accept the submissions made by Mr. Ganguli, since in our view there is little difference between the provisions of the Tamil Nadu Act and the Pondicherry Act, which is to protect the interests of depositors who stand to lose their investments on account of the diversion of the funds collected by M/s PNL Nidhi Ltd. for the benefit of the Appellant Mill, which is privately owned by Shri V. Kannan and Shri V. Baskaran, who are also Directors of M/s PNL Nidhi Ltd.

48. The Appeals are, accordingly, dismissed with costs assessed at Rs.1,00,000/-.

R.P. Appeals dismissed.

LAXMAN

v.

THE STATE OF MAHARASHTRA

(Criminal Appeal No. 246 of 2008)

SEPTEMBER 27, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Penal Code, 1860 - s.302 r/w 34 - Murder - Common intention - Eleven accused - Trial court convicted A-1,2,3,4,7 & 10 u/s.302 r/w s.149 IPC and sentenced them to life imprisonment - High Court found A-1,2 & 7 guilty u/s.302 r/w s.34 IPC and confirmed their life sentence but acquitted A-3,4 & 10 - On further appeal by A-1 & 2, held: Merely because PW 3,4 & 5 were related to the family of the victim, their testimonies cannot be eschewed - PWs 3, 4 and 5 not only witnessed the occurrence but also specified the overt acts of each accused, particularly, A-1, 2 and 7 - On facts, where the PWs made all attempts to save the life of the victim by taking him to the nearest hospital through a bullock cart and they also sustained injuries, and the victim died 12 hours after the incident and the police complaint was lodged thereafter, the delay in lodging of FIR cannot affect the prosecution case - Non-recording of dying declaration is inconsequential since the victim remained unconscious all throughout till his death - Injuries sustained by some accused being minor in nature, even in absence of proper explanation by the prosecution, the prosecution story cannot be disbelieved - PW1, who conducted the post-mortem, opined that the probable cause of death was primarily head injury associated with other multiple injuries - Among the accused, at least two, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe - It is established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and 2 by means of axe and sticks respectively -

Appellants (A-1 and 2) and A-7 had assaulted the victim, inflicted multiple injuries and shared common intention - Conviction of appellants accordingly sustained.

The prosecution case was that when 'N' came out of the house of PW-5, the accused persons who were sitting in the house of A-1 came out and they assaulted 'N' by means of axe, sticks and stones; that on seeing this, PW-5, PW-3 and PW-4 and 3 others came to rescue 'N' but they were also assaulted by the accused persons and sustained injuries. 'N' received grievous injuries and was taken to the hospital where he died subsequently. The trial court convicted 6 out of 11 accused, namely, A-1, 2, 3, 4, 7 and 10 under Section 302 read with Section 149 of IPC and sentenced them to life imprisonment. They were also convicted for the offence punishable under Sections 147 and 148 read with Section 149 of IPC, but no separate sentence was awarded. Rest of the accused persons were acquitted of all the charges. All the 6 convicts filed appeal before the High Court. The High Court found A-1,2 and 7 guilty under Section 302 read with Section 34 of IPC and confirmed the sentence imposed upon them by the trial Court but acquitted A-3,4 and 10 by giving them the benefit of doubt.

In the instant appeals, A-1 and 2 challenged their conviction on the ground that the witnesses relied on the side of the prosecution, viz., PWs 3, 4 and 5 were relatives of the deceased 'N'. They also submitted that there was no proper explanation for the delay in lodging of FIR; that though the deceased was alive for 12 hours, no dying declaration was recorded and finally that the prosecution had not offered any explanation for the injuries sustained by some of the accused persons, and, hence, the entire prosecution story was to be disbelieved.

Dismissing the appeals, the Court

HELD: 1.1. The entire prosecution rests on the

evidence of PWs 3, 4 and 5. PW-3, who made the complaint to the police is brother of the deceased. Likewise, PW-4, who witnessed the occurrence is the son of the deceased and PW-5 is the mother-in-law of grand-daughter of the deceased. But merely because the witnesses are related to the family of the deceased, their testimonies cannot be eschewed. However, their testimonies have to be scrutinized carefully and if there is no infirmity, there is nothing wrong in accepting their statement. Apart from this, it is also not in dispute that PWs 3 and 4 sustained injuries which is evident from the deposition of the Doctor who examined them. [Para 6] [917-G-H; 918-A-B]

1.2. It is seen from the evidence of PWs 3, 4 and 5 that they not only witnessed the occurrence but also specified the overt acts of each accused, particularly, A-1, A-2 and A-7. Among those 3 persons, PWs 3 and 4 sustained injuries. In such circumstance, on perusal of their entire testimonies, there is no reason to reject the same, on the other hand, the trial Court has rightly accepted their testimonies. [Para 10] [919-G-H; 920-A]

Abdul Rashid Abdul Rahiman Patel and Ors. v. State of Maharashtra **(2007) 9 SCC 1 - relied on.**

2. The incident occurred at 7 a.m. on 19.01.1992 and the deceased died at around 7:30 p.m. on the same day and, thereafter, the complaint was lodged with the police. Taking note of the fact that the prosecution witnesses made all attempts to save the life of the deceased by taking him to the nearest hospital through a bullock cart and they also sustained injuries, the delay in lodging of FIR cannot affect the prosecution case. [Para 11] [920-B-C]

3. It is true that no dying declaration was made and recorded, however, the prosecution witnesses clearly stated that throughout the day, 'N' was unconscious. In

view of the categorical statement and the position of the deceased till his death, the prosecution cannot be blamed for not recording his dying declaration. [Para 12] [920-D-E]

4. Insofar as the injuries sustained by some of the accused are concerned, it is seen from the evidence of Dr. (PW-2) that those injuries are minor in nature. In the case of minor injuries, merely because the prosecution has not furnished adequate reasons, their case cannot be rejected. Considering the fact that the injuries sustained by some of the accused were minor in nature, even in the absence of proper explanation by the prosecution, the prosecution story cannot be disbelieved. [Para 13] [920-E-G]

5.1. Among the number of accused, at least two, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe. PW-1, the Doctor who conducted the post mortem has stated in his evidence that "in my opinion, cause of death was shock due to head injury with multiple injuries over the body." He further deposed that "the injury Nos. 4-6 and 8-10 were caused by hard and blunt object. Those were possible by a weapon like stick. Injury No. 7 was possible by means of sharp weapon like an axe. Internal injury mentioned in Column No. 19 of post mortem report corresponds to Injury No. 19 mentioned in Column No. 17." Finally, he opined that "probable cause of death was primarily head injury associated with other multiple injuries." The prosecution witnesses established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and A-2 by means of axe and sticks respectively. [Para 14] [920-G-H; 921-A-C]

5.2. Taking note of the same and the evidence of the doctor (PW-1) who conducted the post mortem, namely, the cause of death, it is clear that the prosecution has

proved its case beyond reasonable doubt in respect of A-1 and A-2 (the appellants) and A-7 who assaulted the victim and inflicted multiple injuries and shared common intention. In conclusion, this Court fully agrees with the conclusion arrived at by the trial Court and affirmed by the High Court. [Paras 15, 16] [921-C-E]

Case Law Reference:

(2007) 9 SCC 1 relied on Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 246 of 2008.

From the Judgment & Order dated 11.04.2005 of the High Court of Maharashtra at Bombay, Bench at Aurangabad in Criminal Appeal No. 605 of 2003.

WITH

Crl. A. No. 247/2008.

Vikas Upadhyay, B.S. Banthia, K.K Shukla, Brij Bhusan, Neelam Saini, Sushil Karanjakar, Nikhilesh Kumar, Sanjay Kharde, Asha Gopalan Nair for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These appeals are directed against the final judgment and order dated 11.04.2005 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.605 of 2003 whereby the Division Bench of the High Court while disposing of the appeal confirmed the order of conviction and sentence dated 19.07.2003 passed by the Additional Sessions Judge, Biloli against the appellants herein and acquitted the other accused persons.

2. Facts and circumstances giving rise to these appeals are as under:

(a) Laxman (original Accused No. 2), appellant in Criminal Appeal No. 246 of 2008 is the son of Shetiba (original Accused No. 1), appellant in Criminal Appeal No. 247 of 2008. Both the accused persons and the rival group including that of one Nagoba (the deceased) are residents of the same village, viz., Pingri, Dharmabad Taluq, Biloli Dist, Nanded, Maharashtra.

(b) According to the prosecution case, the grand-daughter of Nagoba (the deceased) was engaged with one Ananda, son of Anjanabai (PW-5). On 19.01.1992, at about 7.30 a.m., Nagoba went to the house of PW-5 to discuss about the settlement of marriage of his grand-daughter. After discussion, when Nagoba came out of the house of PW-5, all the accused persons were present in the house of Shetiba (A-1). They approached Nagoba and scolded him on the pretext of the marriage of his grand daughter with the son of Anjanabai (PW-5). The accused persons also expressed that the said marriage was contracted with an aim of gaining support. All the accused persons assaulted Nagoba by means of weapons like axe, stones, sticks etc. On seeing this, Anjanabai (PW-5), Nivratti (PW-3) and Datta (PW-4) and 3 others came to rescue the deceased but they were also assaulted by the accused persons and sustained injuries. After the intervention of police, the incident came to an end and Nagoba got grievous injuries and he was taken to the hospital at Karkhali wherefrom on the advice of the Doctor, he was shifted to the Civil Hospital at Nanded where he succumbed to his injuries, the same evening.

(c) On the same day, i.e. on 19.01.1992, Devrao (original Accused No. 7) lodged a First Information Report (FIR) at the Police Station, Dharmabad alleging that he was assaulted by Nagoba (the deceased) and some other persons and as a result of which he and other persons sustained injuries. On the said report, Crime No. 6/92 was registered against Nivratti (PW-3), Datta (PW-4) and Anjanabai (PW-5) and 3 others under Sections 147, 148, 149, 324, 337 and 504 of IPC.

(d) On the next day, i.e., on 20.01.1992, at about 9.00 a.m., Nivratti (PW-3)-the complainant lodged an FIR with the Police Station, Vazirabad, Nanded, which was registered as Crime No. D/92 for the offence punishable under Sections 309, 147, 148, 149 of the Indian Penal Code, 1860 (in short the "IPC") and later on it was referred to Dharmabad Police Station which registered the case as Crime No. 7/92 for the offences punishable under Sections 302, 147, 143, 149, 337 and 504 of IPC.

(e) Both the cases were committed to the Court of Additional Sessions Judge at Biloli for trial and numbered as Sessions Case No. 49 of 1993. The Additional Sessions Judge, vide judgment and order dated 19.07.2003 convicted 6 persons out of 11 accused, namely, Shetiba (appellant in Criminal Appeal No. 247 of 2008), Laxman (appellant in Criminal Appeal No. 246 of 2008), Babu, Devidas, Devrao and Rohidas under Section 302 read with Section 149 of IPC and sentenced them to suffer imprisonment for life alongwith a fine of Rs. 500/- each, in default, to further undergo simple imprisonment for 7 days each. They were also convicted for the offence punishable under Sections 147 and 148 read with Section 149 of IPC, but no separate sentence was awarded. They were acquitted of the offence punishable under Sections 337 and 504 read with Section 149 of IPC. Rest of the accused persons were acquitted of all the charges.

(f) Being aggrieved by the order of conviction and sentence passed by the Additional Sessions Judge, all the 6 convicted accused persons filed appeal being Criminal Appeal No. 605 of 2003 before the High Court. The High Court, by impugned judgment dated 11.04.2005, found Shetiba (A-1), Laxman (A-2) and Devrao (A-7) guilty of the offence punishable under Section 302 read with Section 34 of IPC and confirmed the sentence imposed upon them by the trial Court and acquitted the other accused persons, namely, Babu (A-3), Devidas (A-4) and Rohidas (A-10) by giving them the benefit of doubt.

(g) Aggrieved by the said order of the High Court, the appellants herein have filed these appeals by way of special leave.

3. Heard Mr. Vikas Upadhyay, learned counsel for the appellant in Criminal Appeal No. 246 of 2008, Mr. Brij Bhusan, learned counsel for the appellant in Criminal Appeal No. 247 of 2008 and Mr. Sushil Karanjakar, learned counsel for the respondent-State.

4. Learned counsel for the appellants submitted that the witnesses relied on the side of the prosecution, viz., PWs 3, 4 and 5 are relatives of the deceased, hence, in the absence of other evidence, the conviction solely based on witnesses related to the deceased cannot be sustained. They also submitted that there is no proper explanation for the delay in lodging of FIR. Though the deceased was alive for 12 hours, no dying declaration was recorded. Finally, they submitted that the prosecution has not offered any explanation for the injuries sustained by the accused persons. In other words, according to them, there was a free fight and in the absence of proper explanation from the side of the prosecution, the entire story is to be disbelieved. On the other hand, learned counsel appearing for the State submitted that on proper appreciation of evidence and the materials, considering the fact that the eye-witnesses were injured and taking note of all acceptable materials, the appellants were convicted under Section 302 read with Section 34 of IPC, hence, there is no ground for interference.

5. We have carefully considered the rival contentions and perused all the relevant materials.

6. It is true that the entire prosecution rests on the evidence of PWs 3, 4 and 5. It is equally true that Nivratti (PW-3), who made the complaint to the police is brother of the deceased. Likewise, Datta (PW-4), who witnessed the occurrence is the son of the deceased and Anjanabai (PW-5) is the mother-in-

law of grand daughter of the deceased. This Court in a series of decisions has held that merely because the witnesses are related to the family of the deceased, cannot be eschewed. However, their testimonies have to be scrutinized carefully and if there is no infirmity, there is nothing wrong in accepting their statement vide Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra (2007) 9 SCC 1. Apart from this, it is also not in dispute that PWs 3 and 4 sustained injuries which is evident from the deposition of the Doctor who examined them.

7. Now, let us discuss the evidence of PWs 3, 4 and 5. As stated earlier, PW-3 is the brother of the deceased who also sustained injuries in the incident. In such circumstance, his presence cannot be doubted. In his statement, he deposed that the incident took place 10 years ago and it occurred in a village called Pingri in front of the house of Anjanabai (PW-5). He further deposed that it was about 6-7 o'clock and according to him, he was standing nearby. He stated that Nagoba-the deceased was in the house of Anjanabai (PW-5). When Nagoba came out of the house of PW-5 to proceed to his house, 12 persons who were sitting in the house of Shetiba (A-1) came out and they assaulted Nagoba by means of axe, sticks and stones. He further described that Shetiba (A-1) and Laxman (A-2) were holding sticks, Devrao (A-7) was holding an axe whereas Babu (A-3), Nagan (A-9), Rohidas (A-10), Devidas (A-4), Kanta (A-11), Shamrao (A-8) were holding stones. According to him, Shetiba (A-1) and Laxman (A-2) assaulted Nagoba over his shoulders, upper arm and thighs by means of sticks. Devrao (A-7) inflicted axe blows over his wrist and legs. He further stated that he was one amongst several persons who took Nagoba to the Hospital in a bullock cart and he was alive at that time. On the direction of the Doctor, they took him to the hospital at Nanded, however, he expired at about 7:30 p.m. According to him, at about 10:00 to 11:00 p.m., they lodged a report at the police chowki which was reduced into writing and he signed the same admitting that the contents

therein are correct and he also proved his signature which is Exh. 95.

8. Datta (PW-4) has stated that Nagoba-the deceased was his father. He also mentioned that the occurrence took place 11 years ago in front of the house of Anjanabai (PW-5) at about 7 a.m. His father had been to the house of PW-5 to have a cup of tea. He further deposed that he heard hue and cry and he immediately rushed to the place of incident and saw that Devrao (A-7), Dhondiba, Laxman (A-2) and Babu (A-3) were assaulting Nagoba. He further stated that Devrao (A-7) assaulted the deceased by means of an axe and Shetiba (A-1), Laxman (A-2) and rest other accused assaulted him using sticks and stones. He also stated that Kitikabai (A-5), Indirabai (A-6) and Chautrabai had assaulted by means of fist and kicks.

9. The next witness who explained the cause of the death is Anjanabai (PW-5). In her evidence, she stated that the occurrence took place 10/11 years ago and it was 7 a.m. She called Nagoba-the deceased to have a cup of tea in order to have negotiation about proposed marriage of his grand daughter with her son. She further deposed that her brother-in-law Shetiba (A-1) was also present there. After negotiation, the marriage was settled. Nagoba-the deceased took tea and went out of her house. Immediately, she heard hue and cry and noticed that a fight was going on and Devrao (A-7), Shetiba (A-1), Laxman (A-2), Nagan (A-9), Devidas (A-4), Rohidas (A-10), Babu (A-3), Shamrao (A-8) and Kantilal were beating Nagoba by means of sticks, stones and axe. In cross examination, he also stated that Nagoba was unconscious till his death.

10. It is seen from the evidence of PWs 3, 4 and 5 that they not only witnessed the occurrence but also specified the overt acts of each accused, particularly, A-1, A-2 and A-7. Among those 3 persons, PWs 3 and 4 sustained injuries. In such circumstance, on perusal of their entire testimonies, we are of the view that there is no reason to reject the same, on

the other hand, the trial Court has rightly accepted their testimonies.

11. Insofar as the delay in lodging of FIR is concerned, it is true that the incident occurred at 7 a.m. on 19.01.1992 and the deceased died at around 7:30 p.m. on the same day and, thereafter, the complaint was lodged to the police. Taking note of the fact that the above mentioned prosecution witnesses made all attempts to save the life of the deceased by taking him to the nearest hospital through a bullock cart and they also sustained injuries, we are of the view that the said delay cannot affect the prosecution case.

12. It is the claim of the appellants that though the deceased was alive for nearly about 12 hours, no attempt was made to record his dying declaration. It is true that no declaration was made and recorded. The prosecution witnesses mentioned above clearly stated that throughout the day, the Nagoba (the deceased) was unconscious. In view of the categorical statement and the position of the deceased till his death, the prosecution cannot be blamed for not recording his dying declaration.

13. Insofar as the injuries sustained by some of the accused are concerned, it is seen from the evidence of Dr. D. Trimabak (PW-2) that those injuries are minor in nature. This Court on various occasions has held that in the case of minor injuries, merely because the prosecution has not furnished adequate reasons, their case cannot be rejected. Considering the fact that the injuries sustained by some of the accused were minor in nature, even in the absence of proper explanation by the prosecution, we hold that the prosecution story cannot be disbelieved.

14. The above analysis clearly shows that among the number of accused, at least two accused persons, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe. Dr. Kishore (PW-1), the Doctor who conducted the post mortem

has stated in his evidence that "in my opinion, cause of death was shock due to head injury with multiple injuries over the body." He further deposed that "the injury Nos. 4-6 and 8-10 were caused by hard and blunt object. Those were possible by a weapon like stick. Injury No. 7 was possible by means of sharp weapon like an axe. Internal injury mentioned in Column No. 19 of post mortem report corresponds to Injury No. 19 mentioned in Column No. 17." Finally, he opined that "probable cause of death was primarily head injury associated with other multiple injuries." The prosecution witnesses established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and A-2 by means of axe and sticks respectively.

15. Taking note of the same and the evidence of the doctor (PW-1) who conducted the post mortem, namely, the cause of death, we are satisfied that the prosecution has proved its case beyond reasonable doubt in respect of A-1 and A-2 (appellants herein) and A-7 who assaulted the victim and inflicted multiple injuries and shared common intention.

16. In the light of the above discussion, we fully agree with the conclusion arrived at by the trial Court and affirmed by the High Court, consequently, both the appeals are dismissed.

B.B.B. Appeals dismissed.

ABDUL REHMAN & ANR.
v.
MOHD. RULDU & ORS.
(Civil Appeal No. 7043 of 2012)

SEPTEMBER 27, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Code of Civil Procedure, 1908 – Or. 6 r. 17 r/w. s. 151 – Amendment of plaint – Two sale deeds in favour of appellants as well as respondents by different members of a family in respect of suit property – Appellants filing suit for permanent injunction restraining respondent Nos. 1 to 3 – Subsequent application for amendment of plaint to add relief of declaration of title – Application dismissed by courts below – On appeal, held: The application for amendment is allowed – Amendments necessary for the purpose of determining the real question in controversy should be allowed, if it does not change the basic nature of the suit – A change in nature of relief cannot be considered as change in nature of the suit – The challenge to the sale deed in favour of respondents was implicit in the factual matrix in the un-amended plaint, and hence relief of declaration of title does not change the nature of the suit – Relief claimed is not barred in law and the amendment would not prejudice the respondents.

Predecessor-in-interest inherited the suit property from his father pursuant to courts order (passed in a suit filed by his sisters claiming their share in the property) which declared that under the applicable customary law of inheritance to the parties, widows and daughters had no inheritance rights in presence of the sons.

Predecessor-in-interest sold the suit property to the appellants. The sale was challenged in suit by four of his children and the same was dismissed by the courts. After

the death of the predecessor-in-interest, the suit filed by his wife for declaration and permanent prohibitory injunction against all her children and application seeking injunction against the appellants from interfering with her possession, were dismissed by the courts. The wife of predecessor-in-interest and his two daughters sold the suit property to respondent Nos. 1 to 3.

Appellants filed suit for permanent injunction restraining respondent Nos. 1 to 3 from forcibly and illegally dispossessing the appellants from the suit property. Appellants further filed application for amendment of the plaint to include a relief of declaration of title in addition to the permanent injunction. Trial court dismissed the application. Revision against the same was also dismissed by the High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. Parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. [Para 7] [929-D-E]

2. The power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and

circumstances of each case. [Para 8] [930-A-B]

J. Samuel and Ors. vs. Gattu Mahesh and Ors. **(2012) 2 SCC 300;***Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Ors.* **(2012) 5 SCC 337 – relied on.**

3. The challenge to the voidness of the sale deeds in favour of the respondent Nos. 1 to 3 was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. [Para 10] [931-C-D]

Pankaja and Anr. vs. Yellapa (Dead) By Lrs. and Ors. **AIR 2004 SC4102 = (2004) 6 SCC 415 – relied on.**

4. The relief sought by way of amendment could also be claimed by way of a separate suit on the date of filing of the application. In view of the date of the sale deeds and the date on which the application was filed for amendment of the plaint, the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiciplity of litigation. [Para 10] [931-D-F]

5. The amendments were necessitated due to the observations made by the High Court in its earlier order to the effect that the appellants' application for ad-interim injunction without seeking cancellation of the sale deeds is not maintainable. This aspect has not been noticed by the trial court as well as the High Court while considering the application filed under Order VI Rule 17 CPC. [Para 11] [931-G-H; 932-A]

6. Thee facts that the respondents-transferees were

bound by the previous judgment of the court in this case to the effect that under the applicable customary law of inheritance to the parties therein, widows and daughters have no right of inheritance in the presence of the sons, were specifically stated in the un-amended plaint and, therefore, amendment seeking incorporation of relief of declaration that the sale deeds are void does not change the nature of the suit. Because of those allegations in the un-amended plaint, the same was denied by the defendants in their written statement and the necessary factual matrix as regards the relief of cancellation was already on record and the same was an issue arising between the parties. [Para 12] [932-B-E]

7. All amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties. [Para 15] [933-A-C]

8. The appellants have made out a case for amendment and by allowing the same, the respondents (Defendant Nos. 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire. Accordingly, the order of the trial court dismissing the application for amendment of plaint as well as the High Court in Civil Revision are set aside. The application for amendment is allowed. [Para 16] [933-D-E]

Case Law Reference:

(2012) 2 SCC 300	**Relied on**	**Para 8**
(2012) 5 SCC 337	**Relied on**	**Para 8**
(2004) 6 SCC 415	**Relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7043 of 2012.

From the Judgment and Order dated 13.11.2007 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4486 of 2007.

Manmeet Arora, Kavita Wadia for the Appellants.

Debasis Misra, Jitendra Kumar for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is filed against the judgment and order dated 13.11.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 4486 of 2007 whereby the High Court dismissed the revision filed by the appellants herein and confirmed the order dated 06.06.2007 passed by the Civil Judge (Jr. Division) Malerkotla in an application filed by the appellants herein for amendment of the plaint.

3. Brief Facts:

(a) Originally one Jhandu, resident of Village Haider Nagar, was the owner and in possession of land admeasuring 53 bighas 11 biswas at village Haider Nagar, Tehsil Malerkotla and 33 bighas 15 biswas situated at Village Binjoli Kalan, Tehsil Malerkotla. Jhandu died leaving behind Khuda Bux as his son and Aishan and Kaki as his daughters. The mutation of inheritance was sanctioned in favour of Khuda Bux alone being his son.

(b) Feeling aggrieved by the aforesaid mutation, Kaki and Aishan (daughters of Jhandu) filed Suit No. 280/162 against

Khuda Bux claiming 9/36 share each in the said lands before the subordinate Judge, Ist Class, Sangrur, Camp at Malerkotla. By order dated 20.12.1971, the sub-Judge dismissed the said suit.

(c) Challenging the said judgment, Kaki and Aishan filed an appeal being Civil Appeal No. 21 of 1972 before the District Judge, Sangrur. Vide order dated 04.07.1972 passed by the District Judge, the said appeal was dismissed as withdrawn in terms of the compromise arrived at between the parties. According to the terms of the compromise, it was agreed that Khuda Bux shall be entitled to retain possession of land admeasuring 34 Bighas 13 Biswas in village Haider Nagar with the condition that he and his wife Ramzanan will receive the produce of the suit land during their life time but they will have no right to alienate it by way of sale, mortgage or any other form. After the death of Khuda Bux and his wife, the said land would be divided among the four sons of Khuda Bux in equal shares. The remaining land owned by Khuda Bux in Binjoli and Haider Nagar was partitioned by him amongst his four sons in the manner set out in the compromise deed.

(d) On 12.09.1986, Khuda Bux executed a sale deed transferring ownership and possession of land admeasuring 17 Bighas and 10 biswas in village Haider Nagar in favour of the appellants herein. Challenging the said sale deed, the other two sons and two daughters of Khuda Bux filed a suit before the sub-Judge, Malerkotla. The sub-Judge dismissed the said suit and set aside the sale deed dated 12.09.1986. The said order was further confirmed in appeal.

(e) After the death of Khuda Bux, Ramzanan - his wife filed Suit No. 308 of 2002 before the Civil Judge, Malerkotla for declaration and permanent prohibitory injunction against all her children. In the above suit, on 24.12.2002, she also filed an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") seeking an injunction against the appellants herein from interfering with

her possession. The said application was dismissed. Against the dismissal of the said application, she filed an appeal being C.M.A. No. 7 of 2003 before the Additional District Judge, Sangrur. By order dated 06.08.2003, the Additional District Judge dismissed the same.

(f) Vide registered sale deed Nos. 1810 and 1811 dated 25.08.2003 Ramzanan (wife of Khuda Bux) and Bashiran and Rashidan (daughters of Khuda Bux) sold some lands to respondent No.1 to 3 herein and tried to forcibly dispossess the appellants and respondent No.4 herein from the lands under their possession.

(g) The appellants filed Suit No. 320 of 2003 in the Court of Civil Judge (Jr. Division) Malerkotla, for permanent prohibitory injunction restraining respondent Nos. 1-3 herein from forcibly and illegally dispossessing the appellants from the land in dispute.

(h) In the said suit, the appellants herein filed an application on 17.09.2004 under Order VI Rule 17 read with Section 151 of the Code for amendment of the plaint. The trial Court, by order dated 06.06.2007, dismissed the said application.

(i) Being aggrieved by the said order, the appellants filed Civil Revision No. 4486 of 2007 before the High Court of Punjab & Haryana. By impugned judgment dated 13.11.2007, the High Court dismissed the said revision.

(j) Aggrieved by the said judgment, the appellants have filed this appeal by way of special leave.

4. Heard Ms. Manmeet Arora, learned counsel for the appellants. None appeared for the respondents.

5. The only point for consideration in this appeal is whether the appellants herein have made out a case for amendment of the plaint in terms of Order VI Rule 17 of the Code.

6. Before considering the factual details and the materials placed by the appellants praying for amendment of their plaint, it is useful to refer Order VI Rule 17 which is as under:-

> *"17. Amendment of pleadings.*—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

7. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts

should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others vs. Gattu Mahesh and Others,* (2012) 2 SCC 300 and *Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others,* (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.

9. It is true that originally the appellants have approached the trial Court with a prayer for permanent prohibitory injunction restraining respondent Nos. 1-3 herein from forcible and illegal dispossession of the appellants herein from the land in dispute. Respondent Nos. 1-3 herein (Defendant Nos. 1-3 therein) filed written statement wherein they specifically alleged that they have stepped into the shoes of Ramzanan and Smt. Bashiran and Rashidan on the basis of the sale deeds dated 25.08.2003. It is the claim of the appellants that the above said Ramzanan and Smt. Bashiran and Rashidan have no concern with the ownership of the land in dispute and no right to alienate the suit land to the defendants or anybody else. In view of the stand taken by the defendants in their written statement, in the application filed under Order VI Rule 17 of the Code, the appellants have specifically raised that the alleged sale deed Nos. 1810 and 1811 dated 25.08.2003 in favour of defendant Nos. 1-3 executed by Ramzanan and Bashiran and Rashidan are liable to be set aside and have no effect on the rights of the plaintiffs and Saifur-Rehman qua the suit land and the

mutation Nos. 781 and 782 sanctioned on the basis of above noted sale deeds dated 25.08.2003 are also liable to be set aside. In view of the claim of the appellants, we verified the necessary averments in the written statement of Defendant Nos. 1 and 3 and we agree with the stand of the appellants.

10. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiciplity of litigation.

11. Learned counsel for the appellants has also brought to our notice that the amendments were necessitated due to the observations made by the High Court in its earlier order dated 19.04.2007 in C.R. No. 3361 of 2007 to the effect that the appellants' application for ad-interim injunction without

seeking cancellation of the sale deeds is not maintainable. This aspect has not been noticed by the trial Court as well as the High Court while considering the application filed under Order VI Rule 17 of the Code.

12. It is also brought to our notice that respondent Nos. 2 and 3 herein – transferees under the sale deed, are the nephews of the appellants herein and the transferors and the purchase of the suit land by them is void to their knowledge as they were equally bound by the judgment dated 20.12.1971 and compromise deed dated 04.07.1972 declaring that under the applicable customary law of inheritance to the parties therein, widows and daughters have no right of inheritance in the presence of the sons. It is the claim of the appellants that in view of the same, respondents – transferees are not bona fide purchasers of the suit land. Learned counsel for the appellants again brought to our notice that these facts were specifically stated in the un-amended plaint and, therefore, amendment seeking incorporation of relief of declaration that the sale deeds are void does not change the nature of the suit. Because of those allegations in the un-amended plaint, the same was denied by the defendants in their written statement and we are satisfied that the necessary factual matrix as regards the relief of cancellation was already on record and the same was an issue arising between the parties.

13. In view of the stand taken by the respondent Nos. 1-3 herein/Defendant Nos. 1-3 in their written statement and the observation of the High Court in the application filed for injunction, we are of the view that the proposed amendment to include a relief of declaration of title, in addition to the permanent injunction, is to protect their interest and not to change the basic nature of the suit as alleged.

14. In *Pankaja & Anr. vs. Yellapa (Dead) By Lrs. & Ors.* AIR 2004 SC 4102 = (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate

cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

16. In the light of various principles which we have discussed and the factual matrix as demonstrated by learned counsel for the appellants, we are satisfied that the appellants have made out a case for amendment and by allowing the same, the respondents herein (Defendant Nos. 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire. Accordingly, the order of the trial court dated 06.06.2007 dismissing the application for amendment of plaint in Suit No. 320 of 2003 as well as the High Court in Civil Revision No. 4486 of 2007 dated 13.11.2007 are set aside. The application for amendment is allowed. Since the suit is of the year 2003, we direct the trial Court to dispose of the same within a period of six months from the date of receipt of copy of the judgment after affording opportunity to all the parties concerned. The appeal is allowed. No order as to costs.

K.K.T. Appeal allowed.

COMMISSIONER OF INCOME TAX-II
v.
M/S. KRISHI UTPADAN MANDI SAMITI
(Civil Appeal No. 7040 of 2012 etc.)

SEPTEMBER 27, 2012

[S.H. KAPADIA, CJI., AND MADAN B. LOKUR, J.]

Income Tax Act, 1961:

ss.11(1)(a) and 2(15) – Assessee-Market Committee established under State Krishi Utpadan Mandi Adhiniyam and registered u/s. 12AA of 1961 Act – Statutorily required to transfer its funds to Mandi Parishad (another institution established under the Adhiniyam) – Transfer of the funds whether would constitute application of income for charitable purpose within meaning of s. 11(1)(a) – Held: The Adhiniyam was enacted for advancement of the object of general public utility in terms of s. 2(15) of 1961 Act – The transfer by the assessee would constitute application of its income for charitable purpose (which includes advancement of object of general public utility) u/s.11(1)(a) – Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 – ss. 12.

s.12(1) – Transfer of funds by Mandi Samiti (assessee) to Mandi Parishad – Whether constitutes application of income u/s. 11(1)(a) of 1961 Act – Assessing Officer holding that assesee not entitled to claim exemption u/s. 12(1) because the contribution by the assessee to the Parishad was not voluntary but was a statutory requirement – Held: Assessing Officer erred in invoking s. 12(1) – ss. 12(1) and 11(1)(d) deal with voluntary contribution while the issue in the present case pertained to transfer of amount to the Mandi Parishad u/s. 11(1)(a).

The question for consideration in the present

appeals was whether amounts transferred by the assessee-Mandi Samiti to Mandi Parishad would constitute application of income for charitable purposes within the meaning of Section 11(1)(a) of the Income Tax Act, 1961?

The Revenue contended that the amounts transferred to the Parishad would not constitute application of income within meaning of s. 11(1)(a) of the Act in view of the fact that the assessee is only a conduit which collects Mandi Shulk (fees) and utilization of the fee is by the Parishad (whose accounts are not verifiable), and not by the assessee.

Dismissing the appeals, the Court

HELD: 1.1 Keeping in mind the statutory scheme of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 whose object falls u/s. 2(15) of Income Tax Act, 1961, there is no doubt that the assessee satisfies the conditions of Section 11(1)(a) of the Act. The income derived by the assessee [which is an institution registered under Section 12AA of 1961 Act] from its property has been applied for charitable purposes which includes advancement of an object of general public utility. [Para 6] [942-E-G]

1.2. In the present case, the Department has not withdrawn the registration under Section 12AA of the Act. Even after the amendment of Section 10(20) and Section 10(29) of the Act, the assessee continues to enjoy the registration under Section 12AA of the Act for the reason that the assessee is a Market Committee statutorily established under Section 12 of the Adhiniyam for the advancement of the object of general public utility in terms of Section 2(15) of the Act. Moreover, it is always open to the Department to verify and find out whether the Mandi Parishad has utilized the amounts for the purposes of the Adhiniyam. [Para 5] [941-D-G]

1.3. Under Section 19(2) of the Adhiniyam, all expenditure incurred by the assessee in carrying out the purposes of the Adhiniyam [which includes advancing credit facilities to farmers and agriculturists as also construction of development works in the Market Area] has to be defrayed out of the Market Committee Fund and the surplus, if any, has to be invested in such manner as may be prescribed. This is one circumstance in the Adhiniyam to indicate application of income. Similarly, under Section 19-B(2) of the Adhiniyam, the assessee is statutorily obliged to apply Market Development Fund for the purposes of development of Market Area. Under Section 19-B(3), assessee is statutorily obliged to utilize the amounts lying to the credit in the Market Development Fund for extending facilities to the agriculturists, producers and payers of market fees. The Market Development Fund is also to be statutorily utilized for development of market yards. Similarly, all contributions received by the Market Committee [Mandi Samiti] from its members under Section 19(5) shall be statutorily paid by the Market Committee [assessee] to Uttar Pradesh State Marketing Development Fund. These provisions clearly indicate application of income of the assessee to the statutory funds set up under the Adhiniyam. [Para 6] [942-A-E]

2. In one of the matters, the Assessing Officer held that the assessee was not entitled to claim the benefit of exemption under Section 12(1) of the Act because the contribution to the Parishad was not voluntary but a statutory requirement. Such finding is not correct. On reading the Adhiniyam it is clear that the word "contribution" in the Adhiniyam is in the context of what the members contribute to the Fund(s) held statutorily by the Mandi Samiti which merely transfers the amount(s) to the Fund(s) of Mandi Parishad. Even the question framed by Court/Authorities below is "Whether amounts

transferred by the Mandi Samiti would constitute application of income under Section 11(1)(a) of the Act". Therefore, the question of voluntary contribution under Section 11(1)(d) or under Section 12(1) does not arise. The question of "control" may be relevant in the context of Section 11(1)(d) or under Section 12(1). However, in the present case, the question framed deals with application of income under Section 11(1)(a). Hence, the Assessing Officer had erred in invoking Section 12(1). In view of the provisions of the Adhiniyam it is held that the transfer of the amounts by Mandi Samiti constituted application of income under Section 11(1)(a) of the Act. [Para 7] [943-B-E; 944-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7040 of 2012.

From the Judgment & Order dated 4.12.2009 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in ITA No. 102 of 2009.

WITH

C.A. No. 7041, 7042, 7044, 7045, 7046, 7047, 7048, 7049, 7050, 7051, 7052, 7053, 7054, 7055, 7056, 7057, 7058, 7059, 7060, 7061, 7062, 7063, 7064, 7065, 7066, 7067, 7068, 7069, 7070, 7071, 7072, 7073, 7074, 7075, 7076, 7077, 7078, 7079, 7080, 7081, 7082, 7083, 7084, 7085, 7086, 7087, 7088, 7089, 7090, 7091, 7092, 7093, 7094, 7095 and 7096 of 2012.

Arijit Prasad, Rahul Kaushik, Sadhana Sandhu, Anil Katiyar (for B.V. Balaram Das) for the Appellant.

Akarsh Garg, Sunil Kumar Jain, Dr. Rakesh Gupta, Poonam Ahuja, Rani Kiyala, Sunil Kumar for the Respondent.

The Judgment of the Court was delivered by

S.H. KAPADIA, CJI. 1. Heard learned counsel on both sides.

Delay condoned.

Leave granted.

2. This batch of civil appeals has been filed by the Department.

3. The question, which arises for determination in this batch of civil appeals, is as follows:

"Whether amounts transferred by the assessee to Mandi Parishad would constitute **application** of income for charitable purposes within the meaning of Section 11(1)(a) of the Income Tax Act, 1961?"

4. M/s. Krishi Utpadan Mandi Samiti, respondent-assessee herein, is a Market Committee incorporated and registered under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 ["1964 Adhiniyam", for short]. The assessee carries out its activities in accordance with Section 16 of 1964 Adhiniyam under which it is required to provide facilities for sale and purchase of specified agricultural produce in the Market Area. The Members of the said Market Committee consist of producers, brokers, agriculturists, traders, commission agents and arhatiyas. The source of income of the assessee is in the form of receipt collected as market fee from buyers and their agents, development cess on sale and purchase of agricultural products and licence fees from traders. Under 1964 Adhiniyam, broadly, there are two distinct entities or bodies. One is Mandi Samiti [Assessee] and the other is Mandi Parishad. Mandi Samiti [Board] is established and incorporated under Section 12 of 1964 Adhiniyam for a specified Market Area. Section 16 of 1964 Adhiniyam, inter alia, concerns functions and duties of the Market Committee. Under Section 16(1) of 1964 Adhiniyam, the Market Committee

is under statutory obligation to enforce the provisions of 1964 Adhiniyam, the Rules and Bye-laws made thereunder so as to provide such facilities for sale and purchase of specified agricultural produce, as may be specified by the Mandi Parishad from time to time. Section 17 of 1964 Adhiniyam deals with powers of the Mandi Samiti. Section 17(iii), inter alia, empowers the Mandi Samiti to levy and collect market fee payable on transactions of sale of specified agricultural produce in the Market Area at such rates, as may be prescribed by the State Government. Under Section 17(iii)(b), the Mandi Samiti is also empowered to charge and collect development cess. Under Section 17(iv), the Mandi Samiti has to utilise Market Committee Fund for the purposes of 1964 Adhiniyam. Under Section 17(v-a), Mandi Samiti can even advance loans to Mandi Parishad on such terms and conditions as may be mutually agreed upon between Mandi Parishad and Mandi Samiti. Section 19 deals with constitution of Market Committee Fund and its utilization. Section 19(1) stipulates that all monies received by Mandi Samiti shall be credited to a fund called "Market Committee Fund". Section 19(2), inter alia, states that all expenditure incurred by the Committee in carrying out the purposes of 1964 Adhiniyam shall be defrayed out of Market Committee Fund and surplus, if any, shall be **invested** in such manner as may be prescribed. The expenses to be incurred and debited are indicated in Section 19(3). Section 19-B of 1964 Adhiniyam deals with establishment of Market Development Fund. Under Section 19-B, the Mandi Samiti shall establish a fund to be called "Market Development Fund" to which amounts shall be credited as may be directed from time to time by Mandi Parishad. Under Section 19-B(2), the Market Development Fund shall be applied for development of the Market Area. Under Section 19-B(3), the purposes for which Market Development Fund shall be utilised has been indicated. Section 26-A of 1964 Adhiniyam deals with establishment of Mandi Parishad [**Board**]. Under 1964 Adhiniyam, the Board shall be a body corporate. Section 26-P, inter alia, states that

the Mandi Parishad [Board] shall have its own fund which shall be deemed to be a local fund and in which shall be credited all monies received by or on behalf of the Board, except monies required to be credited in the State Marketing Development Fund under Section 26-PP. Under Section 26-PP, State Marketing Development Fund has been established for Mandi Parishad [Board] in which amounts received from the Market Committee under Section 19(5) shall be credited. Section 19(5), inter alia, states that every Market Committee shall, out of its total receipts realised as development cess, shall pay to the Mandi Parishad [Board] **contribution** at a specified rate. The said payment from the Market Committee [Mandi Samiti] shall be credited to the State Marketing Development Fund under Section 26-PP. The State Marketing Development Fund shall be utilized by the Mandi Parishad [Board] for purposes indicated under Section 26-PP(2). Section 26-PPP deals with establishment of Central Mandi Fund to which amounts specified in sub-section (1) shall be credited. Section 26-PPP(2), inter alia, states that the Central Mandi Fund shall be utilized by Mandi Parishad [Board] for rendering assistance to financially weak and under-developed Market Committees; that the Funds would be used for construction, maintenance and repairs of link roads, market yards and other development works in the Market Area and such other purposes as may be directed by the State Government or the Board.

5. It is not in dispute that both, the Mandi Samiti and the Mandi Parishad, are duly registered under Section 12AA of the Income Tax Act, 1961 ["1961 Act", for short]. It is also not in dispute that, after the amendment of Section 10(20) and Section 10(29) by Finance Act No.2 of 2002 with effect from 1st April, 2003, that the word "**Local Authority"** has lost its restricted meaning and, therefore, the assessee [Market Committee] has to satisfy the conditions of Section 12AA read with Section 11(1)(a) of 1961 Act, like any other body or person. According to Shri Rajiv Dutta, learned senior counsel

for the Department, in view of the said Amendment *vide* Finance Act No.2 of 2002, the assessee has to show that, during the relevant Assessment Year, income has been derived from property held under Trust and that the said income stood **applied** to charitable purposes. According to the learned counsel, if one analyses the scheme of 1964 Adhiniyam, it becomes clear that the amounts **transferred** by the assessee to Mandi Parishad cannot constitute **application** of income for charitable purposes within the meaning of Section 11(1)(a) of 1961 Act in view of the fact that the assessee [Mandi Samiti] is only a conduit which collects Mandi shulk [fees] whereas utilization of the said Mandi shulk is not by the assessee but is made by another entity, i.e., Mandi Parishad, whose Accounts are not verifiable and, therefore, according to the Department, such income will not get the benefit of exemption under Section 11(1)(a) of 1961 Act. We find no merit in this contention. In this case, we have analysed the scheme of 1964 Adhiniyam. In this case, the Department has not withdrawn the registration under Section 12AA of 1961 Act. In this case, we are only concerned with the question as to "whether **transfer** of amounts collected by Mandi Samiti to Mandi Parishad [Board] would constitute application of income for charitable purposes under Section 11(1)(a) of 1961 Act?" Even after the amendment of Section 10(20) and Section 10(29) of 1961 Act, the assessee continues to enjoy the registration under Section 12AA of 1961 Act for the reason that the assessee is a Market Committee statutorily established under Section 12 of 1964 Adhiniyam for the advancement of the object of general public utility in terms of Section 2(15) of 1961 Act. [See also Section 16 of 1964 Adhiniyam]. Moreover, it is always open to the Department to verify and find out whether the Mandi Parishad has utilized the amounts for the purposes of 1964 Act.

6. The question is what do we mean by "application of income"? This judgment is confined to the statutory scheme of 1964 Adhiniyam. Under Section 19(2) of 1964 Adhiniyam, all

expenditure incurred by the assessee in carrying out the purposes of 1964 Adhiniyam [which includes advancing credit facilities to farmers and agriculturists as also construction of development works in the Market Area] has to be defrayed out of the Market Committee Fund and the surplus, if any, has to be **invested** in such manner as may be prescribed. This is one circumstance in the 1964 Act to indicate application of income. Similarly, under Section 19-B(2) of 1964 Adhiniyam, the assessee is statutorily obliged to **apply** Market Development Fund for the purposes of development of Market Area. Under Section 19-B(3), assessee is statutorily obliged to utilize the amounts lying to the credit in the Market Development Fund for extending facilities to the agriculturists, producers and payers of market fees. The Market Development Fund is also to be statutorily utilized for development of market yards. Similarly, all contributions received by the Market Committee [Mandi Samiti] from its members under Section 19(5) shall be statutorily paid by the Market Committee [assessee] to Uttar Pradesh State Marketing Development Fund. These provisions clearly indicate application of income of the assessee to the statutory Funds set up under 1964 Adhiniyam. Keeping in mind the statutory scheme of 1964 Adhiniyam, whose object falls under Section 2(15) of 1961 Act, there is no doubt that the assessee satisfies the conditions of Section 11(1)(a) of 1961 Act. The income derived by the assessee [which is an institution registered under Section 12AA of 1961 Act] from its property has been applied for charitable purposes which includes advancement of an object of general public utility. Consequently, we see no reason to interfere with the impugned judgement of the High Court.

7. Before concluding, one point needs to be highlighted. In one of the matters, the Assessing Officer has held that, on the facts and circumstances of the case, the assessee was not entitled to avail the benefits of exemption under Section 12(1) of 1961 Act, despite the fact that it was registered under Section 12AA of 1961 Act, because the assessee was

statutorily obliged to contribute to the Fund of the Mandi Parishad under 1964 Adhiniyam. Therefore, according to the Assessing Officer, there was no voluntary contribution. Absent such voluntary contribution, according to the Assessing Officer, the assessee herein was not entitled to claim the benefit of exemption under Section 12(1) of 1961 Act. We find no merit in this finding of the Assessing Officer. At the outset, it needs to be mentioned that the Assessing Officer has not understood the scheme of the 1964 Act. On reading the 1964 Adhiniyam (Act) it is clear that the word "contribution" in the Adhiniyam is in the context of what the members contribute to the Fund(s) held statutorily by the Mandi Samiti which merely *transfers* the amount(s) to the Fund(s) of Mandi Parishad. Even the question framed by Court/Authorities below is "Whether amounts transferred by the Mandi Samiti would constitute application of income under Section 11(1)(a) of 1961 Act". Therefore, the question of voluntary contribution under Section 11(1)(d) or under Section 12(1) does not arise. The question of "control" may be relevant in the context of Section 11(1)(d) or under Section 12(1). However, in the present case, the question framed deals with application of income under Section 11(1)(a). Hence, the Assessing Officer had erred in invoking Section 12(1). Section 11(1) deals with four items of "income" from property held for charitable purposes. These four items of income are distinct and separate items of income. Section 11(1)(d) deals with the fourth item of income. Section 11(1)(d), inter alia, refers to income in the form of voluntary contributions made with a specific direction that it shall form part of the corpus of the Trust or Institution whereas Section 12(1) refers to non-corpus voluntary contribution. In the present case, neither Section 11(1)(d) nor Section 12(1) of 1961 Act is attracted. In the present case, the narrow controversy is, whether, in the facts and circumstances of the case, the amounts statutorily transferred to Rajya Krishi Utpadan Mandi Parishad would constitute application of income for charitable purposes under Section 11(1)(a) of 1961 Act? Looking to the provisions of

1964 Adhiniyam we hold that the transfer of the amounts by Mandi Samiti constituted application of income under Section 11(1)(a) of 1961 Act.

8. For the above reasons, these civil appeals filed by the Department are dismissed with no order as to costs.

K.K.T. Appeals dismissed.