DEVENDRA PATEL
v.
RAM PAL SINGH & ORS.
(Civil Appeal No. 7907 of 2013)

SEPTEMBER 6, 2013

[R.M. LODHA AND MADAN B. LOKUR, JJ.]

Representation of the People Act, 1951 - s.79(b) and 82(b) - Person whose nomination rejected, whether can be considered as a 'candidate' for the purpose of s.82(b) - Held: Where nomination of person is rejected on the ground of such person being disqualified, he is neither a duly nominated candidate nor he can claim to be duly nominated candidate, within the meaning of s.79(b) - Therefore, he cannot be considered as 'candidate' for the purpose of s.82(b).

The question for consideration in the present appeal was whether the person whose nomination was rejected, must be considered as a 'candidate' for the purpose of s. 82(2) of the Representation of the People Act, 1951.

Dismissing the appeal, the Court

HELD: The question whether a person is a 'candidate' for the purpose of Section 82(b) of Representation of the People Act, 1951 would depend on whether he is a 'candidate' within the meaning of Section 79(b). Since nomination of 'J' was rejected as he was disqualified, he cannot be considered to be duly nominated as a candidate at the election. The expression "claims to have been duly nominated as a candidate at any election" in Section 79(b) of the 1951 Act, would not take within its fold a person whose nomination has been rejected as being disqualified. Thus, where the nomination of a person is rejected by the returning officer

on the ground of such person being disqualified, such person is neither a duly nominated candidate nor he can claim to be duly nominated as a candidate. In view of this position, 'J' is not covered by the expression 'candidate' in either of the two categories within the meaning of Section 79(b). Therefore, 'J' cannot be treated as a 'candidate' for the purpose of Section 82(b) of the 1951 Act. [Paras 5, 8, 9 and 10] [293-E; 294-D-F; 295-B-D]

Mohan Raj vs. Surendra Kumar Taparia and Ors. **(1969) 1 SCR 630 - distinguished.**

Mithilesh Kumar Sinha vs. Returning Officer for PresidentialElection and Ors. **AIR 1993 SC 20: 1992 (1) Suppl. SCR 651 - referred to.**

Case Law Reference:

(1969) 1 SCR 630	**distinguished**	**Para 9**
1992 (1) Suppl. SCR 651	**referred to**	**Para 3**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7907 of 2013.

From the Judgment and Order dated 26.08.2010 of the High Court of Madhya Pradesh, Principal Bench at Jabalpur in Election Petition No. 16 of 2009.

Saurabh Suman Sinha, Gaurav Agrawal for the Appellant.

Vikramjit Banerjee, S.S. Shamshery, V.M. Vishnu, R.C. Kohli for the Respondent.

The Judgment of the Court was delivered by

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

2. The only argument canvassed by the learned counsel for the appellant is that Jaswant Singh whose nomination was rejected must be regarded as a 'cand e

of Section 82(b) of the Representation of the People Act, 1951 (for short, '1951 Act') and since he has not been joined as a party respondent in the election petition although there is allegation of corrupt practice against him, the election petition is liable to be rejected.

3. The High Court has considered this question and, relying upon the decision of this Court in M*ithilesh Kumar Sinha Vs. Returning Officer for Presidential Election & Others*[1], held that Jaswant Singh could not be regarded as a 'candidate' as defined in Section 79(b) for the purpose of Section 82(b) and overruled the objection regarding non-joinder of Jaswant Singh.

4. The admitted fact is that Jaswant Singh's nomination was rejected by the returning officer as he was found to be disqualified. Jaswant Singh challenged the order of the returning officer rejecting his nomination in a Writ Petition before the High Court, but that Writ Petition was not taken to the logical conclusion and it was dismissed.

5. The question is, whether Jaswant Singh is a 'candidate' for the purpose of Section 82(b) ? The answer to this would depend on whether he is a 'candidate' within the meaning of Section 79(b).

6. Section 79(b) reads as follows :-

"79. Definitions.? In this Part and in Part VII unless the context otherwise requires,-

(a) x x x

(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;

(c) x x x

1. AIR 1993 SC 20.

(d) x x x

(e) x x x

(f) x x x"

7. Section 82(b) reads as under :-

"82. Parties to the petition.? A petitioner shall join as respondents to his petitioner ?

(a) x x x

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

8. In our opinion, in view of the admitted position that Jaswant Singh's nomination was rejected as he was disqualified, he cannot be considered to be duly nominated as a candidate at the election. Learned counsel for the appellant submits that his contention is founded on the expression "claims to have been duly nominated as a candidate at any election" in Section 79(b) of the 1951 Act. The expression "claims to have been duly nominated as a candidate" would not take within its fold a person whose nomination has been rejected as being disqualified. Such person cannot claim to be duly nominated as a candidate when he is not qualified to contest election. In view of this position, Jaswant Singh is not covered by the expression 'candidate' in either of the two categories within the meaning of Section 79(b).

9. Learned counsel for the appellant relies upon a decision of this Court in *Mohan Raj Vs. Surendra Kumar Taparia & Ors.*[2] in support of his contention. *Mohan Raj*[2] was a case where one R.D. Periwal who was duly nominated candidate but withdrew his nomination later was not joined as a party in the election petition though allegations of corrupt practice against him were made. This Court held that a candidate who is duly

2. (1969) 1 scr 630.

nominated continues to be candidate for the purpose of Section 82(b) in spite of withdrawal. There is an important difference between that case and this case. In that case, R.D. Periwal was duly nominated candidate but he withdrew later, whereas here Jaswant Singh's nomination was rejected as he was found to be disqualified. For this crucial and compelling difference, the statement of law in *Mohan Raj*[2] has no application. Where the nomination of a person is rejected by the returning officer on the ground of such person being disqualified, in our view, such person is neither a duly nominated candidate nor he can claim to be duly nominated as a candidate.

10. The High Court did not commit any error in not treating Jaswant Singh as a 'candidate' for the purpose of Section 82(b) of the 1951 Act.

11. Appeal is dismissed with no order as to costs.

K.K.T. Appeal dismissed.

UNION OF INDIA & ORS.
v.
B. BANERJEE
(Civil Appeal No. 7298 of 2013)

SEPTEMBER 06, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND RANJAN GOGOI, JJ.]

Service Law:

Railway Establishment Manual-Volume I (Revised Edition 1989) - Running Allowance Rules, 1981 - rr.902, 903, 905 and 907 - Allowance in lieu of kilometerage (ALK) - Entitlement - To medically decategorised Driver, working as Crew Controller with stationary duties - Held: Running Allowance is to be paid only to running staff engaged in actual movement of trains or to the staff temporarily assigned stationary duties who are likely to go back and perform running duties - Medically decategorised Driver, in stationary duty, since not falling in either of the categories, not entitled to Running Allowance (ALK) - Running Allowance to which the medically decategorised staff was entitled, while a member of running staff, has been protected as part of his pay in the post of Crew Conroller - Such act of the appellant is in compliance with the provisions of s.47 of Disabilities Act - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - s.47.

The question for consideration in the present appeal was whether the respondent, a medically decategorised Driver of the Indian Railways, working as a Crew Controller with stationary duties, was entitled to allowance in lieu of kilometerage (ALK).

Allowing the appeal, the Court

HELD: 1. As per the Running Allowance Rules, 1981 as embodied in the Railway Establishment Manual - Volume I (Revised Edition, 1989), no Running Allowance i.e. either kilometerage allowance or allowance in lieu of kilometerage is contemplated for any staff, including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running Allowance of either description is required to be paid only to members of the running staff who are directly engaged in actual movement of trains or such staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties. The retention of decategorised Drivers working as Crew Controllers in the original cadre of Drivers by the Railway Board's Circular No.9/98 dated 09.01.1998 and their entitlement to Running Allowance (ALK) has to be understood in the above context. The aforesaid inclusion, which is wholly fictional, cannot confer any benefit contrary to the express provision of the Running Allowance Rules. The above position has been made abundantly clear by the Railway Board Circular No.12/2004 dated 14.01.2004. [Paras 9 and 10] [304-F-H; 305-A-C]

2. Under Rule 903 of the Running Allowance Rules, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorised Driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done by the appellant. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the respondent was entitled while he was a member of the running staff has

been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified. [Para 11] [305-D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7298 of 2013.

From the Judgment and Order dated 20.06.2011 of the High Court at Calcutta in WPCT No. 128 of 2011.

Mohan Jain. ASG, S.K. Bajwa, Mohit Garg, Shreekant N. Terdal for the Appellants.

Avijit Bhattacharjee, Samina Sheikh, Rohit Dutta, Kamal Kumar Banerjee, Tayenjam Momo Singh for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The precise question that arises for determination in the present appeal is whether the respondent, a medically decategorised Driver of the Indian Railways, working as a Crew Controller with stationary duties, is entitled to allowance in lieu of kilometerage (ALK). The Central Administrative Tribunal by its order dated 10.02.2011 answered the question against the respondent which led to a round of litigation before the Calcutta High Court. The High Court held that the respondent was entitled to the allowance in question. Aggrieved, the Union has filed this appeal.

2. The basic facts that would require notice are not in dispute. The respondent while serving as a Diesel Driver (Goods) Grade-II was found unfit to work as a Driver in a special medical examination that was held on 5.1.2005. He was, however, allowed to work as a Crew Controller. The said post, though involved performance of stationary duties was included in the cadre of Driver in terms of Railway Board Circular No.9/98 dated 09.01.1998. Regular Drivers, in addition to medically decategorised Drivers like the Respondent, were also drafted to perform the duties of

categories of employees i.e. regular Drivers and medically decategorised Drivers in the post of Crew Controller were being paid ALK. A subsequent Circular No.12/2004 dated 14.01.2004 was issued to make it clear that medically decategorised Drivers allowed to perform duties of Crew Controller were ineligible to the grant of any benefit specifically admissible to the running staff on the premise that such decategorised Drivers ceased to be running staff. Accordingly, it was clarified that the benefit of allowance in lieu of kilometerage (ALK) is not admissible to medically decategorised Drivers working as Crew Controllers. Following the aforesaid clarificatory Circular No.12/2004 dated 14.01.2004, the respondent who was drawing ALK was denied further benefit of the same which led to the institution of the proceeding before the Tribunal. The Tribunal, as it appears from its order dated 10.02.2011, took the view that following his medical decategorisation the respondent ceased to be a running staff and as he had been performing stationary duties he is not entitled to any Running Allowance. The High Court, on being approached by the respondent, however, took the view that even after his medical decategorisation the respondent continued to remain in the cadre of Driver (the said cadre included the post of Crew Controller). Hence, he was entitled to ALK. Accordingly, the impugned directions have been issued which have led to the institution of the present appeal by the Union.

3. We have heard the learned counsels for the parties.

4. To appreciate the issues arising in the present appeal, it will be necessary to notice the relevant provisions of the Running Allowance Rules (1981) as embodied in the Indian Railway Establishment Manual - Volume-I (Revised Edition 1989).

5. Rule 902 (2)(iii) defines "running duties" to mean "duties directly connected with the movement of trains and performed by running staff while employed on moving trains or engines

including shunting engines".

Sub-rule (iv) of Rule 902 is in the following terms:

"(iv) "Running staff" performing "running duties" shall refer to Railway servants of the categories mentioned below:

Loco	Traffic
(a) Drivers, including Motormen & Rail Motor Drivers but excluding Shunters.	(a) Guards
(b) Shunters	(b) Assistant Guards
(c) Firemen, including Instructing Firemen, Electric Assistant on Electric Locos and Diesel Assistant /Drivers. Assistants on Diesel Locos.	

"Running Allowance" as defined in sub-rule (v) of Rule 902 is extracted below:

"(v) "Running Allowance" means an allowance ordinarily granted to running staff in terms of and at the rates specified in these rules, and/or modified by the Central Government in the Ministry of Railways (Railway Board), for the performance of duties directly connected with charge of moving trains and includes a "Kilometrage Allowance" and "Allowance in lieu of kilometrage" but excludes special compensatory allowances."

6. Rule 903 which is quoted below makes it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the

"903. Pay element in Running Allowance:-30% of the basic pay of the running staff will be treated to be in the nature of pay representing the pay element in the Running Allowance. This pay element would fall under clause (iii) of Rule 1303-FR-9 21(a) i.e. "emoluments which are specially classed as pay by the President".

7. Rule 905 deals with the types of allowances admissible to running staff and is in the following terms:

"905. Types of Allowances admissible to Running Staff:-Running staff shall be entitled to the following allowances subject to the conditions specified by or under these rules:

(i) Kilometrage Allowance for the performance of running duties, in terms of and at the rates specified in these rules.

(ii) An allowance in lieu of kilometrage (ALK) for the performance of stationary duties such as journeys on transfer, joining time, for attending enquiries or law courts on Railway business, attending departmental inquiries as Defense Counsel or witness, Ambulance classes, volunteer duty in connection with Territorial or other similar Fund and Staff Loans Fund Committees, meeting of Railway Institutes, Welfare and Debt Committees, Staff Benefit Fund and Staff Loan Fund Committees, Staff and Welfare Committees, for attending the meetings of Railway Co-operative Societies in cases where special casual leave is granted for doing so, medical and departmental examinations, participating in recognized athletic contests and tournaments, scouting activities and Lok Sahayak Sena Camp, representing recognized labor organizations, attending periodical meetings with District offices, Heads of Departments and General

Managers, attending First-aid classes, undergoing training in carriage sheds and as worker teacher under the Workers' Education Scheme attending training schools for refresher and promotion courses, undergoing sterilization operation under Family Planning Scheme appearing in Hindi Examination Guards booked on escort duty of treasure and other insured parcels on trains, Drivers and Firemen when kept spare for a day or two to enable them to examine and clean the engines thoroughly before being deputed to work special trains for VIPs, or any other duties which may be declared in emergencies as qualifying for an allowance in lieu of kilometrage.

(iii) **Special Compensatory Allowances**

The running staff are eligible for the following compensatory allowances under the circumstances and at the rates specified in these rules:

(a) Allowance in lieu of Running Room facilities.

(b) Breach of rest allowance.

(c) Outstation (Detention) Allowance.

(d) Outstation (Relieving) Allowance.

(e) Accident Allowance.

(iv) An official Allowance when undertaking duties in higher grades of posts open to running staff or in stationary appointments."

8. Rule 907 which deals with allowance in lieu of kilometerage (ALK) is in the following terms :

"907. Allowance in lieu of Kilometrage (ALK)

When running staff are engaged in or employed on non-running duties as specified in Rule 3 (ii) above, they shall be entitled to the payment of an allowance in lieu of Kilometrage as indicated below for every calendar day for such non-running duties as may be required to be performed by them:

(a) When such non-running duties are performed by the running staff at their headquarters, they shall be paid the pay element of the Running Allowance, namely, 30% of the basic pay applicable for the day.

(b) When such non-running duties are performed by the running staff at outstations, they shall be paid ALK at the following rates:

S. No.	Category of Running Staff	New scales of pay	Revised rates of ALK (160 km.) per day w.e.f. 1-11-1986*
1.	Mail Driver	1640-2900	45.20
2.	Passenger Driver	1600-2660	45.10
3.	Goods Guard	1350-2200	45.05
4.	First Fireman/ Diesel Asstt./ Electric Asstt	950-1500	30.90
5.	Second Fireman	825-1200	26.25
6.	Shunter	1200-2040	33.05
7.	Mail Guard	1400-2600	36.95
8.	Passenger Guard	1350-2200	36.90
9.	Goods Guard	1200-2040	36.80
10.	Assistant Guard/ Brakesmen	950-1400	22.00

9. From the provisions of the Running Allowance Rules, extracted above, it is abundantly clear that only a specific category of employees in the Railways like Drivers, Motormen, Firemen, Guards, Assistant Guards etc. who constitute the running staff and such staff who are directly connected with the movement of trains perform running duties. Running Allowance under the Rules is required to be paid only to the running staff who are engaged in the performance of duties directly connected with the movement of trains and such allowance includes kilometerage allowance or allowance in lieu of kilometerage (ALK). While kilometerage allowance is to be paid for performance of actual running duties, the allowance in lieu of kilometerage (ALK) is to be paid to such members of the running staff who are temporarily required to perform stationary duties. The rules also make it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the Running Allowance. Those members of the running staff who are employed on non-running duties are paid the aforesaid 30% of the basic pay if such non-running duties are performed at the headquarters whereas in case such non-running duties are performed by the running staff at outstations they are required to be paid ALK at the rates prescribed by Rule 907(b). It is thus clear that no Running Allowance i.e. either kilometerage allowance or allowance in lieu of kilometerage is contemplated for any staff, including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running Allowance of either description is required to be paid only to members of the running staff who are directly engaged in actual movement of trains or such staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties. The respondent does not fall in either of the above two categories.

10. The retention of decategorised Drivers working as Crew Controllers in the original cadre of Drivers by the Railway Board's Circular No.9/98 dated 09.01.1998 and their entitlement to Running Allowance (ALK) has to be understood in the above context. The aforesaid inclusion, which is wholly fictional, cannot confer any benefit contrary to the express provision of the Running Allowance Rules inasmuch as a decategorised Driver working as a Crew Controller is not a member of the running staff or engaged in performance of running duties as defined by the provisions of Running Allowance Rules. The above position has been made abundantly clear by the Railway Board Circular No.12/2004 dated 14.01.2004, details of which have already been noticed.

11. There is yet another aspect of the matter which would require a mention. Under Rule 903 of the Running Allowance Rules, as noticed above, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorised Driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as is evident from the rejoinder affidavit of the Union. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified.

12. We, therefore, hold that the High Court was not justified in issuing the impugned directions for grant of ALK to the respondent. The order of the High Court dated 20.06.2011 is therefore set aside and the appeal is allowed.

K.K.T. Appeal allowed.

PINAKIN MAHIPATRAY RAWAL
v.
STATE OF GUJARAT
(Criminal Appeal No. 811 of 2004)

SEPTEMBER 9, 2013

[K.S. RADHAKRISHNAN AND PINAKI CHANDRA GHOSE, JJ.]

Penal Code, 1860 - ss. 498A and 306 - Married woman committing suicide within 7 years of marriage, allegedly due to extra-marital relationship between her husband (A-1) and husband's colleague (A-2) - Suicide note left by the deceased - Conviction of A-1 u/ss. 498A and 306 - Justification - Held: On facts, not justified - A-1 did not ill-treat the deceased, either physically or mentally demanding dowry, who was living with A-1, in the matrimonial home till the date, she committed suicide - The alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide - A-1 never intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide - The prosecution did not discharge the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of such a degree which was likely to drive the wife to commit suicide - At best the relationship of A-1 and A-2 was a one-sided love affair, A-1 might have developed some liking towards A-2, all the same, the facts disclose that A-1 had discharged his marital obligations towards the deceased - The suicide note completely exonerates A-1, which states that he was not responsible for death of the deceased - Further, no evidence forthcoming to show that A-2 ever evinced any interest to marry A-1 - On the other hand, during subsistence of the alleged relationship, A-2 herself got married - The relationship A-1 had with A-2 was not of such a nature which

under normal circumstances would drive one to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet his wife to commit suicide - Evidence Act, 1872 - s.113A.

Family Law - Matrimonial Law - Extra Marital relationship - Meaning of - Held: Extra-marital relationship as such is not defined in the IPC.

Family Law - Matrimonial Law - Alienation of affection by stranger - Anglo-Saxon common law on alienation of affection - Applicability - Held: It does not have much roots in India, the law being still in its nascent stage.

Family Law - Matrimonial Law - Alienation of affection by stranger - Liability - When arises - Held: A person is not liable for alienation of affection for merely becoming a passive object of affection - The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant - Acts which lead to loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection - For proving a claim for alienation of affection, it is not necessary for a party to prove an adulterous relationship - On facts, A-2 did not intrude into the family life of A-1 and his deceased wife, and the Court on evidence acquitted A-2 of all the charges levelled against her - Consequently, it cannot be said that A-2 had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of A-1 towards his deceased wife.

The wife of A-1 committed suicide within seven years of marriage, allegedly due to extra-marital relationship between A-1 and his colleague, A-2. The prosecution case was that extra-marital relationship between A-1 and A-2 was of such a degree to disturb the mental balance of the deceased, which amounted to cruelty within the

Explanation to Section 498A IPC. It was submitted that the suicide note left by the deceased indicated that A-1 and A-2 were in love and that A-1 wanted to marry A-2 and it was for their happiness that the deceased committed suicide. It was alleged that due to the extra marital relationship, the wife of A-1 developed a feeling of alienation, loss of companionship, etc., which ultimately drove her to commit suicide by leaping out of the terrace of a flat.

The trial court convicted A-1 under Sections 498A IPC and 306 IPC. A-2 and A-3, the mother of A-1 were, however, acquitted of the various offences alleged against them. The trial Court also acquitted A-1 of the offence charged against him under Section 304-B IPC. On appeal by A-1, the High Court confirmed the conviction of A-1 under Sections 498A IPC and 306 IPC.

In the instant appeal preferred by A-1, the question which arose for consideration was whether the relationship between A-1 and A-2 was extra-marital leading to cruelty within the meaning of Section 498A IPC and also amounted to abetment leading to the act of suicide by the wife of A-1 within the meaning of Section 306 IPC. The question was required to be examined in light of the fact that A-2 was already found not guilty of the charges levelled against her under Sections 498A, 306 and 304-B read with Section 114 IPC.

Allowing the appeal, the Court

HELD: 1.1. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. [Para 12] [

1.2. For successful prosecution of an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, initiation or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. [Para 14] [319-F-H]

1.3. A person is not liable for alienation of affection for merely becoming a passive object of affection. The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant. Acts which lead to the loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection. For proving a claim for alienation of affection, it is not necessary for a party to prove an adulterous relationship. [Para 16] [321-A-B]

1.4. In the instant case, it cannot be said that there was any willful or malicious interference by A-2 in the marital relationship between A-1 and the deceased. A-2, it has not been proved, had in any way caused any kind of mental harassment by maintaining any relationship with A-1 so as to cause any emotional distress on the deceased. No evidence had been adduced or proved to show that A-2 had alienated A-1, the husband from the deceased. Further, no evidence had been adduced to show that due to the wrongful conduct of A-2, the deceased had lost companionship, affection, love, sexual relationship. No evidence has been adduced to show that there has been any attempt on the part of A-2 to disrupt the marital relationship between A-1 and the deceased. A-2 has not intruded into the family life of A-1 and his

deceased wife, and the Court on evidence acquitted A-2 of all the charges levelled against her. Consequently, it cannot be said that A-2 had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of A-1 towards his deceased wife. [Paras 11, 17] [318-F-H; 321-C-D]

Knight Vs. Woodfield **50 So. 3d 995 (Miss. 2011) [decision in State of Mississipi, United States] and** *Dare Vs. Stokes,* **62 So, 3d 858 (Miss. 2011) [decision in State of Mississipi, United States] - referred to.**

2.1. Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. Extra-marital relationship as such is not defined in the IPC. [Para 18] [321-E-G]

2.2. The facts in the case have clearly proved that the A-1 has not ill-treated the deceased, either physically or mentally demanding dowry, who was living with A-1, in the matrimonial home till the date, she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498A. [Para 19] [322-B-C]

2.3. The mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from [illegible],

depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. On facts, it is found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide. [Para 22] [323-F-H; 324-A-B]

2.4. Legislative mandate of the Section 113A of the Evidence Act, 1872 is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498A IPC, the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498A IPC is on the prosecution. On facts, the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of such a degree which was likely to drive the wife to commit suicide. [Para 25] [325-A-D]

2.5. To constitute an offence under Section 306 IPC, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. In the instant case, but for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the

prosecution to show that the accused had provoked, incited or induced the wife to commit suicide. [Para 26] [325-E-G]

2.6. At best the relationship of A-1 and A-2 was a one-sided love affair, the accused might have developed some liking towards A-2, his colleague, all the same, the facts disclose that A-1 had discharged his marital obligations towards the deceased. There is no evidence of physical or mental torture demanding dowry. Deceased might have been under serious "emotional stress" in the sense that she had undergone an abortion in the year 1992, and the year following that, though a daughter was born to her, the daughter also died few days of its birth. After one or two years, she committed suicide. Evidence, in any way, is lacking in this case to hold, that due to the alleged relationship between A-1 and A-2, A-1 had intended or intentionally inflicted any emotional stress on the deceased wife, so as to drive her to the extreme step of ending her life. In the suicide note (Ex.44), she had not made any accusations as such against A-1 or A-2, on the other hand she stated that it was she who was selfish and egoist. [Para 27] [325-G-H; 326-A-D]

2.7. The suicide note completely exonerates A-1, which states that he was not responsible for death of the deceased. On the other hand, the deceased described herself as extremely selfish, egoist and, therefore, not a match for A-1. She entertained the belief that her husband A-1 was in love with A-2 and wanted to marry A-2. Note states it was for their happiness she had decided to end her life. She also wanted to have the marriage of A-1 and A-2 solemnized with pomp and gaiety. On reading the suicide note, one can infer that the deceased was very possessive of her husband, and was always under an emotional stress that she might los

much of possessiveness could also lead to serious emotional stress, over and above the fact that she had one abortion and her daughter died after few days of birth. No evidence is forthcoming in this case to show that A-2 ever evinced any interest to marry A-1. On the other hand, during the subsistence of the alleged relationship, A-2 herself got married. [Para 28] [326-G-H; 327-A-C]

2.8. The relationship A-1 had with A-2 was not of such a nature which under normal circumstances would drive one to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet the wife to commit suicide. The Courts below committed serious error in holding that it was due to the extra marital relationship A-1 had with A-2 that led the deceased to take the extreme step to commit suicide, and A-1 was instrumental for the said act. In the circumstances, the conviction of the appellant is set aside. [Para 29] [327-D-F]

Girdhar Shankar Tawade Vs. State of Maharashtra, **(2002) 5 SCC 177: 2002 (3) SCR 376 and** *Gananath Pattnaik Vs. State of Orissa,* **(2002) 2 SCC 619: 2002 (1) SCR 845 - referred to.**

Case Law Reference:

3d 995 (Miss. 2011	**referred to**	**Para 15**
3d 858 (Miss. 2011)	**referred to**	**Para 15**
2002 (3) SCR 376	**referred to**	**Para 20**
2002 (1) SCR 845	**referred to**	**Para 21**

CRIMINAL APPEALLATE JURISDICTION : Criminal Appeal No. 811 of 2004.

From the Judgment and Order dated 25 & 27.11.2003 of the High Court of Judicature of Gujarat at Ahmedabad in Criminal Appeal No. 300 of 1998.

Sanjay Visen (for Aniruddha P. Mayee) for the Appellant.

Sumita Hazarika, Shubhada Deshpande (for Hemantika Wahi) for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. We are in this case concerned with the question as to whether the relationship between A-1 and A-2 was extra-marital leading to cruelty within the meaning of Section 498A IPC and also amounted to abetment leading to the act of suicide within the meaning of Section 306 IPC.

2. A-1, the first accused, along with A-2 and A-3, were charge-sheeted for the offences punishable under Sections 498A, 304-B and 306 IPC. The Sessions Court convicted A-1 for the offence punishable under Section 498A IPC and sentenced him to suffer RI for three years and to pay a fine of Rs.5,000/- and in default to undergo further RI for six months. A-1 was also convicted for offence punishable under Section 306 IPC and sentenced to suffer RI for 10 years and to pay a fine of Rs.5,000/- and in default to undergo further RI for six months. A-2 and A-3, the mother of A-1 were, however, acquitted of the various offences alleged against them. The trial Court also acquitted A-1 of the offence charged against him under Section 304-B IPC. On appeal by A-1, the High Court though confirmed the conviction, modified the sentence under Section 498A IPC to two years' RI and a fine of Rs.2,500/- and in default to undergo further RI for six months, and for the offence under Section 306 IPC, the sentence was reduced to RI for five years and to pay a fine of Rs.5,000/- and in default to undergo RI for one year. It was ordered that the sentences would run concurrently. Aggrieved by the judgment of the High Court, this appeal has been preferred by A-1.

3. Shri Sanjay Visen, learned counsel appearing for the Appellant, submitted that the allegations raised against the accused in respect of the alleged extra-marital relationship with second accused would not constitute an

498A IPC. Learned counsel also submitted that the suicidal death of the deceased was not a direct result of the alleged extra-marital relationship and would not constitute an offence punishable under Section 306 IPC. Learned counsel also submitted that even assuming that the Appellant was maintaining extra-marital relationship with the second accused, there is no mens rea proved to show that such relationship was maintained by the accused with an intention to drive the deceased to commit suicide. Placing reliance upon the suicide note Ex.44, learned counsel submitted that the deceased did not allege any cruelty or harassment on the part of the accused which led the deceased to commit suicide. Learned counsel submitted that in any view, the conduct of the accused or the alleged relationship he had with A-2 was not of such a degree that would incite/provoke or push the deceased to a depressed situation to end her life.

4. Mrs. Sumita Hazarika, learned counsel appearing for the State, on the other hand submitted that extra-marital relationship between the first and second accused was of such a degree to disturb the mental balance of the deceased, which amounted to cruelty within the explanation to Section 498A IPC. Referring to various letters written by the deceased to her father, learned counsel pointed out that those letters would clearly depict the trauma undergone by her, which ultimately drove her to commit suicide. Learned counsel also referred to the latter part of the suicide note and submitted that the same would indicate that A-1 and A-2 were in love and that A-1 wanted to marry A-2 and it was for their happiness that the deceased committed suicide. Learned counsel submitted that the Courts below have correctly appreciated the documentary as well as oral evidence of this case, which calls for no interference by this Court.

5. We may before examining the various legal issues refer to some relevant facts. A-1 married the deceased in the year 1989 and was leading a happy married life. A-1 while working

as a Field Officer in the Life Insurance Corporation of India came into contact with A-2, who was then unmarried and a colleague, working with him in the Corporation. Official relationship and contacts developed into an intimacy, which according to the prosecution, was "extra marital". Due to this extra marital relationship, the deceased, the wife of A-1, developed a feeling of alienation, loss of companionship, etc., which ultimately drove her to commit suicide on 18.3.1996 by leaping out of the terrace of a flat leaving a suicide note Ex.44.

6. Prosecution in order to establish its case examined altogether eleven witnesses and produced twenty two documents. Prosecution, however, was not successful in proving that A-1 or A-3 had caused any physical or mental harassment to the deceased demanding dowry. A-3, the mother of A-1, was acquitted of the charge and no evidence whatsoever was adduced to show that A-1 had also caused any harassment physically or mentally demanding dowry. Prosecution story entirely rests on the nature of relationship A-1 had with A-2.

7. The prosecution in order to prove the relationship as "extra marital", made reference to few letters exchanged between the deceased and her father. Ex.27 is letter of the deceased written on 2.7.1993 to her father informing him about the relationship A-1 had with A-2, which also disclosed that the father of A-1 had gone to the house of A-2 twice to persuade A-2 to withdraw from that relationship and advised early marriage for A-2. Ex.28 is another letter dated 5.7.1993, addressed by the deceased to her father, wherein she had stated that she had also gone to the house of A-2 and told her that she was prepared to part with her husband A-1 and that A-2 had told her that deceased had blindly placed faith on her husband. Prosecution also made reference to Ex.29, letter dated 26.7.1993, wherein the deceased had again made a complaint to her father of the continued relationship of A-1 and A-2. Ex.30 is yet another letter dated 6

deceased again to her parents, wherein she had indicated that even her father-in-law was fed up with the attitude of A-1 and that often he used to come to the house late in the night. Reference was made to another letter Ex.31 dated 17.8.1993 written by the deceased to her parents wherein also she had made grievance against the behavior of A-1 and the steps taken by the father-in-law to mend the ways of A-1. Letter also indicated that A-1 had made a suggestion to include A-2 also in their life, which she opposed.

8. Prosecution stand is that the above mentioned letters would disclose the feelings and sufferings of an unfortunate wife having come to know of the love affair between her husband A-1 and his colleague A-2, which ultimately led her to commit the act of suicide. Further, it is also the stand of the prosecution that the deceased died within seven years of marriage and hence under Section 113A of the Evidence Act, the Court can presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband.

9. We have to examine the question as to whether A-1 is guilty or not under Section 498A and Section 306 IPC, in the light of the fact that A-2 was already found not guilty of the charges levelled against her under Sections 498A, 306 and 304-B read with Section 114 IPC. Further, the Court has recorded a clear finding that the prosecution could not prove any immoral or illegal relationship between A-1 and A-2 or that A-1 had tortured mentally or physically his wife demanding dowry. Further, there is also a clear finding of the trial Court that A-2 had not contributed or caused any mental harassment to the deceased so as to drive her to commit the act of suicide. Further, the facts would disclose that during the period of alleged intimacy between A-1 and A-2, A-2 got married in November, 1993. Prosecution story is that the intimacy between A-1 and A-2 developed years prior to that and, of course, if the intimacy or relationship between A-1 and A-2 was so strong, then A-2 would not have got married in November, 1993. During the

period of alleged relationship between A-1 and A-2, it is pertinent to note that the deceased got pregnant twice, once in the year 1992, which was aborted, and the year following when the wife delivered a baby girl, which unfortunately died two days after her birth. Prosecution has not alleged any hand or involvement on the part of A-1 on such abortion. Facts indicate that both A-1 and the deceased were staying under the same roof and that A-1 was discharging his marital obligations and was leading a normal married life.

10. A-1 had not caused any physical or mental torture on the deceased, but for the alleged relationship between A-1 and A-2. Parents of the deceased also did not make any allegation against A-1 of ill-treatment of wife or of dowry demand. Possibly, he might have caught up in a one-sided love affair with some liking towards A-2. Can it be branded as an "extra-marital affair" of that degree to fall within the expression "cruelty"? Extra-marital affair is a term which has not been defined in the Indian Penal Code and rightly not ventured since to give a clear definition of the term is difficult, as the situation may change from case to case.

ALIENATION OF AFFECTION

11. We are not prepared to say that there was any willful or malicious interference by A-2 in the marital relationship between A-1 and the deceased. A-2, it has not been proved, had in any way caused any kind of mental harassment by maintaining any relationship with A-1 so as to cause any emotional distress on the deceased. No evidence had been adduced or proved to show that A-2 had alienated A-1, the husband from the deceased. Further, no evidence had been adduced to show that due to the wrongful conduct of A-2, the deceased had lost companionship, affection, love, sexual relationship. No evidence has been adduced to show that there has been any attempt on the part of A-2 to disrupt the marital relationship between A-1 and the deceased

12. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. Anglo-Saxon based action against third parties involving tortuous interference with the marital relationship was mainly compensatory in nature which was earlier available to the husband, but, of late, a wife could also lay such a claim complaining of alienation of affection. The object is to preserve marital harmony by deterring wrongful interference, thereby to save the institution of marriage. Both the spouses have a valuable interest in the married relationship, including its intimacy, companionship, support, duties, affection, welfare of children etc.

13. We notice, in this country, if the marital relationship is strained and if the wife lives separately due to valid reasons, the wife can lay a claim only for maintenance against the husband and if a third party is instrumental for disrupting her marriage, by alienating her spouse's affection, companionship, including marital obligations, seldom, we find the disgusted spouse proceeds against the intruder into her matrimonial home. Possibly, in a given case, she could question the extent, that such injuries can be adequately compensated, by a monetary award. Such an action, of course, may not protect a marriage, but it compensates those who have been harmed.

14. We are, however, of the view that for a successful prosecution of such an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, initiation or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. Few countries and several

States in the United States of America have passed legislation against bringing in an action for alienation of affection, due to various reasons, including the difficulties experienced in assessing the monetary damages and few States have also abolished "criminal conversation" action as well.

15. We may, however, indicate that few States and countries strongly support such an action, with the object of maintaining and preserving the marriage as a sacred institution. Strong support comes from the State of Mississippi in the United States. In *Knight Vs. Woodfield* 50 So. 3d 995 (Miss. 2011), the husband filed a suit for alienation against his wife. The wife alleged paramour after gaining access to a phone call. Facts disclosed they had exchanged 930 text messages and talked more than 16 hours in two months. In that case jurisdictional issues were raised, but Court reaffirmed that law of alienation of affection is firmly established in State of Mississippi. Another case of some importance is *Dare Vs. Stokes,* 62 So, 3d 858 (Miss. 2011), where in a property settlement agreement of divorced couple, a provision was made that the husband would not bring suit against any other person for alienation of affection. Agreement was reduced to a final order by the trial Court. Later husband came to know that his wife had a love affair with one Dare and hence sought for a modification of the agreement. He also sent a notice to Dare as well of his intention to file a suit for alienation of affection. Dare's attempt to intervene and oppose the application for modification of the agreement was not favourably considered by the Court on the ground that he cannot middle with the marital relationship.

16. Action for alienation of affection lies for all improper intrusions or assaults on the marriage relationship by another, whether or not associated with "extramarital sex", his or her continued overtures or sexual liaisons can be construed as something akin to an assumption of risk that his/her conduct will injure the marriage and give rise to

same, a person is not liable for alienation of affection for merely becoming a passive object of affection. The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant. Acts which lead to the loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection. For proving a claim for alienation of affection it is not necessary for a party to prove an adulterous relationship.

17. We have on facts found that A-2 has not intruded into the family life of A-1 and his deceased wife, and the Court on evidence acquitted A-2 of all the charges levelled against her. Consequently, it cannot be said that A-2 had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of A-1 towards his deceased wife. If that be so, we have to examine what type of relationship A-1 had with A-2. Can it be said as an "extra-marital relationship" of such a degree which amounted to "cruelty" falling within the explanation to Section 498A and also leading to an offence under Section 306 IPC.

EXTRA-MARITAL RELATIONSHIP

18. Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. Extra-marital relationship as such is not defined in the IPC. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the explanation to Section 498-A and that A-1 had abetted the wife to commit suicide. We have to examine whether the relationship between A-1 and A-2 amounted to mental harassment and cruelty.

19. We have to examine the correctness or otherwise of

the findings recorded by the trial Court, affirmed by the High Court, as to whether the alleged relationship between A-1 and A-2 has in any way constituted cruelty within the meaning of explanation to Section 498A IPC. The facts in this case have clearly proved that the A-1 has not ill-treated the deceased, either physically or mentally demanding dowry and was living with A-1, in the matrimonial home till the date, she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498A. Section 498A IPC reads as under:-

> "498A. Husband or relative of husband of a woman subjecting her to cruelty.-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.- For the purposes of this section," cruelty" means-
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

20. This Court in *Girdhar Shankar Tawade Vs. State of Maharashtra,* (2002) 5 SCC 177, examined the scope of the explanation and held as follows :-

> "3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by

statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498A."

21. In *Gananath Pattnaik Vs. State of Orissa,* (2002) 2 SCC 619, this Court held that the concept of cruelty under Section 498A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said Section need not be physical. Even mental torture or abnormal behavior may amount to cruelty or harassment in a given case.

22. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and

some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

23. We also notice in this case that the wife committed suicide within seven years of the date of the marriage. Hence, a presumption under Section 113A of the Evidence Act could be drawn.

24. Section 113A which was inserted by the Criminal Law (Second Amendment) Act, 1983, w.e.f. 26.12.1983, is given below for easy reference :-

> **"113A. Presumption as to abetment of suicide by a married woman.-** When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
>
> Explanation.-- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

25. Section 113A only deals with a presumption which the Court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treate it

suicide by the husband or his relatives, demanding dowry. Legislative mandate of the Section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498A IPC, the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of such a degree which was likely to drive the wife to commit suicide.

26. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.

27. We have on facts found that at best the relationship of A-1 and A-2 was a one-sided love affair, the accused might have developed some likings towards A-2, his colleague, all the same, the facts disclose that A-1 had discharged his marital

obligations towards the deceased. There is no evidence of physical or mental torture demanding dowry. Deceased might have been under serious "emotional stress" in the sense that she had undergone an abortion in the year 1992, and the year following that, though a daughter was born to her, the daughter also died few days of its birth. After one or two years, she committed suicide. Evidence, in any way, is lacking in this case to hold, that due to the alleged relationship between A-1 and A-2, A-1 had intended or intentionally inflicted any emotional stress on the deceased wife, so as to drive her to the extreme step of ending her life. In the suicide note she had not made any accusations as such against A-1 or A-2, on the other hand she stated that it was she who was selfish and egoist. Suicide note (Ex.44), which was translated by the High Court, reads as under :-

> "My husband Pinakin is a very good man and he is not responsible. I also love him. However, I am extremely bad, selfish and egoist and, therefore, not a match to him.
>
> He is in love with Priti Bhakt, serving in LIC and wants to marry her and, therefore, for their happiness, I am taking this step.
>
> No one of my house is responsible. Therefore, they may not be harassed. Kindly arrange their marriage with all pomp and gaiety. I gift my dead body to the medical students and I donate my eyes to the blinds.
>
> Yours
> Jagruti
>
> This is my last wish which be fulfilled for the peace of my soul."

28. Suicide note completely exonerates A-1, which states that he was not responsible for death of the deceased. On the other hand, the deceased described herself as extremely

selfish, egoist and, therefore, not a match for A-1. She entertained the belief that her husband A-1 was in love with A-2 and wanted to marry A-2. Note states it was for their happiness she had decided to end her life. She also wanted to have the marriage of A-1 and A-2 solemnized with pomp and gaiety. On reading the suicide note, one can infer that the deceased was so possessive of her husband, and was always under an emotional stress that she might lose her husband. Too much of possessiveness could also lead to serious emotional stress, over and above the fact that she had one abortion and her daughter died after few days of birth. No evidence is forthcoming in this case to show that A-2 ever evinced any interest to marry A-1. On the other hand, during the subsistence of the alleged relationship, A-2 herself got married.

29. We are, therefore, of the considered view that the relationship A-1 had with A-2 was not of such a nature which under normal circumstances would drive one to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet the wife to commit suicide. Courts below, in our view, have committed serious error in holding that it was due to the extra marital relationship A-1 had with A-2 that led the deceased to take the extreme step to commit suicide, and A-1 was instrumental for the said act. In the circumstances, we are inclined to allow this appeal and set aside the order of conviction and sentence imposed on the appellant, and he is set at liberty. Ordered as above.

B.B.B. Appeal allowed.

SOMA SURESH KUMAR

v.

GOVERNMENT OF ANDHRA PRADESH & ORS.

(Writ Petition (Civil) No. 614 of 2007)

SEPTEMBER 12, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 - ss. 2, 3, 5, 8 and 9 - Writ petition u/Art. 32 - Challenging constitutional validity of the Act - On the ground of legislative competence of the State - Held: The Bank in question comes within the definition of 'financial establishment' u/s. 2(c) of the Act - It does not fall in the category of institutions excluded from the purview of s.2(c) - The object and purpose as well as provisions of the Act are pari materia with similar Acts of Maharashtra, Tamil Nadu and Pondicherry, the constitutional validity whereof has already been upheld - Hence, the Act is held as constitutionally valid - Constitution of India, 1950 - Seventh Schedule - List I Entry 45, List II Entry 32 - Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 - Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 - Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004.

The petitioners, erstwhile Directors of Co-operative Bank, filed the present writ petitions seeking declaration that ss. 3, 5, 8 and 9 of Andhra Pradesh Protection of Depositions of Financial Establishments Act, 1999 are unconstitutional and violative of fundamental rights guaranteed u/Arts. 14 and 21 of the Constitution.

Petitioners inter alia contended that the Bank in question did not come within the definition of 'financial

establishment' u/s. 2(c) of the Act; and that the State did not have legislative competence for enactment of the Act, as the subject 'banking' is covered under Entry 45 of List I of Seventh Schedule.

Dismissing the petitions, the Court

HELD: 1. It is not correct to say that the Bank in question does not come within the definition of "financial establishment" under Section 2(c) of the Andhra Pradesh Protection of Depositions of Financial Establishments Act, 1999. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act. [Para 13] [338-E-G]

2. The object and purpose as well as the provisions of the Andhra Act are pari materia with that of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999, as well as the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004. The constitutional validity of those legislations has already been upheld. Therefore, the constitutional validity of the Andhra Act is upheld. [Paras 10 and 12] [335-C-D; 338-D-E]

K.K. Baskaran vs. State, represented by its Secretary, Tamil Naduand Ors. **(2011) 3 SCC 793: 2011 (3) SCR 527;** *New Horizon Sugar Mills Ltd. vs. Government of Pondicherry* **(2012) 10 SCC 575: 2012 (8) SCR 874 - relied on.**

R.C. Cooper vs. Union of India **(1970) 1 SCC 248: 1970 (3) SCR 530;** *Greater Bombay Cooperative Bank and Ors. vs. United Yarn Tex (P) Ltd. and Ors.* **(2007) 7 SCC 236: 2007 (8) SCR 763;** *Vijay C. Puljal vs. State of Maharashtra* **(2005) 4 CTC 705 - referred to.**

Case Law Reference:

1970 (3) SCR 530	**referred to**	**Para 4**
2007 (8) SCR 763	**referred to**	**Para 9**
2011 (3) SCR 527	**relied on**	**Para 10**
(2005) 4 CTC 705	**referred to**	**Para 10**
2012 (8) SCR 874	**relied on**	**Para 11**

CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India.

Writ Petition (Civil) No. 614 of 2007.

WITH

Writ Petition (Civil) No. 637 of 2007.

Bina Madhavan, Praseena E. Joseph, V. Santhanalakshmi, A. Venayagan Balan for the Petitioner.

Rakesh Kumar Khanna, ASG, ATM Rangaramanujam, Kiran Bhardwaj, R.K. Verma, Sushma Suri, Seema Thapliyal, Shreekant N. Terdal, D. Mahesh Babu, Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, B. Ramakrishna Rao, D. Bharathi Reddy for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. The petitioners, who were erstwhile Directors of Vasavi Cooperative Urban Bank Limited, have approached this Court seeking a declaration that Sections 3, 5, 8 and 9 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (in short "the Andhra Act") are unconstitutional and violative of fundamental rights guaranteed to them under Articles 14 and 21 of the Constitution of India and also other consequential r

2. The petitioners were Directors of the above-mentioned bank during the period from 1996 to 2002. Large number of complaints were received from the depositors stating that the Board of Directors of the bank had swindled away the money of the depositors by creating false documents, amounting to crores of rupees. On receipt of the complaints, enquiry was conducted and, ultimately, Joint Registrar of Cooperative Societies and Chief Executive Officer of the bank registered Crime No.8 of 2003 on the file of the CID, Police Station under Section 120(b), 420, 409, 468, 477(A), Indian Penal Code and under Section 5 of the Andhra Act. Criminal case was later investigated by the Deputy Superintendent of Police, STD-II, CID Hyderabad and charge-sheet was filed against several persons, including the petitioners. The Charge-sheet was registered as C.C. No.4 of 2003 before the Special Court-cum-Metropolitan Sessions Judge, Hyderabad. It is at this juncture, the petitioners have approached this Court seeking the above-mentioned reliefs and also for a writ of certiorari to quash all proceedings or orders passed by the competent authority and by the Special Court constituted under the Andhra Act. Petitioners have also sought for a writ of *mandamus* directing the respondents not to arrest the petitioners or to attach their properties for the offences alleged to have been committed by them under Sections 3 and 5 of Andhra Act.

3. The State of Andhra Pradesh filed a detailed counter-affidavit explaining the circumstances under which the petitioners were charge-sheeted. It was stated that, while they were in the Board of Directors of bank, they had entered into a criminal conspiracy with the borrowers of the bank and created fake proprietary concerns, firms/companies and swindled away money of the depositors by accepting defective, fake, forged title deeds and committed default in making payment of dues to the depositors. It was pointed out that the petitioners were rightly charge-sheeted for the various offences under the Indian Penal Code as well as Section 5 of the Andhra Act.

4. Union of India, in its counter affidavit, submitted that the petitioners were rightly charge-sheeted by the State Government and, over and above, the provisions under which they were charge-sheeted, even the provisions of Sections 11 to 11-D of Chapter IV of the Securities and Exchange Board of India Act, 1992 (15 of 1992) would also be applicable as amended by the Amendment Act 2002 (59 of 2002). Further, it was also stated that the Andhra Pradesh Cooperative Societies Act, 1964 did not fall within the meaning of the "banking company" as defined by Section 5(b) of the Banking Regulations Act, 1949. Union of India has taken up that stand by placing reliance on the Judgment of this Court in *R.C. Cooper Vs. Union of India* (1970) 1 SCC 248, wherein this Court held that all activities falling under Section 5(b) of the Banking Regulations Act, 1949 would fall under Entry 45 of the List I of the Seventh Schedule of the Constitution of India.

5. The Union of India had earlier filed a counter affidavit to the interlocutory application No.2 of 2010, filed to implead the Union of India as a party to Writ Petition (C) No.614 of 2007. In that, it was stated that the provisions of Sections 3, 5, 8 and 9 of the Andhra Act were not opposed to the public policy or unconstitutional or violative of the fundamental rights guaranteed to the petitioners. Further, it is also pointed out that the Banking Regulations Act, enacted by the Central Government, to regulate the operation of banking companies or organizations, enables the RBI to give licence to banking companies to carry out the functions of the bank. It was pointed out that it covered different areas which are not common to the area covered by the Andhra Act. Further, it was pointed out that both the Acts have applicability to different aspects of refund to the depositors. The Banking Regulations Act, it is pointed out, was enacted to regulate the functioning of the banking companies, including the Vasavi Cooperative Urban Bank Limited and that the petitioners have approached this Court challenging the validity of the Act so as to wriggle out of the clutches of law.

6. Vasavi Cooperative Bank was registered as a cooperative society on 29.05.1982. The bank was issued a licence to carry on the business on June 16, 1982 and was accorded the Scheduled Status in the Banking Regulations Act w.e.f. May 22, 1999. The Bank was placed under the directive of Section 35A of the Banking Regulations Act, 1949 with effect from the close of business on March 7, 2003. Bank is having 17 branches all over the State of Andhra Pradesh.

7. We notice that the State of Andhra Pradesh was contemplating a legislation similar to one enacted in the State of Tamil Nadu, for a long time. On many occasions, the State's attention was drawn, to the large scale diversion of money by many financial institutions in the State, by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. Several cases were booked against the persons responsible for the same, but the presence of a comprehensive legislation to curb such unfair practice was lacking. This was the reason for the State of Andhra Pradesh to enact the Andhra Act. The Statement of Objects & Reasons of the Act read as under :-

> "Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard earned savings. To curb these malpractices, the State Government has decided to bring a law to protect the interests of depositors of the financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14.9.1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take

> expeditious steps for enacting legislation on the lines of "Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997, "to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.
>
> To achieve the above object, the Government has decided to make separate law by undertaking legislation."

8. The above mentioned Act was reserved by the Governor on 13th April, 1999 for consideration and assent of the President and on 23rd June, 1999, the same was granted and the Act was published on 1st July, 1999, in the Andhra Pradesh Gazette for general information.

9. The petitioners have raised an objection that the State Legislature does not have the competence to enact the Andhra Act since the subject "banking" is covered under Entry 45 of List I of Seventh Schedule. Hence, only the Central Government is entitled to enact the law relating to subject "accepting of deposit from the public and repayment of the same on demand". Referring to the judgment of this Court in R.C. Cooper's case (supra), it was contended that the scope, ambit and definition of the term "banking" under Entry 45 List I of the Seventh Schedule appended to Article 246 would include all activities falling under Section 5(b) of the Banking Regulation Act, 1949. Consequently, only the Parliament alone has the power to frame the law relating to acceptance of deposits or its return or making the same as an offence. Further, it was pointed out that the powers conferred on State Legislature to legislate "corporate societies" as falling under Entry 32 List II of the Seventh Schedule appended to Article 246 of the Constitution can be confined to incorporation, registration, administration, amalgamation, winding-up of the cooperative societies. Further, it was pointed out that the power under that Entry can be stretched to encompass all the activities of banking under Entry 45 of List I of the Se[illegible]s

pointed out that under the guise of legislation with respect to Entry 32 of List I, the State Legislature cannot legislate with respect to the matters falling under Entry 45 of List I of the Seventh Schedule. Consequently, it was submitted that the Andhra Act is constitutionally invalid. Reference was also made to the judgment of this Court in *Greater Bombay Cooperative Bank & Ors. Vs. United Yarn Tex (P) Ltd. & Ors.,* (2007) 7 SCC 236.

10. We notice that the question of law raised in this case had come up for consideration before this Court while challenging the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short "the Tamil Nadu Act"), the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (for short "the Maharashtra Act") as well as the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (for short "the Pondicherry Act"). This Court in *K. K. Baskaran Vs. State,* represented by its *Secretary, Tamil Nadu and Others* (2011) 3 SCC 793, while examining the constitutional validity of the Tamil Nadu Act, held that the enactment by the State Legislature is not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution though there may be some overlapping. The Court held that in pith and substance, the Act comes under the Entries in List II of the Seventh Schedule. In the said judgment, this Court placed specific reference to the Full Bench judgment of the Bombay High Court in *Vijay C. Puljal Vs. State of Maharashtra* (2005) 4 CTC 705. After scanning through the various provisions of the Tamil Nadu Act, this Court held as follows:-

> "15. We have carefully perused the judgment of the Full Bench of the Bombay High Court in *Vijay V. Puljal v. State of Maharashtra* (2005) 4 CTC 705 (Bom) and we respectfully disagree with the view taken by the Bombay

> High Court. It may be noted that though there are some differences between the Tamil Nadu Act and the Maharashtra Act, they are minor differences, and hence the view we are taking herein will also apply in relation to the Maharashtra Act.
>
> 16. The Bombay High Court has taken the view that the Maharashtra Act transgressed into the field reserved for Parliament. We do not agree. It is true that Section 58-A of the Companies Act has been upheld by this Court in *Delhi Cloth and General Mills Co. Ltd. v. Union of India* (1983) 4 SCC 166 and the provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by this Court in T. Velayudhan Achari v. Union of India (1993) 2 SCC 582. However, we are not in agreement with the Full Bench decision of the Bombay High Court that the subject-matter covered by the said Act falls squarely within the subject-matter of Sections 58-A and 58-AA of the Companies Act.
>
> 17. We are of the opinion that the impugned Tamil Nadu Act enacted by the State Legislature is not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution though there may be some overlapping. In our opinion, in pith and substance the said Act comes under the entries in List II (the State List) of the Seventh Schedule."

Further, in para 33 of the judgment, this Court expressed the following view:

> "33. The State being the custodian of the welfare of the citizens as parens patriae cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt w[illegible]ll

amounts collected from a substantial number of individual depositors culminated into huge amounts of money. These collections were diverted in the name of third parties and finally one day the fraudulent financers closed their financial establishments leaving the innocent depositors in the lurch."

11. Later, the constitutional validity of the Pondicherry Act came for consideration before this Court in *New Horizon Sugar Mills Ltd. Vs. Government of Pondicherry* (2012) 10 SCC 575, wherein this Court has exhaustively considered the various contentions raised on the constitutional validity of the Pondicherry Act in the light of the judgment in *K.K. Baskaran's* case (supra). Contention was raised that the State lacked the legislative competence to enact the Pondicherry Act on the ground that the subject would fall under the Union jurisdiction. This Court, while deciding the constitutional validity of the Pondicherry Act, held as follows :-

"49. 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.

50. 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.

53. Even if it is to be accepted that the Pondicherry Act is relatable to List I Entries 43, 44 and 45, it can be equally said that the said enactment is also relatable to List II Entries 1, 30 and 32 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."

12. We notice in *New Horizon Sugar Mills Ltd.'s* case (supra), this Court held that the objects of the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are pari materia with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act.

13. Learned counsel for the petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of "financial establishment" under Section 2(c) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act.

14. In the circumstances, we find no merit in these Writ Petitions and the same are accordingly dismissed.

K.K.T. Wr

M/S. ESCORTS LIMITED
v.
RAMA MUKHERJEE
(Criminal Appeal No. 1457 of 2013)

SEPTEMBER 17, 2013

[P. SATHASIVAM, CJI AND JAGDISH SINGH KHEHAR, J.]

Negotiable Instruments Act, 1881 - s.138 - Dishonour of cheque - Jurisdiction to try offence u/s.138 - Vesting with which Court - Held: The Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed u/s.138.

Issue arose for consideration as to whether the Court within the jurisdiction whereof, the complainant had presented the dishonoured cheque (issued by an accused), had the jurisdiction to entertain a petition filed under Section 138 of the Negotiable Instruments Act, 1881.

The High Court held that just because the dishonoured cheques in question were presented for encashment by the complainant at Delhi or the demand notice was sent from Delhi, the Courts at Delhi would not have jurisdiction to try the case. The High Court accepted the prayer made by the drawee of the cheque (i.e. the respondent) to conclude, that the Courts at Delhi did not have the jurisdiction to try the complaint filed by the appellant, under Section 138 of the Negotiable Instruments Act. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. It is apparent, that the conclusion drawn by the High Court, in the impugned order, is not in

consonance with the decision rendered by this Court in Nishant Aggarwal's case wherein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act. In addition to the judgment rendered by this Court in Nishant Aggarwal's case, another bench of this Court has also arrived at the conclusion drawn in Nishant Aggarwal's case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in FIL Industries Limited vs. Imtiyaz Ahmed Bhat. [Paras 5, 6] [351-A-D]

1.2. In view of the above, having taken into consideration the factual position noticed by the High Court in paragraph 13 of the impugned judgment, this Court is of the view that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order passed by the High Court is accordingly set aside. [Para 7] [354-E-F]

Nishant Aggarwal vs. Kailash Kumar Sharma **[Criminal Appeal no. 808 of 2013 (arising out of SLP (Crl.) No. 9434 of 2011); decision of Supreme Court dated 1.7.2013] and** *FIL Industries Limited vs. Imtiyaz Ahmed Bhat* **[Criminal Appeal No. 1168 of 2013 (arising out of SLP (Crl.) No.8096 of 2012), decision of Supreme Court dated 12.8.2013] - relied on.**

K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr. **(1999) 7 SCC 510 : 1999 (3) Suppl. SCR 271;** *Shri Ishar Alloys Steels Ltd. Vs. Jayaswal NECO Ltd.,* **(2003) 3 SCC 609;** *Harman Electronics Private Ltd. Vs. National Panasonic India Pvt. Ltd.* **(2009) 1 SCC 720 : 20[illegible]d**

FIL Industries Limited vs. Imtiyaz Ahmed Bhat **2014 (2) SCC 266 - referred to.**

2. However, during the course of hearing, whilst it was the case of the appellant (based on certain documents available on the file of the present case) to reiterate that the cheque in question, which was the subject matter of the appellant's claim under Section 138 of the Negotiable Instruments Act, 1881 was presented for encashment at Delhi; it was the contention of the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for this Court to entertain and adjudicate upon a disputed question of fact. In case, the respondent is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before this Court. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law. [Para 8] [354-G-H; 355-A-D]

Case Law Reference:

1999 (3) Suppl. SCR 271	**referred to**	**Para 4**
(2003) 3 SCC 609	**referred to**	**Para 4**
2008 (17) SCR 487	**referred to**	**Para 4**
2014 (2) SCC 266	**referred to**	**Para 6**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1457 of 2013.

From the Judgment and Order dated 27.04.2012 of the High Court of Delhi at New Delhi in Criminal Miscellaneous Case No. 1715 of 2011.

S. Udaya Kumar Sagar, Bina Madhavan, Praseena E. Joseph, Shivendra Singh (for Lawyer's Knit & Co.) for the Appellant.

A.K. De, Debasis Misra, Rajesh Dwivedi, Sanjay Chetry for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. This Court on 21.2.2013 directed that the instant SLP (Crl.) No.7325 of 2012 be listed after the pronouncement of judgment in Criminal Appeal no. 808 of 2013 (arising out of SLP (Crl.) No. 9434 of 2011), titled *Nishant Aggarwal vs. Kailash Kumar Sharma. Nishant Aggarwal's* case (supra) was disposed of by this Court on 1.7.2013. The pointed question, which arose for consideration in this Court's aforesaid determination was, whether the Court within the jurisdiction whereof, the complainant had presented the dishonoured cheque (issued by an accused), had the jurisdiction to entertain a petition filed under Section 138 of the Negotiable Instruments Act. While disposing Criminal Appeal No.808 of 2013, this Court returned a finding in the affirmative by observing as under:

"(7) We have already narrated the case of both the parties in the pleadings portion. In order to answer the only question, it is relevant to note that the undisputed facts in the context of territorial jurisdiction of the learned Magistrate at Bhiwani are that the drawee of the cheque i.e., the respondent/complainant is a resident of Bhiwani. The native village of the respondent, namely, village Barsana is situated in District Bhiwani. The respondent owns ancestral agricultural land at village Barsana, District Bhiwani. It is also asserted that the respondent is running his bank account with Canara Bank, Bhiwani and is also residing at the present address for the last about two decades. In view of the same, it is the claim of the respondent that he bonafidely presented the cheque in his bank at Bhiwani which was further presented to the drawer's Bank at Guwahati. The cheque was returned uncashed to the respondent's bank at Bhiwani with the endorsement "payment stopp[illegible]e

respondent received the bounced cheque back from his bank at Bhiwani. Thereafter, the respondent sent a legal notice under Section 138 of the N.I. Act to the appellant from Bhiwani. In turn, the appellant sent a reply to the said notice which the respondent received at Bhiwani. In view of non-payment of the cheque amount, the respondent filed a complaint under Sections 138 and 141 of the N.I. Act before the learned Magistrate at Bhiwani.

(8) Inasmuch as the issue in question is directly considered by this Court in *K. Bhaskaran* (supra), before going into the applicability of other decisions, it is useful to refer the relevant portion of the judgment in paras 10 and 11 of the said case which reads thus:

> "10. Learned counsel for the appellant first contended that the trial court has no jurisdiction to try this case and hence the High Court should not have converted the acquittal into conviction on the strength of the evidence collected in such a trial. Of course, the trial court had upheld the pleas of the accused that it had no jurisdiction to try the case.
>
> 11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to

> fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act."

It is clear that this Court also discussed the relevant provisions of the Code, particularly, Sections 177, 178 and 179 and in the light of the language used, interpreted Section 138 of the N.I. Act and laid down that Section 138 has five components, namely,

i) drawing of the cheque;

ii) presentation of the cheque to the bank;

iii) returning the cheque unpaid by the drawee bank;

iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and

v) failure of the drawer to make payment within 15 days of the receipt of the notice.

After saying so, this Court concluded that the complainant can choose any one of the five places to file a complaint. The further discussion in the said judgment is extracted hereunder:

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence:
>
> (1) drawing of the cheque,

(2) presentation of the cheque to the bank,

(3) returning the cheque unpaid by the drawee bank,

(4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178. (a)-(c) * * *

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

(9) Para 11 of *K. Bhaskaran* (supra), as quoted above, clarified the place in the context of territorial jurisdiction as

per the fifth component, namely, "failure of the drawer to make payment within 15 days of the receipt." As rightly pointed out by learned senior counsel for the respondent, the place of failure to pay the amount has been clearly qualified by this Court as the place where the drawer resides or the place where the payee resides. In view of the same and in the light of the law laid down by this Court in *K.Bhaskaran* (supra), we are of the view that the learned Magistrate at Bhiwani has territorial jurisdiction to try the complaint filed by the respondent as the respondent is undisputedly a resident of Bhiwani. Further, in *K. Bhaskaran* (supra), while considering the territorial jurisdiction at great length, this Court has concluded that the amplitude of territorial jurisdiction pertaining to a complaint under the N.I. Act is very wide and expansive and we are in entire agreement with the same.

*** *** ***

(12) Mr. Ahmadi, learned senior counsel for the appellant has also relied on a decision of this Court in *Harman Electronics Private Limited and Another vs. National Panasonic India Private Limited,* (2009) 1 SCC 720. In *Harman Electronics* (supra), the complainant and the accused entered into a business transaction. The accused was a resident of Chandigarh. He carried on the business in Chandigarh and issued a cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within 15 days from the date of the communication of the said letter, the complainant filed a complaint at De it

was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi, the demand notice was issued from Delhi, the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within the statutory period of 15 days from the date of receipt of notice. It is further seen that the cognizance of the offence was taken by the learned Magistrate at Delhi. The accused questioned the jurisdiction of the Magistrate at Delhi before the Addl. Sessions Judge, New Delhi. The Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as, admittedly, the notice was sent by the complainant to the accused from Delhi and the complainant was having its Registered Office at Delhi and was carrying on business at Delhi. The learned Judge has also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused. Thereafter, the accused approached this Court. This Court considered Section 138 of the N.I. Act and also referred to *K.Bhaskaran's* case (supra) and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence under Section 138 of the N.I. Act were done in five different localities, any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the N.I. Act and the complainant would be at liberty to file a complaint at any of those places. Ultimately, this Court held that the Chandigarh Court had jurisdiction to entertain the complaint because the parties were carrying on business at Chandigarh, Branch Office of the complainant was also in Chandigarh, the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. This Court pointed out that the complaint did

not show that the cheque was presented at Delhi, because it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. It is not in dispute that the dishonour of the cheque also took place at Chandigarh and, therefore, the only question which arose before this Court for consideration was whether the sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the N.I. Act. In such circumstances, we are of the view that *Harman Electronics* (supra) is only an authority on the question where a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down in *K. Bhaskaran* (supra). This Court has accepted that the place where the cheque was presented and dishonoured has jurisdiction to try the complaint. In this way, this Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. In other words, the court clarified only on the service in such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days, thereafter, the commission of an offence completes. We are of the view that this Court in *Harman Electronics* (supra) affirmed what it had said in *K. Bhaskaran* (supra) that court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make payment within 15 days of the receipt of notice can have jurisdiction to try the offence under Section 138 of the N.I. Act. It is also relevant to point out that while holding that the Chandigarh Court has jurisdiction, this Court in *Harman Electronics* (supra) observed that in the case before it, the complaint was silent as to whether the said cheque was presented at Delhi. In the case on hand, it is categorically stated that the cheque was presented at Bhiwani whereas in *Harman Electronics* (supra) the dishonour had taken place at Chandigarh and this fact was tak[illegible]e

holding that Chandigarh court has jurisdiction. In the complaint in question, it is specifically stated that the dishonour took place at Bhiwani. We are also satisfied that nothing said in *Harman Electronics* (supra) had adverse impact on the complainant's case in the present case.

(13) As observed earlier, we must note that in *K. Bhaskaran* (supra), this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in *Ishar Alloy* (supra) does not affect the ratio in *K. Bhaskaran* (supra) which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Section 482 of the Code and dismissed the petition filed by the appellant-accused.

(14) In the light of the above discussion, we hold that the ratio laid down in K.Bhaskaran (supra) squarely applies to the case on hand. The said principle was correctly applied by the learned Sessions Judge as well as the High Court. Consequently, the appeal fails and the same is dismissed. In view of the dismissal of the appeal, the interim order granted by this Court on 09.12.2011 shall stand vacated."

(emphasis is ours)

2. Leave granted.

3. We have heard learned counsel for the rival parties. The reason for posting the instant matter for hearing after the disposal of *Nishant Aggarwal's* case (supra) was, that the controversy arising herein, was exactly the same as was sought to be determined by this court in *Nishant Aggarwal's* case

(supra). The factual position necessary for the disposal of the instant Civil Appeal, was noticed in paragraph 13 of the impugned order, passed by the Delhi High Court. The same is being extracted hereunder:

"13. Thus *M/s Religare Finvest* (supra) relied on by the Petitioner was a case where even the drawer bank's clearing branch which dishonoured the cheque was also situated at New Delhi. In the said case, the jurisdiction was vested in the Courts at Delhi because of the drawer's bank's clearing branch being at Delhi and not because the cheque was presented in the payee bank or that the legal notice of demand was issued from a place at Delhi. Applying the decisions aforementioned to the facts of the present case, I do not consider it fit to state that just because the cheques were presented at Delhi or the demand notice was sent from Delhi, Courts at Delhi would have jurisdiction to try the present case."

(emphasis is ours)

4. Having taken into consideration the fact that the cheque was presented for encashment by the complainant at Delhi, and having referred to the judgments rendered by this Court in *K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr.,* (1999) 7 SCC 510, *Shri Ishar Alloys Steels Ltd. Vs. Jayaswal NECO Ltd.,* (2003) 3 SCC 609, and *Harman Electronics Private Ltd. Vs. National Panasonic India Pvt. Ltd.,* (2009) 1 SCC 720, the High Court accepted the prayer made by the drawee of the cheque (i.e. the respondent herein) to conclude, that the Courts at Delhi did not have the jurisdiction to try the complaint filed by the appellant, under Section 138 of the Negotiable Instruments Act. Having so concluded, the Metropolitan Magistrate before whom the matter was pending, was directed to return the complaint to the respondent. Liberty was granted to the appellant, to file the returned petition before the jurisdictional Court at Kolkata.

5. It is apparent, that the conclusion drawn by the High Court, in the impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court in *Nishant Aggarwal's* case (supra). Therein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

6. In addition to the judgment rendered by this Court in Nishant Aggarwal's case, another bench of this Court has also arrived at the conclusion drawn in Nishant Aggarwal's case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in *FIL Industries Limited vs. Imtiyaz Ahmed Bhat,* Criminal Appeal No. 1168 of 2013 (arising out of SLP (Crl.) No.8096 of 2012), decided on 12.8.2013. This Court in the above matter held as under:

> "3. The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of `29,69,746/-(Rupees Twenty Nine lakhs sixty nine thousand seven hundred forty six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account of the appellant in UCO Bank Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore. The respondent sought dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the appellant filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561A of the

> Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

4. We have heard learned counsel for the parties and we find that in *K.Bhaskaran v. Sankaran Vidyabalan and Another,* (1999) 7 SCC 510, this Court had the occasion to consider as to which Court would have the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:-

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.
>
> 15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:
>
> > "Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

5. It will be clear from the aforesaid paragraphs of the judgment in *K. Bhaskaran's* case (Supra) that five different acts compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality the Court having territorial jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant can choose any one of those courts having jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done. In the facts of the present case, it is not disputed that the cheque was presented to the UCO Bank at Sopore in which the appellant had an account and, therefore the Court at Sopore had territorial jurisdiction to entertain and try the complaint.

6. Learned counsel for the respondent, however, relied on the decision of this Court in Harman Electronics Private Limited and Another v. National Panasonic India Private Limited to submit that the Court at Shopian would have the territorial jurisdiction. We have perused the aforesaid decision of this Court in Harman Electronics Private Limited (Supra) and we find on a reading of paragraphs 11 and 12 of the judgment in the aforesaid case that in that

case the issue was as to whether sending of a notice from Delhi itself would give rise to a cause of action for taking cognizance of a case under Section 138 of the Negotiable Instruments Act when the parties had been carrying on business at Chandigarh, the Head Office of the respondent-complainant was at Delhi but it had a branch at Chandigarh and all the transactions were carried out only from Chandigarh. On these facts, this Court held that Delhi from where the notice under Section 138 of the Negotiable Instruments Act was issued by the respondent would not have had jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act. This question does not arise in the facts of the present case.

7. For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and remand the matter to the Chief Judicial Magistrate, Sopore for decision in accordance with law."

(emphasis is ours)

7. In view of the above, having taken into consideration the factual position noticed by the High Court in paragraph 13 of the impugned judgment, we are of the view, that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order dated 27.4.2012 passed by the High Court is accordingly liable to be set aside. The same is, therefore, hereby set aside.

8. Despite the conclusion drawn by us hereinabove, it would be relevant to mention, that our instant determination is based on the factual position expressed by the High Court in paragraph 13 of the impugned order. During the course of hearing, whilst it was the case of the learned counsel for the appellant (based on certain documents available on the file of the present case) to reiterate that the cheque in question, which was the subject matter of the appellant

138 of the Negotiable Instruments Act, was presented for encashment at Delhi; it was the contention of the learned counsel for the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for us to entertain and adjudicate upon a disputed question of fact. We have rendered the instant decision, on the factual position taken into consideration by the High Court. In case, the respondent herein is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before us. The determination rendered by us must be deemed to be on the factual position taken into consideration by the High Court (in paragraph 13, extracted above), while disposing of the issue of jurisdiction. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law.

9. Allowed in the aforesaid terms.

B.B.B. Appeal allowed.

NAGOOR PICHAI @ BADUSHA
v.
STATE TR. SUB-INSPECTOR OF POLICE
Crl. M.P. No. 853 of 2013
IN
(Criminal Appeal No. 811 of 2011)

SEPTEMBER 19, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Tamil Nadu Borstal Schools Act, 1925 - ss. 2(1), 8 & 10 - Petitioner convicted u/s.302 IPC for murder and sentenced to life imprisonment - He was over 19 years of age on the date of incident, and 22 years 9 months old on the date of conviction - Plea for detention of Petitioner in a Borstal School - Held: Definition of 'adolescent offender' in s.2(1) of the Borstal Schools Act stipulates requirement of being not less than 16 years but not more than 21 years of age on the date of conviction - Petitioner being over 21 years on the date of his conviction, it would not be advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons - The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as then he would have been required to be placed in a Borstal School - Since Petitioner was over 19 years on the date of the occurrence or the conviction, even in postulation of the Juvenile Justice Act, no relief available even retrospectively to the Petitioner - No impediment or legal impropriety in his having to undergo his sentence in an ordinary jail - Petitioner not entitled to bail - Juvenile Justice (Care and Protection of Children) Act, 2000 - Penal Code, 1860 - s.302.

Tamil Nadu Borstal Schools Act, 1925 - ss.2(1) & 8 - Definition of 'adolescent offender' - Distinction between 'adolescent' and 'juvenile' - Discussed

Tamil Nadu Borstal Schools Act, 1925 - Borstal School - Held: Is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail.

Tamil Nadu Borstal Schools Act, 1925 - Provisions of - Difference from provisions of the Juvenile Justice Act - Held: The Borstal Schools Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed - Juvenile Justice (Care and Protection of Children) Act, 2000.

The Petitioner was convicted under Section 302 IPC for the murder of his paternal uncle and sentenced to life imprisonment. He was 19 years 8 months of age on the date of incident, and 22 years 9 months old on the date of conviction.

The only question agitated for the Petitioner before this Court was that the provisions of Tamil Nadu Borstal Schools Act, 1925 were ignored by the Courts below. It was contended that the Courts below erred in not directing the detention of the Petitioner in a Borstal School.

Dismissing the bail application of the Petitioner, the Court

HELD: 1.1. The Tamil Nadu Borstal Schools Act, 1925 does not contemplate the term 'juvenile' at all. However, the definition of 'adolescent offender' is contained in Section 2(1) of the Act. By virtue of the statutory definition of 'adolescent offender', on the date of the conviction he should have been not less than 16 years but not more than 21 years of age. 'Adolescent' is seldom considered in any legal dictionary, whereas juvenile/ minor/child is ubiquitously dealt with. The Borstal School is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail. Section 8 of the

Borstal Schools Act stipulates that a convict cannot remain in a Borstal School beyond a period of five years or his attaining the age of 23 years. There is a distinction, as the relevant statutes ordain, between an 'adolescent' and a 'juvenile'. 'Juvenile' and its statutory synonym 'child' (and now even 'minor') has been defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 simply as a person who has not completed eighteen years of age. The repealed Juvenile Justice Act treated any person below the age of sixteen years as a juvenile and it is this age which is contemplated in the Borstal Schools Act. By virtue, therefore, of Section 8 of the Juvenile Justice Act, Special Homes have to be established for the 'reception and rehabilitation of a juvenile in conflict with law'. Again, it is this Act in terms of Section 16, that places an embargo on the imposition of any sentence of death or imprisonment for life. [Paras 2, 3] [360-G; 361-C-G; 362-A]

1.2. Since the Petitioner was over 19 years on the date of occurrence of the unfortunate event or the conviction, even in the postulation of the Juvenile Justice Act, no relief is available even retrospectively to the Petitioner. Under Section 8 of the Borstal Schools Act, the Court is empowered to pass a sentence of detention in the Borstal School when it appears to it expedient to pass such a sentence for a term which shall not be less than two years but shall not exceed five years. The rationale behind these provisions is obviously to insulate a young person or adolescent in contradistinction to a juvenile, during his waning impressionable years, from the pernicious influence of hardened criminals; and, on the other hand, to similarly insulate other persons sentenced to detention in Borstal Schools from the influence of convicts who have attained the age of 23 years or who have been detained in a Borstal School for five years. [Para 3] [362-B-E]

1.3. Since on the date of his conviction the Petitioner was over 21 years old, and therefore, was not a juvenile under the erstwhile or current statutory dispensation as per the wisdom of the Legislature, there was no impediment or legal impropriety in his having to undergo his sentence in an ordinary jail; on the contrary being an adult it would not have been advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons. The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as he would then have required to be placed in a Borstal School. Even if this infraction had occurred, the Petitioner would not be entitled to bail today solely on that score. In any event, the entire argument is totally academic since on the present date the Petitioner is over 30 years of age and on the date of his conviction for the commission of the offence, the Petitioner was over 21 years of age. The Borstal Schools Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed. [Paras 5] [364-E-H; 365-A]

Yaduraj Singh v. State of U.P. **(1976) 4 SCC 310 and** *C. Elumalai v. State of Tamil Nadu* **(1984) 4 SCC 539 - distinguished.**

Case Law Reference:

(1976) 4 SCC 310	**distinguished**	**Para 4**
(1984) 4 SCC 539	**distinguished**	**Para 4**

CRIMINAL APPELLATE JURISDICTION : Criminal M.P. No. 853 of 2013.

IN

Criminal Appeal No. 811 of 2011.

From the Judgment and Order dated 02.12.2009 of the Madurai Bench of Madaras High Court in Crl. Appeal No. 1355/2002.

V. Kanagaraj, Vipin Kumar Jai, Vipul Jai for the Appellant.

Subramonium Prasad, AAG, Rajiv Dalal, A. Santha Kumaran, K. Sasikala, M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. The only question agitated before us by learned Senior Counsel for the Petitioner is that the provisions of Tamil Nadu Borstal Schools Act, 1925 (hereinafter 'Borstal Schools Act') have been ignored by the Courts below. It is evident from a perusal of the impugned judgment that the applicability of the said statute has not been raised in either of the Courts below. Briefly stated, the Petitioner has been sentenced to life imprisonment under Section 302 of the Indian Penal Code for the murder of his paternal uncle on 12.8.1999. It is not disputed before us that the Petitioner's date of birth is 29.11.1979 thereby making him 19 years 8 months of age on the date of the commission of the murder. The Petitioner having been found guilty has been sentenced to life imprisonment vide judgment of the Trial Court pronounced on 6.9.2002, on which date the Petitioner was 22 years 9 months old. It is contended before us by learned Senior Counsel that the Courts below erred in not directing the detention of the Petitioner in a Borstal School.

2. The Borstal Schools Act does not contemplate the term 'juvenile' at all. However, the definition of 'adolescent offender' is contained in Section 2(1) of the said Act and reads thus :

" 'Adolescent offender' means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under section 118 of the Code of Criminal Procedure has failed to do

so and who at the time of such conviction or failure to give security is not less than 16 in the case of a boy and not less than 18 in the case of a girl, but not more than 21 years of age in either case."

We should clarify that Section 118 corresponds to Section 110 of the current 1973 Cr.P.C. The age of a juvenile prior to the present Act was 16 years and a legal anachronism palpably exists requiring an amendment to the Borstal Schools Act substituting the age of 16 years by 18 years for a boy. 'Adolescent' is seldom considered in any legal dictionary, whereas juvenile/minor/child is ubiquitously dealt with. Adolescence is the penumbral period (presently between 18 years and 23 years) when, for good reason, a person is not perceived and treated as an adult for the purposes of incarceration. The Borstal School is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail. Section 8 of the Borstal Schools Act stipulates that a convict cannot remain in a Borstal School beyond a period of five years or his attaining the age of 23 years. We should immediately note the distinction, as the relevant statutes ordain, between an 'adolescent' and a 'juvenile'. 'Juvenile' and its statutory synonym 'child' (and now even 'minor') has been defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 [for short, 'Juvenile Justice Act'] simply as a person who has not completed eighteen years of age. The repealed Juvenile Justice Act treated any person below the age of sixteen years as a juvenile and it is this age which is contemplated in the Borstal Schools Act. By virtue, therefore, of Section 8 of the Juvenile Justice Act, Special Homes have to be established for the 'reception and rehabilitation of a juvenile in conflict with law'. Again, it is this Act in terms of Section 16, that places an embargo on the imposition of any sentence of death or imprisonment for life.

3. In the context of the arguments addressed before us it is important to emphasise that it is the date of conviction that

assumes singular significance. By virtue of the statutory definition of 'adolescent offender', on the date of the conviction he should have been not less than 16 years but not more than 21 years of age. Although this question does not arise directly before us, the date of juvenility was less than 16 years of age and, therefore, a plea on this ground had not been raised since the Petitioner was over 19 years on the date of occurrence of the unfortunate event or the conviction. Even in the postulation of the Juvenile Justice Act, no relief is available even retrospectively to the Petitioner. Under Section 8 of the Borstal Schools Act, the Court is empowered to pass a sentence of detention in the Borstal School when it appears to it expedient to pass such a sentence for a term which shall not be less than two years but shall not exceed five years. The rationale behind these provisions is obviously to insulate a young person or adolescent in contradistinction to a juvenile, during his waning impressionable years, from the pernicious influence of hardened criminals; and, on the other hand, to similarly insulate other persons sentenced to detention in Borstal Schools from the influence of convicts who have attained the age of 23 years or who have been detained in a Borstal School for five years.

4. Learned Senior Counsel has drawn our attention to *Yaduraj Singh v. State of U.P.* (1976) 4 SCC 310 and *C. Elumalai v. State of Tamil Nadu* (1984) 4 SCC 539 both of which have no relevance to the issue raised before us, that too for the first time. In *Yaduraj Singh* this Court had emphasised that the plea under the Probation of Offenders Act had not been raised in any of the Courts below and whilst it could nevertheless be pressed, such a course invariably presents difficulties in comprehensively considering the plea because of the absence of any credible evidence to determine the juvenility of the person concerned. We hasten to clarify that we have not declined to entertain the plea on the ground that it has not been raised in any of the Courts below, therefore rendering *Yaduraj Singh* of no assistance to the Petitioner. The ratio of *Elumalai* follows upon a bare reading of Sections

Schools Act which we shall reproduce so as to make our judgment holistic and self contained :

"8. **Power of Court to pass sentence of detention in Borstal School.** (1) Where it appears to a Court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with the persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty-three years.

(2) Before passing a sentence of detention in a Borstal School under sub-section (1), the Court

(a) shall call for a report from the Probation Officer of the area in which the offender permanently resided at the time when he committed the offence and shall consider such report,

(b) shall consider any other report or representation which may be made to it, and

(c) may make such further inquiry as it may think fit, as to suitability of the case for treatment in a Borstal school and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid.

(3) The report of a Probation Officer referred to in sub-section (2) shall be treated as confidential.

Provided that the Court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

10. **Power of Inspector-General to transfer prisoners to Borstal Schools.**-The Inspector General may, subject to rules made by the State Government, if satisfied that any adolescent offender undergoing imprisonment in consequence of a sentence passed either before or after the passing of this Act might with advantage be detained in a Borstal school, there to serve the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall thereupon apply to such person as if he had been originally sentenced to detention in a Borstal school."

5. So far as the facts in the present Appeal are concerned, since on the date of his conviction the Petitioner was over 21 years old, and therefore, was not a juvenile under the erstwhile or current statutory dispensation as per the wisdom of the Legislature, there was no impediment or legal impropriety in his having to undergo his sentence in an ordinary jail; on the contrary being an adult it would not have been advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons. The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as he would then have required to be placed in a Borstal School. Even if this infraction had occurred, the Petitioner would not be entitled to bail today solely on that score. In any event, the entire argument is totally academic since on the present date the Petitioner is over 30 years of age and on the date of his conviction for the commission of the offence, the Petitioner was over 21 years of age. The Borstal Schools

Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed.

6. Accordingly the Application for bail, on the grounds pressed before us, is devoid of merit and is dismissed.

B.B.B. Bail Application dismissed.

YASH DEEP TREXIM PRIVATE LIMITED
v.
NAMOKAR VINIMAY PVT. LTD. & ORS.
(Civil Appeal Nos.8440-8445 of 2013 etc.)

SEPTEMBER 23, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, JJ.]

Sick Industrial Companies (Special Provisions) Act, 1985 - s.3(o) - Applicability of the Act - To the foreign companies registered in India - Held: In view of object and scheme of the Act and the financial health of the company in question, the company does not fall within ambit of expression 'sick industrial company' defined u/s. 3(o) - Hence provisions of the Act does not apply - The question whether the Act applies to foreign companies registered in India, is left open.

The main question for consideration in the present appeals was whether the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 are applicable to the 'foreign companies' registered in India under the provisions of s.591 of the Companies Act, 1956, and therefore, the revival scheme framed by the Board for industrial and Financial Reconstruction, in respect of the respondent-Company, was required to be implemented. In addition to the main question, various other contentious issues with regard to the rights of one group of shareholders or the others to be in the control of the management of the Company were also raised.

Disposing of the appeals, the Court

HELD: The Act was enacted to overcome the grossly inadequate and time consuming institutional arrangements that were then in place for revival and rehabilitation of sick industrial companies. The Act was

brought into force to provide timely identification, by an expert body, of sick industrial companies and to design suitable rehabilitation packages in order to obviate the enormous loss that would be occasioned by such units going permanently out of business. The Act has cast upon the BIFR the duty to cause a detailed inquiry to be made into the functioning of any sick industrial company and to take steps to revive the functioning of such company failing which to refer the cases of such companies to the jurisdictional High Court for winding up in accordance with the provisions of the Companies Act. [Para 7] [375-H; 376-A-E]

2. In the present case the entitlement of the respondent company to receive a total amount of Rs.170 crores (approximately) by way of acquisition compensation and the payment of Rs.95 crores by NHAI which is presently lying in deposit with the Registrar of the Calcutta High Court is not in dispute. That the respondent company would be left with a surplus of about Rs.50 crores after meeting all its losses and liabilities is a common ground amongst all the contesting parties. The rehabilitation scheme framed by the Board by its order dated 04.10.1999 is yet to be implemented. In the aforesaid situation keeping in view the object and scheme of the Act and the virtual consensus of the contesting parties with regard to the present financial health of the respondent company, it is clear that the company can no longer fall within the ambit of the expression "sick industrial company" as defined in Section 3(o) of the Act. Further applicability of the Act to the respondent company, therefore, does not arise. [Para 8] [377-A-D]

3. Since the respondent-company no longer falls within the ambit of a 'sick industrial company' as defined by Section 3(o) of the Act and the Act has ceased to apply

to the company and the rehabilitation package worked out by the Board has not yet been implemented, the question(s) arising in the present appeals have become academic and redundant. Hence, the said question(s) left open for determination in an appropriate case and as and when the occasion would arise. [Para 9] 377-E-F]

4. This Court exercising jurisdiction under Article 136 of the Constitution is not the appropriate forum to adjudicate grievances/claims with regard to the right of management of the affairs of the company by one group of shareholders or the other. Several contentious issues with regard to the rights of one group of shareholders or the other to be in control of the management of the Company had been raised and some of such claims are still pending before the High Court. Coupled with the above is the pendency of several other proceedings with regard to permanent stay of the winding up of the Company. Therefore, it would be just, proper and equitable to leave the contesting parties to pursue their remedies before the High Court or such other forum as may be competent in law. For the present, the Management of the Company as on date will continue until orders, if any, varying the current position are passed by any forum competent in law. It is clarified that the above is a mere working arrangement and the same should not be understood as any expression of opinion by this Court on the entitlement of any particular group of shareholders to run and manage the affairs of the company which issue is left open. [Para 10] [377-H; 378-A-E]

Radheshyam Ajitsaria and Anr. vs. Bengal Chatkal Mazdoor Unionand Ors. **(2006) 11 SCC 771: 2006 (2) Suppl. SCR 918;** *Raheja Univeral Limited vs. NRC Limited and Ors.* **(2012) 4 SCC 148: 2012 (3) SCR 388 - relied on.**

Case Law Reference:

2006 (2) Suppl. SCR 918	**relied on**	**Para 3**
2012 (3) SCR 388	**relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8440-8445 of 2013.

From the Judgment and Order dated 19.10.2012 of the High Court of Calcutta in FMA Nos. 169, 170, 171, 172 of 2012, 1115 of 2011.

WITH

C.A. Nos. 8446-8451, 8452-8457 and 8458-8463 of 2013.

Gopal Subramanium, Amrendra Sharan, V. Giri., C.A. Sundram, Rohinton Nariman, Guru Krishna Kumar, Shyam Divan, Umesh Pratap Singh, Brijesh Kumar Singh, R.C. Kohli, S. Mehdi Imam, Rahul Gupta, M.L. Lahoty, Ram Niwas, Samir Ali Khan, Pradeep Aggarwal, Lal Pratap Singh, Gaurav Kejriwal, A. Tanu, Ruchi Kohli, Sanjeev Sen, Manju Agarwal, Rameshwar Prasad Goyal, Rudarjeet Sarkar, Ankur Chawla, Meenakshi Chatterjee, Jayant Mohan, Vikas Mehta, Saurabh Kirpal, Renuka Iyer, Rajat Sehgal, Shakil Ahmed, Narhari, Aditi Misra, Abhishek Gupta, Mohit D. Ram, S. Wasim A. Qadri, Sunita Sharma, Sadha Sandhu, Rashmi Malhotra, Anil Katiyar, Mahesh Srivastava, Vaibhav Srivastava, P.N. Puri, Appoorv Kurup, Ardhendumauli Kumar Prasad, Pragati Neekhra, Parth Tiwari, Sanjoy K. Ghosh, Rupali S. Ghosh, D.P. Mukherjee, Amit Sibbal, U.N. Goyal, Dr. Kailash Chand for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. The common challenge in these appeals is against the judgment and order dated 19.10.2012 passed by a Division Bench of the High Court of Calcutta holding that the provisions

of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter for short "SICA") are applicable to the "foreign companies" registered in India under the provisions of Section 591 of the Companies Act, 1956 (hereinafter for short "the Act") and, therefore, the revival scheme framed by the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") in respect of the Baranagore Jute Factory Plc. (hereinafter for short 'the Respondent Company') is required to be implemented. Though the question raised in these appeals is short and precise, as noticed above, learned counsels for the parties have raised various issues and contentions which, in no way, appear to be even remotely connected with the question of law that arises from the order of the High Court. We would, therefore, like to make it clear at the outset that in spite of the strenuous efforts on the part of the learned counsels for the parties to persuade us to go into the said questions we have considered it wholly unnecessary to do so for reasons indicated hereinafter. Instead, we must deal with what strictly arises for our answer in the present appeals leaving the parties to avail of such remedies as may be open to them in law in respect of all other grievances raised.

3. We may now take note of a few relevant facts. The Respondent Company was wound up by an order dated 28.10.1987 of the learned Company Judge of the Calcutta High Court. The appeal filed against the winding up order by some of the workers of the Company came to be dismissed by the Appellate Bench of the High Court on 18.11.1987. Thereafter, on an approach being made, the winding up proceedings were stayed for a period of six months on 22.9.1988 and a scheme for revival of the Company suggested by some of the shareholders was accepted by the learned Company Judge. Our perusal of the relevant facts and the voluminous pleadings brought on record would seem to suggest that the initial order of stay of the winding up dated 22.9.1988 has been extended from time to time and till the present date different schemes for running the affairs of the Respondent

framed and implemented pursuant whereto the Company has been functioning as a going concern. We also deem it necessary to put on record that it has been contended before us that several applications registered and numbered as C.A. No. 126/2005, C.A. No. 302/2005, C.A. No. 303/2005, C.A.No.370/2009, C.A.No.957/2010 for a permanent stay of the winding up proceedings have been filed before the Calcutta High Court and the same are presently pending. The above plea has been urged notwithstanding the observations of this Court in *Radheshyam Ajitsaria & Anr. v. Bengal Chatkal Mazdoor Union & Ors.*[1] to the effect that in permanent stay of the winding up proceedings in respect of the Respondent Company had been granted by the High Court.

4. From the pleadings of the parties placed before us it appears that the Respondent Company is the owner of vast immovable properties in and around Kolkata which, with the passage of time, have enormously appreciated in value. It is this particular asset of the Respondent Company which has been the bone of contention between different groups of shareholders who have claimed the right to run the affairs of the Company under the schemes framed by the learned Company Judge from time to time. The action of one group of shareholders purportedly to the disadvantage of another and the acquisition of majority share holding by one such group to the detriment of the other by enlarging the equity base of the Respondent Company has been the bone of contention giving rise to serious contentious issues, which issues, as indicated earlier, we are not inclined to go into as the same not only has to be agitated before the appropriate forum but also does not arise from the order passed by the High Court which has been subjected to challenge in the appeals before us. All that would be necessary for us to note, in addition to the facts stated above, is that a Reference made in the year 2004 to the BIFR by two of the Directors of the Respondent Company claiming to be in office at that point of time was ordered by the Calcutta

1. (2006) 11 SCC 771.

High Court to be disposed of on merits. The said order is dated 20.02.2006 passed in W.P. No. 221 of 2006. On the basis of the said order proceedings before the BIFR were taken up and a scheme under Sections 18(4) and 19(3) of the SICA was framed and notified for immediate implementation by the order of the BIFR dated 4.11.2009. The said order came to be challenged before the High Court in W.P. No. 1166/2009 (re-numbered as W.P. 5535(W)/2010). There was an interim order in the said writ petition restraining the respondents therein from taking any steps in the matter of sale of any property of the Respondent Company or from creating any charge in respect of the assets of the Company without the leave of the Court. The writ petition was, however, withdrawn on 16.6.2010 whereafter three separate writ petitions bearing Nos. 12377/2010, 12406/2010 and 12412/2010 were filed challenging the jurisdiction of the BIFR to entertain the reference; frame the scheme in question and pass orders for implementation of the same. The aforesaid writ petitions were disposed of by the learned Single Judge of the High Court by order dated 25.1.2011 holding that the SICA is not applicable to the Respondent Company, it being incorporated outside India. Consequently, the scheme framed by the BIFR was set aside and quashed. As against the aforesaid order dated 25.1.2011 passed by the learned Single Judge of the High Court six appeals were filed by the aggrieved parties bearing Nos.169/2012, 170/2012, 171/2012, 172/2012, 173/2012 and 1115/2011. The Appellate Bench of the High Court by order dated 19.10.2012 took the view that on a purposive interpretation of the provisions of SICA the said Act would be applicable to the Respondent Company. In this regard the Division Bench of the High Court specifically took note of the fact that the only factory of the Company is located in India at Baranagore; 90% of its shareholders are Indians and 3700 workers are working in the jute factory in West Bengal. Aggrieved, the present appeals have been filed before us.

5. Having noticed the question(s) a of

the High Court which has been challenged in the appeals presently under consideration, we may now briefly take note of the contentions raised in the appeals filed by the respective appellants before this Court.

The appellant in the appeals arising out of SLP (C) Nos. 39005-39010/2012, apart from questioning the jurisdiction of the BIFR, also contends that the first respondent (Namokar Vinimay Pvt. Ltd.) in the said appeals had fraudulently increased its equity holding from 9% to 90% on payment of a paltry sum of Rs. 5 crores by committing acts of cheating, forgery, fraud etc. The majority shareholding of the appellant has been thereby reduced, it is claimed.

In the appeals arising out of SLP (C) Nos.39011-39016/ 2012 the workers' union has raised grievances with regard to the competence of the existing Management Committee to function and contends that the Committee consisting of the two Directors who have instituted the appeals arising out of SLP(C) Nos. 39017-39022/2012 would be competent in law to run the affairs of the Respondent Company. Certain alleged fraudulent acts in the matter of disposition of the property/transfer of shares by the existing Management Committee are also alleged by the workers' union.

On the other hand in the appeals arising out of SLP(C) Nos. 39017-39022/2012, two Directors, namely, Chaitan Choudhury and Ridh Karan Rakhecha who have purportedly filed the appeal on behalf of the Respondent Company, apart from raising the issue of jurisdiction of the BIFR and the applicability of the SICA to the Company, had also struck issues with regard to the changes in the composition of the Management Committee and the frauds and the misdeeds allegedly committed by the first respondent, i.e., Namokar Vinimay Pvt. Ltd. in bringing out the above changes. Peculiarly, the reference of the case of the respondent Company to the BIFR was made by the very same appellants. In the last set of appeals in chronological order, i.e., appeals arising out of

SLP(C) Nos. 39023-39028/2012, the appellant Radheshyam Ajitsaria is one of the promoters of the revival scheme under which a Committee of Management had been constituted in the year 1988/1989 by the learned Company Judge of the High Court to run the affairs of the Company. The appellants therein are aggrieved by the BIFR's scheme which, according to the appellant, would be in serious derogation of the scheme approved by the High Court.

6. Having noted the broad features of the grievances raised in each of these appeals we may now take note of certain connected facts on the basis of which we will be required to decide the necessity and expediency to adjudicate the core question arising in these appeals and the other issues that have been sought to be agitated before us. It has already been stated in the earlier part of this order that the Respondent Company is the owner of vast tracts of immovable property in and around Kolkata which has, with the passage of time, appreciated in value. Way back in the year 1988 an area of about 24 acres of land owned by the Company was acquired for the purpose of building, maintenance, management and operation of the second Vivekananda Bridge across the river Hoogly. In the year 2003 provisional compensation was assessed at Rs.21,28,21000/- and on deposit of the said amount possession of the land was taken over. The acquisition of the land came to be challenged before the High Court and the said challenge was also carried to this Court. The net result of the aforesaid exercise(s) was an enhancement of the compensation initially by the High Court to the extent of 30% and thereafter by this Court by fictionally shifting the date of entitlement of compensation from the date of acquisition to the date of taking over of possession. An award dated 30.01.2006 was made in terms of the order of this Court which had led to further disputes between the parties. Eventually, all parties agreed to refer the matter to the sole arbitration of a retired Chief Justice of this Court who by a final Award dated 13.9.2012 awarded an additional com of

Rs.57 crores along with interest, which on computation, would amount to about Rs.50 crores. A sum of Rs.95 crores has been deposited by the National Highway Authority of India with the Registrar of the Calcutta High Court on 9.11.2012 in the account of the Respondent Company. In this manner the Respondent Company has received/entitled to receive a sum of nearly Rs.170 crores on account of compensation for acquisition of the land. The Respondent Company has clearly and categorically and on the basis of the precise details of its liabilities has contended that even after meeting all its statutory and contractual obligations and liabilities it would still be left with a surplus of nearly Rs.50 crores and, therefore, would not be a 'sick company' any more. The aforesaid claim/position has been admitted by the appellant in the appeals arising out of SLP (C) Nos.39005-39010/2012 in paragraph 'I' of the SLP by stating as follows :

> "It is submitted that in all an amount of Rs.170 crores has been paid by NHAI to the Respondent No.22 Company out of which Rs.95 crores has been deposited with the Registrar of the High Court on 9.11.2012 to the credit of the Respondent No.22 Company pursuant to the award dated 13.9.2012 and as such the Respondent No.22 Company would be out of BIFR as it will have a surplus fund available and profits of about Rs.50 crores even after meeting out all losses and liabilities."

7. To appreciate the effect of the aforesaid facts on the necessity of any adjudication of the present appeals, the object behind enactment of the SICA and the statutory scheme contemplated by the Act may be briefly noticed. An elaborate exposition of the legislative history and object behind enactment of the SICA as well as the scheme under provisions of the Act is to be found in a recent pronouncement of this Court in *Raheja Univeral Limited v. NRC Limited & Ors.*[2]. At the cost of repetition it may be usefully recapitulated that the Act was

2. (2012) 4 SCC 148.

enacted to overcome the grossly inadequate and time consuming institutional arrangements that were then in place for revival and rehabilitation of sick industrial companies. The Act was brought into force to provide timely identification, by an expert body, of sick industrial companies and to design suitable rehabilitation packages in order to obviate the enormous loss that would be occasioned by such units going permanently out of business. The provisions of Sections 15 to 19 contained in Chapter III of the Act dealing with references to the Board by the Management of sick industrial companies; enquiries into the working of such companies and the measures to be undertaken by the Board to make a sick industry viable had received a full consideration of this Court in *Raheja Univeral Limited* (supra). The details in this regard need not be noticed once again save and except that the Act has cast upon the BIFR the duty to cause a detailed inquiry to be made into the functioning of any sick industrial company and to take steps to revive the functioning of such company failing which to refer the cases of such companies to the jurisdictional High Court for winding up in accordance with the provisions of the Companies Act. In this regard, specific notice must be had of Section 3(o) of the Act which defines a sick industrial company in the following terms:

> "(o) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.
>
> Explanation.-For the removal of doubts, it is hereby declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993 registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, sha[illegible]a

sick industrial company;"

8. In the present case the entitlement of the respondent company to receive a total amount of Rs.170 crores (approximately) by way of acquisition compensation and the payment of Rs.95 crores by NHAI which is presently lying in deposit with the Registrar of the Calcutta High Court is not in dispute. That the respondent company would be left with a surplus of about Rs.50 crores after meeting all its losses and liabilities is a common ground amongst all the contesting parties. The rehabilitation scheme framed by the Board by its order dated 04.10.1999 is yet to be implemented. In the aforesaid situation keeping in view the object and scheme of the Act and the virtual consensus of the contesting parties with regard to the present financial health of the respondent company it is clear that the company can no longer fall within the ambit of the expression "sick industrial company" as defined in Section 3(o) of the Act. Further applicability of SICA to the respondent company, therefore, does not arise.

9. If the respondent company no longer falls within the ambit of a 'sick industrial company' as defined by Section 3(o) of the Act and the Act has ceased to apply to the company and the rehabilitation package worked out by the Board has not yet been implemented, the question(s) arising in the present appeals have surely become academic and redundant. If that be so, we do not see why we should answer the said question(s) in the present group of appeals. Instead, in fitness of things, we should leave the said question (s) open for determination in an appropriate case and as and when the occasion would arise.

10. In so far as the other issues, particularly, with regard to the management of the company is concerned we have already found that none of the said issues arise from the order of the High Court under appeal before us. Even otherwise, we will not be justified to go into any of the said issues and express any opinion thereon inasmuch as this Court exercising

jurisdiction under Article 136 of the Constitution is not the appropriate forum to adjudicate grievances/claims with regard to the right of management of the affairs of the company by one group of shareholders or the other. It has been urged before us that several contentious issues with regard to the rights of one group of shareholders or the other to be in control of the management of the Company had been raised and some of such claims are still pending before the High Court. Coupled with the above is the pendency of several other proceedings with regard to permanent stay of the winding up of the Company. Taking into account all that has been stated above we are of the view that it would be just, proper and equitable to leave the contesting parties to pursue their remedies before the High Court or such other forum as may be competent in law. For the present, the Management of the Company as on date will continue until orders, if any, varying the current position are passed by any forum competent in law. It is made clear that the above is a mere working arrangement that we have considered appropriate for the present and the same should not be understood as any expression of opinion by us on the entitlement of any particular group of shareholders to run and manage the affairs of the company which issue is left open.

11. Consequently, all these appeals shall stand disposed of in terms of our above observations and directions.

K.K.T. Appeals disposed of.

SUSHILA DEVI

v.

STATE OF RAJASTHAN AND ORS.

(Criminal Miscellaneous Petition No. 21811 of 2010 etc.)

IN

Special Leave Petition (Criminal) No. 3212 of 2008

SEPTEMBER 24, 2013

[SURINDER SINGH NIJJAR AND PINAKI CHANDRA GHOSE, JJ.]

Investigation - Monitoring of - By Supreme Court - Investigation by CBI under the monitoring of Supreme Court - Continuance of monitoring pleaded even after charge-sheet was filed and trial commenced - Held: Monitoring is not permissible after the investigation is complete and charge-sheet filed.

The question for consideration in the present cases was whether this Court should continue to monitor the investigation, even after the investigation is complete and charge-sheet is filed.

Disposing of the applications, the Court

HELD: The monitoring of a case is continued till the investigation continues, but when the investigating agency, which is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. In the present case, since the investigation has already been completed, charge-sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring

of the case, which is in the domain of the competent court. [Paras 14 and 15] [391-H; 392-A-C]

Vineet Narain vs. Union of India **1998 (1) SCC 226: 1997 (6) Suppl. SCR 595;** *Union of India vs. Sushil Kumar Modi* **1998 (8) SCC 661;** *M.C. Mehta (Taj Corridor Scam) vs. Union of India* **2007 (1) SCC 110: 2006 (9) Suppl. SCR 683;** *Jakia Nasim Ahesan vs. State of Gujarat* **2011 (12) SCC 302: 2011 (11) SCR 365 - relied on.**

National Human Rights Commission vs. State of Gujarat and Ors. **2009 (6) SCC 767: 2009 (7) SCR 236;** *Centre for Public Interest Litigation and Ors. vs. Union of India and Ors.* **2012 (3) SCC 104;** *Rajiv Lalan Singh "Lalan" (8) vs. Union of India* **2006 (6) SCC 613: 2006 (4) Suppl. SCR 742 - cited.**

Case Law Reference:

2009 (7) SCR 236	**cited**	**Para 4**
2012 (3) SCC 104	**cited**	**Para 4**
2006 (4) Suppl. SCR 742	**cited**	**Para 7**
1997 (6) Suppl. SCR 595	**relied on**	**Para 9**
1998 (8) SCC 661	**relied on**	**Para 10**
2006 (9) Suppl. SCR 683	**relied on**	**Para 11**
2011 (11) SCR 365	**relied on**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Miscellaneous Petition No. 21811 of 2010

WITH

Criminal Miscellaneous Petition No. 17950 of 2011

AND

Criminal Miscellaneous Petition No. 15638 of 2012

IN

Criminal Miscellaneous Petition No. 21811 of 2010

IN

Special Leave Petition (Criminal) No. 3212 of 2008

From the Judgment and Order dated 01.10.2007 of the High Court of Rajasthan at Jaipur in SBCRM No. 1015 of 2007.

H.P. Raval, ASG, R.P. Bhat, P.S. Patwalia, Dr. Manish Singhvi, AAG, S.K. Sinha, Seema Kashyap, Amit Lubhaya, Milind Kumar, Rajiv Nanda, T.A. Khan, Shriniwas Khalap, Anando Mukherjee, Palash Kanwar, Divya Anand, B.V. Balramdas, Abhishek Gupta, Sarad Kumar Singhania, Rakesh Dahiya, Gagan Deep Sharma, Preeti Singh for the appearing parties.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These applications have been filed by the parties praying for monitoring of the matter in question, on one hand and the other parties seek that since the charge-sheet has already been filed, it is not necessary to continue with the monitoring of the matter in question which is pending before the Criminal Court for adjudication.

2. Therefore, the sole question as it appears to be germane at this stage in the matter is: whether this Court should continue to monitor the investigation, as directed earlier, even after filing of the charge-sheet.

3. The facts of the case briefly are as follows:

a) In January, 2006, the Rajasthan Police came up with a list of most-wanted criminals of Rajasthan which included the name of Dara Singh, the deceased husband of the petitioner in Special Leave Petition (Criminal) No.3212/2008. An award of Rs.25,000/- was declared on his head and on October 23, 2006 , it appears that he was killed in an encounter as would be evidenced from the subsequent FIR No. 396/2006 dated

October 23, 2006 registered on the complaint of Mr. Rajesh Chaudhary, a member of the Special Operation Group (SOG).

b) In the FIR it was alleged that the deceased was equipped with sophisticated weapons and was killed in an encounter with the SOG after a gun-battle. In these circumstances, subsequently, Smt. Sushila Devi filed a complaint before the Judicial Magistrate under Section 190 of the Code of Criminal Procedure (hereinafter' the Code') seeking directions under Section 156(3) of the Code for registration of an FIR against the member of the SOG and alleged that Dara Singh was killed by the SOG. The Judicial Magistrate by an order dated April 2, 2007, issues directions for investigation. These directions were in conflict with the investigation under FIR No.396/2006.

c) Thereafter, Smt. Sushila Devi, widow of Late Dara Singh, filed an application being Criminal Miscellaneous Petition No. 1015/2007 before the High Court of Rajasthan against the order passed by the learned Magistrate dated May 28, 2007, dismissing the application under Sections 157(1) and 210 of the Code recording that the encounter, as alleged by Sushila Devi, is the subject-matter of FIR No.396/2006 which is under the process of an investigation.

d) On August 2, 2007, the High Court issued notices to the respondents and by an order dated October 1, 2007, which is impugned in this petition, the High Court was pleased to recall its order dated August 2, 2007.

e) In the said Special Leave Petition (No.3212/2008), an allegation has been made by Sushila Devi that her husband was killed in the said encounter by the Police officials of Special Operation Group, Jaipur on October 23, 2006 and, hence, prayed for a direction to initiate a CBI inquiry in the matter. The State of Rajasthan filed an affidavit and submitted that the Government had decided to refer the matter to the Central Bureau of Investigation (CBI)

March 3, 2009. In these circumstances, the matter came up/ disposed of by this Court on April 8, 2009.

f) Thereafter, Smt. Sushila Devi filed Criminal Misc. Petition No.13244/2009 along with Criminal Misc. Petition No.13246/2009. This Court disposed of the said petitions on the ground that since the CBI has been directed to hold an investigation in respect of an offence alleged, no order need be passed on the said petitions. After complying with the orders of this Court, the CBI registered Case No.RC.2(S)/2010-SCU.V/SC-II/CBI/New Delhi on April 23, 2010 and took up investigation.

g) During the investigation, another Criminal Miscellaneous Petition No.21811 of 2010 was filed in this Court by the petitioner, praying for monitoring of investigation of the case and to direct the CBI to place the findings of investigation before this Court ahead of filing the same in competent court at Jaipur. This Court vide its order dated January 1, 2011 issued the following directions in the matter :

"Heard learned counsel for the parties.

It is deeply disappointing that the CBI has not yet completed the investigation despite the order of this Court dated 9th April, 2010. On the request of the learned counsel for CBI, we grant two months' further time to complete the investigation, failing which a serious view will be taken by this Court about the functioning of the CBI.

List on 8th March, 2011."

h) From time to time, the matter appeared before this Court and two months' time was granted on March 8, 2011 to complete the investigation by the CBI. The State of Rajasthan was directed to co-operate with them. The CBI proceeded with the matter. In course of investigation, four of the accused

persons were arrested on March 11, 2011 and remanded in Police custody till March 17, 2011. Subsequent thereto, two accused persons were arrested on May 15, 2011 and May 26, 2011.

i) The CBI on completion of their investigation filed a charge-sheet before the competent court on June 3, 2011, against 16 accused persons including the persons who were absconding at that point of time, namely, Arvind Kumar Jain, Arshad Ali, Rajesh Chaudhary, Zulfikar Ali, Arvind Bhardwaj and Vijay Kumar Chaudhary. Investigation under section 173(8) of the Code was pending against one of the prima facie suspects, Mr. Rajendra Rathore, who was then a Minister in the Government of Rajasthan.

j) In the meanwhile, one of the accused Satyanarayan Godara filed an application for impleadment in the matter which was granted by this Court on July 18, 2011. On August 25, 2011 charges against 10 accused persons, who were in jail custody, were framed by the District & Sessions Judge, Jaipur. This Court on October 31, 2011 issued directions to the six accused to surrender before the trial court, in order to be eligible for legal remedy. Inspite of the same, only one of the accused being Arshad Ali surrendered before the Court on November 11, 2011.

k) Complying with the various orders of this Court from time to time, the CBI duly filed status report/s before this Court and on December 16, 2011, this Court directed that monitoring of the case will continue and further directed the CBI to file a status report by the end of January, 2011. Steps were also taken by the CBI as would be evident from the status reports filed before this Court.

l) In an attempt to arrest the remaining five fugitive accused, cash rewards of Rs.10 lakhs on A.K. Jain and Rs.5 lakhs on others were declared by the CBI to motivate the general public to give information leading to the arres d

persons at large. After the rewards were announced, A.K. Jain surrendered before the court on February 27, 2012 and he remained in police custody till March 10, 2012. Efforts to arrest the remaining absconding accused continued.

m) After completion of further investigation pending under section 173(8) of the Code, the CBI filed a supplementary charge-sheet under Section 120B read with Sections 302, 364, 346, 201, 218 and 193 of the IPC against Rajendra Rathore before the court on April 5, .2012. The C.J.M., Jaipur, took cognizance of the offence against the accused Rajendra Rathore and committed the case to the Court of Sessions, Jaipur, Rajasthan. On May 31, 2012, the Sessions Judge, Jaipur discharged the accused Rajendra Rathore from all allegations levelled against him. The CBI filed a revision petition before the High Court which was allowed on December 26, 2012 setting aside the order passed by the learned Sessions Judge, Jaipur. Rajendra Rathore was directed to surrender before the High Court and a charge was directed to be framed against him.

n) In the meanwhile, the accused A.K. Jain was committed to the Court of Sessions by the A.C.J.M. Jaipur and the Sessions Court on May 1, 2012 framed charges against him under the same provisions under which Rajendra Rathore was charge-sheeted and the trial remains pending. Two other absconding accused, namely, Rajesh Choudhary and Arvind Bhardwaj were committed to the Court of Sessions on August 13, 2012 and charged were framed against them on September 6, 2012.

o) Furthermore, on June 30, 2012, the CBI moved the court at Jaipur for registration of an FIR under section 174A IPC against the four absconding accused persons. It was further stated that one of the absconding accused Vijay Kumar Chaudhary was found murdered on November 15, 2012 in the area of Police Station Ratangarh, District Churu, Rajasthan. It is further stated that an important witness in the case, i.e., Mr.

Vijay Shankar Singh, Additional Chief Secretary, the then Home Secretary, Government of Rajasthan died in a road accident on December 3, 2012 at Jaipur.

4. Mr. H.P. Raval, learned Additional Solicitor General submitted that in the facts and circumstances of this case, it is necessary for this Court to monitor the whole case which is pending before the Court. Mr. Raval further submitted that if the investigation of the CBI and further monitoring of the case pending before the court is done, it would ensure that the trial is conducted fairly. Mr. Raval also submitted that considering the peculiar nature and the facts of this case, it is necessary for the Court to monitor this case. He also relied upon the following judgments of this Court : *National Human Rights Commission vs. State of Gujarat & Ors.* [2009 (6) SCC 767], *Centre for Public Interest Litigation & Ors. vs. Union of India & Ors.* [2012 (3) SCC 104] and *Jakia Nasim Ahesan v. State of Gujarat* [2011 (12) SCC 302].

5. Mr. R.P. Bhatt, learned senior counsel appearing for Smt. Sushila Devi, adopted the arguments of Mr. Raval.

6. Dr. Manish Singhvi, learned Additional Advocate General appearing on behalf of the State of Rajasthan, supports the contention of Mr. Raval, learned A.S.G. Dr. Singhvi further pointed out that if the court monitors the case, the matter will be properly dealt with at every stage.

7. Per contra, Mr. P.S. Patwalia, learned senior counsel appearing in Criminal Misc. Petition No.17950/2011 and on behalf of one Satyanarayan Godara submitted that once a charge-sheet is filed, which is not denied before this Court, before a competent court after completion of the investigation, the process of such monitoring comes to an end. In the instant case, according to him, the CBI has already stated that they have completed the investigation and filed a charge-sheet before the competent court. So, there is no need to monitor the matter which is now pending befor e

competent court of law would deal with the matter relating to the trial of the accused including the matters filed under Section 173(8) of the Code. He further contended that after filing of the charge-sheet the matter should be left to the court which should proceed with the trial in accordance with the provisions of law. Mr. Patwalia further contended that the investigation in the case was over on April 5, 2012. Undisputedly, a supplementary charge-sheet has been filed. It cannot be disputed that no investigation is pending in the matter. Trial has been going on and as many as 15 witnesses have been examined so far. The application which is pending consideration of this Court is Crl. Misc. Petition No.21811 of 2010 wherein the complainant has made a prayer for monitoring. He contended that the said application has become infructuous because monitoring of the case comes to an end as soon as the investigation is over. In support of his contention, he strongly relied upon *Vineet Narain v. Union of India* [1998 (1) SCC 226], *Union of India v. Sushil Kumar Modi* [1998 (8) SCC 661], *Rajiv Lalan Singh "Lalan" (8) v. Union of India* [2006 (6) SCC 613], *M.C. Mehta (Taj Corridor Scam) v. Union of India* [2007 (1) SCC 110] and *Jakia Nasim Ahesan v. State of Gujarat* [2011 (12) SCC 302], and drew our attention specifically where the Court came to the conclusion that after the investigation is over, there is no need to monitor the case.

8. Mr. Ranjit Kumar, learned senior counsel, also appeared in this matter and contended that after the completion of the investigation and filing of the charge- sheet, nothing remains to be monitored by this Court since the matter is being proceeded before the trial court. He also relied upon the decisions cited before this Court by Mr. Patwalia and contended that the trial court should deal with the matter in accordance with the provisions of law.

9. We have heard learned counsel for the parties at length. We have also perused the facts of this case. We have noticed in *Vineet Narain's* case (supra) also known as the "Hawala

Case" wherein a Bench of three learned Judges heard the various PILs regarding the investigations of the Hawala Scam run by the Jain Brothers implicating various politicians. This Court while deciding the procedure of investigation under the monitoring of the CBI, observed that:

> *"8. We would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of 'continuing mandamus'.*

10. In *Union of India vs. Sushil Kumar Modi* (supra) which dealt with the investigation in the fodder scam, a three-Judge Bench of this Court observed thus :

> *"6. … It was made clear by this Court in the very first case, namely Vineet Narain & Ors. vs. Union of India (W.P. (Crl.) Nos.340-343 of 1993), that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other concerned investigative agencies perform their function of investigating into the offences concerned comes to an end and thereafter it is only the court in which the charge-sheet is filed which is to deal with*

the trial of the accused, including matters falling within the scope of Section 173(8) of the CrPC. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is, therefore, clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained."

11. In *M.C. Mehta vs. Union of India* (supra) famously known as the "Taj Corridor Case", two learned Judges of the three-Judge Bench wherein the third Judge gave a separate but concurring judgment, observed after referring to the judgment of this Court in *Union of India v. Sushil Kumar Modi* (supra) which upheld the *Vineet Narain* Case (supra) that the monitoring of the investigation by this Court is only to ensure the proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigations, which are to be determined at the trial as per the ordinary procedure prescribed by law.

12. In the case of *Jakia Nasim Ahesan* (supra) where the wife of a victim of the 2002 Gujarat riots sought additional investigation on the basis of additional material coming to light against the persons in power who were accused in the same, a three-Judge Bench of this Court, while coming to the conclusion that monitoring in the present case must come to an end, deferentially concurred with the aforementioned cases and observed thus :

"9. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in M.C. Mehta (Taj Corridor Scam) v. Union of India [2007 (1) SCC 110], in cases monitored by this Court, it

is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law."

13. In the said decision, it was also observed :

"13. In M.C. Mehta v. Union of India [2008 (1) SCC 407], a question arose as to whether after the submission of the final report by CBI in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and validity of CBI's action in seeking a sanction under Section 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned amicus curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus :

'9. … The jurisdiction of the court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appro[illegible]e

matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in.'

14. Recently, similar views have been echoed by this Court in Narmada Bai v. State of Gujarat [2011 (5) SCC 79]. In that case, dealing with the question of further monitoring in a case upon submission of a report by CBI to this Court, on the conclusion of the investigation, referring to the earlier decisions in Vineet Narain (supra), Sushil Kumar Modi (supra) and M.C. Mehta (Taj Corridor Scam) (supra), speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under : (Narmada Bai case (supra), SCC p. 102, para 70)

'70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173 (8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application.' "

14. After analysing all these decisions, it appears to us that this Court has already in a catena of decisions held and pointed out that the monitoring of a case is continued till the investigation continues but when the investigating agency, which

is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. Accordingly, we are of the opinion that since the investigation has already been completed, charge-sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring of the case in question.

15. In these circumstances, we have to answer the question in the negative. Accordingly, we direct that it is not necessary to monitor the matter in question any further since the matter is in the domain of the competent court. All the applications are accordingly disposed of.

K.K.T. Applications disposed of.

GIRRAJ PRASAD MEENA
v.
STATE OF RAJASTHAN & ORS.
(Criminal Appeal No. 1547 of 2013)

SEPTEMBER 30, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Code of Criminal Procedure, 1973:

s.252 and Chapter XXI-A - FIR u/s. 365 IPC - Alleging offence of kidnapping against 7 persons - Police filed charge-sheet u/s.323 and 343 r/w. s.34 IPC only against two accused - Both the accused filed application pleading guilty for the offences charged - Trial court without notice to the victim convicted the accused u/ss.323 and 343 r/w. s.34 IPC and concluded the trial same day - Application u/s. 482 by the appellant dismissed by High Court - Held: Order of trial court stands vitiated as it proceeded not only in great haste but adopted a procedure not known in law - The Court was obliged to put the victim to notice before extending the benefit to the accused persons.

s. 216 - Finality of charges - Filing of charge-sheet and taking cognizance has nothing to do with finality of charges, as the charges can be altered, amended, changed and added at any stage upto the stage of conviction.

Probation of Offenders Act, 1958 - s.12 - Conviction of accused u/ss. 323 and 343 r/w. s.34 IPC, on their having pleaded guilty - Further held that conviction would not affect their Government service - Held: Trial court had no competence to make any observation having civil consequences.

Pursuant to order u/s. 156(3) Cr.P.C. for investigation,

FIR u/s. 365 IPC was lodged, alleging that appellant was kidnapped by the private respondents alongwith 5 other accused. Police, after completing the investigation, filed charge-sheet against only two accused (private respondents) u/ss. 323 and 343 r/w Section 34 IPC. Both the accused-respondents filed an application pleading guilty for the offences u/ss. 323 and 343 IPC before the statements of the witnesses were recorded. The trial court entertained the application forth with and concluded the trial immediately convicting the accused u/ss. 323 and 343 r/w Section 34 IPC, without issuing notice to the appellant. The accused were further granted benefit of provisions of s.12 of Probation of the Offenders Act, 1958, holding that the order passed in the criminal case, shall not have any adverse affect on the Government service of the accused persons. Appellant challenged the order of trial court by filing application u/s. 482 Cr.P.C. High Court dismissed the application holding that the appellant had not challenged the order taking cognizance nor any objection was raised when charges were read over to the accused. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The appellant has been raising the grievance from the very beginning that the police has not been investigating the case properly and for that purpose, he had also approached the High Court by filing Writ Petition, wherein several directions had been issued by the Division Bench of the High Court to the Director General of Police for a fair investigation. In the statement of the appellant recorded under Section 164 Cr.P.C., appellant gave a full version as to how he had been kidnapped and illegally detained. Appellant named 7 persons and serious allegations of criminal intimidation, threats, terrorising and causing phy

levelled. The police after concluding the investigation filed a charge sheet only against the two accused and, that too, only for the offences punishable under Sections 323 and 343 IPC. [Para 7] [401-C-F]

1.2. Had the trial court applied its mind to the material collected during investigation and particularly the statement recorded under Section 164 Cr.P.C., the charges could have been framed also under Section 365 IPC. In that case, the Gram Nyayalaya would have no jurisdiction to deal with the matter as the maximum sentence for that offence is 7 years imprisonment with fine, and the Magistrate in that situation, was bound to commit the matter to the Sessions court. Further, before the statements of the witnesses could be recorded, the private respondents filed an application admitting their guilt. Had the statements of the witnesses been recorded, perhaps the court could have issued summons to other accused under Section 319 Cr.P.C. or charges could have been amended/altered/modified under Section 216 Cr.P.C. More so, at that stage, the appellant was not heard as no notice had been issued to him. The trial court proceeded not only in great haste, but adopted a procedure not known in law, and the judgment and order of the trial court therefore stands vitiated. [Paras 8 and 9] [401-G-H; 402-A-C]

1.3. The High Court rejected the application under Section 482 Cr.P.C. filed by the appellant only on the ground that the appellant neither challenged the order of taking cognizance nor raised any objection at the time of reading over of the charges to the accused. The High Court failed to appreciate that before the statement of the appellant or any other witness could be recorded, the trial court disposed off the matter on the date when the application itself had been submitted admitting the guilt. Even otherwise if the trial court wanted to entertain any issue of plea bargaining under Chapter XXI-A, inserted

w.e.f. 5.7.2006, then too the court was obliged thereunder to put the victim to notice before extending any such benefits that have been given in the present case. The procedure therefore appears to have been clearly violated. Therefore, in the facts and circumstances of the case, the appellant had no opportunity to raise any grievance before the appropriate forum. [Para 13] [404-B-E]

1.4 Filing of charge sheet and taking cognizance has nothing to do with the finality of charges, as charges framed after the cognizance is taken by the court, can be altered/amended/changed and any charge can be added at any stage upto the stage of conviction in view of the provisions of Section 216 Cr.P.C. The only legal requirement is that, in case the trial court exercises its power under Sections 228/251 Cr.P.C., the accused is entitled to an opportunity of show-cause/hearing as required under the provisions of Section 217 Cr. P.C. [Para 6] [400-H; 401-A-B]

Umesh Kumar vs. State of A.P. **JT 2013 (12) SC 213: 2013 (10) SCC 591 - relied on.**

2. The trial court had no competence to make any observation having civil consequences so far as the private respondents are concerned. Section 12 of the Probation of Offenders Act, 1958 does not take away the effect of conviction for the purpose of service also. [Paras 11 and 13] [402-G; 404-B]

State of U.P. vs. Ranjit Singh **AIR 1999 SC 1201: 1999 (1) SCR 786;** *Shankar Dass vs. Union of India and Anr.* **AIR 1985 SC 772: 1985 (3) SCR 163;** *Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank* **(2010) 8 SCC 573: 2010 (9) SCR 796;** *Aitha Chander Rao vs. State of A.P.* **1981 Supp SCC 17;** *Harichand vs. Director of School Education* **AIR 1998 SC 788: 1998 (1) SCR 143;** *Divisional Personnel Officer, Southern Railway and Anr. vs.* **R**

1975 SC 2216: 1976 (1) SCR 783; *Trikha Ram vs. V.K. Seth and Anr.* **AIR 1988 SC 285: 1987 Suppl. SCC 39;** *Karamjit Singh vs. State of Punjab* **(2009) 7 SCC 178 - relied on.**

Case Law Reference:

2013 (10) SCC 591	**relied on**	**Para 6**
1999 (1) SCR 786	**relied on**	**Para 10**
1985 (3) SCR 163	**relied on**	**Para 11**
2010 (9) SCR 796	**relied on**	**Para 12**
1981 Supp SCC 17	**relied on**	**Para 12**
1998 (1) SCR 143	**relied on**	**Para 12**
1976 (1) SCR 783	**relied on**	**Para 12**
1987 Suppl. SCC 39	**relied on**	**Para 12**
(2009) 7 SCC 178	**relied on**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1547 of 2013.

From the Judgment and Order dated 23.04.2012 of the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Misc. Petition No. 1260 of 2012.

H.D. Thanvi, Abhishek Gupta, Preeti Thanvi, Sarad Kumar Singhania for the Appellant.

Nilofar Qureshi, Rehnuma, Vivek Singh, Pragati Neekhra for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 23.4.2012 passed by the High Court of Judicature of Rajasthan (Jaipur Bench) in S.B. Criminal Misc. Petition No. 1260 of 2012, by

which the High Court rejected the application filed by the appellant under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.') for setting aside the judgment and order dated 15.7.2011 passed by the Judge, Gram Nyayalaya, Gangapur City, District Sawai Madhopur, Rajasthan, in Case No. 269 of 2011, whereby the trial court has allowed the application of the respondents-accused for pleading guilty for the offences punishable under Sections 323 and 343 of the Indian Penal Code, 1860 (hereinafter referred to as the `IPC') and has further given them the benefit of Section 12 of the Probation of the Offenders Act, 1958, (hereinafter referred to as the `Act 1958'), in the case arising out of FIR No. 115 of 2009 lodged at Police Station Wazirpur under Section 365 IPC.

2. Facts and circumstances giving rise to this appeal are that:

A. The learned Magistrate passed an order under Section 156 (3) Cr.P.C. for the investigation whereunder FIR No. 115 of 2009 under Section 365 IPC was lodged on the complaint filed by one Kamlesh Meena, who is brother-in-law of the appellant, alleging that the appellant had been kidnapped by the private respondents alongwith other accused when he was returning from the school duty as a teacher.

B. Police investigated the matter, located the appellant from village Jeevli on 4.7.2009 and recorded the statements of various persons under Section 161 Cr.P.C, and the statement of the appellant was recorded under Section 164 Cr.P.C. After completing the investigation, the police filed a charge sheet dated 4.8.2010 against the accused - namely private respondents only for offences punishable under Sections 323, 343 read with Section 34 IPC.

C. After filing of the charge sheet, the trial commenced. On 3.1.2011, the court ordered the presence of the witnesses for recording their statements on 9.6.201 d

date, the summons were issued to three witnesses, including the appellant for recording their evidence on 7.7.2011. But on the date so fixed, the trial could not proceed.

D. On 15.7.2011, both the accused-respondents appeared before the learned trial court and filed an application pleading guilty for the offences under Sections 323 and 343 IPC. The said application was entertained forthwith and the learned trial court concluded the trial on that day itself, without issuing notice to the appellant, convicting the respondents under Sections 323 and 343 IPC and imposing a fine of Rs.500/-, and further granting them the benefit of provisions of Sections 3 & 12 of the Act 1958. The learned Magistrate further held that the order passed in criminal case herein shall not have any adverse affect on the government service of the accused persons.

E. Aggrieved, the appellant challenged the said judgment and order dated 15.7.2011 before the High Court on various grounds including that the court below had committed an error in not taking into consideration the statement of the appellant under Section 164 Cr.P.C., wherein serious allegations had been made against the accused persons and others particularly that the appellant was kidnapped and illegally detained from 29.6.2009 to 4.7.2009; terrorising and threatening him that his hand and legs would be chopped of; abusing the complainant persistently. The case was disposed off hastily in one day without notice to the appellant. More so, the court below had no right to make the observation that the order of conviction would not adversely affect the services of the respondents-accused.

F. The High Court dismissed the said application vide order dated 23.4.2012 on the ground that the appellant has not challenged the order taking cognizance nor any objection was raised when charges were read over to the accused and the respondents-accused had been convicted on their pleading guilty regarding the aforesaid offences. The High Court held that there was no obligation in law to hear the appellant or any other

witness at this stage and the trial court was right in passing the impugned order.

Hence, this appeal.

3. Shri H.D. Thanvi, learned counsel appearing on behalf of the appellant, has raised a large number of issues and insisted that the trial court had no right to make any observation that the conviction could not have adverse affect on the service of the respondents. More so, the courts below had committed an error in exceeding the scope of the provisions of Section 12 of the Act 1958. The trial stood concluded without framing the charges, without issuing notice to the appellant.

4. On the other hand, Ms. Nilofar Qureshi, learned counsel appearing on behalf of the private respondents, has opposed the appeal contending that the judgment and order impugned is passed in consonance with law and does not require any interference. In fact, appellant is the father of son-in-law of respondent no.2-accused Kirodi Lal Meena. Respondent's daughter Hemlata had been ill-treated by the appellant and his family. There had been various civil and criminal cases between the parties and the present case is just a counter blast to such proceedings.

Shri Vivek Singh, learned Standing counsel appearing on behalf of the State of Rajasthan, has supported the case of the respondents-accused contending that the orders of the courts below are in consonance with the statutory provisions and once a charge sheet is filed, the charges become final, and as the charges so framed were not so serious, the benefit of Act 1958 has rightly been granted to the private respondents. Thus, the appeal is liable to be rejected.

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

6. Filing of charge sheet and taking cognizance has nothing to do with the finality of charge and

after the cognizance is taken by the court, can be altered/amended/changed and any charge can be added at any stage upto the stage of conviction in view of the provisions of Section 216 Cr.P.C. The only legal requirement is that, in case the trial court exercises its power under Sections 228/251 Cr.P.C., the accused is entitled to an opportunity of show-cause/hearing as required under the provisions of Section 217 Cr. P.C. (Vide: *Umesh Kumar v. State of A.P.,* JT 2013 (12) SC 213).

7. In fact, the appellant has been raising the grievance from the very beginning that the police has not been investigating the case properly and for that purpose, he had also approached the High Court by filing Writ Petition No. 14272 of 2009, wherein several directions had been issued by the Division Bench of the High Court of Rajasthan to the Director General of Police for a fair investigation vide orders dated 10.2.2010 and 11.8.2010. In the statement of the appellant recorded under Section 164 Cr.P.C. before the learned magistrate, appellant has given a full version as to how he had been kidnapped while returning from school duty and forcibly lifted by the private respondents and five others in a Innova Car and was illegally detained from 29.6.2009 till 4.7.2009 when he was located by the police. Appellant named 7 persons and serious allegations of criminal intimidation, threats, terrorising and causing physical harm had been levelled. The police after concluding the investigation filed a charge sheet only against the two accused and, that too, only for the offences punishable under Sections 323 and 343 IPC.

8. Had the trial court applied its mind to the material collected during investigation and particularly the statement recorded under Section 164 Cr.P.C., the charges could have been framed also under Section 365 IPC. In that case, the Gram Nyayalaya would have no jurisdiction to deal with the matter as the maximum sentence for that offence is 7 years imprisonment with fine, and the Magistrate in that situation, was bound to commit the matter to the Sessions court. Further,

before the statements of the witnesses could be recorded, the private respondents filed an application admitting their guilt. Had the statements of the witnesses been recorded, perhaps the court could have issued summons to other accused under Section 319 Cr.P.C. or charges could have been amended/altered/modified under Section 216 Cr.P.C. More so, at that stage, the appellant was not heard as no notice had been issued to him. The trial court proceeded in great haste and disposed off the matter on 15.7.2011 the same date when the application was filed by the private respondents.

9. On the said facts, we are of the considered opinion that the learned trial court proceeded not only in great haste, but adopted a procedure not known in law, and the judgment and order of the trial court therefore stands vitiated.

10. In *State of U.P. v. Ranjit Singh,* AIR 1999 SC 1201, this Court has held that the High Court, while deciding a criminal case and giving the benefit of the U.P. First Offenders' Probation Act, 1938, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil consequences. The Court has held as under:

> *"5. We also fail to understand how the High Court while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break and, therefore, he should be paid his full pay and [dearness allowance] during the period of his suspension.* ***This direction and observation is wholly without jurisdiction****…."(Emphasis added)*

11. In *Shankar Dass v. Union of India & Anr.,* AIR 1985 SC 772, this Court has held that the order of dismissal from service, consequent upon a conviction, is not a disqualification within the meaning of Section 12 of the Act 1958 observing as under:

> *"4. … There are statutes which pro*

are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled 'Disqualifications for membership of Parliament and State Legislatures' and Chapter IV entitled 'Disqualifications for Voting' contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word 'disqualification' is used in Section 12 of the Probation of Offenders Act. [Therefore, it is not possible to accept the reasoning of the High Court that Section 12 of the 1958 Act takes away the effect of conviction for the purpose of service also."

12. The provision of the Act 1958 has been dealt with by this Court elaborately in *Sushil Kumar Singhal v. Regional Manager, Punjab National Bank,* (2010) 8 SCC 573, wherein after considering the judgments of this court in *Aitha Chander Rao v. State of A.P.,* 1981 Supp SCC 17; *Harichand v. Director of School Education,* AIR 1998 SC 788; *Divisional Personnel Officer, Southern Railway & Anr. v. T.R. Chellappan,* AIR 1975 SC 2216; and *Trikha Ram v. V.K. Seth & Anr.,* AIR 1988 SC 285, the court held as under:

"In view of the above, the law on the issue can be summarised to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. The word "disqualification" contained in Section 12 of the 1958 Act refers to a disqualification provided in other statutes, as explained by this Court in the abovereferred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the 1958 Act."

(See also: *Karamjit Singh v. State of Punjab,* (2009) 7 SCC 178).

13. Thus, we are also of the considered opinion that the trial court had no competence to make any observation having civil consequences so far as the private respondents are concerned.

The High Court rejected the application under Section 482 Cr.P.C. filed by the appellant only on the ground that the appellant neither challenged the order of taking cognizance nor raised any objection at the time of reading over of the charges to the accused. The High Court failed to appreciate that before the statement of the appellant or any other witness could be recorded, the trial court disposed off the matter on the date when the application itself had been submitted admitting the guilt. Even otherwise if the trial court wanted to entertain any issue of plea bargaining under Chapter XXI-A, inserted w.e.f. 5.7.2006, then too the court was obliged thereunder to put the victim to notice before extending any such benefits that have been given in the present case. The procedure therefore appears to have been clearly violated. Therefore, in the facts and circumstances of the case, the appellant had no opportunity to raise any grievance before the appropriate forum.

14. In view of the above, the appeal succeeds and is allowed. The judgment and order of the trial court dated 15.7.2011 as well as of the High Court dated 23.4.2012 are set aside. The matter is remitted to the trial court to be decided afresh in accordance with law. As the matter is very old, we request the trial court to conclude the trial afresh adopting the procedure as explained hereinabove expeditiously, preferably within a period of six months from the date of filing certified copy of the order before it.

Before parting with the case, we would clarify that we have expressed no opinion on the merits of the ensuing trial.

K.K.T. .

KISHAN RAM & ORS.
v.
STATE OF UTTARAKHAND
(Criminal Appeal No. 1196 of 2007)

OCTOBER 1, 2013

[A.K. PATNAIK AND RANJANA PRAKASH DESAI, JJ.]

Penal Code, 1860 - s.302 r/w s.149 and s.147 - Murder - Assault with lathis and dandas leading to death - Five accused including the three appellants - Conviction of appellants by Courts below - Justification - Held: On facts, justified -Evidence of the three eye-witnesses (PWs1, 2 and 6) as corroborated by the statement of PW-1 in the FIR within four hours of the incident clearly establish that the five accused persons including the three appellants had assaulted the deceased with lathis and dandas when the hands and legs of the deceased were tied with a rope - PW-3, PW-4 and PW-7 supported the prosecution case - Delay of four hours in lodging the FIR was sufficiently explained - Oral testimony of the eye-witnesses, the recovery of rope from the spot and the medical evidence establish beyond reasonable doubt that the five accused persons tied the hands and legs of the deceased and gave him jointly 27 injuries with lathis and dandas - Hence, the common object of the assembly was to commit the offence u/s.302, IPC - Trial court and the High Court, therefore, rightly held the appellants guilty of the offence of murder u/s.302 r/w s.149, IPC.

The prosecution story as given out by PW-1, PW-2 and PW-6 was that the five accused including the three appellants assaulted the husband of PW1 with lathis and dandas while his hands and legs were tied up with a rope, which led to his death. The trial court convicted the five accused persons under Section 147 and Section 302 r/w Section 149 of IPC and sentenced them to life

imprisonment. The conviction and sentence was confirmed by the High Court.

The appellants challenged their conviction before this Court contending that 1) PW-1 was not able to identify the assailants of the deceased; 2) that there was inordinate delay in lodging of the FIR; and 3) that even if the evidence of PW-1, PW-2 and PW-6 are to be believed, the appellants could not be convicted for the offence of murder under Section 302, IPC, read with Section 149, IPC, since the common object of the appellants was not to commit the offence of murder and, therefore, they were not liable for the sentence of imprisonment for life. The appellants submitted that this was at best a case of culpable homicide not amounting to murder under Section 304, IPC, read with Section 149, IPC.

Dismissing the appeal, the Court

HELD: 1. The evidence of the three eye-witnesses (PWs1, 2 and 6) as corroborated by the statement of PW-1 in the FIR within four hours of the incident clearly establish that the five accused persons including the three appellants had assaulted the deceased with lathis and dandas when the hands and legs of the deceased were tied with a rope. [Para 11] [414-D-E]

2. PW-3, PW-4 and PW-7 supported the prosecution case that the deceased had been assaulted when his hands and legs were tied but they did not name the persons who had assaulted the deceased perhaps because they had arrived at the scene of occurrence only after the incident had taken place. [Para 12] [415-A-B]

3. It is true that the incident took place at about 7.30 p.m. on 03.07.1986 and the FIR was lodged about four hours thereafter at 11.50 p.m. on the same day, but this delay of four hours has been sufficie[illegible]e

evidence of PW-1 and PW-6. PW-1 has stated that she first rushed to village Roorkee and informed PW-6 and then PW-1, PW-2 and PW-6 came back to Chilkiya Temple and saw that the deceased had died and the accused persons were present there and then they went to the Patwari of village Pandey to give the information of the incident but there was a lock on the door and only thereafter they went to Police Chowki Kotabagh and handed over the report of the incident to the Chowki after it was scribed by PW-6. PW-6 has corroborated what PW-1 has stated. The delay of four hours from 7.30 p.m. to 11.50 p.m. in lodging the FIR is, thus, sufficiently explained and does not make the prosecution case doubtful. [Para 13] [415-C-E, G]

4. The autopsy report (Ext.A-1) read with the statement of CW-1 Dr. S.C. Pant discloses as many as 27 injuries on the body of the deceased. Dr. S.C. Pant has opined that there was haematoma under injuries no.1 and 3 and the deceased died due to shock and haemorrhage on account of injuries no.1 and 3. PW-1 and PW-2 have stated that all the five accused persons were assaulting the deceased by their respective lathis and dandas and the hands and legs of the deceased were tied with rope. At the time of inquest on the morning of 04.07.1986, PW-5 also took into possession the rope from the spot. Considering the fact that all the five accused persons assaulted the deceased when the hands and legs of the deceased were tied and they caused as many as 27 injuries on different parts of the body of the deceased, there is no escape from the conclusion that the common object of the assembly was to commit the offence of murder under Section 302, IPC, and all the five members of the unlawful assembly were liable for the offence under Section 302, IPC, as provided in Section 149, IPC. [Para 14] [416-A; 418-B-D]

5. The oral testimony of the eye-witnesses, the recovery of rope from the spot and the medical evidence in this case establish beyond reasonable doubt that the five accused persons tied the hands and legs of the deceased and gave him jointly 27 injuries with lathis and dandas. Hence, the common object of the assembly was to commit the offence under Section 302, IPC. The trial court and the High Court, therefore, rightly held the appellants guilty of the offence of murder under Section 302 read with Section 149, IPC. [Para 19] [420-A-C]

Bhudeo Mandal & Ors. v. State of Bihar **1981 (2) SCC 755: 1981 (3) SCR 291;** *Sarman & Ors. v. State of M.P.* **1993 Supp (2) SCC 356;** *Thakore Dolji Vanvirji & Ors. v. State of Gujarat* **1993 Supp (2) SCC 534;** *Rajaram v. State of M.P.* **1994 Supp (2) SCC 153 - distinguished.**

Case Law Reference:

1981 (3) SCR 291	**distinguished**	**Para 6**
1993 Supp (2) SCC 356	**distinguished**	**Para 6**
1993 Supp (2) SCC 534	**distinguished**	**Para 6**
1994 Supp (2) SCC 153	**distinguished**	**Para 6**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1196 of 2007.

From the Judgment and Order dated 16.04.2007 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 1951 of 2001 (Old No. 1963 of 1990).

T.N. Singh, P. Narasimhan for the Appellants.

Jatinder Kumar Bhatia for the Respondents.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal against the judgment dated 16.04.2007 of the High Court of Uttarakhand in Criminal Appeal No. 1951 of 2001 by way of special leave under Article 136 of the Constitution.

Facts:

2. The facts very briefly are that on 03.07.1986 Smt. Gulachi Devi lodged a First Information Report (for short 'FIR') at the Police outpost at Kotabagh. In this FIR, she alleged that her husband Suresh Chandra was working on the post of Beldar with Kumaun Jal Sansthan and on 03.07.1986 after he had returned to his quarter at about 7.00 p.m. Kishan Ram and Pani Ram came to his quarter which is inside the water works, called Suresh Chandra and took him along with them. She further stated in the FIR that her neighbour Puran Ram told her that he has heard the scream of Suresh Chandra from the side of Chilkiya Temple and she went along with Puran Ram near the Chilkiya Temple and saw that the hands and legs of Suresh Chandra were tied with rope and he was being assaulted by Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh with lathis and dandas. She also stated in the FIR that the assailants did not permit them to go near Suresh Chandra and she went running to Roorkee and gave information of the incident to Dan Singh, who is a Fitter of the Jal Sansthan, and again came along with Puran Ram and Dan Singh near the Chilkiya Temple to see Suresh Chandra, but found that Suresh Chandra had lost his breath and the assailants were standing near the dead body. She further stated in the FIR that she then went to give information of this incident to the Chowki of Patwari Halka at village Pandey, but the Patwari was not available and, therefore, she had come to lodge the FIR in the Police outpost at Kotabagh. Sub-Inspector Roop Singh Bisht proceeded to the place of incident and saw Suresh Chandra lying dead with his hands and legs tied. He could not prepare the inquest report in the night, but next morning on 04.07.1986 prepared the site plan, took the rope into possession, prepared

the inquest report and sent the dead body of Suresh Chandra (hereinafter referred to as 'the deceased) for post mortem examination. Dr. S.C. Pant, Medical Officer, Civil Hospital, Haldwani, conducted the autopsy on the dead body of the deceased and prepared the post mortem report. On 05.07.1986, the Sub-Inspector Roop Singh Bisht entrusted the investigation to Ani Ram, a Supervisor Kanoongo, who recorded the statements of witnesses, inspected the spot, prepared the site plan and arrested Dev Singh, Chandan Singh, Kishan Ram, Pani Ram and Har Ram and after completing investigation, submitted a chargesheet against the aforesaid five accused persons as well as three others, namely, Nain Singh, Gopal Ram and Hari Ram.

3. All the accused pleaded not guilty and were tried. At the trial, nine witnesses were examined. The informant Gulachi Devi was examined as PW-1, Puran Ram was examined as PW-2, Dan Singh was examined as PW-6, Dr. S.C. Pant was examined as CW-1 and Ani Ram was examined as PW-8. The accused persons were examined under Section 313 of the Criminal Procedure Code, 1973 (for short 'Cr.P.C.'), but they did not examine any witness and relied on some documents. After hearing the arguments, the trial court found the accused Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh guilty of the offences under Section 147 and Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC'). The trial court, however, acquitted Nain Singh, Gopal Ram and Hari Ram of all the charges. After hearing on the question of sentence, the trial court imposed the sentence of one year rigorous imprisonment for the offence punishable under Section 147, IPC, and imprisonment for life under Section 302/149, IPC. Aggrieved, the five accused persons who were found guilty filed Criminal Appeals before the High Court and by the impugned judgment, the High Court has dismissed the appeals. Of the five accused persons found guilty, Dev Singh and Chandan Singh have already expired and hence we are called upon to decide the appeals of c ni

Ram and Har Ram.

Contentions on behalf of learned counsel for the parties

4. Mr. T.N. Singh, learned counsel for the appellants, submitted that the trial court and the High Court have relied on the eye-witness account of PW-1 and PW-2 for holding the appellants guilty. Referring to the evidence of PW-1, he submitted that PW-1 did not belong to the locality in which the incident took place and she has not been able to identify the assailants of the deceased. He referred to the evidence of PW-1 to show that she has relied on Dan Singh (PW-6) to know the name of the accused persons. He submitted that it will be clear from the evidence of PW-1 that she is confused between the two accused persons Har Ram and Hari Ram and she does not know the name of the father of either Har Ram or Hari Ram. He submitted that PW-3, PW-4 and PW-7 have not supported the prosecution case and PW-6 (Dan Singh) has stated that the names of the accused persons were given by PW-1 but PW-1 has not been able to identify the assailants.

5. Mr. Singh next submitted that the incident took place on 03.07.1986 at about 7.30 p.m. whereas the FIR was lodged four hours thereafter at 11.50 p.m. on the same day and, therefore, there was a delay of four hours in lodging the FIR itself. He argued that the delay in lodging the FIR is a good ground to disbelieve the prosecution story as given out by PW-1 PW-2 and PW-6.

6. Mr. Singh finally submitted that even if the evidence of PW-1, PW-2 and PW-6 in this case are to be believed, the appellants could not be convicted for the offence of murder under Section 302, IPC, read with Section 149, IPC, because the common object of the appellants was not to commit the offence of murder and, therefore, they were not liable for the sentence of imprisonment for life. He submitted that this is at best a case of culpable homicide not amounting to murder under Section 304, IPC, read with Section 149, IPC. In support of this submission, he relied on the decisions of this Court in *Bhudeo Mandal & Ors. v. State of Bihar* [(1981 (2) SCC 755], *Sarman & Ors. v. State of M.P.* [1993 Supp (2) SCC 356], *Thakore Dolji Vanvirji & Ors. v. State of Gujarat* [1993 Supp (2) SCC 534] and *Rajaram v. State of M.P.* [1994 Supp (2) SCC 153].

7. In reply, Mr. Jatinder Kumar Bhatia, learned counsel appearing for the State, submitted that it is true that PW-1 did not belong to the locality in which the incident took place, but she has taken the help of PW-2 and PW-6 to identify the assailants and to lodge the FIR. He submitted that the trial court has held in the judgment that PW-1 being an outsider from the plains and not belonging to the hill area was not expected to differentiate between Hari Ram and Har Ram and there is nothing improbable or unnatural in it and the testimony of Puran Ram (PW-2) and Dan Singh (PW-6) coupled with the written FIR (Ext. Ka.2) leaves no room for doubt that Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh attacked Suresh Chandra with lathis and dandas. He also submitted that PW-3, PW-4 and PW-7 have been declared hostile but they also have supported the prosecution case with regard to the date, time and place of occurrence.

8. Regarding the delay in lodging the FIR, Mr. Bhatia submitted that the trial court had found that soon after the incident on 03.07.1986 at 7.30 p.m. PW-1 and PW-2 had first gone to the Chowki at village Pandey to lodge the report and then from there they proceeded to Kotabagh Police out-post, which is about eight kilometers away from the place of occurrence by a tractor and lodged the FIR at 11.50 p.m. on 03.07.1986 and in these circumstances there was no delay in lodging of the FIR.

9. Mr. Bhatia submitted that the argument of learned counsel for the appellants that there was no common object of the accused persons to commit the offence under Section 302, IPC, should not be accepted by the Co[illegible]n

report and the medical evidence reveal as many as 27 injuries on the body of the deceased. He vehemently argued that the evidence on record established that the common object of the accused persons was to commit the offence under Section 302, IPC, and hence the trial court and the High Court have rightly held the appellants guilty of the offence under Section 302 read with Section 149, IPC, and sentenced them to life imprisonment.

Findings of the Court:

10. We have gone through the evidence of PW-1 and we find that she has deposed that at about 7.00 p.m. on 03.07.1986 Kishan Ram and Pani Ram came to their house and took away the deceased along with them and after some time PW-2 told her that he was hearing the shrieks of the deceased from the side of the Chilkiya Temple and then both PW-1 and PW-2 went to the Chilkiya Temple and saw that the hands and legs of the deceased were tied up and he was being assaulted by all the five accused persons with their respective lathis and dandas. In her cross-examination, PW-1 has, of course, faltered when questions were put to her as to whether Har Ram and Hari Ram were the same persons and she has also admitted that she did not know the names of the fathers of either Har Ram or Hari Ram, but in the FIR she has named Har Ram along with Kishan Ram, Pani Ram, Dev Singh and Chandan Singh as the assailants of the deceased and, thus, the evidence of PW-1 is corroborated by her statement recorded in the FIR immediately after the incident.

11. The evidence of PW-1 is also corroborated by PW-2 who has stated in his deposition that he heard the scream of the deceased and then he along with PW-1 went to Chilkiya Temple from where the sound of the scream was coming and having reached there, he saw that the hands and legs of the deceased were tied with a rope and he was being assaulted by the five accused persons. Similarly, PW-6 has stated that on 03.07.1986 at about 8.30 p.m. in the night, PW-1 and PW-

2 came to him and PW-1 told him that her husband was being assaulted by the accused Kishan Ram, Pani Ram, Har Ram, Dev Singh and Chandan Singh near Chilkiya Temple and after hearing this, he collected some persons from the village and reached near Chilkiya Temple where he saw that the hands and legs of the deceased were tied with rope and injuries were found on his body and the deceased was dead and the accused persons Har Ram, Kishan Ram, Pani Ram, Dev Singh and Chandan Singh were present there. PW-6 has further deposed that he went with PW-1 to lodge the report in village Pandey, but the Patwari was not present and they went to the police outpost at Kotabagh where PW-1 lodged the report (Ext. Ka.2). PW-6 has also stated that the report was written by him on the dictation of PW-1 and thereafter it was read over to PW-1 and she put her thumb impression on the report. Thus, the evidence of the three eye-witnesses as corroborated by the statement of PW-1 in the FIR within four hours of the incident clearly establish that the five accused persons including the three appellants had assaulted the deceased with lathis and dandas when the hands and legs of the deceased were tied with a rope.

12. PW-3 has stated that he had seen the dead body near Chilkiya Temple and the hands and legs of the deceased were tied and there were some persons also standing, but he had not seen the incident. PW-4 has stated that on 03.07.1986 at about 8.30 - 9.00 p.m. he had heard the scream of one lady and then he came out and saw that the persons of the village were proceeding towards Chilkiya Temple and he also went to Chilkiya Temple and saw that the deceased was lying dead and his hands and legs were tied with a rope and there were 40-50 persons present there but he could not identify them due to darkness. PW-7 has similarly stated that on 03.07.1986 at about 8.30 p.m. or 9.00 p.m. he was in his house when PW-6 and PW-1 came there and told him that some persons were assaulting the deceased in Chilkiya and they reached Chilkiya Temple and saw that there were number

there and the husband of PW-1 was lying dead and his hands and legs were tied and blood was oozing out from his body. Thus, it appears that PW-3, PW-4 and PW-7 supported the prosecution case that the deceased had been assaulted when his hands and legs were tied but they did not name the persons who had assaulted the deceased perhaps because they had arrived at the scene of occurrence only after the incident had taken place.

13. It is true, as has been submitted by Mr. Singh, that the incident took place at about 7.30 p.m. on 03.07.1986 and the FIR was lodged about four hours thereafter at 11.50 p.m. on the same day, but this delay of four hours has been sufficiently explained by the evidence of PW-1 and PW-6. PW-1 has stated that she first rushed to village Roorkee and informed PW-6 and then PW-1, PW-2 and PW-6 came back to Chilkiya Temple and saw that the deceased had died and the accused persons were present there and then they went to the Patwari of village Pandey to give the information of the incident but there was a lock on the door and only thereafter they went to Police Chowki Kotabagh and handed over the report of the incident to the Chowki after it was scribed by PW-6. PW-6 has corroborated what PW-1 has stated by stating that at about 8.30 p.m. on 03.07.1986, PW-1 and PW-2 came to him and after hearing the incident they went to Chilkiya Temple and thereafter they went to village Pandey to lodge the report with the Patwari but Patwariji was not present and then they went to the police outpost at Kotabagh where PW-1 lodged the report (Ext. Ka.2). The delay of four hours from 7.30 p.m. to 11.50 p.m. in lodging the FIR is, thus, sufficiently explained and does not make the prosecution case doubtful.

14. We may now consider the submission of Mr. Singh that even if the evidence of PW-1, PW-2 and PW-6 in this case are to be believed, the appellants could not be convicted for the offence of murder under Section 302, IPC, read with Section 149, IPC, as the common object of the appellants was not to

commit the offence of murder. The autopsy report (Ext.A-1) read with the statement of CW-1 Dr. S.C. Pant discloses as many as 27 injuries on the body of the deceased as detailed hereunder:

"1. Contusion 3 cm X 1 cm over left temporal region, 2 cm lateral to left eye. Clotted blood present underneath.

2. Contusion 3 cm X 1 cm over mid of forehead. Clotted blood present.

3. Contusion 4 cm X 3 cm over right temporal region. Clotted blood present.

4. Two contusions 5 cm X 0.5 cm parallel to each other, 1 cm apart over right lateral side of neck. Clotted blood present.

5. Two contusions 11 cm X 0.5 cm parallel and 1 cm apart over lateral side of right arm. Clotted blood present.

6. Contusion 4 cm X 4 cm over trip of right shoulder. Clotted blood present.

7. Contusion 10 cm X 5 cm over lateral aspect of right forearm. Clotted blood present.

8. Contusion around the right wrist with a groove.

9. Contusion 16 cm X 9 cm over lateral side of left arm. Clotted blood present.

10. Contusion 5 cm X 1.5 cm over left scapular. Clotted blood present.

11. Contusion 4 cm X 1.5 cm, 3 cm below the injury no.10. Clotted blood present.

12. Contusion 8 cm X 2 cm over right scapula. Clotted blood present.

13. Contusion 8 cm X 1.5 cm over left side of back, 4 cm below the injury no.11. Clotted blood present.

14. Contusion 2 cm X 0.5 cm over mid of back. Clotted blood present.

15. Contusion all over lateral aspect of thigh. Clotted blood present.

16. Contusion 18 cm X 10 cm over back and medical aspect of left thigh. Clotted blood present.

17. Contusion 6 cm X 1 cm over left knee joint. Clotted blood present.

18. Contusion 5 cm X 6 cm anterior side of left leg. Clotted blood present.

19. Contusion 7 cm X 0.5 cm over back of left elbow. Clotted blood present.

20. Contusion 3 cm X 2 cm over post aspect of left forearm. Clotted blood present.

21. Contusion 4 cm X 2 cm over post aspect of left arm. Clotted blood present.

22. Contusion alongwith groove around the left wrist. Clotted blood present.

23. Two contusions 10 cm X 0.5 cm and 1 cm apart over right side of abdomen. Clotted blood present.

24. Contusion all over right glutial region. Clotted blood present.

25. Contusion all over posterior and medical aspect of right thigh. Clotted blood present.

26. Two contusions 8 cm X 0.5 cm parallel and 1 cm apart

and 6 cm above the right knee joint. Clotted blood present.

27. Contusion 6 cm X 0.5 cm over left ankle joint. Clotted blood present."

Dr. S.C. Pant has opined that there was haematoma under injuries no.1 and 3 and the deceased died due to shock and haemorrhage on account of injuries no.1 and 3. PW-1 and PW-2 have stated that all the five accused persons were assaulting the deceased by their respective lathis and dandas and the hands and legs of the deceased were tied with rope. At the time of inquest on the morning of 04.07.1986, PW-5 also took into possession the rope from the spot. Considering the fact that all the five accused persons assaulted the deceased when the hands and legs of the deceased were tied and they caused as many as 27 injuries on different parts of the body of the deceased, there is no escape from the conclusion that the common object of the assembly was to commit the offence of murder under Section 302, IPC, and all the five members of the unlawful assembly were liable for the offence under Section 302, IPC, as provided in Section 149, IPC. Hence, the contention of the learned counsel for the appellants that the appellants were not guilty of the offence of murder under Section 302, IPC, is not correct.

15. In *Bhudeo Mandal & Ors. v. State of Bihar* (supra), cited by the learned counsel for the appellants, this Court had held that before convicting the accused with the aid of Section 149, IPC, the Court must give a clear finding regarding the nature of the common object which was unlawful. In the aforesaid case of *Bhudeo Mandal & Ors. v. State of Bihar* (supra), this Court had found that Bhudeo Mandal had given a blow to Mainu Mandal, but so far as the other appellants are concerned they were armed with lathis but they did not cause any injuries either to the witnesses or to the deceased and on these facts, this Court held that they did not have the common object of committing the offence under Section 326, IPC, and hence could not be roped in with the aid of Section

16. In *Sarman & Ors. v. State of M.P.* (supra), cited by learned counsel for the appellants, this Court found that all the appellants were armed with lathis and the doctor, who conducted the post mortem, noticed 17 injuries on the body of the deceased and only injury no.15 had resulted in the depressed fracture of parietal bone, which according to the doctor, was individually sufficient to cause death of the deceased. The Court further found that the prosecution case in general was that all of them were found with lathis and nobody had stated which of them caused injury no.15 which unfortunately resulted in the death of the deceased and the Court held that if anyone of the appellants had acted on his own exceeding the common object, it would be his individual act and in these circumstances, it was difficult to award punishment under Sections 302/149, IPC.

17. In *Thakore Dolji Vanvirji & Ors. v. State of Gujarat* (supra), cited by the learned counsel for the appellants, the Court found that accused no.1 had dealt a fatal blow on the head of the deceased with a sword and only omnibus allegations had been made against rest of the accused persons and the Court held that accused no.1 had to be convicted under Section 302, IPC, but it was not safe to convict every one of them for the offence of murder by applying Section 149, IPC.

18. In *Rajaram v. State of M.P.* (supra), cited by the learned counsel for the appellants, the Court found that by way of an omnibus allegation the witnesses deposed that all the nineteen accused persons inflicted injuries, but the medical evidence did not support such omnibus allegations. The Court held that it was highly unsafe to confirm the conviction of the appellants under Section 302, IPC, read with Section 149, IPC, particularly when the medical evidence had not fully supported the allegation made by the two witnesses particularly when only one injury was found to be fatal which was a multiple contusion on the back.

19. The facts of the present case, however, are different from the aforesaid cases cited by the learned counsel for the appellants. The oral testimony of the eye-witnesses, the recovery of rope from the spot and the medical evidence in this case establish beyond reasonable doubt that the five accused persons tied the hands and legs of the deceased and gave him jointly 27 injuries with lathis and dandas. Hence, the common object of the assembly was to commit the offence under Section 302, IPC. The trial court and the High Court, therefore, rightly held the appellants guilty of the offence of murder under Section 302 read with Section 149, IPC.

20. We do not, therefore, find any merit in this appeal and we accordingly dismiss the same.

B.B.B. Appeal dismissed.

M. MANSOOR & ANR.
v.
UNITED INDIA INSURANCE CO. LTD. & ANR.
(Civil Appeal No. 8612 of 2013)

OCTOBER 03, 2013

[G.S. SINGHVI AND C. NAGAPPAN, JJ.]

Motor Vehicles Act, 1988 - s.166 - Fatal accident - Claim for compensation - By parents of deceased - Tribunal granted compensation by deducting 1/3 towards personal and living expenses of the deceased and by applying multiplier of 17 - High Court reduced the compensation amount by using multiplier of 12 - Held: In view of the facts that the deceased was bachelor and the claimants were his parents, deduction towards personal and living expenses should have been 50% and not 1/3rd - In view of the age of the deceased at the time of death i.e. 24 years, multiplier of 18 ought to have been applied - Compensation amount determined by deducting 50% towards personal and living expenses and by applying multiplier of 18 - In addition Rs.1,00,000/- paid towards loss of love and affection and Rs.10,000-/ on account of funeral and ritual expenses.

Appellants, the parents of the deceased (who lost his life in motor accident), filed petition u/s.166 of Motors Vehicles Act, claiming compensation to the tune of Rs.28,00,000/-. They pleaded that the accident was caused due to rash and negligent driving; that the deceased was 24 years old earning Rs.18,100/- per month. Tribunal accepting the case of the appellants, determined the compensation at Rs.24,65,668/- after deducting 1/3rd towards personal and living expenses of the deceased and applying the multiplier of 17. On appeal by the respondent-Insurance Company, High Court

reduced the compensation amount to Rs.15,14,648/- by applying multiplier of 12. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The Tribunal as well as the High Court made a deduction of 1/3rd only, towards personal and living expenses of the deceased and the deceased being a bachelor and the claimants being parents, the deduction of 50% has to be made as personal and living expenses. [Para 14] [429-B-D]

2. As the age of the deceased at the time of his death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bringing it down to the multiplier of 12. [Para 16] [429-H; 430-A]

Amrit Bhanu Shali and Ors. vs. National Insurance Company Limited and Ors. **(2012) 11 SCC 738 - relied on.**

3. Appellants produced the Salary Certificate of the deceased, which shows that the deceased was earning Rs.18,100/- per month. The Tribunal has rightly taken into consideration the aforesaid income for computing the compensation. The annual income comes to Rs. 2,17,200/-. If 50% of the said income is deducted towards personal and living expenses of the deceased the contribution to the family will be Rs.1,08,600/-. At the time of the accident the deceased was a bachelor about 24 years old hence applying the multiplier of 18, the amount will come to Rs.19,54,800/-. Besides this amount the claimants are entitled to get Rs.50,000/- each towards the loss of affection of the son i.e. Rs.1,00,000/- and Rs.10,000/- on account of funeral and ritual expenses. Therefore, the total amount comes to Rs.20,64,800/- and the claimants are entitled to get [illegible]f

compensation instead of the amount awarded by the Tribunal and the High Court. They would also be entitled to get interest at the rate of 6% per annum from the date of the filing of the claim petition till realization. [Para 17] [430-A-E]

Sarla Verma vs. Delhi Transport Corporation **(2009) 6 SCC 121: 2009 (5)SCR 1098 - relied on.**

U.P. SRTC vs. Trilok Chandra **(1996) 4 SCC 362: 1996 (2) Suppl. SCR 443 - referred to.**

Nance vs. British Columbia Electric Railway Co. Ltd. **(1951) 2 All ER 448(PC);** *Davies vs. Powell Duffryn Associated Collieries Ltd. No.2* **(1942) 1 All ER 657 (HL) - referred to.**

Case Law Reference:

2009 (5) SCR 1098	**relied on**	**Para 13**
1996 (2) Suppl. SCR 443	**referred to**	**Para 13**
(1951) 2 All ER 448 (PC)	**referred to**	**Para 13**
(1942) 1 All ER 657 (HL)	**referred to**	**Para 13**
(2012) 11 SCC 738	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8612 of 2013.

From the Judgment and Order dated 30.04.2010 of the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 676 of 2005.

P.B. Suresh, Udayaditya Banerjee for the Appellants.

Zahid Ali for the Respondent.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

2. Feeling dissatisfied with the reduction of compensation determined by the Motor Claims Tribunal, Second Small Causes Court, Chennai in Motor Accident Claim No.M.A.C.T.O.P. No.4973 of 2001, the appellants have preferred this appeal.

3. The deceased Amjath Khan Arabu, is the son of the appellants. The deceased was travelling as passenger in a Transport Corporation Bus bearing registration no.TN-01-N-6587 to Kumbakkonam from Tambaram on the Grand Southern Trunk Road, while the bus was proceeding near the village Silavattam, a container lorry bearing registration no.TN-01-C-6248 coming rashly and negligently in the opposite direction dashed against the Corporation Bus, resulting in the instantaneous death of five persons including the son of the appellants. The parents of the deceased-Amjath Khan Arabu, filed a claim petition under Section 166 of the Motors Vehicle Act (for short "the Act") for awarding of compensation to the tune of Rs.28,00,000/-. They pleaded that the accident was caused due to rash and negligent driving of the container lorry, owned by the Respondent No.1 and that, at the time of his death the age of the deceased was 24 years and he was a MBA Graduate and employed as Business Manager in Intel Comox Management India and was earning Rs.18,100/- per month.

4. Respondent No.1 did not appear and was set Ex-parte. Respondent No.2, insurer of the container lorry, filed a written statement stating that the accident was not caused due to the negligence on the part of the driver of the container lorry and also denied the claimant's assertion about the income of their son Amjath Khan Arabu.

5. Two other claim petitions, arising out of the same accident, were clubbed with the claim petition of the appellants and the Tribunal framed the following issues :

"1. As to who is the cause for the accident cited in these petitions?

2. If so, what should be compensation amount which are liable to be received in each of the petitions?"

6. In support of the claim petitions the first appellant examined himself as PW-1 and four other witnesses were also examined. PW-2 and PW-4 were travelling in the bus and witnessed the accident. According to PW-1 the first appellant, their son Amjath Khan Arabu studied MBA and has been working as the Business Manager in the Firm called Intel Comox Management India and his salary was Rs.18,100/-. Ex.A-1 to A-10 were marked as documents which included the Post Mortem Certificate, MBA Degree Certificate, Appointment Order for the Job done, Salary Certificate and copy of the Bank Account. No evidence was let in by Respondent No.2.

7. After analyzing the evidence, the Tribunal decided Issue No.1 in the affirmative and held that accident was caused due to rash and negligent driving of container lorry owned by the first respondent.

8. While dealing with the Issue No.2, the Tribunal accepted the evidence produced to show the employment of the deceased as Business Manager and his earning at Rs.18,100/- in the private company. It also determined that the deceased was a bachelor aged about 24 years at the time of accident. The Tribunal deducted 1/3rd of his monthly salary and determined the loss of earnings to family at Rs.12,067/-. The Tribunal then applied the multiplier 17 and declared that the claimants are entitled to get compensation of Rs.24,65,668/- with interest at the rate of 9% per annum from the date of claim petition.

9. Respondent No. 2 the Insurance Company challenged the award of the Tribunal by filing Civil Miscellaneous Appeal No.676 of 2005 before the High Court of judicature at Madras.

10. The High Court referred to the decisions of this Court including *Sarla Verma vs. Delhi Transport Corporation* (2009) 6 SCC 121 and by the impugned judgment dated 30.4.2010 reduced the compensation to Rs.15,14,648/- by applying multiplier of 12 and observed as follows :

> ....."We determine the Loss of monthly Income/ Pecuniary Loss in respect of the deceased at Rs.15,100/-p.m. as an Equitable one and fair sum. From and out of the sum of Rs.15,100/- we deduct one third sum of Rs.5,033/- towards personal expenses of the deceased and the balance works out to Rs.10,067/- and this sum, we aptly take into account as Loss of Income/Pecuniary Loss per month in respect of the death of the deceased son of the Respondents/Claimants. Per year, it comes to Rs.1,20,804/- (Rs.10,067 x 12). Since the First Respondent/First Claimant's (father) age was 51 and the Second Respondent/Second Claimant's (mother) aged about 46 at the time of the death of the deceased son, we deem it fit and proper to adopt a just fair and reasonable multiplier 12 and accordingly, the Loss of Income works out to Rs.14,49,648/- (Rs.1,20,804 x 12). Towards loss of Love and Affection, we award a sum of Rs.50,000/- to the Respondents/ Claimants. Towards Funeral Expenses, we award a sum of Rs.5,000/-. Towards Loss of Estate, we grant a sum of Rs.10,000/-. Thus, we award a total compensation of Rs.15,14,648/- (Rupees fifteen lakhs fourteen thousand six hundred and forty eight only) with interest at 9% p.a. from the date of accident till date of payment with pro costs payable by the Appellant/Second Respondent Insurance Company."..... .....

11. The learned counsel appearing on behalf of the appellants relied upon the judgment of this Court in *Sarla Verma* case (supra) referred above and argued that the victim being aged 24 years the multiplier of 18 should have been applied but the High Court committe[illegible]y

applying the multiplier of 12, which was against the law laid down by this Court in the said decision. The learned counsel appearing on behalf of the Respondent No.1-Insurance Company relying upon the same decision in *Sarla Verma* case (supra) contended that deceased being a bachelor, deduction of 50% towards personal and living expenses ought to have been made and the Tribunal as well as the High Court committed serious error by deducting one-third (1/3rd) only which was against the law laid down by this Court in the said decision. He also further contended that the deceased Amjath Khan Arabu was an unmarried person aged about 24 years and the High Court rightly applied the multiplier of 12 as per the age of the claimants (i.e.) parents.

12. We have considered the respective arguments and perused the record. The questions which arise for consideration are :

"1. What should be the deduction for the "personal and living expenses" of the deceased Amjath Khan Arabu to decide the question of the contribution to the parents?

2. What is the proper selection of Multiplier for deciding the claim?"

13. The question relating to deduction for personal and living expenses and selection of multiplier fell for consideration before this Court in *Sarla Verma vs. Delhi Transport Corporation* (Supra) cited above and this Court referred to large number of precedents including the judgments in *U.P. SRTC vs. Trilok Chandra* (1996) 4 SCC 362, *Nance vs. British Columbia Electric Railway Co. Ltd.* (1951) 2 All ER 448 (PC), *Davies vs. Powell Duffryn Associated Collieries Ltd.* No.2 (1942) 1 All ER 657 (HL) and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straitjacket formula under different headings in its judgment some of which

are enumerated below :

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *U.P. SRTC vs. Trilok Chandra* (1996) 4 SCC 362, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6 and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent [illegible]e

deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

14. Admittedly, both the parents namely the appellants herein have been held to be dependants to the deceased Amjath Khan Arabu and therefore, the Tribunal held that they have the right to get the compensation. The Tribunal as well as the High Court made a deduction of 1/3rd only towards personal and living expenses of the deceased and as rightly contended by the learned counsel for the Respondent No.1, the deceased being a bachelor and the claimants being parents, the deduction of 50% has to be made as personal and living expenses as per the decision of this Court in *Sarla Verma* case (supra) extracted above. The first question is determined accordingly.

15. The Tribunal adopted the multiplier of 17 and the High Court determined the multiplier as 12 on the basis of the age of the parents/claimants. This Court in the decision in *Amrit Bhanu Shali & Ors. vs. National Insurance Company Limited & Ors.* (2012) 11 SCC 738 held as follows :

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation."

16. In the decision in *Sarla Verma* case (supra) this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the

age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bringing it down to the multiplier of 12.

17. Appellants produced the Salary Certificate of deceased Amjath Khan Arabu, which has been marked as Ex.P-8. It shows that the deceased was earning Rs.18,100/- per month. The Tribunal has rightly taken into consideration the aforesaid income for computing the compensation. The annual income comes to Rs.2,17,200/-. If 50% of the said income is deducted towards personal and living expenses of the deceased the contribution to the family will be Rs.1,08,600/-. At the time of the accident the deceased Amjath Khan Arabu was a bachelor about 24 years old hence on the basis of the decision in *Sarla Verma* case (supra) applying the multiplier of 18, the amount will come to Rs.19,54,800/-. Besides this amount the claimants are entitled to get Rs.50,000/- each towards the loss of affection of the son i.e. Rs.1,00,000/- and Rs.10,000/- on account of funeral and ritual expenses. Therefore, the total amount comes to Rs.20,64,800/- and the claimants are entitled to get the said amount of compensation instead of the amount awarded by the Tribunal and the High Court. They would also be entitled to get interest at the rate of 6% per annum from the date of the filing of the claim petition till realization.

18. Accordingly, the appeal is allowed. The impugned judgment dated 30-4-2010 passed by the High Court of Madras in Civil Miscellaneous Appeal No.676 of 2005 is set aside and the award passed by the Tribunal is modified to the extent above. The amount which has already been received by appellants/claimants shall be adjusted and rest of the amount be paid at an early date.

No order as to costs.

K.K.T. Appeal allowed.

G.L. BATRA
v.
STATE OF HARYANA AND OTHERS
(Civil Appeal No. 9015 of 2013)

OCTOBER 07, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Constitution of India, 1950 - Articles 316 and 14 - Appointment as Chairman of State Public Service Commission - Of the Government servant who was drawing wages at a higher level than the wages fixed under Regulations governing service conditions of the Public Service Commission - Remuneration of the Chairman refixed in view of his last pay drawn in government service by relaxing the relevant rule - Subsequently the benefit withdrawn by State Government - Propriety of - Held: The benefit granted to the Constitutional appointee by relaxing the regulation, could not have been withdrawn by State Government - Especially when master and servant relationship not established between the Constitutional appointee and the State Government - Withdrawal of the benefit was discriminatory and violative of Article 14 - Haryana Public Service Commission (Conditions of Service) Regulations, 1972 - Regulation 6.

Judicial Propriety - Judgment by Co-ordinate Bench - By over-ruling the judgment of another co-ordinate Bench - Held: Not proper - Appropriate course in such case is to refer the matter to larger Bench.

Appellant, while posted as Additional Secretary, Lok Sabha was drawing a salary of Rs.7500/- per month. He was appointed as Chairman of Haryana Public Service Commission in exercise of powers u/Art. 316(1A) of the Constitution. The conditions of service of the Commission are governed by Haryana Public Service

Commission (Conditions of Service) Regulations, 1972. The existing pay of the Chairman of Haryana Public Service Commission was Rs.7000/- per month. The Government re-fixed the recomuneration of the appellant as Chairman, as Rs.7500/- p.m. by relaxing the provisions contained in Regulation 6, as a personal measure to him. Thereafter, the Government withdrew the benefit and re-fixed his remuneration as Rs.4135/- p.m.. Writ petition, challenging the action of the Government, was dismissed by Division Bench of High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The Government, after having recognized the status of the appellant as a constitutional appointee, and relaxing Regulation 6 of 1972 Regulations so far as the appellant was concerned, vide its order dated 18.03.1996, has no power to withdraw the same, especially when no master and servant relationship has been established between a constitutional appointee and the State Government. Though the appellant's conditions of service were governed by the 1972 Regulations, but when the Government themselves had relaxed the same, especially Regulation 6, as a personal measure to him, then they could not withdraw that benefit to his disadvantage which is clearly discriminatory and violative of Article 14 of the Constitution of India. The appellant, therefore, would be entitled to all consequential benefits. State of Haryana is also directed to pay an award of Rs.50,000/- to the appellant by way of cost. [Paras 10 and 17] [438-H; 439-A-B; 442-C]

2.1. The High Court has committed a serious error in ignoring the judgment of the High Court in Ram Phal Singh's case i.e. the case relating to the Member of the Haryana Public Service Commission who was appointed as a Member along with the appel a

Government. Single Judge in that case held that first proviso under Regulation 6(2) of the 1972 Regulations which restricts the remuneration payable to a Member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of 1972 Regulations), the last pay drawn by him under the Government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India. The order of single Judge was upheld by a Division Bench of the High Court. [Paras 11 and 12] [439-C-F]

2.2. The Division Bench of the High Court, in the instant case, over-ruled the judgment in Ram Phal Singh's case which was also affirmed by another Division Bench. A co-ordinate Bench of the High Court could not have over-ruled a judgment of a Single Judge which was already affirmed by another co-ordinate Bench. The Division Bench has committed a serious error of the highest order. [Para 13] [440-B-C]

2.3. The Division Bench should have referred the matter to a larger Bench, if it was in disagreement with the judgment of the Single Judge which had already been affirmed by a co-ordinate bench and on the doctrine of merger, the judgment of the Single Judge had merged with that of the Division Bench. Thus, in essence, the Division Bench has over-ruled the judgment of a co-ordinate Bench which is clearly inadmissible. Over and above, the judgment in Ram Phal Singh's case was followed by another co-ordinate Division Bench of the High Court, Special Leave Petition against which was dismissed by this Court. All these aspects are sidetracked and overlooked. [Para 13] [440-C-F]

Dr. Vijay Laxmi Sadho vs. Jagdish **(2001) 2 SCC 247: 2001 (1) SCR 95;** *State of Bihar vs. Kalika Kuer @ Kalika*

Singh and Ors. **AIR 2003 SC 2443: 2003 (3) SCR 919** *Union of India and Ors. vs. Godfrey Philips India Ltd.* **AIR 1986 SC 806: 1985 (3) Suppl. SCR 123** *Sundarjas Kanyalal Bhathija and Ors. vs. The Collector, Thane, Maharashtra and Ors.* **AIR 1990 SC 261: 1989 (3) SCR 405** *Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel* **AIR 1968 SC 372: 1968 SCR 455 - relied on.**

Case Law Reference:

2001 (1) SCR 95	**relied on**	**Para 14**
2003 (3) SCR 919	**relied on**	**Para 15**
1985 (3) Suppl. SCR 123	**relied on**	**Para 15**
1989 (3) SCR 405	**relied on**	**Para 15**
1968 SCR 455	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9015 of 2013.

From the Judgment and Order dated 04.11.2009 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 13029 of 1997 (O&M).

K.K. Venugopal, Sanjay Bhatt, Jayant Mehta, Dushyant Kumar, Rishi Malhotra for the Appellant.

Manjit Singh, AAG, Vikas Sharma, Tarjit Singh, Vinay Kuhar, Kamal Mohan Gupta for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are in this case concerned with the question whether the State Government is competent to vary the remuneration fixed to a constitutional appointee to his disadvantage, after his appointment.

3. The appellant herein was working, in the post of senior most Additional Secretary, in the Lok Sabha during the years 1991-1994 drawing a salary of Rs.7500/- per month as basic pay for the post in the pay scale of Rs.7500-7600 which was revised in the pay scale of Rs.22400-525-24500 and DA @ 32% w.e.f. 01.01.1996. According to the appellant, he had the prospect of promotion to the Secretary General, Lok Sabha, a post equivalent to Cabinet Secretary which is in the pay scale of Rs.30,000/- fixed and DA @ 32%. The age of retirement of Secretary General, Lok Sabha, when the appellant joined Haryana Public Service Commission, was 60 years, which was later increased to 62 years.

4. The appellant, while he was working as the senior most Additional Secretary in the Lok Sabha, was appointed as Chairman of the Haryana Public Service Commission (for short 'the Haryana PSC') by the Haryana State Government on 06.07.1994 in exercise of the powers conferred by Article 316 of the Constitution of India along with Ravinder Sharma and Ram Phal Singh as Members of the Haryana PSC. On joining duty, conditions of services of the appellant were governed by the Haryana Public Service Commission (Conditions of Service) Regulations, 1972 (for short '1972 Regulations'). At that time, the existing basic pay of the Chairman of the Haryana PSC as per rules was Rs.7000/- per month. The appellant then preferred a representation on 04.10.1994 requesting the Government to re-fix his pay as Rs.7500/- on 06.07.1994 and Rs.7600/- w.e.f. 01.09.1994 by relaxing the Rules.

5. The Government of Haryana examining the said request passed an order on 18.03.1996, fixing the remuneration of the Chairman, Haryana PSC as Rs.7500/- per month w.e.f. 06.07.1994 as a personal measure, in relaxation of the provisions contained in Regulation 6 of the 1972 Regulations. Noticing that the above-mentioned order was silent as to from which date the allowances, as mentioned in Regulation 6 were to be given to the appellant, the Commission wrote a letter on

20.06.1996 to the State Government to clarify as to whether the allowances were to be given w.e.f. 01.01.1986 as was given to the other State Government employees or w.e.f. 01.01.1989 when Regulation 6 was amended to include 'allowances' in addition to the basic pay. The State Government referring to the said letter replied on 23.06.1996 stating that DA was to be paid w.e.f. 01.01.1989 only and not w.e.f. 01.01.1986 as admissible to other State Government employees.

6. The appellant then wrote a Demi Official letter dated 24.9.1996 to the Chief Secretary, Haryana PSC stating that he was entitled to the Dearness Allowance, which he was drawing while he was Additional Secretary and if the DA was paid only w.e.f. 08.02.1989, then the same would be in pursuance to Regulation 6, which already stood relaxed in his case. It was also pointed that that when Regulation 6 was relaxed, all conditions laid down under the said Regulation also stood automatically relaxed. The Government, however, reiterated the earlier stand through their letter dated 23.10.1996. Over and above, the Government passed yet another order on 29.11.1996 withdrawing its earlier order dated 18.03.1996 whereby the appellant's remuneration was fixed by relaxing Regulation 6 and a direction was also issued to recover the excess payment already made to the appellant. The appellant then filed a representation on 03.02.1997 to the Government of Haryana stating his grievances but the State Government passed an order on 15.04.1997 re-fixing the remuneration of the appellant in pursuance to the Regulation 6 of the 1972 Regulations as Rs.4135/- per month. The appellant subsequently made various representations but his grievances were not redressed. The appellant then preferred CWP No.13029 of 1997 before the High Court of Punjab and Haryana seeking a declaration that the first and second proviso to Regulation 6(2) of the Regulation are unconstitutional and ultra vires to Articles 14 and 16 of the Constitution of India and to quash the order dated 29.11.1996 and 15.04.1997. While the writ petition was pending, the appellant s

Chairman of the Haryana PSC on 19.09.1999.

7. The writ petition filed by the appellant was later heard by the Division Bench of the Punjab and Haryana High Court and the same was dismissed on 04.11.2009. Aggrieved by the same this appeal has been preferred by special leave.

8. We have heard Shri K.K. Venugopal, learned senior counsel appearing for the appellant and Mr. Manjit Singh, learned Additional Advocate General appearing for the State of Haryana.

9. The appellant was appointed as Chairman of the Haryana PSC by the Governor of the State of Haryana in exercise of powers conferred under Article 316 (1A) of the Constitution of India. The conditions of service of the Chairman and the Members are governed by the 1972 Regulations. Regulation 6, with which we are concerned in this case, reads as follows:

> "6. (1) The Chairman shall receive a remuneration of seven thousand and five hundred rupees a month and each of the other Members a remuneration of six thousand and five hundred rupees a month. They shall be entitled to such other allowances as may be admissible in future from time to time, to Government employees drawing the same pay (in addition to four hundred rupees a month as car allowances provide a care is maintained).
>
> (2) The Chairman or the Member if, at the time of his appointment as such, is a retired Government employee he will be entitled to the remuneration mentioned in sub-regulation (1) in addition to the pension sanctioned to him.
>
> Provided that the amount of remuneration plus the gross amount of pension or the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher.

> Provided further that the total remuneration plus the gross amount of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, shall in no case exceed eight thousand rupees per month.
>
> (3) The Chairman or the Members who at the time of the appointment as such, in the service of the Central or State Government and does not exercise option under sub-regulation (1) of regulation 9 shall be paid the remuneration drawn by him immediately before his appointment as Chairman or Member, as the case may be, or the remuneration mentioned in sub-regulations (1) whichever is higher, till the date of his retirement from Government service in the normal course and thereafter his remuneration shall be regulated as provided in sub-regulation (2).
>
> (4) A member who in the absence of the Chairman on leave or otherwise, is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rate of two hundred rupees a month:
>
> Provided that such additional duties are performed for a period of not less than fourteen days."

10. We find that after the appellant was appointed as Chairman of the Haryana PSC, the Government passed an order on 18.03.1996 relaxing the provision contained in Regulation 6 and re-fixed the remuneration of the appellant as Chairman of the Haryana PSC as Rs.7500/- p.m. w.e.f. 06.07.1994 as a "personal measure to him." We find it difficult to appreciate the stand of the State Government as to how they could withdraw that benefit vide notification dated 29.11.1996 and then re-fix the same vide order dated 15.04.1997 as Rs.4135/- p.m. The Government after having recognized the status of the appellant as a constitutional appointee, and relaxed Regulation 6 so far as the appellant is c[illegible]er

dated 18.03.1996, has no power to withdraw the same, especially when no master and servant relationship has been established between a constitutional appointee and the State Government. True, the appellant's conditions of service were governed by the 1972 Regulations, but when the Government themselves had relaxed the same, especially Regulation 6, as a personal measure to him, then we fail to see how they could withdraw that benefit to his disadvantage which, in our view, is clearly discriminatory and violative of Article 14 of the Constitution of India.

11. We are also of the view, as rightly contended by learned senior counsel for the appellant, that the High Court has committed a serious error in ignoring the judgment of the learned Single Judge in Writ Petition No.15159 of 1996 titled *Ram Phal Singh v. State of Haryana & others* decided on 8th September, 2004, a case relating to the Member of the Haryana Public Service Commission, who was appointed as a Member along with the appellant by the Haryana Government vide notification dated 16.07.1994. Learned Single Judge in that case held that first proviso under Regulation 6(2) of the 1972 Regulations which restricts the remuneration payable to a Member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of 1972 Regulations), the last pay drawn by him under the government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India.

12. A Division Bench of the Punjab and Haryana High Court placing reliance on *Ram Phal Singh's* case (supra), rendered the judgment in *M.B. Pandove v. State of Punjab and others* on 26.2.2005. Against the said judgment, Special Leave Petition (C) No.12336 of 2005 was preferred before this Court which was dismissed on 13.07.2005. Further, we notice that LPA No.115 of 2005 filed against the judgment in *Ram Phal*

Singh v. State of Haryana & others CWP 15159 of 1995 was also dismissed by a Division Bench of the Punjab and Haryana High Court on 19.03.2007

13. We find that the above-mentioned facts were brought to the knowledge of the Division Bench of the Punjab and Haryana High Court when they rendered the impugned judgment but the Division Bench, however, over-ruled the judgment in *Ram Phal Singh's* case (supra), which was also affirmed by another Division Bench in LPA No.115 of 2005 vide its judgment dated 19.03.2007. We fail to see how a coordinate bench of the High Court could over-rule a judgment of a learned Single Judge which was already affirmed by another coordinate bench. The Division Bench has committed a serious error of the highest order. The Division Bench should have referred the matter to a larger Bench, if it was in disagreement with the judgment of the learned Single Judge which had already been affirmed by a co-ordinate bench and on the doctrine of merger, the judgment of the Single Judge had merged with that of the Division Bench. Thus, in essence, the Division Bench has overruled the judgment of a co-ordinate bench which is clearly inadmissible. Over and above, it may also be noted that the judgment in *Ram Phal Singh's* case (supra) was followed by another coordinate Division Bench of the High Court in *M.P. Pandove* (supra). Special Leave Petition (C) No.12336 of 2005 filed against that judgment was also dismissed by this Court. In the impugned judgment, all these aspects are conveniently sidetracked and overlooked.

14. Law on this point has been dealt with by this Court in several Judgments. In *Dr. Vijay Laxmi Sadho v. Jagdish* (2001) 2 SCC 247, this Court held as follows:

"As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress tha[illegible]s

not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

15. In *State of Bihar v. Kalika Kuer @ Kalika Singh and others* AIR 2003 SC 2443 this Court held that when an earlier decision may seems to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of coordinate jurisdiction. The Court held that easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. In this respect reference may also be made to the Judgment of this Court in *Union of India and others v. Godfrey Philips India Ltd.* AIR 1986 SC 806, *Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others* AIR 1990 SC 261 and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* AIR 1968 SC 372 etc.

16. Applying the above-mentioned principle, we are clearly of the view that the High Court has committed a grave error in over-ruling the judgment of the learned Single Judge in *Ram*

Phal Singh's case (supra), which stood merged into the judgment of a Division Bench as it was affirmed by a coordinate bench in LPA No.115 of 2005 on 19.03.2007 and failed to remedy the illegality meted out to the appellant.

17. We, therefore, allow this appeal and set aside the impugned judgment of the High Court and quash the orders passed by the State of Haryana dated 29.11.1996 and 15.04.1997. The appellant, therefore, would be entitled to all consequential benefits which would be paid to him within a period of three months from the date of this order. State of Haryana is also directed to pay an award of Rs.50,000/- to the appellant by way of cost.

K.K.T. Appeal allowed.

STATE OF RAJASTHAN
v.
GIRDHARI LAL
(Criminal Appeal No. 1186 of 2008)

OCTOBER 7, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND A.K. SIKRI, JJ.]

Penal Code, 1860 - ss.306 and 304B - Death of married woman due to burn injuries within 7 years of marriage - Deceased was daughter of PW1 - Trial court convicted accused-husband (respondent) u/s.304B IPC and sentenced him to undergo life imprisonment - On appeal, High Court converted the conviction from s.304B IPC to s.306 IPC and reduced the sentence from life imprisonment to five years imprisonment - Justification - Whether death of PW1's daughter was an instance of dowry death or she was driven to commit suicide by respondent - Held: No specific allegation as to whether respondent demanded dowry - No evidence on record to come to the definite conclusion that soon before her death, the deceased was subjected to cruelty or harassment by respondent for, or in connection with any, demand of dowry - In absence of such ingredient, presumption that respondent had caused the dowry death cannot be drawn - However, it is established from ocular and documentary evidence that deceased was subjected to cruelty and harassment by respondent - As a result of such treatment of cruelty and harassment, she was driven to meet the suicidal death - Appellate Court (High Court) rightly presumed, having regard to all other circumstances of the case, that such suicidal act had been abetted by respondent and convicted him u/s.306 IPC - Evidence Act, 1872 - ss.113A and 113B.

Penal Code, 1860 - s.304B - Offence under - Main ingredient - Held: The main ingredient of the offence under

s.304B IPC which is required to be established by the State is whether "soon before her death" the deceased was subjected to cruelty and harassment by her husband, "for or in connection with demand of dowry", to allege "dowry death" - Period which can come within the term "soon before" cannot be put within the four corners of time frame - It is left to the Court for its determination depending upon the facts and circumstances of each case - Words and Phrases - Term "soon before" - Meaning of.

The daughter of PW1 was married to respondent. She died of burn injuries within 7 years of her marriage. It was alleged that the deceased had been tortured and harassed by her in-laws in connection with demand for dowry from the initial days of her marriage.

The trial court convicted the respondent under Section 304B IPC and sentenced him to undergo life imprisonment. On appeal, the High Court converted the conviction from Section 304B IPC to 306 IPC and reduced the sentence from life imprisonment to five years imprisonment.

In the instant appeal by the State, the question which arose for consideration was whether the death of PW1's daughter was an instance of dowry death or whether she was driven to commit suicide by her husband (respondent).

Dismissing the appeal, the Court

HELD: 1. The main ingredient of the offence under Section 304B IPC which is required to be established by the State is whether "soon before her death" the deceased was subjected to cruelty and harassment by her husband, "for or in connection with demand of dowry", to allege "dowry death". The period which can come within the term "soon before" n

the four corners of time frame. It is left to the Court for its determination depending upon the facts and circumstances of each case. [Paras 8, 11] [448-E; 449-H; 450-A]

2. In the present case, father and mother of the deceased (PW.1 and PW.7 respectively) made ominous statements regarding demand of dowry that after the marriage, demand of dowry was made by the in-laws of the deceased. It is not made specific as to whether respondent demanded dowry. [Para 11] [450-B]

3. Section 113B of the Indian Evidence Act, 1872 deals with the presumption as to dowry death. In the present case there is no evidence on record to come to the definite conclusion that soon before her death, the deceased was subjected to cruelty or harassment by her husband, respondent for, or in connection with any, demand of dowry. In absence of such ingredient the presumption that respondent had caused the dowry death cannot be drawn. The prosecution thereby cannot take advantage of Section 113B of the Indian Evidence Act, 1872. [Para 12] [450-C, F-G]

4. Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman. In the instant case, it is established from the ocular and documentary evidence that the deceased was subjected to cruelty and harassment. As a result of such treatment of cruelty and harassment, she was driven to meet the suicidal death. She had committed suicide within a period of 7 years from her marriage and that her husband had subjected her to cruelty. Therefore, the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal act had been abetted by her husband-respondent and convicted him for the offence under Section 306 IPC. [Para 13] [450-G; 451-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1186 of 2008.

From the Judgment and Order dated 14.03.2007 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Appeal No. 472 of 2000.

Archana Pathak Dave, Milind Kumar for the Appellant.

Satendar Sing Gulati, Kamaldeep Gulati for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal has been preferred by the State of Rajasthan against the judgment and order dated 14th March, 2007 passed by the Division Bench of the Rajasthan High Court, Jaipur Bench. By the impugned judgment, the Division Bench partly allowed the appeal filed by the respondent-Girdhari Lal, modified the sentence and convicted him under Section 306 IPC instead of 304B IPC. For the said offence, the Division Bench sentenced him to undergo five years rigorous imprisonment and fine of Rs.1000/-, in default he has to further suffer six months rigorous imprisonment. Since the respondent-Girdhari Lal had already undergone imprisonment for a period of more than six years, the High Court directed to release him forthwith, if not required to be detained in any other case.

2. The case of the prosecution in nutshell is that:

The informant-Jugal Kishore(PW.1) - father of the deceased Babita in his written complaint on 11th August, 1998 informed that his daughter-Babita (since deceased) was married to respondent-Girdhari Lal four years back. Her in-laws were harassing Babita in connection with demand for dowry from the initial days of her marriage. Earlier also the in-laws of Babita made attempt to set her ablaze and neighbourers rescued her. Later, the in-laws assured

will not harass Babita, but she was burnt to death on 10th August, 1998.

3. On the said complaint a case under Section 304B and 498A IPC was registered and investigation was commenced. After the investigation chargesheet was filed. In due course, the case came up for trial to the Additional Sessions Judge, Jhunjhunu. The charge under Section 304B IPC framed against the respondent was denied by him who claimed trial. Altogether 9 witnesses were examined in support of the case of the prosecution. In his explanation under Section 313 Cr. P.C., the respondent claimed innocence. Two defence witnesses were also examined. The trial court on appreciation of evidence and on hearing the parties convicted the respondent under Section 304-B IPC and sentenced him to undergo life imprisonment.

On appeal, as noticed above, the Division Bench of the High Court partly allowed the appeal, convicted the respondent under Section 306 IPC instead of 304B IPC and sentenced him to undergo five years rigorous imprisonment with fine of Rs.1,000/-, in default he has to further suffer six months rigorous imprisonment.

4. Learned counsel for the appellant-State submitted that the deceased-Babita died within 7 years of her marriage under unnatural circumstances and respondent did not inform the parents of the deceased regarding the incident. The burden to prove innocence lies on the respondent after the prosecution has proved that the deceased died under the unnatural circumstances within seven years of marriage. Further, according to the learned counsel for the State, the High Court has failed to appreciate that Jugal Kishore (PW.1), Nand Lal (PW.4) and Smt. Bimla (PW.7) have made statements regarding harassment and torture by the in-laws of the deceased in relation to the demand for dowry which has been corroborated by the statement of other witnesses and the documents on record. The aforesaid facts were not properly appreciated by the High Court while converting the conviction

from Section 304B IPC to 306 IPC and reducing the sentence from life imprisonment to five years imprisonment.

5. Learned counsel appearing for the respondent on the other hand supported the decision rendered by the High Court.

6. We have heard the learned counsel for the parties and gone through the materials on record.

7. Coming to the evidence adduced at the trial, we notice that Babita died of burn injuries within 5 to 6 years of her marriage with respondent-Girdhari Lal, thereby the death occurred otherwise than under normal circumstances. A bare look at the postmortem report (Ext.P-6) shows that the deceased died because of the extensive burns. Therefore, the question that arises for determination is whether Babita's death is an instance of dowry death or whether she was driven to commit suicide by her husband?

8. The main ingredient of the offence under Section 304B which is required to be established by the State is whether "soon before her death" Babita was subjected to cruelty and harassment by her husband, "for or in connection with demand of dowry", to allege "dowry death".

Jugal Kishore (PW.1) is himself the complainant and is the father of the deceased-Babita. He stated that his daughter was married to Girdhari Lal about 6 or 7 years back. The said statement was recorded on 12th June, 2000 and the incident occurred on 10th August, 1998. Shyam Lal Mahajan, another resident of the Village Chhavsari, where the marriage of Babita was solemnised, by his statement stated that the marriage of Babita was solemnised with accused Girdhari Lal in the year 1992-93. Similar was the statement made on 12th June, 2000 by Jagdish Prasad (PW.3) and he stated that the marriage of Babita was solemnised with the accused Girdhari Lal about 6 or 7 years back. Therefore, it is clear that the death of Babita happened within 7 years of her marriag

9. The death of Babita was caused by the burn injuries and thereby death occurred otherwise than under normal circumstances. The statement made by Dr. J.P. Bugalia (PW.6) proved the fact that death was caused due to the burns. He stated that on 10th August, 1998 he was working as Medical Jurist in B.D.K. Hospital, Jhunjhunu. He along with Dr. P.S. Sahu conducted the postmortem of Babita who was admitted in the Hospital on 10th August, 1998 at 1.50 p.m. and died during the treatment at 4.00 p.m. There were burn injuries all over her body.

10. So far as the harassment and cruelty are concerned, Rajender Prasad (PW.8) stated that Girdhari Lal used to beat her for dowry. Jugal Kishore(PW.1) has also supported the fact that she was being subjected to cruelty in connection with dowry demand by stating that Girdhari Lal used to beat and harass Babita for dowry after her marriage. Once he was asked not to do so but he did not mend his ways. He also stated that Girdhari Lal earlier tried to burn her alive by pouring kerosene by confining her in a room and when he came to know about this incident, he went to her in-laws house alongwith Shyam Lal, Phool Chand, Rajender, Jagdish, Neki Ram and Man Roop where Girdhari Lal and his father begged their pardon for their act of burning her alive and assured that they will not repeat the incident. Bimla Devi (PW.7), mother of the deceased stated in her statement that the accused Girdhari Lal and Babita came to their village Chhavsari one month prior to the incident and stayed there for one hour. Jugal Kishore was not present at the house at that time and Babita told her mother to send her father to her in-laws because Girdhari Lal used to harass her. This statement clearly indicates that Babita was being subjected to cruelty and harassment soon before the death.

11. Now, the question arises as to whether Babita was subjected to such cruelty and harassment by her husband soon before her death for, or in connection with the demand of dowry. The period which can come within the term "soon before"

cannot be put within the four corners of time frame. It is left to the Court for its determination depending upon the facts and circumstances of each case.

In the present case, Jugal Kishore (PW.1) and Bimla Devi (PW.7) has made ominous statements regarding demand of dowry that after the marriage demand of dowry was made by the in-laws. It is not made specific as to whether Girdhari Lal demanded dowry.

12. Section 113B of the Indian Evidence Act, 1872 which deals with the presumption as to dowry death reads as follows:

Section 113B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860).

In the present case there is no evidence on record to come to the definite conclusion that soon before her death, Babita was subjected to cruelty or harassment by her husband, Girdhari Lal for, or in connection with any, demand of dowry. In absence of such ingredient the presumption that Girdhari Lal had caused the dowry death cannot be drawn. The prosecution thereby cannot take advantage of Section 113B of the Indian Evidence Act, 1872.

13. Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman which reads as follows:

113A. Presumption as to abetr a

married women.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation - For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Panel Code (45 of 1860).

In the instant case, it is established from the ocular and documentary evidence that Babita was subjected to cruelty and harassment. As a result of such treatment of cruelty and harassment she was driven to meet the suicidal death. She had committed suicide within a period of 7 years from her marriage and that her husband had subjected her to cruelty. Therefore, the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal had been abetted by her husband Girdhari Lal and convicted him for the offence under Section 306 IPC. Hence, no interference is called for.

14. We find no merit in this appeal. The appeal is dismissed.

B.B.B. Appeal dismissed.

SOMDEV KAPOOR

v.

STATE OF WEST BENGAL & ORS.

(Civil Appeal No. 9016 of 2013)

OCTOBER 7, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 - r.8 (as amended in 2004) - Application for issuance of licence for retail sale of liquor made in 1992 - Granted in 2006 - PIL seeking cancellation of licence being in violation of amended r.8 - High Court held that licence was in violation of amended r.8 which prohibited grant of licence for retail sale of liquor at a new site within 1000 feet from educational institutions/religious places - On appeal, plea that application having been made in 1992 rules applicable at that time were applicable and not subsequent amended rules - Held: Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made - In view of the facts, application of the appellant was to be governed by new Rules of 2003 as amended in 2004 - On the basis of the amended new Rules, appellant could not have been granted the licence - West Bengal Excise Rules, 1993 - r.8 - Circular dated 28.9.2005 issued by the Excise Commissioner, West Bengal.

The appellant made an application on 28.8.1992 before Collector of Excise, for issuance of licence to operate foreign liquor bar and restaurant. He sent another application on 8.9.2005 giving reference to the earlier application. Thereafter, he was given temporary licence to run the liquor bar. Respondent Nos.5 and 6, a Society and its President respectively, filed writ petition as Public Interest Litigation seeking cancellation of the

licence, on the ground that the licence was in violation of r.8 of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003, as amended in the year 2004, whereby there was bar on grant of license for the retail sale of liquor or any other intoxicant at a new site within 1000 feet from any college/educational institution/ religious places. High Court allowed the petition. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. West Bengal Excise Rules, 1993 were promulgated vide Notification dated 22nd March 1993. As per Rule 8 of Rules 1993, in its original form, there was bar for grant of license for retail sale of spirit or any other intoxicant at a new site which is situated in "close proximity" to an educational institution or traditional place of worship, hospital or bathing ghat for public use. There was no specific distance stipulated therein, defining the expression "close proximity" in arithmetical/ numerical terms. However, when West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain other Intoxicants) Rules, 2003 came into force in supersession of earlier Rules of 1993 with effect from 29.9.2003, the words "close proximity" were replaced by the expression "vicinity". The term "vicinity" was defined as a distance of 300 ft. Rule 8 of Rules, 2003 was amended with effect from 15.4.2004 and as per the amended provision, distance of 1000 ft. was prescribed in the definition of 'vicinity'. Thus, there was a shift from the position contained in Rules, 1993 which prohibited the grant of license for the retail sale of spirit or any other intoxicant in "close proximity" from the educational institution and religious places etc. to the grant of license within "vicinity of such places" and the term 'vicinity' was explicitly and precisely defined to be a distance of 300 ft.

in the unamended Rule 8 of Rules, 2003 and increased to 1000 ft. by way of amendment in the year 2004, from educational institution and religious places. [Para 6] [458-E-H; 459-A-B]

2. It cannot be said that in view of the Circular dated 28.9.2005 issued by the Excise Commissioner, West Bengal to its functionaries, pending applications were to be considered on the basis of un-amended Rules, 2003. This circular has no application to the facts of the present case. The circular deals with the situation where applications for grant of license had been submitted after 29.7.2003 when Rules, 2003 were promulgated prescribing a distance of 300 ft. in Rule 8(1) of those Rules to define 'vicinity' and before this definition of "vicinity" was amended vide Notification dated 2.4.2004. [Paras 7-9] [459-E-F; 461-G-H; 462-A]

3. Though the application of the appellant was made in the year 1992, it was processed much after 2004 and the license is also granted after 2004. The application of the appellant, was submitted in 1992 but had not been taken up for consideration at all for number of years, even the appellant had not taken any steps by sending any reminder or followed it up with any request to the department to grant him bar license on the basis of said application. This position remained even during the operation of Rules, 1993 which remained operative for 10 years and were replaced by Rules, 2003. During this period also, no steps were taken. After Rules, 2003 there was an amendment in Rule 8 thereof. Thereafter the Excise Commissioner, issued clarification in the year 2005 in respect of applications which were submitted pursuant to Rules, 2003 but either had not been dealt with upto the amendment notified on 2.4.2004 or were rejected after 2004 applying the amended Rules. Though, the circular was totally unconnected and unrelated to the case of the appellant, at this stage, t[illegible]p

from slumber and started insisting that his application submitted in the year 1992 be considered. The appellant very well knew that on the basis of new Rules he would not be able to get bar license. Therefore, the strategy adopted was to resuscitate the application of 1992 and demand its consideration on the basis of un-amended rules. [Paras 7 and 10] [459-D; 462-E-H; 463-A-B]

4. The application of the year 1992 was not even proper and valid application as no fee etc. was paid along with the said application. That would be the reason that the said application was never processed. The application has to be supported by appropriate fee which was not given earlier. Such a fee was deposited only in the year 2006 in compliance with the provisions of Rule 9 of the Rules, 2003. As per the copy of letter which he enclosed along with communication dated 1.11.2004 and it shows that only a letter was submitted, though, as per the Rules, application was also not made in Form I or Form II annexed with these Rules. [Para 10] [463-B-D]

5. Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made. Thus the appellant had first made application on 28.8.1992 and then again on 8.9.2005 giving reference to the first application. The first application was not even proper application and second application was dated 8.9.2005. It had to be governed by the new Rules, namely, Rules 2003, as amended in 2004. On the basis of these Rules, the appellant could not have been granted for foreign liquor bar and restaurant license as there were many religious and educational institutions within the 1000 ft. of place from where the appellant was operating. [Paras 11-13] [463-E-G; 464-G]

State of Kerala and Ors. vs. Kandath Distilleries **2013 (2) SCALE 789 - relied on.**

Case Law Reference:

2013 (2) SCALE 789 relied on Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9016 of 2013.

From the Judgment and Order dated 14.12.2012 of the High Court at Calcutta in a Public Interest Litigation being W.P. No. 9 of 2011.

K.K. Venugopal, Jaideep Gupta, Kailash Vasdev, Kalyaan Bandopadhyay, R. Aggarwal, Yadunandan Bansal, Abhijat P. Medh, Shneyans Singhvi, Umrao Singh Rawat, Saurabh Trivedi, Anip Sachthey, Snonik Singhvi, Suryanarayana Singh, Pragati Neekhra for the appearing parties.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted.

2. The appellant herein is a proprietor of a Hotel and Restaurant under the name and style of "BHIMSAIN VAISHNAV' which is being run since 1954. On 28th August 1992, he made an application before the Collector of Excise, Calcutta (now known as Kolkata) for issuance of license to operate foreign liquor bar and restaurant. This application, for the reasons not available on record, kept pending for number of years. Thereafter, on 1.11.2004 he made a request that his earlier application dated 28th August 1992 may be processed and he be granted foreign liquor bar and restaurant license. It was followed by another reminder dated 8.9.2005. Thereafter, the appellant was given temporary license to run the liquor bar in January 2006, purportedly on the basis of his application submitted in the year 1992.

3. Respondent Nos. 5 and 6 herein, namely, Muslim Khawateem Khilafat Tanzeem, a Society and Nazia Elahi Khan, President of the said society respective[illegible]n

as Public Interest Litigation, with the prayers to cancel, rescind and revoke the aforesaid temporary license issued to the appellant. The plea raised was that it was not open for the appellant to run a liquor bar in the said restaurant which was in the vicinity of religious places and school, namely, Gurudwara Bara Sikh Sangar, Shree Digambar Jain Vidyalaya, Shree Jain Swetambere Panchayati Temple, Shree Laxmi Narayan Mandir, Shree Shree Satya Narayanji Mandir and also a mosque. These respondents in the said Writ Petition alleged that the aforesaid religious places and school were situated within the distance of 550 feet of the premises where the license to operate the bar by the Excise Department was granted to the appellant and this was in violation of Rule 8 of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 (hereinafter referred to as "Rules of 2003"), as amended in the year 2004. Amended Rule 8 of the said Rules imposed a ban on the grant of license for the retail sale of liquor or any other intoxicant at a new site which is within 1000 feet from any college/educational institution /religious places. This plea has been accepted by the High Court and vide impugned judgment dated 14th December 2012, the Excise Department is directed not to renew the license of the appellant which was expiring in the month of January 2013.

4. It is not in dispute that there are few religious places as well as a school within a distance of 1000 feet from the restaurant of the appellant where he runs his liquor bar as well. The precise distance of these places from the appellant's restaurant is as under:

> Gurudwara Bara Sikh Sangar is at a distance of 430 ft., Shree Digambar Jain Vidyalaya is at a distance of 580 ft., Shree Jain Swetambar Panchayati Temple is at a distance of 630 ft., Shree Laxmi Narayan Mandir is at a distance of 730 ft., and Shree Shree Satya Narayanji Ka Mandir is at a distance of 780 ft.

5. It is also not in dispute that Rule 8 proscribes grant of license for retail sale of liquor or any other intoxicant at a new site which comes within the range of 1000 ft. However, case set up by the appellant is that since the application for grant of license was filed in the year 1992, the rules which were prevailing at that time would be applicable to the case of the appellant. Under Rules, 1993, the restriction was within a distance of 300 ft. from such places and since the religious places and school pointed out by respondent Nos. 5 and 6 are situated beyond the vicinity of 300 ft., the license was validly granted. In this scenario, the question that falls for determination is as to whether Rules, 1993 would govern the case of the appellant or the license was to be granted keeping in mind Rules, 2003 (as amended). Before we embark on this issue, it would be essential to tread the events leading to the promulgation of the aforesaid Rules and certain Government instructions issued in the matter.

6. As mentioned above, the appellant had applied for Foreign Liquor Bar and Restaurant license on 28.8.1992. Within few months thereof, West Bengal Excise Rules, 1993 were promulgated vide Notification dated 22nd March 1993. These Rules were made in exercise of powers conferred by Sections 85, 86 read with Section 30, 31, 36, 37 and 37A of the West Bengal Excise Act, 1909. As per Rule 8 of Rules 1993, in its original form, there was bar for grant of license for retail sale of spirit or any other intoxicant at a new site which is situated in "close proximity" to an educational institution or traditional place of worship, hospital or bathing ghat for public use. There was no specific distance stipulated therein, defining the expression "close proximity" in arithmetical/ numerical terms. However, when Rules, 2003 came into force in supersession of earlier Rules 1993 with effect from 29.9.2003, the words "close proximity" were replaced by the expression "vicinity". The term "vicinity" was defined as a distance of 300 ft. Rule 8 of Rules, 2003 was amended with effect from 15.4.2004 and as per the amended prov 0

ft. was prescribed in the definition of 'vicinity'. Thus, there was a shift from the position contained in Rules, 1993 which prohibited the grant of license for the retail sale of spirit or any other intoxicant in "close proximity" from the educational institution and religious places etc. to the grant of license within "vicinity of such places" and the term 'vicinity' was explicitly and precisely defined to be a distance of 300 ft. in the unamended Rule 8 of Rules, 2003 and increased to 1000 ft. by way of amendment in the year 2004, from educational institution and religious places.

7. Reverting to the case of the appellant, we would also like to emphasize here that Rule 8 of Rules, 1993 as well as Rule 8 of Rules, 2003 apply only to new sites. Its implication is that those restaurants/ hotels etc. who were already granted license, before coming into force the respective Rules, would not be hit by the mischief of these rules and are allowed the continuation of such a bar license, as pointed out, though the application of the appellant was made in the year 1992, it was processed much after 2004 and the license is also granted after 2004. Therefore, normally the application would be governed by the Rules prevalent on the date of grant of liquor license. However, Mr. K.K.Venugopal, learned senior counsel appearing for the appellant drew our attention to the Circular dated 28.9.2005 issued by the Excise Commissioner, West Bengal to its functionaries and on that basis, he made emphatic plea that pending applications were to be considered on the basis of un-amended Rules, 2003. Since the entire foundation of the appellant's case rests on this communication, we would like to reproduce the same in its entirety:

> "Sub: Settlement of Excise Licenses in favour of the applicants/licensees who have applied for the same before publication of the Excise Department's Notification No. 527-Ex dated 02.04.2004.

Sir,

With reference to above noted subject, it has come to the notice of the undersigned that several applications have been received by the District Authorities for grant of Foreign Liquor 'On' Shop Licenses as well as shifting of the existing shop before the Excise Department's Notification No.527-EX dated 02.04.2004 came into force.

It is further noticed that some applicants/licenses who applied for 'On' shop License/shifting of existing licenses and who were not granted licenses as the sites proposed by them attracted the provisions of the aforesaid notification, moved the Hon'ble High Court for processing their applications in terms of the provisions existing prior to coming into force or Notification No.527-EX dated 02.04.2004.

After careful consideration of the matter, the following……..;

(a) All the applications received before the 15th April, 2004 being the date of publication of the above notification, by the concerned District Authorities for grant of Foreign Liquor 'On' Shop Licenses and not rejected by the Collector may kindly be sent to this Directorate, if not sent already, after suitable processing as per Rule 8(1) of the Excise Department's Notification No.800-EX dated 29.7.2003.

(b) All the petitions received before 15th April, 2004 duly rejected by this Directorate and/or the Collectors due to coming into force of the Excise Department's Notification No. 527-EX dated 02.04.2004 should also be sent to this Directorate for further consideration, after processing of the same in terms of Rule e

Department's Notification No.800-EX dated 29.7.2003;

(c) If the licenses in respect of Foreign Liquor 'On' Shops duly approved by the Govt. In the Excise Department and communicated to the district authorities by this.....also be sent to this Directorate after necessary processing as per Excise Department's Notification No.800-EX dated 29.7.2003.

(d) It has also come to the notice of the undersigned that several applications for grant of Foreign Liquor 'On' Shop Licenses received by the District Excise Authorities are being rejected at their end.

All such applications should be sent to the undersigned in terms of Rule 9(3) of the Rules framed under Excise Department's Notification No.800-EX dated 29.7.2003.

You are, therefore, requested to take necessary steps in the matter and ensure the compliance of these instructions."

8. Seeking to draw sustenance from the aforesaid circular, Mr. Venugopal's endeavour was to make us agree to his submission that those applications which were received before 15th April, 2004 and had not been rejected by the time circular dated 28.9.2005 came to be issued, were to be processed as per unamended Rule 8 which fixed the upper limit of 300 ft. as prohibitory limit. However, we don't feel persuaded by this plea. In our view, this circular has no application to the facts of the present case for the reasons stated hereafter.

9. On the face of it, it is visible that the circular deals with the situation where applications for grant of license had been submitted after 29.7.2003 when Rules, 2003 were promulgated

prescribing a distance of 300 ft. in Rule 8(1) of those Rules to define 'vicinity' and before this definition of "vicinity" was amended vide Notification dated 2.4.2004. The question was as to whether applications which were given after 29.7.2003 but before 2.4.2004, were to be governed by original Rules 8(1) or the amended Rule 8(1). It seems that a Writ Petition was filed in the High Court of Calcutta by those who were not granted license because of the amended Rules. During the pendency of the said Writ Petition, the matter was considered and the decision was taken that all the applications received before the amended Rules came into force, which had not been rejected by the Collector, should be processed in terms of unamended Rules and sent to the Directorate. Even those applications which were received before 15th April, 2004 and had been rejected applying amended Rule were also directed to be sent to the Directorate for further consideration, after processing in terms of unamended Rules. These applications were to be sent in terms of Rule 9(3) of the Rules. Ex-facie, the case of the appellant has no such factual parity.

10. We would like to point out, at this stage, that when the application of the appellant, which was submitted in 1992 but had not been taken up for consideration at all for number of years, even the appellant had not taken any steps by sending any reminder or followed it up with any request to the department to grant him bar license on the basis of said application. This position remained even during the operation of Rules, 1993 which remained operative for 10 years and were replaced by Rules, 2003. During this period also, no steps were taken. After Rules, 2003 there was an amendment in Rule 8 thereof. Thereafter the Excise Commissioner, West Bengal issued clarification in the year 2005 in respect of applications which were submitted pursuant to Rules, 2003 but either had not been dealt with upto the amendment notified on 2.4.2004 or were rejected after 2004 applying the amended Rules. Though, this circular was totally unconnected and unrelated to the case of the appellant, at this stage,

from slumber and started insisting that his application submitted in the year 1992 be considered. The appellant very well knew that on the basis of new Rules he would not be able to get bar license. Therefore, the strategy adopted was to resuscitate the application of 1992 and demand its consideration on the basis of un-amended rules. In fact, Mr. Kailash Vasdev, learned senior counsel appearing for respondent Nos. 5 and 6 is right in submitting that his application of the year 1992 was not even proper and valid application as no fee etc. was paid along with the said application. That would be the reason that the said application was never processed. The application has to be supported by appropriate fee which was not given earlier. Such a fee was deposited only in the year 2006 in compliance with the provisions of Rule 9 of the Rules, 2003. In his letter dated 1.11.2004 the appellant referred to his application submitted on 28.8.1992 in which the appellant stated that he had applied for the license as per the copy of letter which he enclosed along with communication dated 1.11.2004 and it shows that only a letter was submitted, though, as per the Rules, application was to be made in Form I or Form II annexed with these Rules.

11. Before filing the Writ Petition, respondent Nos. 5 and 6 had obtained information from the department under Right to Information Act. Information supplied to them mentions that the appellant had first made application on 28.8.1992 and then again on 8.9.2005 giving reference to the first application. Thus, we find that the first application was not even proper application and second application was dated 8.9.2005. It had to be governed by the new Rules, namely, Rules 2003, as amended in 2004.

12. It would also be significant to state that as per the law laid down by this Court, Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made. This is so held in *State of Kerala & Ors. Vs. Kandath Distilleries* 2013 (2) SCALE 789 in the following words:

> "We have gone through the Government Order dated 11.10.2006 in extenso and we are not prepared to say that the application of the respondent was rejected solely on the ground that the application dated 12.1.1987 could not be treated as an application put forward by a firm based on a partnership deed, which came into existence on 10.4.1991, as per Clause 3 of the Partnership Deed but on various other grounds as well. The State Government, in our view, has considered the respondent's application dated 12.1.1987 with regard to the conditions that existed in the year 1998. The Government letter dated 28.6.1994 would indicate that, apart from the respondent, few other applications were also pending prior to the year 1994. Over and above, the State Government during the year 1998, from 3.2.1998 to 21.11.1998, had received 52 applications for establishing compounding, blending and bottling units in IMFLs in various parts of the State. The Excise Commissioner vide his letter dated 25.11.1998 had reported that there was an unprecedented flow of applications, that was the situation prevailing in the year 1998, a factor which was taken note of in not entertaining the respondent's application, whether it was submitted on 12.1.1987 or on 22.11.1998. We cannot, in any way, activate an out-modeled, outdated, forgotten liquor policy of 1998, in the year 2013, by a Writ of Mandamus."

13. We fail to comprehend as to how the application filed in 1992 could be considered in 2010. In any case, as per the dicta aforesaid, when the request of the appellant was considered in the year 2010, Rules of 2003 as amended in 2004 had to be applied. On the basis of these Rules, the appellant could not have been granted for foreign liquor bar and restaurant license as there are many religious and educational institutions within the 1000 ft. of place from where the appellant is operating.

14. Mr. Venugopal has tried to mak[illegible]e

malafides on the part of the respondent Nos. 5 and 6 alleging that there is another restaurant run by respondent No.4 which is also operating from a place that is less than 1000 ft. from religious places etc. However, proceedings against the said respondents were dropped by respondent Nos. 5 & 6. First of all, this argument would be of no avail to the appellant inasmuch as when it is found that the appellant was not entitled for bar license, the High Court has rightly issued mandamus not to renew the same. Even if, we presume that some other person is also operating in an infringing manner, that would not legalize the license of the appellant. That apart, after going through the record, we find that the case of respondent No.4 was not of a new license but existing license. Rule 8 applied to new sites only and in so far as those who were operating already and having existing license, they are not hit by the mischief of this Rule.

15. The result of the aforesaid discussion would be to uphold the judgment of the High Court and dismiss the appeal with costs. Since the license was renewed on the basis of interim orders passed by this court, which is valid till December 2013, it would not be renewed thereafter. We order accordingly.

K.K.T. Appeal dismissed.

ONGC LTD.

v.

M/S. MODERN CONSTRUCTION AND CO.

(Civil Appeal Nos. 8957-8958 of 2013)

OCTOBER 7, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Code of Civil Procedure, 1908 - Or.VII r.10 - Suit returned - To be presented before court of competent jurisdiction - The suit before court of competent jurisdiction decreed directing the defendant to pay interest on decretal amount from the date of filing of the suit - Payment of interest from the date of filing of the suit before the court of competent jurisdiction - Claim of interest by decree-holder from the date of the suit filed before the court, not having jurisdiction - Held: Once the plaint was returned under Order VII r.10 and presented before the court of competent jurisdiction, subsequent suit was a fresh suit and not continuation of the previous suit - Decree-holder cannot be permitted to take advantage of his own mistake of instituting suit before wrong court - Hence, not entitled to interest from the date of filing of the suit before wrong court.

Maxim - 'Actus Curiae Neminum Gravabit' - Applicability.

Respondent-plaintiff filed suits in the year 1986 in the civil court at 'Mehsana' which were decreed. But the order of the civil court was set aside by High Court in appeal on the ground that the civil court at Mehsana had no territorial jurisdiction to entertain the suits. The High Court directed the civil court at 'Mehsana' to return the plaints to the respondent, so that the same could be filed before the appropriate court having jurisdiction. Thereafter, the respondent filed the suits in competent court at Surat on 3.2.1999. The suits were allowed holding that the respondent was entitled to decretal

amount with a future interest @ 12% per annum from the date of filing of the suit till realization. The appellant paid the decretal amount with interest from the date the respondent had presented the plaints before the Court of competent jurisdiction i.e. 3.2.1999. The respondent filed Special Execution Petition claiming interest for the period 1986 to 1999 i.e. the period when the suit remained pending before the court at Mehsana which had no jurisdiction. Executing court dismissed the petition. Appeal against the same was dismissed. However, the High Court by the impugned judgment held that the respondent was entitled to interest from the date of institution of the suit at Mehsana Court. Hence the present appeal.

Allowing the appeals, the Court

HELD: 1. If the court, where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo, even if it stood concluded before the court having no competence to try the same. [Para 13] [476-E-G]

Ramdutt Ramkissen Dass vs. E.D. Sassoon and Co. **AIR 1929 PC 103;***Sri Amar Chand Inani vs. Union of India* **AIR 1973 SC 313: 1973 (2) SCR 684;** *Hanamanthappa and Anr. vs. Chandrashekharappa and Ors.* **AIR 1997 SC 1307: 1997 (1) SCR 846;** *Harshad Chimanlal Modi (II) vs. D.L.F.*

Universal Ltd. and Anr. **AIR 2006 SC 646: 2005 (5) Suppl. SCR 740 - relied on.**

Joginder Tuli vs. S.L. Bhatia and Anr. **(1997) 1 SCC 502: 1996 (7) Suppl. SCR 221 - distinguished.**

2. Respondent instituted the suit in Civil Court at Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint. The High Court while passing the order did not exercise its power of transfer under Section 24 CPC; rather the language used in the said judgment makes it clear that the return of the plaints was required in view of the provisions of Order VII Rule 10 CPC. Once the plaint was presented before the Civil Court at Surat, it was a fresh suit and cannot be considered to be continuation of the suit instituted at Mehsana. The plaintiff/respondent cannot be permitted to take advantage of its own mistake of instituting the suit before a wrong court. Therefore, the judgment and order impugned cannot be sustained in the eyes of law. [Paras 6, 17 and 19] [473-F; 477-H; 478-A]

3. In the instant case, a copy of the decree has not been filed by either of the parties. The judgment and order dated 21.9.2006 shows that the plaints were received and registered on 24.3.1986. The respondent cannot be permitted to take advantage of a mistake made by the court and raise a technical objection to defeat the cause of substantial justice. The legal maxim, 'Actus Curiae Neminem Gravabit' i.e. an act of Court shall prejudice no man, comes into play. [Para 15] [477-C-D]

Jayalakshmi Coelho vs. Oswald Joseph Coelho **AIR 2001 SC 1084: 2001 (2) SCR 207;** *Bhagwati Developers Private Ltd. vs. Peerless General Finance Investment Company Ltd. and Ors.* **AIR 2013 SC**

455; *Bhartiya Seva Samaj Trust Tr. Pres. and Anr. vs. Yogeshbhai Ambalal Patel and Anr.* **AIR 2012 SC 3285: 2012 (7) SCR 1054 - relied on.**

4. The Executing Court cannot go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution. [Para 14] [476-H; 477-A]

Bhawarlal Bhandari vs. Universal Heavy Mechanical Lifting Enterprises **AIR 1999 SC 246: 1998 (3) Suppl. SCR 331;** *Dhurandhar Prasad Singh vs. Jai Prakash University and Ors.* **AIR 2001 SC 2552: 2001 (3) SCR 1129;** *Rajasthan Financial Corpn. vs. Man Industrial Corpn. Ltd.* **AIR 2003 SC 4273;** *Balvant N. Viswamitra and Ors. vs. Yadav Sadashiv Mule (Dead) Thru. Lrs. and Ors.* **AIR 2004 SC 4377: 2004 (3) Suppl. SCR 519;** *Kanwar Singh Saini vs. High Court of Delhi* **(2012) 4 SCC 307: 2011 (15) SCR 972 - relied on.**

Case Law Reference:

AIR 1929 PC 103	**relied on**	**Para 7**
1973 (2) SCR 684	**relied on**	**Para 8**
1997 (1) SCR 846	**relied on**	**Para 10**
1996 (7) Suppl. SCR 221	**distinguished**	**Para 10**
2005 (5) Suppl. SCR 740	**relied on**	**Para 11**
1998 (3) Suppl. SCR 331	**relied on**	**Para 14**
2001 (3) SCR 1129	**relied on**	**Para 14**
AIR 2003 SC 4273	**relied on**	**Para 14**
2004 (3) Suppl. SCR 519	**relied on**	**Para 14**
2011 (15) SCR 972	**relied on**	**Para 14**
2001 (2) SCR 207	**relied on**	**Para 15**
2013 (5) SCC 455	**relied on**	**Para 15**
2012 (7) SCR 1054	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8957-8958 of 2013.

From the Judgment and Order dated 10.12.2010 of the High Court of Judicature of Gujarat at Ahmedabad in Special Civil Application No. 5036 of 2010 with Special Civil Application No. 5037 of 2010.

Parag P. Tripathi, Nishant Menon, Kavita Sarin, Kunal Verma for the Appellant.

Santosh Krishnan, Nikhil Goel, Marsook Bafaki, Naveen Goel for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 10.12.2010 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application Nos.5036-5037 of 2010, reversing and setting aside the order dated 12.3.2010, passed by the Addl. District Judge, Fast Track Court, Surat in Misc. Civil Appeal Nos.29 and 30 of 2008 as well as the order dated 28.9.2007, passed in Special Execution Petition Nos.17 and 18 of 2007, passed by the 2nd Additional Senior Civil Judge, Surat.

2. Facts and circumstances giving rise to these appeals are that:

A. A contract for re-construction of cement godown, site office and warehouse for LPG Plant at Kawas in Surat District was awarded by the appellant to the respondent to be completed on or before 8.8.1984 vide agreement dated 9.2.1984. The respondent completed the work with an inordinate delay and possession could be taken by the appellant only on 31.6.1985. The respondent filed Civil Suit Nos.60, 61 and 62 of 1986 against the appellant in the Civil Court at Mehsana to recover the outstanding dues from the a

B. The Civil Court vide judgment and decree dated 31.1.1994 allowed Civil Suit Nos.61 and 62 of 1986 in favour of the respondent.

C. Aggrieved, the appellant filed First Appeal Nos.1451, 1452 and 1453 of 1994 before the High Court of Gujarat challenging the said judgment and decree dated 31.1.1994. The High Court vide common judgment and order dated 18.3.1997 held that the Civil Court at Mehsana did not have territorial jurisdiction to entertain the suits. Therefore, the said judgment and decrees passed in the civil suits were set aside and the Civil Court at Mehsana was directed to return the plaints to the respondent so that the same may be presented before the appropriate court having jurisdiction.

D. The plaints were returned to the respondent in the aforesaid civil suits, who instituted the same before the Civil Court at Surat on 3.2.1999 being Civil Suit Nos.56, 57 and 58 of 1999. The said suits were allowed by the 3rd Additional Senior Civil Judge vide judgment and decree dated 21.9.2006 holding that the respondent was entitled to receive an amount of Rs.1,29,138/-, Rs.1,69,757/- and Rs.58,616/- in the respective suits with a future interest @ 12% per annum from the date of filing of the suit till realisation.

E. The appellant complied with the decrees passed by the 3rd Addl. Senior Civil Judge and made the payment of decretal amount to the respondent calculating the interest on the principal sum from 3.2.1999, i.e. the date on which the respondent had presented the plaints in the court of competent jurisdiction at Surat.

F. The respondent after receiving the said amount filed Special Execution Petition Nos. 17 and 18 of 2007 on 5.3.2007 claiming interest for the period 1986 to 1999, i.e. during the period when the suit remained pending before the court at Mehsana which had no jurisdiction. The Executing Court vide order dated 28.9.2007 dismissed the Execution petition

observing that respondent was entitled to interest from the date of filing of the suit at Surat and not from the date on which the plaint was presented at Mehsana.

G. Aggrieved, the respondent preferred Misc. Civil Appeal Nos.29, 30 and 35 of 2008 before the District Court at Surat and the same were dismissed vide order dated 12.3.2010.

H. Aggrieved, the respondent challenged the said order dated 12.3.2010 by filing Special Civil Application Nos.5036 and 5037 of 2010 before the High Court of Gujarat at Ahmedabad and the said applications have been allowed vide order dated 10.12.2010 holding that the respondent was entitled to interest from the date of institution of the suit at Mehsana Court.

Hence these appeals.

3. Shri Parag P. Tripathi, learned Senior counsel appearing for the appellant duly assisted by Shri Nishant Menon, Advocate has submitted that the plaints had initially been instituted at Mehsana Court which had no territorial jurisdiction to entertain these suits and even after being decreed, the High Court vide order dated 18.3.1997 had rightly set aside the judgment and decrees and asked the court at Mehsana to return the plaints to the respondent so that the plaintiff could present them before the court of competent territorial jurisdiction. Therefore, the order of the High Court has to be understood to have been passed in view of the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') and not a case of transfer of a suit from the Court at Mehsana to the Civil Court, Surat. Once the plaint is presented after being returned from the court having no jurisdiction, it is to be treated as a fresh suit and even if the trial was conducted earlier, as in the instant case, it had to be done de novo. The only protection could be to take advantage of the provisions of Section 14 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation

paid earlier may be adjusted but by no stretch of imagination it can be held to be a continuation of the suit. Had it been so there would be no occasion for the High Court to set aside the judgment and decree of the civil court at Mehsana at such a belated stage. Thus the impugned judgment and order is liable to be set aside.

4. Per contra, Shri Santosh Krishnan, learned counsel appearing for the respondent has submitted that in fact, the suits had been instituted at Mehsana Court in 1986 and the civil court therein had decreed the suit. The High Court in the impugned order has clearly stated that the suits were transferred from Mehsana Court to Civil Court at Surat and therefore, the respondent was entitled for interest from the date of institution of suit at Mehsana. The judgment and decree dated 21.9.2006 clearly reveals that the suits were received and registered on 24.3.1986. The appellant had not applied for correction of the said judgment and order by filing an application under Section 152 CPC. Therefore, no interference is called for and the appeals are liable to be dismissed.

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

6. The High Court while passing order dated 18.3.1997, did not exercise its power of transfer under Section 24 CPC; rather the language used in the said judgment makes it clear that the return of the plaints was required in view of the provisions of Order VII Rule 10 CPC. The relevant part of the order reads as under:

> "Therefore, the impugned judgments and decrees in all the three appeals are **allowed only on the limited ground that civil court at Mehsana had no jurisdiction to entertain the suits with the result, the plaints are required to be returned to the Plaintiff for filing suits in appropriate forum or court at appropriate place in view of provisions of O. 7, R 10 of the CPC**. Therefore, the plaints are ordered to be returned to the Plaintiff or (sic) presentation to proper court having territorial jurisdiction. No doubt, we cannot resist temptation of mentioning the fact that the controversy is very old. It pertains to money on the basis of breach of contract. Therefore, the proper court on presentation of plaints will expeditiously determine and decide the dispute between the parties. We have not entered into merits of other issue decided by the trial court as decisions rendered in respect of other issues as they are examined and adjudicated upon by the trial court without jurisdiction. In the result, all the three appeals are allowed and impugned judgment and decree are quashed and set aside. The appeals are allowed. The plaints, therefore, shall be returned to the Plaintiff for presentation to proper court." (Emphasis added)

7. In *Ramdutt Ramkissen Dass v. E.D. Sassoon & Co.,* AIR 1929 PC 103, a Bench of Privy Council held:

> *".....It is quite clear that where a suit has been instituted in a court which is found to have no jurisdiction and it is found necessary to raise a second suit in a court of proper jurisdiction, the second suit cannot be regarded as a continuation of the first, even though the subject matter and the parties to the suits were identical....."*
>
> (Emphasis added)

8. In *Sri Amar Chand Inani v. Union of India,* AIR 1973 SC 313, the issue involved herein was considered and this Court held that in such a fact-situation, where the plaint is returned under Order VII Rule 10 CPC and presented before the court of competent jurisdiction, the plaintiff is entitled to exclude the time during which he prosecuted the suit before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act and by no means it can be held to be continuation of the earlier suit after such presentation.

9. In *Hanamanthappa & Anr. v. Chandrashekharappa & Ors.,* AIR 1997 SC 1307, this Court reiterated a similar view rejecting the contention that once the plaint is returned by the court having no jurisdiction and is presented before a court of competent jurisdiction, it must be treated to be continuation of the earlier suit. The Court held:

> *"In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee. …. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law."*

10. In *Joginder Tuli v. S.L. Bhatia & Anr.,* (1997) 1 SCC 502, this Court dealt with a case wherein the landlord had terminated the tenancy and filed a suit for possession. An application for amendment of the plaint to recover damages for the use and occupation was also filed. On that basis, the pecuniary jurisdiction of the Trial Court was beyond its jurisdiction and accordingly the plaint was returned for presentation to proper court. On revision, the High Court directed the Court to return the plaint to the District Court with a direction that the matter would be taken up by the District Court and proceeded with from the stage on which it was returned. This Court disposed of the case observing:

> *"Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference."*

11. This Court in *Harshad Chimanlal Modi (II) v. D.L.F. Universal Ltd. & Anr.,* AIR 2006 SC 646 has approved and followed the judgment of this Court in *Sri Amar Chand Inani* (supra) and distinguished the case in *Joginder Tuli* (supra)

observing that:

> *"The suit when filed was within the jurisdiction of the Court and it was properly entertained. In view of amendment in the plaint during the pendency of the suit, however, the plaint was returned for presentation to proper court taking into account the pecuniary jurisdiction of the court. Such is not the situation here."*

12. Section 14 of the Limitation Act provides protection against the bar of limitation to a person bonafidely presenting his case on merit but fails as the court lacks inherent jurisdiction to try the suit. The protection also applies where the plaintiff brings his suit in the right court, but is nevertheless prevented from getting a trial on merits because of subsequent developments on which a court may loose jurisdiction because of the amendment of the plaint or an amendment in law or in a case where the defect may be analogous to the defect of jurisdiction.

13. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

14. There can also be no quarrel with the settled legal proposition that the Executing Court cannot go behind the decree. Thus, in absence of any challe o

objection can be raised in execution. (Vide: *Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises* AIR 1999 SC 246; *Dhurandhar Prasad Singh v. Jai Prakash University & Ors.,* AIR 2001 SC 2552; *Rajasthan Financial Corpn. v. Man Industrial Corpn. Ltd.,* AIR 2003 SC 4273; *Balvant N. Viswamitra & Ors. v. Yadav Sadashiv Mule (Dead) Thru. Lrs. & Ors.,* AIR 2004 SC 4377; and *Kanwar Singh Saini v. High Court of Delhi,* (2012) 4 SCC 307).

15. In the instant case, a copy of the decree has not been filed by either of the parties. The judgment and order dated 21.9.2006 shows that the plaints were received and registered on 24.3.1986. The respondent cannot be permitted to take advantage of a mistake made by the court and raise a technical objection to defeat the cause of substantial justice. The legal maxim, 'Actus Curiae Neminem Gravabit' i.e. an act of Court shall prejudice no man, comes into play. (See: *Jayalakshmi Coelho v. Oswald Joseph Coelho,* AIR 2001 SC 1084; and *Bhagwati Developers Private Ltd. v. Peerless General Finance Investment Company Ltd. & Ors.,* AIR 2013 SC 1690).

16. This Court in *Bhartiya Seva Samaj Trust Tr. Pres. & Anr. v. Yogeshbhai Ambalal Patel & Anr.,* AIR 2012 SC 3285, while dealing with the issue held:

> *"21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim 'allegans suam turpitudinem non est audiendus'. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong….*
>
> *This concept is also explained by the legal maxims 'Commodum ex injuria sua non habere debet'; and 'nullus commodum capere potest de injuria sua propria'."*

17. Thus, the respondent cannot take the benefit of its own mistake. Respondent instituted the suit in Civil Court at

Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint in view of the provisions of Order VII Rule 10 CPC. Thus, the respondent presented the plaint before the Civil Court at Surat on 3.2.1999.

18. The judgment and decree dated 21.9.2006 clearly provided for future interest at the rate of 12 per cent per annum from the date of filing of the suit till the realisation of the amount. The Executing Court vide judgment and decree dated 28.9.2007 rejected the claim of the respondent observing that the respondent had wrongly filed suit at Mehsana and the said court had no jurisdiction, and the "wrong doer cannot get benefit of its own wrong" i.e. the benefit of interest on the amount from the date of filing the suit in Mehsana court. The Appellate Court in its order dated 12.3.2010 reiterated a similar view rejecting the appeal of the respondent observing that "a public undertaking cannot be penalised for the mistake committed by the plaintiff by choosing a wrong forum". Before the High Court when the matter was taken up on 14.9.2010, a similar view had been reiterated that the respondent cannot be allowed to take advantage of the words "from the date of the suit", and conveniently overlook its own wrong of initially filing the suit in 1986 in the court at Mehsana. Though the court did not have jurisdiction, the plaintiff/respondent is now claiming interest for the period from 1986 to 1999 i.e. for 13 years by taking advantage of its own wrong and for that purpose, the plaintiff/respondent is trying to misconstrue the words mentioned by the learned trial court in the operative portion of the judgment dated 21.9.2006, viz., from the date of filing of the suit. However, while passing the impugned order, the High Court has used the language that the case stood transferred from the Mehsana court to the court at Surat and, therefore, interest has to be paid from the date of initiation of the suit at Mehsana i.e. from 1986 and in view thereof, allowed the claim.

19. We are of the considered view that once the plaint was presented before the Civil Court at Surat, it was a fresh suit and cannot be considered to be continuation of the suit instituted at Mehsana. The plaintiff/respondent cannot be permitted to take advantage of its own mistake instituting the suit before a wrong court. The judgment and order impugned cannot be sustained in the eyes of law.

20. In view of the above, appeals are allowed. The judgment and decree impugned are set aside. The judgments and orders of the Trial Executing Court as well as of the Appellate Court are restored. There shall be no order as to costs.

K.K.T. Appeals allowed.

DULCINA FERNANDES & ORS.
v.
JOAQUIM XAVIER CRUZ & ANR.
(Civil Appeal No. 9094 of 2013)

OCTOBER 08, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

Motor Vehicles Act, 1988 - s.166 - Claim under - Adjudication of - To be on the touchstone of preponderance of probability - Deceased was riding a scooter which got hit by the pick-up van driven by first respondent - Claim of wife and daughters of deceased - Claims Tribunal assessed compensation at Rs.6.66 lakhs, but ultimately rejected the claim citing that the accident had occurred on account of the negligence of the deceased - Order affirmed by High Court - On appeal, held: Evidence before the Tribunal was recorded seven years after the accident - Keeping in view the nature of the jurisdiction exercised by the Tribunal, it was not correct on its part to hold against the claimants for their failure/ inability to examine the pillion rider 'R' as a witness, more particularly in view of the hapless condition in which the claimants must have been placed after death of their sole breadwinner and the sufficiently long period of time that had lapsed in the meantime - Further, the Tribunal was not entirely correct in rejecting the evidence of the CW-3 and 5 - Similarly it erred in accepting the evidence tendered by the first respondent - CW-2, Head Constable, had deposed that a criminal case was registered against the first respondent in connection with the accident - Statements made by him were significant to the issues arising in the instant case - Said aspects of the evidence of CW-2 not considered by the Tribunal - High Court failed to notice the lacunae in the award of the Tribunal - Case fit for interference by Supreme Court - Accident in question occurred due to rash and negligent

driving of the pick-up van by the first respondent - Claimants-appellants entitled to compensation as quantified by the Tribunal alongwith interest @ 6% p.a with effect from the date of the award of the Tribunal.

N' was driving a scooter while 'R' was riding pillion when the pick-up van driven by the first respondent allegedly in a rash and negligent manner hit the scooter as a result of which both 'N' and 'R' fell off and suffered injuries. 'N' died due to the injuries sustained. The wife and the daughters of 'N', i.e. the appellants, lodged Claim Petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal. The first respondent took the stand that the accident occurred as the deceased was driving the scooter under the influence of liquor. The Tribunal framed four issues. Though under issue No.3 the Tribunal assessed the compensation payable to the claimants at Rs.6,66,041.78, in view of its' findings against issues 1 and 4, namely that the accident had occurred on account of the negligence of the deceased, the Tribunal thought it proper to reject the claim of the appellants. The order was affirmed by the High Court, and, therefore the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt. Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. [Para 7] [486-E-F; 487-A]

1.2. While it is correct that the pillion rider 'R' could have best unfolded the details of the accident what cannot be lost sight of is the fact that while the accident

occurred on 29.06.1997 the evidence before the Tribunal was recorded after seven years i.e. in the year 2004. Keeping in view the nature of the jurisdiction that is exercised by a Claims Tribunal under the Act, it was not correct on the part of the Tribunal to hold against the claimants for their failure or inability to examine the pillion rider 'R' as a witness in the case. Taking into account the hapless condition in which the claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the meantime, the Tribunal should not have treated the non-examination of the pillion rider as a fatal and fundamental flaw to the claim made before it by the appellants. Further, the Tribunal was not entirely correct in rejecting the evidence of the CW-3 and 5 on the grounds assigned. Similar is the position with regard to the findings of the Tribunal in accepting the evidence tendered by the first respondent. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was chargesheeted and sent up for trial. Though, the first respondent was acquitted in the said case, upon investigation, prime facie, materials showing negligence were found to put him on trial. The statements made by CW-2 in the course of his deposition has considerable significance to the issues arising in the case, namely, whether the deceased was driving the scooter under the influence of alcohol and whether there was any negligence on his part leading to the accident. The said aspects of the evidence of CW-2 do not appear to have been taken note of or to have received any consideration of the Tribunal. At the same time it is possible to take the view that the evidence of CW-2, properly read and considered, can lead to a conclusion contrary to what has been arrived at by the Tribunal, namely, that the accide[illegible]n

account of the negligence of the deceased. The High Court having failed to notice the above lacunae in the award of the Tribunal and correct the same, the present is a fit case for interference. Accordingly the findings of the Tribunal as affirmed by the High Court in respect of issues 1 and 4 are set aside and it is held that the accident had occurred due to the rash and negligent driving of the pick-up van by the first respondent. [Para 8] [487-E-H; 488-A-H; 489-A-B]

Bimla Devi & Ors. Vs. Himachal RTC **(2009) 13 SCC 530: 2009 (6) SCR 362 and** *United India Insurance Company Limited Vs. Shila Datta & Ors.* **(2011) 10 SCC 509: 2011 (14) SCR 763 - relied on.**

2. The claimants-appellants are entitled to compensation of Rs.6,66,041.78 as quantified by the Tribunal in its order dated 20.07.2004. Insofar as award of interest is concerned, in the facts of the present case, it is directed that the amount awarded shall carry interest at the rate of 6% per annum with effect from the date of the award of the Tribunal i.e. 20.07.2004. [Para 9] [489-C-D]

Case Law Reference:

2009 (6) SCR 362	**relied on**	**Para 7**
2011 (14) SCR 763	**relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9094 of 2013.

From the Judgment and order dated 14.11.2008 of the High Court of Bombay at Panaji in FA No. 216 of 2004.

Arun R. Pednekar, V.N. Raghupathy for the Appellants.

Kishore Rawat, M.K. Dua for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. The claimants-appellants are the wife and daughters of one Nicolau Fernandes who died in a motor vehicle accident that had occurred on 29.06.1997 at Santimol, Raia while going from Margao to his village in Ilha, De Rachol. The deceased was driving a scooter and one Rosario Antao was riding Pillion. As the deceased reached Santimol Junction, one pick-up van driven by the first respondent came from the opposite direction; though the deceased tried to avoid the pick-up van which was being driven in a rash and negligent manner, the rear mudguard of the pick-up van hit the scooter as a result of which the deceased and the pillion rider fell off and suffered injuries. Due to the injuries sustained Nicolau Fernandes died on 01.07.1997.

In the aforesaid facts, the appellants, as claimants, had lodged a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter for short 'the Act') before the Motor Accident Claims Tribunal at Margao, Goa. In addition to the first respondent, the New India Assurance Company with whom the pick-up van was insured was also impleaded as a respondent in the proceeding before the Claims Tribunal.

3. Before the Tribunal, the first respondent, in the written statement filed, took the stand that the accident had not occurred on account of any fault or negligence on his part. On the contrary, according to the first respondent, the accident had occurred as the deceased was driving the scooter under the influence of liquor. It was specifically pleaded by the first respondent that the deceased had come on the wrong side of the road and had dashed against the pick-up van of the respondent which was standing parked on the extreme left of the road.

4. On the pleadings of the parties the learned Tribunal framed four issues for trial in the case. Though under issue No.3 the learned Tribunal assessed the compensation payable to the claimants at Rs.6,66,041.78, in view of

against issues 1 and 4 (whether the deceased or the first respondent was negligent and responsible for the accident), the learned Tribunal came to the conclusion that the appellants (claimants) are not entitled to any compensation. The High Court of Bombay having affirmed the findings and the conclusion of the learned Tribunal, the present appeal has been filed.

5. A reading of the award passed by the learned Tribunal and the order of the High Court shows that the claim of the appellants has been rejected on three principal grounds. According to the learned Tribunal and the High Court the most acceptable evidence in the case would have been the version of the pillion rider, Rosario Antio, who however, had not been examined by the claimants. Neither any explanation had been offered by the claimants for not examining the aforesaid person. In these circumstances an adverse inference against the claimants was felt justified. The evidence of CW-3 Benito Vaz, who was examined by the claimants as an eye witness, was discarded by the learned Tribunal in as much as this witness had stated, contrary to the case of the claimants, that the deceased was riding pillion and it was Rosario Antio who was driving the scooter. The evidence of CW-5, who was also examined by the claimants as an eye witness was rejected by the learned Tribunal on the ground that in the circumstances narrated by CW-5 the said witness could not have possibly seen the actual mishap. Having rejected the evidence of CW-3 and CW-5 on the aforesaid grounds, the learned Tribunal considered the evidence tendered by the first respondent who examined himself as RW-1. In his deposition the first respondent had stated that at the time of the accident the pick-up van was parked on the extreme left side of the road and the scooter driven by the deceased came at a high speed and dashed against the pick-up van. The first respondent has also deposed that the deceased as well as the pillion rider were both drunk and after the accident both of them had vomited and were smelling of liquor. The learned Tribunal, upon consideration of the deposition of the first respondent and taking into account

the answers given by him in cross-examination, came to the conclusion that there is no reason to doubt the testimony of the said witness. Accordingly, the learned Tribunal came to its impugned findings on issue Nos. 1 and 4, namely that the accident had occurred on account of the negligence of the deceased. On the basis of the said finding the learned Tribunal thought it proper to reject the claim of the appellants. On appeal, the High Court has reiterated the findings and the conclusion of the learned Tribunal on grounds substantially similar to those recorded by the learned Tribunal.

6. We have heard Mr.Arun R. Pednekar, learned counsel appearing for the appellant and Mr. Kishore Rawat, learned counsel appearing for the respondent No.2. We have considered the submissions advanced by the learned counsels for the respective parties. We have also perused the orders passed by the learned Tribunal as well as by the High Court and have carefully considered the evidence led by the parties which had been included in the SLP paper book.

7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt. [*Bimla Devi & Ors. Vs. Himachal RTC* (2009) 13 SCC 530]. In *United India Insurance Company Limited Vs. Shila Datta & Ors.* (2011) 10 SCC 509 while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-judge-bench of this Court has culled out certain propositions of which propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow:

> "(ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initi

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation.

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

The following further observation available in paragraph 10 of the report would require specific note:

"We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

8. The cases of the parties before us will have to be examined from the perspective of the principles and propositions laid down in *Bimla Devi* case (supra) and *Shila Datta* (supra). While it is correct that the pillion rider could have best unfolded the details of the accident what cannot be lost sight of is the fact that while the accident occurred on 29.06.1997 the evidence before the Tribunal was recorded after seven years i.e. in the year 2004. Keeping in view the nature of the jurisdiction that is exercised by a Claims Tribunal under the Act we do not think it was correct on the part of the learned Tribunal to hold against the claimants for their failure or inability to examine the pillion rider Rosario Antao as a witness in the case. Taking into account the hapless condition in which the claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the meantime, the learned Tribunal should not have treated the non-examination of the pillion rider as a fatal and fundamental law to the claim made before it by the appellant. As this Court while hearing an appeal instituted upon grant of

special leave under Article 136 of the Constitution would not normally re-appreciate the evidence led before Trial Court, we refrain from doing so in the present case though we may observe that the learned Tribunal was not entirely correct in rejecting the evidence of the CW-3 and 5 on the grounds assigned. Similar is the position with regard to the findings of the learned Tribunal in accepting the evidence tendered by the first respondent. However, there are certain other features of the case which are more fundamental and, therefore, have to be specifically noticed. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was chargesheeted and sent up for trial. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prime facie, materials showing negligence were found to put him on trial. From the evidence of CW-2 it also transpired that the deceased was not medically examined to ascertain whether he had consumed alcohol and was, therefore, driving the scooter under the influence of liquor. In fact, according to CW-2, he had reached the spot within 15 minutes of the incident. In his cross-examination CW-2 had specifically denied that the scooter driven by the deceased had dashed the pick-up van which was stationary i.e. parked on the road. The statements made by CW-2 in the course of his deposition has considerable significance to the issues arising in the case, namely, whether the deceased was driving the scooter under the influence of alcohol and whether there was any negligence on his part leading to the accident. The said aspects of the evidence of CW-2 do not appear to have been taken note of or to have received any consideration of the learned Tribunal. At the same time it is possible to take the view that the evidence of CW-2, properly read and considered, can lead to a conclusion contrary to what has been arrived at by the learned Tribunal, namely, that the accident had

the negligence of the deceased. The High Court having failed to notice the above lacunae in the award of the learned Tribunal and correct the same, we are satisfied that the present is a fit case for our interference. We accordingly set aside the findings of the learned Tribunal as affirmed by the High Court in respect of issues 1 and 4 and hold that the accident had occurred due to the rash and negligent driving of the pick-up van by the first respondent.

9. It has already been noticed that on basis of the discussions under issue No.3, the learned Tribunal has quantified the entitlement of the claimants to compensation at Rs.6,66,041.78. The said relief was withheld in view of the findings on issues 1 and 4 which have been now reversed by us. Consequently, we hold the claimants-appellants to be entitled to compensation of Rs.6,66,041.78 as quantified by the learned Tribunal in its order dated 20.07.2004. In so far as award of interest is concerned, in the facts of the present case we direct that the amount awarded shall carry interest at the rate of 6% per annum with effect from the date of the award of the learned Tribunal i.e. 20.07.2004.

10. Appeal of the claimants is allowed on the above terms. No order as to costs.

B.B.B. Appeal allowed.

COMMISSIONER OF INCOME TAX

v.

M/S EXCEL INDUSTRIES LTD.

(Civil Appeal No. 125 of 2013 etc.)

OCTOBER 8, 2013

[R.M. LODHA, MADAN B. LOKUR AND KURIAN JOSEPH, JJ.]

Income Tax Act, 1961 - s.28(iv) - 'Advance licence benefit' and 'duty entitlement pass book benefit' under import export policy - Taxability of - relevant assessment year - Whether the year of receipt of benefit or the year in which such benefits are actually utilized - Held: Income becomes taxable when it is accrued - Income tax cannot be levied on hypothetical income - Income can be said to have accrued when it becomes due and is accompanied by a corresponding liability of the other party to pay the amount - The benefits in the present case could be hypothetical income until the goods are actually imported and made available for clearance - Hence, assessment of the assessee u/s.28(iv) in the facts of the present case, not correct.

The question for consideration in the present appeals was whether 'advance license benefit and 'duty entitlement pass book benefit' are taxable in the year in which they are actually utilised by the assessee and not in the year of receipt.

The plea of the Revenue was that in view of the provisions of s.28(iv) of the Income Tax Act, the value of the benefit obtained by the assessee is its income and is liable to tax under the head ' Profits and gains of business or profession'.

Dismissing the appeals, the Court

HELD: 1.1. Income tax cannot be levied on hypothetical income. Income accrues when it becomes due, but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee. [Paras 17 and 20] [498-B; 499-A-B]

1.2. Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income, but only hypothetical income had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic. [Para 27] [501-B-D]

1.3. In the present even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee. [Para 21] [499-C-D]

1.4. In the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and

paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. The rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers. [Para 32] [503-C-E]

Ajamshri Ranjitsinghji Spinning and Weaving Mills vs. Inspecting Assistant Commissioner **1992 41 ITD 142:** *(Mum) Commissioner of Income Tax vs. Shoorji Vallabhdas and Co.* **(1962) 46 ITR 144 (SC);** *Morvi Industries Ltd. vs. Commissioner of Income-Tax (Central)* **(1971) 82 ITR 835 (SC);** *Godhra Electricity Co. Ltd. vs. Commissioner of Income Tax* **(1997) 225 ITR 746 (SC);** *Income Tax vs. Birla Gwalior (P.) Ltd.* **(1973) 89 ITR 266 (SC);** *Morvi Industries Poona Electric Supply Co. Ltd. vs. Commissioner of Income Tax* **(1965) 57 ITR 521 (SC);** *State Bank of travancore vs. Commissionerof Income Tax,* **(1986) 158 ITR 102 (SC) - relied on.**

R.B. Jodha Mal Kuthiala vs. Commissioner of Income Tax **(1971) 82 ITR 570 (SC) - referred to.**

2.1. A consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for this court to take a different view unless there are very convincing reasons, none of which have been pointed out by the counsel for the Revenue. [Para 28] [501-D-E]

2.2. In several assessment y e

accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it. [Para 31] [503-A-B]

Radhasoami Satsang Saomi Bagh vs. Commissioner of Income Tax **(1992) 193 ITR 321 (SC);** *Hoystead vs. Commissioner of Taxation,* **1926 AC 155 (PC);** *Parashuram Pottery Works Ltd. vs. Income Tax Officer* **(1977) 106 ITR 1 (SC) - relied on.**

Case Law Reference:

1992 41 ITD 142	**relied on**	**Para 6**
(1962) 46 ITR 144 (SC)	**relied on**	**Para 17**
(1971) 82 ITR 835 (SC)	**relied on**	**Para 18**
(1997) 225 ITR 746 (SC)	**relied on**	**Para 22**
(1973) 89 ITR 266 (SC)	**relied on**	**Para 24**
(1965) 57 ITR 521 (SC)	**relied on**	**Para 24**
(1986) 158 ITR 102 (SC)	**relied on**	**Para 25**
(1971) 82 ITR 570 (SC)	**referred to**	**Para 26**
(1992) 193 ITR 321 (SC)	**relied on**	**Para 29**
1926 AC 155 (PC)	**relied on**	**Para 29**
(1977) 106 ITR 1 (SC)	**relied on**	**Para 30**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 125 of 2013.

From the Judgment and order dated 25.11.2011 of the High Court of Bombay in ITA No. 1183 of 2011.

WITH

Civil Appeal No. 5195 of 2011.

Civil Appeal No. 9101 of 2013.

Civil Appeal No. 9100 of 2013.

R.P. Bhatt, S. Ganesh, Rashmi Malhotra, T.M. Singh (for B.V. Balaram Das), Praveena Gautam, Tarun Gulati, Sparsh Bhargava for the appearing parties.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Leave granted in the Special Leave Petitions.

2. The question for consideration in all these appeals is whether the benefit of an entitlement to make duty free imports of raw materials obtained by the assessee through advance licences and duty entitlement pass book issued against export obligations is income in the year in which the exports are made or in the year in which the duty free imports are made.

3. In our opinion, the income does not accrue in the year of export but in the year in which the imports are made.

4. The facts pertaining to Civil Appeal No. 125 of 2013 (M/s Excel Industries Limited for the Assessment Year 2001-02) are referred to for convenience.

5. The assessee maintains its accounts on a mercantile basis. In its return (revised on 31st March 2003) the assessee claimed a deduction of Rs.12,57,525/- under the head advance licence benefit receivable. The assessee also claimed a deduction in respect of duty entitlement pass book benefit receivable amounting to Rs.4,46,46,976/-. These benefits

related to entitlement to import duty free raw material under the relevant import and export policy by way of reduction from raw material consumption. According to the assessee, the amounts were excluded from its total income since they could not be said to have accrued until imports were made and the raw material consumed.

6. During the assessment proceedings, the assessee relied upon a decision of the Income Tax Appellate Tribunal in *Jamshri Ranjitsinghji Spinning and Weaving Mills v. Inspecting Assistant Commissioner* [1992] 41 ITD 142 (Mum) and also the order of the Commissioner of Income Tax (Appeals) in its own case for the assessment years 1995-96 to 1997-98.

7. By his order dated 24th March 2004, the Assessing Officer did not accept the assessee's claim on the ground that the taxability of such benefits is covered by Section 28(iv) of the Income Tax Act, 1961 (for short 'the Act') which provides that the value of any benefit or perquisite, whether convertible into money or not, arising from a business or a profession is income. According to the Assessing Officer, along with an obligation of export commitment, the assessee gets the benefit of importing raw material duty free. When exports are made, the obligation of the assessee is fulfilled and the right to receive the benefit becomes vested and absolute, at the end of the year. In the year under consideration, the export obligation had been made and the accounting entries were based on such fulfilment. The Assessing Officer distinguished *Jamshri* on the ground that it pertained to the assessment year 1985-86 when the export promotion scheme was totally different and the taxability of such a benefit was examined only with reference to Section 28(iv) of the Act but "in the present case the taxability of such benefit is to be examined from all possible angles as it forms part of the profits and gains of business according to the ordinary principles of commercial accounting."

8. The assessee took up the matter in appeal and by an order dated 15th September 2008 the Commissioner of Income Tax (Appeals) referred to an earlier appellate order in the case of the assessee relevant to the assessment years 1999-2000 and 2000-01 and following the conclusion arrived at in those assessment years, the appeal was allowed and it was held that the advance licence benefit receivable amounting to Rs.12,57,525/- and duty entitlement pass book benefit of Rs.4,46,46,976/- ought not to be taxed in this year. Reliance was also placed on the order of the Income Tax Appellate Tribunal in the assessee's own case for the assessment year 1995-96.

9. Feeling aggrieved, the Revenue preferred a further appeal before the Income Tax Appellate Tribunal (for short 'the ITAT) which referred to the issues raised by the Revenue and by its order dated 29th April 2011 dismissed the appeal upholding the view taken by the Commissioner of Income Tax (Appeals).

10. The Tribunal held that the issues were covered in favour of the assessee by earlier orders of the Tribunal in the assessee's own cases. It had been held by the Tribunal in the earlier cases that income does not accrue until the imports are made and raw materials are consumed by the assessee. As regards the accounting year under consideration, it was found that there was no dispute that it was only in the subsequent year that the imports were made and the raw materials consumed by the assessee.

11. The Tribunal also took the note of the fact in the assessee's own cases starting from the assessment year 1992-93 onwards these issues had been consistently decided in its favour. It was also noted that for some of the assessment years namely 1993-94, 1996-97 and 1997-98 appeals were filed by the Revenue in the Bombay High Court but they were not admitted.

12. Under the circumstances, the Tribunal affirmed the decision of the Commissioner of Income Tax (Appeals) on the issues raised.

13. The Revenue then preferred an appeal under Section 260-A of the Act in respect of the following substantial question of law:

> "Whether on facts and in circumstances of the case and in law ITAT is justified in law in holding by following its decision in the case of Jamshri Ranjitsinghji Spinning & Weaving Mills Ltd. (41 ITD 142), that advance license benefit and DEPB benefits are taxable in the year in which these are actually utilized by the assessee and not in the year of receipts."

14. By the impugned order, the High Court declined to admit the appeal filed by the Revenue under Section 260-A of the Act.

15. It was submitted before us by learned counsel for the Revenue that in view of the provisions of Section 28(iv) of the Act, the value of the benefit obtained by the assessee is its income and is liable to tax under the head "Profits and gains of business or profession". We are unable to accept the contention of learned counsel for the Revenue for several reasons.

16. Section 28 (iv) of the Act reads as follows:-

"Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession" -

… ……..

(iv) the value of any benefit or perquisite, whether

convertible into money or not, arising from business or the exercise of a profession;

……."

17. First of all, it is now well settled that income tax cannot be levied on hypothetical income. In Commissioner of Income Tax v. Shoorji Vallabhdas and Co., [1962] 46 ITR 144 (SC) it was held as follows:-

> "Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

18. The above passage was cited with approval in *Morvi Industries Ltd. v. Commissioner of Income-Tax (Central),* [1971] 82 ITR 835 (SC) in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: "..... the date of payment ..... does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately."

19. This Court further held, and in our opinion more importantly, that income accrues w a

corresponding liability of the other party from whom the income becomes due to pay that amount."

20. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

21. In so far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.

22. In *Godhra Electricity Co. Ltd. v. Commissioner of Income Tax,* [1997] 225 ITR 746 (SC) this Court reiterated the view taken in Shoorji Vallabhdas and Morvi Industries.

23. *Godhra Electricity* is rather instructive. In that case, it was noted that the High Court held that the assessee would be obliged to pay tax when the profit became actually due and that income could not be said to have accrued when it is based on a mere claim not backed by any legal or contractual right to receive the amount at a subsequent date. The High Court however held on the facts of the case that the assessee had a legal right to recover the consumption charge in dispute at the enhanced rate from the consumers.

24. This Court did not accept the view taken by the High Court on facts. Reference was made in this context to *Commissioner of Income Tax v. Birla Gwalior (P.) Ltd.,* [1973] 89 ITR 266 (SC) wherein it was held, after referring to Morvi

Industries that real accrual of income and not a hypothetical accrual of income ought to be taken into consideration. For a similar conclusion, reference was made to *Poona Electric Supply Co. Ltd. v. Commissioner of Income Tax,* [1965] 57 ITR 521 (SC) wherein it was held that income tax is a tax on real income.

25. Finally a reference was made to *State Bank of Travancore v. Commissioner of Income Tax,* [1986] 158 ITR 102 (SC) wherein the majority view was that accrual of income must be real, taking into account the actuality of the situation; whether the accrual had taken place or not must, in appropriate cases, be judged on the principles of real income theory. The majority opinion went on to say:

> "What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made "no income".

26. This Court then considered the facts of the case and came to the conclusion (in *Godhra Electricity*) that no real income had accrued to the assessee in respect of the enhanced charges for a variety of reasons. One of the reasons so considered was a letter addressed by the Under Secretary to the Government of Gujarat, to the assessee whereby the assessee was "advised" to maintain status quo in respect of enhanced charges for at least six months. This Court took the view that though the letter had no legal binding effect but "one has to look at things from a practical point of view." (See *R.B. Jodha Mal Kuthiala v. Commissioner of Income Tax,* [1971] 82 ITR 570 (SC)). This Court took the view that the probability or improbability of realisation has to be considered in a realistic manner and it was held that there was no

to the assessee in respect of the disputed enhanced charges for supply of electricity. The decision of the High Court was, accordingly, set aside.

27. Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.

28. Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

29. In *Radhasoami Satsang Saomi Bagh v. Commissioner of Income Tax,* [1992] 193 ITR 321 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from *Hoystead v. Commissioner of Taxation,* 1926 AC 155 (PC) wherein it was said:

> "Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

30. Reference was also made to *Parashuram Pottery Works Ltd. v. Income Tax Officer,* [1977] 106 ITR 1 (SC) and then it was held:

> "We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.
>
> "On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

31. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it.

32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

33. For the aforesaid reasons, we dismiss the civil appeals with no order as to costs, but with the hope that the Revenue implements its litigation policy a little more practically and a little more seriously.

K.K.T. Appeals dismissed.

DR. RAJESH TALWAR AND ANR.

v.

C.B.I. AND ANR.

(Special Leave Petition (Crl.) No. 7966 of 2013)

OCTOBER 8, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Criminal Trial -Application u/s.233 r/w. s.91 Cr.P.C. by accused seeking reports of scientific test conducted on 3 persons who were initially suspected accused in the case - Application disposed of by trial court - Petition u/s.482 seeking the reports rejected by the High Court on the ground that the application was vexatious and intended to delay the proceedings - Held: Criminal Courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence, and are bound in terms of s.233(3) Cr.P.C. to refuse such request, if it appears that they are made in order to vex the proceedings or delay the same - In the facts of the case, it is evident that the accused have been adopting dilatory tactics - Hence, the petition rejected.

Selvi and Ors. vs. State of Karnataka **(2010) 7 SCC 263: 2010 (5) SCR 381;** *Selvi J. Jayalalithaa and Ors. vs. State of Karnataka and Ors.* **2013 (12) SCALE 234;** *Smt. Triveniben vs. State of Gujarat* **AIR1989 SC 1335: 1989 (1) SCR 509;** *Zahira Habibullah Sheikh (5) vs. State of Gujarat* **AIR 2006 SC 1367: 2006 (2) SCR 1081;** *Capt. Amarinder Singh vs. Parkash Singh Badal and Ors.* **(2009) 6 SCC 260: 2009 (9) SCR 194;** *Mohd. Hussain @ Julfikar Ali vs. State (Govt. of NCT of Delhi)* **AIR 2012 SC 750: 2012 (1) SCR 64;** *Natasha Singh vs. CBI* **(2013) 5 SCC 741 - relied on.**

Case Law Reference:

2010 (5) SCR 381	**relied on**	**Para 10**
2013 (12) SCALE 234	**relied on**	**Para 10**
1989 (1) SCR 509	**relied on**	**Para 10**
2006 (2) SCR 1081	**relied on**	**Para 10**
2009 (9) SCR 194	**relied on**	**Para 10**
2012 (1) SCR 64	**relied on**	**Para 10**
(2013) 5 SCC 741	**relied on**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 7966 of 2013.

From the Judgment and Order dated 19.07.2013 of the High Court of Judicature at Allahabad in Application U/s. 482 No. 20215 of 2013.

U.U. Lalit, Sandeep Kapur, Shivek Trehan, Niharika Karanjawala, Manik Karanjawala (for Karanjawala & Co.) for the Appellants.

Siddharth Luthra, ASG, Rajiv Nanda, Padma Lakshmi Nigam, Pramod Kumar Dubey, Supriya Juneja, B.V. Balram Das, Anandana Handa, Shiv Pande, Hemant Shah for the Respondents.

The Order of the Court was delivered by

S.A. BOBDE, J. 1. This special leave petition has been preferred against the impugned judgment dated 19.7.2013, passed by the High Court of Judicature at Allahabad in Application under Section 482 No.20215 of 2013 whereby the petitioners' prayer for documents pertaining to scientific tests made in their application 405/Kha dated 11.6.2013 filed under Section 233 of the Code of Criminal Procedure, 1973

(hereinafter referred to as 'Cr.PC') read with Section 91 was rejected.

2. The petitioners are being tried for charges of committing the murder of their daughter Arushi and their domestic helper Hemraj in their house. At the initial stage, the investigation was conducted by the U.P. Police, however, it was later transferred to the Central Bureau of Investigation (hereinafter referred to as the 'CBI'). A closure report was submitted before the Magistrate who disagreed with it and has issued the process to the petitioners for the charge of committing the double murder.

3. The present stage of the trial is that the evidence of the prosecution is closed and the statements of the accused are being recorded under Section 313 Cr.PC. The application in question under Section 311 for examining 7 other left over witnesses was moved at this stage. Alongwith this application, another application under Section 233 Cr.PC read with Section 91 has been moved on 11.6.2013, in respect of the reports of certain tests conducted on 3 persons who at one time were suspected accused and had been in police custody, namely, Krishna, Raj Kumar and Vijay Mandal. By this application, the petitioners' sought the following reports:

(i) Narco-analysis test reports and CD of Krishna conducted at FSL Bangalore;

(ii) Narco-analysis test reports and CD of Rajkumar conducted at FSL Bangalore;

(iii) Narco-analysis test reports and CD of Vijay Mandal conducted at FSL Bangalore;

(iv) Brain mapping test of Rajkumar conducted at FSL Gandhinagar;

(v) Brain mapping test of Krishna co[illegible]e;

(vi) Brain mapping test of Vijay Mandal conducted at Bangalore;

(vii) Lie detector, polygraph test reports of Krishna, Raj Kumar and Vijay Mandal conducted at CFSL New Delhi, FSL Bangalore, FSL Gandhinagar;

(viii) Psychological analysis test reports of Krishna, Raj Kumar and Vijay Mandal conducted at AIIMS, FSL Bangalore, FSL Gandhinagar.

(ix) The Narco-analysis test, brain mapping test, polygraph test and the psychological tests done at AIIMS, CFSL New Delhi and at FSL Gandhinagar of the accused Dr. Rajesh Talwar and Mrs. Nupur Talwar.

x) The written opinion / report and its annexures and other related documents dated 31.7.2008 of the postmortem doctors i.e. Dr. Sunil Dohre and Dr. Naresh Raj regarding inspection and examination of the then murder weapon (Khukhri) sent to them by the CBI.

In addition, applicants also asked for call records, material forming the basis of report prepared by PW.6 and sound simulation test reports.

4. These applications were disposed of by the trial Court by order dated 18.6.2013 allowing them partly.

5. Before the High Court, it was contended by the petitioners that the said reports are essential for the defence since they pertain to those persons who were at one time suspected as being responsible for the offence and contain exculpatory statements favouring the petitioners. According to the petitioners, it is only upon examination of the reports by the Court that the petitioners will be able to put up their plea that the crime, in fact, may have been committed by Krishna, Raj Kumar and Vijay Mandal who were earlier suspected of the offence and had been interrogated. The High Court inter-alia

rejected the petitioners' prayer on the ground that the application is vexatious and intended to only delay the proceedings as was also found by the trial Court.

6. Before us, Shri U.U. Lalit, learned Senior counsel for the petitioners submitted that the production of the reports pertaining to the abovenamed 3 persons is absolutely essential and relying on Section 91 Cr.PC, submitted that the production of these reports being relevant, the prayer ought to have been allowed by the High Court. According to Shri Lalit, the reports, if produced, would not breach either Article 21 read with Article 20(3) which protects the accused from self-incrimination and/or would not be hit by Section 21 of the Evidence Act since the persons in respect of whom those reports have been prepared are not accused anymore. In any case, according to the learned counsel, the reason given by the High Court that such reports having been prepared on the basis of statements and data collected in contravention of Article 20 are premature and this could only have been found after the reports were produced in courts.

7. Shri Siddharth Luthra, learned ASG vehemently opposed the prayer and submitted that the production of these reports is pointless in view of the law laid down by this Court in *Selvi & Ors. v. State of Karnataka* (2010) 7 SCC 263, wherein such reports are held to be inadmissible in evidence. The learned ASG further submitted that the timing of the application and the stage at which it was made clearly shows that the applications are vexatious and intended to delay the proceedings which are at a concluding stage. In support of his contention, Shri Luthra relied on sequence of events which according to him show that the petitioners have at every stage tried to delay the proceedings by making one application after the other. The learned counsel further submitted that even the present special leave petition is delayed in view of the fact that it is preferred on the file on 18.9.2013 against the judgment of the Allahabad High Court which was pas

order of the trial Court was, in fact, passed on 18.6.2013.

8. Shri Lalit, learned Senior counsel for the petitioners submitted that the petitioners have been occupied in the trial and could not challenge the order of the High Court earlier.

9. After considering the rival submissions on this point, we find no merit in the contention on behalf of the petitioners that they could not have approached this Court earlier. There is no reason why the petitioners ought to have waited from 19.7.2013 to 17.9.2013 to approach this Court and allowed the trial to proceed even further. We make this observation in the background of the observation of the High Court that even the initial applications were made at a stage where the prosecution evidence had been concluded and the defence had entered and almost concluded its evidence. In fact, the petitioners had, without raising any objection that the reports and documents allegedly proved by the witnesses have not been supplied to them or made part of the Court record, participated in the examination and cross-examination of two witnesses. We might note that criminal courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence and in fact, are bound in terms of Section 233(3) Cr.PC. to refuse such request if it appears that they are made in order to vex the proceedings or delay the same. It is also pertinent to mention here that the learned Trial Judge who has been conducting the trial is likely to retire very soon. Relevant part of the Trial Court proceedings as well as Trial Court's orders thereto are given as under:

a. Accused filed application dated 22.07.2013 in Trial Court for adjournment to produce their defence witness. They moved application dated 06.8.2013 in Trial Court for direction to CBI to produce document, Tabulated chart etc.

b. Trial Court passed order dated 12.08.2013 rejecting the application for supplying of tabular charts.

c. Accused moved application dated 02.09.2013 in Trial Court to call PW-6 Dr.B.K.Mahapatra, CFSL, Bio Division, to file an affidavit.

d. Trial Court passed order dated 03.09.2013 rejecting the prayer to call upon Dr.B.K.Mahapatra to file affidavit.

e. Trial Court passed order dated 03.09.2013 directing the accused to produce the defence witnesses from foreign country on the next date or through video conferencing.

f. Accused moved application dated 07.09.2013 for adjournment to produce defence witness from foreign country.

g. Accused moved application dated 12.09.2013 in Trial Court for exhibiting documents.

h. Accused moved application to recall Dr. B.K. Mahapatra for his further cross examination.

i. Seventh DW examined.

j. Accused filed another application for re-examination of DW-7 (Dr.Andrei Semikhodskii).

k. Trial Court dismissed the aforesaid application for re-examination of Dr.B.K.Mahapatra and posted the case for final arguments i.e stage of 233 Cr.P.C. is crossed.

It may be pertinent to note that petitioners took 04 months to produce 7 DWs after the closing of statement u/s 313 Cr.PC. On 25.09.2013 case was fixed for final arguments but accused moved applications u/s 233 Cr.PC.

l. Accused moved application U/s 233 Cr.P.C. dated 26.09.2013 in Trial Court to send physical exhibit Khukri abroad for re-examination.

m. Trial Court passed order dated 28.09.2013 dismissing the aforesaid application.

n. Accused moved application U/s 233 Cr.P.C. dated 30.09.2013 in Trial Court to file disclosure statements of Krishna, Vijay Mandal and Rajkumar. Case adjourned to 1.10.2013 for objections and arguments on the application. Petitioners moved another application U/s 233 Cr.P.C. dated 30.09.2013 in Trial Court for summoning witnesses of IOs of CBI, UP Police and private persons as defence witnesses. Case adjourned to 1.10.2013 for objections and arguments on the application.

o. On 1.10.2013, petitioners did not argue the applications and one lawyer informed the court that their counsel is ill and obtained adjournment.

10. This Court in *Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors.* (Writ Petition (Crl.) No.154 of 2013) decided on 30.9.2013, after referring to its earlier judgments in *Smt. Triveniben v. State of Gujarat,* AIR 1989 SC 1335; *Zahira Habibullah Sheikh (5) v. State of Gujarat,* AIR 2006 SC 1367; *Capt. Amarinder Singh v. Parkash Singh Badal & Ors.,* (2009) 6 SCC 260; *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi),* AIR 2012 SC 750; and *Natasha Singh v. CBI,* (2013) 5 SCC 741, dealt with the issue of fair trial observing:

> "Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive

> conduct that occurs in relation to criminal proceedings.
>
> Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.
>
> xx xx xx xx
>
> Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights."

11. Thus, from the afore-stated facts, it is evident that petitioners have been adopting dilatory tactics on every moment. The impugned order was passed on 19.7.2013. This petition was filed after about two months.

12. In view of the above, we are of the considered opinion that facts and circumstances of the case do not warrant any interference. The special leave petition is accordingly dismissed.

K.K.T. SLP dismissed.

ATMARAM

v.

STATE OF U.P.

(Criminal Appeal No. 1678 of 2013)

OCTOBER 8, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Bail - Grant of - Validity - Assault with balkati (a sharp edged weapon) and lathis - Four victims - All suffered serious injuries - One died - Case registered u/ ss.147,148,149,323,325,302 IPC - Respondent no.2 and three co-accused denied bail by Sessions Judge - High Court, however, granted them bail - On appeal, held: Keeping in view the criminal antecedents of Respondent no.2, as well as the specific role assigned against him, it cannot be said that it was fanciful, unreasonable or irresponsible for the State to contend that Respondent no.2 violated the terms of his bail by threatening or intimidating witnesses - It was incorrect and imprudent for the High Court to grant him bail at least till such time as examination of the eye witnesses had been completed - The Court should not lose perspective of the fact that intimidation of witnesses is a common occurrence at least as regards persons come into conflict with the law on multiple occasions - Accordingly, bail of Respondent no.2 cancelled - Alleged role ascribed to one co-accused identical in material particulars to that of Respondent no.2, both of whom allegedly were armed with balkatis - High Court erred in granting bail to that co-accused as well - Other two co-accused were not armed with sharp edged weapons but with lathis/dandas - The State did not allege pendency of any previous cases against them and it was also not the prosecution case that they endeavoured to intimidate or influence witnesses - Bail order in respect of them accordingly not interfered with.

The prosecution case was that pursuant to an altercation, Respondent no.2-accused and other accused persons armed with a sharp edged weapon (balkati) and lathis attacked the appellant, his two sons and grandson all of whom suffered serious injuries. One son of appellant died. Case was registered under Sections 147, 148, 149, 323, 325, 302 I.P.C. Respondent no.2 and three other accused -'R', S' and 'H' were denied bail by the Sessions Judge. The High Court, however, granted them bail, by the impugned order.

Disposing of the instant appeals, the Court

HELD: 1. It is the asseveration on behalf of the State of U.P. that Respondent no.2 has been tampering with evidence by giving threats to witnesses and that the High Court had ignored his criminal antecedents as well as the specific role assigned against him in the subject complaint. Keeping the above factors in view, primarily the criminal antecedents of Respondent no.2, it cannot be said that it is fanciful, unreasonable or irresponsible for the State of U.P. to contend that Respondent no.2 has violated the terms of his bail by threatening or intimidating witnesses. Even in the Affidavit filed by the State, details of as many as ten cases in which Respondent no.2 is involved have been given. In these circumstances, therefore, it was incorrect and imprudent for the High Court to grant bail at least till such time as the examination of the eye witnesses had been completed. The Court should not lose perspective of the fact that intimidation of witnesses is a common occurrence at least as regards persons who have come into conflict with the law on multiple occasions. Accordingly, the bail of Respondent no.2 is cancelled. [Para 4-6] [518-D-H]

2. The alleged role ascribed to 'R' is identical in material particulars to that of Respondent no.2, both of whom allegedly were armed with

Affidavit filed on behalf of the State there are as many as fifteen cases pending against him. Therefore, the High Court erred in granting bail to 'R' as well. So far as 'S' and 'H' are concerned, it appears that they were not armed with sharp edged weapons but with lathis/dandas. The State has not alleged pendency of any previous cases against them and it is also not the prosecution case that these two persons have endeavoured to intimidate or influence witnesses. For these reasons, so far as 'S' & 'H' are concerned, the impugned Order is not interfered with. [Paras 8 and 9] [519-C-D, F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1678 of 2013 etc.

From the Judgment and Order dated 05.09.2011 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No. 17466 of 2011.

WITH

Crl. A. No. 1679 of 2013.

Jitendra Mohan Sharma, Sandeep Singh, Vibhor Vardhan, Sanchit, Harsh Vardhan Surana for the Appellant.

Irshad Ahmad, AAG, Gaurav Abhisth Kumar, P.K. Jain, Saurabh Jain, P.K. Goswami, S.P. Singh, Haresh Raichura, Saroj Raichura, Kalp Raichura for the Respondents.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J.

Crl.Appeal No. 1678 of 2013

[Arising out of S.L.P.(Crl.)No.1387 of 2012]

1. Leave granted. The Appellant had reported to the Chauki-in-charge, Sheikpura Kadi, P.S. Kotwali Dehat, Saharanpur, U.P. that on 13/14.3.2011 Respondent no.2,

namely, Kunwar Singh and other co- accused had cut the ridge of his field on 12.3.2011 which resulted in an altercation between them at 7.00 a.m. on 13.3.2011. Five other persons, namely, Rafal Singh, Issam Singh, Shahspal, Hanish @ Hanif @ Awanish and Pillu @ Ravindra were already present at the site; Kunwar Singh and Rafal Singh were armed with Balkati and the others with lathis. The six persons allegedly attacked the Appellant, his sons, namely, Sanjay and Baliram and his grandson Udaiveer all of whom suffered serious injuries. All of them stand charged under Sections 147, 148, 149, 323, 325, 302 I.P.C. Sanjay (deceased) suffered the following injuries:

"(i) Multiple LW 8 x 4 cm top of head into bone deep 12 cm above (eligible) root of nose CTs 6 x 8 cm.

(ii) IW 6 x 6 cm into bone deep rt side head 7 cm above rt ear K/W."

According to the Medical Report Injury no.(i) has been caused by hard and blunt object and Injury no.(ii) by sharp edged object. Although Respondent no.2 Kunwar Singh has set up an alibi, it is not in dispute that it was he who had taken the members of his group to the hospital on that fateful day itself. Eventually, he was granted bail by the impugned Order in respect of Case Crime No.29/119 of 2011 registered for offences punishable under Sections 147, 148, 149, 323, 325, 302, I.P.C. P.S. Kotwali Dehat, District Saharanpur.

2. On the other hand, the Additional Sessions Judge, Saharanpur, had prior thereto noted that Kunwar Singh had been named in the FIR, along with a specific role. The learned Addl. Sessions Judge was obviously influenced by the fact that injuries on Sanjay (deceased) were on vital part of the body, i.e., the head; that on the indication of Kunwar Singh, the Balkati was recovered from a sugarcane field and that the unrebutted case is that Kunwar Singh was involved in a number of cases including four shown pending in the Gang Chart including one for murder and another for rape. In the

Sessions Judge, Saharanpur, these were sufficient reasons to decline bail as transpires from his Order dated 20.5.2011.

3. The learned Additional Govt. Advocate had submitted to the High Court, and the learned Addl. Advocate General for the State of U.P. has similarly pressed before us, that the Applicant-Respondent no.2 was armed with the reaping hook (Balkati) and the deceased had sustained Injury no.2 allegedly by this weapon. Moreover Respondent no.2 is involved in several criminal cases and that if he is released on bail, he is likely to tamper with evidence. Learned Counsel for Respondent no.2 has contended that all the cases in which Respondent no.2 has been named, he has been acquitted in two and has been released on bail in the third. The High Court was impressed with the view that the occurrence has taken place in a sudden quarrel and, therefore, there was no "pre-intention" or pre-meditation; that it has not been specified as to whose blow caused the incised wound being Injury no.2; that it was difficult to decide which party was the aggressor; that Respondent no.2, the Applicant before the High Court, was in jail since 25.3.2011. It was in these premises that Kunwar Singh had been granted bail on terms in the impugned Order dated 5.9.2011.

4. In the Counter Affidavit on behalf of the State of U.P., the criminal history of Respondent no.2 is contained in the following table :

S.No.	Crime No.	Sections	Police Station	District
1.	29/119/2011	Under Sec. 147, 148, 149, 323, 325, 302 IPC	Kotwali Dehat	Saharanpur
2.	295/2006	323, 324, 307, 504, 506, IPC	Kotwali Dehat	Saharanpur
3.	142/1993	325 IPC	Kotwali Dehat	Saharanpur
4.	208/91	342, 323 IPC	Kotwali Dehat	Saharanpur
5.	231/2008	447, 353, 504, 506, IPC	Kotwali Dehat	Saharanpur
6.	571/2011	2/3 Gangster Act	Kotwali Dehat	Saharanpur
7.	NCR No.176/2011	504, 506 IPC	Kotwali Dehat	Saharanpur
8.	NCR No.37/2012	504, 506 IPC	Kotwali Dehat	Saharanpur
9.	Crime Case No.54/12	Sec.3 U.P. Gunda Control Act	Kotwali Dehat	Saharanpur

That apart, it is the asseveration on behalf of the State of U.P. that Respondent no.2 has been tampering with evidence by giving threats to witnesses and that it is palpably evident that in the impugned Order, the High Court had ignored his criminal antecedents as well as the specific role assigned against him in the subject complaint.

5. Keeping the above factors in view, primarily the criminal antecedents of Respondent no.2, we do not think that it is fanciful, unreasonable or irresponsible for the State of U.P. to contend that Respondent no.2 has violated the terms of his bail by threatening or intimidating witnesses. Even in the Affidavit dated 27.6.2013 filed by the Circle Officer, City-II, District Saharanpur, details of as many as ten cases in which Respondent no.2 is involved have been given.

6. In these circumstances, therefore, it was incorrect and imprudent for the High Court to grant bail at least till such time as the examination of the eye witnesses had been completed. The Court should not lose perspective of the fact that intimidation of witnesses is a common occurrence at least as regards persons who have come into conflict with the law on multiple occasions. Accordingly, the impugned Order is set aside and the bail of Respondent no.2 [illegible]

bonds shall stand cancelled and the sureties discharged. He shall be taken into custody forthwith.

7. The Appeal stands allowed accordingly.

Criminal Appeal No. 1679 of 2013

[Arising out of S.L.P. (Crl.)No.7668 of 2012]

8. Leave granted. The Bail Orders dated 3.11.2011 passed by the High Court in favour of Rafal Singh, Shashpal and Hanish @ Hanif @ Awanish have been assailed in this Appeal. Earlier, another Addl. Sessions Judge, Saharanpur had rejected their applications vide Orders dated 14.10.2011. The alleged role ascribed to Rafal Singh is identical in material particulars to that of Kunwar Singh, both of whom allegedly were armed with Balkatis. As per the Affidavit dated 27.6.2013 filed on behalf of the State there are as many as fifteen cases pending against him. We are, therefore, of the opinion that the High Court erred in granting bail to the said Respondent as well. We set aside the Order of the High Court so far as Rafal Singh is concerned. His bail bonds shall stand cancelled and the sureties discharged, and he shall be taken into custody forthwith.

9. So far as Shashpal and Hanish @ Hanif @ Awanish are concerned, it appears that they were not armed with sharp edged weapons but with lathis/dandas. Of course, it is alleged, so far as Sanjay (deceased) is concerned, that he had also suffered from multiple lacerated wounds on the top of his head, for which prima facie Shashpal and Hanish are responsible. The State has not alleged pendency of any previous cases against them and it is also not the prosecution case that these two persons have endeavoured to intimidate or influence witnesses. For these reasons, so far as these two Respondents are concerned, the impugned Order is not interfered with. It is, however, made clear that if they are found to be intimidating or influencing witnesses or tampering with the evidence the bail

granted to these respondents shall be liable to be cancelled. It is further made clear that the observations made hereinabove will not affect the Trial which should be conducted on its own merit.

10. The Appeal stands disposed of accordingly.

B.B.B. Appeals disposed of.

L. KRISHNA REDDY

v.

STATE BY STATION HOUSE OFFICER & ORS.

(Criminal Appeal No. 1833 of 2013)

OCTOBER 24, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Penal Code, 1860 - ss.302, 498A r/w s.34 - Charges under - Abated qua husband-accused due to his death - Parents-in-law (accused) discharged - Held: In the facts of the case, prima facie case not made out against the accused-parents in law - Hence, rightly discharged - Code of Criminal Procedure, 1973 - s.227.

Charges u/ss. 302, 498-A r/w s.34 IPC were framed against the three accused including respondent Nos.2 and 3. The charges abated against the husband-accused as he committed suicide. The proceedings continued against the respondent Nos. 2 and 3 (the parents-in-law of the deceased). The discharge petition of respondent Nos. 2 and 3 u/s.227 Cr.P.C. was allowed. Hence the present appeal by the complainant.

Dismissing the appeal, the Court

HELD: 1. The Court is neither a substitute nor an adjunct of the prosecution. On the contrary, once a case is presented to it by the prosecution, its bounden duty is to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. The interest of a person arraigned as an accused must also be kept in perspective lest, on the basis of flippant or vague or vindicative accusations, bereft of probative evidence, the ordeals of a trial have to be needlessly suffered and

endured. [Para 7] [528-E-F]

Union of India vs. Prafulla Kumar Samal **(1979) 3 SCC 4: 1979 (2) SCR 229 - relied on.**

2. In the present case, the Charge-Sheet does not indicate any complicity so far as the parents-in-law of the deceased (accused Nos. 2 and 3) are concerned. Obviously, if the murder has been committed in Pondicherry a direct role in that unfortunate event cannot be ascribed to them. It is theoretically possible that they may have abetted or conspired in the crime or persuaded their son (accused No.1) to have perpetrated the crime. However, this version is not forthcoming from the Charge-Sheet. The Appellant-complainant, in his statement, had alleged that as per the plans of the three accused, accused-husband had killed the deceased due to dowry harassment. This is the only statement which contains an allegation pertaining to the possible conspiracy of the husband's parents who, it must be kept in focus, were not in Pondicherry at the time when the deceased was done to death by her husband. It is not sufficient to merely make a bald statement but further catenation should exist linking all the conspirators together. Sifting through the evidence, i.e., the statement made by several witnesses, there is no direct imputation that either of the respondent nos. 2 and 3 had either independently or along with their deceased son, made a demand for dowry. The deceased couple had earlier been living with the wife's family, and thereafter independently of either of the parents-in-law. In order to make good the commission of an offence of criminal conspiracy, it should be evident that an agreement between the conspirators should have been in existence at the material time. Since the prosecution would be an exercise in futility it should be brought to a quick end. [Paras 6 and 8] [526-G-H; 527-A-E, F-G; 529-A]

Central Bureau of Investigation vs. K. Narayana Rao **(2012) 9 SCC 512:2012 (9) SCR 54;** *State of Haryana vs. Bhajan Lal* **1992 Supp. (1) SCC 335:1991 (1) Suppl. SCR 387;** *Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia and Anr.* **(1989) 1 SCC 715: 1989 (1) SCR 560 - relied on.**

Case Law Reference:

2012 (9) SCR 54	**relied on**	**Para 6**
1991 (1) Suppl. SCR 387	**relied on**	**Para 6**
1989 (1) SCR 560	**relied on**	**Para 7**
1979 (2) SCR 229	**relied on**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1833 of 2013.

From the Judgment and Order dated 18.10.2011 of the High Court of Judicature at Madras in Crl. R.C. No. 761 of 2010.

D. Rama Krishna Reddy, D. Bharathi Reddy for the Appellant.

Altaf Ahmed, P. Venkat Reddy, Anil Kumar Tandale for the Respondent.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. This Appeal assails the Order of the High Court of Judicature at Madras while exercising its Criminal Revisional Jurisdiction. The facts disclose a human tragedy. Ramachandra Reddy was married to Sujatha on 2.5.1999. At the initial stages of their marriage the deceased couple was staying with the bride's relatives, significantly, not with her parents-in-law who are the remaining accused. They had set up their own separate residence about six months prior to the unfortunate incidents. On 26.3.2006

Sujatha was found murdered in the hotel room in Pondicherry [now Puducherry] rented by her soon to be deceased husband. Her body bore several stab wounds. Thereupon, Crime No.86/2006 under Section 302 IPC dated 26.3.2006, leading to Charge Sheet No.59/2007 dated 31.5.2007 under Sections 302, 498-A read with 34, IPC was registered. It then transpires that the husband of the deceased, namely, Ramachandra Reddy, possibly suffering from guilt and remorse, committed suicide shortly thereafter. The question before us is whether the criminal proceedings could or should have been continued against his parents, namely Vidyasagar and Narasamma, who had preferred a Discharge Petition under Section 227 of the Code of Criminal Procedure, 1973 ('Cr.PC' henceforward) in which they eventually succeeded.

2. The Final Report dated 31.5.2007 reads so -

"Since the date of marriage at the residence at No.2-7/10, Lakma Reddy Colony, Uppal, Hyderabad, the accused No.1 Ramachandra Reddy, S/o Vidyasagar Reddy, No.-7/10, Lakma Reddy Colony, Uppal, Hyderabad (husband of the deceased) who is no more now, the accused No.2. Vidyasagar Reddy, S/o Ramachandra Reddy, No.2-7/10, Lakma Reddy Colony, Uppal, Hyderabad (Father-in-law of the deceased) and the accused No.3 Narasamma Reddy, w/o Vidyasagar Reddy, No.2-7/10, Lakma Reddy Colony, Uppal, Hyderabad (Mother-in-law) of the deceased, in furtherance of their common intention, subjected the deceased Sujatha to cruelty and harassment relating to dowry demand and rendered themselves liable to be punished u/sec.498-A IPC r/w 34 IPC.

That on 25.3.2006 at about 19.00 hrs. at Room No.306, Hotel Aruna, Second Floor, No.3, Zamindar Garden, near Ajantha Theatre, S.V.P. Salai, Muthialpe, Puducherry-3, about 800 meters South-East to PS, accused No.1 noted above in furtherance of common intention with his father, the sec[illegible]s

mother, the third accused, caused death of his wife Sujatha, as she was unable to meet out their unlawful demand of dowry by inflicting 11 multiple injuries by means of knife with the knowledge that such injuries would be likely to cause death or would be sufficient in the ordinary course of nature to cause death and rendered themselves liable to be punished u/sec.302 IPC r/w 34 IPC.

Hence, the charges.

CHARGE ABATED.

The accused above said A1 Ramachandra Reddy, S/o Vidyasagar Reddy, No.2-7/10, Lakma Reddy Colony, Uppal, Hyderabad had committed suicide by hanging and he is no more now. In this connection a separate case in Cr.No.244/2006 u/sec.174 Cr.P.C. was registered at PS D' Nagar, dt.24.9.2006 and investigation was taken-up.

Therefore, the charge against him is abated".

3. The IIIrd Additional Sessions Judge, Pondicherry favoured the position that the proceedings could continue against the Respondent-parents (Accused Nos.2 and 3) notwithstanding the devastating death of their son (Accused No.1) despite prosecution against him having abated. The Learned Additional Sessions Judge specifically recorded the fact that the Public Prosecutor had conceded that there appeared to be no direct involvement of the father-in-law and mother-in-law in the murder, but that since it was a murder case the discharge may not be considered before the Trial. The Learned Additional Sessions Judge noted that the parents were implicated only on the basis of the Statements recorded under Section 161 of the Cr.P.C.; it was of the prima facie view that the motive behind the murder of Sujatha was dowry. These aspects would be established by the prosecution, beyond all reasonable doubts, only in an exhaustive Trial "where the entire truth could be unearthed". It is also evident that the Learned

Additional Sessions Judge was influenced by the direction of the High Court, on the petition of the present Appellant, ordering that the case be disposed of within two months.

4. However, the High Court has come to the contrary conclusion, after having reviewed the Statements and evidence available on the record. There is no dispute as regards the factum of the deceased married couple having set up their separate and independent residence. According to the Complainant/Appellant who is the father of the unfortunate lady the deceased Sujatha, he had telephonically been informed by her that the married couple had left Hyderabad on 23.3.2006 and were proceeding to Vijayawada. The impugned Judgment records that none of the Statements under Section 161 Cr.P.C. incriminate the parents of the deceased husband of any connection with the offence under Section 302 IPC, and no common intention can be inferred. So far as the dowry demands and offence under Section 498A goes, the High Court opined that even the father of the deceased wife namely the Appellant/ Complainant in his Statement confined the demand only to his deceased son-in-law. Holding this to be insufficient the Respondents Nos.2 and 3 have been discharged.

5. There can be no cavil that if a fine is imposed on an accused/convict even upon the death of an accused his estate will continue to be liable for its discharge. This is not the case before us inasmuch as that stage in the prosecution has not been arrived at. In any event the pecuniary liability of the deceased/ convict can be fastened only on the beneficiaries of his legal estate. There is no evidence whatsoever that this is the position that obtains in the present case.

6. The Charge Sheet does not indicate any complicity so far as the parents of the deceased are concerned. Obviously, if the murder has been committed in Pondicherry a direct role in that unfortunate event cannot be ascribed to them. Of course, it is theoretically possible that they may have abetted or

conspired in the crime or persuaded their son to have perpetrated the crime. However this version is not forthcoming from the Charge Sheet. The Appellant, in his Further Statement, has alleged that - "on the last 25.03.06 night as per the plans of Ramachandra Reddy, his father Vidyasagar Reddy and mother Naarasamma, Ramachandra Reddy had killed my daughter Sujatha brutally at a Hotel at Pondicherry due to dowry harassment. …." This is the only statement which contains an allegation pertaining to the possible conspiracy of the husband's parents who, it must be kept in focus, were not in Pondicherry at the time when Sujatha was done to death by her husband. In our opinion, it is not sufficient to merely make a bald statement but further catenation should exist linking all the conspirators together. Sifting through the evidence, i.e., the Statement made by several witnesses, there is no direct imputation that either of the Respondent nos.2 and 3 before us had either independently or along with their deceased son, made a demand for dowry. We should not lose sight of the fact that the deceased couple had earlier been living with the unfortunate wife's family, and thereafter independently of either of the parents-in-law. In fact, as has been noted by the High Court in the impugned order the statement of the complainant father of the deceased, some demands have been made by his son-in-law. Out attention has been drawn to a recent Judgment titled *Central Bureau of Investigation v. K. Narayana Rao* (2012) 9 SCC 512, wherein after discussing the previous opinions of this Court in a number of cases including State of Haryana v. Bhajan Lal 1992 Supp. (1) SCC 335, it was opined that in order to make good the commission of an offence of criminal conspiracy, it should be evident that an agreement between the conspirators should have been in existence at the material time.

7. Our attention has been drawn to *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and Anr.* (1989) 1 SCC 715 as well as K. Narayana Rao but we are unable to appreciate any manner in which they would persuade a Court

to continue the prosecution of the parents of the deceased. After considering *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, this Court has expounded the law in these words :

> "14. …… In fact, Section 227, itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

The Court is neither a substitute nor an adjunct of the prosecution. On the contrary, once a case is presented to it by the prosecution, its bounden duty is to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. The interest of a person arraigned as an accused must also be kept in perspective lest, on the basis of flippant or vague or vindicative accusations, bereft of probative evidence, the ordeals of a trial have to be needlessly suffered and endured. We hasten to clarify that we think the statements of the complainant are those of an anguished father who has lost his daughter due to the greed and cruelty of his son-in-law. As we have already noted, the husband has taken his own life possibly in remorse and repentance. The death of a child even to avaricious parents is the worst conceivable punishment.

8. Since the prosecution would be an exercise in futility it should be brought to a quick end; and this is possible only if an order of discharge vis-à-vis the parents who are the remaining accused is passed. This is exactly what has transpired in the wisdom of the High Court by means of the impugned Order. We find no error therein. Accordingly the appeal is dismissed.

K.K.T. Appeal dismissed.

STATE OF ORISSA
v.
KANHU CHARAN MAJHI
(Civil Appeal No. 9650 of 2013)

OCTOBER 28, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Service Law:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 - rr.31 and 32 - Review under - Of the order passed by Government authorities, dropping disciplinary proceedings against respondent-employee - Permissibility - Held: An order passed by Government authorities can be reviewed u/s.31 and 32 - Under s.32 it can be reviewed within a period of 6 months - Under s.31, it can be reviewed by the Governor, for which the rule does not prescribe any limitation - In the instant case, review of the order dropping the disciplinary proceedings, can be said to have been passed by the Governor u/r.31 in view of rr.11 and 12 of Orissa Government Rules of Business - Though Rule 31 does not prescribe any limitation period, the power should be exercised within reasonable period - Review of the order in the present case after a period of 5 years cannot be said to be reasonable period - Hence, the review was rightly held bad by courts below - In view of peculiar circumstances of the case, on the principle of 'no work no pay' direction not to pay back-wages, but to pay pension on the basis of last pay actually drawn by him from the date on which the employee would have been superannuated - Orissa Government Rules of Business - rr.11 and 12.

Departmental proceedings initiated against the respondent-employee were dropped by order dated 16.10.1995. The said order was reviewed and by order

dated 4.9.2000, the departmental proceedings were reinitiated. The review of the order dated 16.10.1995 and re-initiation of disciplinary proceedings were held to be bad in law by the courts below. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. In view of Rules 31 and 32 of Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, it is clear that an order, passed by the Government Authorities, can be reviewed. Thus, initiation of proceedings in pursuance of order dated 4th September, 2000 was bad and rightly held so by the Tribunal and confirmed by the High Court. [Paras 15 and 16] [538-G-H]

2. The provisions of Rule 31 of the Rules, whereby power has been given to the Governor to review any order and therefore, it was open to the Governor to review the order dated 16th October, 1995. It is also true that when any statute empowers the Governor to pass an order, the Governor himself need not sign and need not pass the order. The Rules of business of the particular State deal with the procedure as to how an order is to be passed by the Governor or in the name of the Governor. In the instant case, the order dated 4th September, 2000 was passed by the Under Secretary, Food Supplies & Consumer Welfare Department of the Government of Orissa. According to Rules 11 and 12 of the Orissa Government Rules of Business, an Under Secretary is empowered to sign in the name of the Governor. Thus, in view of the said legal position, the order dated 4th September, 2000 can be said to have been passed by the Governor, exercising power under Rule 31 of the Rules. [Para 14] [538-A-E]

3. Rule 31 of the Rules does not prescribe any period of limitation. Normally, when no period of limitation is prescribed, for exercising the power of review, the power

of review should be exercised within a reasonable period from the date of order which is sought to be reviewed. In the instant case, the Governor had reviewed the order after about five years. In any case, period of five years cannot be said to be a reasonable period. The action with regard to review of the order, so as to make it effective, ought to have been passed within reasonable period and the facts of each case would determine as to what period would be reasonable. Therefore, even if the Governor had power to review the order dated 16th October, 1995, which pertains to dropping of the departmental proceedings initiated against the respondent, the said power could not have been exercised after about five years, as by no stretch of imagination, period of five years can be said to be reasonable, in the facts of the case. [Para 17] [539-B-F]

4. So far as Rule 32 of the Rules is concerned, in a disciplinary case the Appellate Authority can review the order but the Authority can review the order within six months from the date of passing of that order and thereafter the order cannot be reviewed as specified in the proviso to Rule 32 of the Rules. By virtue of the order dated 4th September, 2000, the order dated 16th October, 1995 had been taken into review and as it was taken into review after more than six months, the order would be bad if it was passed under Rule 32 of the Rules. [Paras 15 and 16] [538-F-H; 539-A]

5. It might be open to the appellant-State to initiate some proceedings against the respondent-employee again. However, the subsequent development in the matter is that the respondent-employee has already reached the age of superannuation. Therefore, in view of the peculiar facts of the case and in the interest of justice, no further action should be taken against the respondent-employee as the matter i

and it requires a quietus. In view of these peculiar circumstances, following the principle of "no work, no pay", it is directed that no back wages should be paid to the respondent-employee for the period during which he had not worked with the appellant-State. The respondent-employee should, however, be paid pension from the date on which he would have been superannuated on the basis of the last pay actually drawn by him. [Para 18] [539-F-H; 540-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9650 of 2013.

From the Judgment and Order dated 21.01.2011 of the High Court of Orissa at Cuttack in WP (C) No. 2492 of 2010.

Shibashish Misra, Suvinay Dash for the Appellant.

Ranjan Mukherjee, Sachin Das, Chandra Bhushan Prasad for the Respondent.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the judgment delivered in Writ Petition (C) No. 2492 of 2010 by the High Court of Orissa, the appellant-State has filed this appeal. By virtue of the impugned judgment delivered by the High Court, the order passed by the Orissa Administrative Tribunal in O.A. No. 831 of 2006 dated 27th November, 2008 has been confirmed.

3. The facts giving rise to the present litigation, in a nutshell, are as under :-

The respondent was appointed as an Inspector of Supplies on the post which had been reserved for SC/ST candidates. It was reported to the Government Authorities that, in fact, the respondent was not belonging to either SC or ST and therefore, proceedings were to be initiated against him so as to ascertain

whether the information received was correct. Though the proceedings had been initiated, by an order dated 16th October, 1995, the said proceedings had been dropped. Thereafter, on 4th September, 2000, the aforesaid decision with regard to closing the proceedings under order dated 16th October, 1995 had been reconsidered and a notice was issued to the respondent with regard to initiation of the departmental proceedings.

4. The re-initiation of the proceedings had been challenged by the respondent before the Orissa Administrative Tribunal even at an earlier point of time and the Tribunal had decided the same in favour of the respondent but, at this stage, we are not concerned with the earlier proceedings and therefore, we do not refer to the same.

5. Ultimately the respondent had challenged the disciplinary proceedings initiated against him as well as the decision dated 4th September, 2000, whereby the order dated 16th October, 1995 had been reviewed and it was decided to initiate departmental proceedings against the respondent. Thereafter, by an order dated 27th November, 2008, the Orissa Administrative Tribunal decided the said case in favour of the respondent and therefore, the appellant-State had filed the above referred Writ Petition (C) No. 2492 of 2010 before the High Court, which has been finally dismissed and thus, the State of Orissa has filed this appeal.

6. The issue involved in the present litigation is with regard to powers of the Governor and the State Government Authorities in relation to review under the provisions of Rules 31 and 32 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 (hereinafter referred to as "the Rules").

7. The case of the respondent before the Tribunal as well as the High Court was that once a decision was taken on 16th October, 1995 to drop the departmental proceedings initiated against him, the said decision could no[t] [be] revoked

on 4th September, 2000. Therefore, no proceedings could have been initiated against the respondent in pursuance of the said order dated 4th September, 2000.

8. The submissions advanced before the Tribunal, the High Court and before this Court on behalf of the respondent-employee were to the effect that under Rule 31 of the Rules only the Governor has the power to take any order in review whereas under Rule 32 of the Rules, the appellate-authority can take any order into review, but in the instant case, none could have reviewed the order dated 16th October, 1995. The aforestated two Rules have been reproduced hereinbelow :-

> **"31. Governor's power to review** - Notwithstanding anything contained in these rules, the Governor may, on his motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these rules or the rules repealed by Rule 33, and, after consultation with the Commission where such consultation is necessary -
>
> (a) confirm, modify or set aside the order ;
>
> (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order ;
>
> (c) remit the case to the authority which made the order or any other authority directing such further action or inquiry as he considers proper in the circumstances of the case; or
>
> (d) pass such other orders as he deems fit;
>
> Provided that -
>
> (i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity or making any representation

> which he may wish to make against such enhanced penalty;
>
> (ii) if the Governor proposes to impose any of the penalties specified in Clauses (vi) to (ix) of Rule 13 in a case where an enquiry under Rule 15 has not been held, he shall, subject to the provisions of Rule 18, direct that such inquiry be held and, thereafter, on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as he may deem fit.
>
> 32. **Review of Orders in Disciplinary Cases** -The authority to which an appeal against an order imposing any of the penalties specified in Rule 13 lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and, after consultation with the Commission, where such consultation is necessary, pass such orders as it deems fit as if the Government servant had preferred an appeal against such order :
>
> Provided that no action under this rule shall be initiated more than six months after the date of the order to be reviewed."

9. It had been submitted on behalf of the respondent-employee that in the instant case, the order dated 4th September, 2000 was not passed by the Governor and therefore, the power under Rule 31 of the Rules had not been exercised. So far as Rule 32 of the Rules is concerned, there is a period of limitation, which is six months and if the power was exercised under Rule 32, it was bad in law because the order dated 4th September, 2000, was passed in review after about 5 years from the initial order. So, i er

dated 4th September, 2000, whereby it was decided to initiate departmental proceedings was not in accordance with the Rules and therefore, the impugned judgment upholding the view of the Tribunal is correct. Therefore, the appeal should be dismissed.

10. On the other hand, it had been submitted on behalf of the appellant-State that the order dated 4th September, 2000 had been passed under the provisions of Rule 31 of the Rules and therefore, there was no question with regard to limitation because only Rule 32 of the Rules provides for limitation of six months whereas power of the Governor to take an order into review can be exercised at any time.

11. It had been further submitted that, in fact, the order had been passed by the Governor because according to the Rules of business of the appellant-State it is not necessary that the Governor himself should sign the order to be passed by the Governor. The Rules of business provide that in the name of the Governor, an order can be passed by the concerned officer. Thus, all the departmental proceedings were just and proper and the Division Bench of the High Court had committed an error by upholding the view of the Tribunal.

12. We have heard the concerned counsel and have carefully gone through the impugned judgment as well as the order passed by the Tribunal dated 27th November, 2008. We have also gone through the relevant orders placed on record before this Court by both the parties.

13. Upon hearing the learned counsel and looking to the provisions of the Rules we are of the view that the order dated 4th September, 2000, reviewing the order dated 16th October, 1995 was not in accordance with the Rules. By virtue of the order dated 16th October, 1995, it was decided to drop the departmental proceedings initiated against the respondent-employee and the said decision was taken in review by virtue of the order dated 4th September, 2000 and upon review, the

order dated 16th October, 1995 was set aside and it was decided to initiate proceedings against the respondent-employee again.

14. We have considered the provisions of Rule 31 of the Rules, whereby power has been given to the Governor to review any order and therefore, it was open to the Governor to review the order dated 16th October, 1995. Now the question is whether the order was passed by the Governor. It is true that when any statute empowers the Governor to pass an order, the Governor himself need not sign and need not pass the order. The Rules of business of the particular State deal with the procedure as to how an order is to be passed by the Governor or in the name of the Governor. In the instant case, the order dated 4th September, 2000 was passed by the Under Secretary, Food Supplies & Consumer Welfare Department of the Government of Orissa. According to Rules 11 and 12 of the Orissa Government Rules of Business, an Under Secretary is empowered to sign in the name of the Governor. Thus, in view of the said legal position, the order dated 4th September, 2000 can be said to have been passed by the Governor, exercising power under Rule 31 of the Rules.

15. So far as the exercise of power under Rule 32 of the Rules is concerned, it is very clear from the proviso to the Rule that no action can be taken under the said Rule after more than six months from the date on which the order to be reviewed was passed. By virtue of the order dated 4th September, 2000, the order dated 16th October, 1995 had been taken into review and as it was taken into review after more than six months, the order would be bad if it was passed under Rule 32 of the Rules. Thus, initiation of proceedings in pursuance of order dated 4th September, 2000 was bad and rightly held so by the Tribunal and confirmed by the High Court.

16. Upon perusal of both the aforestated Rules, it is clear that an order, passed by the Government Authorities, can be reviewed. So far as Rule 32 of the Ru[illegible]a

disciplinary case the Appellate Authority can review the order but the Authority can review the order within six months from the date of passing of that order and thereafter the order cannot be reviewed as specified in the proviso to Rule 32 of the Rules.

17. So far as the power of the Governor with regard to review of an order is concerned, Rule 31 of the Rules does not prescribe any period of limitation. Normally, when no period of limitation is prescribed, for exercising the power of review, the power of review should be exercised within a reasonable period from the date of order which is sought to be reviewed. In the instant case, the Governor had reviewed the order after about five years. In any case, period of five years cannot be said to be a reasonable period. The action with regard to review of the order, so as to make it effective, ought to have been passed within reasonable period and the facts of each case would determine as to what period would be reasonable. In the instant case, looking at the fact that Rule 32 of the Rules prescribe period of six months as limitation for exercising power of review in disciplinary cases, one can reasonably infer that period of five years cannot be said to be reasonable for exercise of power under Rule 31 of the Rules. We, therefore, conclude that even if the Governor had power to review the order dated 16th October, 1995, which pertains to dropping of the departmental proceedings initiated against the respondent, the said power could not have been exercised after about five years, as by no stretch of imagination, period of five years can be said to be reasonable in the facts of the case.

18. It might be open to the appellant-State to initiate some proceedings against the respondent-employee again. However, the subsequent development in the matter is that the respondent-employee has already reached the age of superannuation. Looking at the peculiar facts of the case and in the interest of justice, we feel that no further action should be taken against the respondent-employee as the matter is pending since long and it requires a quietus. In view of these

peculiar circumstances, following the principle of "no work, no pay", we direct that no back wages should be paid to the respondent-employee for the period during which he had not worked with the appellant-State. The respondent-employee should, however, be paid pension from the date on which he would have been superannuated on the basis of the last pay actually drawn by him. The amount so payable to the respondent-employee shall be calculated and paid to him within three months from today and thereafter, he should be paid the pension so determined in normal course.

19. The appeal is dismissed subject to the aforesaid direction and modification in the judgment delivered by the High Court. There shall be no order as to costs.

K.K.T. Appeal dismissed.

M/S. SHREE MAHAVIR CARBON LTD.
v.
OM PRAKASH JALAN (FINANCER) & ANR.
(Criminal Appeal No. 1875 of 2013)

OCTOBER 28, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Judgment - Reasoned judgment - Need for - Held: The Court while recording a decision, is supposed to record sufficient reasons for taking the decision or arriving at a particular conclusion - The reason should be such that they demonstrate that the decision has been arrived at, on an objective consideration - In the instant case, the High Court, set aside the order of subordinate criminal court without assigning any reason as to how it reached the conclusion that the dispute was of civil nature - Matter remanded to High Court- Code of Criminal Procedure, 1973 - s.482 - Penal Code, 1860 - ss.420/406/468/471.

Words and Phrases - 'Reasoning' - Meaning of.

Judicial Magistrate took cognizance of offences u/ss. 420/406/468/471 IPC against the respondents, on the basis of complaint filed by the appellant-Company. Respondents filed application u/s.482 Cr.P.C. seeking quashing of the criminal proceedings. The High Court allowed the petition setting aside the orders taking cognizance, on the ground that the dispute was of civil nature. Hence the present appeal.

Allowing the appeal and remanding the matter to High Court, the Court

HELD: 1.1. It is to be borne in mind that the principal objective in giving judgment is to make an effective,

practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (Precedents). Since the court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide an effective, workable remedy to the winner. While recording the decision with clarity, the court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at, on an objective consideration. [Paras 12 and 13] [549-G-H; 550-A-C]

2. In the context of legal decision-making, the focus is to what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary ways in favour of making or accepting that decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason. [Para 14] [550-C-D]

3. In the present case, it was required by the High Court to take note of the arguments of the complainant on the basis of which complainant insist that ingredients of the particular offences alleged are prime facie established justifying the cognizance of the complaint and the arguments of the respondents, on the basis of which respondents made an endeavour to demonstrate that it was a pure civil dispute with no elements of criminality attached. Thereafter, the conclusion should have been backed by reasons as to why the arguments of the complainant are merit-less and what is the rationale basis for accepting the case of accused persons. [Para 16] [550-G-H; 551-A]

4. The appellant/complainant sought to make a complaint that the acts of the accused persons amounted to offence since punishable u/ss. 420/406/468/471 IPC. The Judicial Magistrate, after going through the preliminary evidence recorded by him had chosen to take cognizance of the matter. It was bounden duty of the High Court to give appropriate and sufficient reasons on the basis of which it arrived at a conclusion that the dispute was merely that of accounts with no elements of criminality. It is correct that ingredients of each of the provisions of IPC, which is sought to be foisted upon the respondents are to be prima facie established before cognizance of the complaint is taken by the Judicial Magistrate. However, when the summoning order is quashed holding that it is a civil dispute, various allegations and averments made in the complaint and preliminary evidence led in support thereof has to be appropriately dealt with by the High Court. There is no discussion worth the name, in the impugned judgment, as to how and on what basis the High Court accepted such a plea of the respondents in recording its conclusion that it was a case of rendition of accounts simplicitor. When the High Court was setting aside the order of the subordinate court by which the subordinate court had taken cognizance in the matter, this could be done after appropriately dealing with the contentions of both the parties, more specially when it was first judicial review of the orders of the Court below. [Paras 8 to 10] [547-E-H; 548-A-C]

Hindustan Times Ltd. vs. Union of India **(1998) 2 SCC 242: 1998 (1) SCR 4 - relied on.**

Case Law Reference:

1998 (1) SCR 4	**relied on**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1875 of 2013.

From the Judgment and Order dated 16.01.2012 of the High Court of Orissa at Cuttack in Crl. M.C. No. 2818 of 2010.

A.K. Ganguli, Chanchal Kumar Ganguli, B. Basak, George Varghese, Soumi Kundu for the Appellant.

V. Giri, Ashok Panigrahi, Yashpal Mohanty, Santosh Kumar, Surajit Bhaduri, Punit Jain, Christi Jain for the Respondents.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted.

2. The appellant-company has filed a complaint registered as ICC No.62/2008 under Sections 420/406/468/471, Indian Penal Code against the respondent herein and two others. After recording preliminary evidence, the learned Judicial Magistrate First Class (JMFC), Salipur, Orissa took cognizance of the aforesaid offence and issued summons to the accused persons including the respondents. On receiving the summons, the respondents filed applications under Section 482 of the Code of Criminal Procedure with a prayer that orders dated 9.6.2008 by the learned JMFC taking cognizance of the complaint be quashed. It was pleaded that the complaint was with regard to rendition of accounts maintained by the accused persons in respect of business between the complainant and the accused persons and therefore the dispute was of civil nature. The High Court has allowed the said application thereby setting aside orders taking cognizance of the offence. It is this order which is challenged by the appellant-complainant in these proceedings.

3. The impugned order is two page order. After taking note of facts in one paragraph, the High Court has allowed the application and quashed the order taking cognizance of the offence and the discussion leading to this judgment is contained in the following paragraph:

"On perusal of the nature of allegations made in the complaint petition and the statements given by the complainant and the witnesses, it is clearly disclosed that the dispute is civil in nature relating to settlement of the accounts between the parties and no offence is made out."

4. Questioning the rationality of the aforesaid order, Mr. Ganguli, the learned senior counsel appearing for the appellant, took us through the various paragraphs of the complaint on the basis of which he made an attempt to demonstrate that it was not simply a civil dispute pertaining to settlement of accounts between the parties. He also argued that the High Court had allowed petition filed by the respondent under Section 482,Cr.P.C. without giving any reason inasmuch as the impugned judgment hardly contained any discussion for arriving at the conclusion that the dispute in question was civil in nature. Learned senior counsel, who appeared for the respondent, though tried to argue that conclusion of the High Court that dispute was of civil nature, he candidly conceded that the impugned judgment does not disclose as to how this finding was arrived at and that it was a non-speaking order. He, thus, submitted that instead of this Court examining the issue, the matter be relegated back to the High Court for hearing afresh. Mr. Ganguly also accepted this suggestion of Mr. Giri. Accordingly, we set aside the impugned judgment and remand the case back to the High Court to decide the same with direction to hear afresh the petition filed by the respondent under Section 482 of the Cr.P.C. and decide it on merits without being influenced by the earlier view taken in the impugned order dated 16.1.2012.

5. Before we part with, we would like to observe that this case necessitates making certain comments on the importance of rationale legal reasoning in support of judicial orders. From the extracted portion, which is the only discussion on the merits of the matter, it can clearly be discerned that what is stated is the conclusion and no reasons are given by the High Court for

holding that dispute between the parties is civil in nature. The complainant in its complaint had made various specific allegations of cheating, siphoning of funds and falsification of accounts etc. In the complaint filed by the appellant, the appellant averred that it is engaged in the business of manufacturing and sale of low ash phos metallurgical coke. The appellant entered into a tripartite agreement dated 08.04.2003 with Om Prakash Jalan respondent No.1 herein and Mr. Rajeev Maheshwari-Respondent No.3 herein. In this agreement Respondent Nos.1 and 3 agreed to provide sufficient funds for expansion of the coke oven plant owned by the appellant and in consideration thereof the respondents were to be allotted 70% of the existing shares of the appellant company while 30% of its shares were to be retained by the existing shareholders. It was also agreed that the Board of Directors of the appellant Company would be reconstituted with three directors consisting of one nominee of the appellant company, and one nominee each from the respondent companies. Respondent No.1 was to become the Managing Director of the Company. It was further agreed between the parties that while the respondent would bring in the additional working capital for operation and expansion of the plant but one of the contracting parties shall be entitled to withdraw any profits till such time there is enough working capital in the company.

6. It was further agreed that the profit and loss as earned for the new expansion would be shared in the same ratio till 31st March 2004 and thereafter on the total plant would also be shared in the same ratio. Pursuant to the said agreement the control and management of the appellant company and its Coke Oven Plant was virtually taken over by the respondents while they remained responsible to both the Company and its existing shareholders who have been running the business since the inception of the company till the execution of the tripartite agreement.

7. As per the allegation in the co[illegible]e

respondents assumed control over the business of the appellant company, the respondents started indulging in large scale fraudulent transactions for and on behalf of the company, subjecting the appellant company to great loss and consequences and also foisted civil and criminal liabilities on the company as well as its Directors and shareholders. Large amount of money from the appellant company's account was allegedly siphoned out in favour of third parties without the appellant company having any transaction with them. Large amounts were also allegedly deposited in the appellant company's account in cash purportedly received by them from third parties, thus making the appellant company, its directors and shareholders liable for violation of laws and commission of crime. It was also alleged that large sums of money was also siphoned out from bank accounts of the appellant company and paid to third parties without the company entering into any transaction with them.

8. In the complaint instances of siphoning of the funds by the accused persons to its own company have been given. On this basis, the appellant/complainant sought to make a complaint that the aforesaid acts of the accused persons amounted to offence since punishable under Sections 419,420,406,486,471 of the IPC.

9. The JMFC after going through the preliminary evidence recorded by him had chosen to take cognizance of the matter. Challenge against this order has been accepted by the High Court it becomes the bounden duty of the High Court to give appropriate and sufficient reasons on the basis of which it arrived at a conclusion, the dispute was merely that of accounts with no elements of criminality. We are conscious of the legal position that Ingredients of each of the provisions of IPC, which is sought to be foisted upon the respondents are to be prima facie established before cognizance of the complaint is taken by the Judicial Magistrate. However, when the summoning order is quashed holding that it is a civil dispute, various

allegations and averments made in the complaint and preliminary evidence led in support thereof has to be appropriately dealt with by the High Court. We are not commenting upon the merits of these allegations. However, there is no discussion worth the name, in the impugned judgment, as to how and on what basis the High Court accepted such a plea of the respondents herein, in recording its conclusion that it was a case of rendition of accounts simplicitor.

10. After all the High Court was setting aside the order of the Subordinate Court by which Subordinate Court had taken cognizance in the matter. This could be done after appropriately dealing with the contentions of both the parties, more specially when it was first judicial review of the orders of the Court below. In *Hindustan Times Ltd. Vs. Union of India;* (1998) 2 SCC 242, this Court made pertinent observation in the context:

> "In an article on Writing Judgments, Justice Michael Kirby (1990) 64 Austr L.J p.691) of Australia, has approached the problem from the point of the litigant, the legal profession, the subordinate Courts/tribunals, the brother Judges and the Judge's own conscience. To the litigant, the duty of the Judge is to uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centre-piece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact, etc. The reputational considerations are important for the exercise of appellate rights, for the Judge's own self discipline, for attempts at improvement and th[illegible]e

integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of Judges and tribunals is of utmost importance. Justice Asprey of Australia has even said in *Petit v. Dankley* (1971) (1) NSWLR 376 (CA) that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant.

It was finally stated:

"In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal.

In that case, the order of dismissal of the writ petition by the High Court was affirmed by us but the task fell on the Supreme Court, to inform the appellant why it had lost the case in the High Court."

11. In the present case, we have avoided to do this exercise and have not gone into the merits of the case to find out whether the conclusion of the High Court is correct or not, as the counsel for both the parties have agreed for remand of the matter.

12. It is no where suggested by us that the judgment should be too lengthy or prolix and disproportionate to the issue involved. However, it is to be borne in mind that the principal objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or

writers (Precedents). Since the Court is to come to a workable decision, its reasoning an conclusion must be practical, suit the facts as found and provide and effective, workable remedy to the winner.

13. We are of the opinion that while recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on a objective consideration.

14. When we talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision making, the focus is to what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary ways in favour of making or accepting that decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.

15. We are not entering into a jurisprudential debate on the appropriate theory of legal reasoning. It is not even a discourse on how to write judgments. Our intention is to simply demonstrate the importance of legal reasoning in support of a particular decision. What we have highlighted is that instant is a case or arriving at a conclusion, in complete absence of reasons, what to talk of adequate or good reasons that justifying that conclusion.

16. In the given case, it was required by the High Court to take note of the arguments of the complainant on the basis of which complainant insist that ingredients of the particular offences alleged are prime facie established justifying the cognizance of the complaint and the arguments of the respondents herein on the basis of which respondents made an endeavour to demonstrate that it was a pure civil dispute with no elements of criminality attac e

conclusion should have been backed by reasons as to why the arguments of the complainant are merit less and what is the rationale basis for accepting the case of accused persons. We hope that this aspect would be kept in mind by the High Court while deciding the case afresh.

17. Accordingly, this appeal is allowed and the impugned order is set aside with direction as aforesaid. No costs.

K.K.T. Appeal allowed.

STATE OF BIHAR & ANR.
v.
LALU SINGH
(Criminal Appeal No. 1883 of 2013)

OCTOBER 29, 2013

[CHANDRAMAULI KR. PRASAD AND JAGDISH SINGH KHEHAR, JJ.]

Code of Criminal Procedure, 1973 - s.173 - State of Bihar - Criminal Investigation Department (CID) - Whether Inspector of C.I.D. can be treated in law as officer-in-charge of the police station for purpose of submitting the report contemplated u/s.173(2) - Held: r.431(b) envisages that an Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station - Once it is held that the Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station, its' natural corollary is that the Inspector of C.I.D. is competent to submit the report as contemplated u/s.173 - The case in hand is not one of those cases where officer-in-charge of the police station had deputed the Inspector of C.I.D. to conduct some steps necessary during the course of investigation - Rather the investigation itself was entrusted to the Inspector of C.I.D. by the order of the Director General of Police - In such circumstances, it shall not be necessary for the officer-in-charge of the police station to submit the report u/s.173(2) - The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the Inspector of C.I.D., all these powers have to be performed by the Inspector himself or the officer superior to him - In the case in hand, the case was transferred to the C.I.D. and it was entrusted for investigation by an Inspector of C.I.D., who possesses a rank superior to an officer-in-charge of the police

station as per r.431(b) and, therefore, competent to form opinion in terms of s.173(2), subject of course to the power of superior officer - Bihar Police Manual - r.431(b) - Police Act, 1861 - ss. 7 and 12

On the basis of an oral statement made by one 'S' before the officer-in-charge of the Police Station, case was registered under Section 302/34 IPC and Section 27 of the Arms Act. The officer-in-charge of the Police Station took up the investigation, but before he could complete the same, and submit report in terms of Section 173 CrPC, the Director General of Police entrusted the investigation to the Criminal Investigation Department, (C.I.D.) and the task for conducting the investigation was assigned to an Inspector. The Inspector of C.I.D. conducted the investigation and submitted the charge-sheet against the accused persons. On consideration of the charge-sheet and the materials collected during the course of investigation, the Magistrate took cognizance of the offence and directed for issuance of process.

The respondent-accused preferred writ petition before the High Court for quashing the prosecution, inter alia, on the ground that under Section 173(2) CrPC only an officer in-charge of a Police station has the authority to do that and, therefore, the charge-sheet submitted by the Inspector, C.I.D. is fit to be quashed. Though the High Court declined to quash the charge-sheet submitted by the Inspector of the Criminal Investigation Department of the State Government, it observed that under Section 36 CrPC, the higher police officials have got same powers as available to the officer-in-charge of a police station under them but the power is available only with respect to supervising the investigation or participating into the investigation to some extent but under section 173(2) CrPC, the final view over the investigation of a case with regard to filing charge sheet or final form has to be taken

by the concerned officer-in-charge only and he only has the authority to file the charge sheet in the case. The observations were challenged before this Court by the State of Bihar.

The question which arose for consideration was: whether the Inspector of C.I.D. can be treated in law as the officer-in-charge of the police station for the purpose of submitting the report contemplated under Section 173(2) CrPC.

Allowing the appeal, the Court

HELD: The State Government, in exercise of the powers under Sections 7 and 12 of the Police Act, 1861, has framed the Bihar Police Manual. Chapter 15 thereof deals with the constitution and functions of the Criminal Investigation Department. Rule 431(b) makes the Inspectors and superior officers of the C.I.D. superior in rank to an officer-in-charge of a police station and they have been conferred with the same powers as may be exercised by an officer-in-charge of a police station. This Rule, therefore, envisages that an Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station. Here, in the present case, the investigation was conducted by the Inspector of C.I.D. and it is he who had submitted the report in terms of Section 173 CrPC. The Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station and once it is held so, its natural corollary is that the Inspector of C.I.D. is competent to submit the report as contemplated under Section 173 CrPC. The case in hand is not one of those cases where the officer-in-charge of the police station had deputed the Inspector of C.I.D. to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of C.I.D. by the order of the Director General of Police. In such ci[illegible]ll

not be necessary for the officer-in-charge of the police station to submit the report under Section 173(2) CrPC. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the Inspector of C.I.D., all these powers have to be performed by the Inspector himself or the officer superior to him. In the case in hand, the case was transferred to the C.I.D. and it was entrusted for investigation by an Inspector of C.I.D., who possesses a rank superior to an officer-in-charge of the police station as per Rule 431(b) and, therefore, competent to form opinion in terms of Section 173(2) CrPC, subject of course to the power of superior officer. The observations made by the High Court in the impugned judgment is erroneous and deserve to be set aside. [Paras 11, 12, 14] [559-D-E; 560-C-H; 561-A & F-G]

M.C.Mehta (Taj Corridor Scam) v. Union of India **(2007) 1 SCC 110: 2006 (9) Suppl. SCR 683 - distinguished.**

Case Law Reference:

2006 (9) Suppl. SCR 683 distinguished Para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1883 of 2013.

From the Judgment & Order dated 23.03.2009 of the High Court of Judicature at Patna in Cr.W.J.C. No. 996 of 2007.

Manish Kumar, Gopal Singh for the Appellants.

Nagendra Rai, Shantanu Sagar, Aabhas Parimal, Gopi Raman, T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. While dismissing the Writ Petition, the High Court has made observations which have far reaching consequences and accordingly the State of

Bihar, aggrieved by the same has preferred this Special Leave Petition. The observations made read as follows:

> "I have no doubt in taking this view that under Section 36 of the Code of Criminal Procedure, the higher police officials have got same powers as available to the officer-in-charge of a police station under them but the power is available only with respect to supervising the investigation or participating into the investigation to some extent but under section 173(2) of the Code of Criminal Procedure, the final view over the investigation of a case with regard to filing charge sheet or final form has to be taken by the concerned officer-in-charge only and he only has the authority to file the charge sheet in the case"

2. While doing so, however, the High Court has not quashed the report submitted by the Inspector of the Criminal Investigation Department of the State Government.

3. It is the aforesaid observation, which is the subject matter of this special leave petition.

4. Leave granted.

5. Facts lie in a narrow compass:

On the basis of an oral statement made by one Shail Kumari Devi before the officer-in-charge of Marhaura Police Station, Marhaura, P.S. Case No. 148 of 2004 was registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The officer-in-charge of the Police Station took up the investigation, but before he could complete the same, and submit report in terms of Section 173 of the Code of Criminal Procedure (hereinafter referred to as the "Code"), the Director General of Police entrusted the investigation to the Criminal Investigation Department, (hereinafter referred to as "C.I.D.") and the task for conducting the investigation was assigned to an Inspector. The Inspector of C.I.D. conducted the investigation and submitted the charge-sheet against the accused persons. On consideration of th e

materials collected during the course of investigation, the Chief Judicial Magistrate, Saran took cognizance of the offence and directed for issuance of process. One of the accused, namely Lalu Singh, aggrieved by the same, preferred writ petition before the High Court for quashing the prosecution, inter alia, on the ground that under Section 173(2) of the Code only an officer in-charge of a Police station has the authority to do that and, therefore, the charge-sheet submitted by the Inspector, C.I.D. is fit to be quashed.

6. The High Court considered the aforesaid submission and though it declined to quash the charge-sheet, it made the observation quoted above and held that it is the officer-in-charge only who can file the charge-sheet.

7. We have heard Mr. Manish Kumar, learned Counsel for the appellants and Mr. Nagendra Rai, learned Senior Counsel for the respondent.

8. Mr. Kumar contends that the Inspector of C.I.D. possesses the power to submit report under Section 173(2) of the Code and the observation made by the High Court is erroneous. Mr. Rai, however, submits that in the facts of the present case, the High court was justified in making the observations as quoted above.

9. In view of the rival submissions, we deem it expedient to analyse the scheme of the Code and the provisions of the Bihar Police Manual. Section 173 of the Code contemplates submission of report on completion of investigation. Section 173(2) of the Code which is relevant for the purpose reads as follows:

"173 - Report of police officer on completion of investigation-

(1) xxx xxx xxx

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a

report in the form prescribed by the State Government, stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of the medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

xxx xxx xxx"

10. From a plain reading of the aforesaid provision, it is evident that it is the officer-in-charge of a police station who is authorized to forward report in the prescribed form to the Magistrate empowered to take cognizance. Section 36 of the Code deals with the power of superior officers of police with reference to the officer-in-charge of a police station, same reads as follows:

"36. Powers of superior officers of police. Police officers superior in rank to an office

station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

11. Therefore, under the scheme of the Code the power to submit report in terms of Section 173(2) of the Code is with the officer-in-charge of the police station. Further, in view of Section 36 of the Code, police officers superior in rank to an officer-in-charge of the police station throughout the local area have been conferred with the authority to exercise the same power as that of officer-in-charge of police station. In the present case, the investigation has been conducted by Inspector of C.I.D. and he had submitted the report under Section 173(2) of the Code. Therefore, the question is as to whether the Inspector of C.I.D. can be treated in law as the officer-in-charge of the police station for the purpose of submitting the report contemplated under Section 173(2) of the Code. The State Government, in exercise of the powers under Sections 7 and 12 of the Police Act, 1861, has framed the Bihar Police Manual. Chapter 15 thereof deals with the constitution and functions of the Criminal Investigation Department. Rule 431, with which we are concerned in the present appeal, reads as follows:

"431.(a) Sub-Inspectors of the department deputed to districts have not the powers of an officer in charge of a police-station nor of the subordinate of such an officer, unless they are posted to a police-station for the purpose of exercising such powers. It follows that unless so posted they have not the powers of investigation conferred by Chapter XII, Cr.P.C. and their functions are confined to supervising or advising the local officers concerned. If for any reason it be deemed advisable that a Sub-Inspector of the department should conduct an investigation in person, the orders of the Inspector-General shall be taken to post him to a district where he shall be appointed by the Superintendent to the police-station concerned. Such a necessity will not arise in case of Inspectors of C.I.D. as given in sub-rule (b) below.

Sub-Inspectors of the department shall not be employed to conduct investigations in person unless such orders have been obtained.

(b) Under section 36, Cr.P.C. Inspectors and superior officers of the C.I.D. are superior in rank to an officer in charge of a police-station and as such may exercise the same powers throughout the State as may be exercised by an officer in charge of a police-station within the limits of his station."

12. Rule 431(b) makes the Inspectors and superior officers of the C.I.D. superior in rank to an officer-in-charge of a police station and they have been conferred with the same powers as may be exercised by an officer-in-charge of a police station. This Rule, therefore, envisages that an Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station. Here, in the present case, as stated earlier, the investigation was conducted by the Inspector of C.I.D. and it is he who had submitted the report in terms of Section 173 of the Code. In view of what we have observed above, the Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station and once it is held so, its natural corollary is that the Inspector of C.I.D. is competent to submit the report as contemplated under Section 173 of the Code. The case in hand is not one of those cases where the officer-in-charge of the police station had deputed the Inspector of C.I.D. to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of C.I.D. by the order of the Director General of Police. In such circumstances, in our opinion, it shall not be necessary for the officer-in-charge of the police station to submit the report under Section 173(2) of the Code. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the Inspector of C.I.D., all these powers have to be performed by [illegible] If

or the officer superior to him. In view of what we have discussed above, the observations made by the High Court in the impugned judgment is erroneous and deserve to be set aside.

13. The High Court while coming to the aforesaid conclusion has greatly been swayed by the observation of this Court in the case of *M.C.Mehta (Taj Corridor Scam) v. Union of India,* (2007) 1 SCC 110. In that case the Court was considering the scope of Section 173(2) of the Code in case of difference of opinion between the team of investigating officers and the law officers on one hand and the Director of Prosecution of the same investigating agency i.e. C.B.I., on the other hand, on the question as to whether there exist adequate materials for judicial scrutiny against the accused persons. In this background this Court held that it is the officer-in-charge of the police station, who is competent to form final opinion. In this connection, it has been observed as follows:

> "31. As stated above, the formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. Under the CBI Manual, the officer in charge of the police station is the SP. In this connection, we quote hereinbelow the CBI Manual, which though not binding on this Court in Supreme Court monitored cases, nonetheless, the said Manual throws light on the controversy in hand."

14. In the case in hand, there is no such controversy. The case was transferred to the C.I.D. and it was entrusted for investigation by an Inspector of C.I.D., who possesses a rank superior to an officer-in-charge of the police station as per Rule 431(b) extracted above and, therefore, competent to form opinion in terms of Section 173(2) of the Code, subject of course to the power of superior officer.

15. In the result, we allow this appeal, set aside the impugned observations, but without any order as to the costs.

B.B.B. Appeal allowed.

M/S. AVK TRADERS

v.

KERALA STATE CIVIL SUPPLIES CORPORATION LTD.

(Civil Appeal No. 9697 of 2013)

OCTOBER 29, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Code of Civil Procedure, 1908 - Or.XXII, r.10 - Devolution of interest during pendency of suit - Suit instituted by partnership firm consisting of two partners - One of the two partners died - Subordinate Court allowed amendment sought by the sole surviving partner (appellant) and permitted him to proceed with the suit as a proprietary concern - Justification - Held: Justified - The Court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved - On facts, the partner who died was none other than the father of the appellant, and the other heir of the deceased partner was the sister of appellant who was not interested in joining the firm - Therefore, there was complete devolution of interest in favour of the appellant - High Court by taking a hyper-technical approach held that if prayer of appellant was allowed, the same would alter the nature and character of the suit - Such a stand cannot be countenanced considering the peculiar facts and circumstances of the case - Further, the High Court failed to notice that if the partnership firm succeeds in the suit, the decree so granted would not be executable, and hence a nullity.

A registered partnership firm, consisting of only two partners, filed a suit against respondent-corporation. During pendency of the suit, one of the partners died. Though the firm stood dissolved, in terms of the partnership deed, the sole surviving partner (appellant) could continue the business of the firm as a proprietary concern. Consequently, all the interests of the firm stood

devolved upon the appellant. He filed an application for leave to continue to prosecute the suit as a proprietary concern; and another application seeking necessary amendment of the plaint. The Subordinate Court allowed the applications preferred by the appellant.

Aggrieved, the Respondent-Corporation preferred Petition before the High Court. The High Court did not allow the prayer for amendment of the plaint moved by the appellant holding that there was no question of altering and amending the plaintiff-partnership firm as a proprietary concern as that would alter the nature and character of the suit, which cannot be permitted, and further that the indefeasible rights of the legal heirs of the deceased partner were insulated under sub-rule (2) of Rule 4 of Order XXX of CPC. Hence the present appeal by the appellant.

Allowing the appeal, the Court

HELD: 1.1. The Subordinate Court allowed the prayer of appellant possibly bearing in mind the principle laid down in Order XXII Rule 10 CPC, which deals with the procedure in case of assignment before the final order of the suit. Rule 10 refers to "devolution of any interest" during the pendency of the suit. In such a case, the Court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved. Admittedly, the partner who died is none other than the father of the Appellant and the other sole surviving heir is his sister. Sister is admittedly not interested in joining the firm and, therefore, she is not taking over the assets and liabilities of the firm. Therefore, there has been a complete devolution of interest in favour of the Appellant. Under the circumstances, the Subordinate Court had allowed the amendment and permitted the Appellant to proceed with the suit, granting necessary amendment, which, according to the Subordinate Court, was

necessary for a proper and effective adjudication of real dispute between the parties. The High Court by taking a hypertechnical approach held that if such a prayer is allowed, the same would alter the nature and character of the suit. Such a stand cannot be countenanced considering the peculiar facts and circumstances of the case. [Para 9] [568-H; 569-A-E]

1.2. The legal consequences pointed out by the High Court might apply in a case where one of the several partners dies in the suit instituted in the name of the partnership firm as compared to when one of the two partners of the partnership dies. Further, the High Court failed to notice that if the partnership firm succeeds in the suit, the decree so granted would not be executable, and hence a nullity. [Para 10] [569-E-F]

Purushottam Umedbhai & Co. v. Manilal & Sons **AIR 1961 SC 325: 1961SCR 982;** *CIT v. Seth Govindram Sugar Mills* **AIR 1966 SC 24: 1965 SCR 488 - cited.**

Case Law Reference:

1961 SCR 982	**cited**	**Para 7**
1965 SCR 488	**cited**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9697 of 2013.

From the Judgment and Order dated 29.03.2012 of the High Court of Kerala at Ernakulam in Original Petition (C) No. 631 of 2012.

Gaurav Mitra, Shivendra Singh, Madhurima Tatia for the Appellant.

Ramesh Babu M.R. for the Respondent.

The Judgment of the Court was de

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. OS No.39 of 2008 was a suit preferred on 1.1.2008 by M/s AVK Traders, a partnership firm, for realization of an amount of Rs.53,39,648/- against the Respondent Corporation for claims with regard to various supplies made to the Corporation during the year 2004-06. Respondent Corporation filed its written statement on 26.5.2008 denying the claim. M/s AVK Traders was a partnership firm with only two partners, the Appellant and his father. The partnership was later re-constituted. The re-constituted partnership under the Partnership Deed dated 4.11.2002 contained the following clause :-

> "In the event of retirement of partner or refusal of the legal representative of the deceased partner to become the partner of the partnership as on the expiry of the period given to them to become partners or on the expiry of the period given to them to become partner, the other partner shall have the power to purchase his share by giving notice to retired partner or the legal representative of the deceased partner in writing to that effect within three calendar months or receipt of the notice by the retained partner or the legal representative of the deceased partner. If the surviving partner fail to purchase the share of the partnership or the legal representative fail to express their interest within the said period, the partnership shall dissolve as on the expiry of three months mentioned earlier……"

During the pendency of the suit on 2.2.2009, the father of the Appellant, who was a partner, expired. The Appellant and his sister were the only legal representatives of the deceased father. On the death of the father, the partnership stood dissolved w.e.f. 24.5.2009 since the sister was not interested in becoming a partner of the firm.

3. In view of the above-mentioned clause, though the firm stood dissolved on 24.5.2009, the sole surviving partner could continue the business of the firm as a proprietary concern.

Consequently, all the interests of the firm stood devolved upon the Appellant and he filed I.A. No.817 of 2002 in O.S. No.39 of 2008 for leave to continue to prosecute the suit for and on behalf of M/s AVK Traders as a proprietary concern. The Appellant also preferred I.A. No.814 of 2012 seeking necessary amendment of the plaint. Appellant also filed I.A. No.815 of 2012 under Order XXIII Rule 17 read with Section 151 CPC praying for recalling and examining PW1. The Subordinate Court by a common order dated 8.2.2012 allowed all the aforementioned applications preferred by the Appellant. With regard to the prayer for continuing the suit, the Subordinate Court held as follows :-

> "In the instant case, out of two partners in the plaintiff firm, one partner died during the pendency of the suit and as such the partnership got dissolved. Therefore, I hold that the other partner viz. the 2nd petitioner is entitled to continue the suit. Hence, necessary amendment is also required to the plaint. Therefore, for a proper and effective adjudication of the real dispute between the parties the proposed amendment is also liable to be allowed……"

4. The Respondent Corporation preferred I.A. No.809 of 2012 under Order XIV Rule 5 CPC seeking framing of additional issues. The Subordinate Court vide order dated 8.2.2012 dismissed I.A. No.809 of 2012 filed by the Respondent Corporation.

5. Aggrieved by the above-mentioned orders, the Respondent Corporation preferred Original Petition (Civil) No.631 of 2012 before the High Court of Kerala seeking the following reliefs :-

> "(a) To call for the records leading to Ext.P11, P11(a), P11(b) & P12 and set aside the same.
>
> (b) To declare that the respondent/plaintiff is not entitled to continue the suit as a Pr

(c) To direct the Court below to frame additional issues as prayed for in Ext.P-4.

(d) To issue any other appropriate order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

The High Court did not allow the prayer for amendment of the plaint moved by the surviving partner and held as follows :-

"When the above be the settled position of law, the application for amendment moved by the surviving partner to alter the cause title to convert the suit as one by the proprietary concern with him as its 'proprietor', which was instituted in the name of a firm, for the reason of the death of the Managing Partner and also non-interestedness of the legal heirs of that partner to come on record, has no basis or merit at all, as the death of the Managing Partner in no way affects the continuance of the suit instituted in the 'firm name', in view of the protection afforded under Order XXX Rule 4 of the Code."

6. The High Court also took the view that there is no question of altering and amending the plaintiff firm as a proprietary concern as that would alter the nature and character of the suit, which cannot be permitted. Further, it was also held by the Court that no further dilation over that aspect is called for in the case other than pointing out that the indefeasible rights of the legal heirs of a deceased partner in a suit filed by a firm are insulated under sub-rule (2) of Rule 4 of Order XXX of the Code. The High Court, however, did not interfere with the order of the Subordinate Court allowing the application for recalling PW1 for further examination. With regard to the prayers of the Respondent Corporation for raising additional issues, the High Court took the view that the same should have been allowed. Consequently, the prayer made by the Respondent Corporation for framing additional issues was allowed. Aggrieved by the above-mentioned order, this appeal has been preferred by the Appellant.

7. Learned counsel appearing for the Appellant submitted that on the death of one of the partners of a partnership firm consisting of only two partners, remaining partner has become the sole proprietor/owner with all assets and liabilities and as such he can always proceed with the suit as per the provisions contained under Order XXII Rule 10 CPC. Learned counsel also submitted that the reasoning of the High Court, if at all apply, could apply in a case where there are more than one partners after the death of a partner, in the event of which the firm could continue with minimum of two partners. In such a situation, learned counsel suggested that the provision of sub-rule (2) of Rule 4 of Order XXX of the Code would apply. Learned counsel placed reliance on the judgment of this Court in *Purushottam Umedbhai & Co. v. Manilal & Sons* [AIR 1961 SC 325], particularly para 9 of the said judgment in support of this contention. Learned counsel also made reference to the judgment of this Court in *CIT v. Seth Govindram Sugar Mills* [AIR 1966 SC 24].

8. Learned counsel appearing for the Respondent Corporation, on the other hand, submitted that if the Appellant is allowed to continue the suit in the name of the firm, all the defence set up by the defendant in the written statement would be frustrated. Learned counsel also submitted that if the amendment sought for is allowed, that will alter the very nature and character of the suit and that the High Court has rightly rejected that prayer which calls for no interference by this Court.

9. We are in this case faced with a situation of a registered partnership firm, consisting of only two partners, filing a suit when both the partners were alive and during the pendency of the suit, one of the partners died and legal heir of the deceased partner did not show any interest either in the assets of the firm or in the liabilities and had refused to join as a partner. The question is, on dissolution of the partnership firm on the death of the partner, could the suit already filed be proceeded with by the remaining so-called partner. We

Court has allowed that prayer possibly bearing in mind the principle laid down in Order XXII Rule 10 CPC, which deals with the procedure in case of assignment before the final order of the suit. Rule 10 refers to "devolution of any interest" during the pendency of the suit. In such a case, the Court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved. Admittedly, the partner who died is none other than the father of the Appellant and the other sole surviving heir is his sister. Sister is admittedly not interested in joining the firm and, therefore, she is not taking over the assets and liabilities of the firm. Therefore, there has been a complete devolution of interest in favour of the Appellant. Under the circumstances, the Subordinate Court had allowed the amendment and permitted the Appellant to proceed with the suit, granting necessary amendment, which, according to the Subordinate Court, was necessary for a proper and effective adjudication of real dispute between the parties. The High Court, in our view, by taking a hypertechnical approach held that if such a prayer is allowed, the same would alter the nature and character of the suit. In our view, such a stand cannot be countenanced considering the peculiar facts and circumstances of the case.

10. We are of the view that the legal consequences pointed out by the High Court might apply in a case where one of the several partners dies in the suit instituted in the name of the partnership firm as compared to when one of the two partners of the partnership dies. Further, the High Court failed to notice that if the partnership firm succeeds in the suit, the decree so granted would not be executable, and hence a nullity. In such circumstances, we are inclined to allow this appeal and set aside the order of the High Court interfering with the order of the Subordinate Court allowing the application for amendment and permission to prosecute the suit as prayed for. Ordered accordingly.

B.B.B. Appeal allowed.

MAK DATA P. LTD.

v.

COMMISSIONER OF INCOME TAX-II

(Civil Appeal No. 9772 of 2013)

OCTOBER 30, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Income Tax Act, 1961 - s.271 r/w s.274 - Explanation 1 to s.271(1)(c) - Scope of - Concealment of income - Penal proceedings against appellant - Challenge to - Held: Explanation to s.271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income - Burden is then on the assessee to show otherwise, by cogent and reliable evidence - When the initial onus placed by the Explanation, is discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise - The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty - On facts, the surrender of income by appellant-assesse was not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee - Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings - Clearly the assessee had no intention to declare its true income - The AO had recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and was liable for penalty proceedings under s.271 r/w s.274 - No illegality found in the department initiating penalty proceedings against the appellant-assessee.

The Appellant-assessee filed its return of income. The case was selected for scrutiny and notices were issued under Sections 143(2) and 142(1) of the Income Tax Act. The Assessing Officer (AO) issued show-cause notice seeking specific information regarding certain documents pertaining to share applications found in the course of survey proceedings under Section 133A conducted in the case of a sister concern of the assessee. In reply to the show-cause notice, the assessee made offer to surrender a sum of Rs.40.74 lakhs with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. The AO after verifying the details and calculations of the share application money accepted by the appellant-Company completed the assessment, and a sum of Rs.40,74,000/- was brought to tax, as "income from other sources" and the total income was assessed at Rs.57,56,700/-. The department thereafter initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under Section 271(1)(c) of the Income Tax Act. The AO imposed a penalty of Rs.14,61,547/- under Section 217(1)(c) of the Act. The Tribunal set aside the penalty order, holding that the amount of Rs.40,74,000/- was surrendered to settle the dispute with the department and since the assessee, for one reason or the other, agreed or surrendered certain amounts for assessment, imposition of penalty solely on the basis of assessee's surrender could not be sustained. The High Court set aside the judgment of Tribunal holding that there was absolutely no explanation by the assessee for the concealed income of Rs.40,74,000/-; and in absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 to Section 271(1)(c) of the Act was attracted.

Dismissing the appeal, the Court

HELD: 1.1. The Tribunal has not properly understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Income Tax Act. The AO should not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the Explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. [Paras 6, 7] [576-D; 577-B-D]

1.2. In the instant case, the assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the Explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty. [Para 8] [577-D-F]

1.3. The surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings noticed that certain documents comprising of share application forms,

memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961. [Para 9] [577-F-H; 578-A-D]

1.4. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. No illegality is found in the department initiating penalty proceedings in the instant case. [Paras 10, 11] [578-E, G]

Union of India vs. Dharmendra Textile Processors **(2008) 13 SCC 369: 2008 (14) SCR 13 and** *CIT vs. Atul Mohan Bindal* **(2009) 9 SCC 589: 2009 (13) SCR 464 - relied on.**

Case Law Reference:

2008 (14) SCR 13	**relied on**	**Para 10**

2009 (13) SCR 464	**relied on**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9772 of 2013.

From the Judgment and Order dated 22.01.2013 of the High Court of Delhi at New Delhi in ITA 415 of 2012.

S. Krishan, Rani Chhabra for the Appellant.

V. Shekhar, Purnima Bhat, Reshmi Malhotra, Piyush Jain,, Vishal Saxena, Ashly Cherian, S. Rama, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The Appellant-assessee filed his return of income for the assessment year 2004-05 on 27th October, 2004, declaring an income of Rs.16,17,040/- along with Tax Audit Report. The case was selected for scrutiny and notices were issued under Sections 143(2) and 142(1) of the Income Tax Act. During the course of the assessment proceedings, it was noticed by the Assessing Officer (AO) that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed had been impounded. These documents had been found in the course of survey proceedings under Section 133A conducted on 16.12.2003 in the case of M/s Marketing Services (a sister concern of the assessee). The AO then proceeded to seek information from the assessee and issued a show-cause notice dated 26.10.2006. By the show-cause notice, the AO sought specific information regarding the documents pertaining to share applications found in the course of survey, particularly, bank transfer deeds signed by persons, who had applied for the shares. Reply to show-cause notice was filed on 22.11.2006, in which the as[illegible]er

to surrender a sum of Rs.40.74 lakhs with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. Following are the words used by the assessee:-

> "The offer of surrender is by way of voluntary disclosure of without admitting any concealment whatsoever or with any intention to conceal and subject to non-initiation of penalty proceedings and prosecution."

3. The AO after verifying the details and calculations of the share application money accepted by the Company completed the assessment on 29.12.2006 and a sum of Rs.40,74,000/- was brought to tax, as "income from other sources" and the total income was assessed at Rs.57,56,700/-.

4. The department initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under Section 271(1)(c) of the Income Tax Act. During the course of the hearing, the assessee contended that penalty proceedings are not maintainable on the ground that the AO had not recorded his satisfaction to the effect that there has been concealment of income/furnishing of inaccurate particulars of income by the assessee and that the surrender of income was a conditional surrender before any investigation in the matter. The AO did not accept those contentions and imposed a penalty of Rs.14,61,547/- under Section 217(1)(c) of the Act. The assessee challenged that order before the Commissioner of Income Tax (Appeals) by filing Appeal No.2/07-08, which was dismissed vide order dated 17.2.2010. The assessee filed an appeal being ITA No.1896/Del/10 before the Income Tax Appellate Tribunal, Delhi. The Tribunal recorded the following findings :-

> "The assessee's letter dated 22.11.2006 clearly mentions that "the offer of the surrender is without admitting any concealment whatsoever or any intention to conceal."

The Tribunal took the view that the amount of

Rs.40,74,000/- was surrendered to settle the dispute with the department and since the assessee, for one reason or the other, agreed or surrendered certain amounts for assessment, the imposition of penalty solely on the basis of assessee's surrender could not be sustained. The Tribunal, therefore, allowed the appeal and set aside the penalty order.

5. The Revenue took up the matter in appeal before the High Court by filing ITA No.415 of 2012. The High Court accepted the plea of the Revenue that there was absolutely no explanation by the assessee for the concealed income of Rs.40,74,000/-. The High Court took the view that in the absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 is attracted. Holding so, the judgment of the Tribunal was set aside and the appeal filed by the Revenue was allowed.

6. We have heard counsel on either side. We fully concur with the view of the High Court that the Tribunal has not properly understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Act, which reads as follows :-

> Explanation 1 - Where in respect of any facts material to the computation of the total income of any person under this Act, --
>
> (A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or
>
> (B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then the amount added or disallowed in computing the total income of such per of

shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

7. The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of

association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

10. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(1)(c) has also been elaborately discussed by this Court in *Union of India vs. Dharmendra Textile Processors* (2008) 13 SCC 369 and *CIT vs. Atul Mohan Bindal* (2009) 9 SCC 589.

11. The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed. There shall be no order as to costs.

B.B.B.