BHARAT SANCHAR NIGAM LIMITED AND ANOTHER
v.
G. SARVOTHAMAN
(Civil Appeal No. 8947 of 2013)

OCTOBER 04, 2013

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

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

s. 59 – Chief Commissioner – Functions of – Explained – Complaint by respondent-physically handicapped (PH) person for not providing him reservation in promotion – Chief Commissioner directing to include Telecom Operating Assistants (TOA) cadre in the list of notified jobs and to prepare 100 point reservation register for PH persons and to consider claim of respondent – Held: Promotion in physically handicapped quota was limited to certain categories of posts as identified by High Powered Committee constituted for the purpose -- TOA was not identified for the purpose of reservation for physically handicapped persons – Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit -- He exceeded the powers conferred on him u/s 59 – Order of Chief Commissioner, as confirmed by High Court, is set aside – Service law – Reservation in promotion for physically handicapped persons.

The respondent was appointed as a Lower Division Clerk on compassionate ground in the Post Master General's Office in 1973. Later, on bifurcation of the PMT Department into Departments of Posts and Telecommunications, the respondent opted for

Telecommunications Department. The respondent on his normal turns was promoted to higher posts and was ultimately promoted as Telecom Operating Assistant TOA Grade-III (Senior Section Supervisor), w.e.f. 01.07.1999. He then applied for promotion under the physically handicapped person's quota on the basis of OM No.36035/8/89-Estt.(SCT) dated 20.11.1989. The claim was declined by the appellant-BSNL. On the complaint filed by the respondent, the Chief Commissioner directed to include the TOA cadre in the list of identified jobs issued by Department of Telecommunications published in the Gazette notification No.178 dated 30.06.2001, to prepare a 100 point reservation register for PH persons, and to consider the claim of the respondent-complainant for promotion under reserved vacancies for the grade(s) as a PH person against reserved vacancies. The writ petition filed by BSNL was dismissed by the High Court ordering that the benefit of LSG cadre be given to the respondent from 01.03.1992.

In the instant appeal filed by BSNL, the question for consideration before the Court was: "whether the Chief Commissioner has got the powers to order regularization of promotion and identification of eligible posts in a cadre, in the Department of erstwhile Telecommunications, while exercising powers under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Allowing the appeal, the Court

HELD: 1.1. The Department of Personnel and Training by OM dated 20.11.1989 introduced reservation in favour of physically handicapped persons in posts filled by promotion (i) within Group 'D', (ii) from Group 'D' to Group 'C', and (iii) within Group 'C'. The promotion in the physically handicapped quota e

categories of posts as identified by the High Powered Committee, namely, JTO, JAO, Stenographers, JE (Civil) and JE (Electrical). TOA was not identified for the purpose of reservation for physically handicapped persons. The Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit. [Para 6, 9-10 and 12] [568-G-H;570-D-E, F, H; 571-A; 572-B-C]

1.2. An employee who chose to join the new cadre of TOA cannot revert back for claiming any financial or promotion benefit in both the cadres simultaneously. TOA cadre was introduced in the circle office w.e.f. 09.09.1992 and the respondent had opted for TOA pattern with effect from the said date. Consequently, the respondent was working as TOA at the relevant time and, therefore, his claim for promotion to Grade-IV could not be allowed since the promotion to the Grade was based on seniority in the basic cadre and in fact there was no reservation even for SC/ST candidates for promotion to Grade-IV. [Para 7 and 10] [569-G; 571-B-C]

1.3. The Chief Commissioner u/s 59 of the 1995 Act has got only the power to examine the matters relating to "deprivation of rights" of persons with disabilities. He can only examine whether the persons with disabilities have been deprived of any "rights" for which first it is to be examined whether the complainant has any "rights" under the laws. The Chief Commissioner cannot confer or create any right for the complainant before him. The respondent could not establish that the Department denied any right conferred on him. [Para 12] [571-G-H; 572-A-B]

1.4. The Chief Commissioner as well as the High Court have failed to appreciate that the respondent was working in a cadre in which there was no reservation for promotion under physically handicapped quota. Further,

exclusion of TOA cadre from the promotional post of physically handicapped persons is due to a policy decision of the Government of India taken by the then Department of Telecommunications. In such circumstances, the Chief Commissioner has no power u/s 59 of the 1995 Act to direct the inclusion of TOA cadre in the list of identified posts and then to order preparation of reservation register for physically handicapped persons and to consider the claim of the respondent for promotion under the reserved vacancies for the various Grades under TOA. The Chief Commissioner has exceeded the powers conferred on him u/s 59 of the Act of 1995. Consequently, the order of the Chief Commissioner, as confirmed by the High Court is set aside. [Para 11-13] [571-D-F; 572-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8947 of 2013.

From the judgment and Order dated 19.02.2007 of the High Court of Kerala at Ernakulam in W.P. (C) No. 30816 of 2003.

Rahul Kaushik, Bhuvneshwari P. Kaushik, Ashok Kumar Singh for the Appellants.

Nidhi for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. Leave granted.

2. We are in this case concerned with the question whether the Chief Commissioner has got the powers to order regularization of promotion and identification of eligible posts in a cadre, in the Department of erstwhile Telecommunications, while exercising powers under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act of 1995)

3. The Respondent was appointed as a Lower Division Clerk on compassionate ground in relaxation of normal recruitment rules, including upper age limit and typing test, in the Post Master General's Office Trivandrum on 23.01.1973 in the PMT Department, which was later bifurcated into Departments of Posts and Telecommunications. The Respondent then opted for Telecommunications Department. Nomenclature of posts of Lower Division Clerk/Upper Division Clerk/Office Superintendent (LDC/UDC/OS in short) was changed as Telecom Operating Assistants in the Telecom Department. Telecom Office Assistant (TOA in short) Grade-I included LDC/UDC/OS, Grade-II included Section supervisors, Grade-III included Senior Section Supervisors, Grade-IV included Chief Section Supervisors. The above categorization was done w.e.f 09.09.1992. The Respondent was later promoted as ad hoc UDC w.e.f. 1977 and was promoted as UDC on regular basis w.e.f. 04.11.1982 on seniority-cum-fitness quota. Later he was placed as TOA Grade-II (Section Supervisor) w.e.f. 09.09.1992. The Respondent was again promoted as TOA Grade-III (Senior Section Supervisor), w.e.f. 01.07.1999.

4. The Respondent then applied for promotion under the physically handicapped person's quota after availing all facilities of restructured Cadre on the basis of the OM No.36035/8/89-Estt.(SCT) dated 20.11.1989, which was considered and rejected by BSNL on the ground that no relaxation/reservation in promotion was permissible under schemes for physically handicapped persons as in the case of Scheduled Caste/Scheduled Tribe (SC/ST in short) officials. Further, it was also noticed that the respondent's appointment was not under physically handicapped quota. The Respondent, aggrieved by the rejection order passed by the BSNL filed a complaint before the Commissioner, praying that he should be given promotion to the post of Lower Selection Grade (LSG in short) (Section Supervisors) retrospectively w.e.f. 20.11.1989 and to the upgraded clerical posts of TOA Grade-III (Senior

Section Supervisors) and TOA Grade-IV (Chief Section Supervisors) w.e.f. 07.02.1996. The Chief Commissioner entertained the complaint and registered case No.1109/2001 under Section 59 of the Act of 1995. The Commissioner after hearing parties and examining various contentions passed the following order on 26.12.2002. The operative portion of the same reads as under:

"The respondents are, therefore, directed to include the TOA cadre which is required to do clerical work and other such jobs in the list of identified jobs issued by Department of Telecommunications vide their letter No.1-8/2001/AO(SNG) dated 18.10.01 to be inconformity with the list of identified jobs published in the Gazette notification No.178 dated 30.06.2001 referred to above. Upon identification of the cadre for PH persons, the respondents are directed to prepare a 100 point reservation register for PH persons as required under the existing instructions of Department of Personnel & Training/ Department of Telecommunications and to consider the claim of the complainant for promotion under reserved vacancies for the grade(s) if he becomes eligible as a PH person against reserved vacancies."

5. BSNL, aggrieved by the above-mentioned order approached the Kerala High Court by filing Writ Petition No.30816 of 2003 which was dismissed by a learned Single Judge vide order dated 19.02.2007, ordering that the benefit of LSG cadre be given to the respondent from 01.03.1992. Aggrieved by the same, this appeal has been preferred by special leave.

6. The Department of Personnel and Training vide its OM dated 20.11.1989 introduced reservation in favour of physically handicapped persons in posts filled by promotion in (i) within Group 'D' (ii) from Group 'D' to Grup 'C' and (iii) within Group 'C'. Reservation was provided for three categories of persons namely, visually handicapped, heari d

orthopedically handicapped. The applicability of reservation was, however, limited to the promotion being made to those posts that were identified as being capable of being filled/held by these appropriate categories of handicapped persons. On 09.09.1992, a new cadre was created under restructuring scheme of erstwhile Department of Telecommunications. A choice was given to the employees working in the clerical stream to opt for the new cadre of TOA or to remain in the clerical cadre. The posts in the clerical cadre became redundant as the majority of the employees had chosen to join the new cadre due to the difference in pay scale advantageous to them. Names of cadre and pay scales are given below for ready reference:

	Name of The erst-while cadre	Pay scale (Rupees)	Name of cadre under TOA pattern w.e.f. 09.09.1992	Pay scale (Rupees)
1	LDC	950-1400	TOA-GR-1	975-1660
2	UDC	1200-1800	TOA GR-II [SS(O)]	1400-2300
3	LSG	1400-2300	TOA GR-III [Sr.SS(O)]	1600-2550
4	OS	1600-2600	TOA GR-IV (CSS)	1640-2900

7. An employee who chose to join the new cadre of TOA cannot revert back on his own choice for claiming any financial or promotion benefit in both the cadres simultaneously. The Respondent had opted for restructured cadre of TOA. Consequently, he was placed as TOA-Grade-II (Section Supervisor) w.e.f. 09.09.1992 when restructured scheme was implemented on 09.09.1992.

8. The Department of Telecommunications formed a High Power Committee for identification of posts in group 'C' from 'D' for the purpose of 9% reservation for physically handicapped persons. The Committee identified 5 cadres, namely, JTO, JAO, Stenographers, JE (Civil) and JE (Electrical), which was circulated for compliance vide letter No.226-07/96-STN dated 12.05.1997. The Respondent in the meanwhile was promoted as TOA Grade-III (Senior Supervisor) w.e.f. 01.07.1999. He later applied for promotion under the physically handicapped quota after availing of all the facilities of restructured cadre. In fact, he claimed promotion to the post of LSG (SS) with retrospective effect w.e.f.20.11.1989 and to the upgraded clerical post of TOA Grade-III (Sr. SS) and TOA Grade-IV (CSS) w.e.f. 07.02.1996, which was rejected by the Department.

9. We notice that the promotion in the physically handicapped quota was limited to certain categories of posts as identified by the High Powered Committee constituted for the purpose of identification of the cadre. The High Power Committee was constituted by the erstwhile Telecommunication Department for identifying the post to which physically handicapped persons could be promoted under the physically handicapped reservation quota. The High Power Committee had identified five cadres for promotion and they were JTO, JAO, Stenographers, JE (Civil) and JE (Electrical). The operative portion of the Circular dated 1.5.1997 reads as follows:

"Now, it has been decided to have a reservation of 1.5% each for partially hearing impaired which can be improved with hearing aid and for locomotive disability effecting one leg or limb only in the vacancies in the cadre of JTO, JAO, JE (Civil), JE (Electrical) and Stenographers for direct recruitment quota as well as department quota."

10. We notice that the cadre of cl d

for the purpose of promotion under the physically handicapped reservations. Since the respondent was a TOA, he could not be considered for physically handicapped quota in Sr. TOA cadre. TOA cadre was introduced in the circle office w.e.f. 09.09.1992 and the Respondent had opted for TOA pattern with effect from the said date and it was with his own consent. Consequently, the respondent was working as TOA at the relevant time which was not identified for the purpose of reservation for physically handicapped persons and hence his claim for promotion to Grade-IV could not be allowed since the promotion to the Grade was based on seniority in the basic cadre and in fact there was no reservation even for SC/ST candidates for promotion to Grade-IV.

11. We are of the view that the Chief Commissioner as well as the High Court have failed to appreciate that the respondent was working in a cadre in which there was no reservation for promotion under physically handicapped quota. Further exclusion of TOA cadre from the promotional post of physically handicapped persons is due to a policy decision of the Government of India taken by the then Department of Telecommunications. In such circumstances, the Chief Commissioner has no power under Section 59 of the Act of 1995 to direct the inclusion of TOA cadre in the list of identified posts and then to order preparation of reservation register for physically handicapped persons and to consider the claim of the respondent for promotion under the reserved vacancies for the various Grades under TOA.

12. The Chief Commissioner under Section 59 of the Act of 1995 has got only the power to examine the matters relating to "deprivation of rights" of persons with disabilities. The Commissioner can only examine whether the persons with disabilities have been deprived of any "rights" for which the Commissioner has to first examine whether the complainant has any "rights" under the laws. The Commissioner cannot

confer or create any right for the Appellants. The respondent could not establish that any right has been conferred on him and such right has been denied to him by the Department. The Respondent wanted conferment of a right which was extended only to specific five categories of posts on the basis of the report of a High Power Committee. The Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit. Under Section 59(b) the Chief Commissioner has got the power to look into the complaints with respect to the matters relating to non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights or persons with disabilities. It is not the case of the respondent that the Department has failed to implement either any laws, rules or regulations. The Respondent prayed for positive direction, claiming certain rights, which had not been conferred on him either by any law, regulations or orders. Consequently, the directions given by the Chief Commissioner for the inclusion of TOA cadre among the identified categories cannot be sustained and the Commissioner while passing such order has exceeded the powers conferred on him under Section 59 of the Act of 1995.

13. We, for the reasons mentioned above, allow this appeal and set aside the order of the Chief Commissioner, as confirmed by the High Court. There shall be no order as to costs.

R.P. Appeal allowed

BHOLA RAM
v.
STATE OF PUNJAB
(Criminal Appeal No. 1022 of 2008)

NOVEMBER 11, 2013

[RANJANA PRAKASH DESAI AND MADAN B. LOKUR, JJ.]

Penal Code, 1860 – ss.304B & 498A – Sister-in-law of appellant committed suicide within few years of marriage – Allegations of dowry death – Conviction of appellant – Justification – Held: Not justified – Appellant deserves acquittal since no evidence inculpating him – No definite allegation made by any of the witnesses including PW-2 (deceased's father) or anybody from his family that appellant had demanded any additional dowry from him or anybody in his family or had treated the deceased with cruelty or in a humiliating manner so as to make him complicit in the dowry death – Appellant may have been a silent or a passively conniving participant, but nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly – Presumption available u/s.113-B of the Evidence Act, 1872 to conclude that deceased's death was a dowry death cannot be stretched to implicate all and sundry in the family of deceased's husband in demanding additional dowry from deceased's family and harassing her and treating her with such cruelty that she had to resort to taking her life – Mere fact that all family members of the deceased's husband were living together, did not alter the factual situation – In absence of the prosecution proving the ingredients of s.304-B, initial burden cast on it not discharged – Therefore, presumption u/s.113-B of the Evidence Act

cannot be attracted – Appellant acquitted – Evidence Act, 1872 – s.113B.

The sister-in-law of the appellant committed suicide by consuming poison within few years of marriage. The appellant was convicted by both the Trial Court and the High Court under Sections 304-B and 498-A IPC for causing dowry death, and there fore the instant appeal.

It was submitted on behalf of the appellant that in fact there was no specific allegation against him; that the statements of all the witnesses were omnibus or generic in nature; and that in the absence of any particular allegation, demands for dowry made by the deceased's husband cannot be attributed to the appellant and under these circumstances, there was really no evidence to uphold his conviction.

Allowing the appeal, the Court

HELD: 1. The Sessions Judge found that there was no evidence that the sister-in-law and the other brother-in-law of the deceased made demands for additional dowry from PW-2, the deceased's father. Accordingly, they were acquitted at the trial stage itself. Therefore, the segregation process, based on the evidence on record, had begun at the trial stage. This is clearly because in a dowry death, some actors play an active role while others play a passive role. Consequently, to sustain the conviction of the appellant, there must be some suggestive evidence and not generic evidence implicating him in the demand for additional dowry from PW-2. [Para 22] [582-G-H; 583-A-B]

Law Commission of India (LCI) in its 91st Report of **10th August, 1983 (in paragraph 1.8) – referred to.**

2. So far as this case is con

allegation has been made by any of the witnesses including PW-2 or anybody from his family that the appellant had demanded any additional dowry from him or anybody in his family or had treated the deceased with cruelty or in a humiliating manner so as to make him complicit in the dowry death. It is true that there was a demand of dowry of Rs.10,000/- which was paid by PW-2 by borrowing this amount from PW1, but that demand was for the purchase of a car for use by the deceased's husband. Under the circumstances, it can safely be presumed that the deceased's husband made the demand for additional dowry for his benefit. The appellant may have been a silent or a passively conniving participant, but there is nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly. Similarly, the evidence on record does not show that the demand of another amount of Rs.30,000/- from PW1 just a fortnight before the deceased took her life was made by the appellant to purchase articles for the service station being set up by him and the deceased's husband. At best, it could be said that this amount was intended for use for the joint business venture of the appellant and the deceased's husband. Given that the earlier demand for additional dowry was made for the benefit of the deceased's husband, it is more than likely that this demand was also made by him. In any event, there is again nothing to suggest that the appellant was in any manner actively concerned in making the demand directly or indirectly from PW2. Consequently, there is no evidence to suggest any active complicity of the appellant in demanding any additional dowry from PW2 either for himself or for the deceased's husband or his proposed business venture. [Paras 25, 27, 28 & 29] [583-H; 584-A-B, G-H; 585-A-D]

3. Merely making a demand for dowry is not enough to

bring about a conviction under Section 304-B of the IPC. A dowry death victim should also have been treated with cruelty or harassed for dowry either by her husband or a relative. In this case, even assuming the silent or conniving participation of the appellant in the demands for dowry, there is absolutely no evidence on record to suggest that he actively or passively treated deceased with cruelty or harassed her in connection with, or for, dowry. The High Court, unfortunately, did not advert to this ingredient of an offence punishable under Section 304-B of the IPC or even considered it. [Para 30] [585-E-G]

Kans Raj v. State of Punjab **(2000) 5 SCC 2007: 2000 (3) SCR 662 – relied on.**

4. The High Court has relied on the presumption available under Section 113-B of the Evidence Act, 1872 to conclude that deceased's death was a dowry death. However, this presumption cannot be stretched to implicate all and sundry in the family of deceased's husband in demanding additional dowry from deceased's family and harassing her and treating her with such cruelty that she had to resort to taking her life. There is a possibility of members of the family having varying roles, active and passive. Depending on the nature and extent of involvement, a person may be punished for an offence under Section 498-A or Section 304-B or Section 306 of the IPC or Section 4 of the Dowry Prohibition Act, 1961. A dowry death will not *ipso facto* suck the husband with all his relatives into the net of Section 304-B IPC. While the appellant and the other two convicts (husband and mother-in-law of the deceased) may be staying together, it does not lead to any positive conclusion that each one of them was actively involved in demanding additional dowry from the deceased and also behaving in a cruel or humiliating manner towards her resulting in her consuming pois

cases of this nature which attract a reverse onus of proof, the least that is expected of the prosecution to bring home a charge under Section 304-B IPC is to adduce some evidence to suggestively implicate a relative, in this case, to suggestively implicate the appellant both in the demands for additional dowry and harassment or cruelty. Such evidence is not available on record and so the mere fact that all the members of the family of the deceased's husband were living together, would not alter the factual situation. [Paras 31, 32] [585-G-H; 586-A-F]

5. Consequently, in the absence of the prosecution proving the ingredients of Section 304-B of the IPC, the initial burden cast on it has not been discharged. Therefore, the presumption under Section 113-B of the Evidence Act cannot be attracted. The appellant deserves acquittal since there is no evidence inculpating him. [Paras 1, 33] [578-B-C; 586-G-H]

Case Law Reference:

2000 (3) SCR 662 relied on Para 26

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1022 of 2008.

From the Judgment and Order dated 05.07.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 25 SB of 1992.

R.K. Kapoor, Shiwani Mahipal, Rajat Kapoor, Shweta Kapoor, Anis Ahmed Khan for the Appellant.

V. Madhukar AAG, Ms. Anvita C., Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question for consideration

is whether the appellant Bhola Ram was rightly convicted by both the Trial Court and the High Court for having caused the dowry death of Janki Devi, an offence punishable under Section 304-B and Section 498-A of the Indian Penal Code (IPC). In our opinion, Bhola Ram deserves an acquittal since there is no evidence inculpating him.

The facts:

2. Darshan Ram married Janki Devi on 30th June, 1986 after which they resided in Darshan Ram's house in village Mehma Sarja. The couple has a female child.

3. At the time of their marriage, Janki Devi's family gave dowry within their means to Darshan Ram and his family. But according to the prosecution, his brothers Parshottam Ram and Bhola Ram (the appellant) and his sister Krishna Devi and mother Vidya Devi demanded more dowry from time to time.

4. Janki Devi's family was unable to fulfill the additional demands for dowry and, according to the prosecution, she was humiliated and cruelly treated by Darshan Ram's family for their incapacity. Being unable to face the harassment, cruelty and humiliation meted out by Darshan Ram's family, Janki Devi consumed poison and thereby committed suicide on 6th September, 1989.

5. About one and a half months before her death, a demand for Rs. 10,000/- was made by Janki Devi's in-laws for the purchase of a car. Janki Devi's father PW-2 Nath Ram borrowed this amount from PW-1 Nirbhai Singh for meeting the dowry demand. The amount was then handed over by him to Darshan Ram in the presence of other members of his family.

6. Unfortunately, Darshan Ram's family was not fully satisfied with this payment. According to the prosecution, about a fortnight before her death, Janki Devi came to her father and told him that there was a further deman[illegible]s.

30,000/- for purchasing some articles for a service station proposed to be run by Darshan Ram and Bhola Ram. Thereupon, Nath Ram accompanied Janki Devi to her matrimonial home and informed Darshan Ram and the other accused that he would not be able to pay this amount. On this, Darshan Ram's family informed him that he should pay the amount failing which he could take Janki Devi back with him. Nath Ram requested the family not to insist on the demand and left Janki Devi at her matrimonial home in village Mehma Sarja.

7. On 3rd September, 1989 PW-3 Des Raj, the brother of Nath Ram's wife, informed Nath Ram about Janki Devi being ill-treated on account of Nath Ram's inability to meet the additional demand for dowry. Again on 5th September, 1989 Des Raj informed Nath Ram that Janki Devi wanted to meet Nath Ram and was weeping in his presence.

8. On receiving this information, Nath Ram went to village Mehma Sarja along with his brother PW-4 Sukhdev Ram. When they reached the bus stand in the village they were informed that Janki Devi had consumed poison and had taken her life, having suffered more than enough cruelty at the hands of the family of Darshan Ram. Nath Ram and Sukhdev Ram then proceeded to Janki Devi's matrimonial home and found her lying there but no one from Darshan Ram's family was present in the matrimonial home.

9. Nath Ram then lodged a First Information Report (FIR) in Police Station Nehianwala. On the basis of the FIR PW-7 Manminder Singh prepared an inquest report in the presence of Sukhdev Ram. On the next day, that is 7th September, 1989 PW-5 Dr. Tirath Goyal performed an autopsy on the dead body of Janki Devi. He noted that froth was coming out from her nose and mouth. Her viscera were sent to the Chemical Examiner who reported that Janki Devi had died due to having consumed an organo phosphorus insecticide which was poisonous and sufficient to cause death in the ordinary course of nature.

10. On the basis of the above details and further investigations, a charge sheet was filed against Darshan Ram and four members of his family (including Bhola Ram) under Section 304-B and Section 498-A of the IPC for causing the dowry death of Janki Devi.

11. The accused pleaded not guilty and were tried by the Sessions Judge at Bathinda.

Decision of the Trial Judge

12. In his Judgment and Order dated 3rd December, 1991 the Sessions Judge at Bathinda in Sessions Case No. 35 of 15th May, 1990 held that Section 304-B of the IPC required the prosecution to establish four ingredients, namely: (i) the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, (ii) such death should have occurred within seven years of her marriage, (iii) soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, and (iv) such cruelty or harassment should be for, or in connection with, any demand for dowry. In the present case, all four ingredients were established by the prosecution.

13. It was further held that Darshan Ram, Bhola Ram and their mother Vidya Devi were living together in the same house at village Mehma Sarja and that they had demanded additional dowry from Janki Devi's family. However, Parshottam Ram and Krishna Devi were living separately and they could not be said to have caused the dowry death of Janki Devi. Consequently, Parshottam Ram and Krishna Devi were found not guilty of the charges framed against them and they were acquitted. However, the Sessions Judge found that Darshan Ram, Bhola Ram and Vidya Devi, by their attitude and behaviour, caused Janki Devi to take the extreme step of taking her own life. These three accused were accordingly convicted for offences punishable under Section 304-B and Se C

and sentenced to undergo rigorous imprisonment for a period of 7 years with fine for the offence under Section 304-B of the IPC and 2 years rigorous imprisonment for the offence under Section 498-A of the IPC.

14. The accused preferred two appeals (one by Vidya Devi and the other by Darshan Ram and Bhola Ram) against their conviction and sentence in the High Court of Punjab and Haryana.

Decision of the High Court

15. In so far as Vidya Devi is concerned, her conviction was upheld by the High Court and she preferred a Special Leave Petition in this Court. She was granted special leave to appeal but during the pendency of her appeal she passed away and accordingly her appeal was disposed of.

16. Darshan Ram and Bhola Ram preferred a joint appeal in the High Court being Criminal Appeal No. 25 SB of 1992. This appeal was heard by a learned Single Judge who by his Judgment and Order dated 5th July, 2004 upheld their conviction and sentence.

17. The High Court held that Vidya Devi, Darshan Ram and Bhola Ram were all residing together in the same house at village Mehma Sarja. It was held that the amount of Rs. 10,000/- initially taken from Nath Ram was used to purchase a car for Darshan Ram and that car was being plied as a taxi by him. It was also held that a service station was at the initial stages of being established by Darshan Ram and Bhola Ram and that they needed Rs. 30,000/- for expenses in connection with that venture. Since all three convicts were residing together at village Mehma Sarja, they were equally responsible for demanding additional dowry from Janki Devi and her father and thereby compelling her to take her life.

18. It appears that Darshan Ram has not challenged the

Judgment and Order of the learned Single Judge and his conviction and sentence have attained finality.

19. We are, therefore, only concerned with the appeal filed by Bhola Ram who challenged his conviction and sentence in this Court and was granted special leave to appeal on 8th July, 2008. He was also granted bail by this Court on the same day and we are told that even today, he is on bail.

Discussion

20. Learned counsel for Bhola Ram submitted that in fact there is no specific allegation against him. The statements of all the witnesses are omnibus or generic in nature and Darshan Ram and other members of his family have been generally accused of having demanded additional dowry from Janki Devi's family. It is submitted that in the absence of any particular allegation, demands for dowry made by Darshan Ram cannot be attributed to Bhola Ram and under these circumstances, there is really no evidence to uphold his conviction.

21. On the other hand, it was submitted by learned counsel for the State that the three convicts were jointly and directly concerned with the demands of additional dowry made on Janki Devi and her family. Consequently, it is not possible to segregate the case of Bhola Ram from that of the other two convicts.

22. We are unable to accept the contention of learned counsel for the State. The Sessions Judge found that there was no evidence that Parshottam Ram and Krishna Devi made demands for additional dowry from Nath Ram. Accordingly, they were acquitted at the trial stage itself. Therefore, the segregation process, based on the evidence on record, had begun at the trial stage. This is clearly because in a dowry death, some actors play an active role while others play a passive role. Consequntly, to sustain t

Ram, there must be some suggestive evidence and not generic evidence implicating him in the demand for additional dowry from Nath Ram.

23. As observed by the Law Commission of India (LCI) in its 91st Report of 10th August, 1983 (in paragraph 1.8) the truth may not come in a dowry death case due to the sequestered nature of the offence. This is what the LCI said:

> "Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family."

24. This passage also clearly brings out that in a case of a dowry death, every member of the family may not be fully and equally guilty. The degree of involvement may differ – as an associate, as a silent witness, as a conniving witness and so on.

25. So far as this case is concerned, we have gone through the evidence of all the witnesses on record and while there is no doubt that Janki Devi died an unnatural death within a few years of her marriage to Darshan Ram, no definite allegation has been made by any of the witnesses including Nath Ram or anybody from his family that Bhola Ram had demanded any additional dowry from him or anybody in his family or had treated Janki Devi with cruelty or in a humiliating manner so as to make him complicit in the dowry death.

26. In *Kans Raj v. State of Punjab, (2000) 5 SCC 207* the ingredients of an offence under Section 304-B of the IPC were held to be as follows:

> "In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:
>
> (*a*) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
>
> (*b*) such death should have occurred within 7 years of her marriage;
>
> (*c*) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
>
> (*d*) such cruelty or harassment should be for or in connection with the demand of dowry; and
>
> (*e*) to such cruelty or harassment the deceased should have been subjected soon before her death."

27. It is true that there was a demand of dowry of Rs. 10,000/- which was paid by Nath Ram by borrowing this amount from Nirbhai Singh, but that demand was for the purchase of a car for use by Darshan Ram. Under the circumstances, it can safely be presumed that Darshan Ram made the demand for additional dowry for his benefit. Bhola Ram may have been a silent or a passively conniving participant, but there is nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly.

28. Similarly, the evidence on reco[illegible]t

the demand of another amount of Rs.30,000/- from Nath Ram just a fortnight before Janki Devi took her life was made by Bhola Ram to purchase articles for the service station being set up by him and Darshan Ram at village Nehianwala. At best, it could be said that this amount was intended for use for the joint business venture of Bhola Ram and Darshan Ram. Given that the earlier demand for additional dowry was made for the benefit of Darshan Ram, it is more than likely that this demand was also made by him. In any event, there is again nothing to suggest that Bhola Ram was in any manner actively concerned in making the demand directly or indirectly from Nath Ram.

29. Consequently, we do not find any evidence to suggest any active complicity of Bhola Ram in demanding any additional dowry from Nath Ram either for himself or for Darshan Ram or his proposed business venture.

30. Merely making a demand for dowry is not enough to bring about a conviction under Section 304-B of the IPC. As held in *Kans Raj* a dowry death victim should also have been treated with cruelty or harassed for dowry either by her husband or a relative. In this case, even assuming the silent or conniving participation of Bhola Ram in the demands for dowry, there is absolutely no evidence on record to suggest that he actively or passively treated Janki Devi with cruelty or harassed her in connection with, or for, dowry. The High Court has, unfortunately, not adverted to this ingredient of an offence punishable under Section 304-B of the IPC or even considered it.

31. The High Court has relied on the presumption available under Section 113-B of the Evidence Act, 1872 to conclude that Janki Devi's death was a dowry death. However, this presumption cannot be stretched to implicate all and sundry in Darshan Ram's family in demanding additional dowry from Janki Devi's family and harassing her and treating her with such cruelty that she had to resort to taking her life. As mentioned

above, there is a possibility of members of the family having varying roles, active and passive. Depending on the nature and extent of involvement, a person may be punished for an offence under Section 498-A or Section 304-B or Section 306 of the IPC or Section 4 of the Dowry Prohibition Act, 1961. A dowry death will not *ipso facto* suck the husband with all his relatives into the net of Section 304-B of the IPC.

32. It was contended by learned counsel for the State that Darshan Ram, Bhola Ram and Vidya Devi were living together at village Mehma Sarja and so their active involvement in the dowry death cannot be ruled out. While these persons may be staying together, it does not lead to any positive conclusion that each one of them was actively involved in demanding additional dowry from Janki Devi and also behaving in a cruel or humiliating manner towards her resulting in her consuming poison to end her life. In cases of this nature which attract a reverse onus of proof, the least that is expected of the prosecution to bring home a charge under Section 304-B of the IPC is to adduce some evidence to suggestively implicate a relative, in this case, to suggestively implicate Bhola Ram both in the demands for additional dowry and harassment or cruelty. Such evidence is not available on record and so the mere fact that all the members of Darshan Ram's family were living together at village Mehma Sarja, would not alter the factual situation.

33. Consequently, in the absence of the prosecution proving the ingredients of Section 304-B of the IPC, the initial burden cast on it has not been discharged. Therefore, the presumption under Section 113-B of the Evidence Act cannot be attracted.

Conclusion

34. Based on the evidence available on record (or the lack

of it) we have no doubt that the appeal filed by Bhola Ram ought to be allowed. It is accordingly allowed and he is acquitted of the charges against him under Section 304-B and Section 498-A of the IPC in relation to the death of Janki Devi.

35. The appeal is allowed and the conviction and sentence of Bhola Ram is set aside.

Post script

36. What is a little disturbing about this case is that it is illustrative of the slow movement of the wheels of criminal justice delivery. The dowry death took place on 6th September, 1989. The Trial Court pronounced its decision on 3rd December, 1991 within two years of Janki Devi's death. The first appeal was decided by the High Court on 5th July, 2004 which is more than twelve years later. A petition for special leave to appeal was filed in this Court in 2004 and leave was granted only after a gap of four years in 2008. Thereafter this appeal was listed for hearing as if it is an appeal of 2008 rather than a petition of 2004 thereby wiping away four years of its age in this Court. And even then, it has taken another five years for its disposal, making a total of nine years spent in this Court. It is high time those of us who are judges of this Court and decision makers also become policy makers.

B.B.B. Appeal Allowed.

B. CHANDRIKA
v.
SANTHOSH & ANR
(Criminal Appeal No.1969 of 2013)

NOVEMBER 21, 2013

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

Penal Code, 1860 – s.420 r/w s.34 – Case initiated by Magistrate on a protest complaint filed by first respondent – Two accused; A-1 and A-2 – A-2 is divorced wife of A-1 – Summons issued against A-2 – Challenge to – Held: The statement of the complainant clearly indicates that money was entrusted to A-1 and not to A-2 –Police investigation revealed that during the period when money was entrusted to A-1, he was separated from A-2 – No reason to prosecute A-2 considering the fact that she had no role, even according to the complainant – Magistrate did not consider this vital aspect when the protest petition was considered by him – The refer report as well as the statement of the complainant indicate that no offence was made out so far as A-2 is concerned since, admittedly, no money was entrusted to her and A-2 is the divorced wife of A-1 – Summons issued against A-2 accordingly quashed – However, Magistrate may proceed against A-1.

The appellant is the second accused (the divorced wife of the first accused) in a criminal case initiated by the Magistrate on a protest complaint filed by the first respondent for the offences punishable under Section 420 read with Section 34 IPC. Summons were issued to accused persons by the Magistrate. That order was challenged in Revision before the High Court on the ground that the Magistrate was not justified in initiating proceedings after a refer report was submitted by the

Police, after due enquiry. The High Court, however, dismissed the Revision Petition, and therefore the instant appeal.

Allowing the appeal, the Court

HELD: 1. The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report cannot be disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the ingredients of complaint before Magistrate takes cognizance under Section 190(1)(a) Cr.P.C. The Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of police report. In the instant case, the High Court rightly applied the legal principle, but omitted to consider the crucial question as to the involvement of the second accused, the wife of the first accused. [Paras 6, 7, 8] [593-D-H; 594-A]

Gopal Vijay Verma v. Bhuneshwar Prasad Sinha & Ors. **(1982) 3 SCC 510;** *Kishore Kumar Gyanchandani v. G.D. Mehrotra* **(2001) 10 SCC 59 – relied on.**

2. The statement of the complainant clearly indicates that money was entrusted to the first accused (the husband of A-2) and not to A-2. Complainant has also stated that at the time of paying the amount, the wife was not seen. Police on investigation, noticed that during the period when money was entrusted to the first accused, the second accused was not in the residential house of first respondent. Investigation revealed that they were

separated and second accused started living at Thiruvananthapuram. The appellant has also produced a copy of decree of divorce before the Court, which will indicate that the second accused had obtained a decree of divorce against the first accused on the ground of cruelty under Section 13(1)(a) of the Hindu Marriage Act, 1955. Considering the fact that the second accused had no role, even according to the complainant, there is no reason to prosecute the second accused. The Magistrate has not considered this vital aspect when the protest petition was considered by him. [Paras 9, 10] [594-D-G]

3. The Magistrate has to exercise judicial discretion and apply his mind to the contents of the petition. The refer report as well as the statement of the complainant would indicate that no offence has been made out so far as the second accused is concerned since, admittedly, no money was entrusted to her and that second accused is the divorced wife of the first accused. That being the factual situation, the summons issued against the second accused would stand quashed. However, it is open to the Magistrate to proceed against the first accused. [Para 11] [594-H; 595-A-B]

Case Law Reference:

(1982) 3 SCC 510	**relied on**	**Para 7**
(2001) 10 SCC 59	**relied on**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1969 of 2013.

From the Judgment and Order dated 23.11.2012 of the High Court of Kerala at Ernakulam in Criminal Misc. Case No. 1767 of 2012.

K. Vijayan, K. Rajeev for the Appellant.

A. Raghunath, for the Respondents.

The Judgment of the Court was delivered by

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

2. The appellant herein is the second accused in CC 1548/2011 pending on file of the Judicial Magistrate, First Class, Cherthalay, which was initiated by the Magistrate on a protest complaint filed by the first respondent herein for the offences punishable under Section 420 read with Section 34 IPC. Summons were issued to accused persons by the learned Magistrate vide order dated 22.11.2011. That order was challenged in Revision before the High Court of Kerala on the ground that the Magistrate was not justified in initiating proceedings after a refer report was submitted by the Police, after due enquiry. The High Court, however, dismissed the Revision Petition vide order dated 23rd November, 2012 stating that even if a refer report is filed by the police after conducting investigation, the Magistrate has the power to entertain a protest complaint and to issue summons to the accused and proceed in accordance with law. Aggrieved by the same, this appeal has been preferred.

3. This appeal has been preferred by the second accused, a divorced wife of the first accused. The first respondent herein initially filed a complaint against accused nos.1 and 2 before the Police Station Mohamma which was registered as Crime No.302/2010. The operative portion of the complaint is as follows :-

> "The accused 1 and 2 with the ambition for immediate profits and the intention to make loss to the complainant, had given the commitment to the complainant in his rental residence house, owned by Kamal Travels, at Aryakara, Tannermukkam on 13.10.2006 to provide job to his uncle's son Sajimon, in Aushathi Govt. Department and taken 1 lac rupee from complainant, from Raveendran, R/o

> Illathukalathil House, Kumarakam taken 1 lac rupees in the commitment to give job to his son Rathish from Prabhakaran, Puthanparambil House, Kumarakam, and from Arumukam, R/o Kalathil House, Udayaperoor taken 50,000/- rupees each, and from K.P. Prasad, R/o Tikarthil, Kothuruthi, taken 25,000/- rupees, thereafter the accused persons committed cheating without providing job to these persons."

4. An FIR was registered and the investigation ordered. Police conducted detailed investigation, relevant portion of the investigation report is as follows :-

> "After completing the investigation and recording the statement of witnesses stated above, I came to the conclusion that the fact stated above was not occurred. The complainant through Adv. Rajan had made contact with the first accused Ramchandran Unni and given Rs.12000/- for the purpose of taking certified copy of the order passed in Water Authority case, which was decided by the Kerala High Court, wherein he relatives of the complainant were parties in the case for the purpose of being permanency in service. After two weeks, Ramchandran Unni had got the certified copies from High Court and given it to the complainant. Except this, the accused had not collected money from any person. During the period when money was given as stated by the complainant, the second accused was not in the residential house at Muhamma with the first accused because they were separated to each other and started living in the house at Thiruvananthapuram. It is also proved that the first accused had not received any amount from the complainant or any other persons for providing job to the relative of the complainant or any other person. The amount paid, as stated in the complaint, has not been proved by the complainant and others by submitting any reliable documents."

5. On the basis of the above-mentioned report, the police referred the case as not proved. Reference report was submitted to the Judicial Magistrate, First Class, Cherthalay for appropriate action. Later, the respondent/claimant filed a protest complaint before the above-mentioned Court for cancellation of the reference report and for taking cognizance of the case, on which, as already stated, the Magistrate passed an order dated 22.11.2011, which reads as follows :-

> "Heard the counsel for the petitioner. Perused the evidence adduced and other case records, prima facie case alleged is made out. Hence, case is taken on file as CC No.154810 for offence u/S 420 and 34 IPC. Issue summons to both accused. Take steps 28.1.12."

6. The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report cannot be disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the ingredients of complaint before Magistrate takes cognizance under Section 190(1)(a) Cr.P.C.

7. This Court in *Gopal Vijay Verma v. Bhuneshwar Prasad Sinha & Ors.* [(1982) 3 SCC 510] held that the Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of police report. The judgment was followed by a Three-Judge Bench judgment of this Court in *Kishore Kumar Gyanchandani v. G.D. Mehrotra* [AIR 2002 SC 483 = (2001) 10 SCC 59].

8. The High Court, in our view, rightly applied the legal

principle, but omitted to consider the crucial question as to the involvement of the second accused, the wife of the first accused. In this connection, it is pertinent to refer to the statement of the complainant having been made during the investigation, which reads as follows :-

> "Thereafter I, Kunjumon and Rajan were gone to Thiruvanthapuram and met his wife then she told that they were separated to each other and she don't know nothing about him. I have given payment ot Ramchandran Unni on the words of Rajan and Kunjumon. I don't know where he is now. At the time of paying the amount I have not seen his wife or not talked to her. I don't know anything about him so I have given this complaint."

9. The above statement of the complainant clearly indicates that money was entrusted to the first accused (the husband of A-2) and not to A-2. Complainant has also stated that at the time of paying the amount, the wife was not seen. Police on investigation, noticed that during the period when money was entrusted to the first accused, the second accused was not in the residential house of first respondent. Investigation revealed that they were separated and second accused started living at Thiruvananthapuram.

10. The appellant has also produced a copy of decree of divorce dated 25.1.2010 before the Court, which will indicate that the second accused had obtained a decree of divorce against the first accused on the ground of cruelty under Section 13(1)(a) of the Hindu Marriage Act, 1955. Considering the fact that the second accused had no role, even according to the complainant, there is no reason to prosecute the second accused. In our view, the Magistrate has not considered this vital aspect when the protest petition was considered by him.

11.Magistrate has to exercise judicial discretion and apply his mind to the contents of the petition. [illegible]

as the statement of the complainant would indicate that no offence has been made out so far as the second accused is concerned since, admittedly, no money was entrusted to her and that second accused is the divorced wife of the first accused. That being the factual situation, we are inclined to allow the appeal so far as the second accused is concerned and the summons issued against the second accused would stand quashed. However, it is open to the Magistrate to proceed against the first accused.

12. The appeal is allowed as above.

B.B.B. Appeal Allowed.

HARYANA WAKF BOARD
v.
MAHESH KUMAR
(Special Leave Petition (Civil) No. 10947 of 2012)

NOVEMBER 21, 2013

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

Haryana Wakf Act, 1995 – s.7 r/w s.85 – Interpretation of – Jurisdiction of the Tribunal (constituted under the Act) to determine disputes regarding wakfs – Held: In respect of the questions/ disputes mentioned in sub-section (1) of s.7, exclusive jurisdiction vests with the Tribunal, having jurisdiction in relation to such property; (ii) Decision of the tribunal thereon is made final; (iii) Jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal iv) There is however an exception made u/s.7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered u/sub section (1) of s.6, the Civil Court would continue and the tribunal would not have the jurisdiction to determine those matters – Present suit was instituted in the year 2000 i.e. after the Act came into force – Therefore, the present case not covered by exception to s.7(5) of the Act – On a plain reading of s.7 r/w s.85, it is manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same.

The petitioner-Wakf Board filed suit in the Court of Civil Judge seeking possession of property which was allegedly given on rent by the Wakf Board to one Major Ram Prakash. The petitioner claimed that the entire property was Wakf property.

The Trial court decreed the suit holding that the lease agreement dated 2.5.1991 executed by Savitri Devi, widow of Major Ram Prakash in favour of Nirmala Devi for a period of 99 years was bad in law and in turn Nirmala Devi had no right to put the defendant-respondent in possession by executing any lease in his favour. The trial court also recorded categorical finding that the Wakf Board had by clear, cogent and consistent evidence proved its title over the land in question and it is the Wakf Board which was the actual owner of the suit property.

The respondent filed First Appeal before the ADJ, which held that since in the suit filed by the petitioner-Wakf Board, question had arisen as to whether the suit property was Wakf Property or not, such a question could be decided only by the Tribunal constituted under the Wakf Act. The appeal court, therefore, returned the plaint to the petitioner for presentation to the court of competent jurisdiction, namely, the Tribunal. The petitioner approached the High Court by way of Regular Second Appeal. The High Court, however, dismissed the appeal in limine.

In the instant SLP, the question which arose for consideration was as to whether Civil Court had the jurisdiction to entertain the suit filed by the Petitioner-Wakf Board.

Dismissing the SLP, the Court

HELD: 1.1. As per Sub-section (1) of Section 7 of the Haryana Wakf Act, 1995, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the

jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. As per sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction. On a conjoint reading of Section 7 and Section 85 of the Haryana Wakf Act, 1995, legal position is summed up as under: i) In respect of the questions/ disputes mentioned in sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property; (ii) Decision of the tribunal thereon is made final; (iii) The jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under sub section (1) of section 6, the Civil Court would continue and the tribunal would not have the jurisdiction to determine those matters. [Paras 8, 9] [604-E-H; 605-A-E]

1.2. The present suit was instituted in the year 2000 i.e. after the Wakf Act came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. [Para 10] [605-E-G]

Bhanwar Lal & Anr. vs. Rajasthan Board of Muslim Wakf & Ors. **2013 (11) SCALE 210 and** *A*

Paripalana Committee vs. P.V.Ibrahim Haji & Ors. **2013 (9) SCALE 622 – relied on.**

Sardar Khan & Ors. vs. Syed Nazmul Hasan (Seth) & Ors, **2007 (10) SCC 727: 2007 (3) SCR 436** and *Ramesh Gobindram (D) through LRs. vs. Sugra Humayun Mirza Wakf* **2010 (8) SCC 726: 2010 (10) SCR 945 – referred to.**

Case Law Reference:

2013 (11) SCALE 210	**relied on**	**Para 10**
2007 (3) SCR 436	**referred to**	**Para 10**
2010 (10) SCR 945	**referred to**	**Para 10**
2013 (9) SCALE 622	**relied on**	**Para 10**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 10947 of 2012.

From the Judgment and Order dated 12.12.2011 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 3939 of 2009.

Imtiaz Ahmed, Naghma Imtiaz (for Equity Lex Associates) for the Petitioner.

Hiren Dasan, Avinash Singh, Sarla Chandra for the Respondents.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The petitioner is the original plaintiff. It is a Wakf Board which had filed Civil Suit in the Court of Civil Judge, Junior Division, Karnal, Haryana way back in the year 2000 seeking possession of property admeasuring 21 square yards which was allegedly given on rent by the Wakf Board to one Major Ram Prakash. This piece of land is a part of Khasra No.4129, Kasba Karnal, Haryana. The petitioner claims that the

entire land is a Muslim graveyard land and hence the same is Wakf property. The entire Khasra measures 800 square yards and is given on lease to different persons by different allotment letters. As stated above, 21 square yards out of this8 land was given to Major Ram Prakash on monthly rent vide allotment letters dated 1.9.1969. The petitioner also claims that the suit property was formally notified under Section 5 (2) vide Notification dated 19.12.1970 of the Wakf Act, 1954 as Wakf property. After the death of Major Ram Prakash, his son Gurcharan Singh and his widow Smt. Savitri Kadyan executed a long term lease in favour of the present defendant/ respondent Shri Mahesh Kumar in the year 1991 and put him in possession. As per the case of the petitioner, the petitioner came to know about this alleged illegal creation of lease deed in favour of the respondent in the year 1996 and treated it as illegal encroachment by the respondent. The petitioner requested him to vacate the premises. When he did not do so, the aforesaid suit was filed in the Court of Civil Judge, Junior Division, Karnal, Haryana for possession of the suit property.

2. The respondent appeared and filed the written statement raising several preliminary objections regarding maintainability of the suit. Apart from stating that the suit was bad for non-joinder of necessary party, lack of locus standi and barred of principle of estoppel, it was also barred by limitation. On merits, the respondent stated that he was in possession of the suit property for the last 10 years as a tenant of Smt. Nirmala Devi and it is Nirmala Devi who was the lessee of the property vide a registered lease deed and the suit property was not wakf property.

3. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to decree of possession, as prayed for? OPD

2. Whether the suit of the plaintiff is not maintainable in its present form: OPD

3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the suit is time barred? OPD

6. Relief.

4. Both the parties led their evidence in support of their evidence. After hearing the counsel for either side, the trial court decreed the suit vide judgment and decree dated 30th May 2007 holding that the lease agreement dated 2.5.1991 executed by Savitri Devi, widow of Major Ram Prakash in favour of Nirmala Devi for a period of 99 years was bad in law inasmuch as Savitri Devi was predecessor in interest of Major Ram Prakash as his widow to whom the property was rented out by the petitioner. Therefore, she was not capable of entering into such lease deed n favour of Nirmala Devi and in turn Nirmala Devi had no right to put the respondent in possession by executing any lease in his favour. The trial court also recorded categorical finding that Wakf Board had by clear, cogent and consistent evidence proved its title over the land in question and it is the Wakf Board who was the actual owner of the suit property.

5. The respondent challenged the aforesaid judgment and decree by filing First Appeal under Section 96 of the Code of Civil Procedure, before the Additional District Judge, Karnal which was registered as Civil Appeal No.49/2007. The learned Additional District Judge decided the said appeal vide his judgment dated 15.6.2009. Deciding the question of maintainability and locus standi, in respect of which issue nos. 2 and 4 were framed, the first appellate court held that since

the claim in the suit by the petitioner which is a Wakf Board, was on the basis that suit property was Wakf property and since the respondent had denied it to be the Wakf property, the question had arisen as to whether suit property is Wakf Property or not. Such a question, in the opinion of the learned ADJ, could be decided only by the Tribunal constituted under the Wakf Act. The appeal court, therefore, returned of the plaint to the petitioner under Order VII of Rule 10, CPC for presentation to the court of competent jurisdiction, namely, the Tribunal. The result was that the decree passed by the trial court was set aside and the plaint returned.

6. The petitioner approached the High Court by way of Regular Second Appeal under Section 100 of the CPC challenging the aforesaid findings of the First Appellate Court returning the plaint for want of jurisdiction of the Civil Court. The High Court, has, however, dismissed the appeal in limine observing that the Appellate Court has taken right view in the matter. Against that order, the present Special Leave Petition is filed.

7. From the aforesaid, it is clear that the only question which calls for consideration is as to whether Civil Court had the jurisdiction to entertain the suit. The issue depends upon the interpretation of Section 7 read with Section 85 of the Haryana Wakf Act, 1995 (hereinafter referred to as the "Wakf Act"). These provisions read as under:

7. **Power of Tribunal to determine disputes regarding wakfs –**

(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or a

therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that-

(a) In the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs.

(b) In the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (5), no proceeding under this Section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be mad a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under

sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court under sub-section 91) of section 6, before the commencement of this Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be".

Section 85 of the Act bars the jurisdiction of the Civil Court to decide such issues. Section 85 reads as under:

"85. Bar of Jurisdiction of Civil Courts. – No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal".

8. As per Sub-section (1) and Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction.

9. On a conjoint reading of Section 7 and Section 85, legal position is summed up as under:

(i) In respect of the questions/ disputes mentioned in sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

(ii) Decision of the tribunal thereon is made final.

(iii) The jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal

(iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under sub section (1) of section 6, the Civil Court would continue and the tribunal would not have the jurisdiction to determine those matters."

10. Present suit was instituted in the year 2000 i.e. after the Wakf Act, 1985 came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. We need not delve into this issue any longer, inasmuch as in a recent judgment by this very Bench of this Court in the case of *Bhanwar Lal & Anr. vs. Rajasthan Board of Muslim Wakf & Ors.* 2013 (11) SCALE 210 decided on 9th September 2013, this Court took the same view, after taking note of earlier judgments on the subject, namely, *Sardar Khan & Ors. Vs. Syed Nazmul Hasan (Seth) & Ors.* 2007 (10) SCC

727, *Ramesh Gobindram (D) through LRs. Vs. Sugra Humayun Mirza Wakf* 2010 (8) SCC 726. This view has been re-affirmed in *Akkode Jumayath Palli Paripalana Committee vs. P.V.Ibrahim Haji & Ors.* 2013 (9) SCALE 622.

11. We, thus, do not find any fault with the view taken by the High Court in the impugned judgment. The Special Leave Petition is, accordingly, rejected.

B.B.B. SLP Dismissed.

ASHOK KUMAR AGGARWAL
v.
UNION OF INDIA & ORS.
(Criminal Appeal No. 1842 of 2013)

NOVEMBER 22, 2013

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

Code of Criminal Procedure, 1973 – s.340 r/w s.195(1)(b) – Perjury in judicial proceedings – Allegations of – Application filed by appellant to proceed against respondent no.5 u/s.340 r/w s.195(1)(b) – Dismissed by the High Court – Justification – Held: Justified – In order to initiate prosecution for perjury, the court must prima facie reach a conclusion after holding preliminary inquiry that there was a deliberate and conscious effort to misguide the court and interfere in the administration of justice – More so, it has to be seen whether such a prosecution is necessary in the interest of justice – Prosecution for perjury is required only where perjury appears to be deliberate and conscious and the conviction is reasonable, probable or likely – On facts, a mere impression or perception of the appellant would not make the deposition on affidavit by respondent no.5 to be false as being a deliberate and conscious act – There was no deliberate perjury to misguide the court while making such statement or filing the affidavit.

The appellant filed Writ Petition before the High Court seeking transfer of investigation from respondent nos. 3, 4 and 5 to any other senior officer of Central Bureau of Investigation ('CBI'), as the said respondents had been abusing their investigating powers and adopted unfair and improper means. On submission of the counsel for respondent No. 5 that the investigation report had been finalised and no further investigation was required to be done, the Court directed the competent authority of the

CBI to file an affidavit in this regard. An affidavit was filed by respondent No. 5 on 5-4-2002, wherein it was stated that the investigation was complete and that no further investigation was required to be done and a final report was already submitted by him on 11-1-2002 to the Superintendent of Police.

However, coming to know that certain witnesses had been examined by the CBI subsequent thereto, the appellant preferred an application to proceed against respondent no.5 under Section 340 read with Section 195(1)(b) of CrPC. The application was dismissed by the High Court, and therefore the instant appeal.

Dismissing the appeal, the Court

HELD: 1. In order to initiate prosecution for perjury, the court must *prima facie* reach a conclusion after holding preliminary inquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice. [Para 10] [615-A-B]

Chandra Shashi v. Anil Kumar Verma **(1995) 1 SCC 421: 1994 (5) Suppl. SCR 465;** *Karunakaran v. T.V. Eachara Warrier & Anr.* **AIR 1979 SC 290;** *K.T.M.S. Mohd. & Anr. v. Union of India* **AIR 1992 SC 1831: 1992 (2) SCR 879;** *Chajoo Ram v. Radhey Shyam & Anr.* **AIR 1971 SC 1367: 1971 (0) Suppl. SCR 172;** *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.* **AIR 2005 SC 2119: 2005 (2) SCR 708 and** *R.S. Sujatha v. State of Karnataka & Ors.* **(2011) 5 SCC 689: 2010 (14) SCR 227 – relied on.**

2.1. In the instant case, the affidavit filed by respondent no. 5 revealed that the respondent no. 5 had submitted the final report (Part-I) in the aforesaid case on 11.1.2002 to the SP. It is also not in di n

from the affidavit dated 5.4.2002, that the report submitted by the IO goes to the superior officers for scrutiny and comments. The High Court had passed a consent order dated 19.4.2002 wherein certain directions had been issued to the Director, CBI to examine the case. The Director, CBI after examining the record of the case, vide order dated 23.4.2002, asked the IO to tighten the loose ends of the case. The said order has not been challenged till date. The High Court while dealing with the case has also, after examining the original records as well as the file and particularly the confidential notings therein, came to the conclusion that in view of the directions issued by the superior authority, some other witnesses were examined "to tighten the loose ends of the case" and there was no attempt on the part of the investigating agency to mislead the court. After looking into the voluminous record of the case, what has been done after filing the affidavit or making the statement was minimal. The prosecution for perjury is required only where perjury appears to be deliberate and conscious and the conviction is reasonable, probable or likely. In the circumstances, a mere impression or perception of the appellant would not make the deposition on affidavit by the respondent no. 5 to be false as being a deliberate and conscious act. [Paras 11, 12] [615-C-E, F-G; 616-A-C]

2.2. The High Court rightly reached the conclusion that there was no deliberate perjury to misguide the court while making such statement or filing the affidavit. In such a fact-situation, the question of allowing application under Section 340 Cr.P.C. read with Section 195 (1)(b) Cr.P.C. was not warranted. [Para 14] [616-E-F]

Case Law Reference:

1994 (5) Suppl. SCR 465	**relied on**	**Para 6**
AIR 1979 SC 290	**relied on**	**Para 7**
1992 (2) SCR 879	**relied on**	**Para 7**
1971 (0) Suppl. SCR 172	**relied on**	**Para 8**
2005 (2) SCR 708	**relied on**	**Para 9**
2010 (14) SCR 227	**relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1842 of 2013.

From the Judgment and Order dated 16.04.2010 of the High Court of Delhi at New Delhi in Criminal Misc. Application No. 3314 of 2006 in Writ Petition (Crl.) No. 938 of 2001.

K.V. Vishwanathan, Indira Jaising, ASG, Ram Jethmalani, Ranjit Kumar, Lata Krishnamurti, Aman Vachher, Ashutosh Dubey, Harsh Sharma, Abhishek Chauhan, Pranav Diesh, Karan Kalia, P.R. Mala, P.N. Puri, Gautam Narayan, M.P. Jha, Dr. Ashok Dhamija, V. Mohana, Shailendra Saini, Sonia Dhamija, Abhishek Kaushik, B.V.B. Das, R. Balasubramanium, Rajiv Nanda, Madhurima Tatia, Anindita Pujari, Sadhana Sandhu, Sonakshi M. (for Anil Katiyar), B. Krishna Prasad, Balbir Singh Gupta for the appearing parties.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and final order dated 16.4.2010 passed by the High Court of Delhi at New Delhi in Criminal Miscellaneous Application No. 3314 of 2006 in Writ Petition (Crl.) No. 938 of 2001, by which the application filed by the appellant to proceed against respondent no. 5 under Section 340 read with Section 195(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been dismissed.

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

A. The appellant had filed Writ Petition (Criminal) No. 938 of 2001 before the High Court of Delhi seeking transfer of investigation from respondent nos. 3, 4 and 5 to any other senior officer of Central Bureau of Investigation (hereinafter to referred as 'CBI'), as the said respondents had been abusing their investigating powers and adopted unfair and improper means in RC No. S19/E0006/99 dated 7.12.1999.

B. The court made order dated 4.4.2002, on the submission of counsel for the respondent No. 5 that the investigation report had been finalised in the said RC case and no further investigation was required to be done, directed the competent authority of the CBI to file an affidavit in this regard by 5th April, 2002.

C. An affidavit was filed by respondent No. 5 on 5.4.2002, being investigating officer, wherein it had been stated that the investigation was complete and that no further investigation was required to be done and a final report Part-1 (FR-1) was submitted by him on 11.1.2002 to the Superintendent of Police (in short 'SP').

D. However, coming to know that certain witnesses had been examined by the CBI subsequent thereto, the appellant preferred an application under Section 340 r/w 195(1)(b) Cr.P.C., which has been dismissed by the High Court vide impugned judgment and order.

Hence, this appeal.

3. Shri Ram Jethmalani, learned senior counsel appearing on behalf of the appellant, has submitted that not only a statement was made, but even an affidavit had been filed by respondent no. 5 before the High Court that the investigation was complete and an investigative report had been finalised by him and no further investigation was required. Therefore, if further witnesses had been examined and certain evidence had been collected, it is evident that the statement so given and

affidavit filed by respondent no. 5 was just to mislead the court and therefore, the court ought to have proceeded against him allowing the application filed by the appellant.

4. Per contra, Shri Ranjit Kumar, learned senior counsel appearing on behalf of the respondent No.5 and Ms. Indira Jaising, learned ASG for respondent no. 1 and 2, have vehemently opposed this appeal contending that the submission made before the court and affidavit filed by respondent no.5 that investigation stood concluded, was factually correct. However, as per the procedure prescribed under the CBI manual, the investigation report submitted by the I.O. goes to the superior officers for their comments, approval and directions, and ultimately, it goes to the Director of the CBI. In case the superior authorities have some query in respect of any matter in that report of the investigating officer, they are competent to issue directions to examine a particular witness on a particular point. The investigating officer is bound to do so in order to tie the loose ends of investigation. Such examination of witness or further investigation does not amount to the statement made by the I.O. in the affidavit before the court being false or having been made deliberately and mischievously to misguide the court. As per the requirement of the procedure prescribed under the CBI manual, the I.O., even after filing such an affidavit, was bound to carry out such directions issued by the superior authorities.

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

6. In *Chandra Shashi v. Anil Kumar Verma,* (1995) 1 SCC 421, this Court held that no body should be permitted to indulge in immoral acts like perjury, prevarication and motivated falsehoods in the judicial proceedings and if someone does so, it must be dealt with appropriately. In case recourse to a false plea is taken with an oblique motive, it would definitely hinder,

hamper or impede the flow of justice and prevent the courts from performing their legal duties.

7. In this context, reference may be made of Section 340 under Chapter XXVI of the Cr.P.C., under the heading of "Provisions as to Offences Affecting the Administration of Justice". This Chapter deals with offences committed in or in relation to a proceeding in the court, or in respect of a document produced or given in evidence in a proceeding in the court and enables the court to make a complaint in respect of such offences if that court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence. Clause (b) of Section 195 (1) Cr.P.C. authorises such court to examine *prima facie* as it thinks necessary and then make a complaint thereof in writing after having recorded a finding to that effect as contemplated under Section 340 (1) Cr.P.C. In such a case, the question remains as to whether a *prima facie* case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offences and whether it is also expedient in the interest of justice to take any action. Thus, before lodging a complaint, the condition precedent for the court to be satisfied are that material so produced before the court makes out a *prima facie* case for a complaint and that it is expedient in the interest of justice to have prosecution under Section 193 IPC. (Vide: *Karunakaran v. T.V. Eachara Warrier & Anr.,* AIR 1979 SC 290; and *K.T.M.S. Mohd. & Anr. v. Union of India,* AIR 1992 SC 1831).

8. In the case of *Chajoo Ram v. Radhey Shyam & Anr.,* AIR 1971 SC 1367, this Court held:

> *"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be* ***deliberate and conscious*** *and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start*

> *prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge."*
>
> (Emphasis added)

9. In *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.,* AIR 2005 SC 2119, this Court observed:

> *"In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice….."*
>
> (See also: *R.S. Sujatha v. State of Karnataka & Ors.,* (2011) 5 SCC 689)

10. In view of the above, law [illegible] e

summarised that in order to initiate prosecution for perjury, the court must *prima facie* reach a conclusion after holding preliminary inquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice.

The case is required to be decided in light of the aforesaid settled legal proposition.

11. The affidavit filed by respondent no. 5 revealed that the respondent no. 5 had submitted the final report (Part-I) in the aforesaid case on 11.1.2002 to the SP. It is also not in dispute as can be seen from the affidavit dated 5.4.2002, that the report submitted by the IO goes to the superior officers for scrutiny and comments. The High Court had passed a consent order dated 19.4.2002 wherein certain directions had been issued to the Director, CBI to examine the case. The Director, CBI after examining the record of the case, vide order dated 23.4.2002, asked the IO to tighten the loose ends of the case. The said order has not been challenged till date. It is also evident that chargesheet was filed on 5.12.2002 and, subsequently, cognizance was taken by the competent court on 10.1.2003. The case was filed under Section 340 read with Section 195(1)(b) Cr.P.C. by the appellant on 3.5.2006, i.e. after three and a half years.

12. The High Court while dealing with the case has also, after examining the original records as well as the file and particularly the confidential notings therein, came to the conclusion that in view of the directions issued by the superior authority, some other witnesses were examined "to tighten the loose ends of the case" and there was no attempt on the part of the investigating agency to mislead the court. The order dated 23.4.2002 passed by the Director, CBI has not been challenged by the appellant and the instant complaint had been filed after 3-1/2 years in 2006. The statements were recorded

on such directions, however, only to the extent of tightening the loose ends. More so, the provisions of Section 195(1)(b) etc. are also attracted in such a fact-situation. After looking into the voluminous record of the case, what has been done after filing the affidavit or making the statement was *minimal.* The prosecution for perjury is required only where perjury appears to be *deliberate* and conscious and the *conviction is reasonable,* probable or likely. In the circumstances, a *mere impression or perception of the appellant* would not make the deposition on affidavit by the respondent no. 5 to be false as being a deliberate and conscious act.

13. The court further observed that the complaint had been filed after 4 years on the basis of mere impression of the appellant and under *no circumstances,* it could be held that there had been some deliberate and conscious attempt to mislead the court which may warrant entertaining the application filed by the appellant.

14. We have given serious consideration to the material on record. However, we could not convince ourselves to take a view contrary to that of the High Court. The High Court has rightly reached the conclusion that there was no deliberate **perjury** to misguide the court while making such statement or filing the affidavit. In such a fact-situation, the question of allowing application under Section 340 Cr.P.C. read with Section 195 (1)(b) Cr.P.C. was not warranted.

15. Thus, we do not find any cogent reason to interfere with the impugned judgment and order. The appeal lacks merit and, is accordingly dismissed.

B.B.B. Appeal dismissed.

STATE BANK OF INDIA
v.
GRACURE PHARMACEUTICALS LTD.
(Civil Appeal Nos. 10531-10532 of 2013)

NOVEMBER 22, 2013

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

Code of Civil Procedure, 1908 – Or.II, r.2 – Applicability of – In respect of two suits filed by the respondent – Held: The object of Or.II, r.2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process – In the instant case, the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed – No fresh cause of action arose in between the first suit and the second suit – When the first suit for recovery of dues was filed for the alleged relief, damages sought for in the subsequent suit could have also been sought for – Respondent not entitled to split the cause of action into parts by filing separate suits – It omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it could not have filed a separate suit.

Two suits were filed by the respondent, one in the Original side of the High Court and another before the District Court. Original Suit No.1145 of 2003 was filed by the respondent on 15.05.2003 for recovery of an amount of Rs.44,30,994 against the appellant bank and its officers towards the amount of Letter of Credit issued by Credit Du Nord, Paris (CDN) and towards interest for the delay in receipt of payment from BNP – Paribas S.A., Ivry-Sur-Scine (BNP) with cost *pendente lite* and future interest @ 18% per annum. Suit No.288/03/04 of 2003 was also filed by the respondent on 21.05.2003 claiming damages of Rs.3,09,000/- with cost and *pendente lite* and future

interest @ 18% per annum against the bank and its officers for withdrawing credit facility on 23.03.2002.

The bank and its officers filed application under Order 7 Rule 11 CPC in Suit No.288/03/04 of 2003 before the District Court for rejection of the plaint in the suit for damages on the ground that the same was barred by the provisions of Order 2 Rule 2 CPC. The District Court held that the cause of action in both the suits was same and the relief sought for in Suit No.288/03/04 of 2003 could have been claimed by the plaintiff in the Suit No.1145 of 2003 filed before the High Court. The application under Order 7 Rule 11 was, therefore, allowed, holding that the latter suit was barred under Order 2 Rule 2, CPC and plaint was accordingly rejected. On appeal by the respondent, the High Court set aside the order of the District Court, and therefore the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. Order 2 Rule 2, CPC requires the unity of all claims based on the same cause of action in one suit, it does not contemplate unity of distinct and separate cause of action. If a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2, CPC is based on the cardinal principle that defendant should not be vexed twice for the same cause. [Paras 11, 12] [625-A-C]

1.2. In the instant case, it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action e

first suit and the second suit. The closure of account was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not entitled to split the cause of action into parts by filing separate suits. The respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule 2 of Order 2 Rule 2, CPC. The object of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits. The High Court committed an error in reversing the order passed by the District Court, allowing the application under Order 7 Rule 11, CPC. [Paras 15, 16] [627-D-H; 628-A-C]

Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd. and others **(2007) 7 SCC 148: 2007 (8) SCR 437;** *Sidramappa v. Rajashetty and Others* **(1970) 1 SCC 186: 1970 (3) SCR 319** *Gurbux Singh v. Bhooralal AIR* **1964 SC 1810 – relied on.**

Naba Kumar Hazra v. Radhashyam Mahish **AIR 1931 PC 229 – referred to.**

Deva Ram and another v. Ishwar Chand and another **(1995) 6 SCC 733: 1995 (4) Suppl. SCR 369 – cited.**

Case Law Reference:

1995 (4) Suppl. SCR 369	**cited**	**Para 6**
2007 (8) SCR 437	**relied on**	**Para 6**
AIR 1931 PC 229	**referred to**	**Para 9**
1970 (3) SCR 319	**relied on**	**Para 9**
AIR 1964 SC 1810	**relied on**	**Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10531-32 of 2013.

From the Judgment and Order dated 08.12.2008 in RFA No. 497 of 2006 and dt. 30.01.2009 in RA No. 36 of 2009 of the HIgh Court of Delhi at New Delhi.

C.U. Singh, Sanjay Kapur, Rajiv Kapur, Vatsala Rai and Shubhra Kapur for the Appellant.

Dr. Kailash Chand for the Respondent.

The Judgment of the Court was delivered by

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

2. We are, in this case, concerned with the applicability of Order 2 Rule 2 of the Code of Civil Procedure (for short "the CPC") in respect of two suits filed by the respondent, one in the Original side of the Delhi High Court and another before the District Court, Delhi. Original Suit No.1145 of 2003 was filed by the respondent herein on 15.05.2003 for recovery of an amount of Rs.44,30,994 against the appellant bank and its officers towards the amount of Letter of Credit issued by Credit Du Nord, Paris (CDN) and towards interest for the delay in receipt of payment from BNP – Paribas S.A., Ivry-Sur-Scine (BNP) with cost *pendente lite* and future interest @ 18% per annum.

3. Suit No.288/03/04 of 2003 was also filed by the respondent on 21.05.2003 claiming damages of Rs. 3,09,000/- with cost and *pendente lite*

18% per annum against bank and its officers for withdrawing credit facility on 23.03.2002. Notice was issued to the bank and its officers by the District Court, Delhi.

4. The bank and its officers then filed an application under Order 7 Rule 11 CPC in Suit No.288/03/04 of 2003 before the District Court, Delhi for rejection of the plaint in the suit for damages on the ground that the same is barred by the provisions of Order 2 Rule 2 CPC. The District Court elaborately heard the matter and after perusing the plaints, averments in both the suits as well as the reliefs sought for, came to the conclusion that the cause of action in both the suits was same and the relief sought for in Suit No.288/03/04 of 2003 could have been claimed by the plaintiff in the Suit No.1145 of 2003 filed before the Delhi High Court. The application under Order 7 Rule 11 was, therefore, allowed, holding that the latter suit was barred under Order 2 Rule 2, CPC and plaint was accordingly rejected.

5. The respondent, aggrieved by the said order, filed RFA No.490 of 2006 before the Delhi High Court. The High Court took the view that the earlier suit No.1145 of 2003 was founded on cause of action pertaining to the contract between the parties and the second Suit No.288/03/04 of 2003 was on entirely different footing, being the malicious action of the officers of the bank to withdraw the credit facility because of their animus emanating from the action of the respondent to lodge a complaint before the Ombudsman Banking. Holding so, the appeal was allowed and the order dated 10.05.2006 of the District Court was set aside. Challenging the above-mentioned order these appeals have been filed by the State Bank of India.

6. Shri C.U. Singh, learned senior counsel appearing for the bank submitted that the High Court has failed to consider the scope of Order 2 Rule 2, CPC and committed a mistake in holding that the respondent could not have claimed the relief of

damages in Suit No.1145 of 2003, the earlier suit filed before the High Court. Learned senior counsel submitted that the respondent, on the date of filing of the earlier suit, was aware that the bank had declined to grant any further credit facility, in the event of which, the respondent could have sought the relief for damages against the bank and its officers in the earlier suit. Learned senior counsel submitted that, having omitted to claim such a relief in the earlier suit, the Court ought to have held that the respondent had relinquished its claim and is estopped from preferring a second suit in view of the provisions of Order 2 Rule 2, CPC. Learned senior counsel also submitted, what is required is, that every suit shall hold whole of the claim arising out of one and the same cause of action and it was obligatory on the part of the respondent to raise the whole claim at the time of institution of the first suit. Learned senior counsel placed reliance on the Judgments of this Court in *Deva Ram and another v. Ishwar Chand and another* (1995) 6 SCC 733 and *Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd. and others* (2007) 7 SCC 148.

7. The respondent filed a detailed counter affidavit before this Court explaining its stand. It was pointed out that the cause of action to file the first suit arose much prior to the subsequent suit since on the basis of wrongful debits made by the bank to the account of the respondent on 01.05.2001 and 14.06.2001 for the amounts of two Letters of Credit, one of which the bank could not recover and second was recovered later from the foreign bank. Further, it was also pointed out that the facts on the basis of which two suits have been filed and respective reliefs sought for, are absolutely distinct and separate and cause of action subsequently arose because of the wrongful acts of the bank depriving the respondent of various banking facilities. Further, it was also pointed out that the damages claimed in the subsequent suit have no link or nexus to the cause of action with the previous one. Consequently, it was pointed out that the High Court has righ[illegible]al

which calls for no interference by this Court under Article 136 of the Constitution of India.

8. We may, before examining the rival contentions, extract the relevant provisions of Order 2 Rule 2, CPC for easy reference which reads as under:

> "2. ***Suit to include the whole claim.***— (1) Every suit shall include the whole of the claim which the plaintiff be entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.
>
> (2) ***Relinquishment of part of claim.***— Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> (3) ***Omission to sue for one of several reliefs.***— A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any reliefs so omitted."

9. The scope of the above-mentioned provisions came up for consideration before this Court in several cases. The earliest one dealt by the Privy Council was reported in *Naba Kumar Hazra v. Radhashyam Mahish* AIR 1931 PC 229 wherein the Privy Council held that the plaintiff cannot be permitted to draw the defendant to court twice for the same cause by splitting up the claim and suing, in the first instance, in respect of a part of claim only. In *Sidramappa v. Rajashetty and Others* (1970) 1 SCC 186 this Court held that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter, namely, the subsequent suit, will not

be barred by the rule contained in Order 2 Rule 2, CPC. In *Gurbux Singh v. Bhooralal* AIR 1964 SC 1810 the scope of the above-mentioned provision was further explained as under:

> "In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (*i*) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."

10. In *Sandeep Polymers (P) Ltd.*'s case (supra), the above-mentioned principles were reiterated and this Court held as under:

> "Under Order 2 Rule 1 of the Code which contains provisions of mandatory nature, the requirement is that the plaintiffs are duty-bound to claim the entire relief. The suit has to be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards.

11. The above-mentioned decisions

the law that if a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2, CPC is based on the cardinal principle that defendant should not be vexed twice for the same cause.

12. Order 2 Rule 2, CPC, therefore, requires the unity of all claims based on the same cause of action in one suit, it does not contemplate unity of distinct and separate cause of action. On the above-mentioned legal principle, let us examine whether the High Court has correctly applied the legal principle in the instant case.

13. We have gone through the plaints and the averments contained in both the suits *in extenso* and also the reliefs claimed in both the suits. Respondents had availed of various credit facilities from the State Bank of India. It had an export order from M/s Medipharma Company, France who had opened two Letters of Credit. The first Letter of Credit was opened with CDN and second Letter of Credit was opened with BNP. The date of issue of first Letter of Credit by CDN was 16.01.2001 and it was to expire on 10.04.2001. Similarly, second Letter of Credit opened with BNP was issued on 16.01.2001 and was to expire on 30.04.2001. On 20.03.2001, proceeds of the export deal were paid by the bank honouring the bills of exchange against the Letter of Credit opened with CDN and credited the same to the account of the respondent on the understanding that in case the relevant documents were accepted by the opening owner/issuing bank for any reason whatsoever, the respondent was liable to repay to the bank, without demur or demand, the amount of the bills/documents along with overdue interest and other charges. Other clauses were also incorporated so as to safeguard the interest of the bank. On 28.03.2001, the bank honoured the bills of exchange against the LC opened with BNP subject to the various

conditions. The amount was credited to the account of the respondent subject to realization of LC. Since the amount of the LC was not received with the issuing bank on 01.05.2001, the amount was debited to the account of the respondent on account of non-receipt of LC from CDN. Similarly, the amount of LC having not received from the issuing bank by 14.06.2001, the amount was debited to the account of the respondent for non-receipt of LC from BNP.

14. The bank sent various letters to the respondent to regularize the accounts. Since the accounts were not regularized, the bank decided not to grant further facility. The respondent then on receipt of the payment from the foreign buyer and having failed to take any steps to realize the payment from the buyer or issuing bank, filed a complaint on 30.09.2001 with the Banking Ombudsman against the bank on account of reversing the entry on non-receipt of payment of LCs. The complaint filed by the respondent was, however, later withdrawn. The bank's stand is that closure of account was done on 20.03.2002 due to the fault of the respondent on non-regularization of their accounts i.e. after non-receipt of payment of LC, the amount became irregular and remained so continuously. Let us now examine the averments contained in paragraph 37 of the subsequent suit No.288/03/04 of 2003 in the above perspective. Paragraph 37 is extracted hereinbelow for easy reference:

> "37. That the cause of action to file the present suit accrued in favour of the plaintiff and against the Defendants on all those occasions when the Defendants wrote various letters to the Plaintiff threatening initiate or actually initiating action against the Plaintiff in relation to various credit facilities which were being enjoyed by the Plaintiff. The cause of action to file the present suit accrued further in favour of the Plaintiff and against the Defendants on all those occasions when the Defendants actually initiated action against the Plaintiff in relation to v s,

which were being enjoyed by the plaintiff and thereby did not provide the said facilities to the Plaintiff. The cause of action further accrued when the Defendants wrote letter dated 20.03.2002 to the Plaintiff conveying their decision to unilaterally and illegally rescind and contract between the parties and thereby stopping all credit facilities to the Plaintiff. The cause of action accrued further when on 26.3.2002, the general Manager (Commercial) of the Defendant No.1 did not intervene to stop the arbitrary and illegal action of the concerned officers of the Industrial Finance Branch. The cause of action accrued further when prior to filing of the suit, the Plaintiff through its counsel, issued and served upon the Defendants a legal notice dated 24.12.2002. The cause of action is still continuing and subsisting."

15. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not entitled to split the cause of action into parts by filing separate suits. We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule 2 of Order 2 Rule 2, CPC. The object

of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits.

16. We are, therefore, of the view that the High Court has committed an error in reversing the order dated 10.05.2005, passed by the District Court, allowing the application under Order 7 Rule 11, CPC. The appeals are accordingly allowed and the judgment of the High Court is set aside. However, there will be no order as to costs.

B.B.B. Appeals allowed.

UNION OF INDIA & ANR.
v.
ASHOK KUMAR AGGARWAL
(Civil Appeal No. 9454 of 2013)

NOVEMBER 22, 2013

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

SERVICE LAW:

Suspension – Renewal of, after suspension order quashed by Tribunal – Legality of — Criminal cases pending against delinquent officer — Officer placed under suspension – Departmental proceedings also initiated – Suspension reviewed from time to time – Tribunal quashing suspension orders with certain directions — Order not challenged – Further suspension orders passed irrespective the order of Tribunal – Quashed by Tribunal — Held: It was not permissible for appellants to pass any fresh order of suspension till the commencement of trial before criminal court – Tribunal and High Court were right that appellants had not followed the directions of Tribunal and the mandate of Department's O.M. dated 7.1.2004 — The terms of the said O.M. were required to be observed — Subsequent order of suspension was a nullity – More so, the issue could not have been re-agitated by virtue of the application of doctrine of res judicata – It is a clear case of legal malice – Constitution of India, 1950 – Arts. 14 and 16 – Administrative law – Legal malice — O. M. dated 7.1.2004—Res judicata.

Suspension order – Held: Should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.— CCS (CCA) Rules, 1965 are a self contained code and the order of suspension can

be examined in the light of the statutory provisions to determine as to whether the suspension order was justified — Central Civil Services (Classification, Control and Appeal) Rules, 1965 – r. 10(6).

Suspension order – Judicial review of – Held: Long period of suspension does not make the order of suspension invalid — Whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by disciplinary authority concerned and ordinarily court should not interfere with orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

Suspension – Connotation and effect of – Explained.

Representation – Held: May be considered by competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the authority.

CONSTITUTION OF INDIA, 1950:

Art. 136 – Exercise of jurisdiction under – Explained – Held: In the instant case, appellants having acted unreasonably and illegally, are not entitled to relief before the Court.

The respondent, an Officer belonging to the Indian Revenue Service and during the relevant time on deputation to Enforcement Directorate as Deputy Director (Enforcement), was put under suspension since 28.12.1999 in view of the pendency of two criminal cases against him duly investigated by the Central Bureau of Investigation. The suspension order was reviewed from

time to time. The respondent filed an OA before the Tribunal seeking to quash the suspension order. The Tribunal, by order dated 16.12.2011, directed the appellants to convene a meeting of the Special Review Committee (SRC) to consider revocation or continuation of suspension of the respondent after taking into consideration various factors mentioned in its order. Thereafter, as recommended by the SRC, the competent authority, by orders dated 12.1.2102 and 3.2.2012, decided to continue the suspension of the respondent. The respondent challenged the said orders by filing another OA before the Tribunal, which, by order dated 1.6.2012, quashed the orders impugned holding that the earlier directions given by the Tribunal on 16.12.2011 had not been complied with. The writ petition filed by the appellants was dismissed the High Court.

It was contended for the appellants that though the respondent had been under suspension for 14 years, but in view of the gravity of the charges against him in the disciplinary proceedings as well as in the criminal cases, no interference was warranted by the Tribunal or the High Court. It was submitted that the respondent had himself filed 27 cases in court and made 62 representations. It was further submitted that the domestic enquiry stood completed and charges stood proved against the respondent, but no punishment order could be passed by the disciplinary authority in view of the fact that the charge sheet itself had been quashed by the Tribunal.

Dismissing the appeal, the Court

HELD: 1.1 Representation may be considered by the competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation

for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the authority. More so, once a representation has been decided, the question of making second representation on a similar issue is not allowed as it may also involve the issue of limitation etc. [para 6] [648-D-F]

Rabindra Nath Bose & Ors. v. Union of India & Ors., **1970 (2) SCR 697 =AIR 1970 SC 470;** *Employees' State Insurance Corpn. v. All India Employees' Union & Ors*., 2**006 (3) SCR 361 = (2006) 4 SCC 257;** *A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy & Ors*., **2006 (2) SCR 494 =AIR 2006 SC 1465;** *Karnataka Power Corporation Ltd. & Anr. v. K. Thangappan & Anr*., **2006 (3) SCR 783 = AIR 2006 SC 1581;** *Eastern Coalfields Ltd. v. Dugal Kumar,* **2008 (11) SCR 369 = AIR 2008 SC 3000;** and *Uma Shankar Awasthi v. State of U.P. & Anr.*, **2013 (3) SCR 935 = (2013) 2 SCC 435 - relied on.**

2.1 Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. During suspension, relationship of master and servant continues between the employer and the employee. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment in strict legal sense. [para 7 and 14] [648-H; 649-A-C; 653-E-F]

O.P. Gupta v. Union of India & Ors., **1988 (1) SCR 27 =AIR 1987 SC 2257;** and *Capt. M. Paul Anthony v. Bharat*

Gold Mines Ltd. & Anr., **1999 (2) SCR 257 =AIR 1999 SC 1416;** *State of Orissa v. Bimal Kumar Mohanty* **1994 (2) SCR 51 = AIR 1994 SC 2296;** *R.P. Kapur v. Union of India & Anr.* **1964 SCR 431 = AIR 1964 SC 787; and** *Balvantrai Ratilal Patel v. State of Maharashtra,* **1968 SCR 577 = AIR 1968 SC 800.**

2.2 Suspension order should be passed only where there is a strong *prima facie* **case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc. [para 10] [651-A-B]**

2.3 Long period of suspension does not make the order of suspension invalid. Whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a *prima facie* evidence on record connecting the employee with the misconduct in question. [para 12 and 14] [651-H; 653-D-E]

State of H.P. v. B.C. Thakur, (1994) SCC (L&S) 835; and *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors.* **2006 (5) Suppl. SCR 884** = (2006) 8 SCC 200; *State of M.P. v. Sardul Singh,* (1970) 1 SCC 108; *P.V. Srinivasa Sastry v. Comptroller & Auditor General of India,* **1992 (3) Suppl. SCR 503** = (1993) 1 SCC 419; *Director General, ESI & Anr. v. T. Abdul Razak*, **1996 (3) Suppl. SCR 80** =AIR 1996 SC 2292; *Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors.*, **1988 (2) Suppl. SCR 821** =AIR 1988 SC 2118; *Delhi Cloth General Mills vs. Kushan Bhan,* 1960 SCR 227 = AIR 1960 SC 806; U.P. *Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan*, (1993) Supp. (3) SCC 483; *State of Rajasthan v. B.K. Meena & Ors.*, **1996 (7) Suppl. SCR 68** =

(1996) 6 SCC 417; *Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan* **1996 (2) SCR 737** = (1996) 3 SCC 157; and *Allahabad Bank & Anr. v. Deepak Kumar Bhola,* **1997 (2) SCR 1055 = (1997) 4 SCC 1 — referred to.**

2.4 Central Civil Services (Classification, Control and Appeal) Rules, 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Rule 10 of the Rules 1965 provides for suspension and clause (6) thereof provides for review thereof by the competent authority before expiry of 90 days from the effective date of suspension. However, the extension of suspension shall not be for a period exceeding 180 days at a time. The CVC can also review the progress of investigation conducted by the CBI in a case under the Act 1988. The Vigilance Manual issued by CVC on 12-1-2005 specifically deals with suspension of a public servant. Clause 6.1 read with Clause 6.3.2 thereof provide that suspension is an executive order only to prevent the delinquent employee to perform his duties during the period of suspension. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion **and also carried a** stigma**, an order of suspension should not be made in a perfunctory or in a routine and casual manner but** with due care and caution after taking all factors into account. **Clause 6.3.3 further provides that before passing the order of suspension the competent authority may consider whether the purpose may be served if the** officer is transferred from his post**. The Department of Personnel and Training, Government of India also issued Circular dated 4.1.2004 regarding the suspension and review of the suspension order. [para 13 and 15] [652-B; 653-G-H; 654-A-F, H; 655-A]**

Union of India & Ors. v. Udai Narain, **(1998) 5 SCC 535 – referred to.**

2.5 In *Dipak Mali, this Court held that if the initial or subsequent period of extension has expired, the suspension order comes to an end because of the expiry of the period provided under rule 10(6) of the Rules 1965. Subsequent review or extension thereof is not permissible for the reason that earlier order had become invalid after expiry of the original period of 90 days or extended period of 180 days. [para 26] [659-E-F]**

Union of India & Ors. v. Dipak Mali,* **2009 (16) SCR 564 = AIR 2010 SC 336 – relied on.

2.6 The Tribunal *inter alia* had placed reliance on notings of the file. Notings in the files could not be relied upon by the Tribunal and Court. [para 16 and 18] [655-B; 656-F]

Shanti Sports Club v. Union of India 2009 (13) SCR 710 = (2009) 15 SCC 705; *Sethi Auto Service Station v. DDA,* **2008 (14) SCR 598 = AIR 2009 SC 904;** *Jasbir Singh Chhabra v. State of Punjab* **(2010) 4 SCC 192 – relied on.**

3.1 By order dated 16.12.2011 the Tribunal had directed the appellants to reconsider the whole case taking into account various issues enumerated in the order. The Tribunal neither directed the competent authority not to renew the order of suspension nor to decide the case in a particular way. Rather simple directions were issued to take into consideration the factors enumerated in its order before any order is passed. Though the Tribunal took note of the fact that the charges against the respondent were grave, it held that continuance of his suspension was not tenable and, as such, the said orders were quashed and set aside with the direction to the appellants to revoke the respondent's

suspension and to reinstate him in service with all consequential benefits. However, liberty was given to the appellants that if at any point of time the criminal trial commenced, the appellants could consider the possibility of keeping the officer under suspension at that point of time, if the facts and circumstances so warranted. [para 18 and 21] [656-G; 657-C-D, G-H; 658-A-B]

3.2 The order dated 16.12.2011 was not challenged by the appellants and, thus, it attained finality. Therefore, it was not permissible for the appellants to pass any fresh order of suspension till the commencement of the trial before the criminal court. [Para 22] [658-C]

3.3 This Court in *Manohar Lal* has held that any order passed by any authority in spite of the knowledge of order of the court, is of no consequence as it remains a nullity and any subsequent action thereof would also be a nullity. [para 25] [659-C-D]**

***Manohar Lal (D) by LRs. v. Ugrasen (D) by LRs. & Ors.*, **2010 (7) SCR 346 =AIR 2010 SC 2210;** *Mulraj v. Murti Raghunathji Mahaaraj* **1967 SCR 84 =AIR 1967 SC 1386,** *Surjit Singh & Ors. etc. etc. v. Harbans Singh & Ors. etc. etc.*, 1995 (3) Suppl. SCR 354 = AIR 1996 SC 135; *Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Anr.,* **1996 (2) Suppl. SCR 295 = AIR 1996 SC 2005;** and *Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa Navalgund & Ors.,* **2007 (13) SCR 77 = AIR 2008 SC 901 – relied on**

3.4 The order dated 31.7.2012 is a nullity being in contravention of the final order of the Tribunal which had attained finality. More so, the issue could not have been re-agitated by virtue of the application of the doctrine of *res judicata.* [para 28] [660-D-E]

State of U.P. v. Neeraj Chaubey, =

(2010) 10 SCC 320 and *State of Orissa & Anr. v. Mamata Mohanty* **2011 (2) SCR 704 = (2011) 3 SCC 436 – relied on.**

Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr., **1960 SCR 590 = AIR 1960 SC 941;** *Daryao & Ors. v. State of U.P. & Ors.*, **1962 SCR 574 = AIR 1961 SC 1457;** *Greater Cochin Development Authority v. Leelamma Valson & Ors.*, **AIR 2002 SC 952; 2004 (6) Suppl. SCR 1104 = AIR 2005 SC 626** *Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr.* **1998 (2) Suppl. SCR 514 = (1999) 5 SCC 590 - referred to**

3.5 Therefore, it was not permissible for the appellants to consider the renewal of the suspension order or to pass a fresh order without challenging the order of the Tribunal dated 1.6.2012 and such an attitude tantamounts to contempt of court and arbitrariness as it is not permissible for the executive to scrutinize the order of the court. [para 31] [661-H; 662-A]

4.1 The scope of Arts. 14 and 16 of the Constitution of India is wide and pervasive as those Articles embodied the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the State. The facts of the instant case make it crystal clear that it is a case of legal malice. [para 32 and 34] [662-B-C, H]

Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., **2010 (10) SCR 971 =AIR 2010 SC 3745;** *Dr. Amarjit Singh Ahluwalia v. State of Punjab & Ors.* **1975 (3) SCR 82 = AIR 1975 SC 984;** *Union of India v. K.M. Shankarappa,* **2000 (5) Suppl. SCR 117 = (2001) 1 SCC 582;** ***Vitaralli v. Seaton*, 359 US 536 – relied on**

4.2 The record of the case reveals that this Court has granted interim order dated 8.10.2012 staying the

operation of the judgment and order dated 1.6.2012 but that would not absolve the appellants of passing an illegal, unwarranted and uncalled for order of renewal of suspension on 31.7.2012 and that order being void, the sanctity/validity of the orders passed on 21.1.2013 and 17.7.2013 becomes doubtful. It further creates doubt whether the appellants, who had acted such unreasonably or illegally, are entitled to any relief before this Court. The Tribunal and the High Court were right that the appellants had not followed the directions of the Tribunal issued on 16.12.2011 and the mandate of Department's O.M. dated 7.1.2004. The terms of the said O.M. were required to be observed. [para 35] [663-E-G]

4.3 Jurisdiction under Art.136 of the Constitution is basically one of conscience. The jurisdiction is plenary and residuary. Therefore, even if the matter has been admitted, there is no requirement of law that Court must decide it on each and every issue. The Court can revoke the leave as such jurisdiction is required to be exercised only in suitable cases and very sparingly. The law is to be tempered with equity and the Court can pass any equitable order considering the facts of a case. In such a situation, conduct of a party is the most relevant factor and in a given case, the Court may even refuse to exercise its discretion under Art. 136 for the reason that it is not necessary to exercise such jurisdiction just because it is lawful to do so. para 36] [663-H; 664-A-C]

Pritam Singh v. The State, **1950 SCR 453 = AIR 1950 SC 169;** *Taherakhatoon (D) by Lrs. v. Salambin Mohammad* **1999 (1) SCR 901 = AIR 1999 SC 1104;** and *Karam Kapahi & Ors. v. M/s. Lal Chand Public Charitable Trust & Anr.,* **2010 (4) SCR 422 = AIR 2010 SC 2077 – relied on.**

5.1 An authority cannot issue orders/office memorandum/ executive instructions [illegible] of

the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. [para 38] [664-G-H]

Sant Ram Sharma v. State of Rajasthan & Ors., AIR 1967 SC 1910; *Union of India & Ors. v. Majji Jangammayya & Ors.*, **1977 (2) SCR 28 = AIR 1977 SC 757;** P.D. *Aggarwal & Ors. v. State of U.P. & Ors*., **1987 (3) SCR 427 =AIR 1987 SC 1676; Paluru** *Ramkrishnaiah & Ors. v. Union of India & Anr*., **1989 (2) SCR 92 = AIR 1990 SC 166;** *C. Rangaswamaiah & Ors. v. Karnataka Lokayukta & Ors*.**1998 (3) SCR 837 = AIR 1998 SC 2496;** and *JAC of Airlines Pilots Association of India & Ors. v. The Director General of Civil Aviation & Ors*., **2011 (5) SCR 1019 =AIR 2011 SC 2220;** *Naga People's Movement of Human Rights v. Union of India* **1997 (5) Suppl. SCR 469 = AIR 1998 SC 431- relied on.**

Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Anr. **1991 (2) SCR 576 = AIR 1991 SC 1507;** *State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh & Ors*., **1989 (1) SCR 176 = AIR 1989 SC 997 – referred to.**

5.2 Considering the case in totality, this Court is of the view that the appellants have acted in contravention of the final order dated 1.6.2012 passed by the Tribunal and therefore, there was no occasion for the appellants for passing the order dated 31.7.2012 or any subsequent order. The orders passed by the appellants are in contravention of not only of the order of the court but also to the office memorandum and statutory rules. [para 42] [665-F-G]

Case Law Reference:

1970 (2) SCR 697	**relied on**	**para 6**
2006 (3) SCR 361	**relied on**	**para 6**
2006 (2) SCR 494	**relied on**	**para 6**

2006 (3) SCR 783	**relied on**	**para 6**
2008 (11) SCR 369	**relied on**	**para 6**
2013 (3) SCR 935	**relied on**	**para 6**
1988 (1) SCR 27	**relied on**	**para 7**
1999 (2) SCR 257	**relied on**	**para 7**
1994 (2) SCR 51	**relied on**	**para 8**
1964 SCR 431	**relied on**	**para 8**
1968 SCR 577	**relied on**	**para 8**
2006 (5) Suppl. SCR 884	**referred to**	**para 11**
(1994) SCC (L&S) 835	**referred to**	**para 12**
(1998) 5 SCC 535	**referred to**	**para 13**
(1998) 5 SCC 535	**referred to**	**para 14**
(1970) 1 SCC 108	**referred to**	**para 14**
1992 (3) Suppl. SCR 503	**referred to**	**para 14**
1996 (3) Suppl. SCR 80	**referred to**	**para 14**
1988 (2) Suppl. SCR 821	**referred to**	**para 14**
1960 SCR 227	**referred to**	**para 14**
(1993) Supp. (3) SCC 483	**referred to**	**para 14**
1996 (7) Suppl. SCR 68	**referred to**	**para 14**
1996 (2) SCR 737	**referred to**	**para 14**
1997 (2) SCR 1055	**referred to**	**para 14**
2009 (13) SCR 710	**relied on**	**para 16**
2008 (14) SCR 598	**relied on**	**para 16**
(2010) 4 SCC 192	**relie**	

1967 SCR 84	**relied on**	**para 25**
1995 (3) Suppl. SCR 354	**relied on**	**para 25**
1996 (2) Suppl. SCR 295	**relied on**	**para 25**
2007 (13) SCR 77	**relied on**	**para 25**
2010 (7) SCR 346	**relied on**	**para 25**
2009 (16) SCR 564	**relied on**	**para 26**
2010 (11) SCR 542	**referred to**	**para 27**
2011 (2) SCR 704	**referred to**	**para 27**
1960 SCR 590	**referred to**	**para 29**
1962 SCR 574	**referred to**	**para 29**
AIR 2002 SC 952	**referred to**	**para 29**
2004 (6) Suppl. SCR 1104	**referred to**	**para 29**
1998 (2) Suppl. SCR 514	**referred to**	**para 30**
1975 (3) SCR 82	**referred to**	**para 32**
359 US 536	**referred to**	**para 32**
2000 (5) Suppl. SCR 117	**referred to**	**para 33**
2010 (10) SCR 971	**relied on**	**para 34**
1950 SCR 453	**relied on**	**para 36**
1999 (1) SCR 901	**relied on**	**para 36**
2010 (4) SCR 422	**relied on**	**para 36**
1977 (2) SCR 28	**relied on**	**para 38**
1987 (3) SCR 427	**relied on**	**para 38**
1989 (2) SCR 92	**relied on**	**para 38**
1998 (3) SCR 837	**relied on**	**para 38**

2011 (5) SCR 1019	**relied on**	**para 38**
1997 (5) Suppl. SCR 469	**relied on**	**para 39**
1991 (2) SCR 576	**referred to**	**para 40**
1989 (1) SCR 176	**referred to**	**para 41**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9454 of 2013.

From the Judgment and Order dated 17.09.2012 of the HIgh Court of Delhi at New Delhi in W.P. (C) No. 5247 of 2012.

Indira Jaising, ASG, R. Balasubramaniam, Anindita Pujari, Anil Katiyar, Sonakshi Malhan, Rajiv Nanda, Madhurima Tatia, Sadhana Sandhu for the Appellants.

Dhruv Mehta, Aman Vachher, Ashutosh Dubey, Yash, Abhishek Chauhan, Harsh Sharma, Balbir Singh Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred by the Union of India against the judgment and order dated 17.9.2012, passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.5247 of 2012 affirming the judgment and order dated 1.6.2012, passed by the Central Administrative Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') in OA No.495 of 2012 filed by the respondent by which and whereunder the Tribunal has quashed the suspension order passed by the appellants.

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

A. That the respondent who belongs to the Indian Revenue Service (Income Tax-1985 batch) has been put under suspension since 28.12.1999 in view of the pendency of two criminal cases against him duly inves[illegible]al

Bureau of Investigation (for short 'CBI') and in which he was also arrested on two occasions, namely, 23.12.1999 and 19.10.2000 in relation to the said cases. During the relevant time, the respondent was on deputation to Enforcement Directorate and was working as Deputy Director (Enforcement).

B. The CBI registered RC No.S18/E0001/99 dated 29.1.1999 against the respondent in respect of certain illegal transactions whereby the Directorate had seized a fax message (debit advice) from the premises of one Subhash Chandra Bharjatya purported to have been sent from Swiss Bank Corporation, Zurich, Switzerland, which reflected a debit of US$ 1,50,000 from the account of Royalle Foundation, Zurich, Switzerland in favour of one S.K. Kapoor, holder of account number 002-9-608080, Hong Kong & Shanghai Banking Corporation (HSBC), Head office at Hong Kong, as per the advice of the customer, i.e. Royalle Foundation. Subhash Bharjatya filed a complaint dated 4.1.1998 alleging the said fax message to be a forgery and had been planted in his premises during the course of search in order to frame him and further that he and his employee were illegally detained on the night of 1.1.1998 and were threatened and manhandled. It was in the investigation of this case that CBI took a *prima facie* view that respondent was part of a criminal conspiracy with co-accused Abhishek Verma to frame Subhash Chandra Bharjatya in a case under Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA) by fabricating false evidence to implicate Subhash Bharjatya.

C. Subsequently, CBI registered another case No. RC S19/E0006/99 dated 7.12.1999 in respect of disproportionate assets possessed by the respondent amounting to more than 12 crores to his known sources of income during his service period of 14 years. As the respondent was arrested on 23.12.1999, he was under deemed suspension. The suspension order was reviewed subsequently. In view of the

provisions of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (hereinafter referred to as 'Rules 1965'), the suspension order was passed by the disciplinary authority to be effective till further order.

D. Sanction to prosecute the respondent had been obtained from the competent authority under the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988').

E. The respondent challenged the order of his suspension before the Tribunal by filing OA No.783 of 2000 which was allowed by the Tribunal vide order dated 17.1.2003 giving the opportunity to the appellants herein to pass a fresh order as appropriate based on facts of the case.

F. The appellants re-considered the case of the suspension in pursuance of the order of the Tribunal dated 17.1.2003. However, vide order dated 25.4.2003 the appellants decided that the respondent should remain under suspension.

G. Aggrieved, the respondent challenged the said order dated 25.4.2003 before the Tribunal by filing OA No.1105 of 2003, however the same was dismissed vide order dated 9.5.2003. The record reveals that the said order of the Tribunal was challenged by filing a writ petition before the Delhi High Court. However, the said petition was subsequently withdrawn by the respondent vide order dated 11.8.2010.

H. So far as the criminal cases are concerned, the Special Judge granted pardon to co-accused Abhishek Verma. The said order was challenged by the respondent before the High Court and ultimately before this Court, but in vain.

The departmental proceedings were also initiated against the respondent based on the CBI's investigation reports and the charge memorandum was issued which was quashed by the Tribunal vide judgment and order dated 24.2.2010. Aggrieved, appellants filed special lea[illegible]s

Court with a delay of more than two years, without approaching the High Court. The judgment of this Court dated 5.9.2013 passed in C.A.Nos. 7761-7717 of 2013, Union of India & Ors. v. B.V. Gopinath etc. etc., affirmed the view taken by the Tribunal that chargesheet is required to be approved by the disciplinary authority. The petition filed by the appellants against the respondent has not yet been decided. Review Petition filed by the appellants against the judgment and order dated 5.9.2013 is also reported to be pending.

I. The appellants had been reviewing the suspension order from time to time and thus, the respondent filed OA No.2842 of 2010 before the Tribunal for quashing of the suspension order and the same was disposed of by the Tribunal vide order dated 16.12.2011 directing the appellants to convene a meeting of the Special Review Committee (SRC) within a stipulated period to consider revocation or continuation of suspension of the respondent after taking into consideration various factors mentioned in the said order.

J. Pursuant to the said order of the Tribunal dated 16.12.2011, the SRC was constituted. The competent authority considered the recommendations of the SRC in this regard and passed an order dated 12.1.2012 to the effect that the suspension of the respondent would continue. The views of the CBI were made available subsequent to order dated 12.1.2012 and thus, the SRC again met and recommended the continuance of suspension of the respondent and on the basis of which the Competent Authority, vide order dated 3.2.2012, decided to continue the suspension of the respondent.

K. The respondent challenged the said orders dated 12.1.2012 and 3.2.2012 by filing OA No.495 of 2012 before the Tribunal and the Tribunal allowed the said OA vide order dated 1.6.2012 holding that the earlier directions given by the Tribunal on 16.12.2011 had not been complied with while passing the impugned orders dated 12.1.2012 and 3.2.2012

and thus, the continuation of suspension was not tenable. The said orders were accordingly quashed by the Tribunal.

L. Aggrieved by the order dated 1.6.2012 passed by the Tribunal, the appellants preferred Writ Petition No.5247 of 2012 before the High Court of Delhi which was dismissed vide judgment and order impugned dated 17.9.2012.

Hence, this appeal.

3. Ms. Indira Jaising, learned Additional Solicitor General appearing for the appellants has submitted that though the respondent had been under suspension for 14 years but in view of the gravity of the charges against him in the disciplinary proceedings as well as in the criminal cases, no interference was warranted by the Tribunal or the High Court. In spite of the fact that the charges were framed against the respondent and the domestic enquiry stood completed and very serious charges stood proved against the respondent, no punishment order could be passed by the disciplinary authority in view of the fact that the charge sheet itself has been quashed by the Tribunal on the ground that it had not been approved by the disciplinary authority and in respect of the same, the matter had come to this Court and as explained hereinabove, has impliedly been decided in favour of the respondent vide judgment and order dated 5.9.2013.

The respondent has himself filed 27 cases in court and made 62 representations. Almost all his representations had been considered by the competent authority fully applying its mind and passing detailed orders. The Tribunal has placed reliance on the notings in the files while deciding the case, which is not permissible in law as the said notings cannot be termed as decision of the government.

The scope of judicial review is limited in case of suspension for the reason that passing of [illegible] is

of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. The Tribunal or the court cannot function as an appellate authority over the decision taken by the disciplinary authority in these regards.

In view of the provisions contained in CVC Regulations which came into force in 2004, the case of suspension of the respondent has been reviewed from time to time and the disciplinary authority thought it proper to continue the suspension order. The Tribunal and the High Court failed to appreciate that the directions given by the Tribunal in its order dated 16.12.2011, *inter-alia,* to consider the reply to the letter rogatory received from the competent authority in Switzerland and the report of the Law Department in case of sanction granted by the competent authority i.e. Hon'ble Finance Minister are matters to be examined by the trial court where the case is pending. The proceedings had been stayed by the court taking a *prima facie* view that the courts below had not passed the order in correct perspective and in that view of the matter, the appellants could not be blamed. Thus, the impugned judgment and order is liable to be set aside.

4. Shri Dhruv Mehta, learned senior counsel appearing for the respondent has opposed the appeal contending that the respondent had served the department for a period of 14 years and has faced the suspension for the same duration i.e. 14 years, and after nine year, the respondent would attain the age of superannuation. The appellants have obtained the interim order from this court restraining the trial court to proceed in a criminal case though it is not permissible in law to stay the trial as provided in Section 19(3) of the Act 1988. The said interim order had been obtained by the appellants by suppressing the material facts. The Tribunal vide order dated 16.12.2011 had issued certain directions and in spite of the fact that the said

order had attained finality as the appellants had chosen not to challenge the same before a higher forum, the appellants were bound to ensure the compliance of the same and the Tribunal and the High Court had rightly held that the said order had not been complied with and the suspension orders dated 12.1.2012 and 3.2.2012 suffered from non-application of mind. More so, the Tribunal having quashed the suspension orders, renewing the suspension order would tantamount to sitting in appeal against the order of the Tribunal. The conduct of the appellants had been contemptuous and the same disentitled them for any relief from this Court. In view of the above, no interference is called for and the appeal is liable to be dismissed.

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

6. Representation may be considered by the competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the authority. More so, once a representation has been decided, the question of making second representation on a similar issue is not allowed as it may also involve the issue of limitation etc.

(Vide: Rabindra Nath Bose & Ors. v. Union of India & Ors., AIR 1970 SC 470; *Employees' State Insurance Corpn. v. All India Employees' Union & Ors.,* (2006) 4 SCC 257; *A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy & Ors.,* AIR 2006 SC 1465; *Karnataka Power Corporation Ltd. & Anr. v. K. Thangappan & Anr.,* AIR 2006 SC 1581; *Eastern Coalfields Ltd. v. Dugal Kumar,* AIR 2008 SC 3000; and *Uma Shankar Awasthi v. State of U.P. & Anr.,* (2013) 2 SCC 435).

7. During suspension, relationship

continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense. (Vide: *O.P. Gupta v. Union of India & Ors.,* AIR 1987 SC 2257; and *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.,* AIR 1999 SC 1416).

8. In *State of Orissa v. Bimal Kumar Mohanty,* AIR 1994 SC 2296, this Court observed as under:–

> *"..... the order of suspension would be passed taking into consideration the* ***gravity*** *of the misconduct sought to be inquired into or investigated and the* ***nature of evidence*** *placed before the appointing authority and* ***on application of the mind by the disciplinary authority.*** *Appointing authority or disciplinary authority should consider ….. and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf.....In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry*

> *or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by* ***mala fide, arbitrarily or for ulterior purpose.*** *The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind* ***public interest of the impact of the delinquent's continuation in office*** *while facing departmental inquiry or a trial of a criminal charge."* (Emphasis added)

(See also: *R.P. Kapur v. Union of India & Anr.,* AIR 1964 SC 787 ; and *Balvantrai Ratilal Patel v. State of Maharashtra,* AIR 1968 SC 800).

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong *prima facie* case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the *gravity of the alleged misconduct* i.e. serious act of omission or commission and the *nature of evidence* available. It cannot be actuated by *mala fide, arbitrariness,* or for *ulterior purpose.* Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The fa e

to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong *prima facie* case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors.,* (2006) 8 SCC 200, this Court explained:

> *"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."*

12. Long period of suspension does not make the order of suspension invalid. However, in *State of H.P. v. B.C. Thakur,* (1994) SCC (L&S) 835, this Court held that where for any

reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: *Union of India & Ors. v. Udai Narain,* (1998) 5 SCC 535).

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of M.P. v. Sardul Singh,* (1970) 1 SCC 108; *P.V. Srinivasa Sastry v. Comptroller & Auditor General of India,* (1993) 1 SCC 419; *Director General, ESI & Anr. v. T. Abdul Razak,* AIR 1996 SC 2292; *Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors.,* AIR 1988 SC 2118; *Delhi Cloth General Mills vs. Kushan Bhan,* AIR 1960 SC 806; *U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan,* (1993) Supp. (3) SCC 483; *State of Rajasthan v. B.K. Meena & Ors.,* (1996) 6 SCC 417; *Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan*, (1996) 3 SCC 157; and *Allahabad Bank & Anr. v. Deepak Kumar Bhola,* (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is *ordinarily* not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay *for no fault of the employ*e

the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a *prima facie* evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum *de hors* the powers of judicial review.

15. Rule 10 of the Rules 1965 provides for suspension and clause 6 thereof provides for review thereof by the competent authority before expiry of 90 days from the effective date of suspension. However, the extension of suspension shall not be for a period exceeding 180 days at a time. The CVC can also

review the progress of investigation conducted by the CBI in a case under the Act 1988.

The Vigilance Manual issued by CVC on 12th January, 2005 specifically deals with suspension of a public servant. Clause 5.13 thereof provides that Commission can lay down the guidelines for suspension of a government servant. However, if the CBI has recommended suspension of a public servant and the competent authority does not propose to accept the said recommendation, the matter may be referred to the CVC for its advice. The CBI may be consulted if the administrative authority proposes to revoke the suspension order. Clause 6.1 read with Clause 6.3.2 thereof provide that suspension is an executive order only to prevent the delinquent employee to perform his duties during the period of suspension. However, as the *suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion* and also carried a *stigma*, an order of suspension should not be made in a perfunctory or in a routine and casual manner but *with due care and caution after taking all factors into account.*

Clause 6.3.3 further provides that before passing the order of suspension the competent authority may consider whether the purpose may be served if the *officer is transferred from his post.*

Clauses 17.42 to 17.44 of the CBI (Crime) Manual 2005 also deal with suspension. The said clauses provide that the government servant may be put under suspension if his continuance in office would prejudice the investigation, trial or enquiry e.g. apprehension of interfering with witnesses or tampering of documents or his continuation would subvert discipline in the office where the delinquent is working or his continuation would be against the wider public interest.

The Department of Personnel and

of India also issued Circular dated 4.1.2004 regarding the suspension and review of the suspension order.

16. The instant case is required to be considered in light of the aforesaid settled legal propositions, statutory provisions, circulars etc. The Tribunal *inter alia* had placed reliance on notings of the file. The issue as to whether the notings on the file can be relied upon is no more *res integra*.

In *Shanti Sports Club v. Union of India,* (2009) 15 SCC 705, this Court considered the provisions of Articles 77(2), 77(3) and 166(2) of the Constitution and held that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government. The Court further held:

> *"43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."*

Similarly, while dealing with the issue, this Court in *Sethi Auto Service Station v. DDA,* AIR 2009 SC 904 held:

> *"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."*

17.In *Jasbir Singh Chhabra v. State of Punjab,* (2010) 4 SCC 192, this Court held:

> *"35..... However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations....."*

18. Thus, in view of the above, it is evident that the notings in the files could not be relied upon by the Tribunal and Court. However, the issue of paramount importance remains as what could be the effect of judgment and order of the Tribunal dated 16.12.2011 wherein the Tribunal had directed the appellants to reconsider the whole case taking into account various issues *inter-alia* as what would be the effect of quashing of the chargesheet by the Tribunal against the respondent; the report/ recommendation of the Law Ministry to revoke the sanction; the effect of affidavit filed by the then Finance Minister after remand of the sanction matter by the High Court [illegible]h

the competent authority had accorded sanction, the entire relevant matter had not been placed before him; the directions passed by the High Court against the officers of the CBI in the cases of Shri Vijay Aggarwal and Shri S.R. Saini; and the duration of pendency of criminal trial against the respondent and, particularly, taking note of the stage/status of the criminal proceedings, in view of the fact that the respondent is on bail since 2000 and since the investigation is completed, whether there is any possibility of tampering with the evidence.

Before we proceed further, we would like to clarify that the Tribunal did not direct the competent authority not to renew the order of suspension or to decide the case in a particular way. Rather simple directions were issued to take the aforesaid factors into consideration before the order is passed.

19. Subsequent thereto, the SRC considered the case and the competent authority passed the order of continuation of suspension order on 12.1.2012. The said order made it clear that it would not be feasible for the competent authority to pass a reasoned and speaking order as required in terms of the Office Memorandum dated 7.1.2004 for the reason that CBI reports had not been received.

20. After receiving of the report of the CBI, a fresh order was passed on 3.2.2012 wherein substantial part is verbatim to that of the earlier order dated 12.1.2012 and reiterating the report of the CBI, the authority abruptly came to the conclusion that suspension of the respondent would continue.

21. Both these orders were challenged by the respondent before the Tribunal by filing OA No. 495 of 2012 and in view of the fact that the directions given earlier on 16.12.2011 had not been complied with, in letter and spirit, the Tribunal allowed the OA by a detailed judgment running into 72 pages. Though the Tribunal took note of the fact that the charges against the respondent were grave, it held that continuance of the

respondent's suspension was not tenable. Hence, the said orders were quashed and set aside with the direction to the appellants to revoke his suspension and to reinstate him in service with all consequential benefits. However, liberty was given to the appellants that if at any point of time and in future, the criminal trial proceedings commenced, the appellants could consider the possibility of keeping the officer under suspension at that point of time if the facts and circumstances so warranted.

22. The order dated 16.12.2011 was not challenged by the appellants and thus, attained finality. Therefore, the question does arise as to whether it was permissible for the appellants to pass any fresh order of suspension till the commencement of the trial before the criminal court?

23. Instead of ensuring the compliance of the aforesaid judgment and order of the Tribunal dated 16.12.2011, the matter was reconsidered by SRC, which took note of the fact that the orders dated 12.1.2012 and 3.2.2012 had been quashed and set aside, and further that criminal trial had been stayed by this Court, which recommended that suspension of the respondent be revoked and he may be posted to a non-sensitive post. However, this recommendation was subject to the approval of the Hon'ble Finance Minister. The record reveals that the said recommendation of the SRC was considered by several higher authorities and ultimately, the competent authority passed an order that the suspension order would continue till further review after six months or the outcome of the appeal to be preferred by the department, whichever was earlier.

24. It is astonishing that in spite of quashing of the suspension order and direction issued by the Tribunal to re-instate the respondent, his suspension was directed to be continued, though for a period of six months, subject to review and further subject to the outcome of the challenge of the Tribunal's order before the High Court. T d

the judgment and order of the Tribunal dismissing the case of the appellants vide impugned judgment and order dated 17.9.2012. Even then the authorities did not consider it proper to revoke the suspension order.

25. Placing reliance upon the earlier judgments in *Mulraj v. Murti Raghunathji Mahaaraj,* AIR 1967 SC 1386, *Surjit Singh & Ors. etc. etc. v. Harbans Singh & Ors. etc. etc.,* AIR 1996 SC 135; *Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Anr.,* AIR 1996 SC 2005; and *Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa Navalgund & Ors.,* AIR 2008 SC 901, this Court in *Manohar Lal (D) by LRs. v. Ugrasen (D) by LRs. & Ors.,* AIR 2010 SC 2210 held that any order passed by any authority in spite of the knowledge of order of the court, is of no consequence as it remains a nullity and any subsequent action thereof would also be a nullity.

26. In *Union of India & Ors. v. Dipak Mali,* AIR 2010 SC 336, this court dealt with the provisions of Rules 1965 and the power of renewal and extension of the suspension order. The court held that if the initial or subsequent period of extension has expired, the suspension order comes to an end because of the expiry of the period provided under rule 10(6) of the Rules 1965. Subsequent review or extension thereof is not permissible for the reason that earlier order had become invalid after expiry of the original period of 90 days or extended period of 180 days.

27. In *State of U.P. v. Neeraj Chaubey,* (2010) 10 SCC 320 and *State of Orissa & Anr. v. Mamata Mohanty,* (2011) 3 SCC 436, this Court held that in case an order is bad in its inception, it cannot be sanctified at a subsequent stage. In *Mamta Mohtanty,* it was held:

> *"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits.* ***If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.*** *(Vide Upen Chandra Gogoi v. State of Assam,AIR 1998 SC 1289, Mangal Prasad Tamoli v. Narvadeshwar Mishra, AIR 2005 SC 1964; and Ritesh Tewari v. State of U.P.,AIR 2010 SC 3823)*
>
> (Emphasis added)

28. In view of the above, the aforesaid order dated 31.7.2012 in our humble opinion is nothing but a nullity being in contravention of the final order of the Tribunal which had attained finality. More so, the issue could not have been re-agitated by virtue of the application of the doctrine of *res judicata.*

29. This Court in *Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr.,* AIR 1960 SC 941 explained the scope of principle of *res-judicata* observing as under:

> *"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a fu[illegible]g*

between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

Similar view has been re-iterated in *Daryao & Ors. v. State of U.P. & Ors.,* AIR 1961 SC 1457; *Greater Cochin Development Authority v. Leelamma Valson & Ors.,* AIR 2002 SC 952; and *Bhanu Kumar Jain v. Archana Kumar & Anr.,* AIR 2005 SC 626.

30. In *Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr.,* (1999) 5 SCC 590, this Court has explained the scope of finality of the judgment of this Court observing as under:

"One important consideration of public policy is that the decision pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by the appellate authority and other principle that no one should be made to face the same kind of litigation twice ever because such a procedure should be contrary to consideration of fair play and justice. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it."

31. In view of above, we are of the considered opinion that it was not permissible for the appellants to consider the renewal of the suspension order or to pass a fresh order without challenging the order of the Tribunal dated 1.6.2012 and such

an attitude tantamounts to contempt of court and arbitrariness as it is not permissible for the executive to scrutinize the order of the court.

32. In *Dr. Amarjit Singh Ahluwalia v. The State of Punjab & Ors.,* AIR 1975 SC 984, this Court placing reliance upon the judgment in *Vitaralli v. Seaton,* 359 US 536, considered the scope of Articles 14 and 16 observing that the scope of those Articles is wide and pervasive as those Articles embodied the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the State.

33. In *Union of India v. K.M. Shankarappa,* (2001) 1 SCC 582, this Court deprecated the practice of interfering by the executives without challenging the court order before the superior forum, observed as under:

"The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. ***The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially.*** *A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal*."

(Emphasis added)

34. The aforesaid facts make it crystal clear that it is a clear cut case of legal malice. The aspect of the legal malice was considered by this Court in *Kalabharati* *nt*

Vimalnath Narichania & Ors., AIR 2010 SC 3745, observing:

> *"25. The State is under obligation to act fairly without ill will or malice— in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.*
>
> *26. Passing an order for an unauthorised purpose constitutes malice in law.*"

35. The record of the case reveals that this Court has granted interim order dated 8.10.2012 staying the operation of the judgment and order dated 1.6.2012 but that would not absolve the appellants from passing an illegal, unwarranted and uncalled for order of renewal of suspension on 31.7.2012 and if that order was void, we are very much doubtful about the sanctity/validity of the orders passed on 21.1.2013 and 17.7.2013. It further creates doubt whether the appellants, who had acted such unreasonably or illegally, are entitled for any relief before this Court. The Tribunal and the High Court were right that the appellants had not followed the directions of the Tribunal issued on 16.12.2011 and the mandate of Department's O.M. dated 7.1.2004. There is no gainsaid in saying that the terms of the said O.M. were required to be observed.

36. It is a settled legal proposition that jurisdiction under

Article 136 of the Constitution is basically one of conscience. The jurisdiction is plenary and residuary. Therefore, even if the matter has been admitted, there is no requirement of law that court must decide it on each and every issue. The court can revoke the leave as such jurisdiction is required to be exercised only in suitable cases and very sparingly. The law is to be tempered with equity and the court can pass any equitable order considering the facts of a case. In such a situation, conduct of a party is the most relevant factor and in a given case, the court may even refuse to exercise its discretion under Article 136 of the Constitution for the reason that it is not necessary to exercise such jurisdiction just because it is lawful to do so. (Vide: Pritam Singh v. The State, AIR 1950 SC 169*; Taherakhatoon (D) by Lrs. v. Salambin Mohammad,* AIR 1999 SC 1104; and *Karam Kapahi & Ors. v. M/s. Lal Chand Public Charitable Trust & Anr.,* AIR 2010 SC 2077).

37. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in *Sant Ram Sharma v. State of Rajasthan & Ors.,* AIR 1967 SC 1910, held:

> *"It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed."*

38. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide: *Union of India & Ors. v. Majji Jangammayya & Ors.*, AIR 1977 SC 757; *P.D. Aggarwal & Ors. v. State of U.P. & Ors.,* AIR 19

Ramkrishnaiah & Ors. v. Union of India & Anr., AIR 1990 SC 166; *C. Rangaswamaiah & Ors. v. Karnataka Lokayukta & Ors.,* AIR 1998 SC 2496; and *JAC of Airlines Pilots Association of India & Ors. v. The Director General of Civil Aviation & Ors.,* AIR 2011 SC 2220).

39. Similarly, a Constitution Bench of this Court, in *Naga People's Movement of Human Rights v. Union of India.,* AIR 1998 SC 431, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.

40. In *Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Anr.,* AIR 1991 SC 1507, this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department particularly the recommendations made by CVC.

41. In *State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh & Ors.,* AIR 1989 SC 997, this Court held that the order must be passed by the authority after due application of mind uninfluenced by and without surrendering to the dictates of an extraneous body or an authority.

42. Considering the case in totality, we are of the view that the appellants have acted in contravention of the final order passed by the Tribunal dated 1.6.2012 and therefore, there was no occasion for the appellants for passing the order dated 31.7.2012 or any subsequent order. The orders passed by the appellants had been in contravention of not only of the order of the court but also to the office memorandum and statutory rules.

In view thereof, we do not find any force in this appeal. The appeal lacks merit and is accordingly dismissed. There will be no order as to costs.

R.P. Appeal dismissed.

CHIRONJILAL SHARMA HUF
v.
UNION OF INDIA AND ORS.
(Civil Appeal No. 10601 of 2013)

NOVEMBER 26, 2013

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

Income Tax Act, 1961 – s.132B(4)(b) – Payment of interest on delayed assessment – Search conducted in house of appellant – Cash amount of Rs. 2,35,000/- recovered – Order passed u/s.132(5) on 31.5.1990 – Assessing Officer (A.O.) calculated tax liability and cash seized in search from appellant's house appropriated – Order of A.O. set-aside by Tribunal – Revenue accepted the order of Tribunal – Appellant got refund of Rs.2,35,000/- alongwith interest from 4.3.1994 (date of last of the regular assessments by A.O.) until the date of refund – Claim of appellant-assessee for interest u/s.132B(4)(b) for the period from expiry of period of six months from the date of order under s.132(5) to the date of regular assessment order – Held: Order u/s.132(5) having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, hence, appellant entitled to claim simple interest u/s.132B(4)(b) from 1.12.1990 to 4.3.1994 at the rate of 15% per annum.

In the search conducted in the house of the appellant on 31.1.1990, a cash amount of Rs. 2,35,000/- was recovered. On 31.5.1990, an order under Section 132(5) of the Income Tax Act, 1961 came to be passed. The Assessing Officer calculated the tax liability and the cash seized in the search from the appellant's house was appropriated. However, the order of the Assessing Officer was finally set-aside by the Income Tax Appellate Tribunal.

The revenue accepted the order of the Tribunal. Consequently, the appellant was refunded the amount of Rs. 2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund.

In the instant appeal, the appellant (assessee) claimed entitlement to interest under Section 132B(4)(b) of the Act which was holding the field at the relevant time for the period from expiry of period of six months from the date of order under Section 132(5) to the date of regular assessment order. The order under Section 132(5) of the Act having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claimed interest under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

Allowing the appeal, the Court

HELD: 1. A close look at the provisions of Section 132B(4)(a) and (b) of the Income Tax Act, 1961 clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. In the instant case, it is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post

assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b) on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132B(4)(b) of the Act has no application. But, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal. The view of the department is not right on the plain reading of Section 132B(4)(b) of the Act. The appellant is entitled to the simple interest at the rate of fifteen percent per annum under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994. The revenue shall calculate the interest payable to the assessee as above and pay the same to the appellant (assessee) within two months. [Paras 5, 7, 8 & 9] [672-B-H; 673-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10601 of 2013.

From the Judgment and Order dated 16.08.2011 of the High Court of Madhya Pradesh at Jabalpur, Bench at Gwalior in W.P. No. 5531 of 2005.

Gaurav Agrawal for the Appellant.

R.P. Bhatt, Arijit Prsad, Shalini Kumar, Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

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

2. The brief facts necessary for consideration of the issue

raised in the appeal are these: In the search conducted in the house of the appellant on 31.1.1990, a cash amount of Rs. 2,35,000/- was recovered. On 31.5.1990, an order under Section 132(5) of the Income Tax Act, 1961 (for short "the Act") came to be passed. The Assessing Officer calculated the tax liability and the cash seized in the search from the appellant's house was appropriated. However, the order of the Assessing Officer was finally set-aside by the Income Tax Appellate Tribunal (for short "the Tribunal") on 20.2.2004. The revenue accepted the order of the Tribunal. Consequently, the appellant has been refunded the amount of Rs. 2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund.

3. The appellant (assessee) claims that he is entitled to interest under Section 132B(4)(b) of the Act which was holding the field at the relevant time for the period from expiry of period of six month's from the date of order under Section 132(5) to the date of regular assessment order. In other words, the order under Section 132(5) of the Act having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claims interest under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

4. Section 132 of the Act deals with search and seizure. Sub-section (5) thereof, which is relevant for the purposes of the present appeal, reads as under:

> (5): Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), as a result of a search initiated or requisition made before the Ist day of July, 1995, the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and

> making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Joint Commissioner)-
>
> (i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;
>
> (ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Income Income-Tax Act, 1922 (11 of 1922), or this Act;
>
> (iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-Tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;
>
> (iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,
>
> and retain in his custody such assets/or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:
>
> Provided that if, after taking into account the materials available with him, the Income Tax Officer is of the view that it is not possible to ascerta[illegible]r

previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total amount chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the Income-Tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case."

5. Section 132B deals with the payment of interest on delayed assessment. Omitting the unnecessary part, the relevant provisions of Section 132B(4)(a) and(b) of the Act read as under:

132B: Application of retained assets.....

(4)(a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained under Section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause 3 of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liability referred to in clause (i) of sub—section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section 5 of section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be,

to the date of last of such assessments or re-assessments. 3

5. A close look at the above provisions and, particularly, clause (b) of Section 132B(4) of the Act clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. It is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b), according to Mr. Arijit Prasad, learned counsel for the revenue on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132B(4)(b) of the Act has no application. But, in our view, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal.

7. The view of the department is not right on the plain reading of Section 132B(4)(b) of the Act as indicated above.

8. We, accordingly, allow the appeal and set-aside the impugned order and hold that the app e

simple interest at the rate of fifteen percent per annum under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

9. The revenue shall calculate the interest payable to the assessee as above and pay the same to the appellant (assessee) within two months from today. No costs.

B.B.B. Appeal allowed.

MRS. SARAH MATHEW

v.

THE INSTITUTE OF CARDIO VASCULAR DISEASES BY ITS DIRECTOR – DR. K.M. CHERIAN & ORS.

(Criminal Appeal No. 829 of 2005)

NOVEMBER 26, 2013.

[P. SATHASIVAM, CJI, DR. B.S. CHAUHAN, RANJANA PRAKASH DESAI, RANJAN GOGOI AND S.A. BOBDE, JJ.]

Code of Criminal Procedure, 1973:

ss. 468 and 469 r/w s. 473 – Bar to take cognizance after lapse of the period of limitation – Commencement of period of limitation and extension thereof – Held: For the purpose of computing the period of limitation u/s 468, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance – In view of s. 469, period of limitation in relation to an offence shall commence either from the date of offence or from the date when the offence is detected — If the complaint is filed after the period of limitation, complainant can make an application for condonation of delay u/s 473 — Court will have to issue notice to accused and after hearing the accused, and the complainant, decide whether to condone the delay or not — If the complaint is filed within the period of limitation and court takes cognizance after the period of limitation then complainant cannot be expected to make an application for condonation of such delay — s.473 postulates condonation of delay caused by the complainant in filing the complaint — It is the date of filing of the complaint which is material – ss. 468 and 469 will have to be read with s. 473 – Interpretation of statutes – Legislative intent – Limitation.

Chapter XXXVI — s.468 r/w ss. 469 and 473 – Bar to take

cognizance after lapse of the period of limitation — Taking of 'cognizance' – Connotation of – Held: 'Cognizance' is entirely an act of the court – Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed – This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI – The only harmonious construction which can be placed on ss. 468, 469 and 470 is that Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period – He would, however, be entitled to exclude such time as is legally excludable – Besides, Cr.P.C. is a procedural law to be construed liberally to serve justice — There is no scope for application of doctrine of casus omissus — Interpretation of statutes – Harmonious construction — Liberal construction – Doctrine of casus omissus.

Interpretation of Statutes:

Purposive construction – Held: There is no ambiguity in the provisions of Chapter XXXVI of the Cr.P.C. — But, the word 'cognizance' has not been defined in the Cr.P.C. The rule of purposive construction can be applied in such a situation — A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with legislative purpose – If in a case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted – Code of Criminal Procedure, 1973 – Chapter XXXVI.

Doctrine of reasonable construction — Court would interpret a provision which would help sustaining the validity

of law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution.

Heading of Chapter – Held: 'Heading' or 'title' prefixed to sections or group of sections have a limited role to play in construction of statutes – They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions.

Maxims:

Relevance of legal maxims in interpreting a provision – Held: Though legal maxims are not mandatory rules, but they serve as guiding principles – Maxims – (i) 'nullum tempus aut locus occurrit regi', (ii) 'vigilantibus et non dormientibus, jura subveniunt', (iii) 'actus curiae neminem gravabit' – Applicability of.

There being conflict in the views taken in two-Judge Bench decisions in *Bharat Kale*[1] and *Japani Sahoo*[2] on the one hand, and a three-Judge Bench decision in *Krishna Pillai*[3], on the other, on the question whether for the purpose of computing the period of limitation u/s 468 of the Code of Criminal Procedure, 1973 (CrPC), the relevant date would be the date of filing of the complaint or the date of institution of prosecution or whether the relevant date would be the date on which the Magistrate took cognizance of the offence, the mater was ultimately referred to the Constitution Bench.

Answering the reference, the Court

1. Bharat Damodar Kale & Anr. v. State of Andhra Pradesh (2003) 8 SCC 559.
2. Japani Sahoo v. Chandra Sekhar Mohanty 2007 (8) SCR 582.
3. Krishna Pillai v. T.A. Rajendran & Anr. (1990)

HELD: 1.1 The Limitation Act, 1963 does not apply to criminal proceedings except for appeals or revisions for which express provision is made in Articles 114, 115, 131 and 132 thereof. The Criminal Procedure Code, 1898 contained no general provision for limitation. Though under certain special laws there are provisions prescribing period of limitation for prosecution of offences, there was no general law of limitation for prosecution of other offences. This position underwent a change to some extent when Chapter *XXXVI* was introduced in the Cr.P.C. [para 15-16] [709-C-E; 708-F-G]

The Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr. **1969 SCR 438 = AIR 1970 SC 962 – referred to**

1.2 The object of Chapter *XXXVI* was to quicken the prosecutions of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system more orderly, efficient and just by providing period of limitation for certain offences. However, the law makers did not want cause of justice to suffer in genuine cases. Therefore, in Chapter *XXXVI*, provisions have been made out for exclusion of time in certain cases [s. 470], for exclusion of date on which the court is closed [s.471], for continuing offences [s.472] and for extension of period of limitation in certain cases [s. 473]. Section 473 is crucial. It is an overriding provision which enables courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation. It empowers the court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Therefore, Chapter *XXXVI* is not loaded against the complainant. [Para 18 and 19] [715-G-H; 716-A, E-G]

State of Punjab v. Sarwan Singh **AIR 1981 SC 1054 – referred to.**

1.3 It is true that the accused has a right to have a speedy trial and this right is a facet of Art. 21 of the Constitution. Chapter *XXXVI* of the Cr.P.C. does not undermine this right of the accused. While it encourages diligence by providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It is significant to notice that where the legislature wanted to treat certain offences differently, it provided for limitation in the section itself [e.g. ss.198(6) and 199(5)]. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter *XXXVI* of the Cr.P.C. [para 19] [716-G-H; 717-A-C]

1.4 Section 467 defines the phrase 'period of limitation' to mean the period specified in s.468 for taking cognizance of certain offences. Section 468 stipulates the bar of limitation. Sub-s. (1) of s.468 makes it clear that a fetter is put on the court's power to take cognizance of an offence of the category mentioned in sub-s. (2) after the expiry of period of limitation. Sub-s. (2) lays down the period of limitation for certain offences. Section 469 states when the period of limitation commences. It is dexterously drafted so as to prevent advantage of bar of limitation being taken by the accused. It states that period of limitation in relation to an offence shall commence either from the date of offence or from the date when the offence is detected. [para 21] [719-A-D]

Rashmi Kumar (Smt.) v. Mahesh **6**

(10) Suppl. SCR 347 = (1997) 2 SCC 397 – referred to.

1.5 Thus, Chapter *XXXVI* is a code by itself so far as limitation is concerned. All the provisions of this Chapter will have to be read cumulatively. Sections 468 and 469 will have to be read with s.473. [para 21] [719-G]

2.1 'Cognizance' is entirely an act of the court. The term 'cognizance' has not been defined in the Cr.P.C. A Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter 36. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons. [para 22 and 25] [719-H; 721-H; 722-A-B]

S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd.& Ors. **2008 (2) SCR 36 = (2008) 2 SCC 492;** *Jamuna Singh & Ors. v. Bhadai Shah* **1964 SCR 37 = AIR 1964 SC 1541,** *Gopal Das Sindhi & Ors. v. State of Assam & Anr.* **1961 AIR 986;** *State of Maharashtra v. Sharadchandra Vinayak Dongre & Ors.* **1994 Suppl. (4) SCR 378 = (1995) 1 SCC 42–Referred to.**

2.2 There has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. Therefore, the date on which complaint is filed has to be taken as material for computing the limitation. If the complaint is filed after the period of limitation, the complainant can make an application for condonation of delay u/s 473 of the Cr.P.C. The court will have to issue notice to the accused and after hearing the accused, and the complainant, decide whether to condone the delay or not. If the court takes cognizance after the period of

limitation then, the complainant cannot be expected to make an application for condonation of such delay. Therefore, the only harmonious construction which can be placed on ss. 468, 469 and 470 of the Cr.P.C. is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable. Examined in light of legislative intent and meaning ascribed to the term 'cognizance' by this Court, it is clear that s.473 of the Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material. In taking cognizance subjective element comes in. Therefore, it cannot be held that relevant point for computing limitation would be the date on which the Magistrate takes cognizance. A court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and *ultra vires* the Constitution. [para 26-28] [722-E-H; 723-E-F; 724-C-E, H; 725-A]

U.P. Power Corporation Ltd. v. Ayodhaya Prasad Mishra **2008 (13) SCR 373 = (2008) 10 SCC139 ;** *Vanka Radhamanohari (Smt.) v. Vanka Venkata Reddy and others* **1993 (3) SCR 287 = (1993) 3 SCC 4;** *Dau Dayal vs. State of U.P.* **1959 Suppl. SCR 639 = AIR 1959 SC 433 – referred to.**

2.3 The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim '*nullum tempus aut locus occurrit regi',* which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim '*vigilantibus et non dormientibus, jura subveniunt'.* Cl[illegible]e

Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided, draws support from this maxim. But, even certain offences such as s.384 or 465 of the IPC, which have lesser punishment may have serious social consequences. Provision is, therefore, made for condonation of delay. Treating the date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation u/s 468 of the Code is supported by the legal maxim '*actus curiae neminem gravabit*' which means that the act of court shall prejudice no man. The court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter *XXXVI* thus presents the interplay of these three legal maxims. Though legal maxims are not mandatory rules, but they serve as guiding principles. Use of legal maxims as guiding principles in Bharat Kale and Japani Sahoo is perfectly justified. [para 14 and 30] [707-E; 708-E; 726-D-H; 727-A]

Bharat Damodar Kale & Anr. v. State of Andhra Pradesh **(2003) 8 SCC 559**

Japani Sahoo v. Chandra Sekhar Mohanty **2007 (8) SCR 582 – Upheld.**

Vanka Venkata Reddy and others **1993 (3) SCR 287 = (1993) 3 SCC 4- referred to.**

Broom's Legal Maxims, Tenth Edn. **1939 – referred to.**

3.1 There is no ambiguity in the provisions of Chapter XXXVI of the Cr.P.C. But, the word 'cognizance' has not been defined in the Cr.P.C. The rule of purposive construction can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is

in accordance with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. Therefore, this Court is of the opinion that if in a case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted. [para 32] [727-G-H; 728-A, C]

National Insurance Co. Ltd. v. Laxmi Narain Dhut 2007 (3) SCR 579 = ***(2007) 3 SCC 700;*** *New India Assurance Company Ltd. v. Nusli Neville Wadia and another etc.* **2007 (13) SCR 598 = (2008) 3 SCC 279 – referred**

Francis Bennion on Statutory Interpretation; and 'Principles of Statutory Interpretation' by **Justice G.P. Singh's 13th edition – 2012 —referred to.**

3.2 Besides, while construing rules of limitation, the approach should be in consonance with this Court's observation in Mela Ram that "*it is well established that rules of limitation pertain to domain of adjectival law and that they operate only to bar the remedy but not to extinguish the right*". [para 35] [729-F]

Mela Ram v. The Commissioner of Income Tax Punjab **1956 SCR 166 – referred to.**

3.3 There is no scope for application of doctrine of c*asus omissus*. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the 42nd Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Cr.P.C. to give eff e

intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which is to be filld up by judicial interpretative process so as to encroach upon the domain of the legislature. This Court also concurs with the observations in *Japani Sahoo*, where the Court has examined this issue in the context of Art. 14 of the Constitution and opted for reasonable construction rather than literal construction. [para 36-37] [730-A-E]

Japani Sahoo v. Chandra Sekhar Mohanty **2007 (8) SCR 582 = (2007) 7 SCC 394– Upheld.**

Shiv Shakti Co-operative Housing Society, Nagpur v. Swaraj Developers & Ors. **2003 (3) SCR 762 = (2003) 6 SCC 659 – referred to.**

Law Commission of India, 42nd Report ***– referred to.***

3.4 'Heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. Therefore, it cannot be accepted that heading of Chapter XXXVI is an indicator that the date of taking cognizance is material. [para 38] [731-D-E; 732-A]

M/S Frick India Ltd. v. Union of India & Ors, **(1990) 1 SCC 400 – referred to.**

3.5 It is true that penal statutes must be strictly construed. However, in the instant case, looking to the legislative intent, this Court has harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, Chapter XXXVI is part of the Cr.P.C.,

which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. [para 39] [732-B, C-D]

Muralidhar Meghraj Loya & Anr. v. State of Maharashtra & Ors. **1977 (1) SCR 1 = (1976) 3 SCC 684** and *Kisan Trimbak Kothula & Ors. v. State of Maharashtra* **1977 (2) SCR 102 = (1977) 1 SCC 300;** *Sardar Amarjeet Singh Kalra (dead) by LRs. & Ors. v. Promod Gupta (dead) by LRs. & Ors.* **2002 Suppl. (5) SCR 350 = (2003) 3 SCC 272;** *N. Balaji v. Virendra Singh & Ors.* **2004 Suppl. (5) SCR 96 = (2004) 8 SCC 312;** *Kailash v. Nanhku & Ors.* **2005 (3) SCR 289 = (2005) 4 SCC 480; - referred to**

4.1 Therefore, in the light of the legislative intent, authoritative judicial pronouncements and established legal principles, this Court is of the opinion that Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation u/s 468 of the Cr.P.C., primarily, because in that case, the Court was dealing with s.9 of the Child Marriage Restraint Act, 1929 which is a special Act. There is no reference either to s.468 or s.473 of the Cr.P.C. in that judgment. It does not refer to ss.4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. The Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. [para 40] [732-E-F; 733-A-B]

Krishna Pillai v. T.A. Rajendran & Anr. **(1990) supp. SCC 121 – disapproved.**

A.R. Antulay v. Ramdas Sriniwas Navak **1984 (2) SCR 914 = (1984) 2 SCC 500, held inappl**

4.2 It is, therefore, held that for the purpose of computing the period of limitation u/s 468 of the Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. [para 41] [734-A-B]

Japani Sahoo v. Chandra Sekhar Mohanty **2007 (8) SCR 582;** and *Bharat Damodar Kale & Anr. v. State of Andhra Pradesh* **(2003) 8 SCC 559 – Upheld.**

U.P. Power Corpon. Ltd. v. Ayodhya Prasad Mishra & Anr. **2008 (13) SCR 373 = (2008) 10 SCC 139;** *Udai Shankar Awasthi v. State of U.P. & Anr.* **2013 (3) SCR 935 = (2013) 2 SCC 435;** *Sushil Kumar Jain v. State of Bihar* **1975 (3) SCR 944,** *Sardar, R.R. Chari v. The State of Uttar Pradesh* **1951 SCR 312 = AIR 1951 SC 207;** *Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.* **2012 (2) SCR 696= (2012) 5 SCC 424;** *State of Madras v. Gannon Dukerley & Co. (Madras) Ltd.* **1959 SCR 379;** *Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.* **2006 (10) Suppl. SCR 287 = (2007) 2 SCC 230;** and *State of H.P. v. Tara Dutt & Anr.* **1999 (4) Suppl. SCR 514 = (2000) 1 SCC 230;** *Municipal Corporation of Delhi V. Gurnam Kaur* **1988 (2) Suppl. SCR 929 = (1989) 1 SCC 101;** *R.R. Chari* and *Darshan Singh Ram Kishan v. State of Maharashtra* **1972 (1) SCR 571 = (1971) 2 SCC 654;** *Tolaram Relumal & Anr. v. The State of Bombay* **1955 SCR 439 = AIR 1954 SC 496;** *State of Jharkhand & Anr. v. Ambay Cements & Anr.* **2004 (6) Suppl. SCR 125 = (2005) 1 SCC 368;,** *Bharat Aluminum Co. etc. v. Kaiser Aluminum Technical Services etc.* **2012 (12) SCR 327 = (2012) 9 SCC 552;** *Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd. & Anr.* **2003 (3) Suppl. SCR 763 = (2003) 11 SCC 405;** *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat & Anr.* **2004 (3) Suppl. SCR 202 = (2004) 6 SCC 672;** *A.R. Antulay v. R.S. Nayak* **1991 (3) Suppl. SCR 325 = (1992) 1 SCC 225;** *Raj Deo Sharma (II) v. State of Bihar* **1999 (3) Suppl. SCR 124 =**

(1999) 7 SCC 604;, *P.K. Choudhary v. Commander, 48 BRTF, (GREF)* **2008 (4) SCR 976 = (2008) 13 SCC 229** *Krishna Sanghai v. State of M.P.* 1997 Cr.L.J 90 (MP);*Municipal Corporation of Delhi v. Tek Chand Bhatia* **1980 (1) SCR 910 = (1980) 1 SCC 158;** *P.P. Unnikrishnan & Anr. v. Puttiyottil Alikutty & Anr.* **2000 Suppl. (3) SCR 142 = (2000) 8 SCC 131 – cited.**

Rodger v. Comptoir D'Escompte De Paris **(1870-71) VII Moore N.S. 314 – referred to.**

Case Law Reference:

(2003) 8 SCC 559	upheld	para 1
2007 (8) SCR 582	upheld	para 1
(1990) supp. SCC 121	disapproved	para 1
2008 (13) SCR 373	referred to	para 4
1956 SCR 166	referred to	para 4
2013 (3) SCR 935	cited	para 4
1975 (3) SCR 944	cited	para 5
2002 Suppl. (5) SCR 350	referred to	para 5
2005 (3) SCR 289	referred to	para 5
1951 SCR 312	cited	para 5
2012 (2) SCR 696	cited	para 5
1959 SCR 379	cited	para 5
2006 Suppl. (10) SCR 287	referred to	para 5
AIR 1981 SC 1054	referred to	para 5
1993 (3) SCR 287	referred to	para 5
1999 Suppl. (4) SCR 514	cited	

1988 Suppl. (2) SCR 929	**cited**	**para 5**
1972 (1) SCR 571	**cited**	**para 7**
2004 Suppl. (6) SCR 125	**cited**	**para 7**
(2013) 11 SCC 405	**cited**	**para 7**
2004 Suppl. (3) SCR 202	**cited**	**para 7**
2012 (12) SCR 327	**cited**	**para 7**
2003 Suppl. (3) SCR 763	**referred to**	**para 7**
2004 Suppl. (3) SCR 202	**cited**	**para 7**
1991 Suppl. (3) SCR 325	**cited**	**para 7**
1999 Suppl. (3) SCR 124	**cited**	**para 7**
2003 (3) SCR 762	**referred to**	**para 7**
1994 Suppl. (4) SCR 378	**referred to**	**para 7**
2008 (4) SCR 976	**cited**	**para 7**
1997 Cr.L.J 90 (MP)	**cited**	**para 7**
2008 (2) SCR 36	**referred to**	**para 8**
1980 (1) SCR 910	**cited**	**para 8**
(1870-71) VII Moore N.S. 314	**cited**	**para 8**
2000 Suppl. (3) SCR 142	**cited**	**para 8**
1996 Suppl. (10) SCR 347	**referred to**	**para 9**
1984 (2) SCR 914	**held inapplicable**	**para 9**
1969 SCR 438	**cited**	**para 15**
1964 SCR 37	**referred to**	**para 23**
1961 AIR 986	**referred to**	**para 23**

1959 Suppl. SCR 639	**referred to**	**para 28**
2007 (3) SCR 579	**referred to**	**para 29**
2008 (13) SCR 373	**referred to**	**para 33**
(1990) 1 SCC 400	**referred to**	**Para 38**
1990 (1) SCC 400	**relied on**	**Para 38**
1977 (1) SCR 1	**referred to**	**para 39**
1977 (2) SCR 102	**referred to**	**para 39**
2004 Suppl. (5) SCR 96	**referred to**	**para 39**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 829 of 2005.

From the Judgment and Order dated 17.07.2002 of the High Court of Judicature at Madras in Crl. O.P. No. 12001 of 1997.

WITH

SLP(Crl.) Nos. 5687-5688 and 5764 of 2013.

Sidharth Luthra, ASG, Amarendra Sharan, S. Gurukrishna Kumar, K. Swami, Prabha Swami, Nikhil Swami, Amit Anand Tiwari, Kushagra Pandey, Avinash Tripathy, A.K. Kaul, Charul Sarin, Supriya Juneja, Arjun Dewan, D.S. Mahra, V. Mohana, B. Raghunath, K.V. Vijayakumar, R. Anand Padmanabhan, Amritha Sarayoo, Nikunj Dayal, Pramod Dayal for the appearing parties.

The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. While dealing with Criminal Appeal No. 829 of 2005 a two-Judge Bench of this Court noticed a conflict between a two-Judge Bench decision of this Court in *Bharat Damodar Kale & Anr.*

v. State of Andhra Pradesh[1] which is followed in another two-Judge Bench decision in *Japani Sahoo v. Chandra Sekhar Mohanty*[2] and a three-Judge Bench decision of this Court in *Krishna Pillai v. T.A. Rajendran & Anr.*[3] . In *Bharat Kale* it was held that for the purpose of computing the period of limitation, the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of a process by court. In *Krishna Pillai* this Court was concerned with Section 9 of the Child Marriage Restraint Act, 1929 which stated that no court shall take cognizance of any offence under the Child Marriage Restraint Act, 1929 after the expiry of one year from the date on which the offence is alleged to have been committed. The three-Judge Bench held that since magisterial action in the case before it was beyond the period of one year from the date of commission of the offence, the Magistrate was not competent to take cognizance when he did in view of bar under Section 9 of the Child Marriage Restraint Act, 1929. Thus, there was apparent conflict on the question whether for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, 1973 (for short *'the Cr.P.C.')* in respect of a criminal complaint the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance. The two-Judge Bench, therefore, directed that this case may be put up before a three-Judge Bench for an authoritative pronouncement. When the matter was placed before the three-Judge Bench, the three-Judge Bench doubted the correctness of *Krishna Pillai* and observed that as a co-ordinate Bench, it cannot declare *that Krishna Pillai* does not lay down the correct law and, therefore, the matter needs to be referred to a five-Judge Bench to examine the correctness of the view taken in *Krishna Pillai.* Accordingly, this appeal along

1. (2003) 8 SCC 559.
2. (2007) 7 SCC 394.
3. (1990) supp. SCC 121.

with other matters where similar issue is involved is placed before this Constitution Bench.

2. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

A. Whether for the purposes of computing the period of limitation under Section 468 of the Cr.P.C the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

B. Which of the two cases i.e. *Krishna Pillai* or *Bharat Kale* (which is followed in *Japani Sahoo*) lays down the correct law.

3. We have heard learned counsel for the parties at great length and carefully read their written submissions. We may give gist of their submissions and then proceed to answer the questions which fall for our consideration.

4. Gist of submissions of Mr. Krishnamurthi Swami, learned counsel for the appellant in Criminal Appeal No. 829 of 2005.

a. ***Krishna Pillai*** was rendered in the context of Section 9 of the Child Marriage Restraint Act, 1929. There is no reference to either Section 468 or Section 473 of the Cr.P.C. in this judgment. This judgment merely focuses on the meaning of the term 'taking cognizance' and has accordingly interpreted Section 9 without reference to any provisions of the Cr.P.C. Hence, this judgment cannot be considered authority for the purposes of interpretation of provisions of Chapter XXXVI. On the other hand ***Bharat Kale*** considers various provisions of Chapter XXXVI. All the p n

cumulatively read to conclude that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated within the period of the limitation prescribed under the Cr.P.C. This judgment lays down the correct law.

b. Section 468 of the Cr.P.C. has to be read keeping in view other provisions particularly Section 473 of the Cr.P.C. A person filing a complaint within time cannot be penalized because the Magistrate did not take cognizance. A person filing a complaint after the period of limitation can file an application for condonation of delay and the Magistrate could condone delay if the explanation is reasonable. If Section 468 is interpreted to mean that a Magistrate cannot take cognizance of an offence after the period of limitation without any reference to the date of filing of the complaint or the institution of the prosecution it would be rendered unconstitutional. A court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than accepting an interpretation which may make such provision unsustainable and *ultra vires* the Constitution. [*U.P. Power Corpon. Ltd. v. Ayodhya Prasad Mishra & Anr*[4]].

c. Chapter XXXVI requires to be harmoniously interpreted keeping the interests of both the complainant as well as the accused in mind.

d. The law of limitation should be interpreted from the standpoint of the person who exercises the right and whose remedy would be barred. The laws of

4. (2008) 10 SCC 139.

limitation do not extinguish the right but only bar the remedy. [*Mela Ram v. The Commissioner of Income Tax Punjab]*.[5]

e. If delay in filing a complaint can be condoned in terms of Section 473 of the Cr.P.C. then, Section 468 of the Cr.P.C cannot be interpreted to mean that a complaint or prosecution instituted within time cannot be proceeded with, merely because the Magistrate took cognizance after the period of limitation.

f. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision. However, the same may not by itself be a ground for dismissing the complaint at the threshold. [*Udai Shankar Awasthi v. State of U.P. & Anr.*[6]]. In certain exceptional circumstances delay may have to be condoned considering the gravity of the charge.

g. The contention that Section 468 should be interpreted to mean that where the Magistrate does not take cognizance within the period of limitation it must be treated as having the object of giving quietus to petty offences in the Indian Penal Code is untenable. Some offences which fall within the periods of limitation specified in Section 468 of the Cr.P.C are serious. It could never have been the intention of the legislature to accord quietus to such offences.

h. Procedure is meant to sub-serve and not rule the cause of justice. Procedural laws must be liberally construed to really serve as handmaid. Technical

5. 1956 SCR 166.

6. (2013) 2 SCC 435.

objections which tend to defeat and deny substantial justice should be strictly discouraged. [*Sushil Kumar Jain v. State of Bihar*[7], *Sardar Amarjeet Singh Kalra (dead) by LRs. & Ors. v. Promod Gupta (dead) by LRs. & Ors.*[8], *Kailash v. Nanhku & Ors.*[9]]

5. Gist of submissions of Mr. S. Guru Krishnakumar, learned senior counsel and Mrs. V. Mohana, learned counsel for respondent 1 in Criminal Appeal No. 829 of 2005.

a. *Bharat Kale* and *Japani Sahoo* do not represent the correct position in law. *Krishna Pillai* rightly holds that the relevant date for considering period of limitation is the date of taking cognizance.

b. The settled principles of statutory construction require that the expression 'cognizance' occurring in Chapter XXXVI of the Cr.P.C. has to be given its legal sense, since it has acquired a special connotation in criminal law. It is a settled position in law that taking cognizance is judicial application of mind to the contents of a complaint/police report for the first time. *[R.R. Chari v. The State of Uttar Pradesh*[10], *Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.*[11]*]*. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal meaning and no other. *[State of Madras v. Gannon Dukerley & Co. (Madras) Ltd.*[12]*].*

7. 1975 (3) SCR 944.
8. (2003) 3 SCC 272.
9. (2005) 4 SCC 480.
10. AIR 1951 SCC 424.
11. (2012) 5 SCC 424.
12. 1959 SCR 379.

c. The heading of Chapter XXXVI providing for limitation for taking cognizance of certain offences is clearly reflective of the legislative intent to treat the date of taking cognizance as the relevant date in computing limitation. Pertinently, Section 467 defines the expression 'period of limitation' as the period specified in Section 468 for taking cognizance of an offence. The express language of Section 468 makes it clear that the legislature considers the relevant date for computing the date of limitation to be the date of taking cognizance and not the date of filing of a complaint. Further, the situations in Section 470 of the Cr.P.C. providing for exclusion in computing the period of limitation are again relatable to taking cognizance and institution of prosecution. So also, exclusion under Section 471 of the Cr.P.C. relates only to taking cognizance and Section 473 of the Cr.P.C. also provides for extension of period of limitation in taking cognizance.

d. The scheme of the Cr.P.C. envisages cognizance to be the point of initiation of proceedings. Chapter XIV of the Cr.P.C. which contains provisions of taking cognizance is titled "Conditions requisite for initiation of proceedings". All provisions contained therein use the expression 'cognizance'. They do not refer to filing of complaint at all.

e. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Even if the literal interpretation results in hardship or inconvenience it has to be followed (*Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.*[13]). On a plain and literal interpretation of

13. (2007) 2 SCC 230.

Section 468 of the Cr.P.C. read in the background of object of Chapter XXXVI the intention of the legislature is clearly evident that bar of limitation is only for taking cognizance of an offence after the expiry of the period specified therein.

f. Chapter XV of the Cr.P.C. sets out procedure to be followed in respect of complaints filed directly to a Magistrate. It reflects a well laid out scheme which envisages judicial application of mind to be a pre-requisite for initiation of proceedings. The definition of the term 'complaint' contained in Section 2(d) also makes this evident. Thus, initiation of proceedings in criminal law can only be upon taking cognizance. It is clear, therefore, that under Section 468 of the Cr.P.C. legislature has barred taking of cognizance as envisaged by Chapters XIV and XV after expiry of period of limitation. Hence, the date for purpose of limitation would be the date of taking cognizance. Mere filing of a complaint does not result in cognizance being taken, for the law requires the court to apply its mind judicially even before deciding to issue process.

g. There was no period of limitation under the old Cr.P.C. A long delay led to serious negligence on the part of the prosecuting agencies, forgetfulness on the part of the prosecution and defence witness and mental anguish to the accused. Infliction of punishment long after the commission of offence impairs its utility as social retribution to the offender. To obviate these lacunae Chapter XXXVI was introduced in the Cr.P.C.

h. *Bharat Kale* and *Japani Sahoo* have missed the object of introduction of Chapter XXXVI in the Cr.P.C. namely to serve larger interest of

administration of criminal justice keeping in view the interest of the accused and the interest of prosecuting agencies. These judgments fail to advert to the prejudice that will be caused to the accused if benefit of delay in taking cognizance is not given to them. The likelihood of prejudice being caused to the complainant which weighed with this court in the above two decisions can be taken care of by Section 473 which provides for condonation of delay. *[State of Punjab v. Sarwan Singh*[14]*, Vanka Radhamanohari (Smt.) v. Vanka Venkata Reddy and others*[15] and *State of H.P. v. Tara Dutt & Anr.*[16]*]*

i. Object of Section 473 of the Cr.P.C. has not been considered in *Bharat Kale* and *Japani Sahoo*. They are sub-silentio in this regard. (*Municipal Corporation of Delhi V. Gurnam Kaur*[17]). They have also not taken note of difference of language in Sections 468 and 469 of the Cr.P.C.

j. There are seven exceptions in the Cr.P.C. to Section 468 namely Sections 84(1), 96(1), 198(6), 199(5), 378(5), 457(2) and the proviso to Section 125(3). In all these provisions period of limitation has been expressly provided by the legislature. The language of each of these provisions is different from language of Section 468. A perusal of these seven exceptions show that what is intended in Section 468 of the Cr.P.C. is limitation for taking cognizance and not for filing complaints.

6. Gist of submissions of Mr. Padmanabhan, learned

14. AIR 1981 SC 1054.
15. (1993) 3 SCC 4.
16. (2000) 1 SCC 101.
17. (1989) 1 SCC 101.

counsel for respondent 2 in Criminal Appeal No. 829 of 2005.

a. The legislature has been very specific wherever time limit has to be fixed for initiation of prosecution. In certain special legislations like the Negotiable Instruments Act bar of limitation is not co-related to taking cognizance of an offence by a court, but it is co-related to filing of a complaint within a specific period. It is apparent that the bar under Chapter XXXVI of the Cr.P.C. must be co-related to taking cognizance of an offence by the court in view of specific language used by the relevant sections contained therein.

b. Chapter XXXVI of the Cr.P.C. is captioned as 'Limitation for Taking Cognizance of Certain Offences'. Therefore, this Chapter has to be understood as a Chapter placing limitation upon the court for the purposes of taking cognizance within the timeframe prescribed and not for filing of a complaint. In this Chapter the word 'complaint' or 'complainant' are conspicuously absent. Emphasis is on 'offences'.

c. Section 473 of the Cr.P.C enjoins a duty on the court to examine not only whether the delay has been explained or not but whether it is necessary to do so in the interest of justice.

d. If the charge-sheet is hit by Section 468, the Court may then resort to Section 473 in exceptional cases in the interest of justice. The same consideration may not arise if a private complaint is filed. Section 473 is designed to cater to situations when for genuine reasons investigation is delayed. It is not intended to give long rope to litigants who take long time to approach the court.

e. Marginal Heading or Note can be usefully referred to, to determine the sense of any doubtful expression in a section ranged under that heading though it cannot be referred to for giving a different effect to clear words in the section.

7. Gist of submissions of Mr. Amrendra Sharan, learned senior counsel appearing for the petitioner in SLP (Crl.) Nos. 5687-5688 of 2013 and SLP (Crl.) No. 5764 of 2013.

a. Chapter XXXVI of the Cr.P.C. is a complete code in itself which deals with issue of bar of limitation for taking cognizance of an offence.

b. A bare reading of Section 468 of the Cr.P.C leaves no manner of doubt that the bar of limitation applies as on the date of cognizance. It specifically targets cognizance and it debars taking cognizance of an offence after expiration of the statutory period of limitation. One cannot make fundamental alteration in the words of the statute. Taking cognizance cannot be altered to filing complaint within statutory period.

c. Taking cognizance is distinct from filing complaint. The term cognizance has been defined by this Court in *R.R. Chari* and *Darshan Singh Ram Kishan v. State of Maharashtra*[18]. Cognizance takes place when a Magistrate first takes judicial notice of an offence on a complaint, or on a police report or upon information of a person other than a police officer.

d. Operation of legal maxims can be excluded by statutes but operation of statutes cannot be excluded by legal maxims. Reliance on a maxim by

18. (1971) 2 SCC 654.

this Court in *Japani Sahoo* for carving out an exception and supplying words to the complete Code of limitation is erroneous.

e. Penal statutes have to be interpreted strictly. *[Tolaram Relumal & Anr. v. The State of Bombay*][19]. It is the cardinal rule of interpretation that where a statute provides a particular thing should be done, it should be done in the manner prescribed and not in any other way. *(State of Jharkhand & Anr. v. Ambay Cements & Anr.*[20]*)*

f. The rule of *Casus Omissus* stipulates that a matter which should have been, but has not been provided for in the statute cannot be supplied by the courts as, to do so, will be legislation by court and not construction. The legislative *casus omissus* cannot be supplied by judicial interpretative process. There is no scope for supplying/ supplanting any word, phrase or sentence or creating any exception in Chapter XXXVI which is a complete Code in itself. *[Shiv Shakti Co-operative Housing Society, Nagpur v. Swaraj Developers & Ors.*[21]*, Bharat Aluminum Co. etc. v. Kaiser Aluminum Technical Services etc.*[22]*, Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd. & Anr.*[23]*].*

g. *Japani Sahoo* does not lay down the correct law because by stipulating that the date of limitation is to be calculated from the date of filing of complaint rather than from the date on which the cognizance

19. AIR 1954 SC 496.
20. (2005) 1 SCC 368.
21. (2003) 6 SCC 659.
22. (2012) 9 SCC 552.
23. (2003) 11 SCC 405.

is taken, it has created a *casus omissus*, where the language of the statute was plain and no *casus omissus* existed.

h. The Golden Rule of Interpretation provides that a statute has to be interpreted by grammatical or literal meaning unmindful of the consequences if the language of the statute is plain and simple. [*Maulavi Hussein Haji Abraham Umarji v. State of Gujarat & Anr*[24]].

i. The Law Commission's 42nd Report demonstrates the rational for introduction of limitation in Cr.P.C. The legislature wanted to ensure that prosecution should not result in persecution especially in cases of minor offences which could be tried and disposed of speedily.

j. The accused has a fundamental right to speedy trial which is a facet of Article 21. [*A.R. Antulay v. R.S. Nayak*[25] *("Antulay '1992' Case")*] Therefore, it is the duty of the courts to take cognizance within a prescribed timeframe. If the court fails to do so, it is not open to it to take cognizance of such offence as it might prejudice the right of the accused. Therefore, no cognizance can be taken after the period of limitation. *[Raj Deo Sharma (II) v. State of Bihar*[26] and *Sarwan Singh.]*

k. The accused has a right to be heard at the time of condonation of delay in taking cognizance by the courts. Delay cannot be condoned without notice to the accused. [*State of Maharashtra v. Sharadchandra Vinayak Dongre & Ors.*[27]*, P.K.*

24. (2004) 6 SCC 405.
25. (1992) 1 SCC 225.
26. (1999) 7 SCC 604.
27. (1995) 1 SCC 42.

Choudhary v. Commander, 48 BRTF, (GREF)[28], *Krishna Sanghai v. State of M.P.*[29]*]*

l. The accused have to be heard when an application under Section 473 of the Cr.P.C. is moved by the prosecution before cognizance is taken. Section 468 of the Cr.P.C. is clear and unambiguous and it bars taking cognizance of an offence, if on the date of taking cognizance the period prescribed under Section 468(2) of the Cr.P.C. has expired. *Japani Sahoo*, therefore, does not lay down the correct law.

8. Gist of submissions of Mr. Sidharth Luthra, learned Additional Solicitor General, appearing for the respondent–State (NCT of Delhi) in SLP (Crl.) Nos. 5687-5688 of 2013 and SLP (Crl.) No. 5764 of 2013.

a. *Bharat Kale* lays down the correct law and not *Krishna Pillai*.

b. Legislative history of Chapter XXXVI indicates its object.

c. Stage of process is not to be mistaken for cognizance. Cognizance indicates the point when a court takes judicial notice of an offence with a view to initiating process in respect of the offence [*S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors.*[30]*]*. Cognizance is entirely a different thing from initiation of proceedings, rather it is the condition precedent to the initiation of proceedings by the court. Cognizance is taken of the case and not of

28. (2008) 13 SCC 229.

29. 1997 Cr. L.J. 90 (MP).

30. (2008) 2 SCC 492.

persons. Under Section 190 of the Cr.P.C. it is the application of mind to the averments in the complaint that constitutes cognizance (*Bhushan Kumar)*. Stage of process is not relevant for the purpose of computing limitation under Section 468 of the Cr.P.C.

d. Chapter XXXVI has to be read as a whole. To understand the scheme of this Chapter reference may be made to *Vanka Radhamanohari.*

e. On interpretation of Section 473 of the Cr.P.C particularly the disjunctive 'or' used therein reference may be made to *Municipal Corporation of Delhi v. Tek Chand Bhatia*.[31] Once the complainant has acted with due diligence and there are delays on the part of the Court, it would be in the interest of justice to condone such delay and not call for explanation from the complainant which in any case he cannot possibly give. On condonation of delay reference may be made to *Sharadchandra Dongre*.

f. Taking cognizance is not dictated by the prosecution of the complaint or police report but is predicated upon application of judicial mind by the Magistrate which is not in the control of the individual instituting the prosecution. If date of taking cognizance is considered to be relevant in computing limitation, the act of the court can prejudice the complainant which will be against the maxim 'the acts of courts should not prejudice anyone'. [*Rodger v. Comptoir D'Escompte De Paris*[32]].

31. (1980) 1 SCC 158.

32. (1870-71) VII Moore N.S. 314.

g. *Krishna Pillai* relates to Section 9 of the Child Marriage Restraint Act, 1929 which is a special law and which provides for a limitation for taking cognizance and could exclude the application of Chapter XXXVI and, hence, Section 473 of the Cr.P.C. and perhaps in such facts there was no reference to Section 473 of the Cr.P.C. Similar is the view in *P.P. Unnikrishnan & Anr. v. Puttiyottil Alikutty & Anr.*[33].

h. It is settled law that Sections 4 and 5 of the Cr.P.C. create an exception for special laws with special procedures. *Krishna Pillai* was in the context of specific limitation period where Section 473 of the Cr.P.C. had no application. Thus, it cannot be considered or applied to interpret Sections 468 and 473 of the Cr.P.C. as they stand. On the contrary, view taken in *Bharat Kale* and *Japani Sahoo* relying upon *Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada*,[34] reach the same conclusion as contended herein i.e. the acts of the court should not prejudice anyone.

9. Having given the gist of the submissions, we shall now advert to *Krishna Pillai, Bharat Kale* and *Japani Sahoo* which have led to this reference. In *Krishna Pillai* this Court was concerned with Section 9 of the Child Marriage Restraint Act, 1929 which reads as under:

> "*No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.*"

It was not disputed that cognizance of the offence had been taken by the court more than a year after the offence was

33. (2000) 8 SCC 131.

34. (1997) 2 SCC 397.

committed. The appellant challenged the continuance of prosecution by filing an application under Section 482 of the Cr.P.C. before the High Court contending that the cognizance was barred under Section 9 of the Child Marriage Restraint Act, 1929. It was contended by the respondent that since the complaint had been filed within a year from the commission of the offence it must be taken that the court has taken cognizance on the date when the complaint was filed. Therefore, the complaint cannot be said to be barred by limitation. This Court quoted the following observations of the judgment of the Constitution Bench in *A.R. Antulay v. Ramdas Sriniwas Nayak ("Antulay '1984' Case"*[35]*:*

> *"When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court."*

This Court observed that cognizance has assumed a special meaning in our criminal jurisprudence and the above extract from *Antulay '1984' Case* indicates that filing of a complaint is not taking cognizance and what exactly constitutes taking cognizance is different from filing a complaint. This Court observed that since the magisterial action in the case before it was beyond the period of one year from the date of commission of the offence, the Magistrate was not competent

35. (1984) 2 SCC 500.

to take cognizance when he did in view of the bar under Section 9 of the Child Marriage Restraint Act, 1929.

10. Before discussing *Bharat Kale,* it is necessary to go to *Rashmi Kumar (Smt.)* on which reliance is placed in *Bharat Kale*. In that case, the question was whether the complaint filed by the complainant-wife against the husband under Section 406 of the IPC in September, 1990 was time barred. The offence under Section 406 of the IPC is punishable with imprisonment which could extend to three years or with fine or with both. Therefore, under Section 468(3) of the Cr.P.C., the limitation period for the said offence is three years. It was urged by the counsel for the husband that the evidence of the complainant-wife recorded under Section 200 of the Cr.P.C. establishes that in October, 1986 the complainant-wife demanded return of jewelry and the husband refused to return the jewelry. Therefore, the period of limitation began to run from October, 1986 and the complaint filed in September, 1990 was time barred, it having been filed beyond the period of three years. A three-Judge Bench of this Court negatived this contention and held that it was clearly averred in the complaint that on 5/12/1987, the complainant-wife had demanded jewelry from the husband and the husband had refused to do so and, therefore, the complaint filed on 10/9/1990 was within three years from the date of demand of jewelry and refusal to return it by the husband. Thus, for the purpose of computation of period of limitation, the date of filing of the complaint was held to be relevant.

11. In *Bharat Kale,* the offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was detected on 5/3/1999. The complaint was filed on 3/3/2000 which was within the period of limitation of one year. However, the Magistrate took cognizance on 25/3/2000 i.e. beyond the period of one year. It was argued that since cognizance was taken beyond the period of one year, the bar of limitation

applies. After considering the provisions of Chapter XXXVI of the Cr.P.C. this Court observed that they indicate that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It, of course, prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This Court further observed that taking cognizance is an act of the court over which the prosecuting agency or the complainant has no control. A complaint filed within the period of limitation cannot be made infructuous by an act of the court which will cause prejudice to the complainant. Such a construction will be against the maxim '*actus curiae neminem gravabit',* which means the act of court shall prejudice no man. It was also observed relying on *Rashmi Kumar (Smt.)* that the legislature could not have intended to put a period of limitation on the act of the court for taking cognizance of an offence so as to defeat the case of the complainant.

12. In *Japani Sahoo*, the complainant therein filed a complaint in the court of the concerned Magistrate alleging commission of offences punishable under Sections 161, 294, 323 and 506 of the IPC. On 8/8/1997 learned Magistrate on the basis of statements of witnesses issued summons for appearance of the accused. The accused surrendered on 23/11/1998 and thereafter filed a petition under Section 482 of the Cr.P.C. in the High Court for quashing criminal proceedings contending *inter alia* that no cognizance could have been taken by the court after the period of one year of limitation prescribed for the offences punishable under Sections 294 and 323 of the IPC. The High Court held that the relevant date for deciding the bar of limitation was the date of taking cognizance by the court and since cognizance was taken after the period of one year and the delay was not condoned by the court by exercising power under Section 473 of the Code, the complaint is liable to be dismissed. On appeal, this Court referred to another well known maxim '*nullum tempus aut loc*

means that a crime never dies. This Court elaborately discussed the scheme of Chapter XXXVI of the Cr.P.C. and after following *Bharat Kale* held that it is the date of filing of complaint or the date on which criminal proceedings are initiated which is material.

13. At the outset, we must deal with the criticism leveled against *Bharat Kale* and *Japani Sahoo* that they place undue reliance on legal maxims. It was argued that legal maxims can neither expand nor delete any part of an express statutory provision, nor can they give an interpretation which is directly contrary to what the provision stipulated. Their operation can be excluded by statutes but operation of statutes cannot be excluded by legal maxims.

14. It is true that in *Bharat Kale* and *Japani Sahoo* this Court has referred to two important legal maxims. We may add that in *Vanka Radhamanohari,* to which our attention has been drawn by the counsel, it is stated that the general rule of limitation is based on Latin maxim '*vigilantibus et non dormientibus, jura subveniunt',* which means the vigilant and not the sleepy, are assisted by laws. We are, however, unable to accept the submission that reliance placed on legal maxims was improper. We are mindful of the fact that legal maxims are not mandatory rules but their importance as guiding principles can hardly be underestimated. *Herbert Broom* in the preface to the First Edition of his classical work "*Legal Maxims*" (as seen in Broom's Legal Maxims, Tenth Edition, 1939) stated:

> *"In the Legal Science, perhaps more frequently than in any other, reference must be made to the first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such maxims, many of which obtained in the Roman law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reason and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves.*

In our opinion, therefore, use of legal maxims as guiding principles in *Bharat Kale* and *Japani Sahoo* is perfectly justified.

15. To address the questions which arise in this reference, it is necessary to have a look at the legislative history of Chapter XXXVI of the Cr.P.C. The Criminal Procedure Code, 1898 contained no general provision for limitation. Though under certain special laws like the Negotiable Instruments Act, 1881, Trade and Merchandise Marks Act, 1958, the Police Act, 1861, The Factories Act, 1948 and the Army Act, 1950, there are provisions prescribing period of limitation for prosecution of offences, there was no general law of limitation for prosecution of other offences. The approach of this Court while dealing with the argument that there was delay in launching prosecution, when in the Criminal Procedure Code (1898), there was no general provision prescribing limitation, could be ascertained from its judgment in *The* *of*

Customs , Bombay & Anr. v. L.R. Melwani & Anr.[36]. It was urged before the High Court in that case that there was delay in launching prosecution. The High Court held that the delay was satisfactorily explained. While dealing with this question, this Court held that in any case prosecution could not have been quashed on the ground of delay because it was not the case of the accused that any period of limitation was prescribed for filing the complaint. Hence the complaint could not have been thrown out on the sole ground that there was delay in filing the same. This Court further observed that the question of delay in filing complaint may be a circumstance to be taken into consideration in arriving at the final verdict and by itself it affords no ground for dismissing the complaint. This position underwent a change to some extent when Chapter XXXVI was introduced in the Cr.P.C. as we shall soon see.

16. It is pertinent to note that the Limitation Act, 1963 does not apply to criminal proceedings except for appeals or revisions for which express provision is made in Articles 114, 115, 131 and 132 thereof. After conducting extensive study of criminal laws of various countries, the Law Commission of India appears to have realized that providing provision of limitation for prosecution of criminal offences of certain type in general law would, in fact, be good for the criminal justice system. The Law Commission noted that the reasons to justify introduction of provisions prescribing limitation in general law for criminal cases are similar to those which justify such provisions in civil law such as likelihood of evidence being curtailed, failing memories of witnesses and disappearance of witnesses. Such a provision, in the opinion of the Law Commission, will quicken diligence, prevent oppression and in the general public interest would bring an end to litigation. The Law Commission also felt that the court would be relieved of the burden of adjudicating inconsequential claims. Paragraph 24.3 is material. It reads thus:

36. AIR 1970 SC 962.

"24.3 – In civil cases, the law of limitation in almost all countries where the rule of law prevails, Jurists have given several convincing reasons to justify the provision of such a law; some of those which are equally applicable to criminal prosecutions may be referred to here:-

(1) The defendant ought not to be called on to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared."

(2) The law of limitation is also a means of suppressing fraud, and perjury, and quickening diligence and preventing oppression.

(3) It is in the general public interest that there should be an end to litigation. The statute of limitation is a statute of repose.

(4) A party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the state in enforcing it.

(5) The court should be relieved of the burden of adjudicating inconsequential or tenuous claims."

The Law Commission stated its case for extending limitation to original prosecutions as under:

"24.11 - It seems to us that there is a strong case for having a period of limitation for offences which are not very serious. For such offences, considerations of fairness to the accused and the need for ensuring freedom from prosecution after a lapse of time should outweigh other considerations. Moreover, after the expiry of a certain period the sense of social retribution loses its edge and the punishment does not serve the purpose of social retribution. The deterrent effect of punishment which is one of the most important w

is very much impaired if the punishment is not inflicted promptly and if it is inflicted at a time when it has been wiped off the memory of the offender and of other persons who had knowledge of the crime.

Paragraphs 24.13, 24.14, 24.20, 24.22, 24.23, 24.24, 24.25, and 24.26 could also be advantageously quoted.

"24.13 – At present no court can throw out a complaint solely on the ground of delay, because, as pointed out by the Supreme Court, "the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint". It is true that unconscionable delay is a good ground for entertaining grave doubts about the truth of the complainant's story unless he can explain it to the satisfaction of the court. But it would be illegal for a court to dismiss a complaint merely because there was inordinate delay.

24.14. -We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment upto three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

24.20. -The question whether prosecution commences on the date on which the court takes cognizance of the offence or only on the date on which process is issued against the accused, has been settled by the Supreme Court with reference to Section 15 of the Merchandise Marks Act, 1889. Where the complaint was filed within one year of the discovery of offence, it cannot be thrown out merely because process was not issued within one

year of such discovery. The complainant is required by section 15 of the Act to "commence prosecution" within this period, which means that if the complaint is presented within one year of such discovery, the requirements of section 15 are satisfied. The period of limitation is intended to operate against complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. It will defeat the object to the enactment deprive traders of the protection which the law intended to give them, to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out.

24.22 -Secondly, as in civil cases, in computing the period of limitation for taking cognizance of offence, the time during which any person has been prosecuting with the due diligence another prosecution whether in a court of first instance or in a court of appeal or revision, against the offender, should be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

24.23 -Thirdly, in the case of a continuing offence, a fresh period of limitation should begin to run at every moment of the time during which the offence continues; and we recommend the insertion of a provision to that effect.

24.24 - Impediments to the institution of a prosecution have also to be provided for. Such impediments could be (a) legal, or (b) due to conduct of the accused, or (c) due to the court being closed on the last day.

As regards legal impediments, two aspects may be considered, first, the time for which institution of prosecution is stayed under a legal provision, and secondly, prosecutions for which previous sanction is

required, or notice has to be given, under legal provision. Both are appropriate cases for a special provision for extending the period of limitation. We recommend that, where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, than, in computing the period of limitation for taking cognizance of that offence, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

24.25 -We also recommend that where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

24.26 -As illustrations of impediments caused by the conduct of the accused, we may refer to his being out of India, and his absconding or concealing himself. Running of the period of limitation should be excluded in both cases."

17. The Joint Parliament Committee ("**the JPC**") accepted the recommendations of the Law Commission for prescribing period of limitation for certain offences. The relevant paragraphs of its report dated 30/11/1972 read as under:

*"**Clauses 467 to 473 (new clauses) –** These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out*

complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission.

Among the grounds in favour of prescribing the limitation may be mentioned the following:

1. As time passes the testimony of witnesses become weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.

2. For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at some time or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

3. The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the persons concerned.

4. The sense of social retribution which is one of the purposes of criminal law looses its edge after the expiry of a long period.

5. The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The actual periods of limitation provided for in the new clauses would, in the Committee's opinion be appropriate having regard to the gravity of the offences and other relevant factors.

As regards the date from which the period is to be counted the Committee considered has fixed the date as the date of the offence. As, however this may create practical difficulties and may also facilitate an accused person to escape punishment by simply absconding himself for the prescribed period, the Committee has also provided that when the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the period of limitation would commence from the day on which the participation of the offender in the offence first comes to the knowledge of a person aggrieved by the offence or of any police officer, whichever is earlier. Further, when it is not known by whom the offence has committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence.

The Committee has considered it necessary to make a specific provision for extension of time whenever the court is satisfied on the materials that the delay has been properly explained or that the accused had absconded. This provision would be particularly useful because limitation for criminal prosecution is being prescribed for the first time in this country".

18. Read in the background of the Law Commission's Report and the Report of the JPC, it is clear that the object of Chapter XXXVI inserted in the Cr.P.C. was to quicken the prosecutions of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system

more orderly, efficient and just by providing period of limitation for certain offences. In *Sarwan Singh,* this Court stated the object of Cr.P.C in putting a bar of limitation as follows:

> *"The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."*

19. It is equally clear however that the law makers did not want cause of justice to suffer in genuine cases. Law Commission recommended provisions for exclusion of time and those provisions were made part of Chapter XXXVI. We, therefore, find in Chapter XXXVI provisions for exclusion of time in certain cases (Section 470), for exclusion of date on which the Court is closed (Section 471), for continuing offences (Section 472) and for extension of period of limitation in certain cases (Section 473). Section 473 is crucial. It empowers the court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Therefore, Chapter XXXVI is not loaded against the complainant. It is true that the accused has a right to have a speedy trial and this right is a facet of Article 21 of the Constitution. Chapter XXXVI of the Cr.P.C. does not undermine this right of the accused. While it en

providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It must be mentioned here that where the legislature wanted to treat certain offences differently, it provided for limitation in the section itself, for instance, Section 198(6) and 199(5) of the Cr.P.C. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter XXXVI of the Cr.P.C.

20. To understand the scheme of Chapter XXXVI it would be advantageous to quote Sections 467, 468, 469 and 473 of the Cr.P.C. Section 467 reads as under:

*"467. **Definitions. –** For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence"*

Section 468 reads as under:

*"468. **Bar to taking cognizance after lapse of the period of limitation**. –(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section(2), after the expiry of the period of limitation.*

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

Section 469 reads as under:

*"469. **Commencement of the period of limitation**. - (1) The period of limitation, in relation to an offender, shall commence, -*

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by he offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

Section 473 reads as under:

*"473. **Extension of period of limitation in certain cases. –** Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."*

21. Gist of these provisions could now be stated. Section 467 defines the phrase 'period of limitation' to mean the period specified in Section 468 for taking cognizance of certain offences. Section 468 stipulates the bar of limitation. Sub-section (1) of Section 468 makes it clear that a fetter is put on the court's power to take cognizance of an offence of the category mentioned in sub-section (2) after the expiry of period of limitation. Sub-section (2) lays down the period of limitation for certain offences. Section 469 states when the period of limitation commences. It is dexterously drafted so as to prevent advantage of bar of limitation being taken by the accused. It states that period of limitation in relation to an offence shall commence either from the date of offence or from the date when the offence is detected. Section 470 provides for exclusion of time in certain cases. It *inter alia* states that while computing the period of limitation in relation to an offence, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender, should be excluded. The explanation to this section states that in computing limitation, the time required for obtaining the consent or sanction of the government or any other authority should be excluded. Similarly time during which the accused is absconding or is absent from India shall also be excluded. Section 471 provides for exclusion of date on which court is closed and Section 472 provides for continuing offence. Section 473 is an overriding provision which enables courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation. Analysis of these provisions indicates that Chapter XXXVI is a Code by itself so far as limitation is concerned. All the provisions of this Chapter will have to be read cumulatively. Sections 468 and 469 will have to be read with Section 473.

22. It is now necessary to see what the words 'taking cognizance' mean. Cognizance is an act of the court. The term 'cognizance' has not been defined in the Cr.P.C. To understand

what this term means we will have to have a look at certain provisions of the Cr.P.C. Chapter XIV of the Code deals with 'Conditions requisite for initiation of proceedings'. Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to 'Complaints to Magistrates'. Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

23. In *Jamuna Singh & Ors. v. Bhadai Shah,*[37] relying on *R.R. Chari* and *Gopal Das Sindhi & Ors. v. State of Assam & Anr.*,[38] this Court held that it is well settled that when on a petition or complaint being filed before him, a Magistrate

37. AIR 1964 SC 1541.

38. AIR 1961 SC 986.

applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C., he must be held to have taken cognizance of the offences mentioned in the complaint.

24. After referring to the provisions of the Cr.P.C. quoted by us hereinabove, in *S.K. Sinha, Chief Enforcement Officer,* this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

> *"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.*
>
> *20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."*

In several judgments, this view has been reiterated. It is not necessary to refer to all of them.

25. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to

initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

26. In this connection, our attention is drawn to the judgment of this Court in *Sharadchandra Dongre.* It is urged on the basis of this judgment that by condoning the delay, the Court takes away a valuable right which accrues to the accused. Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 of the Cr.P.C. is presented before the Court. Keeping this argument in mind, let us examine both the view points i.e. whether the date of taking cognizance or the date of filing complaint is material for computing limitation. If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 of the Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the Court takes cognizance within the period of limitation, there is no question of the complaint being time barred. If the Court takes cognizance after the period of limitation then, the question is how will Section 473 of the Cr.P.C. work. The complainant will be interested in having the delay condoned. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the

Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr. Luthra, learned A.S.G. submitted that use of disjunctive 'or' in Section 473 of the Cr.P.C. suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the later part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 of the Cr.P.C. has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the Court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass order condoning or not condoning the delay. Law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 of the Cr.P.C. is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.

27. The role of the court acting under Section 473 was aptly described by this Court in *Vanka Radhamanohari (Smt.)* where this Court expressed that this Section has a non-obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473 of the Cr.P.C. For exercise of power under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the court that there was sufficient cause for condonation of delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such

delay has been explained but as to whether, it is the requirement of justice to ignore such delay. These observations indicate the scope of Section 473 of the Cr.P.C. Examined in light of legislative intent and meaning ascribed to the term 'cognizance' by this Court, it is clear that Section 473 of the Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

28. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 of the Cr.P.C. would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of re

rather than applying a doctrine which would make the provision unsustainable and *ultra vires* the Constitution. *(U.P. Power Corporation Ltd. v. Ayodhaya Prasad Mishra).*

29. The conclusion reached by us is reinforced by the fact that the Law Commission in clause 24.20 of its Report, which we have quoted hereinabove, referred to *Dau Dayal*[39] where the three-Judge Bench of this Court was dealing with a Special Act i.e. the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26/4/1954 when he was arrested, and that, in consequence, the issue of process on 22/7/1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three-Judge Bench of this Court observed as under:

> ***"6.*** *It will be noticed that the complainant is required to resort to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and*

39. AIR 1959 SC 433.

> *who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court."*

Though, this Court was not concerned with the meaning of the term 'taking cognizance', it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year.

30. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Kale*, *Japani Sahoo* and *Vanka Radhamanohari (Smt.)*. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim '*nullum tempus aut locus occurrit regi',* which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim '*vigilantibus et non dormientibus, jura subveniunt'.* Chapter XXXVI of the Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the IPC, which have lesser punishment may have serious social consequences. Provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim '*actus curiae neminem gravabit'* which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. Provisions of this Chapte[illegible]t

interpreted solely on the basis of these maxims. They only serve as guiding principles.

31. It is submitted that the settled principles of statutory construction require that the expression 'cognizance' occurring in Chapter XXXVI should be given its legal sense. It is further submitted that if an expression acquires a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Reliance is also placed on the heading of Chapter XXXVI providing for "*Limitation for taking cognizance of certain offences*". Reliance is placed on observations of the three-Judge Bench of this Court in *Sarwan Singh,* where in the context of limitation on prosecution it is observed that it is of utmost importance that any prosecution, whether by the State or by the private complainant, must abide by the letter of law. Relying on *Raghunath Rai Bareja,* it is urged that the first principle of interpretation of the statute in every system is the literal rule of interpretation. Purposive interpretation can only be resorted to when the plain words of statute are ambiguous. It is submitted that there is no ambiguity here and, therefore, literal interpretation must be resorted to.

32. There can be no dispute about the rules of interpretation cited by the counsel. It is true that there is no ambiguity in the relevant provisions. But, it must be borne in mind that the word 'cognizance' has not been defined in the Cr.P.C. This Court had to therefore interpret this word. We have adverted to that interpretation. In fact, we have proceeded to answer this reference on the basis of that interpretation and keeping in mind that special connotation acquired by the word 'cognizance'. Once that interpretation is accepted, Chapter XXXVI along with the heading has to be understood in that light. The rule of purposive construction can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is in accordance

with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (See: *Francis Bennion on Statutory Interpretation*). After noticing this definition given by *Francis Bennion* in *National Insurance Co. Ltd. v. Laxmi Narain Dhut*[40], this Court noted that more often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. In light of this observation, we are of the opinion that if in the instant case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted.

33. In *New India Assurance Company Ltd. v. Nusli Neville Wadia and another etc.*[41] while dealing with eviction proceedings initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 this Court was concerned with interpretation of Sections 4 and 5 thereof. This Court was of the view that literal meaning thereof would place undue burden on the noticee and would lead to conclusion that the landlord i.e. the State would not be required to adduce any evidence at all. This Court observed that such a construction would lead to an anomalous situation. In the context of fairness in State action this Court observed that with a view to reading the provisions of the said Act, in a proper and effective manner, literal interpretation which may give rise to an anomaly or absurdity will have to be avoided. This Court further observed that so as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator. So done, the rules of purposive construction will have to be resorted to which would require the

40. (2007) 3 SCC 700.

41. (2008) 3 SCC 279.

construction of the statute in such a manner so as to see that it's object is fulfilled.

34. In this connection, we may also usefully refer to the following paragraph from Justice G.P. Singh's '*Principles of Statutory Interpretation' [13th edition – 2012]*.

> "*With the widening of the idea of context and importance being given to the rule that the statute has to be read as a whole in its context it is nowadays misleading to draw a rigid distinction between literal and purposive approaches. The difference between purposive and literal constructions is in truth one of degree only. The real distinction lies in the balance to be struck in the particular case between literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. When there is a potential clash, the conventional English approach has been to give decisive weight to the literal meaning but this tradition is now weakening in favour of the purposive approach for the pendulum has swung towards purposive methods of constructions."*

35. We must also bear in mind that we are construing rules of limitation. Our approach should, therefore, be in consonance with this Court's observation in *Mela Ram* that "*it is well established that rules of limitation pertain to domain of adjectival law and that they operate only to bar the remedy but not to extinguish the right*".

36. It is argued that legislative *Casus Omissus* cannot be supplied by judicial interpretation. It is submitted that to read Section 468 of the Cr.P.C. to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the Court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Co-operative*

Housing Society, Bharat Aluminum, and several other judgments of this Court where doctrine of *Casus Omissus* is discussed. In our opinion, there is no scope for application of doctrine of *Casus Omissus* to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the 42nd Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Cr.P.C. to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of *Casus Omissus* are, therefore, not relevant for the present case.

37. We also concur with the observations in *Japani Sahoo*, where this Court has examined this issue in the context of Article 14 of the Constitution and opted for reasonable construction rather than literal construction. The relevant paragraph reads thus:

> *"The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to*

of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution."

38. So far 'heading' of the chapter is concerned, it is well settled that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. In *M/s. Frick India Ltd. v. Union of India & Ors.*[42], this Court has observed as under:

"It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision."

42. (1990) 1 SCC 400.

Therefore, the submission that heading of Chapter XXXVI is an indicator that the date of taking cognizance is material must be rejected.

39. It is true that the penal statutes must be strictly construed. There are, however, cases where this Court has having regard to the nature of the crimes involved, refused to adopt any narrow and pedantic, literal and lexical construction of penal statutes. [See *Muralidhar Meghraj Loya & Anr. v. State of Maharashtra & Ors.*[43] and *Kisan Trimbak Kothula & Ors. v. State of Maharashtra*[44]]. In this case, looking to the legislative intent, we have harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, we must bear in mind that Chapter XXXVI is part of the Cr.P.C., which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. [See *Sardar Amarjeet Singh Kalra, N. Balaji v. Virendra Singh & Ors.*[45] and *Kailash]*.

40. Having considered the questions which arise in this reference in light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C., primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468

43. (1976) 3 SCC 684.

44. (1977) 1 SCC 300.

45. (2004) 8 SCC 312.

or Section 473 of the Cr.P.C. in that judgment. It does not refer to Sections 4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on *Antulay '1984' Case,* in our opinion, was not apt. In *Antulay '1984' Case*, this Court was dealing *inter alia* with the contention that a private complaint is not maintainable in the court of Special Judge set-up under Section 6 of the Criminal Law Amendment Act, 1952 *('the 1952 Act').* It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 of the Cr.P.C. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 of the Cr.P.C. or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in *Antulay '1984' Case:* Since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 of the Cr.P.C. at all, in our opinion, the said judgment could not have been usefully referred to in *Krishna Pillai* while construing provisions of Chapter XXXVI of the Cr.P.C. For all these, we are unable to endorse the view taken in *Krishna Pillai.*

41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* which is followed in *Japani Sahoo* lays down the correct law. *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C.

42. The Reference is answered accordingly. The Registry may list the matters before the appropriate courts for disposal.

R.P. Reference answered.

LAKHA RAM SHARMA
v.
BALAR MARKETING PRIVATE LIMITED & ORS.
(Civil Appeal Nos. 10679-10680 of 2013)

NOVEMBER 27, 2013

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

Trade and Merchandise Marks Act, 1958 – ss. 46 and 56 – Trade mark registered in favour of respondent no.1 – Application of appellant for rectification of the registered Trade Mark – Dismissal of – On the ground of delay – Held: On facts, not justified – It prejudiced the rights of the appellant to have the case adjudicated on merits – Appellant was pursuing its remedy with due diligence, without brooking any delay – There was not even a slightest delay on his part in challenging the validity of the trade mark obtained by Respondent No. 1 – It is a different matter that the application was returned by the Delhi High Court for want of territorial jurisdiction – However, the moment it was so returned by the Registrar of the Delhi High Court, the appellant presented the same before the Appellate Board (IPAB) on the same day – Having regard to all the facts, one fails to understand as to how IPAB could dismiss the rectification on the ground that it was filed after a delay of 10 years – Appellant had pursued his remedy in a bonafide manner and if it was filed in a wrong court and if he pursued his remedy wrongly by filing it in Delhi High Court, instead of Madras High Court, principles enshrined in s.14 of the Limitation Act clearly get attracted – Matter remitted back to IPAB to decide the Rectification application on merits – Limitation Act, 1963 – s.14.

The appellant filed suit for injunction against respondent no.1 for using his trademark. During pendency of the suit, Respondent No.1 obtained registration of the said trade mark in its favour. The

appellant filed application under Sections 46 and 56 of the Trade and Merchandise Marks Act in the High Court of Delhi for rectification of the registered Trade Mark. Respondent no.1 objected to the territorial jurisdiction of the Delhi High Court to entertain the application. The objection was upheld by the Delhi High Court. The application filed in Delhi High Court was, thus, directed to be returned for presentation before the appropriate Court. Meanwhile, the Intellectual Property Appellate Board ('IPAB') came to be constituted which was given exclusive jurisdiction to deal with such applications. The Registrar of Delhi High Court returned the Rectification application to the appellant, whereupon he presented the same before the IPAB. The IPAB dismissed the Rectification application on the ground that it was filed after a lapse of about 10 years from the date when registration was obtained by Respondent No.1, and therefore was belated. The order was affirmed by the High Court, and therefore the instant appeals.

Allowing the appeals, the Court

HELD: 1. The line of action taken by the IPAB as well as the High Court in dismissing the Rectification Petition filed by the appellant on the ground of delay is wholly erroneous, and it has prejudiced the rights of the appellant to have the case adjudicated on merits. [Para 10] [740-H; 741-A]

2. It is manifest that the appellant has been pursuing its remedy with due diligence, without brooking any delay. The appellant claims that he has been using the trade mark KUNDAN/ KUNDAN CAB and the name Kundan Cables India since 1980. In fact he was the supplier of these goods to Respondent No. 2. When the appellant came to know that Respondent No. 1 was using the trade mark Kundan, he immediately filed the suit for injunction against Respondent

Court of Delhi which shows that in all earnestness, it wanted to protect his interest in the said trade mark. [Para 11] [741-B-D]

3. During the pendency of this suit Respondent No. 1 had obtained registration of trade mark 'KUNDAN' in its favour. This happened in the year 1995. The appellant promptly filed the petition under Section 45 and 46 of the Trade and Merchandise Marks Act for rectification of the said registered trade mark and for cancelling/ expunging the same. This petition was filed on 2.5.1995. Therefore as far as the appellant is concerned, there was not even a slightest delay in challenging the validity of the trade mark obtained by Respondent No. 1. It is a different matter that this petition was returned for want of territorial jurisdiction. However, the moment this petition was returned by the Registrar i.e. on 2.11.2004, it was presented before the IPAB on the same day. Having regard to all these facts one fails to understand as to how the Appellate Board could dismiss the petition on the ground that it was filed after a delay of 10 years. The appellant had pursued his remedy in a bonafide manner and if it was filed in a wrong court and if he has pursued his remedy wrongly by filing it in Delhi High Court, instead of Madras High Court, principles enshrined in Section 14 of the Limitation Act clearly get attracted. The impugned order of the IPAB as well as High Court are liable to be set aside. The matter is remitted back to IPAB to decide the Rectification Petition on merits. [Paras 12, 13] [741-D-H; 742-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10679-10680 of 2013.

From the Judgment and Order dated 29.06.2012 of the High Court of Judicature at Madras, in Writ Petition No. 16070 of 2012 and MP.No. 1 of 2012.

Rajeev Sharma, Sahil Bhalaik, Uddyam Mukherjee, Kundan Sharma for the Appellant.

S. Janani, S. K. Bansal, Sunando Raha, Deepak Goel for the Respondents.

The Judgment of the Court was delivered by

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

2. Before adverting to the core issue it would be apposite to note down the genesis of the dispute.

3. The appellant herein is the proprietor of a concern by the name of Kundan Cables which is engaged in the manufacture of electric accessories and fittings including electrical switches, main switches, fuse units, wires and cables and electrical irons. Since 1980 the petitioner has been using the trademark Kundan/ Kundan Cab and the trade name Kundan Cables India in respect of the said goods. The appellant has also been supplying the said goods under the aforesaid trade marks and names to Respondent No. 1.

4. Sometime in the year 1994, the appellant came to know that Respondent No. 1 was using the Trade Mark 'KUNDAN'. The appellant immediately filed a suit for injunction in the District Court at Delhi which was registered as Suit No. 102 of 1994. During the pendency of the said suit, Respondent No. 1 obtained registration of the said Trade Mark in its favour. The registration was obtained by Respondent No. 1 by virtue of an assignment deed executed by Respondent No. 2 in respect of a pending application for registration. This prompted the appellant to file an application under Sections 46 and 56 of the Trade and Merchandise Marks Act in the High Court of Delhi for rectification of the registered Trade Mark No. 507445 in class 9 and for cancelling/ expunging the same. It was filed on 2.5.1995. In the said proceedings an objection was raised by

Respondent No. 1 as to the territorial jurisdiction of the Delhi High Court to entertain the said petition.

5. Vide orders dated 10.10.2001, a single Judge of the Delhi High Court upheld the objection regarding territorial jurisdiction and directed that the petition be returned for presentation before the appropriate Court. This order was upheld by the Division Bench. A Special Leave Petition against the order of the Division Bench being Special Leave Petition (Civil) No. 16800 of 2002 was also dismissed vide order dated 20.9.2002.

6. As per the aforesaid orders of the High Court, which was upheld by this Court also, the appellant was supposed to file the petition for rectification of the registered trade mark before the appropriate Court, as Delhi High Court did not have the territorial jurisdiction to adjudicate the matter. The petition filed in Delhi High Court was, thus, directed to be returned for presentation before the appropriate Court. However, before the application for rectification could be returned by the Registry of Delhi High Court, the Intellectual Property Appellate Board (hereinafter to be referred as 'IPAB') was constituted on 15.9.2003. On the establishment of this IPAB, such rectification applications are now to be entertained by the IPAB which has the exclusive jurisdiction to deal with such applications. The Registrar of Delhi High Court passed the orders dated 29.10.2004 directing return of the Rectification Petition to the Counsel for the appellant and it was finally returned on 2.11.2004. On same date, the appellant presented the petition before the IPAB.

7. Notice was issued by the IPAB to the Respondent Nos. 1 & 2 who filed their replies. The Respondent No. 1 filed a miscellaneous petition, being M.P. No. 31 of 2005 on the ground that the Rectification Petition could not have been filed as a continuity of the earlier proceedings before the Delhi High Court. For uncertain reasons, the matter dragged on before the

IPAB for quite sometime and ultimately vide orders dated 9.3.2012 the IPAB dismissed the Rectification Petition on the ground that it was filed after a lapse of about 10 years from the date when registration was obtained by Respondent No. 1. The IPAB took the view that Rectification Petition was wrongly filed in the Delhi High Court as jurisdiction vested in the Madras High Court. Therefore, presentation of the petition before the IPAB on 2.11.2004 was taken as the date of filing the petition wherein rectification order was challenged. Since the registration was granted in the year 1995, on this basis the IPAB took the view that Rectification Petition was filed after a period of almost 10 years from the date of registration and therefore it was belated.

8. Aggrieved by the order of the IPAB dismissing the petition, the appellant filed Writ Petition before the High Court which has also been dismissed, as the view taken by the IPAB has found favour with the High Court.

9. A perusal of the order of the IPAB would disclose that as per the Appellate Board though there is a delay of 10 years, no reason has been assigned by the appellant for the said delay and the Rectification Petition was not presented within time before the Madras High Court. In the Writ Petition challenging this order the appellant had submitted that the appellant had pursued its remedy by filing the petition before the Delhi High Court on 2.5.1995 itself that is immediately after the grant of registration of the trade mark Kundan in favour of Respondent No. 1. However, this argument is brushed aside by the High Court with the remarks that the petition was filed before a Court viz. the High Court of Delhi which did not have territorial jurisdiction and therefore the appellant cannot take advantage of filing such a peititon before the Court which lacked the requisite jurisdiction.

10. We are of the view that the aforesaid line of action taken by the IPAB as well as the High C e

Rectification Petition filed by the appellant on the ground of delay is wholly erroneous, and it has prejudiced the rights of the appellant to have the case adjudicated on merits.

11. From the events disclosed above, it is manifest that the appellant has been pursuing its remedy with due diligence, without brooking any delay. The appellant claims that he has been using the trade mark KUNDAN/ KUNDAN CAB and the name Kundan Cables India since 1980. In fact he was the supplier of these goods to Respondent No. 2. When the appellant came to know that Respondent No. 1 was using the trade mark Kundan, he immediately filed the suit for injunction against Respondent No. 1 in the District Court of Delhi which shows that in all earnestness, it wanted to protect his interest in the said trade mark.

12. During the pendency of this suit Respondent No. 1 had obtained registration of trade mark 'KUNDAN' in its favour. This happened in the year 1995. The appellant prompltly filed the petition under Section 45 and 46 of the Trade and Merchandise Marks Act for rectification of the said registered trade mark and for cancelling/ expunging the same. This petition was filed on 2.5.1995. Therefore as far as the appellant is concerned, there was not even a slightest delay in challenging the validity of the trade mark obtained by Respondent No. 1. It is a different matter that this petition was returned for want of territorial jurisdiction. However, the moment this petition was returned by the Registrar i.e. on 2.11.2004, it was presented before the IPAB on the same day. Having regard to all these facts we fail to understand as to how the Appellate Board could dismiss the petition on the ground that it was filed after a delay of 10 years. The appellant had pursued his remedy in a bonafide manner and if it was filed in a wrong court and if he has pursued his remedy wrongly by filing it in Delhi High Court, instead of Madras High Court, principles enshrined in Section 14 of the Limitations Act clearly get attracted.

13. We are, therefore, of the opinion that impugned order of the IPAB as well as High Court are liable to be set aside. These appeals are accordingly allowed. As a consequence the matter is remitted back to IPAB to decide the Rectification Petition on merits.

14. No costs.

B.B.B. Appeals allowed.

S.K. RATTAN
v.
UNION OF INDIA & ORS.
(Civil Appeal Nos. 1921-1922 of 2010)

NOVEMBER 28, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Service Law – Transfer – Of appellant from CBI to NCRB by executive order – Subsequently, appellant came to know that he was not given revised pay scale as received by his batchmate who remained at CBI – Application of appellant for grant of pay scale at par with his CBI batchmate – Dismissed by Tribunal – Order upheld by High Court – On appeal, held: When appellant was transferred from CBI to NCRB, he had no option but to join wherever he is placed – Until appellant retired from service, no separate service rules were framed for officers in NCRB – He continued to be governed by the rules framed for officers of CBI –Tribunal ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution – It would amount to discrimination for no justifiable reasons – Direction given that pay of appellant be appropriately corrected as sought by him and his pension and other service benefits also be corrected on that basis.

The appellant was a Deputy Superintendent of Police in the Central Bureau of Investigation (CBI). By an executive order, he was transferred to National Crime Records Bureau (NCRB). When the appellant was transferred to NCRB his pay, as it was in the CBI, remained protected. However, subsequently, the appellant found out that he was not given revised pay-

scale as received by his batchmate who remained at CBI. Representation made by appellant in this regard before the NCRB was rejected. The appellant eventually retired from service whereafter he preferred an application before the Central Administrative Tribunal which was also rejected. The order was upheld by the High Court, and therefore the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. Until the appellant retired from his service, no separate service rules were framed for the officers in the NCRB. The appellant continued to be governed by the rules framed for the officers of the CBI. When he was transferred from the CBI to NCRB he had no option but to join wherever he is placed. Having joined over there, there was no occasion for him to protest until 1996-97 when he came to know that his salary was lesser as compared to his colleagues of the same batch in the CBI. It is at that stage that he made a representation and the representation having been rejected, he had no option but to approach the Central Administrative Tribunal. The Central Administrative Tribunal ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution. It would amount to discrimination for no justifiable reasons. [Para 13] [751-D-G]

1.2. As far as the appellant is concerned, inasmuch as a wrong has been done to him, it is required to be corrected. The Central Administrative Tribunal and the High Court have failed in doing so. In the circumstances, it is directed that the pay of appellant will be appropriately corrected as sought by him and his pension and other

service benefits will also be corrected on that basis. [Paras 14, 15] [752-A-B, C]

K. Madhavan and Anr. vs. Union of India and Ors. **(1987) 4 SCC 566: 1988 (1) SCR 421;** *State of U.P. and Ors. vs. Gobardhan Lal* **(2004) 11 SCC 402: 2004 (3) SCR 337 – cited.**

Case Law Reference:

1988 (1) SCR 421	**cited**	**Para 10**
2004 (3) SCR 337	**cited**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1921-1922 of 2010

From the Judgment and Order dated 21.05.2009 in Writ Petition (Civil) No. 2080 of 2003 and dated 31.07.2009 in Review Petition No. 277 of 2009 of the High Court of Delhi at New Delhi.

P.P. Rao, Rajesh Rattan, D.S. Chauhan, Akshat Kulshrestha for the Appellant.

K. Radhakrishnan, Kiran Bhardwaj, B.K. Prasad (for Shreekant N. Terdal) for the Respondents.

The Judgment of the Court was delivered by

H.L. GOKHALE, J. 1. Leave granted.

2. These appeals by special leave seeks to challenge the judgment and order dated 21st May, 2009 rendered by a Division Bench of the Delhi High Court in Writ Petition (Civil) No.2080 of 2003 and subsequent order dated 31.7.2009 passed by that Court in Review Petition No.277 of 2009 dismissing both of them. The aforesaid Writ Petition (Civil) No.2080 of 2003 sought to challenge the judgment and order rendered by the Central Administrative Tribunal on 1st October,

2001 in O.A. No.1436 of 2000 by which the Original Application filed by the appellant herein was dismissed.

3. The short facts leading to these appeals are this wise. The appellant joined his services as Sub Inspector of Police in the Central Bureau of Investigation ("CBI") in 1964 and was subsequently promoted to the post of Inspector of Police in 1966. He was eventually promoted to the post of Deputy Superintendent of Police in CBI with effect from 18th April, 1984.

4. It so transpired that Government of India constituted an Organization, namely, National Crime Records Bureau ("NCRB") by merging four units of Central Police Organizations, including the Data Section of the Co-ordination Division of CBI. Consequent upon this decision, 10 posts of this Data Section, including one post of Deputy Superintendent of Police, came to be transferred from CBI to NCRB on 11.11.1987 with complete Inter-state Crime Records. The Data Section of CBI was re-named as Crime Records Data Section in the NCRB. The appellant was also transferred in the NCRB in public interest by Office Order dated 12.4.1988. As the order stated, consequent upon the transfer of the Data Section of the Co-ordination Division of CBI to NCRB, the services of the appellant were placed at the disposal of NCRB on transfer basis and he was therefore relieved of his duties from the CBI with effect from the afternoon of 12th April, 1988. The appellant was not asked whether he wanted to join this new organization. However, in pursuance of the aforesaid order he joined over there.

5. When the appellant was transferred to that organization his pay, as it was in the CBI, remained protected. However, some four years thereafter when the pay of Deputy Superintendent of Police in CBI was reduced, his pay was also reduced from the pay-scale of Rs.2200-4000/- to Rs. 2000-3500/- with effect from 13.4.1992. Wh of

Deputy Superintendent of Police were restored, the pay of the appellant also came to be restored on 10.6.1996 and upgraded from Rs. 2000-3500/- to Rs.2200-4000/- which was equivalent to the post of Deputy Superintendent of Police at the relevant time. Thus far, there was no difficulty. It, however, so transpired that in the year 1996, a batchmate of the appellant one Shri T.N. Kapoor, who remained in the CBI and worked as Superintendent of Police, got further revision of pay-scale of 4100-5300/- with effect from 10.3.1996. Not only that, but a junior of his, namely, Shri Rajendra Prasad working as Superintendent of Police in the CBI was also given this revised pay-scale with effect from 26.3.1996. The appellant was, however, not given this higher pay-scale.

6. The appellant was subsequently promoted on 25.2.1997 to the next post of Joint Assistant Director which is equivalent to the post of Superintendent of Police in the CBI, but he was continued to be given lesser pay in the pay-scale of Rs.3000-4500/-. Therefore, he made a representation on 17.4.1997 and made some further representations in this behalf. He stated in the representation specifically that: "neither I was asked nor I gave my option to remain in the NCRB during my entire service in the NCRB from 10.4.1988 onwards." After putting in 8 years of regular service in the rank of Superintendent of Police in the CBI he was not expecting such a reduction in his pay. The NCRB however rejected his representation after a period of two years by its communication dated 2nd August, 1999. This communication reads as follows:

> "1. With reference to his representation dated 11.5.99 regarding grant of pay scale of Rs.4100-5300/- (pre-revised) to him at par with the Supdt. Of Police in CBI, Sh. S.K. Rattan, JAD is informed that his case was taken up with MHA & DOPT. They have not accepted his contentions and ruled that:
>
> 'The General principle is that when work is transferred along with staff from one Government Office to another Government Office, no terms are required to be offered to the transferees and they will cease to be the employees of the former office / organization. They have to look forward for their career prospects in the new organization.'
>
> 2. This issues with the approval of Director, NCRB."

7. The appellant eventually retired from service on 3.2.2000 but preferred to challenge this communication dated 2nd August, 1999 by filing the above referred Original Application which, as stated earlier, came to be rejected. So also the writ petition and the review petition filed against the order of the Central Administrative Tribunal, and hence these appeals.

8. Mr. P.P. Rao, learned senior counsel appearing for the appellant submitted that when an officer, governed by the statutory rules, is transferred in public interest to another organization along with the post, he continues to be governed by the service rules applicable to him prior to his transfer until new service rules are framed and made applicable for that new organization under the proviso to Article 309 of the Constitution of India. He submitted that a transfer implies continuity of service and therefore it also implies same conditions of service with respect to pay, allowances, promotion and seniority. He drew our attention to the fact that there are rules framed under Article 309 as far as the officers of CBI are concerned and they are called Special Police Establishment (Executive Staff) Recruitment Rules, 1963. The appellant was governed by those rules. No separate rules were framed by the NCRB until the appellant retired from service. It is after his retirement that the NCRB framed rules governing service conditions of the officers of the NCRB which are known as National Crimes Records Bureau (Crime Records, Administration and Training Division) Joint Assistant Director Recruitment R[illegible]ct

from 15.7.2000. These rules prescribed a lower pay to the Joint Assistant Director. However, this was subsequent to the retirement of the appellant i.e. 13.2.2000 and the service or the pay of the appellant could not be said to have been governed by these rules.

9. The submission of Mr. Rao is that the Central Administrative Tribunal as also the High Court have ignored these basic principles. The appellant could not have been placed and given lesser salary when he was transferred to another post and if that was to be justified, it would amount to reducing him in rank and be violative of Article 311 of the Constitution. This is apart from being treated in an unfair manner and, therefore, Article 14 would get attracted since his batchmates and his juniors who remained in the CBI got higher pay-scales. These aspects were ignored by the Central Administrative Tribunal.

10. Mr. Rao drew our attention to the two judgments of this Court, firstly in *K. Madhavan and Anr. Vs. Union of India and Ors.,* (1987) 4 SCC 566, and secondly in *State of U.P. and Ors. Vs. Gobardhan Lal,* (2004) 11 SCC 402. In paragraph 21 of *K. Madhavan* (supra), this Court has observed:

> "21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words. deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been

> transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre."

11. He also drew our attention to the observations of this Court in the case of *Gobardhan Lal* (supra), particularly the following observations in paragraph 7:

> "Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments."

12. Mr. Radhakrishnan, learned senior counsel appearing for the respondents submitted that the appellant did not make any grievance until 1998. He drew our attention to the observation of the Central Administrative Tribunal in its judgment where the Tribunal has observed that the service conditions of the two organizations could not be compared merely because the applicant's pay was on par with other officers in the CBI at an earlier date. It cannot also assist him in giving the parity in pay-scales, especially after he and his post have been transferred by executive order of the President to another organization. Mr. Radhakrishnan drew our attention to the reply which was filed by the respondents in the Central Administrative Tribunal wherein it is stated that the Su e

in CBI and Joint Assistant Directors in NCRB are posts in two different organizations and are completely different from each other in respect of the duties and responsibilities. He submitted that the appellant ceased to be an employee of the CBI with effect from 12.4.1988, and he is governed under different recruitment rules and service conditions. It is further submitted by Mr. Radhakrishnan, learned counsel for the respondents that all administrative orders are issued in the name of the President of India and after the entire Data Section was transferred to NCRB and the appellant having joined over there, he cannot subsequently seek a parity with his colleagues in the CBI.

13. We have noted the submissions of both the learned counsel. It is very difficult to accept the submissions canvassed on behalf of the respondents as also the reasoning given by the Central Administrative Tribunal and the High Court for the simple reason that until the appellant retired from his service, no separate service rules were framed for the officers in the NCRB. The appellant continued to be governed by the rules framed for the officers of the CBI. When he was transferred from the CBI to NCRB he had no option but to join wherever he is placed. Having joined over there, there was no occasion for him to protest until 1996-97 when he came to know that his salary was lesser as compared to his colleagues of the same batch in the CBI. It is at that stage that he made a representation and the representation having been rejected, he had no option but to approach the Central Administrative Tribunal. The Central Administrative Tribunal has ignored the basic principles that where an employee is transferred to another organization, although he has to join over there, he cannot be made to suffer in his service conditions as well as in continuity of his service without framing rules under Article 309 of the Constitution. It would amount to discrimination for no justifiable reasons.

14. We may as well, however, add that the NCRB itself had made a representation before the Fifth Central Pay Commission which was considering the pay revision, that

injustice had been done to the officers of the NCRB but that is a separate issue. As far as the appellant is concerned, we look at it as his individual case and inasmuch as a wrong has been done to him, it is required to be corrected. The Central Administrative Tribunal and the High Court have failed in doing so.

15. In the circumstances, we allow these appeals, set aside both the orders of the Central Administrative Tribunal as well as the High Court and allow the Original Application No.1436 of 2000 filed by the appellant. We direct that his pay will be appropriately corrected as sought by him and his pension and other service benefits will also be corrected on that basis. We expect the respondents Central Government to clear the arrears within three months hereafter. There will however not be any order as to costs.

B.B.B. Appeals allowed.

JOHN K. ABRAHAM
v.
SIMON C. ABRAHAM & ANOTHER
(Criminal Appeal No. 2043 of 2013)

DECEMBER 05, 2013

[SURINDER SINGH NIJJAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Negotiable Instruments Act, 1881 – s.138 – Dishonour of cheque – Trial acquitted accused-appellant – Reversal of acquittal by High Court – Justification – Held: Not justified – In order to draw presumption u/s.118 r/w s.139, the burden was heavily upon the respondent-complainant to have shown that he had the required funds for having advanced money to the appellant; that issuance of cheque in support of the payment advanced was true and that the appellant was bound to make the payment as had been agreed while issuing the cheque in favour of the respondent – Respondent, however, was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant; he was not sure as to who wrote the cheque; he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant – Moreover, the respondent took diametrically opposite stands – Various defects in the evidence of respondent, as noted by the trial Court were simply brushed aside by the High Court without assigning any valid reason – Serious lacuna in the evidence of respondent which strikes at the root of the complaint u/s.138 – This factor not examined by the High Court while reversing the judgment of trial Court – Conviction of appellant accordingly set aside.

The respondent no.1 filed complaint under Section 138 of the Negotiable Instruments Act, 1881, alleging that the appellant had borrowed a sum of Rs.1,50,000/- from

him and had issued a cheque for the said sum in discharge of the debt and that when the cheque was presented for encashment, the same was dishonoured. In the questioning of the appellant made under Section 313 Cr.P.C., the appellant took the stand that his son took the cheque from him and that if at all anything was to be recovered, it had to be made from the son of the appellant, since the appellant had not borrowed any money.

The trial court held that the respondent-complainant was making a prevaricating statement as regards the issuance of the cheque, that he was not even aware of the date when the amount was said to have been borrowed by the appellant, that there was material alteration in the instrument and, therefore, the respondent failed to establish a case under Section 138 of the Negotiable Instruments Act. Consequently, the trial court found the appellant not guilty and acquitted him under Section 255(1) of Cr.P.C. The High Court reversed the judgment of the trial court, and while convicting the appellant, imposed the sentence to pay a fine of Rs.1,50,000/- as compensation under Section 357(1) of Cr.P.C, and therefore the present appeal.

Allowing the appeal, the Court

HELD: 1. The High Court committed a serious illegality in reversing the judgment of the trial court. While reversing the judgment of the trial Court, what weighed with the High Court was that in the 313 questioning, it was not the case of the appellant that a blank signed cheque was handed over to his son and that even in the cross-examination it was not suggested to PW-1 (respondent) that a blank cheque was issued. The High Court was also persuaded by the fact that the appellant failed to send any reply to the lawyer's notice, issued by the respondent. Based on the above conclusions, the High Court held that the presumption und

139 of the Negotiable Instruments Act could be easily drawn and that the appellant failed to rebut the said presumption. On that single factor, the High Court reversed the judgment of the trial Judge and convicted the appellant. In order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant. In the instant case, however, the respondent was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant, that he was not sure as to who wrote the cheque, that he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. Apart from the said serious lacuna in the evidence of the complainant, he further admitted as PW.1 by stating once in the course of the cross-examination that the cheque was in the handwriting of the accused and the very next moment taking a diametrically opposite stand that it is not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him. The various defects in the evidence of respondent, as noted by the trial Court were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under Section 138, having been noted by the trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial Court, would vitiate the ultimate conclusion reached by it. In effect, the conclusion of the High Court would amount to a perverse one. The conviction and sentence

imposed on the appellant is accordingly set aside. [Paras 9, 10 & 11] [759-D-H; 760-A, B-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2043 of 2013.

From the Judgment and Order dated 15.12.2010 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 452 of 2004.

Romy Chacko, Kedar Nath Tripathy for the Appellant.

Jogy Scaria, Sashi Bhushan Kumar (A.C.) for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

2. This appeal is directed against the judgment of the High Court of Kerala at Ernakulam dated 15th December, 2010 passed in Criminal Appeal No.452 of 2004.

3. The issue involved in this appeal arises under Section 138 of the Negotiable Instruments Act. The complaint was preferred by the respondent No.1 before the Chief Judicial Magistrate, Pathanamthitta alleging that appellant borrowed a sum of Rs.1,50,000/- from him and issued a cheque for the said sum on 20.06.2001 drawn on Indian Overseas Bank, Plankamon branch in discharge of the debt. It is the further case of the respondent—complainant that when the cheque was presented for encashment through Pathanamthitta District Co-operative Bank, Kozhencherry branch, the same was returned by the bankers with the endorsement 'insufficient funds in the account of the accused'. The respondent-complainant stated to have issued a lawyer's notice on 14.07.2001, which was received by the appellant on 16.07.2001 but yet there was no

reply from the appellant. Based on the above averments alleged in the complaint, the case was tried by the learned Chief Judicial Magistrate.

4. The respondent herein was examined as PW.1 and Exhibits P-1 to P-6 were marked. None was examined on the side of the appellant. In the questioning of the appellant made under Section 313 of Cr.P.C., the appellant took the stand that his son took the cheque from him and that if at all anything was to be recovered, it had to be made from the son of the appellant, since the appellant had not borrowed any money.

5. The learned Chief Judicial Magistrate after considering the oral and documentary evidence led on behalf of the respondent-complainant, held that the respondent-complainant was making a prevaricating statement as regards the issuance of the cheque, that he was not even aware of the date when the amount was said to have been borrowed by the appellant, that there was material alteration in the instrument and, therefore, the respondent failed to establish a case under Section 138 of the Negotiable Instruments Act. Consequently, the learned Chief Judicial Magistrate found the appellant not guilty and acquitted him under Section 255(1) of Cr.P.C. The respondent preferred the appeal in the High Court of Kerala at Ernakulam and by the impugned order the High Court reversed the judgment of the learned Chief Judicial Magistrate, convicted the appellant and imposed the sentence to pay a fine of Rs.1,50,000/- as compensation under Section 357(1) of Cr.P.C. In default of making the payment of the fine amount, the appellant was directed to suffer simple imprisonment for a period of three months.

6. We heard Mr. Romy Chacko, learned counsel for the appellant and Mr. Jogy Scaria, learned counsel for the 2nd respondent. We also perused the material papers placed before us, including the judgment of the trial Court as well as the High Court. Having considered the above, we are of the

view that the High Court was in error in having reversed the judgment of the trial Court.

7. When we examine the case of the respondent-complainant as projected before the learned Chief Judicial Magistrate and the material evidence placed before the trial Court, we find that the trial Court had noted certain vital defects in the case of the respondent-complainant. Such defects noted by the learned Chief Judicial Magistrate were as under:

(a) Though the respondent as PW-1 deposed that the accused received the money at his house also stated that he did not remember the date when the said sum of Rs.1,50,000/- was paid to him.

(b) As regards the source for advancing the sum of Rs.1,50,000/-, the respondent claimed that the same was from and out of the sale consideration of his share in the family property, apart from a sum of Rs.50,000/-, which he availed by way of loan from the co-operative society of the college where he was employed. Though the respondent stated before the Court below that he would be in a position to produce the documents in support of the said stand, it was noted that no documents were placed before the Court below.

(c) In the course of cross-examination, the respondent stated that the cheque was signed on the date when the payment was made, nevertheless he stated that he was not aware of the date when he paid the sum of Rs.1,50,000/-.

(d) According to the respondent, the cheque was in the handwriting of the accused himself and the very next moment he made a contradictory statement that the cheque was not in the handwriting of the appellant and that he (complainant) w

(e) The respondent also stated that the amount in words was written by him.

(f) The trial Court has also noted that it was not the case of the respondent that the writing in the cheque and filling up of the figures were with the consent of the accused appellant.

8. In light of the above evidence, which was lacking in very many material particulars, apart from the contradictions therein, the trial Court held that the appellant was not guilty of the offence alleged against under Section 138 of the Negotiable Instruments Act and acquitted him.

9. Keeping the above factors in mind, when we examine the judgment impugned in this appeal, we find that the High Court committed a serious illegality in reversing the judgment of learned Chief Judicial Magistrate. While reversing the judgment of the trial Court, what weighed with the learned Judge of the High Court was that in the 313 questioning, it was not the case of the appellant that a blank signed cheque was handed over to his son and that even in the cross-examination it was not suggested to PW-1 that a blank cheque was issued. The High Court was also persuaded by the fact that the appellant failed to send any reply to the lawyer's notice, issued by the respondent. Based on the above conclusions, the High Court held that the presumption under Sections 118 and 139 of the Negotiable Instruments Act could be easily drawn and that the appellant failed to rebut the said presumption. On that single factor, the learned Judge of the High Court reversed the judgment of the trial Judge and convicted the appellant. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the

accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

10. Keeping the said statutory requirements in mind, when we examine the facts as admitted by the respondent-complainant, as rightly concluded by the learned trial Judge, the respondent was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant, that he was not sure as to who wrote the cheque, that he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. Apart from the said serious lacuna in the evidence of the complainant, he further admitted as PW.1 by stating once in the course of the cross-examination that the cheque was in the handwriting of the accused and the very next moment taking a diametrically opposite stand that it is not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him. We find that the various defects in the evidence of respondent, as noted by the trial Court, which we have set out in paragraph 7 of the judgment, were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under Section 138, having been noted by the learned trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial Court, in our considered opinion would vitiate the ultimate conclusion reached by it. In effect, the conclusion of the learned Judge of the High Court would amount to a perverse one and, therefore, the said judgment of the High Court cannot be sustained.

11. Having regard to our above conclusion, this appeal stands allowed. The order impugned is set-aside, the conviction and sentence imposed on the appellant is also set aside.

B.B.B. .

MADAN & ANR.
v.
STATE OF MAHARASHTRA
(Civil Appeal No. 10863 of 2013)

DECEMBER 06, 2013

[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI AND RANJAN GOGOI, JJ.]

Land Acquisition Act, 1894:

s.18 – Reference – Limitation – Expression, "the date of award" – Connotation of – Held: The expression "the date of the award" used in proviso (b) to s.18(2) must be understood to mean the date when the award is either communicated to the party or is known by him either actually or constructively – In the instant case, it is for the first time on the date of order u/s 30 that the appellants came to know that they were entitled to compensation and the quantum thereof — Reference u/s 18 was made within 6 weeks from the said date — Therefore, the view taken by the High Court that reference u/s 18 was barred by limitation cannot be sustained – Order of High Court is set aside and the award of enhanced compensation made by reference court u/s 18 restored.

ss. 18 and 30 – References under – Distinction between – Explained – Limitation for filing reference u/s 18 – Held: The two Sections operate in entirely different circumstances — While s.18 applies to situations where the apportionment made in the award is objected to by a beneficiary thereunder, s.30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims — In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the court u/s 30 of the Act — The other is to relegate the parties to the remedy of a suit — In either situation, the right to receive

compensation under the award would crystallize after apportionment is made in favour of a claimant — It is only thereafter that a reference u/s 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference u/s 30 or in the civil suit, as may be.

In a case of land acquisition, the Collector (Special Land Acquisition Officer) made the award on 16.8.1985. As there was a dispute with regard to the ownership of the land, the Collector referred the matter to civil court for apportionment of compensation u/s 30 of the Land Acquisition Act, 1894. The reference u/s 30 was disposed of by the Additional District Judge on 4.9.1991 holding that the appellants (claimants 1 and 2) were entitled to compensation in respect of 20 acres of the acquired land and the remaining parties (claimants 3 to 7) for compensation in respect of remainder of the acquired land. The appellants received the compensation on 5.9.1991 and within six weeks from the date of the order dated 4.9.1991 they sought a reference u/s 18 of the Act for enhancement of the compensation awarded. The said reference was numbered as L.A.R. No. 75/1992 and was decided by the Additional District Judge, by order dated 29.10.1993 enhancing the compensation amount by an additional sum of Rs.2,10,000/- along with solatium, interest etc. The appeal filed by the State Government was decided by the High Court only on the issue of limitation by holding the same to be time barred.

Allowing the appeal, the Court

HELD: 1.1. In *Raja Harish Chandra Raj Singh*,* this Court has held that the expression "the date of the award" used in proviso (b) to s.18(2) of the Land Acquisition Act, 1894 must be understood to mean the date when the award is either communicated to the party

or is known by him either actually or constructively. It has been further held that it will be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s.18 in a literal or mechanical way. [para 10] [769-D-E]

Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr. **1962 SCR 676 = AIR 1961 SC 1500 – relied on.**

1.2. In the instant case, a finding has been recorded by the reference court in its order dated 29.10.1993 that "*the petitioners had no knowledge about the passing of the award till the date of payment of compensation on 5.9.1991 because they were held entitled to receive the compensation after the decision of Reference u/s 30 dated 4.9.1991***." Thus, it is for the first time on 4.9.1991 (date of the order u/s 30 of the Act) that the appellants came to know that they were entitled to compensation and the quantum thereof. It is not in dispute that the reference u/s 18 was made within 6 weeks from the said date i.e. 4.9.1991. Therefore, the view taken by the High Court that the reference u/s 18 was barred by limitation, cannot be sustained. [para 10-11] [769-E-H]**

1.3. A cursory glance of the provisions of ss.18 and 30 of the Act may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the court. But, a closer scrutiny would indicate that the two Sections operate in entirely different circumstances. While s.18 applies to situations where the apportionment made in the award is objected to by a beneficiary thereunder, s.30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the

question of apportionment to the court u/s 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference u/s 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference u/s 30 or in the civil suit, as may be. [para 12] [770-A-E]

Dr. G.H. Grant Vs. The State of Bihar **1965 SCR 576 = AIR 1966 SC 237 – relied on.**

1.4. This Court, therefore, holds that the High Court had erred in allowing the appeal filed by the State and reversing the order dated 29.10.1993 passed by the Second Additional District Judge. The award of compensation in the instant case having been made by the Collector as far back as in the year 1985 and the amount involved being exceedingly small, this Court has considered the basis on which enhancement of compensation was made by the reference court in its order dated 29.10.1993. There is no error in the view taken by the reference court. Therefore, in the peculiar facts of the case, the order dated 09.09.2008 passed by the High Court is set aside and the order dated 29.10.1993 passed by the Second Additional District Judge in L.A.R. No.75 of 1992 restored. [para 14] [771-C-F]

Case Law Reference:

1962 SCR 676	**relied on**	**para 7**
1965 SCR 576	**relied on**	**para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10863 of 2013.

From the Judgment and Order dated 09.09.2008 of the High Court of Bombay at Aurangabad in FA No. 641 of 1994.

Sudhanshu S. Choudhari, Mahesh Deshmukh for the Appellants.

Anirudh P. Mayee, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 09.O9.2008 passed by the High Court of Bombay at Aurangabad holding the Reference made by the Collector under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") to be barred by limitation. The High Court, accordingly, reversed the Award dated 29.10.1993 passed by the Reference Court granting enhanced compensation to the appellants. Aggrieved, this appeal has been filed.

3. The brief facts of the case may be usefully recited as hereunder:

Acquisition of a total area of 8 Hectares 40 Ares covered by Survey No.49 situated at village Phule Pimpalgaon in Taluka Majalgaon of Beed District was initiated by a Notification under Section 4 of the Act which was published in the gazette on 13.03.1980. No objection under Section 5A of the Act was filed by any person interested. Consequently, the Notification under Section 6 of the Act was published on 18.04.1982 and an Award was passed on 16.08.1985 granting compensation at the rate of Rs.50/-, Rs.65/- and Rs.75/- per Are respectively for different categories of land classified as Grade I, II and III in the Award. As there was a dispute with regard to the ownership of the land, the Collector (Special Land Acquisition Officer) referred the matter to the civil court for apportionment of

compensation under Section 30 of the Act. The Reference under Section 30 made by the Collector which was registered and numbered as L.A.R. No. 94/1985 came to be disposed of by the learned Second Additional District Judge, Beed on 4.9.1991 holding that the present appellants (claimants 1 and 2) are entitled to compensation in respect of 20 acres of the acquired land and the remaining parties (claimants 3 to 7) for compensation in respect of remainder of the acquired land.

4. It appears that after the order dated 4.9.1991 was passed in the Reference under Section 30 of the Act, the appellants received the compensation on 5.9.1991. Though the precise date is not available, within six weeks from the date of the order dated 4.9.1991 the appellants sought a Reference under Section 18 of the Act for enhancement of the compensation awarded. The aforesaid Reference which was numbered as L.A.R. No. 75/1992 was decided by the Second Additional District Judge, Beed by order dated 29.10.1993 enhancing the compensation amount by an additional sum of Rs.2,10,000/- along with solatium, interest etc. as due under different provisions of the Act.

5. Aggrieved by the aforesaid Award dated 29.10.1993, the State of Maharashtra filed an appeal before the High Court questioning the enhancement of the compensation awarded and also contending that the Reference made was barred by limitation in view of the provisions of Section 18(2) of the Act. The High Court by the impugned order dated 09.09.2008 decided the appeal only on the issue of limitation by holding the same to be time barred. Accordingly, the appeal filed by the State was allowed and the Award passed by the Second Additional District Judge in L.A.R.No.75/1992 was reversed.

6. We have heard Mr. Sudhanshu S. Choudhary, learned counsel for the appellants and Mr. Anirudh P. Mayee, learned counsel appearing on behalf of the respondent-State.

7. Learned counsel for the appellants has vehemently urged that from the materials placed on record it is evident that the appellants did not participate in the enquiry leading to the Award dated 16.08.1985 passed by the Land Acquisition Collector. No notice of the Award under Section 12(2) of the Act was served on the appellants either. It is pointed out that the appellants became entitled to receive compensation under the Award only on 4.9.1991 i.e. the date of the order of the court in the Reference made under Section 30 of the Act. Such compensation was received by the appellants on 5.9.1991. Thereafter, the application for Reference under Section 18 of the Act was made within the period of 6 weeks from the date of the order passed under Section 30 of the Act. Relying on the decision of this Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr*[1]**.** learned counsel has urged that the date of knowledge of the Award referred to in Section 18(2), in the present case, has to be understood to be 4.9.1991 i.e. the date of the order under Section 30 of the Act. If that be so, according to the learned counsel for the appellants, the High Court was clearly in error in holding the Reference under Section 18 of the Act to be barred by limitation. Another decision of this Court in *Dr. G.H. Grant Vs. The State of Bihar*[2] has been relied onto emphasize the true purport of Sections 18 and 30 of the Act.

8. Controverting the submissions advanced on behalf of the appellants, learned counsel for the State has contended that the appellants having claimed to be the owners of the land were at all times aware of the land acquisition proceeding leading to the Award dated 16.08.1985 passed by the Collector. According to the learned counsel for the State, the appellants, therefore, should have sought a Reference under Section 18 within the time prescribed by Section 18(2). In this regard, learned counsel for the State has pointed out that even under

1. AIR 1961 SC 1500.
2. AIR 1966 SC 237.

Section 18 of the Act it is open to an aggrieved party to seek a reference on the question of apportionment of the Award. The Award in the present case having been passed by the Land Acquisition Collector on 16.08.1985, the Reference under Section 18 for enhanced compensation made in the year 1991 is inordinately delayed and the conclusion of the High Court to the said effect is fully justified.

9. For ready reference it may be convenient to set out hereinunder the provisions of Sections 18 and 30 of the Act:-

"**18. Reference to Court.**—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

"**30. Dispute as to apportionment.**—When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionm y

part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court."

10. From the order dated 29.10.1993 passed in L.A.R. No. 75/1992, it is, *inter alia,* clear that there was a dispute amongst the land owners (the appellants are one set of such land owners) in respect of their respective shares in the acquired land on account of which no apportionment of compensation was made by the Collector who made a Reference under Section 30 of the Act to the court. Further, in the order dated 29.10.1993 it is recorded that the appellants had no knowledge of the Award till the order dated 4.9.1991 came to be passed in the Reference under Section 30. In *Raja Harish Chandra Raj Singh* (supra) this Court has held that the expression "the date of the award" used in proviso (b) to Section 18(2) of the Act must be understood to mean the date when the award is either communicated to the party or is known by him either actually or constructively. It was further held by this Court that it will be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way. In the present case, it has already been noticed that a finding has been recorded by the Reference Court in its order dated 29.10.1993 that "*the petitioners had no knowledge about the passing of the award till the date of payment of compensation on 5.9.1991 because they were held entitled to receive the compensation after the decision of Reference under Section 30 dated 4.9.1991*."

11. What transpires from the above is that it is for the first time on 4.9.1991 (date of the order under Section 30 of the Act) that the appellants came to know that they were entitled to compensation and the quantum thereof. It is not in dispute that the Reference under Section 18 was made within 6 weeks from the said date i.e. 4.9.1991. In the above facts, it is difficult to subscribe to the view taken by the High Court to hold that the Reference under Section 18 was barred by limitation.

12. A cursory glance of the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the Court. But, a closer scrutiny would indicate that the two Sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the Award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the Court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the Award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference under Section 30 or in the civil suit, as may be.

13. The decision of this Court in *Dr. G.H. Grant Vs. The State of Bihar* (supra) would also support the above conclusion. In the aforesaid case, an Award was made by the Collector on 25.3.1952. On 5.5.1952, the owner applied under Section 18 for a Reference to the court for enhancement of the compensation payable to him. While the matter was so situated, by notification dated 22.5.1952 issued under Section 3 of the Bihar Land Reforms Act, 30 of 1950, the estate of the owner vested in the State. The possession of the land was taken over on 21.08.1952 under Section 16 of the Act. On 15.10.1952, a Reference under Section 30 was sought on behalf of the State. After noticing the different situations in which the provisions of Sections 18 and 30 of the Act would apply, this Court proceeded to hold the Reference sough[illegible]ar

under Section 30 of the Act to be competent in law on the ground that after the award was passed by the Collector the land had vested in the State by virtue of the notification dated 22.5.1952 under Section 3 of the Bihar Land Reforms Act, 1950. On a logical extension of the principle laid down in *Dr. G.H. Grant Vs. The State of Bihar* (supra) the State would have been entitled in law to claim enhanced compensation under Section 18 of the Act once its entitlement to receive such compensation is to be decided in its favour under Section 30. This is what has happened in the present case.

14. For the reasons aforesaid, we hold that the High Court had erred in allowing the appeal filed by the State and reversing the order dated 29.10.1993 passed by the Second Additional District Judge, Beed. The award of compensation in the instant case having been made by the Collector as far back as in the year 1985 and the amount involved being exceedingly small we have considered the basis on which enhancement of compensation was made by the learned Reference Court in its order dated 29.10.1993. On such scrutiny, we do not find any error in the view taken by the learned Reference Court. Therefore, in the peculiar facts of the case, while allowing this appeal and setting aside the order dated 09.09.2008 passed by the High Court we deem it proper to restore the order dated 29.10.1993 passed by the Second Additional District Judge in L.A.R. No.75 of 1995.

R.P. Appeal allowed.

STATE OF MADHYA PRADESH
v.
PRADEEP SHARMA
(Criminal Appeal No. 2049 of 2013)

DECEMBER 6, 2013

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

Code of Criminal Procedure, 1973:

s.438 r/w s.82 – Anticipatory bail – Respondents, accused of offences punishable u/ss 302 and 120-B r/w s.34 IPC – Declared absconders – Granted anticipatory bail by High Court – Subsequently released on regular ail by CJM – Held: If anyone is declared as an absconder/proclaimed offender in terms of s. 82, he is not entitled to the relief of anticipatory bail – The power exercisable u/s 438 is extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty — In the instant case, confessional statements of co-accused reveal that respondents administered poisonous substance to deceased – It is supported by statements of other witnesses and medical report – Further, proclamation u/s 82 was issued against respondents — All these materials were neither adverted to nor considered by High Court while granting anticipatory bail — High Court failed to appreciate that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail – Impugned orders of High Court are set aside — Consequently, the subsequent order of CJM releasing the accused on bail after taking them into custody in compliance with the impugned order of High Court is also set aside.

The respondents in both the appeals alongwith others were accused of the offences punishable u/ss 302 and 120-B read with s. 34 IPC, as they were alleged to have administered poisonous substance to one 'RS' and thus caused his death. A charge-sheet was filed against five accused whereas investigation continued against the two respondents and another as they remained absconding. A proclamation u/s 82 CrPC was issued against the respondents. They filed applications for anticipatory bail, which were allowed by the High Court. Aggrieved, the State filed the appeals. In the meantime, the respondents were enlarged on bail by the Chief Judicial Magistrate.

The question for consideration before the Court was: whether the High Court was justified in granting anticipatory bail u/s 438 of the Code of Criminal Procedure, 1973 to the respondents/accused when the investigation is pending, and, particularly, both the accused had been absconding all along and not cooperating with the investigation.

Allowing the appeals, the Court

HELD: 1.1. The power exercisable u/s 438 of the Code of Criminal Procedure, 1973 is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. [para 10] [779-E-F]

Adri Dharan Das vs. State of W.B., **2005 (2) SCR 188 = (2005) 4 SCC 303– relied on.**

1.2. If anyone is declared as an absconder/ proclaimed offender in terms of s. 82 of the Code, he is

not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of co-accused persons reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, have confirmed the existence of poison in the food item consumed by the deceased. Further, it is brought to notice of the Court that warrants were issued for the arrest of the respondents. Since they were not available/traceable, a proclamation u/s 82 of the Code was also issued. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and it, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. [para 12] [781-E-H; 782-A-B]

Lavesh vs. State (NCT of Delhi) **2012 (7) SCR 469 = (2012) 8 SCC 730 – relied on.**

1.3. It is relevant to point out that both the accused are facing prosecution for offences punishable u/ss 302 and 120B read with s. 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, the impugned orders of granting anticipatory bail cannot be sustained. The High Court failed to appreciate that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail. The impugned orders of the High Court are set aside. Consequently, the subsequent order of the CJM releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside. [para 12-13] [782-B-E]

Case Law Reference:

2005 (2) SCR 188	**relied on**	**para 11**
2012 (7) SCR 469	**relied on**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2049 of 2013.

From the Judgment and Order dated 10.01.2013 of the HIgh Court of M.P at Jabalpur in MCRC NO. 9952 of 2012.

WITH

Criminal Appeal No. 2050 of 2013.

Vibha Datta Makhija, Saurabh Mishra, Vanshaja Sukla and Archi Agnihotri for the Appellant.

Niraj Sharma for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Leave granted.

2. These appeals are filed against the orders dated 10.01.2013 and 17.01.2013 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively whereby the High Court granted anticipatory bail to the respondents herein.

3. **Brief facts**:

(a) The case of the prosecution is that Rajesh Singh Thakur (the deceased), resident of village Gopalpur, Tehsil Chaurai, District Chhindwara, Madhya Pradesh and Pradeep Sharma (respondent herein), resident of the same village, were having enmity with each other on account of election to the post of Sarpanch.

(b) On 10.09.2011, Pradeep Sharma (respondent herein), in order to get rid of Rajesh Singh Thakur (the deceased), conspired along with other accused persons and managed to call him to the Pawar Tea House, Chhindwara on the pretext of setting up of a tower in a field where they offered him poisoned milk *rabri* (sweet dish).

(c) After consuming the same, when he left the place to meet his sister, his condition started getting deteriorated because of vomiting and diarrhea. Immediately, the father of the deceased took him to the District Hospital, Chhindwara wherefrom he was referred to the Government Hospital, Chhindwara.

(d) Since there was no improvement in his condition, on 11.09.2011, he was shifted to the Care Hospital, Nagpur where he took his last breath. The hospital certified the cause of death to be poisoning. On the very same day, after sending the information to the Police Station, Sitabardi, Nagpur, the body was sent for the *post mortem*.

(e) Inder Singh Thakur-father of the deceased submitted a written complaint to the Police Station Kotwali, Chhindwara on 13.09.2011 suspecting the role of the respondents herein. After investigation, a First Information Report (in short 'the FIR') being No. 1034/2011 dated 18.10.2011 was registered under Sections 302 read with 34 of the Indian Penal Code, 1860 (in short 'the IPC').

(f) On 01.08.2012, Pradeep Sharma (respondent herein) moved an application for anticipatory bail by filing Misc. Criminal Case No. 7093 of 2012 before the High Court which got rejected vide order dated 01.08.2012 on the ground that custodial interrogation is necessary in the case.

(g) On 26.08.2012, a charge sheet was filed in the court of Chief Judicial Magistrate, Chhindwara against Sanjay Namdev, Rahul Borkar, Ravi Paradka[illegible]u

Brahambhatt whereas the investigation in respect of Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi (respondents herein), absconding accused, continued since the very date of the incident.

(h) On 21.11.2012, arrest warrants were issued against Pradeep Sharma, Sudhir Sharma and Gudda @ Naresh Raghuvanshi but the same were returned to the Court without service. Since the accused persons were not traceable, on 29.11.2012, a proclamation under Section 82 of the Code of Criminal Procedure, 1973 (in short 'the Code') was issued against them for their appearance to answer the complaint.

(i) Instead of appealing the order dated 01.08.2012, Pradeep Sharma (respondent herein) filed another application for anticipatory bail being Misc. Criminal Case No. 9996 of 2012 before the High Court. Vide order dated 10.01.2013, the High Court granted anticipatory bail to Pradeep Sharma (respondent herein). Similarly, another accused-Gudda @ Naresh Raghuvanshi was granted anticipatory bail by the High Court vide order dated 17.01.2013 in Misc. Criminal Case No. 15283 of 2012.

(j) Being aggrieved by the orders dated 10.01.2013 and 17.01.2013, State of Madhya Pradesh has filed the above appeals before this Court.

(k) In the meantime, the respondents herein approached the Court of Chief Judicial Magistrate, Chhindwara for the grant of regular bail. Vide order dated 20.02.2013, the accused persons were enlarged on bail.

(4) Heard Ms. Vibha Datta Makhija, learned senior counsel for the appellant-State and Mr. Niraj Sharma, learned counsel for the respondents.

5. The only question for consideration in these appeals is whether the High Court is justified in granting anticipatory bail

under Section 438 of the Code to the respondents/accused when the investigation is pending, particularly, when both the accused had been absconding all along and not cooperating with the investigation.

6. Ms. Vibha Datta Makhija, learned senior counsel for the appellant-State, by drawing our attention to the charge sheet, submitted that the charges filed against the respondents/ accused relate to Sections 302, 120B and 34 of the IPC which are all serious offences and also of the fact that both of them being absconders from the very date of the incident, the High Court is not justified in granting anticipatory bail that too without proper analysis and discussion.

7. On the other hand, Mr. Niraj Sharma, learned counsel for the respondents in both the appeals supported the order passed by the High Court and prayed for dismissal of the appeals filed by the State.

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

9. In order to answer the above question, it is desirable to refer Section 438 of the Code which reads as under:-

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

(*i*) the nature and gravity of the accusation;

(*ii*) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction

of any cognizable offence;

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

(*iv*) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

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

Xxx xxx xxx"

10. The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

11. In *Adri Dharan Das* vs. *State of W.B.*, (2005) 4 SCC 303, this Court considered the scope of Section 438 of the Code as under:-

"16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he

seeks bail. The applicant must show that he has "reason to believe" that he may be arrested in a non-bailable offence. Use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere "fear" is not "belief" for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

12. Recently, in *Lavesh* vs. *State* (2)

8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 *vis-à-vis* to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under:

> **"12.** From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk *rabri*. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under Section 82 of the Code to answer the complaint on

29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.

13. In the light of what is stated above, the impugned orders of the High Court dated 10.01.2013 and 17.01.2013 in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively are set aside. Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011 releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside.

14. In view of the same, both the respondents/accused are directed to surrender before the court concerned within a period of two weeks failing which the trial Court is directed to take them into custody and send them to jail.

15. Both the appeals are allowed on the above terms.

R.P. Appeals allowed.

BANK OF BARODA

v.

S.K. KOOL (D) THROUGH LRS. AND ANR.

(Civil Appeal No. 10956 of 2013)

DECEMBER 11, 2013

[CHANDRAMAULI KR. PRASAD AND JAGDISH SINGH KHEHAR, JJ.]

Service Law:

Removal of bank employee from service 'with superannuation benefits' – Held: In view of Regulation 22 of Pension Regulations and Clause 6(b) of Bipartite Settlement, such of the employees who are otherwise entitled to superannuation benefits under the Regulation, if visited with penalty of removal from service with superannuation benefits, shall be entitled for those benefits, and such of the employees though visited with the same penalty but not eligible for superannuation benefits under the Regulation, shall not be entitled to that – In the instant case, employee's heirs are entitled to superannuation benefits with interest at the rate of 6% per annum — Bank of Baroda (Employees) Pension Regulations, 1995 – Regulation22 – Bipartite Settlement – Clause 6(b) - Costs.

Interpretation of statutes:

Harmonious construction – Held: In case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both — Bank of Baroda (Employees) Pension Regulations, 1995 – Regulation 22 – Bipartite Settlement – Clause 6(b).

Words and Phrases:

Expression "as would be due otherwise", occurring in Clause 6(b) of Bipartite Settlement – Connotation of.

Respondent no. 1, a clerk with the appellant-Bank, was visited with the penalty of 'removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment'. His claim for leave encashment and pensionary benefits was declined by the employer. However, the Industrial Tribunal held in favour of the employee and the High Court dismissed the petition of the employer.

In the instant appeal filed by the employer, it was contended for the appellant that in terms of Regulation 22 of the Bank of Baroda (Employees) Pension Regulations, 1995, removal of an employee from the service of the Bank would entail forfeiture of entire past service and, consequently, he would not be entitled to pensionary benefits. It was submitted that clause 6(b) of Bipartite Settlement which provided that an employee found guilty of gross misconduct may be removed from service with superannuation benefits, would not supersede Regulation 22, which was statutory in nature.

Dismissing the appeal, the Court

HELD: 1.1. In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. Various punishments have been provided under the Bipartite Settlement, Clause 6(b) whereof prescribes that an employee found guilty of gross misconduct may be removed from service with superannuation benefits and without disqualification from future employment. The employee undisputedly has been visited with the penalty in terms of the Bipartite Settlement. [paras 10-11] [790-C-D, F]

1.2. From a plain reading of Regulation 22 of the Bank of Baroda (Employees) Pension Regulations, 1995, it is evident that removal of an employee shall entail forfeiture of his entire past service, and, consequently such an employee shall not qualify for pensionary benefits. Thus, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted shall become a dead letter. Such a construction has to be avoided. [para 13] [791-A-C]

1.3. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" in Clause 6(b) of Bipartite Settlement would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Therefore, such of the employees who are otherwise eligible for superannuation benefit and are removed from service in terms of clause 6(b) of the Bipartite Settlement, shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the

two provisions, they should be so interpreted that the effect is given to both. [para 14] [791-D-H; 792-A-B]

1.4. Therefore, this Court holds that such of the employees who are otherwise entitled to superannuation benefits under the Regulation, if visited with the penalty of removal from service with superannuation benefits, shall be entitled for those benefits; and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation, shall not be entitled to that. Accordingly, the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to, should be disbursed along with interest at the rate of 6% per annum. [para 14-15] [792-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10956 of 2013.

From the Judgment and Order dated 28.04.2009 of the High Court of Judicature at Allahabad in C.M.W.P. No. 22499 of 2009.

Jaideep Gupta, Arun Aggarwal, Anil Rai for the Appellant.

Shilpa Singh for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. S.K. Kool, respondent no. 1 herein (since deceased), was working as a clerk with the petitioner, Bank of Baroda and while working as such after a departmental inquiry, as a measure of punishment, visited with the penalty of 'removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment'.

2. S.K. Kool, hereinafter referred to as 'the employee', made a request for leave encashment, [illegible]y

the petitioner Bank of Baroda, hereinafter referred to as 'the employer', on the ground that 'where cessation of service takes place on account of employee's resignation or his dismissal/ termination/compulsory retirement from the Bank's service, all leaves to his credit lapse.'

3. The employee laid claim for pensionary benefits but the same was also declined. However, the employer advised the employee to ask for sanction of compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him otherwise. A dispute was raised and the competent Government referred the dispute for adjudication by the Industrial Tribunal. The dispute referred to the Industrial Tribunal, hereinafter referred to as 'the Tribunal', reads as follows:

> "Whether the action of the management of Bank of Baroda in denying pension and encashment of leave to Shri S.K. Kool is legal and justified? If not, what relief the concerned workman is entitled to?"

4. The employee filed his statement of claim and so did the employer. The employee founded his claim by relying on the order of punishment itself which, according to him, entitles him the superannuation benefit. It was resisted by the employer on the ground that such employees who are removed from the service of the Bank are not entitled to pension. The Tribunal considered the rival plea, upheld the contention of the employee and passed an award in his favour, and while doing so, observed as follows:

> "**12**. Therefore, in view of the facts and circumstances and settled legal position, the tribunal feels no hesitation in holding that the action of the opposite party bank in denying superannuation benefits to the workman is neither legal nor justified. Accordingly it is held that the workman is entitled for his superannuation benefits under the final orders of the disciplinary authority passed on 19.09.03 and any other order passed by some other officer denying superannuation benefits stands set aside. Accordingly the workman is held entitled for all termination benefits like pension, leave encashment, gratuity and commutation of pension subject to adjustment of any amount paid under these heads to the workman."

5. The employer assailed the aforesaid award in a writ petition but the same has been dismissed by the High Court, inter alia, observing as follows:

> "It is true that both the provisions have to be harmonized. What logically follows from bare reading of the aforesaid provisions is that the disciplinary authority has the competence to inflict punishment of removal from service with a condition that such removal from service shall not in any way result in forfeiture of pensionary benefits to which the workman concerned is otherwise eligible. Only simple reading of the words "AS WOULD BE DUE OTHERWISE" would mean that irrespective of the order of punishment of removal from service, workman would be entitled to superannuation benefits, if it is found due otherwise i.e. if the workman concerned satisfies the other requirement of superannuation benefits under Regulations, 1995, namely, he has completed requisite number of years of working etc."

6. Petitioner assails the award and the order of the High Court in the present special leave petition.

7. Leave granted.

8. Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the appellant Bank, submits that employees of the Bank of Baroda are governed by the Bank of Baroda (Employees) Pension Regulation, 1995, hereinafter referred to as 'the Regulation'. According to the learned Senior Counsel, the Regulation has been made in exerci d

by clause (f) of sub-section (ii) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 after consultation with the Reserve Bank of India and the previous sanction of the Central Government. The Regulation, therefore, in his submission is statutory in nature and in terms of Article 22(1) of the Regulation, removal of an employee from the service of the Bank would entail forfeiture of entire past service and consequently he shall not be entitled to pensionary benefits. According to him, such an employee at the most, would be entitled for compassionate allowance in terms of Article 31 of the Regulation. According to Mr. Gupta, though clause 6(b) of the Bipartite Settlement provides that an employee found guilty of gross misconduct may be removed from service with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, but this, in his submission, would not override or supersede Article 22(1) of the Regulation, which in no uncertain terms provides for forfeiture of entire past service on removal from service. Any interpretation other than what has been suggested by him would obliterate Article 22(1) of the Regulation, contends Mr. Gupta.

9. Ms. Shilpa Singh, learned counsel appearing on behalf of the employee's heirs, however, submits that the order of the disciplinary authority inflicting the punishment itself entitled the employee to the superannuation benefits and that having attained finality, the same cannot be legally denied. She does not join issue that an interpretation which renders a provision redundant is to be avoided and, in fact, invokes the same in support of her contention. According to her, if the interpretation put by the employer is accepted, clause 6(b) of the Bipartite Settlement shall be rendered otiose.

10. Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in

nature and the court should accept an interpretation which would not make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions. The terms and conditions of service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

"**6.** An employee found guilty of gross misconduct may;

(a) .....

(b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or

xxx xxx xxx"

11. The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

12. Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"**22**. Forfeiture of service:

(1)Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

13. From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed

from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.

15. Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this Order.

16. In the result, we do not find any merit in this appeal and it is dismissed accordingly with costs of Rs.50,000/- (rupees fifty thousand) to be paid by the appellant to the respondent No. 1 along with other dues and within the time stipulated above.

R.P. Appeal dismised.

KAMLESH KUMAR
v.
STATE OF BIHAR & ANR.
(Criminal Appeal No. 2083 of 2013)

DECEMBER 11, 2013

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

Negotiable Instruments Act, 1881:

s.138 – Dishonour of cheque – Legal notice not sent within 30 days of the knowledge of such dishonor – Held: The right to present the same cheque for second time is available to complainant – However, period of limitation is not to be counted from the date when the cheque in question was presented in the first instance or the legal notice was issued in that regard asmuchas the cheque was presented again — After the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf — It is clear from the averment made by the complainant himself that he had gone to the bank for encashing the cheque and found that because of unavailability of sufficient balance in the account, the cheque was bounced — In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on the date of presentation of the cheque itself, no further enquiry is needed on this aspect — Thus, the complaint filed by him was not maintainable as the legal notice was not issued within 30 days from the date of information.

Respondent no. 2 presented a cheque second time on 10.11.2008. After it was dishonoured, he issued legal notice dated 17.12.2008 to the appellant, and thereafter filed a complaint on 7.1.2009, u/s 138 of the Negotiable

Instruments Act, 1881 against the appellant for dishonour of the said cheque. The appellant filed a petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of the order dated 28.10.2009 whereby the Court of Magistrate had taken cognizance of the complaint and issued summons to the appellant. The case of the appellant was that he was a doctor by profession; that he found certain cheques, some signed and some unsigned, missing from his clinic in December 2006 in respect of which he gave information to the Sub-Divisional Officer on 30.12.2006; that the cheque in question was also one of those stolen cheques. The High Court dismissed the petition holding that trial had commenced and two witnesses had already been examined and discharged.

Allowing the appeal, the Court

HELD: 1.1. In the instant case, the complainant had not filed the complaint on the dishonor of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under the provision of s.138 of N.I. Act. The act of the complainant in presenting the cheque again cannot be questioned by the appellant. [para 8-9] [800-D; 801-C-D]

MSR Leathers vs. S.Palaniappan & Anr. **2012 (9) SCR 165 = (2013) 1 SCC 177 – relied on.**

1.2. However, period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25.10.2008 or the legal notice was issued on 27.10.2008, inasmuch as the cheque was presented again on 10.11.2008. For the purposes of limitation, in so far as legal notice is concerned, it is to be served within 3 ot

of information by the drawee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If noticee fails to make the payment, the offence can be said to have been committed and in that event cause of action for filing the complaint would accrue to the complainant and he is given one month time from the date of cause of action to file the complaint. [para 11] [804-C-G]

1.3. After the judgment was reserved, the complainant filed the affidavit alleging that he received the bank memo of the bouncing of cheque on 17.11.2008 and therefore legal notice sent on 17.12.2008 was within the period 30 days from the date of information. However, it is clear from the averment made by the complainant himself that he had gone to the bank for encashing the cheque on 10.11.2008 and found that because of unavailability of sufficient balance in the account, the cheque was bounced. In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on 10.11.2008 itself, no further enquiry is needed on this aspect. [para 13] [805-C-F]

1.4. It is, thus, apparent that the complainant received the information about the dishonor of the cheque on 10.11.2008 itself. However, he did not send the legal notice within 30 days therefrom. Thus, the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in s.138 of the N. I. Act as explained in para 12 of the judgment in

the case of *MSR Leathers*. The impugned order of the High Court is set aside. As a consequence, petition filed by the appellant u/s 482, Cr.P.C. is also allowed and the complaint of the complainant is dismissed. [para 14-15] [806-C-E]

Case Law Reference:

2012 (9) SCR 165 relied on para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2083 of 2013.

From the Judgment and Order dated 01.11.2012 of the High Court of Patna in CRLM No. 6772 of 2011.

Manan Kr. Mishra, Akhilesh Kumar Pandey, Sudhanshu Saran, Swati Chandra for the Appellant

Samir Ali Khan, Nitin Kumar Thakur, Anilendra Pandey, D.K. Thakur for the Respondents.

The Judgment of the Court was delivered by

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

2. The appellant herein is facing trial in the complaint filed by respondent No.2 under Section 138 of the Negotiable Instruments Act (N.I. Act for short). According to the appellant, criminal complaint is not maintainable and no such proceedings could be launched against him. He, therefore, approached the High Court of Judicature at Patna in the form of a petition under Section 482 of the Cr.P.C. for quashing of the order dated 28.10.2009 whereby the Court of Magistrate had taken cognizance of the complaint filed by the respondent No.2 issued summons to the appellant. This petition, however, has been dismissed by the High Court vide impugned judgment dated 1.11.2012. The solitary reason given by the High Court while dismissing the petition is that trial has already commenced and two witnesses have already been examined and discharged. Hence, at this stage it

interfere with the trial. Various contentions which were raised by the appellant questioning the very maintainability of the complaint under Section 138 of the N.I. Act are not gone into by the High Court with the observations that those contentions would be available to the appellant before the trial court, subject to the rebuttal of respondent No.2.

3. Mr. Mishra, learned senior counsel appearing for the appellant submitted that even on admitted facts the complaint was untenable as it was clearly time barred and not filed within the stipulated period prescribed in law and therefore the High Court could not have scuttled the issue raised by the appellant by merely relegating the appellant to the trial court when the issue could be decided on the admitted facts on records. He, further, submitted that the appellant had approached the High Court without loss of any time and if during the pendency of the petition filed by the appellant under Section 482, Cr.P.C., two witnesses had been examined in the meantime, that factor could not have weighed against the appellant.

4. In order to understand the controversy, we may give basic facts which are undisputed.

5. The complaint under Section 138 of the N.I. Act is filed by respondent No.2 on the basis of cheque bearing No.003285 drawn on Bank of India, Mahua Branch where the appellant holds Bank Account bearing No.23371. This cheque was for a sum of Rs.3,45,000/-. The complainant had presented this cheque on 25.10.2008 which was returned dishonoured by the Bank. The defence on merits set up by the appellant is that he is a doctor by profession who is having his private practice. He found that certain cheques, some signed and some unsigned, were missing from his clinic in December 2006 in respect to which he had even given information to the Sub-Divisional Officer, Mahua, on 30th December 2006. Cheque No. 003285 was also one of those stolen cheques. We have stated this defence of the appellant just for record and are not going into

this explanation of the appellant or influenced by it. We only tend to examine as to whether on admitted events, complaint is not maintainable.

6. The cheque in question was presented on 25.10.2008. After it was dishonoured, complainant issued notice dated 27.10.2008 to the appellant. The appellant did not accede to the demand contained in the said notice. Even the complainant chose not to file any complaint under Section 138 of the N. I. Act at that time. Instead, he presented same very cheque again for encashment through his banker on 10.11.2008. It bounced this time as well because of insufficient funds. Another legal notice dated 17.12.2008 was sent to the appellant. As this legal notice also did not invoke any positive response from the appellant, this time the complainant filed the complaint dated 7.01.2009. The summary of the aforesaid events, accordingly, is as under:-

Date	Events
25.10.2008	Cheque presented
27.10.2008	Legal Notice
10.11.2008	2nd presentation
17.12.2008	Legal Notice
07.01.2009	Complaint filed

7. On the basis of the aforesaid facts, the submission of Mr. Mishra was that the complaint was not filed within the limitation prescribed under Section 138 read with Section 142 of the N. I. Act. To appreciate this contention, we first state the aforesaid provision which reads as under:

"138. Dishonour of cheque for insufficiency,etc. of funds in the account.-Where any cheque drawn by a person on an account maintained b or

payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whoever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be , makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawyer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be. The

holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]"

8. In the present case, the complainant had not filed the complaint on the dishonor of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under the aforesaid provision. This aspect is already authoritatively determined by this Court in *MSR Leathers vs. S.Palaniappan & Anr.* (2013) 1 SCC 177. Specific question which was formulated for consideration by the Court and referred to three Judge Bench in that case, the following question for determination was as under:

"Whether the payee or holder of a cheque can initiate prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881 for its dishonor for the second time, if he had not initiated any action on the earlier cause of action?"

This question was answered by the three Judge Bench in the aforesaid matter in the following manner:

"What is important is that neither Section 138 nor Section 142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any

within a period of six months of its issue or within the period of its validity, whichever is earlier. That such presentation will be perfectly legal and justified was not disputed before us even at the Bar by the learned counsel appearing for the parties and rightly so in the light of the judicial pronouncements on that question which are all unanimous. Even Sadanandan case, the correctness whereof we are examining, recognized that the holder or the payee of the cheque has the right to present the same any number of times for encashment during the period of six months or during the period of its validity, whichever is earlier."

9. To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant. However, we find that when the cheque was presented second time on 10.11.2008 and was returned unpaid, legal notice for demand was issued only on 17.12.2008 which was not within 30 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid. Non-issuance of notice within the limitation prescribed has rendered the complaint as not maintainable.

10. In *MSR Leathers* (supra), this Court analyzed the provisions of Sections 138 and 142 of the N.I. Act in the following manner:

"The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonor of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said

amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.

Section 142 of the Negotiable Instruments Act governs taking of cognizance of the offence and starts with a non obstante clause. It provides that no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, by the holder in due course and such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. In terms of clause (c) to Section 142, no count inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class is competent to try any offence punishable under Section 138.

A careful reading of the above provisions makes it manifest that a complaint under Section 138 can be filed only after cause of action to do so has accrued in terms of clause (c) of the proviso to Section 138 which, as noticed earlier, happens no sooner than when the drawer of the cheque fails to make the payment of the cheque amount to the payee or the holder of the cheque within 15 days of the receipt of the notice required to be sent in terms of clause (b) of the proviso to Section 138 of the Act.

The presentation of the chequ of

within the period of its validity or a period of six months is just one of the three requirements that constitutes "cause of action" within the meaning of Sections 138 and 142 (b) of the Act, an expression that is more commonly used in civil law than in penal statutes. For a dishonor to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque, and (b) failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonor of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him. Therefore, there is, nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. It follows that the complainant may, even when he has the immediate right to institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by several considerations but more importantly it may be induced by an assurance which the drawer extends to the holder of the cheque that given some time the payment covered by the cheques would be arranged, in the process rendering a time-consuming and generally expensive legal recourse unnecessary. It may also be induced by a belief that a

fresh presentation of the cheque may result in encashment for a variety of reasons including the vicissitudes of trade and business dealings where financial accommodation given by the parties to each other is not an unknown phenomenon. Suffice it to say that there is nothing in the provisions of the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of the proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonor of the cheque on its presentation."

11. It is thus clear that period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25.10.2008 or the legal notice was issued on 27.10.2008, inasmuch as the cheque was presented again on 10.11.2008. For the purposes of limitation, in so far as legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawyee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If noticee fails to make the payment, the offence can be said to have been committed and in that event cause of action for filing the complaint would accrue to the complainant and he is given one month time from the date of cause of action to file the complaint.

12. Applying the aforesaid principles, in the present case, we find that cheque was presented, second time, on 10.11.2008. The complainant, however, sent the legal notice on 17.12.2008 i.e. much after the expiry of the 30 days. It is clear from the complaint filed by the co at

he had gone to the bank for encashment the cheque on 10.11.2008 but the cheque was not honoured due to the unavailability of the balance in the account.

13. The crucial question is as to on which date the complainant received the information about the dishonour of the cheque. As per the appellant the complainant received the information about the dishonour of the cheque on 10.11.2008. However, the respondent has disputed the same. However, we would like to add that at the time of arguments the aforesaid submission of the appellant was not refuted. After the judgment was reserved, the complainant has filed the affidavit alleging therein that he received the bank memo of the bouncing of cheque on 17.11.2008 and therefore legal notice sent on 17.12.2008 is within the period 30 days from the date of information. Normally, we would have called upon the parties to prove their respective versions before the trial court by leading their evidence. However, in the present case, as rightly pointed out by the learned senior counsel for the appellant, the complainant has accepted in the complaint itself that he had gone to the bank for encashment of cheque on 10.11.2008 and the cheque was not honoured due to insufficient of funds, thereby admitting that he came to know about the dishonor of the cheque on 10.11.2008 itself. It is for this reason that appellant has filed reply affidavit stating that this is an after thought plea as no material has been filed before the court below to show that the bank had issued memo about the return of cheque which was received by the complainant on 17.11.2008. The specific averment made in the complaint in this behalf is as under:

> "Subsequently the complainant again went to encash the cheque given by the accused on 10.11.2008 which again bounced due to unavailability of balance in the accused account."

It is, thus, clear from the aforesaid averment made by the

complainant himself that he had gone to the bank for encashing the cheque on 10.11.2008 and found that because of unavailability of sufficient balance in the account, the cheque was bounced. Therefore, it becomes obvious that he had come to know about the same on 10.11.2008 itself. In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on 10.11.2008 itself, no further enquiry is needed on this aspect.

14. It is, thus, apparent that he received the information about the dishonor of the cheque on 10.11.2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the N. I. Act as explained in para 12 of the judgment in the case of MSR Leathers, extracted above.

15. We have, thus, no hesitation in allowing this appeal and setting aside the impugned order of the High Court. As a consequence, petition filed by the petitioner under Section 482, Cr.P.C. is also allowed and the complaint of the complainant is dismissed.

R.P. Appeal allowed.

SHALINI

V.

NEW ENGLISH HIGH SCH. ASSN. & ORS.

(Civil Appeal No. 10997 of 2013)

DECEMBER 12, 2013.

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

Social Status Certificate:

Caste certificate – Appointment made on the basis of caste certificate, which subsequently found invalid – Cessation of employment or employee entitled to protection and its extent – Principles emerging from various judgments of Supreme Court – Culled out.

Scheduled Tribe – "Halba" – "Gadwal Koshti" – Appellant appointed on a post earmarked for Scheduled Tribe on the basis of caste certificate issued by competent authority – Caste certificate – Subsequently found invalid by Caste Scrutiny Committee – Held: A person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class, should not be visited with termination of his/her employment and rigours of s. 10 of 2000 Act would not apply to his/her case – It is, therefore, directed that the appellant be reinstated in service without any back wages – As regards her appointment as Headmistress of the School, further directions given — Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 – ss.2(a) and 10 – Government of Maharashtra Resolution dated 15.6.1995 — Office Memorandum dated 10.8.2010 of Government of India, Ministry of Personnel,

Public Grievances and Pensions, Department of Personnel & Training.

Precedent:

Three-Jude Bench – Not overruling two-Judge Bench decisions – Precedent value of such judgments and rule of per incuriam – Discussed.

The appellant was appointed as an Assistant Teacher on 6.11.1981, against a vacancy earmarked for Schedule Tribe candidate, on the basis of a caste certificate dated 8.7.1974 issued by the competent authority testifying her to belong to "Halba Scheduled Tribe Category". On 28.4.1994 she was promoted as Head Mistress subject to production of Caste Validity Certificate. The Caste Scrutiny Committee, by order dated 20.8.2003 held the caste certificate of the appellant as invalid. Initially, the single Judge of the High Court granted her protection in service on the basis of Government Resolution dated 15.6.1995. However, subsequently, in a writ petition, the single Judge by order dated 11.11.2009 set aside the reinstatement order passed by the School Tribunal. The Division Bench of the High Court affirmed the order dated 11.11.2009 holding that *Dattatray*[1] prohibited extension of any protection to the appellant.

Disposing of the appeal, the Court

HELD: 1.1. The principles laid down in various judgments of this Court relevant for deciding the effect on the appointment made on the basis of a caste certificate are culled out as follows: (a) If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment.

1. Union of India v. Dattatray 2008 (2) SCR 109

The rigour of this conclusion has been diluted only in instances where the court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended; (b) It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be 'Koshtis' or 'Halba Koshtis' under the broadband of 'Halbas', protection of employment will be available with the rider that these persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be; (c) this benefit accrues from the decision of this Court, inter alia, in *Raju Ramsing Vasave* which was rendered under Art. 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/ Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in *Milind* that the Constitution Bench clarified that 'Koshtis' or 'Halba-Koshtis' were not entitled to claim benefits as Scheduled Tribes and it was the 'Halbas' alone who were so entitled. A perusal of the judgment in *Vilas* as well as *Solunke* makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature; (d) Where a Resolution or Legislation exists, its *raison d'etre* is that protection is justified *in presenti* (embargo on removal from service or from reversion) but not *in futuro* (embargo on promotions in the category of Scheduled Caste or Scheduled Tribe). [para 5 and 6] [816-E-H; 817-A-D]

Maharashtra v. Milind **2000 Suppl. 5 SCR 65 = (2001) 1 SCC 4;** *Union of India v. Dattatray* **2008 (2) SCR 1096 = (2008) 4 SCC 612;** ***Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*** **2008 (12) SCR 992 = (2008) 9 SCC 54** *Punjab National Bank v. Vilas* **(2008) 14** ***SCC*** **545,** ***Kavita Solunke v. State of Maharashtra*** **2012 (7) SCR 251 = (2012) 8 SCC 430;** *E.V. Chinnaiah v. State of A.P.* **2004 Suppl. 5 SCR 972 = (2005) 1 SCC 394;** *R. Vishwanatha Pillai v. State of Kerala* **2004 (1) SCR 360 = (2004) 2 SCC 105;** *State of Maharashtra v. Om Raj* **(2007) 14 SCC 488;** *Bank of India v. Avinash D. Mandivikar* **2005 Suppl. 3 SCR 170 = (2005) 7 SCC 690** and *BHEL v. Suresh Ramkrishna Burde* **2007 (6) SCR 388 = (2007) 5 SCC 336;** and *State of Maharashtra v. Sanjay K. Nimje* **2007 (1) SCR 960 = (2007) 14 SCC 481—referred to.**

1.2. *Dattatray* is the only Three-Judge Bench decision and, therefore, indisputably holds pre-eminence and it was within the competence of *Dattatray* to overrule the other Two-Judge Bench decisions, but it has not done so. The *per incuriam* principle would not apply to the decision. The Two-Judge Bench views may still be relied upon so long as the ratio of *Dattatray* is not directly in conflict with their ratios. [para 6] [817-G-H]

1.3. The Resolution dated 15.6.1995 passed by the Government of Maharashtra grants status quo as regards employment inasmuch as it states that those persons who, on the basis of Caste Certificates, already stand appointed or promoted in the Government or Semi-Government, shall not be demoted or removed from service. Thereafter, the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (*Vimukta Jatis*) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 was enacted. Section 10 of the said Act cancels w[illegible]ct

any benefit that may have been derived by a person based on a false caste certificate. Section 10 applies in the *Dattatray* mould only. In *Nimje,* a Two-Judge Bench held that Government Resolution dated 15.6.1995 would continue to apply even after the passing of the 2000 Act so long as the appointment had taken place prior to 1995. Further, the Office Memorandum dated 10.8.2010 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training provides that "the persons belonging to the 'Halba Koshti/Koshti' caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000." [para 7] [818-G-H; 819-A-B; 820-H; 821-A-D]

1.4. It requires specialised bodies such as Caste Scrutiny Committees, specialised lawyers, seasoned bureaucrats etc. to decipher which category a relatively backward, or ostracized or tribal person falls in. Therefore, a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class should not be visited with termination of her employment. In the instant case, since there was no falsity in the claim of the appellant and, therefore, she cannot be viewed as having filed a 'false' Caste Certificate. The rigours of s. 10 of the 2000 Act would not apply to her case. A perusal of the Order of the Scheduled Tribe Caste Certificate Committee shows that the Committee was satisfied that her claim to the caste of

'Gadwal Koshti' was correct but that she did not belong to 'Halba' Scheduled Tribe. Government Resolution dated 15.6.1995 specifically declares amongst others 'Godwal Koshti" as "special backward class." Therefore, the appellant should have been debarred from any further advantage that would enure to persons belonging to the 'Halba' Tribe. [para 8-9] [821-F-H; 822-C-E, H; 823-A-C]

1.5. Accordingly, it is directed that the appellant be reinstated in service but without any back wages. Further directions given with regard to her reappointment as Head Mistress of the School. [para 10] [823-D]

Case Law Reference:

2008 (2) SCR 1096	**para 1**
2000 Suppl. 5 SCR 65	**para 1**
2004 Suppl. 5 SCR 972	**para 1**
2004 (1) SCR 360	**para 2**
(2007) 14 SCC 488	**para 3**
2008 (14) SCC 545	**para 3**
2005 Suppl. 3 SCR 170	**para 4**
2007 (6) SCR 388	**para 4**
2007 (1) SCR 960	**para 4**
2012 (7) SCR 251	**para 5**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10997 of 2013.

From the Judgment and Order dated 25.11.2009 of the High Court of Judicature at Bombay, Bench at Nagpur in Letters Patent Appeal No. 527 of 2009.

Satyajit A. Desai, Anagha S. Desa

Shankar Chillarge, (Asha Gopalan Nair), Manish Pitale, Wasi Haider, Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. This Appeal challenges the Order of the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench passed on 25.11.2009 in L.P.A. No.527 of 2009 affirming the Order of the learned Single Judge who had dismissed the Appellant's Writ Petition essentially on the opinion of the Three-Judge Bench in *Union of India v. Dattatray (*2008) 4 SCC 612. The Order impugned before the learned Single Judge was that of the School Tribunal, Nagpur which had granted reinstatement of the Appellant with continuity of service and full back wages. The Appellant had been employed as an Assistant Teacher against a vacancy earmarked for Scheduled Tribe candidate, she having filed a Caste Certificate dated 8.7.1974 issued by the Competent Authority testifying her to belong to the "Halba Scheduled Tribe Category". The question before us is indeed a vexed one, as are all conundrums arising out of claims for Scheduled Caste or Scheduled Tribe status and resultant benefits. The confusion is made worst confounded because of exclusions or inclusions of certain castes or classes of people keeping only electoral advantages in mind. Retrospectivity is inherent in subsequent enumerations under Articles 341 and 342 since those selection are immutable or unalterable; all change therefore, is only clarificatory in content, because the endeavour of Parliament is to make the enumerations more detailed by mentioning sub-castes or the synonyms of the selected castes and tribes. The inclusion of new castes/tribes was intended by the framers of the Constitution to be impermissible, in order "to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President" as per the Constituent Assembly oration of Dr. Ambedkar, which stands accepted by the Apex Court at least twice, as in *State*

of Maharashtra v. Milind (2001) 1 SCC 4 and *E.V. Chinnaiah v. State of A.P.* (2005) 1 SCC 394. We have to decide whether the Appellant's employment was justifiably terminated because a Caste Scrutiny Committee after a passage of several decades, found her disentitled to claim the benefits enuring to Halbas.

2. In *R. Vishwanatha Pillai v. State of Kerala* (2004) 2 SCC 105, this Court found that the caste certificate procured by the Appellant was false *ab initio*. It repelled the argument that a fresh notice should have been issued in compliance with Article 311 of the Constitution of India as a prelude to the imposition of any punishment postulated by that provision, on the premise that the appointment itself was illegal and void, thereby disentitling the Appellant from Constitutional protection. This Court also rejected the plea that since the Appellant had put in 27 years of service the order of dismissal should be converted to compulsory retirement or removal from service so that pensionary benefits could be availed of. The question which immediately begs to be cogitated upon is whether these harsh consequences should nevertheless ensue and obtain even if no fraud, mendacity or manipulation is ascribable to the person who has claimed and enjoyed Scheduled Caste advantages.

3. This slant in the situation arose in *State of Maharashtra v. Om Raj* (2007) 14 SCC 488 whereby several appeals came to be decided simply on the basis of *Milind,* the gist of which was that protection so far as the benefit then claimed on the strength of being Koshtis would be preserved, but the incumbent would not be entitled to any further benefit in the future. To remove confusion, *State of Maharashtra v. Viswanath* [C.A.No.7375 of 2000] has also been decided in *Om Raj* with other appeals. In *Punjab National Bank v. Vilas* (2008) 14 SCC 545, the employee had provided a Halba Scheduled Tribe Certificate and gained employment in 1989 which was invalidated by the Scheduled Tribe Scrutiny Committee leading to the termination of the Respondent'

dated 4.2.2002. Drawing from the previous decision in *Milind* this Court reiterated that Scheduled Tribe status had not been conferred either on Halba Koshti or Koshti but on 'Halba' alone. This Court, thus, once again protected the employment of the Respondent but clarified that he would not be entitled to claim further promotion in the Scheduled Tribe category. It was also declared that the Government Resolution dated 30.6.2004 would apply to all employment with the "government/semi-government and Boards, Municipalities, Municipal Corporations, District Councils, Cooperative Banks, government undertakings, etc."

4. Almost one year later this very question, which has led to a deluge of litigation already, received the attention of a Three-Judge Bench in *Dattatray.* The Respondent, claiming to belong to the Scheduled Tribe 'Halba', was appointed as Assistant Professor of Psychiatry in G.B. Pant Hospital, New Delhi against a post reserved for Scheduled Tribes. A verification of the Certificate of Scheduled Tribe disclosed that he did not belong to the Halba Tribe. The second challenge to this finding, before the High Court, also proved to be futile. However, on what has been held to be a misinformed reading of the Constitution Bench decision in *Milind,* the High Court thought it fit to protect his service. The Three-Judge Bench referred to two other decisions of this Court namely *Bank of India v. Avinash D. Mandivikar* (2005) 7 SCC 690 and *BHEL v. Suresh Ramkrishna Burde* (2007) 5 SCC 336 and noting that the employee had falsely claimed that he belonged to the Scheduled Tribe/Halba, set aside the judgment of the High Court. Whilst it permitted settlement of employee-Doctor's terminal benefits it placed an embargo on his receiving any pensionary benefits. This conclusion was arrived at by the Three-Judge Bench without noting *State of Maharashtra v. Sanjay K. Nimje* (2007) 14 SCC 481 where the impugned Order passed by the Division Bench of the High Court of Judicature at Bombay directing the reinstatement of a person

belonging to the 'Koshti' Tribe, (not even 'Koshti-Halbas') was set aside.

5. It is evident that there is a plethora of precedents on this aspect of the law, and perhaps for this reason Counsel for the parties were remiss in drawing our attention in the present proceedings to the detailed judgment in *Kavita Solunke v. State of Maharashtra* (2012) 8 SCC 430, in which one of us, Thakur J, had analysed as many as eleven precedents including those discussed above. After reviewing all the judgments it was held, in the facts and circumstances of that case, that since that party had not intentionally or with dishonest intent fabricated particulars of a scheduled tribe with a view to obtain an undeserved benefit in the matter of appointment, she was entitled to protection against ouster from service, but no other benefit. In view of the comprehensive yet concise consideration of case law in *Solunke*, any further analysis would make the present determination avoidably prolix, and therefore our endeavour will be to cull out the principles which would be relevant for deciding suchlike conundrums. These are - (a) If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the Court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended; (b) Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be 'Koshtis' or 'Halba Koshtis' under the broadband of 'Halbas', protection of employment will be available with the rider that these persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe a[illegible]C)

this benefit accrues from the decision of this Court inter alia in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar* (2008) 9 SCC 54 which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in *Milind* that the Constitution Bench clarified that 'Koshtis' or 'Halba-Koshtis' were not entitled to claim benefits as Scheduled Tribes and it was the 'Halbas' alone who were so entitled. A perusal of the judgment in *Vilas* by Sirpurkar J, as well as *Solunke* makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature; (d) Where a Resolution or Legislation exists, its *raison d'etre* is that protection is justified *in presenti* (embargo on removal from service or from reversion) but not *in futuro* (embargo on promotions in the category of Scheduled Caste or Scheduled Tribe).

6. A reading of the impugned Judgment requires us to clarify an important aspect of the doctrine of precedence. ***Dattatray*** is the only Three-Judge Bench decision, and therefore indisputably holds pre-eminence. However, by that time several decisions had already been rendered by Two-Judge Benches some of which have already been discussed above. It was within the competence of *Dattatray* Bench to overrule the other Two-Judge Benches. Despite the fact that it has not done so the *per incuriam* principle would not apply to the decision because it was a larger Bench. However, no presumption can be drawn that the *Dattatray* Three-Judge Bench decision was of the opinion that the earlier Two-Judge Bench decisions had articulated an incorrect interpretation of the law. That being so, the Two-Judge Bench views may still be relied upon so long as the ratio of *Dattatray* is not directly in conflict with their ratios. It is therefore imperative to distill the

ratio of *Dattatray*, which we have already discussed in some detail. We need only reiterate therefore that the Three-Judge Bench was perceptibly incensed with the falsity of the claim of the employee to Scheduled Caste/Scheduled Tribe status. That was not a case where a legitimate claim of consanguinity to a 'Halba Koshti', 'Koshti' or 'Gadwal Koshti' etc. had been made, which was at the inception point considered to be eligible to beneficial treatment admissible to Scheduled Tribes, later to be reversed by the Constitution Bench decision in *Milind* and declared to be the entitlement of Halbas only. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/ Scheduled Tribe.

7. We must now reflect upon the Government Resolution dated 15.6.1995 passed by the Government of Maharashtra. Virtually it grants status quo as regards employment inasmuch as it states that those persons who, on the basis of Caste Certificates, already stand appointe

Government or Semi-Government, shall not be demoted or removed from service. Thereafter, the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (*Vimukta Jatis*) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, '2000 Act') was passed by the Legislature and received the assent of the President. Section 10 thereof reads thus :

"**10. Benefits secured on the basis of false Caste Certificate to be withdrawn.**

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any education institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other company or corporation, owned or controlled by the Government or in any Government aided institution or co-operative society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Dilploma or any other

educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backaward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

In essence, the Section cancels with pre-emptive effect any benefit that may have been derived by a person based on a false caste certificate. Whilst "Caste Certificate" has been defined in Section 2(a) of the 2000 Act, "False Caste Certificate" has not been dealt with in the Definitions clause. There is always an element of deceitfulness, in order to derive unfair or undeserved benefit whenever a false statement or representation or stand is adopted by the person concerned. An innocent statement which later transpires to be incorrect may be seen as false in general sense would normally not attract punitive or detrimental consequences on the person making it, as it is one made by error. An untruth coupled with a dishonest intent however requires legal retribution. It appears to us that Section 10 applies in the *Dattatray* mould only. It was obviously for this reason that in *Vilas*, Sema J, was of the opinion that the 2000 Act did not appl it

whereas Sirpurkar J, after concurring with Sema J, granted protection *albeit* under Article 142 of the Constitution of India. In *Nimje* another Two-Judge Bench held that Government Resolution dated 15.6.1995 would continue to apply even after the passing of the 2000 Act so long as the appointment had taken place prior to 1995. There is, therefore, palpable wisdom in the Office Memorandum dated 10.8.2010 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training to the effect that "it has been decided that the persons belonging to the 'Halba Koshti/Koshti' caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000."

8. The Appellant before us has been in service since 6.11.1981 on the strength of her claim of consanguinity to 'Halba Scheduled Tribe' duly predicated on a Certificate dated 8.7.1974 issued by the Competent Authority. Avowedly she was appointed in a vacancy earmarked against the Scheduled Tribe category. She was confirmed as Assistant Teacher with effect from 1.1.1984. Respondent nos.1 and 2, by order dated 17.9.1989 appointed the Appellant as Assistant Head Mistress. Thereafter on 28.4.1994 she was promoted as Head Mistress by an order of even date, subject to production of Caste Validity Certificate. It is not clear when the certificate produced by the Appellant was referred to the Caste Scrutiny Committee, Nagpur for verification, but the said Committee by Order dated 20.8.2003 held it to be invalid. The learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench granted protection in service on the basis of Government Resolution dated 15.6.1995 by his order dated 2.9.2003 in Writ Petition

No.3500 of 2003. Protracted litigation thereafter ensued eventually resulting in the filing of another Writ Petition No.4532 of 2004 in which a learned Single Judge by order dated 11.11.2009 set aside the reinstatement order passed by the School Tribunal, Nagpur which came to be affirmed by the Division Bench in the impugned Order which was of the opinion that *Dattatray* prohibited the extension of any protection to the Appellant. Having come to that conclusion, the Division Bench did not think it necessary to consider the plethora of precedents, *albeit* of Two-Judge Benches where protection had in fact been granted. Be that as it may, we think that since there was no falsity in the claim of the Appellant and therefore that she cannot be viewed as having filed a 'false' Caste Certificate, the rigours of Section 10 of the 2000 Act would not apply to her case. A perusal of the Order of the Scheduled Tribe Caste Certificate Committee, Nagpur shows that the Committee was satisfied that her claim to the caste of 'Gadwal Koshti' was correct but that she did not belong to 'Halba' Scheduled Tribe. Government Resolution dated 15.6.1995 specifically declares that the following were basically backward in social, economic and educational viewpoint and were therefore "special backward class" vide Government Resolution dated 7.12.1994 :

"Sr. No. Name of the Caste

1. …. …. …. ….

2. …. …. …. ….

3. (1) Koshti (2) Halba Koshti (3) Halba Caste (4) Sali (5) Ladkoshti (6) Gadwal Koshti (7) Deshkar (8) Salewar (9) Padmashali (10) Dwang (11) Kachi Dhande (Glass occupation) (12) Patwos (13) Satpal (14) Sade (15) Dhankoshti.

[Emphasis supplied]

9. It requires specialised bodies s y

Committees, specialised lawyers, seasoned bureaucrats etc. to decipher which category a relatively backward, or ostracized or tribal person falls in. Can it therefore seriously be contended that a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not what the Three-Judge Bench was confronted with in *Dattatray.* In our opinion, therefore, the Appellant should have been debarred from any further advantage that would enure to persons belonging to the 'Halba' Tribe.

10. Accordingly, we direct reinstatement of the Appellant in service but without any back wages. With the passage of time it is possible that there may be another incumbent as Head Mistress of the Respondent No.1-School and we think that it would not be equitable to remove such person. However, if this post falls vacant before the Appellant reaches the age of retirement or superannuation she shall be re-appointed to that post but with no further promotion as a Scheduled Tribe candidate unless she is otherwise entitled as a special backward class candidate. The Appeal stands disposed of accordingly. The parties shall bear their respective costs.

R.P. Appeal disposed of.

FAKHRUZAMMA
v.
STATE OF JHARKHAND & ANR.
(Criminal Appeal No. 2086 of 2013)

DECEMBER 12, 2013

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

Code of Criminal Procedure, 1973:

s.197 – Previous sanction for prosecution of public servant – Held: s.197 clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government – Clauses (a) and (b) of r.825 of Jharkhand Police Manual confer power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector, without obtaining prior approval of State Government – High Court has rightly held that since the competent authority had removed the appellant from service, sanction u/s 197 was not warranted – Jharkhand Police Manual – rr.825(a) and (b).

The appellant filed a petition before the High Court seeking to quash the proceedings of a complaint case before the Judicial Magistrate, filed against him alleging offences punishable u/ss 456, 323, 504, 506, 342, 386, 201, 120-B and 304 IPC. His case was that he was a Sub-Inspector of Police and the alleged act was committed while discharging his official duty and in the absence of previous sanction of the State Government u/s 197 CrPC, the Judicial Magistrate could not have taken cognizance of the offences alleged. The High Court dismissed the petition holding that since the competent authority had removed the appellant from service, sanction u/s 197 CrPC was not warranted.

Dismissing the appeal, the Court

HELD: 1.1. Section 197 CrPC clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. Clauses (a) and (b) of r.825 of the Jharkhand Police Manual confer power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. In *Nagraj*'s case a Three-Judge Bench of this Court has held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the Stat•e Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty. [para 7-8] [830-C; 831-B-E]

Nagraj v. State of Mysore **(1964) 3 SCR 671 = AIR 1964 SC 269 – relied on.**

Sankaran Moitra v. Sadhna Das & Anr. **2006 (3) SCR 305 = (2006) 4 SCC 584;** and *Rakesh Kumar Mishra v. State of Bihar & Ors.* **2006 (1) SCR 124 = (2006) 1 SCC 557 – held inapplicable.**

1.2. The High Court was right in applying the ratio laid down in *Nagraj* while interpreting the provisions of the Jharkhand Police Manual and the view of the High Court is endorsed. [para 9] [831-F-G]

Case Law Reference:

2006 (1) SCR 124	**held inapplicable**	**Para 4**
2006 (3) SCR 305	**held inapplicable**	**Para 4**

(1964) 3 SCR 671 relied on para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2086 of 2013.

From the Judgment and Order dated 09.09.2011 of the High Court of Jharkhand at Ranchi in CRLMP No. 1669 of 2006.

S. K. Katriar, Manoj K. Srivastava, Rameshwar Prasad Goyal for the Appellant.

Jayesh Gaurav, Anil K. Jha, Priyanka Tyagi, Mithilesh Kumar Singh for the Respondents.

The Judgment of the Court was delivered by

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

2. The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C. is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down in Jharkhand Police Manual.

3. The Sub-Divisional Judicial Magistrate, Giridih, in Complaint Case No.281 of 2003, T.R. No.835 OF 2006, took cognizance against the Appellant for various offences under Sections 456, 323, 504, 506, 342, 386, 201, 120B and 304 IPC. That order was challenged by the Appellant before the High Court by filing Crl. M.P. No.1669 of 2006 under Section 482 Cr.P.C. stating that in the absence of previous sanction of the State Government, as per the provisions of Section 197 Cr.P.C., the learned Magistrate could not have taken cognizance of the offences against the appellant who was a Sub-Inspector of Police, since the act alleged was committed while discharging his official duty. The High Court rejected that contention by holding that since the competent authority had removed the Appellant from service, [illegible]e

under Section 197 Cr.P.C. was not warranted. Aggrieved by the same, this appeal has been preferred.

4. Shri S.K. Katriar, Senior Advocate, appearing for the Appellant, submitted that the High Court has committed an error in holding that no sanction under Section 197(1) Cr.P.C. was necessary before prosecuting the Appellant. The learned senior counsel submitted that the High Court failed to appreciate the ratio laid down by this Court in *Sankaran Moitra v. Sadhna Das & Anr.* (2006) 4 SCC 584] and *Rakesh Kumar Mishra v. State of Bihar & Ors.* [(2006) 1 SCC 557] and erroneously held that no sanction was contemplated under Section 197 Cr.P.C. for prosecuting the Appellant.

5. Shri Jayesh Gaurav, Advocate, appearing for the Respondents, on the other hand, contended that the Appellant is a Sub-Inspector of Police and hence governed by the Jharkhand Police Manual and he can be removed from the service by the Inspector General of Police or the Deputy Inspector General of Police and for removal from service of a Sub-Inspector, no approval/sanction of the State Government is necessary and, hence, Section 197 Cr.P.C. would not apply to case of the Appellant. Learned counsel also submitted that the issue raised in this case stands covered by the judgment of this Court in *Nagraj v. State of Mysore* [(1964) 3 SCR 671 = AIR 1964 SC 269].

6. The Appellant's case is that he had arrested one Satyam Mirza (since deceased) for offences under Section 376(g) and 302 IPC. The case was registered at Police Station Gande where the Appellant was officiating as an office-in-charge. According to the Appellant, while returning from the spot led by the deceased in search of desi katta, the deceased jumped out of the running police vehicle TATA 407 and disappeared in the dark night in a dense forest and could not be located. Later, on 13.1.2003, he was found dead in the deep forest. The wife of the deceased Satyam Mirza filed a complaint against

the Police stating that the deceased had died during police custody and to take appropriate action against the officials concerned. The learned Sub-Divisional Judicial Magistrate, on 4.7.2006, took cognizance of that complaint and registered case against the Appellant. As already stated, for quashing of that complaint, the Appellant approached the High Court on the ground that no sanction under Section 197 Cr.P.C. was obtained before taking cognizance by the learned Magistrate. The scope of Section 197 Cr.P.C. has to be examined in the light of the Jharkhand Police Manual. Section 197 Cr.P.C. is extracted hereinbelow for an easy reference :-

"**197. Prosecution of Judges and public servants.** (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "state Government" occurring therein, the expression "Central Government" were substituted

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression "Central Government" occurring therein, the expression" State Government" were substituted.

(3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the

Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

7. The above-mentioned provision clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police. The relevant Rule for our purpose is Rule 825, which is given below:

"**825. Officers empowered to impose punishment. –** (a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector-General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in rule 825.

(c) xxx xxx xxx

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in rule 824 except dismissal; removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for

information. If required, the file of departmental proceeding shall also be sent with it.

(e) xxx xxx xxx

(f) xxx xxx xxx."

8. Rule 825, clauses (a) and (b) confers power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. A similar issue came up for consideration before this Court in *Nagraj*'s case (supra), wherein this Court was called upon to examine the scope of Section 197 Cr.P.C. read with Section 4(c), 8, 26(1) and 3 of the Mysore Police Act, 1908. Interpreting the above-mentioned provisions, a Three-Judge Bench of this Court held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty.

9. The judgment referred to by the Appellant, such as, *Rakesh Kumar Mishra* (supra) is not applicable to the case in hand. The question raised, in our view, is directly covered by the judgment of this Court in *Nagraj*'s case (supra) and the High Court was right in applying the ratio laid down in that case while interpreting the provisions of the Jharkhand Police Manual and we fully endorse the view of the High Court.

10. In the circumstances, we find no merit in this Appeal and the same stands dismissed.

R.P. Appeal dismissed.

HARYANA FINANCIAL CORPORATION
v.
GURCHARAN SINGH & ANR.
(Civil Appeal No. 11028 of 2013)

DECEMBER 13, 2013

[K.S. RADHAKRISHNAN AND C. NAGAPPAN, JJ.]

Transfer of Property Act, 1882:

s.100 r/w s.59 – Charges – Undertaking given against loan that properties mentioned therein shall not be disposed of during the currency of the loan – Documents not registered – Held: A conjoint reading of s.100 with s.59 makes it clear that if by act of parties, any immovable property is made security for the payment of money to another and it does not amount to mortgage, then all the provisions which apply to a simple mortgage, as far as may be, apply to such charge — Consequently, in view of s.59, when there is a mortgage other than a mortgage by deposit of title deeds, it can be effected only by a registered instrument — The mere undertaking that the party will not dispose of the properties mentioned in the said undertaking, during the currency of the loan, will not create any charge over those properties, unless charge is created by deposit of title deeds or through a registered document – A mere undertaking to create a mortgage is not sufficient to create an interest in an immovable property — In the instant case, no registered mortgage deed was executed by the first respondent and no title deed of the property was handed over by him to Corporation – Therefore, there is no error in the judgment of first appellate court as affirmed by High Court that the loan taken by first respondent was not subject to charge over the property covered by the decree in favour of second respondent.

Respondent no. 1 gave a written undertaking dated

5.3.1994, as security against a loan obtained from the appellant-Corporation, that he would not dispose of his properties enumerated therein during the currency of the loan. On his failure to repay the loan, the appellant took over the hypothecated properties, sold the same and appropriated the amount. Respondent no. 2, the wife of respondent no. 1, filed Civil Suit no. 767 of 1995 seeking a declaration that she was the absolute owner and in possession of the properties mentioned in the undertaking dated 5.3.1994. The suit was decreed against respondent no. 1 on 3.2.1996. The appellant-Corporation filed a suit seeking a declaration that the decree dated 3.2.1996 was null and void. The trial court held that the decree in the suit filed by respondent no. 2 was a collusive one obtained to defeat the undertaking dated 5.3.1994. However, the first appellant court allowed the appeal of respondent no. 2 holding that the loan taken by respondent no. 1 was not subject to charge over the property covered by the decree in favour of respondent no. 2. The High Court dismissed the appeal of the Corporation.

Dismissing the appeal, the Court

HELD: 1.1. Section 100 of Transfer of Property Act, 1872 clearly indicates the following types of charges : (i) Charges created by act of parties; and (ii) Charges arising by operation of law. An ordinary charge created under the Transfer of Property Act is compulsorily registerable. The first portion of s.100 lays down that where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge. [para 9] [840-H; 841-A-C]

1.2. A conjoint reading of s.100 with s.59 of the TP Act makes it clear that if by act of parties, any immovable property is made security for the payment of money to another and it does not amount to mortgage, then all the provisions which apply to a simple mortgage, as far as may be, apply to such charge. Consequently, in view of s.59 of the TP Act, when there is a mortgage other than a mortgage by deposit of the title deeds, it can be effected only by a registered instrument. So far as the instant case is concerned, no registered mortgage deed was executed by the first respondent and no title deed of the property was handed over by him to the Corporation. A mere undertaking to create a mortgage is not sufficient to create an interest in any immovable property. In *Bank of India*, this Court has held that without a transfer of interest, there is no question of there being a mortgage and that mere undertaking is not sufficient to create a charge. [para 11 and 13] [841-G-H; 842-A-C, H; 843-A-B]

Bank of India v. Abhay D. Narottam and others **(2005) 11 SCC 520; and** *K. Muthuswami Gounder v. N. Palaniappa Gounder* **1998 (1) Suppl. SCR 206 = (1998) 7 SCC 327 – relied on.**

J.K. (Bombay) Private Limited v. New Kaiser-I-Hind Spinning & Weaving Co. Ltd. & Others **(1969) 2 SCR 866 – referred to.**

1.3. This Court, therefore, holds that the mere undertaking that the party will not dispose of the properties mentioned in the said undertaking, during the currency of the loan, will not create any charge over those properties, unless charge is created by deposit of title deeds or through a registered document. Even if the purpose of the decree obtained in Civil Suit No.767 of 1995 between the respondents was fraudulent and collusive one so as to defeat the undertaking made on 5.3.1994, that would not confer a

properties, unless the undertaking is registered. Therefore, there is no error in the judgment of the lower appellate court which was affirmed by the High Court, that the loan taken by the first respondent was not subject to change over the property covered by the decree in favour of second respondent. [para 3 and 13] [836-G-H; 837-A; 843-B-D]

S.P. Cheranalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs and others **1993 (3) Suppl. SCR 422 = (1994) 1 SCC 1 and** *Badami (deceased) by her LR v. Bhali* **(2012) 11 SCC 574;** *M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons & Ors.* **1969 (3) SCR 513 = (1969) 1 SCC 573 – cited.**

Case Law Reference:

1993 (3) Suppl. SCR 422	**cited**	**para 4**
(2012) 11 SCC 574	**cited**	**para 4**
1969 (3) SCR 513	**cited**	**para 4**
1998 (1) Suppl. SCR 206	**relied on**	**para 5**
(2005) 11 SCC 520	**relied on**	**para 5**
(1969) 2 SCR 866	**referred to**	**para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11028 of 2013.

From the Judgment and Order dated 09.01.2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 44 of 2006.

Amit Dayal for the Appellant.

Gagan Gupta for the Respondents.

The Judgment of the Court was delivered by

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

2. M/s Amrit Steel Industries, Jagadhari, a proprietorship concern of which the first respondent is the sole proprietor, had obtained a loan of Rs.5,05,750/- on 15.9.1994 from the Appellant, Haryana Financial Corporation, by entering into hypothecation of machinery, fixture, as well as, personal guarantee bond dated 15.9.1994. The first respondent also gave a written undertaking dated 5.3.1994 that he would not dispose of his properties during the currency of the loan. The first respondent failed to repay the loan. Consequently, the Corporation took over the hypothecated property and sold the same and appropriated the amount. In the meantime, the second respondent, the wife of the first respondent filed Civil Suit No.767 of 1995 against the first respondent before the Court of Civil Judge (Jr. Divn.), Jagadhari, seeking a declaration that she is the absolute owner and in possession of the properties mentioned in the undertaking dated 5.3.1994. The suit was decreed on 3.2.1996 as against the first respondent.

3. The Corporation then filed Civil Suit No.167 of 2003 in the Court of Additional Civil Judge (Senior Division), Jagadhari, against the Respondents seeking a declaration that the decree dated 3.2.1996 was null and void. The Corporation also submitted that the decree was obtained by fraud to defeat the personal undertaking executed by the first respondent on 5.3.1994 in favour of the Corporation. The Court decreed the suit holding that the decree passed in Civil Suit No.767 of 1995 is a collusive one obtained to defeat the undertaking created by the first respondent on 5.3.1994 in favour of the Corporation. The second respondent filed Civil Appeal No.34 of 2005 in the Court of Additional District Judge, Yamunanagar. The Additional District Judge, however, allowed the Appeal vide judgment dated 30.8.2005 holding that the loan taken by the first respondent was not subject to charge over the property covered by the decree in Civil Suit No.767 of 1995 and that the Appellant had no *locus standi* to challen

by the first respondent in favour of the second respondent. The Corporation aggrieved by the aforesaid judgment filed RSA No.44 of 2006 before the Punjab and Haryana High Court, which was dismissed by the High Court on 9.1.2006. Aggrieved by the same, the Corporation has filed the present Appeal.

4. Shri Amit Dayal, learned counsel appearing for the Corporation, submitted that the High Court has committed an error in sustaining the order passed by the Additional District Judge after having found that the decree obtained by the second respondent against the first respondent in Civil Suit No.167 of 2003 was a collusive one. Learned counsel submitted that apparently such a decree was obtained without any contest by the first respondent, only to defeat the undertaking given to the Corporation on 5.3.1994. Learned counsel also placed reliance on the judgments of this Court in *S.P. Cheranalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs and others* [(1994) 1 SCC 1] and *Badami (deceased) by her LR v. Bhali* [(2012) 11 SCC 574] and submitted that the Court cannot grant relief to a party who has obtained a fraudulent decree and who has come to the Court with unclean hands. Learned counsel also placed reliance on the judgment of this Court in *M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons & Ors.* [(1969) 1 SCC 573] and submitted that even if the undertaking dated 5.3.1994 was not registered, still the first respondent is bound by the undertaking and the Corporation can always proceed against the properties referred to in the said undertaking.

5. Shri Gagan Gupta, learned Advocate appearing for the Respondents, submitted that the High Court has rightly affirmed the judgment of the lower Appellate Court after having noticed that the undertaking dated 5.3.1994 has not created any charge over the properties mentioned therein. Consequently, the Corporation cannot proceed against the properties mentioned in the undertaking. Learned counsel submitted that without transfer of interest in the properties in question by a registered

document, no charge could be created in those properties and hence the Corporation cannot proceed against those properties on the basis of mere undertaking dated 5.3.1994. In support of this contention, reliance was placed on the judgments of this Court in *K. Muthuswami Gounder v. N. Palaniappa Gounder* [(1998) 7 SCC 327] and *Bank of India v. Abhay D. Narottam and others* [(2005) 11 SCC 520].

6. We may, for the purpose of this case, extract the undertaking given by the first respondent in favour of the Corporation on 5.3.1994, which reads as follows :-

"That the proprietor of the concern have the following means :-

Name of the Proprietor/ Partner/ Director	Immovable & Moveable Property	Personal Liabilities	Net Worth
Gurcharan Singh	Assets & Liabilities Capital with Amrit Steel Industries		1,20,760.00
	Land & Building of Amrit Steel Industries		8,14,000.00
	Jewellery		1,00,000.00
	Cash & Bank Balance		1,00,000.00
	Deposit with Malhotra Timber		50,000.00
			11,84,760.00

LIABILITIES NIL

NET WORTH 11,84,760.00

Sd/-
DEPONENT

VERIFICATION

I, Gurcharan Singh, the above named deponent do hereby verify contents of the above paras as true and correct to the best of my knowledge and belief and nothing has been concealed from.

Further confirm that the means as indicated above in the name shall not be disposed off during the currency of the loan.

Sd/-
DEPONENT

PLACE : Yamuna Nagar
Dated : 05/03/94"

7. The above-mentioned undertaking dated 5.3.1994 was submitted by the first respondent on a duly attested Stamp Paper, but was not registered under the Registration Act. The above-mentioned undertaking was given before the loan was sanctioned to the first respondent on 15.9.1994. We also fully endorse the view taken by the Courts below that the decree in Civil Suit No.767 of 1995 was obtained by the second respondent as against the first respondent collusively to defeat the undertaking given by the first respondent on 5.3.1994 in favour of the Corporation. Still the question is whether the undertaking dated 5.3.1994 has created any charge over the properties mentioned therein in favour of the Corporation. This Court in *J.K. (Bombay) Private Limited v. New Kaiser-I-Hind Spinning & Weaving Co. Ltd. & Others* [(1969) 2 SCR 866], explained the difference between the charge and the mortgage as follows :-

"While in the case of a charge there is no transfer of property or any interest therein, but only the creation of a right of payment out of the specified property, a mortgage effectuates transfer of property or an interest therein. No particular form of words is necessary to create a charge and all that is necessary is that there must be a clear intention to make a property security for payment of money *in praesnti*."

8. Section 100 of the Transfer of Property Act, 1882 defines "charge" as follows :-

"**100. Charges.**- Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust- property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

The above-mentioned Section clearly indicates the following types of charges :

(1) Charges created by act of parties; and

(2) Charges arising by operation of law.

9. An ordinary charge created under the Transfer of Property Act is compulsorily registerable. The first portion of Section 100 of the TP Act lays down th[illegible]e

property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. The words "which apply to a simple mortgage shall, so far as may be, apply to such charge" in this Section were substituted by Section 53 of the Transfer of Property (Amendment) Act, 1929, for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of Sections 81 and 82 shall, so far as may be, apply to the persons having such charge." Evidently, the effect of the amendment was that all the provisions of the TP Act which apply to simple mortgages were made applicable to charges.

10. Section 59 of the Transfer of Property Act refers to the mode of transfer which reads as follows :-

> "**59. Mortgage when to be by assurance.**- Where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title- deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property."

11. A conjoint reading of Section 100 with Section 59 of the TP Act makes it clear that if by act of parties, any immovable property is made security for the payment of money to another and it does not amount to mortgage, then all the provisions which apply to a simple mortgage, as far as may be, apply to such charge. Consequently, in view of Section 59 of the TP Act when there is a mortgage other than a mortgage by deposit of

the title deeds, it can be effected only by a registered instrument. So far as the present case is concerned, no registered mortgage deed was executed by the first respondent and no title deed of the property was handed over by the first respondent to the Corporation. The mere undertaking that a person would not dispose of the properties mentioned, during the currency of the loan, would not confer any charge on the immovable properties mentioned therein. In other words, a mere undertaking to create a mortgage is not sufficient to create an interest in any immovable property. This legal position has been settled by various judgments of this Court. In *K. Muthuswami Gounder* (supra), this Court was dealing with the legal validity of a security bond by which parties undertook that they would not alienate the properties till the decree was discharged. Referring the said document, this Court held as follows :

> "17. The document, Exhibit A-6, security bond does not in substance offer suit property by way of security. Even giving the most liberal construction to the document, we cannot say that a charge as such has been created in respect of the suit property for money to be decreed in the suit. All that it states is that in the event of a decree being passed not to alienate the property till the decree is discharged, which is a mere undertaking without creating a charge. Therefore, we agree with the finding of the High Court that the document at Exhibit A-6 is not a charge. If that is so, the suit filed by the appellant has got to be dismissed."

12. The Court held that the decree obtained in that suit was a simple money decree and not a decree on a charge or mortgage with the result that the appellant who purchased the property in execution of that decree did not acquire the rights under the Security Bond.

13.In *Bank of India* (supra), this Co e

scope of undertaking made for creating an equitable charge over a flat in favour of the Bank. This Court held that without a transfer of interest, there is no question of there being a mortgage and that mere undertaking is not sufficient to create a charge. The ratio laid down by the above-mentioned judgment applies to the present case. In our view, the mere undertaking that the party will not dispose of the properties mentioned in an undertaking, during the currency of the loan, will not create any charge over those properties, unless charge is created by deposit of title deeds or through a registered document. We also hold that even if the purpose of the decree obtained in Civil Suit No.767 of 1995 between the respondents was fraudulent and collusive one so to defeat the undertaking made on 5.3.1994, that would not confer any charge over the properties, unless the undertaking is registered. We, therefore, find no error in the judgment of the lower Appellate Court which was affirmed by the High Court.

14. In the result, the appeal fails and is accordingly dismissed. There will be no order as to costs.

R.P. Appeal dismissed.

SHERISH HARDENIA & ORS.

v.

STATE OF M.P. & ANR.

(Criminal Appeal No. 2087 of 2013)

DECEMBER 13, 2013

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

Code of Criminal Procedure, 1973:

s.227 – Discharge – Order of Sessions Judge discharging the relatives of husband of deceased and ordering continuance of proceedings against husband u/ss 498-A and 306 IPC – Held: At this stage, in discharging the accused, Sessions Judge had necessarily to have come to the conclusion that on a perusal of the material, no prima facie case against them had been disclosed – High Court has rightly come to the conclusion that material and evidence on record sufficiently support trial of husband, father-in-law, mother-in-law and brother-in-law of deceased – High Court has also rightly upheld the decision of Sessions Judge in holding that the material on record was insufficient to even prima facie indicate complicity of sister-in-law of deceased in the alleged offences of cruelty and abetment of suicide Penal Code, 1860 — ss.498-A and 306.

Penal Code, 1860:

ss.498-A and 306 – Consideration of plea of accused based on limitation – Discussed.

The wife of the appellant (Crl. A. No. 2088 of 2013) committed suicide. Criminal proceedings commenced against the appellant, his parents, his brother and sister-

in-law for commission of offences u/s 498-A and 306 IPC. The Sessions Judge discharged the four relatives of the husband. In the revision petitions filed by the father of the deceased as also her husband, the High Court reversed the order of the Sessions Judge as regards the parents and the brother of the husband. Aggrieved, the husband of the deceased and his parents and brother filed the appeals.

Dismissing the appeals, the Court

HELD: 1. At this stage, in discharging the accused, the Sessions Judge had necessarily to have come to the conclusion that on a perusal of the material, a *prima facie* case against them had not been disclosed. The Single Judge of the High Court has comprehensively and correctly analyzed the case law and appreciated the evidence and has rightly come to the conclusion that there is a *prima facie* case justifying the trial of the husband, the father-in-law, the mother-in-law and the brother-in-law of the deceased. The Single Judge has also rightly upheld the decision of the Sessions Judge in holding that the material on record was insufficient to even prima facie indicate the complicity of the sister-in-law of the deceased in the alleged offences of cruelty and abetment of suicide. [para 3 and 7] [849-C-E; 851-E-F]

State of Maharashtra v. Somnath Thapa **1996 (1) Suppl. SCR 189 = AIR 1996 SC 1744 = (1996) 4 SCC 659;** *State of Bihar v. Ramesh Singh* **1978 (1) SCR 257 = AIR 1977 SC 2013 = (1977) 4 SCC 39;** *Union of India v. Prafulla Kumar Samal* **1979 (2) SCR 229 = (1979) 3 SCC 4 and** *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* **1989 (1) SCR 560 = (1989) 1 SCC 715** *State of Haryana v. Bhajan Lal* **1990 (3) Suppl. SCR 259 = (1992) Supp. 1 335** *Michael*

Machado v. CBI **2000 (1) SCR 981 = (2000) 3 SCC 262** *Suman v. State of Rajasthan* **(2010) 1 SCC 250 = AIR 2010 SC 518;** *Sheoprasad Ramjas Agrawal v. Emperor* **AIR 1938 Nagpur 394 and** *Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra* **AIR 1972 SC 545 = (1972) 3 SCC 282; and** *State of Karnataka v. L. Muniswamy* **1977 (3) SCR 113 =AIR 1977 SC 1489 = (1977) 2 SCC 699 - referred to.**

2. As regards the plea that no case can possibly be made out u/s 306 read with s. 498 -A, IPC after a marriage has crossed the seven years' period, suffice it to say that it is only the statutory presumption that stands removed, thereby also shifting the onerous burden from the shoulders of the accused to that of the prosecution. It would be idle and in fact illogical to contend that law expects that on the first demand of dowry, prosecution u/s 498-A has to be commenced. Therefore, keeping in view the concern of the wife and her relatives to save the marriage, pleas founded on limitation have to be viewed with great circumspection. [para 4-5] [850-D-F; 851-B]

Case Law Reference:

1996 (1) Suppl. SCR 189	**referred to**	**para 3**
1978 (1) SCR 257	**referred to**	**para 3**
1979 (2) SCR 229	**referred to**	**para 3**
1989 (1) SCR 560	**referred to**	**para 3**
1990 (3) Suppl. SCR 259	**referred to**	**para 3**
2000 (1) SCR 981	**referred to**	**para 3**
(2010) 1 SCC 250	**referred to**	**para 3**
AIR 1938 Nagpur 394	**referred to**	**para 6**

(1972) 3 SCC 282 **referred to** **para 6**

1977 (3) SCR 113 **referred to** **para 6**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2087 of 2013.

From the Judgment and Order dated 06.05.2008 of the High Court of M.P. at Jabalpur in CRLR No. 1400 of 2004.

WITH

C.A. No. 2088 of 2013.

R.P. Gupta, Megha Gaur, Parmanand Gaur for the Appellants.

Vibha Datta Makhija, Mishra Saurabh, C.D. Singh, Santosh Kumar, V. Sushant Gupta, Mushtaq Ahmad for the Respondents.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. These appeals assail the Judgment of the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur delivered in Crl. Revision Nos.1400 and 1445 of 2004 passed on 6.5.2008. The learned Single Judge was called upon to decide two Revision Petitions against the Order dated 26.08.2004 passed by the First Additional Sessions Judge, Bhopal in Sessions Trial No.83 of 2004. Amrish Hardenia, the Petitioner in Cr.R.No.1445/2004 stood charged with offences punishable under Sections 498-A and 306 of the Indian Penal Code (IPC). Four other accused namely, his parents, Shri Lajja Shankar and Smt. Meera, as also his brother and sister-in-law Shri Sherish Hardenia and Smt. Sangeeta have been similarly charged by the prosecution. The First Additional Sessions Judge, however, favoured the view

that no case worthy of trial had been made out against the latter four persons, and therefore had discharged them. Proceedings against Amrish Hardenia, husband of late Archana Hardenia had been ordered to continue. In these circumstances, the father of the deceased, Dr. R.K. Sharma had approached the High Court in Criminal Revision No.1400 of 2004 challenging the legal propriety of the said Order of the Sessions Judge discharging his deceased daughter's parents-in-law and borther-in-law and his wife. Amrish Hardenia, widower of the deceased Archana who was the daughter of Dr. R.K. Sharma, had filed Cr.R. No.1445 of 2004 asserting in essence that no case worthy of trial had been disclosed against him either. We must recognise, at the threshold, that the impugned Order manifests a comprehensive marshalling of the facts and of the law applicable to the controversy.

2. Amrish and Archana were married to each other on 19.11.1995, and immediately turmoil in the marriage appears to have started, allegedly owing to dowry demands, the evidence of which is founded on contemporaneous letters written by her to her parents. In those instances where the assertion is that dowry demands had been made as early as within one year of marriage, it would be sanguine and far too optimistic to surmise that such demands would not be reiterated, rearticulated and repeated during the marriage. Of course, a change in the mindset of the husband is theoretically possible and we expect that evidence in this regard would be led to dispel the veracity of the initial demand which has been reduced to an epistolary document and/or its recurrence thereafter. Although it is not an inflexible rule, a demand for dowry made by a husband will invariably be prompted and encouraged by the thinking of his parents. In making these observations we should not be misunderstood to indicate that we have formed an unfavourable opinion as to the culpability

of Amrish, his parents Shri Lajja Shanker and Smt. Meera and his brother Sherish. However, Judges cannot be blind to the disgraceful and distressing reality vis-à-vis dowry, which prevails in some sections of our society. What we find extremely disconcerting is that this social malaise is spreading amongst all religious communities. The demand of dowry is a social anathema, which must be dealt with firmly.

3. So far as the prosecution is concerned it was of the opinion that a triable case had been established against Amrish, the husband, both his parents, his brother. The prosecution had made out a case even against his brother's wife who came into the family five years after the performance of the hapless marriage and approximately two years before the tragic suicide of late Archana. At this stage therefore, in discharging all four persons other than the husband/widower Amrish, the Sessions Judge had necessarily to have come to the conclusion that on a perusal of the material before the Court there was no likelihood of a conviction being returned, nay, that not even a prima facie case against them had been disclosed. We need not travel beyond the decisions rendered by this Court in *State of Maharashtra v. Somnath Thapa* AIR 1996 SC 1744 = (1996) 4 SCC 659; *State of Bihar v. Ramesh Singh* AIR 1977 SC 2013 = (1977) 4 SCC 39; *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4 and *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* (1989) 1 SCC 715. We also think that the line of decisions including *State of Haryana v. Bhajan Lal* (1992) Supp. 1 335 as well as *Michael Machado v. CBI* (2000) 3 SCC 262 and *Suman v. State of Rajasthan* (2010) 1 SCC 250 = AIR 2010 SC 518 are also apposite in the context of Section 319 of the CrPC. Whether it is quashing of an FIR or a Charge-Sheet, or summoning a party under Section 319, CrPC, this Court has repeatedly opined that the approach of the Judge must be to consider whether the

collected material and evidence is indicative of existence of merely a prima facie case. It is only where there is absence of even a prima facie case that the Judge would be justified in cancelling the FIR, or quashing the Charge-Sheet, or declining the summoning of a third person under Section 319, CrPC. The learned Single Judge, as we have already noticed above, comprehensively and correctly analyzed the case law and appreciated the evidence to come to the conclusion that there was enough material available even at that stage for maintaining the trial, i.e. reversing the view of the Sessions Judge on this score. The Single Judge was correct in maintaining that there was inadequate material in regard to Sangeeta as had been held by the Sessions Judge.

4. An argument has been continuously raised vis-à-vis the passage of seven years before the subject marriage ended with the suicide of Archana. This has rightly been found not to vitiate the trial against any of the persons (except Sangeeta). There can be no gainsaying that no case can possibly be made out under Section 306 read with Section 498-A, IPC after a marriage has crossed the seven years' period; it is only the statutory presumption that stands removed, thereby also shifting the onerous burden from the shoulders of the accused to that of the prosecution.

5. It would be idle and in fact illogical to contend that law expects that on the first demand of dowry, prosecution under Section 498-A has to be commenced. In the Indian idiom, where it is oftspoken that on her marriage a daughter ceases to be a member of her parents' family and may return to it only as a corpse, the reality is that only when it is obvious that the marriage has become unredeemably unworkable that the wife and her family would initiate proceedings under Section 498-A, IPC. Before that stage is arrived at, the bride endures the ill

treatment and taunts knowing that the marriage would be undermined and jeopardized by running to the police station. We must hasten to add that a malpractice is now widely manifesting itself in that lawyers invariably advise immediate commencement of Section 498-A proceedings employing them as a weapon of harassment. Courts however, are aware and alive to this abuse of otherwise salutary statutory provision. Therefore, pleas founded on limitation have to be viewed with great circumspection. In this regard the statement of Ms. Sheetal Bhandari pertaining to conversations held by the deceased Archana in August, 2003 will indubitably be cogitated upon by the Trial Court.

6. In the impugned Order the learned Single Judge has kept in perspective the time endured decision in *Sheoprasad Ramjas Agrawal v. Emperor* AIR 1938 Nagpur 394 and of this Court in *Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra* AIR 1972 SC 545 = (1972) 3 SCC 282 and *State of Karnataka v. L. Muniswamy* AIR 1977 SC 1489 = (1977) 2 SCC 699 to be satisfied that the material and evidence on record sufficiently support the trial against Amrish, Shri Lajja Shankar, Smt. Meera and Sherish.

7. The learned Single Judge has also rightly supported the decision of the Sessions Judge in holding that the material on record was insufficient to even prima facie indicate the complicity of Sangeeta in the alleged offences of cruelty and abetment of suicide. We entirely agree with the conclusion arrived in the impugned Order to the effect that a prima facie case justifying the trial of the Lajja Shankar, Meera and Sherish have been established and that the Sessions Judge erred in discharging these three persons.

8. Accordingly, the appeals fail and are dismissed being devoid of merits. We would have imposed exemplary costs on the Appellants in these proceedings but for the fact that the impugned Order reverses the order passed by the Sessions Court. In other words if we had been confronted with concurrent findings punitive costs would have followed.

R.P. Appeals dismissed.