ESSAR TELEHOLDINGS LTD.
v.
REGISTRAR GENERAL, DELHI HIGH COURT & ORS.
(Writ Petition (C) No. 57 of 2012 etc.)

JULY 1, 2013.

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

s.3(1) read with s.4(3) and s.22 - 2G Spectrum case - Nomination of Special Judge - Jurisdiction of Special Court to take cognizance of offences punishable u/ss 420/12B IPC as per second supplementary charge-sheet filed by CBI in the FIR for offences punishable under PC Act - Held: Apart from an offence punishable under the Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified thereunder can also be tried by a Special Judge - From second charge-sheet it is clear that petitioners are co-accused in 2G Scam case - Thus, s. 220,Cr.P.C. will apply and the petitioners though accused of different offences i.e. u/s 420/120-B IPC alleged to have been committed in the course of 2G Spectrum transactions, u/s 223, Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

s. 3(1) - 2G Spectrum case - Nomination of Special Judge - Held: Under sub-s. (1) of s.3 of the PC Act, State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary and specified in the notification to try any offence punishable under the Act - In the instant case, as co-accused have been charged under the provisions of the PC Act, NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try 2G Scam case(s) - In view of Arts. 233 and 234, it is well within the jurisdiction of High Court to nominate officer(s) of the rank of District Judge for appointment and posting as Special Judge(s) under sub-s. (1) of s. 3 - Constitution of India, 1950 - Arts. 233 and 234.

Pursuant to the order dated 10.2.2011 passed by the Supreme Court, in C.A. No. 1066 of 2010 and consequent upon the Delhi High Court nominating an officer of Delhi Higher Judicial Service as Special Judge to try cases of 2 G Scam, the Government of NCT, Delhi in exercise of its power u/s 3(1) of the Prevention of Corruption Act, 1988, issued Notification dated 28.3.2011 designating the officer concerned as Special Judge to undertake the trial of cases in relation to all matters pertaining to 2G Spectrum exclusively. The Special Judge by order dated 21.12.2011 took cognizance of the second supplementary charge-sheet dated 12.12.2011 filed by CBI against the petitioners and other accused persons for alleged commission of offences punishable u/ss 420/120-B IPC in FIR dated 21.10.2009 and directed summons to issue to petitioners and other accused persons. The petitioners filed the instant writ petition challenging the administrative order of the Delhi High Court on 15.3.2011 and the Notification dated 28.3.2011 issued by the Government of NCT, Delhi.

Dismissing the writ petitions, the Court

HELD: 1.1 Section 3 read with s. 4 of the Prevention of Corruption Act, 1988 clearly mandates that apart from an offence punishable under the PC Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified thereunder can also be tried by a Special Judge. Sub-s. (3) of s. 4 specifies that a Special Judge, when trying any case, can also try any offence, other than an offence specified in s.3, with which the accused may, under the Cr.P.C., be charged at the

same trial. In view of s. 22 of PC Act, provisions of the Cr.P.C. are to be applied to trials for offence under the PC Act, subject to certain modifications. [para 17-18] [14-B-C; 15-D-E]

1.2 The second supplementary charge-sheet dated 12.12.2011 was filed in the FIR No. RC DAI 2009 A 0045 dated 21.10.2009. From the said second charge-sheet it is clear that the offences are alleged to have been committed by the petitioners in the course of 2G Scam Cases and, as such, they have been made accused in the 2G Scam Case. [para 21] [17-D; 20-B]

1.3 The co-accused of 2G Scam case charged under the provisions of Prevention of Corruption Act can be tried only by the Special Judge. The Special Judge alone can take cognizance of the offence specified in s. 3(1) of PC Act and conspiracy in relation thereto. A magistrate cannot take cognizance of offence as specified in s. 3(1) of the PC Act. The petitioners are co-accused in the said 2G Scam case. In this background s. 220,Cr.P.C. will apply and the petitioners though accused of different offences, i.e., u/s 420/120-B IPC, alleged to have been committed in the course of 2G Spectrum transactions, u/s 223 of Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases. [para 21 and 25] [20-A-E; 24-H; 25-A-B]

Vivek Gupta v. Central Bureau of Investigation, **2003 (3) Suppl. SCR 1087 = (2003) 8 SCC 628 - relied on.**

A.R. Antulay v. Ramdas Sriniwas Nayak., **1984 (2) SCR 914 = (1984) 2 SCC 500;** *Gangula Ashok v. State of A.P.,* **2000 (1) SCR 468 = (2000) 2 SCC 504 - referred to.**

2.1 As regards validity of the Notification dated 28.3.2011 issued by the NCT of Delhi and Administrative Order dated 15.3.2011 passed by the Delhi High Court, this Court hold as follows:

(i) Under sub-s. (1) of s.3 of the PC Act, the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try any offence punishable under the PC Act. In the instant case, as the co-accused have been charged with offences punishable under the PC Act, the NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try the 2G Scam case(s);

(ii) Arts. 233 and 234 of the Constitution are attracted in cases where appointments of persons to be Special Judges or their postings to a particular Special Court are involved. The power to appoint or promote or post a District Judge of a State is vested with the Governor of the State under Art. 233, which can be exercised only in consultation with the High Court. Therefore, it is well within the jurisdiction of the High Court to nominate officer(s) of the rank of the District Judge for appointment and posting as Special Judge(s) under sub-s. (1) of s. 3 of the PC Act;

(iii) In the instant case, the petitioners have not challenged the nomination made by the High Court of Delhi to the NCT of Delhi. They have challenged the letter dated 15.3.2011 written by the Registrar General, High Court of Delhi to the District Judges concerned intimating them about nomination of an officer of Delhi Higher Judicial Service for his appointment as Special Judge for 2G Scam Cases. [para 26] [25-C-G, H; 26-A-D]

High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal **1998 (1) SCR 961 = (1998) 3 SCC 72 and** *Registrar*

(Admn.) High Court of Orissa v. Sisir Kanta Satapathy **1999 (2) Suppl. SCR 473 = (1999) 7 SCC 725 - referred to.**

2.2 The order dated 11.4.2011 was passed by this Court under Art. 136 read with Art. 142 of the Constitution, in the interest of holding a fair prosecution of the case. In *Rupa Asbhok Hurra* it has been held that a final judgment or order passed by this Court cannot be assailed in an application under Art. 32 of the Constitution by an aggrieved person, whether he was a party to the case or not. In this view also, it is not open to the petitioner to indirectly assail the order passed by this Court in 2G Scam case. No interference is called for against the impugned order taking cognizance of the offence against the petitioners. [para 27-29] [26-E-F; 27-C-D]

Rupa Asbhok Hurra v. Ashok Hurra and Another **2002 (2) SCR 1006 = (2002) 4 SCC 388 - relied on.**

CBI v. Keshub Mahindra **2011 (6) SCR 384 = (2011) 6 SCC 216;** *A.R. Antulay v. R.S. Nayak* **1988 (1) Suppl. SCR 1 = (1988) 2 SCC 602 - cited.**

Case Law Reference:

2011 (6) SCR 384	**cited**	**para 14**
1988 (1) Suppl. SCR 1	**cited**	**para 14**
1984 (2) SCR 914	**referred to**	**para 22**
2000 (1) SCR 468	**referred to**	**para 23**
2003 (3) Suppl. SCR 1087	**relied on**	**para 24**
1999 (2) Suppl. SCR 473	**referred to**	**para 26**
1998 (1) SCR 961	**referred to**	**para 26**
2002 (2) SCR 1006	**relied on**	**para 29**

CIVIL APPELLATE JURISDICTION : Writ Petition (Civil) No. 57 of 2012 etc.

Under Article 32 of the Constitution of India.

WITH

W.P. (C) Nos. 59 & 96 of 2012.

E.C. Agrawala, Siddharth Singla, Garima Prashad for the Petitioner.

Prashant Bhushan, Annam D.N. Rao, B.V. Balaram Das for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Feeling aggrieved by the order dated 21st December, 2011 passed by the Special Judge, Central Bureau of Investigation, New Delhi taking cognizance against the petitioners, they have preferred these writ petitions challenging the said order dated 21st December, 2011, Administrative Order dated 15th March, 2011 passed by the Delhi High Court and Notification dated 28th March, 2011 passed by the Government of National Capital Territory of Delhi (for short 'NCT of Delhi') designating Mr. Om Prakash Saini as Special Judge to undertake the trial of cases in relation to all matters pertaining to 2G Spectrum case (commonly known as 2G Scam case) exclusively. One of the writ petitions has been filed by an individual and two other writ petitions have been preferred by two Companies who are all accused in 2G Scam case.

2. The factual matrix of the case is given in brief as under:

Acting on various complaints pursuant to grant of UAS licences in 2008, the Central Vigilance Commission after conducting a preliminary inquiry entrusted investigation of the case to the CBI. After preliminary investigation, on 21.10.2009, the CBI lodged FIR RC No. DAI-2009-A-0045 against

"unknown officers of the Department of Telecommunications and unknown private persons/companies and others" for causing wrongful loss to the Government by criminal misconduct and criminal conspiracy in distribution of UAS licences in January, 2008. Subsequently, a Public Interest Litigation was filed before the Delhi High Court, in Writ Petition (C) No.3522 of 2010, inter alia, alleging that the FIR filed by the CBI on 21.10.2009 was not being investigated and thereby praying that the CBI be directed to investigate the same. The said writ petition was dismissed by the Delhi High Court on 25.5.2010.

3. Against the order of dismissal, the petitioner of the said case, Centre for Public Interest Litigation (for short, 'CPIL'), filed SLP(C) No.24873 of 2010, wherein this Court by order dated 16th December, 2010 granted leave (C.A.No.10660 of 2010) and decided to monitor the investigation, [**reported in (2011) 1 SCC 560**].

4. In the said case by order dated 10.2.2011, this Court indicated that a separate Special Court should be established to try the case(s) relating to 2G Spectrum. The said part of the above order is quoted hereunder:

> "We also indicated to the learned Attorney General that a separate Special Court should be established to try the case(s) relating to 2G Spectrum. The learned Attorney General responded to this by stating that he may be given two weeks' time to consult the concerned authorities and make a statement on this issue."

5. Pursuant to aforesaid observation, the Delhi High Court issued impugned Administrative order dated 15.3.2011 nominating one Mr. Om Prakash Saini as Special Judge to try cases of 2G Scam exclusively.

6. Another order was passed by this Court on 16.3.2011 inter alia directing;

> "At the commencement of hearing, learned Attorney General placed before the Court letter dated 14.03.2011 sent to him by the Registrar General of the High Court of Delhi conveying the decision taken by the High Court to nominate Shri O.P. Saini, an officer of Delhi Higher Judicial Service, who is presently posted as Special Judge (PC Act) (CBI)-2, New Delhi, Patiala House Courts as the Special Judge to undertake the trial of cases in relation to all matters pertaining to what has been described as 2G Scam exclusively.
>
> Learned Attorney General gave out that he would ensure that two separate notifications are issued by the Central Government in terms of Section 3(1) of the Prevention of Corruption Act, 1988 and Section 43(1) of the Prevention of Money Laundering Act, 2002 for establishment of the Special Court to exclusively try the offences pertaining to what has been termed as 2G Scam and other related offences. Learned Attorney General submitted that appropriate notifications will be issued on or before 29.3.2011."

7. Pursuant to the abovesaid order the Government of N.C.T. of Delhi exercising its power under Section 3(1) of the Prevention of Corruption Act, 1988 (for short "the PC Act") by notification dated 28.3.2011 designated Mr. Om Prakash Saini as Special Judge to undertake the trial of cases in relation to all matters pertaining to 2G Scam case exclusively.

8. Administrative side of the Delhi High Court, thereafter, issued an allocation list on 1.4.2011 whereby Mr. Om Prakash Saini (P.C. Act) (CBI-4) PHC was designated as Special Judge in a new court to deal with matters pertaining to the 2G Scam cases exclusively.

9. CBI initially filed a charge sheet on 2nd April, 2011 against nine accused persons and thereafter on 25th April, 2011 filed a supplementary chargesheet against some more

accused persons. No allegations were made against the petitioners in any of the chargesheets. Therefore, they were not shown as accused.

10. In the 2G Scam case this Court vide order dated 11.4.2011 while appointing the learned Special Public Prosecutor ordered as follows:

> "We also make it clear that any objection about the appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the Trial can be made only before this Court and no other Court shall entertain the same. The trial must proceed on a day-a-day basis."

11. Subsequently, the CBI filed second supplementary chargesheet on 12.12.2011 against the petitioner(s) and other accused persons for the alleged commission of offences under Section 420/120-B IPC. No offences under the PC Act have been alleged against the petitioner(s) and other accused persons arraigned in the second supplementary chargesheet. Based on the same, the learned Special Judge by impugned order dated 21.12.2011 was pleased to take cognizance of the second supplementary chargesheet dated 12.12.2011 and the petitioner(s) and others were summoned.

12. According to the petitioner(s), the CBI in its chargesheet dated 12.12.2011 admits that the chargesheet is being filed " regarding a separate offence" under Section 420/ 120-B IPC. In paragraphs 73 and 74 of the said chargesheet whilst admitting that the offences alleged in the chargesheet are triable by a Magistrate, the CBI relying on the notification dated 28.3.2011 requested the Special Judge to take cognizance of the matter. Paragraphs 73 and 74 of the chargesheet read as under:

> "73. This final report under Section 173(8) Cr. P.C. is being filed regarding a separate offence which came to notice during investigation of the FIR No. RC DAI 2009 A 0045 (2G Spectrum Case),which is pending before Hon'ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi and a final report dated 02.04.2011 and supplementary final report dated 25.04.2011 were earlier filed in the same FIR.
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> 74. In terms of the Notification No.6/05/2011-Judl./363-367 dated 28.03.2011 issued by Govt. of NCT of Delhi this Hon'ble Court has been designated to undertake the trial of cases in relation to all matters pertaining to 2G Scam exclusively in pursuance of the orders of the Supreme Court, although offences alleged to have been committed by accused persons sent up for trial are triable by the Magistrate of first class. It is, therefore, prayed that cognizance of the aforesaid offences may be taken or the final report may be endorsed to any other appropriate court as deemed fit and thereafter process may be issued to the accused persons for their appearance and to face the trial as per Law."

13. The learned Special Judge, thereafter, took cognizance vide impugned order dated 21.12.2011. The relevant portion of the said impugned order reads as under:

> "2. Ld. Spl. PP further submits that the accused have been charged with the commission of offence, which are triable, by the Court of Metropolitan Magistrate. It is further submitted that this second supplementary charge sheet also arises from the aforesaid RC bearing No.DAI2009A0045/CBI/ACB/ND, titled as *CBI v. A.Raja & others,* arose and is pending trial. He further submits that since this case also arises from the same FIR, it is to be tried by this Court alone. He has further invited my attention to an order dated 15.03.2011, passed by the Hon'ble High Court, whereby the undersigned was nominated as Special Judge by the Hon'ble High Court to exclusively try cases of 2G Scam.

3. Accordingly, the trial of this second supplementary charge sheet shall be held in this Court. A copy of the order dated 15.03.2011 be placed on the file."

14. Learned counsel for the petitioner(s) assailed the impugned Administrative Order passed by the Delhi High Court dated 15th March, 2011 and the Notification dated 28th March, 2011 issued by the Government of NCT Delhi on the following grounds:

(a) The impugned notification travels beyond the provisions of the Cr.PC. The Cr.PC mandates that offences under the IPC ought to be tried as per its provisions.

(b) It has been held by this Hon'ble Court in the case of *CBI v. Keshub Mahindra* reported in (2011) 6 SCC 216 that, "No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code." Thus, the Administrative order and Notification are contrary to the well-settled provisions of law and ought to be set aside in so far as they confer jurisdiction on a Special Judge to take cognizance and hold trial of matters not pertaining to PC Act offences.

(c). If the offence of Section 420 IPC, which ought to be tried by a Magistrate, is to be tried by a Court of Sessions, a variety of valuable rights of the petitioner would be jeopardised. This would be contrary to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of *A.R. Antulay v. R.S. Nayak* reported in (1988) 2 SCC 602, wherein it was acknowledged that the right to appeal is a valuable right and the loss of such a right is violative of Article 14 of the Constitution of India.

15. Mr. Harin P. Rawal, learned Additional Solicitor of India appearing on behalf of the CBI made the following submissions:

a). The orders of the Hon'ble Supreme Court directing the setting up of the Special Court for 2G Scam cases were pursuant to its powers under Articles 136 and 142 of the Constitution, which made it clear that all the cases arising out of this Scam would be tried by the Special Court so constituted.

b). The Administrative Order of the High Court of Delhi setting up the Special Court is pursuant to its powers under Section 194 Cr.P.C., which empowers the High Court to direct, by special or general order, an additional Sessions Judge to try certain cases. Section 194 of Cr.P.C. is reproduced as below:-

> **"Section 194. Additional and Assistant Sessions Judges to try cases made over to them-** An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

c) Both Section 4(3) of the PC Act and Section 43(2) of the Prevention of Money-Laundering Act 2002 empower the Special Court to try any other offences that may be taken cognizance of under the Cr.P.C.. In this view of events, the cognizance taken by the Special Court of the charge-sheet filed against the accused was valid.

d) The Second Supplementary charge-sheet which makes out offences against the present accused arises out of FIR No. RC DAI 2009 A 0045 registered by the CBI on 21.10.2009, out of which the earlier charge-sheets have been filed, and cognizance taken by the Special Court. An anomalous situation would be created if various accused charged with offences arising out of the same FIR were to be tried by different courts on the flimsy ground that

some of them are only charged of offences arising out of the IPC and not the special statutes under which other charges are laid.

e) Higher courts can try an offence in view of Section 26 of Cr.P.C. and no prejudice should be caused if the case is tried by a Special Judge. By virtue of Administrative Order passed by the Delhi High court and Notification issued by the Government of NCT, Delhi, the learned Special Judge is not divested of his jurisdiction which he otherwise possesses under Section 26 of the Cr.P.C. to try offence under IPC. The Section reads as follows:

"26. Courts by which offences are triable.- Subject to the other provisions of this Code,-

(a) Any offence under the Indian Penal Code (45 of 1860) may be tried by -

(i) The High Court, or

(ii) The Court of Session, or

(iii) Any other court by which such offence is shown in the First Schedule to be triable;

(b) Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no court is so mentioned, may be tried by -

(i) The High Court, or

(ii) Any other court by which such offence is shown in the First Schedule to be triable."

16. Mr. Prashant Bhushan, learned counsel for the CPIL, submitted that a Special Judge has the power to try offences under the IPC and no challenge can be made against this power. It was further submitted that in view of the order passed

by this Court in 2G Scam case, it is not open to the petitioners to approach any other Court to commence the trial.

17. A mere perusal of Section 3 read with Section 4 of the PC Act clearly mandates that apart from an offence punishable under the PC Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the PC Act can also be tried by a Special Judge. Sub section (3) of Section 4 specifies that when trying any case, a Special Judge can also try any offence, other than an offence specified in Section 3, with which the accused may, under the Cr.P.C., be charged at the same trial. Sections 3 and 4 of the PC Act read as under:

"3. Power to appoint special Judges-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:--

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

18. **Section 22 of PC Act** provides that provisions of the Cr.P.C., shall in their application to any proceeding in relation to an offence punishable under the Act to apply subject to certain modifications. It is, therefore, apparent that provisions of the Cr.P.C. are to be applied to trials for offence under the PC Act, subject to certain modifications.

19. **Section 220 of the Cr.P.C.** relates to trial for more than one offence, if, in one series of acts so connected together as to form the same transaction more offence than one are committed and provides as follows:

"220 - Trial for more than one offence - (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of

properly as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)."

20. Persons accused of different offences committed in the course of the same transaction may be charged jointly as per Section 223 of the Cr.P.C., which reads as under:

"223 - What persons may be charged jointly.- The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) *********

(d) persons accused of different offences committed in the course of the same transaction;

(e) to (g) *********

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the1[Magistrate or Court of Sessions] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

21. The second supplementary charge-sheet dated 12th December, 2011 was filed in the FIR No. RC DAI 2009 A 0045 dated 21st October, 2009 wherein following allegations have been made against the petitioners and some others:

"Allegations

1. On 21.10.2009, the CBI registered an FIR vide RC DAI 2009 A 0045 against unknown officials of Department of Telecommunications, Government of India, unknown private persons/companies and others for the offences punishable under Section 120-B IPC read with Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, on allegations of criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent, United Access Service (UAS) Licenses and spectrum by the Department of Telecommunication. Investigation of the case was taken up and charge-sheets dated 02.04.2011 and first supplementary charge-sheet dated 25.04.2011 were filed before Hon'ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi, in which in trial proceedings are going on and are presently at the stage of prosecution evidence.

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3. The eligibility of all the companies which were allocated letters of Intent (LOI) on 10.01.2008 by the DOT was also investigated by BI during the investigation of this case. During such investigation, allegations came to notice that M/s Loop Telecom Ltd., which had applied for UAS licenses in 21 Telecom circles in September, 2007 was front company of M/s Essar Group. M/s Loop Mobile India Ltd. had been operating a UAS license since 2005 in the Mumbai Service Area. It was alleged that M/s Essar Group which already had a stake of 33% in M/s Vodafone Essar Ltd., a telecom operator in all the 22 telecom circles, was controlling substantial stake in the aforesaid 2 companies in violation of the UAS guidelines dated 14.12.2005and UAS license agreements signed by M/s Vodafone Essar Ltd. with DOT. It was further alleged that the accused persons belonging to M/s Loop Telecom Ltd. M/s Loop Mobile India Ltd and Essar Group of companies, fraudulently suppressed the facts of association of the two Loop Companies with M/s Essar Group of Companies while applying for new licenses DoT, in order the DoT considers these companies as entitles which are not substantially controlled by Essar Group. The said accused persons therefore, dishonestly or fraudulently got the 21 new UAS licenses and continue to operate the Mumbai License of Loop in contravention of the applicable guidelines.

4. Investigation has been carried out on the allegations that M/s Loop Telecom Ltd., and associated persons including Essar Group persons/Companies, cheated the Department of Telecommunication, Government of India by concealing the actual stake holders of M/s Loop Telecom Ltd. behind a corporate veil, while applying for and getting 21 new UAS Licenses and got the 21 UAS Licenses and valuable spectrum for this Company."

Following facts also emerge from the background of the matter:

"70. That after the accused persons had cheated the DoT and fraudulently obtained the Letters of Intent/UAS Licenses/valuable spectrum in furtherance of a conspiracy among themselves, several complaints were received by the Department of Telecommunications during 2008-2010 alleging that M/s Loop Telecom Ltd. was an Essar group company under a corporate veil and was thereby violating the clause 8 of UASL Guidelines dated 14.12.2005. In one such matter Dot referred the matter to Ministry of Corporate Affairs seeking to examine the matter and open whether the given facts and circumstances made out a violation of the clause 8 of UASL Guidelines. Investigation has revealed that the Deputy Director (Inspection), Ministry of Corporate Affairs, who examined the matter in detail, concluded that the clause 8 of the UASL Guidelines had been violated. .....

71. The investigation has, therefore, revealed that M/s. Loop Telecom Ltd. made fraudulent UASL applications for 21 circles on 3.9.2007 by misrepresenting the fact that they met all the eligibility criteria including clause 8 of UASL guidelines. These fraudulent applications were accompanied by false certificates to the effect that the company met the conditions prescribed under clause 8 of UASL guidelines, thereby falsely claiming that the applicant company was not under any control influence of any existing licensee and that competition would not be compromised if 21 licenses applied for are issued to it.....

72. The aforesaid facts and circumstances constitute commission of offences, during 2007-08, punishable u/s 120-B IPC r/w 420 IPC, and substantive offence u/s 420 IPC, against accused persons, viz. Ravi N. Ruia, Anshuman Ruia, Vikash Saraf, I.P. Khaitan, Ms. Kiran Khaitan, M/s. Loop Telecom Ltd. (erstwhile M/s.

Shippingstop Dot Com India Pvt.Ltd.), M/s. Loop Mobile India Ltd. (BPL M/s. Mobile Communications Limited) and M/s. Teleholdings Ltd. Accused persons were not arrested during investigation."

From the aforesaid second charge-sheet it is clear that the offence alleged to have been committed by the petitioners in the course of 2G Scam Cases. For the said reason they have been made accused in the 2G Scam Case.

Admittedly, the co-accused of 2G Scam case charged under the provisions of Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 of Cr.P.C. will apply and the petitioners though accused of different offences i.e. under Section 420/120-B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 of Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

22. In *A.R. Antulay v. Ramdas Sriniwas Nayak.,* (1984) 2 SCC 500, this Court came across a question whether a Court of a Special Judge for certain purposes is a Court of Magistrate or a Court of Session and held as follows:

"23. Once Section 5-A is out of the way in the matter of taking cognizance of offences committed by public servants by a Special Judge, the power of the Special Judge to take cognizance of such offences conferred by Section 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Section 8(1) says that the Special Judge has the power to take cognizance of

offences enumerated in Section 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

28. Section 9 of the 1952 Act would equally be helpful in this behalf. Once Court of a Special Judge is a Court of original criminal jurisdiction, it became necessary to provide whether it is subordinate to the High Court, whether appeal and revision against its judgments and orders would lie to the High Court and whether the High Court would have general superintendence over a Court of Special Judge as it has over all criminal courts as enumerated in Section 6 of the Code of Criminal Procedure. The Court of a Special Judge, once created by an independent statute, has been brought as a Court of original criminal jurisdiction under the High Court because Section 9 confers on the High Court all the powers conferred by Chapters XXXI and XXXIII of the Code of Criminal Procedure, 1898 on a High Court as if the Court of Special Judge were a Court of Session trying cases without a jury within the local limit of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that a new criminal court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The court has to be treated as a Court of original criminal jurisdiction and shall have all the powers as any Court of original criminal jurisdiction has under the Code of Criminal Procedure, except those specifically excluded.

29. Once the position and power of the Court of a Special Judge in the hierarchy of criminal courts under the High Court is clearly and unambiguously established, it is

unnecessary to roam into an enquiry examining large number of decisions laying down in the context of each case that the Court of a Special Judge is a Court of Session and the contrary view taken in some other decisions. Reference to those judgments would be merely adding to the length of this judgment without achieving any useful purpose."

23. In *Gangula Ashok v. State of A.P.,* (2000) 2 SCC 504 this Court dealing with Section 193 of the Cr.PC observed:

"10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet

or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

12. We have noticed from some of the decisions rendered by various High Courts that contentions were advanced based on Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments. Section 4 of the Code contains two sub-sections of which the first sub-section is of no relevance since it deals only with offences under the Indian Penal Code. However, sub-section (2) deals with offences under other laws and hence the same can be looked into. Sub-section (2) of Section 4 is extracted below:

> "4. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

24. Similar question came for consideration before this Court in *Vivek Gupta v. Central Bureau of Investigation,* (2003) 8 SCC 628. In the said case the co-accused were charged by Special Judge under the provisions of the PC Act whereas the appellant before this Court had been charged only under Section 420 IPC and under Section 120-B of the IPC, as in the present case. Having noticed the provisions of the PC Act and Cr. PC as referred to above, this Court held:

> "15. This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge under Section 120-B read with Section 420 IPC. All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 IPC. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 IPC, the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another court, because they are not charged of any offence specified in Section 3 of the Act.
>
> 17. We are, therefore, of the view that in the facts and circumstances of this case, the Special Judge while trying the co-accused of an offence punishable under the provisions of the Act as also an offence punishable under Section 120-B read with Section 420 IPC has the jurisdiction to try the appellant also for the offence punishable under Section 120-B read with Section 420 IPC applying the principles incorporated in Section 223 of the Code. We, therefore, affirm the finding of the High Court and dismiss this appeal."

25. Admittedly, 2G Scam case is triable by the Special Judge against the persons accused of offences punishable under the PC Act in view of sub-Section (1) of Section 4. The Special Judge alone can take the cognizance of the offence specified in sub-Section (1) of Section 3 and conspiracy in

relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-Section (1) of Section 3, in view of sub-Section (3) of Section 4. A magistrate cannot take cognizance of offence as specified in Section 3(1) of the PC Act. In this background, as the petitioners have been shown as co-accused in second-supplementary chargesheet filed in 2G Scam case, it is open to the Special Judge to take cognizance of the offence under Section 120-B and Section 420 IPC.

26. On the question of validity of the Notification dated 28th March, 2011 issued by the NCT of Delhi and Administrative Order dated 15th March, 2011 passed by the Delhi High Court, we hold as follows:

(i) Under sub-Section (1) of Section 3 of the PC Act the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try any offence punishable under the PC Act. In the present case, as admittedly, co-accused have been charged under the provisions of the PC Act, and such offence punishable under the PC Act, the NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try the 2G Scam case(s).

(ii) Article 233 and 234 of the Constitution are attracted in cases where appointments of persons to be Special Judges or their postings to a particular Special Court are involved. The control of High Court is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e., independence of judiciary. [See High Court of Judicature for *Rajasthan v. Ramesh Chand Paliwal* (1998) 3 SCC 72 and Registrar (Admn.) *High Court of Orissa v. Sisir Kanta Satapathy* (1999) 7 SCC 725]. The power to appoint or promote or post a District

Judge of a State is vested with the Governor of the State under Article 233 of the Constitution which can be exercised only in consultation with the High Court. Therefore, it is well within the jurisdiction of the High Court to nominate officer(s) of the rank of the District Judge for appointment and posting as Special Judge(s) under sub-Section (1) of Section 3 of the PC Act.

(iii) In the present case, the petitioners have not challenged the nomination made by the High Court of Delhi to the NCT of Delhi. They have challenged the letter dated 15th March, 2011 written by the Registrar General, High Court of Delhi, New Delhi to the District Judge-I-cum-Sessions Judge, Tis Hazari Courts, Delhi and the District Judge-IV-cum-Addl. Sessions Judge, I/C, New Delhi District, Patiala House Courts, New Delhi whereby the High Court intimated the officers about nomination of Mr. O.P. Saini, an officer of Delhi Higher Judicial Service for his appointment as Special Judge for 2G Scam Cases.

27. In the present case there is nothing on the record to suggest that the petitioners will not get fair trial and may face miscarriage of justice. In absence of any such threat & miscarriage of justice, no interference is called for against the impugned order taking cognizance of the offence against the petitioners.

On 11th April, 2001, when the 2G Scam Case was taken up by this Court, this Court, inter alia, observed as follows:

"Acting on such basis, this Court has given directions for establishing a separate Special Court to try this case and pursuant to such direction, a Special Court has been constituted after following the due procedure.

We also make it clear that any objection about appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the

progress of the Trial can be made only before this Court and no other court shall entertain the same. The trial must proceed on a day-to-day basis.

All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case."

28. From the aforesaid order it is clear that this Court passed the order under Article 136 read with Article 142 of the Constitution, in the interest of holding a fair prosecution of the case.

29. In *Rupa Asbhok Hurra v. Ashok Hurra and Another,* (2002) 4 SCC 388, this Court held that a final judgment or order passed by this Court cannot be assailed in an application under Article 32 of the Constitution by an aggrieved person, whether he was a party to the case or not. For the said reason also, it is not open to the petitioner to indirectly assail the order passed by this Court in 2G Scam case.

30. We find no merit in these writ petitions, they are accordingly dismissed. The Special Court is expected to proceed with the trial on day-to-day basis to ensure early disposal of the trial. There shall be no order as to costs.

R.P. Writ Petitions dismissed.

NATIONAL TEXTILE CORPN. (UP) LTD.
v.
DR. RAJA RAM JAIPURIA & ORS.
(Civil Appeal No. 4818 of 2013 etc.)

JULY 01, 2013.

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

SWADESHI COTTON MILLS COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1986:

s.27 - Complaint for wrongfully withholding the property forming part of textile undertaking - Held: In Doypack's case, the issue of vesting Bunglow No. 2 of Swadeshi House was neither considered nor was decided by Supreme Court -- Categorical decision in Doypack, rejection of subsequent application filed by appellant for clarification/modification, direction to approach the civil court, dismissal of complaint u/s 27 of the Act and proceedings under PP Act, go against the claim and stand of appellant - Orders of trial court and High Court upheld - Public Premises (Eviction of unauthorized Occupants) Act, 1971 ss. 5 and 7.

The Central Government by notification dated 13.04.1978, u/s 18AA of the Industrial Development Regulation Act, 1951, took over the management of six textile undertakings of the Swadeshi Cotton Mills Company Limited (SCMCL) including the Swadeshi Cotton Mills, Kanpur. As a result of the takeover, the NTC took possession and custody of various properties belonging to the SCMCL including a Guest House (Bunglow No. 1) and the Administrative Block (Bungalow No. 3) of the premises known as 'Swadeshi House'. However, Bungalow No. 2 of 'Swadeshi House' continued to be in physical possession of the then Director of the

SCMCL (respondent No. 1). After this Court in Swadeshi Cotton Mills held the said takeover invalid, the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 was enacted and as per s.3 thereof, every textile undertaking and the right, title and interest of the SCMCL in the said textile undertaking stood transferred and vested with the Central Government. The transferred undertakings were further transferred and vested in the NTC. In Doypack Systems Pvt. Ltd. , this Court held that the ownership and control of the SCMCL vested with the NTC. It was also held that Bungalow No. 1 and the Administrative Block of Swadeshi House premises also vested in the Central Government. The claim of the appellant as regards Bunglow No. 2 did not find favour with the courts. In the instant proceedings arising out of s.27 of the Swadeshi Act and ss. 5 and 7 of the Public Premises (Eviction of unauthorized Occupants) Act, 1971, initiated by the appellant claiming possession of Bunglow no. 2, it did not succeed in its case and ultimately, the High Court by the impugned orders dismissed the appellant's writ petitions.

Dismissing the appeals, the Court

HELD: 1.1 A thorough analysis of the judgment in Doypack shows that the issue as to whether Bungalow No.2 of the Swadeshi House vested in appellant or not was neither considered nor decided by this Court in the said case. The appellant has time and again filed various proceedings on the premise that Bungalow No.2 formed part of the Swadeshi House but failed in all the attempts. It is not in dispute that all the proceedings went against the appellant. [para 9 and 15] [40-B-C; 43-F-G]

Doypack Systems Pvt. Ltd. vs. Union of India and Others **1988 (2) SCR 962 = (1988) 2 SCC 299 - referred to.**

1.2 The various orders and decisions by different courts negatived the claim of the appellant and the same issue is again sought to be raised by the appellant in the instant proceedings. In view of categorical decision of this Court in Doypack, rejection of subsequent application filed by the appellant for clarification/ modification, direction to approach the civil court, initiation of proceedings under the PP Act which ended in dismissal, dismissal of complaint u/s 27 of the Swadeshi Act, by various courts, undoubtedly go against the claim and stand of the appellant. [para 16] [43-H; 44-A-B]

1.4 The orders passed by the trial court as well as the High Court are upheld. [para 17] [44-D]

Case Law Reference:

1988 (2) SCR 962 referred to para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4818 of 2013.

From the Judgment and Order dated 25.11.2005 of the High Court of Judicature at Allahabad in Misc. Writ Petition No. 25090 of 1994.

WITH

C.A. No. 4819 of 2013.

Indira Jaising, ASG, Dushyant Dave, K.V. Vishwanathan, Sanjoy Ghose, Kaustubh Anshuraj, Anitha Shenoy, Shabyashachi Patra, Sanjeev K. Kapoor, Khaitan & Co., Rohit Kumar Singh, Mehul M. Gupta, Gautam Narayan for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the final judgment

and order dated 25.11.2005 passed by the High Court of Judicature at Allahabad in Misc. Writ Petition Nos. 25090 of 1994 and 30122 of 1996 whereby the High Court dismissed the petitions filed by the National Textile Corporation (U.P.) Ltd.-the appellant herein.

SLP (Civil) No. 4706 of 2006

3. Brief facts:

(a) In the year 1921, the Swadeshi Cotton Mills Company Limited (SCMCL) was incorporated as a private company and converted into a public company in 1923 which was engaged in the business of activity of operating and managing textile mills. The SCMCL acquired property at Civil Lines, Kanpur, Uttar Pradesh on which an integrated complex popularly known as 'Swadeshi House' was constructed. The said House consisted of three buildings, viz., Bungalow No. 1 which was used prior to 1971 as the Registered Office of the SCMCL and after 1971 it was used for general meetings of the Board of Directors and also as a Guest House, Bungalow No. 2 was in the physical possession of the Managing Director of SCMCL and Bungalow No. 3 was the Administrative Block of the SCMCL.

(b) The Central Government, vide notification dated 13.04.1978, under Section 18AA of the Industrial Development Regulation Act, 1951, took over the management of six textile undertakings of the SCMCL including the Swadeshi Cotton Mills, Kanpur and the National Textile Corporation Limited, New Delhi (NTC), a Government undertaking, was appointed as the authorized representative under the said takeover. As a result of the takeover, the NTC took possession and custody of various properties belonging to the SCMCL including the Guest House and the Administrative Block. However, Bungalow No. 2 continued to be in the physical possession of Dr. Raja Ram Jaipuria, the then Director of the SCMCL (Respondent No. 1 herein).

(c) Aggrieved by the order dated 13.04.1978 of take over, the SCMCL filed Writ Petition No. 408 of 1978 before the High Court of Delhi. In the High Court, vide order dated 04.05.1978, a working arrangement between the parties was made out wherein Respondent No. 1 herein was permitted to continue the physical possession of the residential bungalow on the condition that the same will not be disposed of or alienated in any way to any outsider. Ultimately, by order dated 01.05.1979, the High Court upheld the notification dated 13.04.1978 but certain assets were excluded from the purview of the same including the 'Swadeshi House' and 'Shrubbery'-the residence of the Secretary of the SCMCL.

(d) Being aggrieved by the aforesaid judgment with regard to the validity and legality of the order of takeover, Swadeshi Cotton Mills, National Textile Corporation and Union of India preferred Civil Appeal Nos. 1629, 1857 and 2087 of 1979 respectively before this Court. This Court, vide judgment dated 13.01.1981 in *Swadeshi Cotton Mills vs. Union of India* (1981) 1 SCC 664 held the said takeover invalid on the ground that no opportunity of hearing was given to the SCMCL before the takeover.

(e) On 19.04.1986, the Central Government promulgated the Swadeshi Cotton Mills Company (Acquisition and Transfer of Undertakings) Ordinance, 1986. Thereafter, on 30.05.1986, the said ordinance was replaced by the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 (in short 'the Swadeshi Act'). As per Section 3 of the Swadeshi Act, every textile undertaking and the right, title and interest of the SCMCL in the said textile undertaking stood transferred and vested with the Central Government. The transferred undertakings were further transferred and vested in the NTC. Several proceedings were instituted by the parties as a result of the acquisition of the undertakings of the SCMCL.

(f) One Mukesh Bhasin, a minority shareholder of Swadeshi Polytex Limited (SPL), filed a Civil Suit being No.

506 of 1987 before the High Court of Delhi at New Delhi praying for a declaration and injunction against the SCMCL on the ground that all the investments and assets vest with the NTC which is the rightful owner of the property after coming into force of the Swadeshi Act. In the said suit, he also sought an injunction against SPL from recognizing SCMCL and Swadeshi Mining (subsidiary of SCMCL) as the owners of the Swadeshi House.

(g) Swadeshi Cotton Mills and SCMCL also preferred a Writ Petition being No. 2214 of 1987 before the High Court of Judicature at Allahabad (Lucknow Bench) claiming that equity shares held by the SCMCL in SPL and Swadeshi Mining and other "excluded assets" should be declared to be exempted from the scope and ambit of the Swadeshi Act.

(h) The aforementioned Civil Suit No. 506 of 1987 and Writ Petition No. 2214 of 1987 were transferred to this Court and numbered as Transfer Case Nos. 14 and 13 of 1987 respectively. This Court, vide judgment dated 12.02.1988, in *M/s Doypack Systems Pvt. Ltd. vs. Union of India and Others* (1988) 2 SCC 299, allowed Transfer Case No. 14 of 1987 and dismissed Transfer Case No. 13 of 1987 and held that the ownership and control of the SCMCL vests with the NTC. It was also held that Bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur also vested in the Central Government.

(i) As the SCMCL failed to handover the possession of Bungalow No. 2 of Swadeshi House, the NTC filed Civil Misc. Petition No. 26004 of 1988 in Transfer Case No. 13 of 1987 praying for a direction to the SCMCL to handover the vacant possession of Bungalow No. 2. Vide order dated 03.08.1989, the petition was dismissed without any order with liberty to move the appropriate court. In view of the said order, the National Textile Corporation (U.P.) Ltd. (the appellant herein), which was a successor-in-interest to the NTC preferred Criminal Complaint No. 1661 of 1991 against the respondent herein and others in the Court of Metropolitan Magistrate, Kotwali, Kanpur

under Section 27 of the Swadeshi Act for possession of the said Bungalow. Vide order dated 18.02.1993, the said complaint got dismissed in view of the ruling given in *Doypack* (supra) that only Bungalow No. 1 and the Administrative Block vested with the Central Government.

(j) Being aggrieved by the order dated 18.02.1993, the NTC filed Criminal Revision No. 86 of 1993 before the Session Judge, Kanpur which also got dismissed vide order dated 30.10.1993 holding that the NTC failed to prove beyond doubt that the said Bungalow vested with Central Government with a direction to move the appropriate court in terms of the order dated 03.08.1989.

(k) Aggrieved by the same, the NTC preferred Writ Petition No. 25090 of 1994 before the High Court of Allahabad. In the meantime, the NTC filed Contempt Petition No. 75 of 2005 in Transfer Case No. 14 of 1987 before this Court alleging violation of the judgment in *Doypack* (supra) but the same got dismissed vide order dated 03.02.2006 on the ground of omission to disclose about the instant proceedings. Vide order dated 25.11.2005, the High Court dismissed the above said writ petition.

(l) Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

SLP (Civil) No. 4773 of 2006

(m) On 26.10.1989, the NTC also moved an application under Sections 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'the PP Act') for eviction of the respondent herein from the said Bungalow on the ground that in *Doypack* (supra), it has already been held that the Swadeshi House (which also includes Bungalow No. 2) vested with the NTC and there is no question as to the title of the respondent herein. During the pendency of the

proceedings before the Estate Officer, Shri Rajaram Jaipuria (Respondent No. 2 herein) removed certain valuables from the Bungalow No. 2. The NTC moved an application for restraining the Respondents herein for the same before the Estate Officer which was allowed vide order dated 02.05.1993.

(n) Being aggrieved, M/s Ganesh Synthetics Pvt. Ltd (Respondent No. 16 herein), a related entity of SCMCL, preferred a Writ Petition being No. 16091 of 1993 before the High Court. The High Court, by order dated 11.05.1993, restrained the respondents from removing any article kept in Bungalow No. 2. Vide order dated 05.08.1994, the Estate Officer rejected all the preliminary objections filed by the SCMCL. The respondents herein preferred an Appeal being No. 228 of 1994 under Section 9 of the PP Act before the District Court, Kanpur.

(o) Vide order dated 01.05.1996, the above said appeal was allowed holding that Doypack (supra) had not addressed the issue relating to Bungalow No. 2. Being aggrieved, the NTC preferred Writ Petition being No. 30122 of 1996 before the High Court. The High Court, vide order dated 25.11.2005 dismissed the said petition.

(p) Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

4. Heard Ms. Indira Jaising, learned Additional Solicitor General for the appellant, Mr. Dushyant Dave, learned senior counsel for the contesting respondents and Mr. K.V. Vishwanathan, learned senior counsel and Mr. Gautam Narayan, learned counsel for the newly impleaded parties - Kanpur Builders and Ministry of Textiles respectively.

5. It is the definite case of the appellant-NTC that Swadeshi House was and has always consisted of an integrated complex comprising of three buildings, viz.,

Bungalow No.2 (used as the personal residence of the Directors), Bungalow No.1 (used as Guest House of the Company) and an Administrative Block besides Servants' Quarters and adjacent land and because of Section 3 of the Swadeshi Act, every textile undertaking and the right, title and interest of the SCMCL in the said textile undertaking stood transferred and vested with the Central Government and further transferred and vested in the NTC. Among the properties owned by the SCMCL, now we are concerned only about the ownership of Bungalow No.2.

6. On the other hand, it is the case of the respondents that the properties of SCMCL, Kanpur, vested with the Central Government, did not include Bungalow No.2 as the same was always the property of the SCMCL and not of its Kanpur Mills. It is their assertion that the land on which the SCMCL is constructed was purchased in the year 1921 and the building was constructed soon thereafter. The said land and house were not purchased/constructed from the profits generated by the SCMCL, Kanpur but from the shareholders' fund(s) arranged otherwise. It is also their assertion that the said land, viz., Bungalow No.2, was never vested in the appellant as decided by this Court in *Doypack* (supra). It is also brought to our notice by the respondents that Bungalow Nos. 1 and 2 have been recorded by the Kanpur Municipality as separate premises ever since the said two bungalows were constructed. It is also pointed out that at present Bungalow No.1 is numbered as Premises No. 16/15 and Bungalow No.2 is numbered as Premises No. 16/14, Civil Lines, Kanpur and both are separate premises having separate boundaries.

7. In view of the above, it is relevant to mention the following provisions of the Swadeshi Act:

(i) In Section 2(c) of the Swadeshi Act, there is a reference to a registered office of the SCMCL being at "Swadeshi House".

(ii) The expression "textile undertakings" has been defined in Section 2(k) to mean the following six textile undertakings of SCMCL:

(a) the Swadeshi Cotton Mills, Kanpur;

(b) the Swadeshi Cotton Mills, Pondicherry;

(c) the Swadeshi Cotton Mills, Naini;

(d) the Swadeshi Cotton Mills, Maunath Bhanjan;

(e) the Udaipur Cotton Mills, Udaipur;

(f) the Rae Bareli Textile Mills, Rae Bareli;

(iii) Section 3 of the Swadeshi Act transfers and vests the right, title and interest of the SCMCL "to every such textile undertaking" in the Central Government and thereafter in the National Textile Corporation (NTC).

(iv) Section 4 of the Swadeshi Act defines the effect of "vesting" as under:

"(1) The textile undertakings referred to in Section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and books debts pertaining to the textile undertakings and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company in relation to the said undertakings whether within or outside India, and all books of accounts, registers and all other documents of whatever nature relating thereto."

(v) Section 8 of the Swadeshi Act provides a compensation of Rs.24,32,00,000/- to be paid to the SCMCL.

(vi) Section 27 deals with Penalties as under:

"27. **Penalties**

Any person who.:-

(a) having in his possession, custody or control any property forming part of any of the textile undertaking wrongfully withholds such property from the National Textile Corporation; or

(b) wrongfully obtains possession of, or retains any property forming part of, any of the textile undertaking; or shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees.

shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees."

8. Learned ASG has brought to our notice that several proceedings were instituted by the parties as a result of the acquisition of textile undertakings of the SCMCL. Two significant proceedings are:

(1) "A civil suit instituted by one Mukesh Bhasin on 26.02.1987 before the High Court of Delhi. In paragraph 3 (xix) of the said suit, the appellant made the following submissions:

(xix) The Swadeshi House in an integral part of the Kanpur Undertaking and includes substantial area of land and building. The plaintiff reasonably and bona fide believes that the said House was built in 1921 as a part of the textile undertaking of defendant No.3 for the benefit and

use of its business, which at that time consisted only of the Kanpur Textile Undertaking."

In the said suit, the following prayer was sought:

"(a) that the defendant No.1 is the rightful owner of 10 lakhs equity shares of defendant No.2 held by defendant No.3 and 17,18,000/- equity shares held by defendant No.4 in defendant No.2 and Swadeshi House at Kanpur and all the rights, title and interest attached therewith are assets and investments pertaining to and relate to the textile undertaking of defendant No.3 and they vest in defendant No.1 w.e.f. 1.4.1985 and defendant Nos. 3 & 4 be restrained by a decree of permanent injunction from dealing with them in any manner whatsoever.

(b) Defendant No.2 should also be restrained by permanent injunction from recognizing defendant Nos. 3 & 4 as owners of the aforesaid shares and Swadeshi House."

(2) "The other was a petition instituted by the Swadeshi Mining and Manufacturing Company Ltd. ("SMMCL"), a subsidiary of SCMCL. In the said petition, being the civil W.P. No. 2214 of 1987 instituted on 03.04.1987 in the High Court of Allahabad (Lucknow Bench), SCMCL was petitioner No.2".

The aforementioned Civil Suit No. 506 of 1987 and Writ Petition No. 2214 of 1987 were transferred to this Court and numbered as Transfer Case Nos. 14 and 13 of 1987 respectively. This Court, vide judgment dated 12.02.1988 in *Doypack* (supra) allowed Transfer Case No. 14 of 1987 and dismissed Transfer Case No. 13 of 1987.

9. Both the parties adverted to various paragraphs in *Doypack* (supra) in extenso. As a matter of fact, basing reliance on *Doypack* (supra), learned ASJ submitted that

Bungalow No.2 of Swadeshi House, Kanpur vested with them. In the light of the assertion and claim of both the sides, we have gone through the entire judgment in *Doypack* (supra). It is also to be noted that the said judgment was scrutinized by various courts in earlier legal proceedings initiated by the appellant herein and all such proceedings were dismissed by the courts including this Court. A thorough analysis of the judgment in *Doypack* (supra) shows that the issue as to whether Bungalow No.2 of the Swadeshi House vested in appellant or not was neither considered nor decided by this Court in the said case. This is clear from the plain reading of first paragraph of the judgment itself which reads as under:

"1. What falls for consideration in all these matters is a common question of law, namely, whether equity shares in the two companies i.e. 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Limited, held by the Swadeshi Cotton Mills, vest in the Central Government under Section 3 of the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 (hereinafter referred to as "the said Act"). The other subsidiary question is whether the immovable properties, namely the bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur have also vested in the Government. The question as to one more property known as Shrubbery property whether it has been taken over or not is still to be argued and is not covered by this judgment."

10. From the above, the questions which formed the subject matter of *Doypack* (supra) were as under:

"(a) Whether equity shares in the two companies, i.e., 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Co. Ltd. held by the Swadeshi Cotton Mills, vest in the Central Government under Section 3 of the Swadeshi

Cotton Mills Co. Ltd. (Acquisition and Transfer of Understandings) Act, 1986 (hereinafter referred to as "the Act").

(b) Whether the immovable properties, namely, the Bungalow No.1 and the Administrative Block, Civil Lines, Kanpur have also vested in the Government."

The abovementioned questions, after detailed reasonings, were answered by this Court in paragraph Nos. 69 and 70 as under:

"69. We therefore, reiterate that the shares are vested in the Central Government. Accordingly the shares in question are vested in NTC and it has right over the said 34 per cent of the shareholdings.

70. In the aforesaid view of the matter we hold that the 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Limited held by the Swadeshi Cotton Mills vested in the Central Government under Sections 3 and 4 of the Act.

71. We are further of the opinion that in view of the amplitude of the language used, the immovable properties, namely, the bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur have also vested in NTC."

11. A bare reading of the judgment in *Doypack* (supra) makes it clear that the issue regarding vesting of the Bungalow No.2 of Swadeshi House, Kanpur was not considered by this Court in the said judgment. Hence, the very same contention of the appellant is liable to be rejected.

12. As the SCMCL failed to handover the possession of Bungalow No. 2 of Swadeshi House, the NTC filed Civil Misc. Petition No. 26004 of 1988 in Transfer Case No. 13 of 1987 praying for a direction to the SCMCL to handover the vacant

possession of Bungalow No. 2. The said application was disposed of by this Court on 03.08.1989 which reads as under:

"CMP No. 26004 of 1988 : There will be no order on this CMP. This will not prejudice the right of parties to move the appropriate courts in accordance with law."

From the above order, it is clear that this Court did not decide the issue relating to Bungalow No.2 of the Swadeshi House and had left it open to the appellant to agitate the question of title as regards the said Bungalow by moving before the appropriate court in accordance with law. It is brought to our notice that such proceedings were never initiated by the appellant herein.

13. It is useful to point out that despite the dismissal of Civil Misc. Petition No. 26004 of 1988 in T.C. No. 13 of 1987, the appellant herein again moved before this Court by filing Contempt Petition No. 75 of 2005 in Transfer Case No. 14 of 1987 alleging violation of the judgment in *Doypack* (supra). It was alleged by the appellant in the said contempt petition that since the contemnors therein have sold Bungalow No. 2 to one Kanpur Builders Ltd., they have violated the judgment in *Doypack* (supra) and, therefore, they are liable to be punished for contempt. The Director of the said Kanpur Builders Ltd. was also impleaded as Contemnor No. 3 in the said contempt petition. By order dated 03.02.2006, this Court, dismissed the said contempt petition. After several rounds of litigation, as discussed in the paragraphs (supra), the appellant filed Writ Petition No. 25090 of 1994 before the High Court of Allahabad. By judgment dated 25.11.2005, learned single Judge of the High Court dismissed the writ petition filed by the appellant herein holding that under Section 27 of Act 30 of 1986 a complaint could only have been filed by the appellant if the property had vested in them. It was further held by the High Court that,

"……that a complaint under Section 27 of Act 30 of 1986 could only have been filed by the petitioner if the title

of the property in dispute was clearly in their favour. Both the Courts below have correctly assessed the facts and circumstances of the case and have rightly come to the conclusion that in the absence of having any clear title in their favour the complaint under Section 27 was misconceived and, therefore, rightly dismissed."

14. In addition to the above said proceedings, the appellant herein initiated further proceedings for their eviction under Sections 5 and 7 of the PP Act. Similarly, after rounds of litigation, the claim of the appellant herein got rejected and finally the appellant herein filed Writ Petition No. 30122 of 1996 before the High Court. The High Court, vide order dated 25.11.2005, also dismissed the same and held as under:

"…..the learned District Judge has also rightly come the conclusion that Bungalow No.2 has not vested with the petitioner. This, the learned Judge has said on the basis of the judgment of the Hon'ble supreme Court as referred in the case of *Doypack Systems Pvt. Ltd.,* AIR 1988 SC 782 wherein the only vesting of Bungalow No.1 and Administrative Block has been upheld. It had been left open to the petitioner to file a civil suit for declaration of his title over Bungalow No.2. No suit was filed by the petitioner. There is no order giving a declaration of title in favour of the petitioner."

15. Taking note of all the above said applications/petitions, as mentioned in paragraphs (supra), it is abundantly clear that the appellant herein have time and again filed various proceedings on the premise that Bungalow No.2 formed part of the Swadeshi House but failed in all the attempts. It is not in dispute that all the proceedings went against the appellant herein.

16. All the above details, various orders and decisions by different courts negatived the claim of the appellant and the same issue is now again sought to be raised by the appellant

in the present proceedings. We are satisfied that in view of categorical decision of this Court in *Doypack* (supra), rejection of subsequent application filed by the appellant for clarification/ modification, direction to approach the Civil Court, initiation of proceedings under the PP Act which ended in dismissal, dismissal of complaint under Section 27 of the Swadeshi Act, were passed by various courts which undoubtedly go against the claim and stand of the appellant. It is also brought to our notice by the newly impleaded parties that they had purchased the said property in a bona fide manner with clean title of the property vested in the SCMCL, therefore, they are entitled for the same. It is made clear that we have not expressed any thing about the said issue.

17. In view of the above, we are in entire agreement with the orders passed by the trial Court as well as the High Court, consequently, both the appeals fail and are accordingly dismissed. There shall be no order as to costs.

R.P. Appeals dismissed.

S. IYYAPAN
v.
M/S UNITED INDIA INSURANCE COMPANY LTD. AND ANOTHER
(Civil Appeal No. 4834 of 2013)

JULY 1, 2013.

[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

MOTOR VEHICLES ACT, 1988:

ss.149 read with ss.146 and 147- Insurer to satisfy awards against third party risk - Fatal accident - Held: It is the statutory right of a third party to recover the amount of compensation from the insurer - Insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle,it contained no endorsement to drive commercial vehicle - It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of insurance policy - In the instant case, driver was holding a valid driving licence to drive light motor vehicle - Merely because he did not get any endorsement in the driving licence to drive the Maxi Cab, which is a light motor vehicle, High Court has committed grave error of law in holding that insurer is not liable to pay compensation because driver was not holding licence to drive commercial vehicle - Judgment of High Court set aside -- Insurer is liable to pay compensation awarded.

The husband of respondent no. 2-claimant died as a result of the accident caused by a Maxi Cab. The Tribunal held that the driver possessing licence to drive light motor vehicle was entitled to drive the said Maxi Cab, and awarded compensation to be paid by the respondents before it. In the appeal filed by the Insurance Company, the High Court held that since the vehicle was being used

as a taxi, i.e. a commercial vehicle, the driver was required to hold an appropriate licence and, there being a breach of the condition of the contract of insurance, the Insurance Company was not liable to pay any compensation to the claimant.

In the instant appeal, the question for consideration before the Court was: "can an Insurance Company disown its liability on the ground that the driver of the vehicle although duly licensed to drive light motor vehicle but there was no endorsement in the licence to drive light motor vehicle used as commercial vehicle".

Allowing the appeal, the Court

HELD: 1.1 The right of the victim of a road accident to claim compensation is a statutory one. Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk. [para 2 and 9] [49-C; 53-F-G]

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan **1987 (2) SCR 752 = (1987) 2 SCC 654;** *Sohan Lal Passi v. P. Sesh Reddy & Ors.* **1996 (3) Suppl. SCR 647 = (1996) 5 SCC 21;** *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.* **1999 (2) Suppl. SCR 202 = 1999 (6) SCC 620;** *New India Assurance Company, Shimla v. Kamla & Others* **2001 (2) SCR 797 = (2001) 4 SCC 342;** *National Insurance Co. Ltd. v. Swaran Singh & Ors.* **2004 (1) SCR 180 = (2004) 3 SCC 297;** *National Insurance Co. Ltd. v. Kusum Rai and Others,* **2006 (3) SCR 387 = (2006) 4 SCC 250;** *National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others* **2008 (1) SCR 1061 = 2008 (3) SCC 464- relied on.**

Oriental Insurance Co. Ltd. v. Nanjappan **2004 (2) SCR 365 = 2004 (13) SCC 224 - referred to.**

1.2 The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the 1988 Act (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. The legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. Sections 146 and 147 make it clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. [para 17-18] [67-D-H]

1.3 Insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. It is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. Under s. 149, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. [para 18] [67-H; 68-A-C]

1.5 In the instant case, the driver was holding a valid

driving licence to drive light motor vehicle. Merely because the driver did not get any endorsement in the driving licence to drive the Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The judgment of the High Court is set aside and it is held that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. [para 19-20] [68-D-G]

New India Assurance Company Ltd. v. Prabhu Lal **2007(12) SCR 724 = 2008 (1) SCC 696; and** *Sardari & Ors. v. Sushil Kumar & Ors.* **2008 ACJ 1307 - cited.**

Case Law Reference:

2007(12) SCR 724	**cited**	**para 5**
2008 ACJ 1307	**cited**	**Para 5**
1987 (2) SCR 752	**relied on**	**para 8**
1996 (3) Suppl. SCR 647	**relied on**	**Para 11**
1999 (2) Suppl. SCR 202	**relied on**	**para 12**
2001 (2) SCR 797	**relied on**	**para 13**
2004 (1) SCR 180	**relied on**	**para 14**
2006 (3) SCR 387	**relied on**	**para 15**
2004 (2) SCR 365	**referred to**	**para 15**
2008 (1) SCR 1061	**relied on**	**para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4834 of 2013.

From the Judgment and Order dated 31.10.2008 of the High Court of Judicature of Madras, bench at Madurai in Civil Miscellaneous Appeal No. 1016 of 2012.

T.R.B. Sivakumar, K.V. Vijayakumar for the Appellant.

Ravi Bakshi, Rajeev Kumar Bansal, Akshay K. Ghai for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. The right of the victim of a road accident to claim compensation is a statutory one. The Parliament in its wisdom inserted the relevant provisions in the Motor Vehicles Act in order to protect the victims of road accident travelling in the vehicle or using the road and thereby made it obligatory that no motor vehicle shall be used unless the vehicle is compulsorily insured against third party risk. In this background, can an Insurance Company disown its liability on the ground that the driver of the vehicle although duly licensed to drive light motor vehicle but there was no endorsement in the licence to drive light motor vehicle used as commercial vehicle. This is the sole question arises for consideration in this appeal.

3. This appeal by special leave arises in the following circumstances.

4. On 23.5.1998, at about 8.30 P.M., when the deceased named Charles was riding his bicycle from east to west and reached in front of one house, one Sivananayaitha Perumal (driver of the vehicle who remained ex parte in the proceedings) came from west to east direction driving a Mahindra van at high speed and dashed against Charles and ran away without stopping the vehicle. Charles, who was admitted in a hospital, succumbed to the injuries sustained by him. It is evident from the Motor Vehicle Inspector's Report that the accident did not occur due to mechanical defect. On the claim petition filed by

deceased's wife (respondent No.2 herein), the Motor Accidents Claims Tribunal (Principal District Judge) at Kanyakumari (in short, "Tribunal"), after considering the evidence on record, awarded a compensation of Rs.2,42,400/- with interest at 12% p.a. from the date of petition - to be paid by the respondents before the Tribunal jointly and severally. The Tribunal was of the view that the person possessing licence to drive light motor vehicle is entitled to drive Mahindra maxi cab.

5. Insurance company preferred an appeal before the High Court challenging the judgment and award of the Tribunal. The Insurance Company did not dispute the quantum of compensation, but questioned the liability itself submitting that the driver of the vehicle was not having a valid driving licence to drive the vehicle on that day. Insurance company referred the decisions of this Court in *New India Assurance Company Ltd. v. Prabhu Lal* 2008 (1) SCC 696 and *Sardari & Ors. v. Sushil Kumar & Ors.* 2008 ACJ 1307 and submitted that a person having licence to drive light motor vehicle is not authorized to drive a commercial vehicle.

6. Per contra, on behalf of the claimant, this Court's decisions in *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.* AIR 1999 SC 3181 and *National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Ors.,* 2008 (3) SCC 464 were referred and it was contended that a person who is having a licence to drive light motor vehicle can drive the commercial vehicle also.

7. After hearing the learned counsel on either side and considering the aforesaid decisions, the High Court relying upon *Sardari's* case (supra), observed that since the vehicle was being used as a taxi, which is a commercial vehicle, the driver of the said vehicle was required to hold an appropriate licence. Hence, there being a breach of the condition of the contract of insurance, the Insurance Company is not liable to pay any compensation to the claimant. The view taken by the High Court is quoted hereinbelow:-

"It has not been disputed that the vehicle was being used as a taxi, which is a commercial vehicle. The driver of the said vehicle was required to hold an appropriate license therefore. The third respondent herein, who was driving the said vehicle at the relevant time, was holder of a license to drive a light motor vehicle only. He did not possess any license to drive a commercial vehicle. In the present case, R.W.2 has deposed that the driver of the vehicle was not having the license to drive a commercial vehicle on the date of accident. Therefore, it is clear that the driver was not having the driving license to drive commercial vehicle on the date of accident. Evidently, therefore, there was a breach of the condition of the contract of insurance. Having tested the present case in the light of the Supreme court Judgment in the case of *Sardari and Others v. Sushil Kumar and Others,* cited supra, this court is of the considered view that, since the driver was not possessing the driving license to drive a commercial vehicle, the Insurance Company is not liable to pay any compensation to the claimant and the owner of the vehicle is alone liable to pay the compensation to the claimant."

8. Time and again this Court on various occasions considered the aim and object of making the insurance compulsory before a vehicle is put on the road. Indisputably a new chapter was inserted in the Motor Vehicles Act only with an intention of welfare measure to be taken to ensure and protect the plight of a victim of a road accident. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan,* (1987) 2 SCC 654, this Court observed as under:-

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner

of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for

liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective."

9. The defence which the insurer is entitled to take in a case for compensation arising out of the motor vehicles accident was provided under Section 96 of the old Act which is now Section 149 of the Act of 1988. Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk. For better appreciation, Section 149 is reproduced herein below:-

"(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award

in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5). …….

(6). ……."

10. Section 149(2)(a)(ii) gives a right to the insurer to take a defence that person driving the vehicle at the time of accident was not duly licensed. In other words, Section 149(2)(a)(ii) puts a condition excluding driving by any person who is not duly licensed. The question arose before this Court as to whether the Insurance Company can repudiate its liability to pay the compensation in respect of the accident by a vehicle taking a defence that at the relevant time it was being driven by a person having no licence. While considering this point, this Court in the case of *Skandia Insurance Co. Ltd.* (supra) observed:-

"12. The defence built on the exclusion clause cannot succeed for three reasons, viz.:

(1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.

(2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.

(3) The exclusion clause has to be *"read down"* in order that it is not at war with the *"main purpose"* of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise."

11. To examine the correctness of the aforesaid view, the matter was referred to a 3-Judge Bench because of the stand taken by the Insurance Company that the insurer shall be entitled to defend the action on the ground that there has been a breach of specified condition of policy i.e. the vehicle should not be driven by a person who is not duly licensed and in that case the Insurance Company cannot be held to be liable to indemnify the owner of the vehicle. The 3-Judge Bench of this Court in the case of *Sohan Lal Passi v. P. Sesh Reddy & Ors.,* (1996) 5 SCC 21 after interpreting the provisions of Section 96(2)(b)(ii) of the Act corresponding to Section 149 of the new Act, observed as under:-

"12. ….

…… According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. …."

12. In the case of *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.,* 1999 (6) SCC 620, the appellant was the owner of a truck weighing less than the maximum limit prescribed in Section 2(21) of the Motor Vehicles Act. The said truck was, therefore, a light motor vehicle. It was registered with the respondent insurer for a certain amount and for a certain

period. Within the period of insurance, the truck met with an accident and got completely damaged. The appellant's claim against the respondent was rejected by the National Consumer Disputes Redressal Commission. The National Commission accepted the respondent's contention that the truck was a goods carriage or a transport carriage and that the driver of the truck, who was holding a driving licence in Form 6 to drive light motor vehicles only, was not authorized to drive a transport vehicle and, therefore, the insured having committed breach of the terms of insurance policy and the provisions of the Act, the respondent insurer was not liable to indemnify the insured. Allowing the appeal, this Court held as under:-

> "14. Now the vehicle in the present case weighed 5920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorisation on the licence of the driver under Form 6 under the rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA-28-567."

13. In the case of *New India Assurance Company, Shimla v. Kamla & Others,* (2001) 4 SCC 342, a fake licence had happened to be renewed by the statutory authorities and the question arose as to whether Insurance Company would be liable to pay compensation in respect of motor accident which occurred while the vehicle was driven by a person holding such a fake licence. Answering the question, this Court discussed the provisions of Sections 146, 147 and 149 of the Act and observed:-

> "21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.
>
> 22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.
>
> 23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* (1987)2 SCC 654. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judges pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arising from the use of motor

vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the raison d'être for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi v. P. Sesh Reddy* (1996) 5 SCC 21.

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

14. In the case of *National Insurance Co. Ltd. v. Swaran Singh & Ors.,* (2004) 3 SCC 297, a 3-Judge Bench of this Court

held as under:-

"47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

xxx xxx xxx

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

xxx xxx xxx

110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the

power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where

on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

15. In the case of *National Insurance Co. Ltd. v. Kusum Rai and Others,* (2006) 4 SCC 250, the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in *New India Assurance Co. v. Kamla* (supra) held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in *Oriental Insurance Co. Ltd. v. Nanjappan,* 2004 (13) SCC 224 argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

16. In the case of *National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others,* 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the

policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:

> "20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."

17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can

defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

20. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

R.P. Appeal allowed.

MRS. APARNA A. SHAH
v.
M/S. SHETH DEVELOPERS PVT. LTD. & ANR.
(Criminal Appeal No. 813 of 2013)

JULY 1, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

NEGOTIABLE INSTRUMENTS ACT, 1881:

ss. 138 and 141 - Dishonour of cheque - Liability of joint account holders - Complaint u/s. 138 - Held: Under s. 138, it is only the "drawer" of cheque who can be made liable for penal action -- Strict interpretation is required to be given to penal statutes - In a case of issuance of cheque from joint account, a joint account holder cannot be prosecuted unless cheque has been signed by each and every joint account holder - Appellant has not signed the cheque - s. 141, which deals with offence u/s. 138 committed by a company, is not attracted - It was never the case in the complaint that appellant was being prosecuted as an association of individuals - The term "association of persons" has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in s. 141 - Proceedings as regards appellant, quashed -Interpretation of statutes - Ejusdem generis.

CODE OF CRIMINAL PROCEDURE, 1973:

s.482 - Quashing of criminal proceedings - Stage of approaching the High Court - Explained.

The appellant and her husband had a joint account. The latter issued a cheque from the said account. The cheque was dishonoured for "insufficient funds". On the complaint by respondent no. 1-drawee, the Metropolitan Magistrate issued process against both of them. The High

Court refused to quash the proceedings. In the instant appeal filed by the wife, it was contended for the appellant that in view of the provision of s. 138 of the Negotiable Instruments Act, 1881 and the interpretation of the expression "drawer", issuance of process by the Magistrate could not be sustained.

Allowing the appeal, the Court

HELD: 1.1 In order to constitute an offence u/s 138 of the Negotiable Instruments Act, 1881, this Court, in Jugesh Sehgal's case enumerated the ingredients of the section which are required to be fulfilled. The case on hand relates to criminal liability on account of dishonour of a cheque. It primarily falls on the drawer; if it is a Company, then on Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. No one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others, e.g. s.141 of NI Act, which would have no application in the instant case. Strict interpretation is required to be given to penal statutes. [para 8,13 and 23] [78-B; 79-B; 80-D-F; 84-G]

Jugesh Sehgal vs. Shamsher Singh Gogi **2009 (10) SCR 857 = (2009) 14 SCC 683; and** *Sham Sunder and Others vs. State of Haryana,* **1989 (3) SCR 886 = (1989) 4 SCC 630 - relied on.**

S.K. Alagh vs. State of Uttar Pradesh and Others **2008 (2) SCR 1088 = (2008) 5 SCC 662 - referred to.**

1.2 It is not in dispute that the first respondent has not filed any complaint under any other provisions of the Penal Code and, therefore, 'intention of the parties' is not attracted. Inasmuch as the appellant had annexed the relevant materials, namely, copy of notice, copy of reply,

copy of the complaint and the order issuing process which alone is relevant for consideration in respect of complaint u/s 138 of the N.I. Act, it can not be said that the stand of the appellant has to be rejected for suppressing of material facts or relevant facts. [para 14] [81-D, G-H]

Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others, **2010 (5) SCR 927 = (2010) 4 SCC 728,** *Balwantrai Chimanlal Trivedi vs. M.N. Nagrashna & Ors.,* **AIR 1960 SC 1292,** *J.P. Builders & Anr. vs. A. Ramadas Rao & Anr.* **2010 (15) SCR 538 = (2011) 1 SCC 429 - held inapplicable.**

1.3 Besides, it was never the case of the first respondent in the complaint filed before Magistrate that the appellant wife was being prosecuted as an association of individuals. Since, this expression has not been defined, the same has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in s. 141. The terms "complaint", "persons" "association of persons" "company" and "directors" have been explained by this Court in Raghu Lakshminarayanan's case. Therefore s.138 and the materials culled out from the statutory notice, reply, copy of the complaint, order, issuance of process etc., clearly show only the drawer of the cheque being responsible for the same. [para 15-16] [82-C-F]

Raghu Lakshminarayanan vs. Fine Tubes, **2007 (4) SCR 885 = (2007) 5 SCC 103 - relied on.**

Devendra Pundir vs. Rajendra Prasad Maurya, Proprietor, Satyamev Exports S/o. Sri Rama Shankar Maurya, **2008 Criminal Law Journal 777,** *Gita Berry vs. Genesis Educational Foundation,* **151 (2008) DLT 155,** *Smt. Bandeep Kaur vs. S. Avneet Singh,* **(2008) 2 PLR 796 - approved.**

1.4 This Court, therefore, holds that u/s 138 of the Act, it is only the "drawer" of the cheque who can be prosecuted. Further, u/s 138 in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every joint account holder. In the case on hand, the appellant is not a drawer of the cheque and she has not signed the same. [para 22-23] [84-D-E, F-G]

2. It is to be noted that only after issuance of process, a person can approach the High Court seeking to quash the same on various grounds available to him. Therefore, the High Court was clearly wrong in holding that the prayer of the appellant could not even be considered as the trial was in progress. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage. In the circumstances, the process in Criminal Case No. 1171/SS/2009 against the appellant pending before the court of Metropolitan Magistrate is quashed. [para 23 and 24] [85-C-E]

Case Law Reference:

2009 (10) SCR 857	**relied on**	**para 8**
2008 (2) SCR 1088	**referred to**	**para 10**
1989 (3) SCR 886	**relied on**	**para 11**
2010 (5) SCR 927	**held inapplicable**	**para 14**
AIR 1960 SC 1292	**held inapplicable**	**para 14**
2010 (15) SCR 538	**held inapplicable**	**para 14**
2007 (4) SCR 885	**relied on**	**para 15**
2008 Criminal Law Journal 777	**approved**	**para 17**

151 (2008) DLT 155 approved para 19

(2008) 2 PLR 796 approved para 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 813 of 2013.

From the Judgment and Order dated 24.09.2010 of the High Court of Judicature at Bombay in Criminal Writ Petition No. 1823 of 2010.

K.V. Vishwanathan, Nikhil Goel, Marsook Bafaki, Shivraj Gaonkar, Mehul M. Gupta, A. Venayagam Balan for the Appellant.

Mukul Rohtagi, Huzefa Ahamdi, Mahesh Agarwal, Gaurav Goel, E.C. Agrawala, Rohan Sharma for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 24.09.2010 passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 1823 of 2010 whereby the High Court partly allowed the petition filed by the appellant herein.

3. Brief facts:

a) M/s Sheth Developers Private Ltd.-the respondent herein is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 11, Vora Palace, M.G. Road, Kandivali (West), Mumbai and is engaged in the business of land development and constructions. Aparna A. Shah (the appellant herein) and Ashish Shah, her husband, are the Land Aggregators and Developers who have been in the said business for the last 15 years and are the owners of certain lands in and around Panvel.

b) According to the appellant, in January 2008, since the Company was interested in developing a Township Project and a Special Economic Zone (SEZ) project in and around Panvel, Dist. Raigad, Maharashtra, one Virender Gala of Mahavir Estate Agency - the Broker, introduced them to the appellant herein and her husband as the land owners holding huge land in Panvel. The appellant represented to the Company that the said land was ideal for the development of a Township Project and a Special Economic Zone (SEZ) and also that they have no financial means and capacity to develop the same single handedly. It was further represented that they were also looking for a suitable person, interested in developing the said land jointly with them.

(c) On believing the above said representations, the respondent-Company agreed for the development of the said land jointly with the appellant herein and her husband. When the respondent-Company requested for inspection of the title documents in respect of the said land, the appellant and her husband agreed for the same upon the entrustment of a token amount of Rs. 25 crores with an understanding between the parties that the said amount would be returned if the project is not materialize. Agreeing the same, the respondent-Company issued a cheque of Rs. 25 crores in favour of the appellant herein and her husband. However, for various reasons, the proposed joint venture did not materialize and it was claimed by the appellant herein that the whole amount of Rs. 25 crores was spent in order to meet the requirements of the initial joint venture in the manner as requested by the respondent-Company.

(d) According to the appellant, again the respondent-Company expressed interest to start a new project and to take financial facilities from their bank in order to submit a tender for the purchase of a mill land. With regard to the same, the respondent-Company approached the appellant herein and her husband and informed that they are not having sufficient

securities to enable the bank to grant the facility and the bank is to show receivables in writing. Therefore, on an understanding between the respondent and the appellant, a cheque of Rs. 25 crores was issued by the husband of the appellant from their joint account. It is the case of the appellant that in breach of the aforementioned understanding, on 05.02.2009, the respondent deposited the cheque with IDBI Bank at Cuffe Parade, Mumbai and the said cheque was dishonoured due to "insufficient funds".

(e) On 18.02.2009, a statutory notice under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act") was issued to the appellant and her husband asking them to repay the sum of Rs. 25 crores. On 06.03.2009, the appellant and her husband jointly replied mentioning the circumstances in which the said cheque was issued with the supporting letters.

(f) On 04.04.2009, a complaint was filed against the appellant and her husband in the Court of the Metropolitan Magistrate, Dadar, Mumbai and the same was registered as Case No. 1171-SS of 2009. By order dated 20.04.2009, process was issued against them.

(g) On 12.01.2010, the appellant and her husband filed an application objecting the exhibition of documents and the same was registered as Exh. 28. By order dated 11.05.2010, the said application was dismissed.

(h) Against the issuance of process dated 20.04.2009 and order dated 11.05.2010 dismissing the application by the Magistrate, the appellant filed Writ Petition No. 1823 of 2010 before the High Court. The High Court, by impugned order dated 24.09.2010, partly allowed the petition and quashed the order dated 11.05.2010 and directed the Magistrate to decide the objections raised by the counsel for the accused after hearing both the sides, but refused to quash the proceedings.

(i) Aggrieved by the said order, the appellant has filed the

above appeal by way of special leave.

4. Heard Mr. K.V. Vishwanathan, learned senior counsel for the appellant and Mr. Mukul Rohtagi, learned senior counsel for respondent No.1.

Contentions:

5. Mr. K.V. Vishwanathan, learned senior counsel for the appellant, by drawing our attention to Section 138 of the N.I. Act as well as various decisions of this Court relating to interpretation of the expression "drawer", submitted that the issuance of process by learned Magistrate cannot be sustained. On the other hand, Mr. Mukul Rohtagi, learned senior counsel for respondent No.1/the complainant submitted that inasmuch as the instant case is squarely covered by Section 141 of the N.I. Act and that the accused persons, namely, Ashish Shah and Aparna Shah (appellant No.1) are an association of individuals as envisaged under Section 141, learned Magistrate was fully justified in issuing process. He also submitted that the transaction with respondent No.1 herein was negotiated by both the accused, the cheque which had been issued by respondent No.1 was deposited in the joint account maintained by both the accused, the cheque bears the name and stamp of both the accused and by suppressing all the materials, the appellant has approached the High Court and this Court, hence her claim has to be rejected on the ground of concealing/suppressing material facts. He finally pointed out that inasmuch as the trial has commenced and the appellant will have her remedy during trial, the High Court was right in dismissing her petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code').

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

Discussion:

7. In order to understand the rival contentions, it is useful

to refer Section 138 of the N.I. Act 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 by him with a banker for 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 arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend 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, whichever 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 drawer 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.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".

8. In order to constitute an offence under Section 138 of the N.I. Act, this Court, in *Jugesh Sehgal vs. Shamsher Singh Gogi,* (2009) 14 SCC 683, noted the following ingredients which are required to be fulfilled:

"(i) a person must have drawn a cheque *on an account maintained by him* in a bank for payment of a certain amount of money to another person *from out of that account*;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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 whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn

the cheque can be deemed to have committed an offence under Section 138 of the Act."

Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the N.I. Act. It is settled law that strict interpretation is required to be given to penal statutes.

9. In *Jugesh Sehgal* (supra), after noting the ingredients for attracting Section 138 on the facts of the case, this Court concluded that there is no case to proceed under Section 138 of the Act. In that case, on 20.01.2001, the complainant filed an FIR against all the accused for the offence under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC) and there was hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the N.I. Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonepat Branch. In the light of the ingredients required to be fulfilled to attract the provisions of Section 138, this Court, after finding that there is little doubt that the very first ingredient of Section 138 of the N.I. Act enumerated above is not satisfied and concluded that the case against the appellant for having committed an offence under Section 138 cannot be proved.

10. In *S.K. Alagh vs. State of Uttar Pradesh and Others,* (2008) 5 SCC 662, this Court held:

> 19. … …. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya,* (2006) 10 SCC 581)"

11. In *Sham Sunder and Others vs. State of Haryana,* (1989) 4 SCC 630, this Court held as under:

> "9. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

12. As rightly pointed out by learned senior counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to Section 141 and extend the principle of vicarious liability to persons who are not named in it.

13. In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a Company, then Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the N.I. Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken

against the company. In other words, it makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub-section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

14. It is not in dispute that the first respondent has not filed any complaint under any other provisions of the penal code and, therefore, the argument pertaining to the intention of the parties is completely misconceived. We were taken through the notice issued under the provisions of Section 138, reply given thereto, copy of the complaint and the order issuing process. In this regard, Mr.Mukul Rohatgi, learned senior counsel for the respondent after narrating the involvement of the appellant herein and her husband contended that they cannot be permitted to raise any objection on the ground of concealing/ suppressing material facts within her knowledge. For the said purpose, he relied on *Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others,* (2010) 4 SCC 728, *Balwantrai Chimanlal Trivedi vs. M.N. Nagrashna & Ors.,* AIR 1960 SC 1292, *J.P. Builders & Anr. vs. A. Ramadas Rao & Anr.,* (2011) 1 SCC 429. Inasmuch as the appellant had annexed the relevant materials, namely, copy of notice, copy of reply, copy of the complaint and the order issuing process which alone is relevant for consideration in respect of complaint under Section 138 of the N.I. Act, the argument of learned senior counsel for Respondent No.1 that the stand of the appellant has to be rejected for suppressing of material facts or relevant facts, cannot stand. In such circumstances, we are of the view that

the case law relied upon by the contesting respondent No.1 is inapplicable to the facts of the present case.

15. Mr. Mukul Rohtagi, learned senior counsel for respondent No.1, by drawing our attention to the definition of "person" in Section 3(42) of the General Clauses Act, 1897 submitted that in view of various circumstances mentioned, the appellant herein being wife, is liable for criminal prosecution. He also submitted that in view of the explanation in Section 141(2) of the N.I. Act, the appellant wife is being prosecuted as an association of individual. In our view, all the above contentions are unacceptable since it was never the case of respondent No.1 in the complaint filed before learned Magistrate that the appellant wife is being prosecuted as an association of individuals and, therefore, on this ground alone, the above submission is liable to be rejected. Since, this expression has not been defined, the same has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in Section 141. The terms "complaint", "persons" "association of persons" "company" and "directors" have been explained by this Court in *Raghu Lakshminarayanan vs. Fine Tubes,* (2007) 5 SCC 103.

16. The above discussion with reference to Section 138 and the materials culled out from the statutory notice, reply, copy of the complaint, order, issuance of process etc., clearly show that only the drawer of the cheque being responsible for the same.

17. In addition to our conclusion, it is useful to refer some of the decisions rendered by various High Courts on this issue.

18. Learned Single Judge of the Madras High Court in *Devendra Pundir vs. Rajendra Prasad Maurya, Proprietor, Satyamev Exports S/o. Sri Rama Shankar Maurya,* 2008 Criminal Law Journal 777, following decisions of this Court, has concluded thus:

"7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern namely, "Kamakshi Enterprises" and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise."

After saying so, learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others.

19. In *Gita Berry vs. Genesis Educational Foundation,* 151 (2008) DLT 155, the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the N.I. Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. Learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the proceedings insofar as the petitioner therein.

20. In *Smt. Bandeep Kaur vs. S. Avneet Singh,* (2008) 2 PLR 796, in a similar situation, learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted

against him only. Learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone, i.e., the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

21. In the light of the principles as discussed in the earlier paras, we fully endorse the view expressed by the learned Judges of the Madras, Delhi and Punjab & Haryana High Courts.

22. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

23. We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case

"except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/ denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.

24. Under these circumstances, the appeal deserves to be allowed and process in Criminal Case No. 1171/SS/2009 pending before the Court of learned Metropolitan Magistrate 13th Court, Dadar, Mumbai deserves to be quashed, accordingly, quashed against the appellant herein. The appeal is allowed.

R.P. Appeal allowed.

MOHIT ALIAS SONU AND ANOTHER
v.
STATE OF U.P. AND ANOTHER
(Criminal Appeal No. 814 of 2013)

JULY 01, 2013.

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 482 read with ss. 319 and 397(2) - Order of Court of Session rejecting prayer of complainant u/s. 319 to summon applicants, set aside by High Court - Held: Order passed by trial court refusing to issue summons on the application filed by complainant u/s. 319 decides rights and liabilities of appellants in respect of their involvement in the case and, as such, cannot be said to be an interlocutory order so as to bar a revision to High Court u/s. 397(2)

s. 482 - Exercise of power by High Court - Held: Inherent power of court can be exercised when there is no remedy or express provision provided in the Code for redressal of the grievance - In the instant case, complainant ought to have challenged the order before High Court in revision u/s. 397 and not by invoking inherent jurisdiction of High Court u/s. 482.

s. 482 read with s. 401(2) - Opportunity of hearing - Held: A valuable right accrued to appellants by reason of the order passed by Court of Session refusing to issue summons - In the circumstances, principle of giving notice and opportunity of hearing as contemplated u/s 401(2) should be applied where such orders are challenged in High Court u/s. 482 - Order of High Court set aside and matter remanded to it for decision afresh after giving opportunity of hearing to appellants - Notice.

In the instant appeal challenging the order of the High Court in a petition u/s. 482 Cr.P.C. setting aside the order of the Court of Session rejecting the application of the complainant u/s. 319 to summon the two appellants, the questions for consideration before the Court were: (i) whether petition u/s. 482 Cr.P.C. before the High Court challenging the order of the Court of Session u/s. 319 Cr.P.C. was maintainable; and (ii) whether the High Court before passing the impugned order ought to have given notice and opportunity of hearing to the appellants.

Allowing the appeal, the Court

HELD: 1.1 In exercise of revisional power u/ss. 397 and 401 Cr.P.C., the High Court can call for the records of any criminal court and examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court. However, sub-s (2) of s. 397 puts a restriction on exercise of such power in relation to an interlocutory order passed by the criminal courts in any appeal, inquiry, trial or other proceeding. Further, sub-s (2) of s. 401 categorically provides that no order shall be made by the High Court in exercise of revisional jurisdiction affecting and prejudicing the right of the accused or other person, unless he has been given opportunity of hearing either personally or by pleader in his own defence. [Paras 11 and 12] [98-G-H; 99-A-B, C]

1.2 This Court is of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant u/s. 319 of Cr.P.C. cannot be held to be an interlocutory order within the meaning of sub-s (2) of s. 397 of Cr.P.C. The complainant's application u/s. 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial

court decides the rights and liabilities of the appellants in respect of their involvement in the case and, as such, cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated u/s. 397(2) of Cr.P.C. [Para 20] [110-F-H; 111-A-B]

Amar Nath & Ors. v. State of Haryana & Ors. **1978 (1) SCR 222 = (1977) 4 SCC 137 - relied on.**

1.3 When the complainant's application u/s. 319 of Cr.P.C. was rejected for the second time, he moved the High Court challenging the said order u/s. 482 of Cr.P.C. on the ground that the Court of Session had not correctly appreciated the facts of the case and the evidence brought on record. So far as the inherent power of the High Court as contained in s. 482 of Cr.P.C. is concerned, it is reiterated that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. Thus, inherent power of the court can be exercised when there is no remedy or express provision provided in the Code of Criminal Procedure for redressal of the grievance. The complainant ought to have challenged the order before the High Court in revision u/s. 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court u/s. 482 of Cr.P.C. [Para 21-23] [111-C-D, E-F, G-H; 112-A-B]

Madhu Limaye. v. State of Maharashtra **1978 (1) SCR 749 = (1977) 4 SCC 551;** *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* **1983 (1) SCR 884 = (1983) 1 SCC 1;** *Raj Kapoor & Ors. v. State & Ors.* **1980 (1) SCR 1081 = (1980) 1 SCC 43;** *Padam Sen & Anr. v. State of Uttar Pradesh* **1961 SCR 884 = AIR 1961 SC 218;** *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* **1962 Suppl. SCR 450 = 1962 SC 527 - referred to.**

2. A valuable right accrued to the appellants by reason of the order passed by the Court of Session refusing to issue summons on the ground that no prima facie case was made out on the basis of evidence brought on record. When in the case of challenge to the order of Court of Session, it is incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-s (2) of s. 401 Cr.P.C, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court u/s. 482 of Cr.P.C. The High Court has committed a grave error in passing the impugned order which is set aside and the matter is remanded to it for consideration afresh after giving an opportunity of hearing to the appellants. [Para 29 and 34] [113-F-H; 116-G]

Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others **2012 (8) SCR 1015 = (2012) 10 SCC 517;** *P. Sundarrajan v. R. Vidya Sekar* **(2004) 13 SCC 472,** *Raghu Raj Singh Rousha v. Shivam Sundaram Promotors (P) Ltd.* **2008 (17) SCR 833 = (2009) 2 SCC 363;** *A.N. Santhanam v. K. Elangovan* **(2012) 12 SCC 321;** *Sayeed Bhagat and Others v. State of Andhra Pradesh* **1999 Crl.L.J. 4040;** *Satish Chandra Dey v. State of Jharakhand & Anr.* **2002 (2) AIR Jhar R 330 - referred to.**

Sarabjit Singh and Another v. State of Punjab and Another **2009 (8) SCR 762 = (2009) 16 SCC 46;** *Hardeep Singh v. State of Punjab and Others* **2008 (15) SCR 735 = (2009) 16 SCC 785 and** *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others* **1983 (1) SCR 884 = (1983) 1 SCC 1;** *Lok Ram v. Nihal Singh and Another* **2006 (3) SCR 1018 = (2006) 10 SCC 192; and** *Sarojben Ashwinkumar Shah and Others. v. State of Gujarat and Another* **2011 (9) SCR 1138 = (2011) 13 SCC 316** *Bangarayya v. State of Karnataka and Others* **(2010) 15 SCC 114 - cited.**

Case Law Reference:

2009 (8) SCR 762	**cited**	**para 5**
2008 (15) SCR 735	**cited**	**para 5**
1983 (1) SCR 884	**cited**	**para 5**
2006 (3) SCR 1018	**cited**	**para 6**
2011 (9) SCR 1138	**cited**	**para 6**
(2010) 15 SCC 114	**cited**	**para 6**
1978 (1) SCR 222	**relied on**	**para 14**
1978 (1) SCR 749	**referred to**	**para 16**
1983 (1) SCR 884	**referred to**	**para 18**
1980 (1) SCR 1081	**referred to**	**para 19**
1961 SCR 884	**referred to**	**para 24**
1962 Suppl. SCR 450	**referred to**	**para 26**
2012 (8) SCR 1015	**referred to**	**para 30**
(2004) 13 SCC 472	**referred to**	**para 30**
2008 (17) SCR 833	**referred to**	**para30**
(2012) 12 SCC 321	**referred to**	**Para 30**
1999 Crl.L.J. 4040	**referred to**	**para 31**
2002 (2) AIR Jhar R 330	**referred to**	**para 32**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 814 of 2013.

From the Judgment and Order dated 28.10.2009 of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 22823 of 2009.

A. Sharan, Aseem Chandra, Vivek Singh, Somesh

Chandra Jha for the Appellants.

Ashok Bhan, Jaspreet Gogia, Vipin Gogia, Brijendra Singh, Ravi Prakash Mehrotra, Bharti Tyagi for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. This appeal is directed against the order dated 28th October, 2009 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 22823 of 2009 whereby the order dated 3rd August, 2009 passed by learned Additional Sessions Judge, Fast Track Court No. 2, Mathura, rejecting the application moved by the complainant/ respondent No. 2 herein under Section 319 of the Code of Criminal Procedure, 1973 in Sessions Trial No. 420 of 2007 was set aside and the trial court was directed to summon the accused/appellants herein.

3. The complainant/respondent No. 2 herein (Deepak) lodged an FIR naming seven persons as accused regarding the occurrence which took place on 7th February, 2003 at 10.30 p.m. stating that the accused persons named in the FIR armed with lathi, danda and hockey caused injuries to his uncle Kamta Prasad as well as to the complainant. The complainant was medically examined on 8th February, 2003 and a lacerated wound of 4 cm x 0.8 cm scalp deep on left side back of his skull was reported by the doctor. Kamta Prasad succumbed to his injuries alleged to have been caused by the accused. The accused were named in the FIR vide Case Crime No. 44/ 03 under Sections 147, 323, 504, 506, 304 of the Indian Penal Code (in short, "I.P.C."). The injured complainant as well as other witnesses were examined by the Investigating Officer (I.O.), but the I.O. submitted charge-sheet only against five accused leaving the names of two accused who are appellants before us. After committal of the case for trial, the trial court in

S.T. No. 420 of 2007 examined the complainant as PW-1. In his examination- in-chief, the complainant specifically stated the role of the appellants herein in the occurrence. The complainant then moved an application under Section 319 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') for summoning the appellants herein as accused in the case. However, the trial court vide order dated 25th July, 2008 disposed of the application in view of the fact that cross-examination of PW-1 had not completed and the fact had not been cleared from the witness that there existed probability of the conviction of the appellants herein. On a Criminal Miscellaneous Application being filed under Section 482 of Cr.P.C. before the High Court of Judicature at Allahabad against the above order, the High Court vide judgment and order dated 3rd September, 2008 found no error in the order passed by trial court as the trial court had till then not finally decided the question of summoning the appellants and had simply postponed the issue as it thought that the matter should receive its due and proper consideration only after the cross-examination of the witness is over. Subsequently, PW-2 Vivek and PW-3 Deepak Kumar Dubey were also examined apart from the complainant. The second application filed under Section 319, Cr.P.C. was also rejected by the trial court vide order dated 3rd August, 2009 after considering various legal pronouncements, discussing the statements of PW-1, PW-2 and PW-3 and finding out that the evidence on record is improper and contradictory. Challenging this order, the complainant again filed a Criminal Miscellaneous Application under Section 482, Cr.P.C. which was allowed by the High Court vide order dated 28th October, 2009 impugned herein holding that the lower court committed error in rejecting the application of the complainant/respondent No.2 for summoning the accused-appellants herein despite the prima facie evidence adduced by the prosecution disclosing their involvement in the alleged occurrence for which the other accused are facing the trial on the same facts of the case. The High Court by the impugned order directed the lower court to

summon the accused-appellants herein as per provisions under Section 319, Cr.P.C.

4. In arriving at its conclusion, the High Court in the impugned order observed as under:

"3. …. From the perusal of the statements of the witnesses, it appears that the accused persons named Mohit and Sarthak also have committed the offence. There is ample evidence against the accused persons. They are named in the F.I.R. They are named in the statements of the witnesses recorded by the investigating officer as per provisions under section 161 Cr.P.C. There is specific role attributed to the accused persons and it cannot be said that they have not participated in the crime. The learned lower court relying on the assertion made on the affidavit of some witnesses which cannot be read at the stage of summoning the accused persons under section 319 Cr.P.C., wrongly discussed the evidence of the witnesses on record in a cursory manner thereby rejecting the application of the applicant. …… therefore, they are liable to be summoned.

xxx xxx xxx

6. In the light of the law as is aforesaid, the perusal of the impugned order revealed that lower court committed error thereby discussing the evidence and appreciating the contradictions and the affidavits on record, thereby finding that the evidence of the witnesses is not acceptable being irrelevant in the absence of any motive against the accused persons sought to be summoned in this case. Since the witnesses have stated that accused Mohit alias Sonu and Sarthak alias Babbal have taken part in inflicting injuries to Deepak and Kamta Prasad, therefore the case of accused Mohit and Sarthak cannot be set apart from other accused persons charge sheeted and against whom the trial is going on, thereby finding the improbability of the

conviction of accused Sarthak and Mohit regarding their participation in the occurrence along with other co-accused persons facing trial. The citations referred for taking recourse of the finding by lower court is not of the nature for finding the conclusive proof of conviction of the accused persons sought to be summoned rather it is held therein that there must be reasonable prospectus of the case against the newly added accused ending in the conviction for the offence concerned for summoning of the accused. Reasonable prospectus of conviction has been wrongly discussed by the lower court replacing it to the conclusive proof of the conviction with a detailed discussion ……. The discretionary power vested in the court as per provisions under section 319 Cr.P.C. is supposed to be used thereby finding a prima facie case made out against the accused. While there is allegation of same contribution of the accused Sarthak and Monu in the alleged occurrence as remained of other co-accused persons facing trial, how the case of Monu and Sarthak may be separated giving interim finding affecting the case of the other co-accused too in the case, trial of which is going on before the court on the same allegations against the accused in trial.

xxx xxx xxx

8. Thus the learned lower court thereby analyzing the evidence on record wrongly took recourse of the facts that PW-2 and PW-3 have not proved the injuries on their persons despite the fact that they were stating that the injuries were received by them in the alleged occurrence. Similarly it is also wrongly analysed at this stage by the learned lower court that Mudgal (weapon of assault) by which the deceased is said to have been assaulted, is not mentioned in the F.I.R. Merely calling for Ramveer may not be the outcome of the alleged occurrence is also wrongly held at this stage by the learned lower court because the learned lower court was not supposed to give finding at

this stage pertaining to the facts of entire trial to be conducted by the learned lower court. Similarly the alleged affidavits on record have also been wrongly considered for the purpose of finding the contradictions in the statements of the witnesses examined before the trial court."

Hence, this appeal by special leave.

5. Mr. Amarendra Sharan, learned senior counsel appearing for the appellants while assailing the impugned order passed by the High Court as being illegal and wholly without jurisdiction, raised two important points for consideration. Learned counsel firstly contended that the order passed by the Sessions Court on the application under Section 319 Cr.P.C. refusing to issue summons to the non-accused person ought to have been challenged by the complainant before the High Court invoking its revisional jurisdiction under Section 397/401 Cr.P.C. According to the learned counsel, application of the complainant before the High Court under Section 482 of Cr.P.C. challenging the order passed under Section 319, Cr.P.C. was not maintainable. Secondly, Mr. Sharan submitted that, in any view of the matter, the High Court while exercising its inherent jurisdiction under Section 482 Cr.P.C. ought to have given notice and opportunity of hearing to the appellants before the order of the Sessions Judge was set aside. On the merits of the appeal, learned counsel submitted that the High Court while deciding the petition of the complainant under Section 482 Cr.P.C. on the first motion upset the reasoned order of the trial court and despite the fact that the entire evidence adduced till the decision on the application under Section 319 Cr.P.C. by the trial court was not before the High Court, even then the High Court exercised its discretion without issuing notice and giving opportunity of hearing to the appellants. On the merits of the case, learned counsel contended that for the purpose of exercising power under Section 319 Cr.P.C., the Court must be satisfied about the existence of sufficient evidence on record and not only on the basis of prima facie case. Learned counsel contended that the trial court rightly refused to summon

the appellants on the ground that the witnesses were contradicted on their earlier statement and that the witnesses in their statement under Section 164 Cr.P.C. have denied the presence of these appellants. Learned counsel put reliance on the decision of this Court in *Sarabjit Singh and Another v. State of Punjab and Another* (2009) 16 SCC 46; *Hardeep Singh v. State of Punjab and Others* (2009) 16 SCC 785 and *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others* (1983) 1 SCC 1.

6. On the other hand, Mr. Ashok Bhan, learned senior counsel appearing for the respondent/complainant submitted that from the evidence adduced by the witnesses, the role played by the appellants has become apparent and the trial court has committed serious error of law in refusing to issue summons to the non-accused appellants. Learned counsel relied upon the decisions of this Court in *Lok Ram v. Nihal Singh and Another* (2006) 10 SCC 192; and *Sarojben Ashwinkumar Shah and Others. v. State of Gujarat and Another* (2011) 13 SCC 316. Mr. Bhan contended that it is the discretion of the Court to give notice to the accused for the purpose of issuing summons against them. According to the learned counsel, there cannot be pre-cognizance herein. Further, the High Court in exercise of power under Section 482 Cr.P.C., can see the correctness and propriety of the order passed by the trial court. Learned counsel relied upon the decision of this Court in *Bangarayya v. State of Karnataka and Others* (2010) 15 SCC 114.

7. Before going into the merits of the case, we would like to answer the two important points raised by the appellants i.e., (i) whether petition under Section 482 Cr.P.C. before the High Court challenging the order of the Sessions Court passed under Section 319 Cr.P.C. is maintainable; and (ii) whether the High Court before passing the impugned order ought to have given notice and opportunity of hearing to the appellants.

8. Since both the points raised by Mr. Amarendra Sharan,

learned senior counsel appearing for the appellants, being interlinked, they are discussed here together. However, before discussing those points, we would like to refer some of the relevant provisions of the Code of Criminal Procedure.

9. Section 397 Cr.P.C. confers power of revision on the High Court or any Sessions Court, which reads as under:-

> **"397. Calling for records to exercise powers of revision-**- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation-- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

10. Section 399 deals with Sessions Judge's power of revision, whereas Section 401 deals with the power of revision of the High Court. Section 401 reads as under:-

> "401. High Court's powers of revision-- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
>
> (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

11. From bare reading of the aforesaid two provisions, it is clear that in exercise of revisional power under the aforesaid provisions, the High Court can call for the records of any criminal court and examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the

regularity of any proceeding of such inferior court. However, sub-section (2) of Section 397 puts a restriction on exercise of such power in relation to an interlocutory order passed by the criminal courts in any appeal, inquiry, trial or other proceeding.

12. Similarly, Section 401 empowers the High Court to call for any record in order to examine the correctness, legality or propriety of any order, finding or sentence passed by the inferior courts. However, sub-section (2) categorically provides that no order shall be made by the High Court in exercise of revisional jurisdiction affecting and prejudicing the right of the accused or other person, unless he has been given opportunity of hearing either personally or by pleader in his own defence.

13. Section 482 Cr.P.C. which deals with the inherent power of the High Court is extracted hereinbelow:-

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

14. The power under Section 397 vis-à-vis Section 482 of Cr.P.C. has been elaborately discussed and explained in the case of *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551. The facts of that case were that the appellant was said to have made certain statements and handed over a press hand-out containing defamatory statements against the then Law Minister of the respondent-State. The State Government decided to prosecute the appellant for offence under Section 500 IPC and accorded necessary sanction. On the Public Prosecutor filing the complaint, the Sessions Judge took cognizance of the offence under Section 199(2) Cr.P.C. The appellant contended that even assuming allegations imputed to him were defamatory, they were not made against the

Minister in discharging his public functions, but only in his personal capacity. The Sessions Judge rejected these contentions. On revision, the High Court held that a revision petition was not maintainable under Section 397(2) Cr.P.C. since the order of the Sessions Judge was an interlocutory order. A 3- Judge Bench of this Court discussing the object of the two provisions i.e. Section 397(2) and Section 482 of Cr.P.C. observed as under:-

> "10. As pointed out in *Amar Nath's* case [(1977) 4 SCC 137] the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the

other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting,

that invoking the revisional power of the High Court is impermissible."

15. This Court further observed:-

"13. In *S. Kuppuswami Rao v. King* [AIR 1949 FC 1] Kania, C.J. delivering the judgment of the Court has referred to some English decisions at pp. 185 and 186. Lord Esher M.R. said in *Salaman v. Warner* (1891) 1 QB 734:

> "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

To the same effect are the observations quoted from the judgments of Fry L.J. and Lopes L.J. Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court [at that time there was no bar like Section 397(2)] was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words 'interlocutory order' occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and

the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, vide for example, *River Wear Commissioners v. William Adamson* [(1876-77) 2 AC 743] and *R.M.D. Chamarbaugwalla v. Union of India* [(1957) SCR 930] that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami* case (supra), but, yet it may not be an interlocutory order - pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of

Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course."

16. In the case of *Amar Nath & Ors. v. State of Haryana & Ors.* (1977) 4 SCC 137, two provisions i.e Sections 397 and 482 have been considered and term 'interlocutory order' has been fully discussed. In that case, an FIR was lodged mentioning a number of accused persons including the appellants as having participated in the occurrence which resulted in the death of the deceased. The police after holding investigations, submitted a charge-sheet against the other accused persons except the appellants against whom the police opined that no case at all was made out as no weapon was recovered nor was there any clear evidence about the participation of the appellants. After submission of the final report, the Judicial Magistrate accepted the report and set the appellants at liberty. The complainant thereafter filed a revision petition before the Additional Sessions Judge against the order of the Judicial Magistrate releasing the appellants, but the same was dismissed. The informant filed a regular complaint before the Judicial Magistrate against all the 11 accused including the appellants. The Magistrate after having examined

the complainant and going through the record dismissed the complaint as he was satisfied that no case was made out against the appellants. Thereafter, the complainant took up the matter in revision before the Sessions Judge, who this time allowed the revision petition and remanded the matter to the Judicial Magistrate for further enquiry. The Judicial Magistrate on receiving the order of the Sessions judge issued summons to the appellants straightaway. The appellants then moved the High Court under Sections 482 and 397 of the Code for quashing the order of the Judicial Magistrate, mainly on the ground that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition in limine and refused to entertain it on the ground that as the order of the Magistrate summoning the appellants was an interlocutory order, a revision to the High Court was barred by virtue of sub-section (2) of Section 397 of Cr.P.C. The High Court further held that as the revision was barred, the Court could not take up the case under Section 482 in order to quash the very order of the Judicial Magistrate under Section 397 of Cr.P.C. Answering the question raised, Hon'ble Fazal Ali, J. delivering the judgment on behalf of the Bench, observed :-

> "While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."

17. So far as the question as to whether the order of the Judicial Magistrate was an interlocutory order is concerned, Their Lordships after discussing the legislative background of the provisions held:-

> "6….The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revison to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning

cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

In the concluding paragraph, this Court finally held:-

"Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as affirmed by the Additional Sessions Judge acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by Respondent 2 before the Judicial Magistrate which was also dismissed on merits. The Sessions Judge in revision, however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway which meant that the appellants were to be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the

impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of their's was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial."

18. In the case of *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* (1983) 1 SCC 1, this Court relying upon the earlier decision in *Madhu Limaye* case (supra) observed:-

"5. After the coming into force of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "present Code"), there was a serious divergence of judicial opinion on the question as to whether where a power is exercised under Section 397 of the present Code, the High Court could exercise those very powers under Section 482 of the present Code. It is true that Section 397(2) clearly bars the jurisdiction of the court in respect of interlocutory orders passed in appeal, enquiry or other proceedings. The matter is, however, no longer res integra as the entire controversy has been set at rest by a decision of this Court

in *Madhu Limaye v. State of Maharashtra* (1978) 1 SCR, 749 where this Court pointed out that Section 482 of the present Code had a different parameter and was a provision independent of Section 397(2). This Court further held that while Section 397(2) applied to the exercise of revisional powers of the High Court, Section 482 regulated the inherent powers of the court to pass orders necessary in order to prevent the abuse of the process of the court. In this connection, Untwalia, J. speaking for the Court observed as follows: [SCC para 10, pp. 555-56 : SCC (Cri) P. 15]

> "On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, 'shall be deemed to limit or affect the inherent powers of the High Court'. But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers....But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be

exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code."

19. In the case of *Raj Kapoor & Ors. v. State & Ors.* (1980) 1 SCC 43, Justice Krishna Iyer, while distinguishing the power of the High Court under Section 397 vis-à-vis Section 482 of Cr.P.C. observed that Section 397 or any of the provisions of Cr.P.C. will not affect the amplitude of the inherent power preserved in Section 482. Even so, easy resort to inherent power is not right except under compelling circumstances. Inherent power should not invade areas set apart for specific power under the same Code.

20. In the light of the ratio laid down by this Court referred to hereinabove, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of Cr.P.C. cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient

evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in *Amar Nath's* case (supra), an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) of Cr.P.C.

21. In the instant case as noticed above, when the complainant's application under Section 319 of Cr.P.C. was rejected for the second time, he moved the High Court challenging the said order under Section 482 of Cr.P.C. on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

22. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

23. So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not

interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

24. Courts possess inherent power in other statute also like the Code of Civil Procedure (C.P.C.) Section 151 whereof deals with such power. Section 151 of C.P.C. reads:-

> "Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court."

25. This Court in the case of *Padam Sen & Anr. v. State of Uttar Pradesh,* AIR 1961 SC 218 regarding inherent power of the Court under Section 151 C.P.C. observed:-

> "The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict what has been expressly provided in the Code or against the intentions of the Legislation. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."

26. In a Constitution Bench decision rendered in the case of *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal,* AIR 1962 SC 527, this Court held that :-

"The inherent jurisdiction of the Court to make orders ex debito justiciae is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.

28. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 of Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them.

29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

30. Recently, a 3-Judge Bench of this Court in the case of *Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others* (2012) 10 SCC 517 considered the question as to whether in a case where an order of the Magistrate dismissing the complaint under Section 203 of Cr.P.C. at the stage under Section 200, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. After considering all the earlier decisions, in the case of *P. Sundarrajan v. R. Vidya Sekar* (2004) 13 SCC 472, *Raghu Raj Singh Rousha v. Shivam Sundaram Promotors (P) Ltd.* (2009) 2 SCC 363 and *A.N.Santhanam v. K. Elangovan* (2012) 12 SCC 321, this Court held as under:-

"53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no

right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

31. The same question came up for consideration before different High Courts some of which we would like to refer hereinbelow. In the case of *Sayeed Bhagat and Others v. State of Andhra Pradesh* 1999 Crl.L.J.4040, a Bench of the Patna High Court noticed the facts of the case where an application was filed in a criminal case under Section 319 of Cr.P.C. to summon the remaining accused persons who were named by the witnesses. The Magistrate refused the said prayer mainly for want of sufficient evidence. The said order was challenged in revision by the complainant. The revisional court set aside the order of the Magistrate without hearing the petitioners against whom prayer was made for issuance of summons. When the matter came up before the High Court, the Bench held as under:-

"8. In the instant case also though the jurisdiction of the Court to summon a person under Section 319 of the Cr.P.C. cannot be questioned, the revisional Court, in my view should have heard the petitioners before passing the impugned order because the same has prejudiced them."

32. In a similar case in *Satish Chandra Dey v. State of Jharkhand & Anr.* 2008 (2) AIR Jhar R 330, the order of Sessions Judge was challenged in the High Court under Section 482 of Cr.P.C. on the ground inter alia that the Sessions Judge directed the Magistrate to summon the petitioner to face trial along with other accused though the trial court had refused to exercise its jurisdiction to summon the petitioner to face trial. The question raised before the High Court was that the revisional court has erred in law in passing

such order without giving opportunity of hearing to the petitioner. Allowing the said petition, the High Court held as under :-

"10. Thus it is evidently clear from the relevant provision of law that no order to the prejudice of an accused or any other person can be made unless the said accused or the said persons have been given an opportunity of being heard.

11. In the instant case also learned Sessions Judge in absence of the petitioner has passed the impugned order whereby he directed the trial Court to implead the petitioner as an accused in the proceeding which in view of the provision as contained in Sections 399/401/401(2) of the Code of Criminal Procedure is illegal.

12. In the result, this application is allowed and the impugned order dated 23.6.2006 s set aside and the case is remanded to the learned

Sessions Judge, Bokaro for hearing afresh after giving due notice to the parties so that the same be disposed of in accordance with law."

33. Since the reasoning discussed hereinabove would be suffice to dispose of the present appeal, we do not wish to go into the merits of the case with regard to the scope of the provisions of Section 319 of Cr.P.C.

34. After giving our anxious consideration in the matter, we conclude by holding that the High Court has committed a grave error in passing the impugned order for the reasons given hereinbefore. We, therefore, allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to consider the matter afresh after giving an opportunity of hearing to the present appellants.

R.P. Appeal allowed.

PRADIP KUMAR MAITY
v.
CHINMOY KUMAR BHUNIA & ORS.
(Civil Appeal No. 4820 of 2013)

JULY 01, 2013

[ALTAMAS KABIR, CJI, ANIL R. DAVE AND VIKRAMAJIT SEN, JJ.]

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

Section 38 -- Age relaxation vis-à-vis physically handicapped - Appointment of physically handicapped challenged as he had crossed the age prescribed - Held: Expression "appropriate Government and local authority shall formulate schemes for ensuring employment of persons with disability" and "may provide for relaxation of upper age limit" - Connotation of - Where the Legislature uses the words 'shall' and 'may' in close proximity of each other, as in s. 38, word 'may' cannot be construed as mandatory -- Act postulates age relaxation only as directory or expectant - Failure to mandate age relaxation is a lacuna in the legislation - Since the Government Order not providing age relaxation to physically handicapped continues to hold the field, succour cannot be extended to appellant who is indubitably suffering from a disability - Government of West Bengal Memo No. 1736(21) GA dated 1.11.1999 - Service law -- Age relaxation to physically handicapped - Costs -- Proclamation adopted by the Economic and Social Commission for Asian and Pacific Region (ESCAP) - Legislation.

Section 2(t) - 'Person with disability' -- Held: Means a person suffering from not less than forty per cent of any

disability as certified by a medical authority -- On the coming into force of the Disabilities Act on 7.2.1996, the definition in s.2(t) shall apply notwithstanding any State legislation or Rules irreconcilable or repugnant thereto.

The appellant, a physically handicapped, suffering from 60% hearing disability, and respondent no. 1 were interviewed for the post of Group 'D' non-teaching staff. The appellant securing first place in the merit list was appointed. Respondent no. 1, who secured second position, challenged the appointment of the appellant on the ground that on the date of interview he had crossed the age prescribed. Though concurrent finding of the single Judge and the Division Bench of the High Court were against the appellant, he continued to hold the post even during the pendency of the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, inter alia, ordains in Chapter VI, provisions relating to the employment of disabled persons through the device of reservation of posts, setting apart not less than three per cent (3%) seats in Government educational institutions and other educational institutions receiving aid from Government. Section 38 postulates that the appropriate Government and local authority shall formulate schemes for ensuring employment of persons with disabilities and such schemes may provide for the relaxation of upper age limits. Where the Legislature uses the words 'shall' and 'may' in close proximity of each other, as in s. 38, word 'may' cannot be construed as mandatory. [para 3] [122-E-F; 123-C-E]

Chinnamarkathian Vs. Ayyavoo **1982 (2) SCR 146 = (1982) 1 SCC 159 - relied on.**

'Principles of Statutory Interpretation' **by G.P. Singh - referred to.**

Proclamation adopted by the Economic and Social Commission for Asian and Pacific Region **(ESCAP) - referred to.**

1.2 The Disabilities Act does not in terms provide for age relaxation vis-a-vis persons suffering from disabilities, though this ought to have been woven into the fabric of the statute. The failure to mandate age relaxation is a lacuna in the legislation since it fails to comprehensively put in place affirmative action in favour of the disabled sections with regard to employment in even the non-reserved posts. The Disabilities Act should, therefore, explicitly postulate compulsory relaxation of age of candidates suffering from any of the statutorily recognized disabilities. [para 3 and 8] [123-G-H; 126-A; 129-A-B]

1.3 Section 2(t) defines a 'person with disability' to mean a person suffering from not less than forty per cent of any disability as certified by a medical authority. Therefore, it cannot be accepted that this definition would not enure to the benefit of the appellant for the reason that the Rules/Government Orders extant in the State of West Bengal speak to the contrary inasmuch as they postulate complete disability. The Disabilities Act pays obeisance to the Constitution The definition of deafness or hearing impairment contained in the extant Government Orders must immediately measure to the definition contained in the Disabilities Act. On the coming into force of the Disabilities Act on 7.2.1996, the definition in s.2(t) shall apply notwithstanding any State legislation or Rules irreconcilable or repugnant thereto. [para 4 and 9] [124-D-F; 130-D-F]

1.4 Age relaxation was available in the State of West Bengal for the physically handicapped or disabled till 1999. However, the Memo No. 1736(21) G.A. dated 1.11.1999, inter alia, introduced benefits to Other Backward Classes, but withdrew or deprived it to disabled defence personnel and physically handicapped candidates. Keeping the ethos, expectations and endeavours of the Disabilities Act as well as the Beijing Declaration in mind as well as at heart, the deletion of age relaxation is facially a retrograde action. However, keeping extant legislation and executive fiats in perspective, since age relaxation is not available post 1.11.1999 to the physically handicapped in the State of West Bengal and since the Disabilities Act postulates age relaxation only as directory or expectant, the Government Order will continue to hold the field and, as such, succour cannot be extended to the appellant who is indubitably suffering from a disability. Keeping in view the fact that the appellant has not succeeded before the single Judge as well as the Division Bench of the High Court, as also before this Court, he shall be liable to pay costs to respondent No.1. [Para 6-9 and 11] [126-H; 127-E; 129-C-D; 131-B]

Saiyad Mohammad Bakar El-Edroos v. Abdulhabib Hasan Arab **1998 (2) SCR 648 = (1998) 4 SCC 343 and** *K.P. Sudhakaran v. State of Kerala* **2006 (2) Suppl. SCR 291 = (2006) 5 SCC 386 - referred to.**

Case Law Reference:

1982 (2) SCR 146	**relied on**	**para 3**
1998 (2) SCR 648	**referred to**	**para 9**
2006 (2) Suppl. SCR 291	**referred to**	**para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4820 of 2013.

From the Judgment and Order dated 05.09.2007 of the High Court at Calcutta in FMA No. 399 of 2006.

A.K. Ganguli, Samapati Chatterjee, Soumen Kumar Dutta, Sarla Chandra for the Appellant.

Gaurav Jain, Abha Jain, Subir Sanyal, Kamal Mishra, Avijit Bhattacharjee, Sarbani Kar for the Respondents.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. We have heard counsel for the parties in detail and hence proceed to deliver judgment.

2. The dispute pertains to the employment of the Appellant and Respondent no.1 in the Group 'D' staff (non-teaching staff) of the Nazirbazar Harendranath High School, Nazirbazar, Medinipur, West Bengal (Respondent no.6). Pursuant to holding of the interviews, the Appellant was placed first in the merit list followed by the Respondent no.1 in second position. Respondent no.1, thereafter, challenged the appointment of the Appellant on the ground that he had crossed the permissible age prescribed for recruitment to this Group 'D' post even on the date when the interview was conducted and completed. However, the Appellant's contention is that he was entitled to relaxation in the maximum age as a consequence of his suffering from a hearing disability to the extent of sixty per cent (60%). The factum of his said affliction is not in dispute, although it has been faintly argued by Mr. Sanyal, learned counsel for Respondent no.1 that the applicable Rules and Regulations contemplate complete loss of audio powers for favourable treatment; and that the forty per cent (40%) disability, indubitably prescribed by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereafter referred to as, 'Disabilities Act'] does not come to the succour of the Appellant. Despite the fact that the Appellant had not succeeded in the writ proceedings before the

learned Single Judge and thereafter had also failed in his Appeal before the Division Bench of the Calcutta High Court, he appears to have been in the employment of Respondent no.6 throughout the duration of litigation and remained so on 01.10.2007 when the maintenance of status quo came to be ordered in the present proceedings. We may also underscore that concurrent findings are against the Appellant.

3. The Disabilities Act was passed by Parliament in the wake of the Proclamation that came to be adopted by the Economic and Social Commission for Asian and Pacific Region (ESCAP), the endeavour and expectation of which was the attainment of full participation and equality to persons with disabilities in the matter of protection of their rights, provision of medical care, education, training, employment and rehabilitation. Keeping in perspective that India was a signatory to the said Proclamation, necessitating its wholesome and holistic implementation, the Disabilities Act was introduced in the Lok Sabha on 26th August 1995 and came into force on 7th February 1996. The Disabilities Act, inter alia, ordains in Chapter VI, provisions relating to the employment of disabled persons through the device of reservation of posts, establishment of Special Employment Exchanges, the formulation of schemes for ensuring employment of persons with disabilities and the reservation and setting apart of not less than three per cent (3%) seats in Government educational institutions and other educational institutions receiving aid from Government etc. etc. The Disabilities Act also specifically stipulates that if in any recruitment year any vacancy cannot be filled up due to non-availability of persons with disabilities, i.e., (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy, such vacancy shall be carried forward. If in the succeeding year the vacancies in the three categories cannot yet again be filled up by an eligible candidate, the vacancy must first enure to the benefit of any of the other two categories; and only in the event that there are no candidates even therefrom, can the employer fill up such

segregated or reserved vacancy by a general appointment. It is also noteworthy that the reservation of three per cent (3%) is a minimum requirement. So far as Government as well as aided educational institutions, also poverty alleviation schemes of appropriate Government and local authorities are concerned, the statute mandates a three per cent reservation for the benefit of persons with disabilities; failure to implement these provisions can be remedied by issuance of a writ of mandamus. The two sections, i.e., Sections 39 and 40 containing these stipulations are preceded by Section 38, which is germane to the conundrum at hand. It postulates that the appropriate Government and local authority shall formulate schemes for ensuring employment of persons with disabilities and such schemes may provide for the relaxation of upper age limits. Owing to the use of the word 'may' in the section, the question that immediately arises is whether even in the absence of an implemental scheme, can a superior Court issue an inviolable order with regard to the relaxation of upper age limits. *Chinnamarkathian Vs. Ayyavoo* (1982) 1 SCC 159 holds that whenever the word 'may' is employed in a statute it confers discretion to do something. It seems to us that in instances where the Legislature uses the words 'shall' and 'may' in close proximity of each other, as in Section 38, there is virtually no room to construe the word 'may' as mandatory. Indeed, the decisions in this context dwell predominantly on the scope of interpreting "shall" as merely obligatory, whereas the nodus in hand is the obverse. G.P. Singh in his treatise titled, the 'Principles of Statutory Interpretation' remains steadfast in the opinion that when both words are used in the same Section, 'shall' imposes an obligation or imperative whilst 'may' connotes directive or discretionary power. The Disabilities Act should, therefore, explicitly postulate compulsory relaxation of age of candidates suffering from any of the statutorily recognised disabilities. The absence of this feature has become conspicuous by the dispute in hand. We think that the failure to mandate age relaxation is a lacuna in the legislation since it fails to comprehensively put in place affirmative action in favour

of the disabled sections of our society with regard to employment in even the non-reserved posts. The critique that this would unfairly increase the percentage of reservation does not pass muster since so far as non-reserved posts are concerned, the appointment has to be solely according to merit. Age relaxation enables disabled persons, otherwise outside the orbit of employment to general posts, an additional opportunity of being considered for such post. It is dissimilar to the regime of a reserved post where only a person in the postulated group is eligible for appointment. One readily recalls the self-deprecation of the saint who realized the triviality of his lament for not possessing a pair of shoes on his encountering a person who had no feet. When a relaxation of age is extended to the disabled, the post remains to be nevertheless filled up by adherence to merit.

4. Before departing from this skeletal narration of the provisions of the Disabilities Act, suffice it to state that Section 2(t) defines a 'person with disability' to mean a person suffering from not less than forty per cent of any disability as certified by a medical authority. Therefore, we cannot accept the argument of Mr. Sanyal that this definition would not enure to the benefit of the Appellant for the reason that the Rules / Government Orders extant in the State of West Bengal speak to the contrary inasmuch as they postulate complete disability. On the coming into force of the Disabilities Act on 7th February 1996, the said definition in Section 2(t) thereof shall apply notwithstanding any State legislation or Rules irreconcilable or repugnant thereto. This proposition of law is too well settled to tolerate any explanation again; doing so would needlessly lead to prolixity. However, despite this legal posit, as will presently be seen, relief will still not be available to the Appellant.

5. Reverting to the position obtaining in the State of West Bengal at the relevant time, our attention has been drawn to the Government Order dated August 26, 1986 which reads as follows :

"Sub: Recruitment of Assistant teacher, non-teaching staff and Headmaster/Headmistress of non-Government Secondary Schools - Upper-age limit for physically handicapped candidates.

The undersigned is directed to say that in terms of this department Memo No.454-Edn.(S) dated 25.4.83 the upper-age limit for first entry into service of Assistant Teachers and non-teaching staff has been prescribed as 35 years. The age limit is relaxable upto 40 years for experienced and highly qualified candidates and for candidates belonging to Scheduled Caste and Scheduled Tribe, disabled defence personnel and physically handicapped candidates. But in terms of Finance Department Memo No.105-17-F dated 2.12.80 the upper-age limit for recruitment to State Government Service and posts whether recruited through the Public Service Commission or otherwise, has been prescribed as 45 years in the case of physically handicapped persons provided they are otherwise suitable.

(2) In view of the position stated above, the Government have after careful consideration, decided that the upper-age limit for first entry into service of Assistant teachers and non-teaching staff of Non-Government Secondary Schools will be **45 years in the case of physically handicapped persons provided they are otherwise suitable and possess the qualifications and capacity to perform duties and responsibilities attached to the posts concerned.**

(3) Grant of the above concessions shall be subject to the following conditions:

(i) The "physically handicapped" as illustrated in item (ii) below should be proved by a medical certificate from Competent Medical Officer as defined in Rule 14 of West Bengal Service Rules Part-I.

(ii) For the purpose of the concessions the term 'Physically handicapped' will include three categories viz., the blind, the deaf and dumb and the orthopaedically handicapped as indicated below:

(a) The blind - The blind are those who suffer from the following conditions -

(i) Total absence of sight.

(ii) Visual acquity not exceeded 3/60 or 10/200 (Smellen) in the better eye with correcting lense.

(b) The deaf and dumb - The deaf are those in whom the sense of hearing is fully non-functional for the ordinary purpose of life. The dumb are those persons suffering from aplasia (complete loss of speech-sense of hearing normal) or whose speech is not clear and/ or normal.

(c) The orthopaedically handicapped are those who have physically defects or deformities which cause adequate interference with the normal functioning of bones, muscles and joints.

This order shall be deemed to have come into force with effect from 25.4.83, i.e., the date of issue of order No.454-Edn.(S) dated 25.4.83."

[Emphasis supplied]

6. This Government Order was partially modified by letter dated July 29, 1990 conveying to all concerned the following :

"In supersession of this Department G.O. No.454 Edn.(S) dated 25.04.83 the undersigned is directed to say that after careful consideration, the Government have decided that the upper age limit for first entry into service of Assistant

Teacher and non teaching staff in Non Govt. Secondary Schools shall be 35 years. The age limit is relaxable upto 40 years for candidates belonging to Scheduled Caste and Scheduled Tribe, Disabled defence personnel and physically handicapped candidates.

... ... "

As will be palpably clear, age relaxation was available for the physically handicapped or disabled till 1999 although the relaxation stood reduced from 45 years to 40 years of age.

7. Mr. Sanyal, learned counsel for the Respondent no.1 has emphasized the point that age relaxation was specifically dealt with in both the above Government Orders, and since the age relaxation for the defence personnel and physically handicapped or disabled has notably been deleted from subsequent Government Orders it is facially clear that this advantage was not found by the State of West Bengal to be expedient any longer. It is for this purpose that reliance was placed on behalf of Respondent no.1 to Memo No.1736(21) G.A. dated 1st November 1999 which, inter alia, introduced benefits to Other Backward Classes whilst withdrawing or depriving it to disabled defence personnel and physically handicapped candidates :

"GUIDELINE FOR RECRUITMENT OF NON-TEACHING STAFF (LIBRARIAN, CLERK, GROUP D STAFF) OF NON GOVT. AIDED SECONDARY SCHOOLS, HIGHER SECONDARY SCHOOLS, GOVT. SPONSORED SCHOOLS, D.A. GETTING SCHOOLS AND ALL TYPES OF AIDED MADRASAHS INCLUDING SENIOR MADRASAHS AND NEWLY SET UP EDUCATIONAL INSTITUTION AT SECONDARY LEVEL IN WEST BENGAL

... ...

4.d) No person shall be selected for appointment unless

he/she is a citizen of India and 18 years of age or above. The maximum age limit for appointment in Aided Institution is 37 years and as relaxable in case of S.C./S.T./O.B.C. candidates as per existing Government orders.

... ... "

This Memorandum states that it is in supersession of all previous orders of that Department in respect of procedure for recruitment of non-teaching staff of any Institution. Predicated on this Memorandum it is contended against the Appellant that age relaxation provided in the 1990 Government Order stood withdrawn; that this position has been reiterated in Government Order dated 21st January 2003 which states that non-teaching posts must be filled up only on the basis of the guidelines for recruitment as contained in Memo No.1736(21) G.A. dated 01st November 1999 issued by the Directorate of Education, West Bengal :

"In the circumstances, the undersigned is directed by the order of the Governor to say that henceforth all appointments in teaching and non-teaching posts available as vacant either due to retirement/death/resignation of an existing employee or due to creation of posts in the aforesaid institutions on first recognition or upgradation or otherwise should be filled up only as follows :

(a) In case of whole-time teaching post, through the School Service Commission of the concerned region; and

(b) In case of a non-teaching post, on the basis of the guidelines for recruitment as contained in Memo No.1736(21) G.A. dt. 01.11.99 issued by the Director of School Education, West Bengal.

This cancels the earlier Govt. orders in Memo No.117-SE(S) dt. 24.02.1995 and Memo No.511-SE(S) dt.29.03.2000.

This will take immediate effect."

8. We have already underscored that the Disabilities Act does not in terms provide for age relaxation vis-a-vis persons suffering from disabilities and that this ought to have been woven into the fabric of the statute. Had this been so done, it would have been mandatorily incumbent on every State to fall in line with and implement the Central legislation especially so far as extending the maximum age eligibility criterion for the disabled. Having said so, and keeping the ethos, expectations and endeavours of the Disabilities Act as well as the Beijing Declaration in mind as well as at heart, it seems to us that the deletion of age relaxation is facially a retrograde action. However, keeping extant legislation and executive fiats in perspective, since age relaxation is not available post 1st November 1999 to the physically handicapped in the State of West Bengal, regrettably, succour cannot be extended to the Appellant who is indubitably suffering from a disability. Relief for the disadvantaged in our society should be holistic and should be implemented with vigour. Although the issue is not focal before us, we also think that it is most unfortunate that the exercise to identify and earmark posts suitable for being filled up by total reservation for the disabled to the extent of a minimum of three per cent has not been completed thereby reducing the statutory promise to a mere hallucination. We hasten to reiterate that the present case does not fall in the genre of reservation but of relaxation of age.

9. Since the legal regime applicable to amelioration of the persons suffering from disabilities has been argued before us, we need to dwell upon it briefly. Briefly, because this aspect of the law is so well entrenched in our jurisprudence that only a succinct reiteration is justified. The Constitution of India is the grund norm, demanding meticulous allegiance from all other laws. Statutes, central/parliamentary or of State legislatures, must mandatorily comply with our Constitution. We must hasten to emphasise that statutes must also conform with the discipline

of the three lists contained in the Seventh Schedule of the Constitution. Most statutes postulate the promulgation of Rules, through delegated legislation, which, if they are not ultra vires the Statute inasmuch as they are operational within the parameters of their parent pandects, require adherence. Executive Orders or Administrative Instructions cease to have legal efficacy the moment they are contrary to their superiors, i.e., the Constitution, a Statute, or any delegated legislation in the form of Rules or Regulations. This is also referred to as "dominion paramountcy" by some Courts. There is a plethora of precedents on this proposition, as also on the tiers of subservience, including the adumbration in the case of *Saiyad Mohammad Bakar El-Edroos v. Abdulhabib Hasan Arab* (1998) 4 SCC 343 and *K.P. Sudhakaran v. State of Kerala* (2006) 5 SCC 386. The Disabilities Act pays obeisance to the Constitution and had it concerned itself with improving the lot of the disabled by also providing for compulsory relaxation of age stipulations for employment having regard to disability, all other contrary forms of law-making by State Legislatures or State Governments would have fallen foul of it, and consequently would have ceased to command legal authority. Thus, the definition of deafness or hearing impairment contained in the extant Government Orders must immediately measure to the definition contained in the Disabilities Act. But since the Disabilities Act postulates age relaxation only as directory or expectant, the Government Order will continue to hold the field.

10. Mr. Ganguly, learned senior counsel appearing for the Appellant has not contended that the Government Orders mentioned above are ultra vires the Disabilities Act or that they are devoid of being functional. This is also the dialectic favoured by the Division Bench of the Calcutta High Court in the impugned judgment, which we affirm.

11. In this analysis we cannot but conclude that the Appellant has failed to disclose any Legislation or Rules or Orders that would facilitate, support or legitimise his claim for

being conferred with the advantage of age relaxation, which is presently available only to SC/ST/OBC candidates. It is for these reasons that regretfully we are unable to locate any merit in the present appeal. Interim orders are accordingly recalled and the appeal is dismissed. Keeping in view the fact that the Appellant has not succeeded before the Single Bench as well as the Division Bench, as also before us, he shall be liable to pay costs to Respondent No.1.

R.P. Appeal dismissed.

B. RAGHUVIR ACHARYA

v.

CENTRAL BUREAU OF INVESTIGATION

(Criminal Appeal No. 1001 of 2001 etc.)

JULY 1, 2013.

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

PENAL CODE, 1860:

ss. 120-B, 420/409, 411, 477-A IPC and ss.13(1)(d) read with s.13(2) of Prevention of Corruption Act - Brokerage claimed illegally and dishonestly - Units of CANCIGO floated by CMF, purchased in the names of Andhra Bank, and ABFSL and payment made by broker - Further, false claim of brokerage on the investment made by Sahara India and IDBI - Held: So far as the Trustee and General Manager of CMF is concerned, there is no material of his involvement in the crime - He is acquitted of all the charges - As regards the broker, he disguised his investment and dishonestly claimed brokerage from CMF - He was not engaged as a broker in the transactions - Prosecution has proved that the broker is guilty of making a false representation to CMF to deceive it to part with the stated amount - Acquittal of co-accused on the ground of non-corroboration has no application to the accused himself - Judgment of Special Court affirmed with modification.

ss. 420/409, 411 and 477-A - Accused originally charged with offences u/ss 120-B, 420/409, 411 and 477-A - His conviction u/s 409 converted to that u/s 420 IPC - His conviction u/s 411 upheld - However, in view of acquittal of two other accused, his conviction u/s 477-A set aside -- Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992- Scam.

EVIDENCE ACT, 1872:

s.47 - Evidence as to hand writing - Held: The witness who claimed to be conversant with the handwriting of accused because of alleged correspondence, deposed that he had neither seen the accused writing the endorsement nor he himself was recipient of any correspondence from the accused - He had no prior knowledge of the handwriting of the accused or signature of the author - He was, thus, not a competent witness to depose regarding handwriting of accused.

The appellants in Crl. A. No. 1001 of 2001 (A-1) and Crl. A. No. 1226 of 2001 (A-3) alongwith A-2 were prosecuted for committing offences punishable u/ss 120-B, 420/409, 411 and 477-A IPC. A-1 and A-2 being public servants were also charged with offences u/s 13(1)(d) read with s.13(2) of the Prevention of Corruption Act, 1988. The prosecution case was that in September, 1991, an investment of Rs.65 crores came to be made by four subscribers, who applied for purchase of CANCIGO units floated by Canbank Mutual Fund ('CMF'), a fund created by Canara Bank. The Andhra Bank and Andhra Bank Financial Services Limited ('ABFSL') were said to have made an investment of Rs. 33 crores. Two other transactions were made by the Sahara India and Industrial Development Bank of India ('IDBI') worth Rs.32 crores. During the said period, A-1 was the Trustee and General Manager, A-2 was the Fund Manager and A-3 was the approved broker of CMF. A-3 got CANCIGO units of Rs.11 crores and Rs.22 crores purchased in the name of Andhra Bank and ABFSL, respectively. Although the consideration of Rs.33 crores was paid by A-3, the brokers stamp on the applications were affixed in order to induce CMF to pay brokerage to him, though he was not so appointed either by Andhra Bank or by ABFSL. Similarly, though A-3 did not procure business from Sahara India and IDBI, yet, he claimed and received the

brokerage in conspiracy with A-1 and A-2. The Special Court held A-1 and A-3 guilty and convicted and sentenced them of the offences charged. A-2 was acquitted of all the charges. Aggrieved, A-1 and A-3 filed the appeals.

It was contended for A-1 that the case against him was based on the statement of PW-5 and on the presumption that the endorsement on the letter dated 9.3.1992 of A-3 claiming brokerage (Ext. 17(i)), was in his handwriting. It was submitted that PW-5 was not a competent witness u/s 47 of the Evidence Act, 1872 to provide evidence regarding the handwriting of A-1. For A-3, it was contended that he was entitled to brokerage.

Disposing of the appeals, the Court

HELD: 1.1 PW.5, who claimed to be conversant with the hand-writing of A-1 because of some purported/ alleged correspondence, neither stated that he had seen A-1 writing the endorsement nor was he himself the recipient of any correspondence made by A-1. Therefore, it is clear that PW.5 had no prior knowledge of the handwriting of A-1 or the signatures of the author, and he was not a part of the chain of correspondence to speak of its authors and, as such, PW.5 was not a competent witness u/s 47 of the Evidence Act to provide evidence regarding the handwriting of A-1. Further, the prosecution did not produce the alleged material on the basis whereof PW.5 claimed familiarity with the handwriting of the author, and, as such, the Special Court was precluded from having any independent assessment. [para 33, 35, 36 and 40] [150-C; 151-B-C; 153-B-D]

Murari Lal v. State of Madhya Pradesh **1980 (2) SCR 249 = (1980) 1 SCC 704;** *Fakhruddin v. State of M.P.,* **AIR 1967 SC 1326; and** *Mobarik Ali Ahmed v. State of Bombay.,* **(1958) SCR 328 - referred to.**

1.2 Besides, there is a blatant contradiction and discrepancy in the evidence of PW-4, who stated that the endorsement [Ex.17(i)] was in the handwriting, AGM, and PW.5, who attributes the endorsement to A-1 and, therefore, it will not be desirable to rely on the evidence of PW-5. Apart from the statement of PW.5, there is no material to prove the involvement of A-1. On a close scrutiny of the entire material on record, this Court holds that the Special Court was not correct in taking the view that the prosecution has successfully established the charges against A-1 and wrongly held him guilty for the same. He is acquitted of all the charges. [para 42-43 and 45] [153-F-G, H; 154-A-C; 155-A]

2.1 The appellant in Crl. A. No. 1226 of 2001 (A-3) accepted that the amount of Rs.33 crores was subscribed by him to procure CANCIGO units in the name of Andhra Bank and ABFSL. The IO has stated in his evidence that A-3 was not concerned with the generation of funds in this case. Applications for allotment were made by Andhra Bank and ABFSL but no entry regarding the transactions were made in the books of Andhra Bank and ABFSL. Further, in September, 1992, after the scam became public, the interest warrants were returned by Andhra Bank and ABFSL disclaiming their investments. In view of the evidence, the finding of the Special Court that on 9.3.1992 A-3 dishonestly claimed brokerage from CMF by putting broker's stamp and by disguising his investment of Rs.33 crores on Ext.19 and Ext.15, does not call for any interference. [para 47 and 48] [155-C-D, E-F; 156-G-H; 157-B]

2.2 With regard to the rest of two transactions of Sahara India and IDBI, the evidence on record shows firstly, that on the applications of IDBI and Sahara India there is no broker's stamp, and A-3 had wrongfully and dishonestly claimed brokerage on 9.3.1992. The evidence of the employees of IDBI and Sahara India, namely, PW.2,

PW.6 and PW.7, shows that no broker was involved in the transactions involving purchase of CANCIGO units of Rs. 32 crores face value, nor was A-3 authorised by IDBI and Sahara India to collect brokerage from CMF between September, 1991 and March, 1992. [para 48, 49 and 51] [157-B-C, E-F; 158-D]

2.3 Therefore, it is clear that A-3 was not the broker with regard to four investments in question. The prosecution has proved that A-3 is guilty of making a false representation to CMF with full knowledge and it was so made to deceive CMF to part with an amount of Rs.32.50 lakhs. [para 50-51] [158-B, D-E]

3.1 This Court, in Devender Pal Singh, has held that acquittal of one accused does not raise doubt against conviction of another accused. Acquittal of the co-accused on the ground of non-corroboration has no application to the accused himself. [para 55] [159-D-E]

Devender Pal Singh v. State of NCT of Delhi and Anr. **2002 (2) SCR 767 = (2002) 5 SCC 234 - referred to.**

3.2 In the instant case, the prosecution proved that A-3 deceived CMF by making a false representation dated 9.3.1992 and dishonestly induced the official of CMF to deliver Rs.32.50 lakhs in his favour and he dishonestly received the amount and thereby committed offence u/s 420 IPC. Accused No.3 was originally charged for the offence of cheating, criminal breach of trust for receiving stolen property/falsification of accounts u/s 120-B, s. 420/ 409, IPC apart from s. 411 and s.477-A IPC. This Court, therefore, alters his conviction from that of u/s 409 to s.420 IPC and convicts him of offence u/s 420 IPC. He is sentenced to undergo rigorous imprisonment for three years. Further, as the prosecution successfully established the ingredients of dishonestly receiving stolen property from Canara Bank i.e. Rs.32.50 lakhs

against A-3, this Court upholds the order of his conviction and sentence passed by the Special Court u/s 411, IPC. However, in view of the acquittal of A-1 and A-2, the order of conviction of A-3 u/s 477-A is set aside. The judgment of the Special Judge is affirmed with modification. [para 58-59] [164-B-F]

Satyavir Singh Rathi v. State through CBI **2011 (6) SCR 138 = (2011) 6 SCC 1;** *Sunil Kumar Paul vs. State of West Bengal,* **1964 SCR 70 = AIR 1965 SC 706 - referred to.**

S. Mohan v. Central Bureau of Investigation **2008 (9) SCR 46 = (2008) 7 SCC 1; and** *Brathi alias Sukhdev Singh v. State of Punjab,* **1990 (2) Suppl. SCR 503 = (1991) 1 SCC 519 - cited.**

Case Law Reference:

2008 (9) SCR 46	**cited**	**para 21**
2002 (2) SCR 767	**cited**	**para 24**
1990 (2) Suppl. SCR 503	**referred to**	**para 24**
1980 (2) SCR 249	**referred to**	**para 34**
AIR 1967 SC 1326	**referred to**	**para 37**
(1958) SCR 328	**referred to**	**para 39**
2011 (6) SCR 138	**referred to**	**para 56**
1964 SCR 70	**referred to**	**para 57**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1001 of 2001.

From the Judgment and Order dated 06.09.2001 of the Special Court Constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 at Bombay in Special Case No. 8 of 1994.

WITH

Crl. A. No. 1226 of 2001.

Bansuri Swaraj, Subhranshu Padi, Praneet Ranjan for the Appellant.

Sidharth Luthra, ASG, Vaibhav Ghaggar, Devina Sehgal, Veera, Mohd. Faraz for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. These two appeals under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the 'Act, 1992') are preferred by accused Nos.1 and 3 against the judgment and order dated 6th September, 2001 passed by the Special Court in Special Case No. 8 of 1994 in [RC5(BSC)/93-Bom], convicting and sentencing them.

2. The case of the prosecution, briefly, is as follows:

In September, 1991, an investment of Rs.65 crores came to be made by four subscribers, who applied for purchase of CANCIGO units floated by (Canbank Mutual Fund (hereinafter referred to as 'CMF'), a fund created by Canara Bank. The Andhra Bank and Andhra Bank Financial Services Limited ('ABFSL' for short) made an investment of Rs. 33 crores. Two other transactions were made by the Sahara India and Industrial Development Bank of India ('IDBI' for short) worth Rs.32 crores.

3. During the said period, accused No.1-B.Raghuvir Acharya was the Trustee and General Manager, accused No.2-T.Ravi was the Fund Manager and accused No.3- Hiten P. Dalal was the approved broker of CMF.

4. Further case of the prosecution is that accused No.3 got Andhra Bank to subscribe for the CANCIGO units of Rs.11 crores and got ABFSL to subscribe for the CANCIGO units of Rs.22 crores. The above CANCIGO units worth Rs.33 crores were purchased in the name of Andhra Bank and ABFSL

though the consideration amount for purchase of such units was paid by accused No.3. Accused No.3 got the CANCIGO units purchased in the name of Andhra Bank and ABFSL so as to ensure that he could claim brokerage falsely from CMF. Further, the case of the prosecution is that although the consideration of Rs.33 crores was paid by accused No.3, the brokers stamp on the applications were affixed in order to induce CMF to pay brokerage to accused No.3. The said accused No.3 applied for brokerage as a broker in the said transaction of Rs.33 crores when, in fact, he was not so appointed either by Andhra Bank or by ABFSL. The investment of Rs.33 crores came from accused No.3 for which he was not entitled to claim brokerage as he had not acted as a broker for the said transactions. Similarly, in September, 1991, accused No.3 did not procure business from Sahara India and IDBI and, yet, he claimed and received the brokerage in conspiracy with accused No.1 and accused No.2. It was alleged that accused No.3 never acted as broker in any of the aforesaid transactions but claimed and received the brokerage in conspiracy with the rest two accused.

5. All the three accused were charged for the offences of criminal conspiracy, conspiracy to commit offences of cheating/ criminal breach of trust; receiving stolen property and falsification of accounts under Section 120-B, Section 420/409, Section 411, and Section 477-A of Indian Penal Code. Accused No.1 and accused No.2 being public servants were also charged for the offences of criminal misconduct under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. All together 12 charges were framed jointly and severally vide Ex.3.

6. The prosecution had led evidence of 12 witnesses apart from a number of Exhibits in order to prove their case.

7. Learned Judge, Special Court, by the impugned judgment and order dated 6th September, 2001 held the accused No.1 and accused No.3 guilty and convicted and sentenced them as under:

Name of the accused/appellant	Offences for which convicted	Sentenced awarded
Accused No.1 - B. Raghuvir Acharya	Convicted for offence of criminal breach of trust under Section 409 IPC	Rigorous imprisonment for three years and fine of Rs. 20,000/-, in default rigorous imprisonment for a further period of 6 months.
	Convicted for offence under Section 477-A IPC for falsification of accounts of CMF in respect of amount of Rs.32.50 lakhs paid to accused No.3.	Rigorous imprisonment for three years and find of Rs. 20,000/-, in default rigorous imprisonment for a further period of six months.
	Convicted for offence of criminal misconduct under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.	Rigorous imprisonment for three years and fine of Rs. 40,000/-, in default rigorous imprisonment for a further period of six months.
Accused No.3 - Hiten P. Dalal	Convicted for offence of criminal conspiracy under Section 409 IPC.	Rigorous imprisonment for three years and fine of Rs. 20,000/-, in default rigorous imprisonment for a further period of 6 months.
	Convicted for offence under Section 477-A IPC.	Rigorous imprisonment for three years and fine of Rs.

		20,000/-, in default rigorous imprisonment for a further period of 6 months.
	Convicted for offence of criminal breach of trust under Section 411 IPC and for being in possession of stolen property.	Rigorous imprisonment for a period of 3 years and fine of Rs. 50,000/-, in default rigorous imprisonment for a further period of six months.

8. During the trial the Special Court raised 30 points and determined most of them against accused No.1 - B. R. Acharya and accused No.3 - Hiten P. Dalal. The points raised against accused No.2 - T. Ravi, Fund Manager in CMF were answered in his favour and he was acquitted.

9. As against accused No.1, learned Special Court held that the prosecution proved beyond reasonable doubt that letter dated 9th March, 1992 of accused No.3 claiming brokerage was received by accused No.1; endorsement on the letter dated 9th March, 1992 is in the handwriting of accused No.1 and that by the said endorsement accused No.1 acting as the General Manager instructed accused No.2 to pay brokerage of Rs. 32.50 lakhs to accused No.3. There was criminal conspiracy between accused No.1 and accused No.3 to procure the brokerage which was not due and payable to accused No.3. Accused No.1 being the General Manager and Trustee of CMF dishonestly and fraudulently induced CMF to part with Rs.32.50 lakhs by authorizing payment of brokerage in favour of accused No.3 knowing fully well that accused No.3 had not acted as a broker in the above said transactions. Accused No.1 acted dishonestly and in breach of Exs.84 and 85 being minutes of the Board Meetings prescribing the mode of payment of brokerage, and thereby committed offence of criminal breach of trust under Section 409 of IPC. There was a criminal

conspiracy in the matter of disbursement of brokerage of Rs.32.50 lakhs between accused No.1 and accused No.3 and thereby committed offence under Section 120-B of IPC read with Sections 409, 411 and 477-A of IPC. Accused No.1 thereby committed the offence of criminal misconduct under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

10. Learned counsel for accused No.1 submitted that main allegation against accused No.1 is based on presumption that the endorsement on letter dated 9th March, 1992[Ext.17(i)] was in the handwriting of accused No.1. Such finding has been given solely on the basis of the statement of PW-5 - Rajesh Pitamberdas Mathija. Learned counsel pointed out that there exists inherent contradiction between the evidence of PW-4 and PW-5 and as PW-5 is not a competent witness under Section 47 of the Indian Evidence Act to provide evidence regarding the handwriting of accused No.1, no reliance can be made on the statement made by him. PW.5 was not familiar with the handwriting of accused No.1 in the course of his business as he was neither from the same department (CANCIGO), nor he worked under accused No.1. Moreover, PW.5 had neither seen accused No.1 writing the endorsement nor was PW.5 recipient of any correspondence himself.

11. As against accused No.3, apart from the allegation of conspiracy between accused No.1 and him, learned Special Court further held that the prosecution has proved beyond reasonable doubt that accused No.3 was not the broker in two transactions of Andhra Bank and ABFSL. It was also proved that accused No.3 did not act as a broker in the transactions of IDBI and Sahara India as well. In spite of this, accused No.3 made false representation by writing letter dated 9th March, 1992 under his own signatures claiming brokerage on the investments of Rs.65 crores knowing that he had not acted as a broker and he was not entitled to brokerage. Accused No.3 thereby induced CMF to part with payment of Rs.32.50 lakhs and thereby he committed an offence punishable under Section

411 of IPC apart from offence under Section 409 read with 120-B of IPC and 477-A of IPC.

12. Learned senior for accused No.3 contended that accused No.3 was entitled to brokerage under Rule 36 of the Scheme with respect to investment made by Andhra Bank and ABFSL. It was further contended that he was also entitled for brokerage for the investment made by IDBI and Sahara India as well. As per Rule 36 brokerage can be claimed for 'subscribing or procuring the investment in CANCIGO'. Accused No.3 subscribed and procured the investment of Rs.65 crores including Rs.33 crores invested for Andhra Bank and ABFSL.

13. He further submitted that none of the witnesses (PW.4, 5 & 11) positively stated that accused No.3 was not entitled to brokerage on the investment made by Andhra Bank and ABFSL. The Auditors have never raised any dispute as to payment of brokerage to accused No.3. The Trustees and the Board have neither discussed nor have they repudiated the payment of brokerage made to accused No.3. The Bank, which was allegedly put to wrongful loss never filed a complaint against accused No.3. The Board never addressed any letter to accused No.3 calling upon him to explain the payment of brokerage made to him. In fact, the unequivocal stand of PW.11 is that the CMF did not raise queries with regard to the payment of brokerage on Rs.65 crores to accused No.3 possibly because they may be aware accused No.3 had procured business of Rs.65 crores.

14. It was submitted that such methodology of investment in terms of other i.e. on behalf of accused No.3 is well known in law. The fact that Andhra Bank /ABFSL had invested the said amounts on behalf of accused No.3 and the same was in the nature of a constructive trust has been accepted by this Court in the case of *Canbank Financial Services v.The Custodian and Others,* (2004) 8 SCC 355. In the said case, this Court has held the said arrangement to be legal. In that view of the matter, the mere fact that Andhra Bank/ABFSL applied for

CANCIGO units on behalf of accused No.3 does not show any sort of deception. The CMF itself has found no illegality or deception in the application by Andhra Bank/ABFSL. It is clear from the fact that the CMF has not claimed refund of the brokerage claimed by accused No.3 on the investment made by Andhra Bank /ABFSL.

15. It was also contended that none of the witnesses of the CANCIGO (PW.4, 5 and 11) have come out with a positive assertion that accused No.3 made a fraudulent and/or dishonest representation to CANCIGO which was acted upon by the institution/CMF to its detriment which caused wrongful loss. There is no evidence as to who acted on the representation made by accused No.3.

16. It was further contended that the applications of Andhra Bank and ABFSL were duly stamped and Ex.19 clearly states that the applications were on behalf of accused No.3. The Investigating Officer (hereinafter referred to as 'IO') has admitted, in his corss-examination that in the absence of written rule, circular or written instruction, payment of brokerage in good faith and in due course would not amount to an offence. On the other hand it was also admitted by the IO in his cross-examination that it was not the case of the prosecution that any sort of deception was practiced on the trustees and payment was made by them. The IO, therefore, submitted that "there was no question of deception of the Trustees. They have, in fact, authorized accused No.1 and 2 to deal with the funds and pursuant to which Rs.32.50 Lakhs came to be paid".

17. In so far as IDBI and Sahara's investments are concerned, it is contended on behalf of accused No.3 that the accused No.3 was entitled to brokerage because of the tripartite arrangement between CMF, Citibank and accused No.3. The tripartite agreement entailed accused No.3 and the Citi Bank for procuring investment for CANCIGO. CMF would lend 80% of the amount of subscription to Citi Bank @ 15% for one year and accused No.3 would get brokerage on the

investment so procured. PW.11 admits that the scheme was in a financial crunch and it was only because of accused No.3 the money was infused in the financially starved scheme. The material on record also establishes that investment by IDBI and Sahara was at the instance of Citi Bank. The witnesses examined on behalf of IDBI and the Board note Ex.84 clearly show that the said investment was brought about as a result of the efforts on part of Citi Bank. The money so infused in CANCIGO scheme was for the advantage of Citi Bank as 80% of it was available to it at a nominal rate of interest for a year.

18. The witness PW.11 in his cross-examination had admitted that CMF as a matter of fact lent 80% of the amount to Citi Bank for one year at the rate of 15% per year even when rate of interest was fluctuating between 20% to 50%. The amount given to Citi Bank over one year was 80% of entire amount i.e 80% of Rs.65 crores which included Rs.33 crores by and on behalf of the appellant.

19. According to the learned counsel for accused No.3, the said accused cannot be held guilty of cheating under Section 420 IPC. The prosecution case is that the letter Ex.17 was placed before accused No.1, who in turn made his purported endorsement and thereby committed the offence of cheating in conspiracy with accused No.2 and accused No.3. It was submitted that it was not the case of the prosecution that accused No.1 or for that matter anyone else in the CANCIGO mutual fund was cheated by accused No.3 by virtue of representation through Ex.17.

20. It is further contended that the Institution, CMF, is a juristic entity, akin to a Company and it acts through its human agencies. Therefore, for fastening criminal liability onto a Company, the criminal intent of the human agencies of the Company is imperative. The logical consequence is that if a Company/Institution is a 'victim' of cheating then somebody acting for/on behalf of the institution must state how and/or in what manner the institution has been cheated/put to wrongful loss.

21. It was submitted that the transactions with regard to Andhra Bank /ABFSL were considered by a three Judge Bench of this Court in the case of *S. Mohan v. Central Bureau of Investigation,* (2008) 7 SCC 1 wherein it was held that:

> "18. It is not disputed that CANCIGO units worth Rs.33 crores were purchased by Andhra Bank or Andhra Bank Financial Services Limited by making use of the money owned by the appellant Hiten P.Dalal. These two financial institutions impliedly agreed to lend their name and allowed the appellant Hiten P. Dalal to purchase CANCIGO units in their name. It is also important to note that interest due on the CANCIGO units worth Rs.33 crores received from CBMF by Andhra Bank and Andhra Bank Financial Services Ltd. were credited to the account of the appellant Hiten P. Dalal. Therefore, it is clear for all practical purposes that the CANCIGO units worth Rs.33 crores were purchased by the appellant Hiten P. Dalal and he transferred these units to CANFINA and CBMF did not raise any objection in respect of transfer of the CANCIGO units by the appellant Hiten P. Dalal. If at all, it was for CBMF to raise any objection but they did not raise any objection to the transfer of the CANCIGO units.
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> 21. So long as CANFINA has no grievance or complaint against the appellant S. Mohan that he acted contrary to their directions and accepted the CANCIGO units and paid the money to the appellant Hiten P. Dalal, no offence is made out against the appellant S. Mohan either of criminal breach of trust or conspiracy. In fact, PW.1(Mr. Kini, Executive Vice-President) has admitted that CANFINA used to regularly deal in CANCIGO units, that neither the Adult nor RBI made any remarks regarding transactions

relating to CANCIGO units and all the transactions relating to CANCIGO units were in the ordinary course of business. Neither Canara Bank nor CANFINA had initiated any disciplinary proceedings against him. They have also not disputed the genuineness of the CANCIGO units which were got encashed by the appellant Hiten P. Dalal."

22. According to learned Senior Counsel for accused No.3, the prosecution has failed to produce any evidence documentary or testimonial to make out a case of cheating against accused No.3 with respect to the Institution/CMF. There is no material to convict accused No.3 under any of the charges.

23. Mr. Sidharth Luthra, learned Additional Solicitor General, appearing on behalf of CBI submitted that accused No.1 was aware of receipt of Rs.65 crores into the funds of CANCIGO as stated by PW.11 and the payment of brokerage showing the payment of Rs.32.50 lakhs to accused No.3 under application dated 9th March, 1992, (Ex.17) though accused No.3 was not entitled to receive brokerage. In fact, accused No.1 had personally forwarded the applications of Sahara India to PW.4, as stated by PW.4 and he was the only trustee who was personally looking into all affairs of the scheme and was aware of the source of funds, yet accused No.1 by his omissions led brokerage of Rs.32.50 lakhs be paid to accused No.3 by accused No.2. The handwriting of accused No.1 [Ex.17(i)] has been proved by PW.5.

24. It is further submitted that the parties accept about the fact that accused No.3 claimed and received brokerage of Rs.32.50 lakhs from CMF on account of CANCIGO scheme receiving an amount of Rs.65 crores as investment (Exts.61 and 62) and Section 313 Cr.P.C. statement of accused No.3 also indicates the same. The issue, however, is whether accused No.3 was entitled to the brokerage amount of Rs.32.50 lakhs and if not, then under what circumstances was the payment made to accused No.3 by accused No.1 and

accused No.2 on behalf of the bank. Referring to the impugned judgment passed by the learned Judge, Special Court, it was contended that the mere fact of acquittal of accused No.2 will have no effect, in view of the decision of this Court in *Devender Pal Singh v. State of NCT of Delhi and Anr.,* (2002) 5 SCC 234 and *Brathi alias Sukhdev Singh v. State of Punjab,* (1991) 1 SCC 519; that the evidence against accused No.2 can be relooked afresh by the Appellate Court and for seeing the role of accused No.1 and accused No.3 and the acquittal of accused No.2 would not prejudice the prosecution case.

25. It was further submitted that accused No.3 though never acted as broker in the IDBI and Sahara India, he claimed brokerage from CMF vide letter dated 9th March, 1992 in respect of Andhra Bank, ABFSL, IDBI and Sahara India.

26. The prosecution has proved beyond reasonable doubt that accused No.3 made false representation by writing letter dated 9th March, 1992, (Ex.17) under his own signatures. He claimed brokerage for transactions for which he did not act as a broker. In spite of knowing that he was not entitled to brokerage to the said transactions, he induced CMF to part with payment of Rs.32.50 lakhs.

27. According to the counsel for the CBI, accused No.3 did not produce any witness in his defence to prove that he was in fact the broker who brought about the purported tripartite agreement with Citi Bank. No official of Citi Bank was named, nor examined in this regard, by accused No.3.

28. Learned ASG on behalf of CBI submitted that assuming that this Court were to disagree with the Special Court and hold that evidence against accused No.1 is lacking, this Court can convict accused No.3 for the charge of conspiracy read with Section 409 IPC with unknown persons or with accused No.2 if so established from the available evidence. Alternatively, accused No.3 can be convicted under Section 420 IPC for which a substantive charge has been framed against accused No.1.

29. On hearing learned counsel for the parties, several facts appear to be admitted on record. These facts are:

The Andhra Bank and ABFSL invested Rs. 33 cores and purchased CANCIGO units floated by CMF. Accused No.3 accepted that the amount of Rs.33 crores was subscribed by him to procure CANCIGO units in the name of Andhra Bank and ABFSL. Accused No.3 was an approved broker for CMF. He claimed that he procured the investments of Rs.65 crores including Rs.33 crores of Andhra Bank and ABFSL and Rs.32 crores invested by IDBI and Sahara India.

30. Accused No.3 made a representation by writing letter dated 9th March, 1992 (Ex.17) under his own signatures claiming brokerage on investment of Rs.65 crores. On the basis of the said letter dated 9th March, 1992 (Ex.17) and an endorsement made thereon [Ex.17(i)] CMF had to part with payment of Rs.32.50 lakhs which was received by accused No.3.

31. Learned Judge, Special Court by the impugned judgment held that accused No.1 being the General Manager and Trustee of CMF having dominion over the funds of CMF made false endorsement on the letter dated 9th March, 1992 authorising payment of brokerage favouring accused No.3 by getting the Fund Manager signed on the worksheet (Ex.16) containing details regarding brokerage which was made to his knowledge. On the basis of such endorsement made on the letter dated 9th March, 1992 [Ex.17(i)] the Special Court held that accused No.1 acted dishonestly and committed breach of Ex.84 and Ex.85. Thus it was held that accused No.1 thereby committed offence of criminal breach of trust under Section 409 IPC. It was also held that accused No.1 and 3 were involved in criminal conspiracy regarding disbursement of brokerage of Rs.32.50 lakhs and thereby they committed offence under Section 120-B IPC read with Section 409, 411 and 477-A IPC and accused No.1 being a public servant committed the offence of criminal misconduct by dishonestly providing undue

pecuniary advantage to accused No.3 to which accused No.3 was not entitled and thereby committed an offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

32. The main allegation against accused No.1 is that he made endorsement on letter dated 9th March, 1992 [Ex.17(i)] in his hand-writing. The prosecution relied on the evidence of PW.5 to prove the said allegation.

33. PW.5-Rajesh Pitamberdas Bhathija claimed to be conversant with the hand-writing of accused No.1 because of some purported/alleged correspondence. The witness contradicted himself whereby in an answer to a previous question he asserted that there was no correspondence with accused No.1. The witness-PW.5 failed to specify as to with whom accused No.1 was in correspondence with. The said witness employs an all encompassing generic term "we had entered into correspondence" which raised doubt. Importantly, no such specific correspondence or material has been placed by the prosecution in support of its bald allegation.

34. In *Murari Lal v. State of Madhya Pradesh,* (1980) 1 SCC 704 this Court held that in scenarios where there is an absence of expert opinion, a second screening in the form of the court's assessment is essential to ascertain the authorship of document.

> "12….There may be cases where both sides call experts and two voices of science are heard. There may b e cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that *Shashi*

Kumar v. Subodh Kumar and Fakhruddin v. State of M.P. were cases where the Court itself compared the writings."

35. In the present case what the prosecution ought to have produced is the alleged material on the basis whereof PW.5 claimed familiarity with the handwriting of the author. In absence thereof, the Special Court was precluded from having any independent assessment.

36. Another question that arises is whether PW.5 was a competent witness under Section 47 of the Indian Evidence Act to provide evidence regarding the handwriting of accused No.1. Section 47 of the Indian Evidence Act reads:

"Section 47 - Opinion as to handwriting, when relevant.- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.-A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him."

37. This Court in *Fakhruddin v. State of M.P.,* AIR 1967 SC 1326 has held that the premise of the witness claiming familiarity with the handwriting of the author must be tested.

"11. Both under s.45 and s.47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must

satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premise of the expert in the one case and to appraise the value of opinion in the other case."

38. The prosecution's failure to produce material before the Special Judge on which PW.5 claimed familiarity with the handwriting of accused No.1 is fatal. It can safely be stated that the prosecution has failed to establish the premise of witness in order to allow the Special Court to appreciate the veracity of assertions made by PW.5.

39. In *Mobarik Ali Ahmed v. State of Bombay.,* (1958) SCR 328 at page 342 this Court held as follows:

"….It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in ss.45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject, matter of the chain of correspondence, to speak to its authorship. In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship."

40. The question for our consideration is whether there is any credibility in the evidence of PW.5. Admittedly, PW.5 was

not posted in CANCIGO. He came from CANGILT for the purpose of auditing in April, 1992 i.e after the payment of brokerage (paid on 10th March, 1992).Therefore, the question arises whether PW.5 was familiar with the handwriting of accused No.1 in the course of his business as he was neither from CANCIGO nor was working under accused No.1. PW.5 had neither stated that he had seen accused No.1 writing the endorsement nor he himself was the recipient of any correspondence made by accused No.1. Therefore, it is clear that PW.5 had no prior knowledge of the handwriting of accused No.1 or the signatures of the author, and he was not a part of the chain of correspondence to speak of its authors. It can be safely stated that PW.5 does not come within the ambit of Section 47 of the Indian Evidence Act to provide evidence regarding the handwriting of accused No.1.

41. The sole witness who could have claimed familiarity with the handwriting of accused No.1 was Suchaita Vaidhya since there was a purported endorsement on the same letter by her as deposed by PW.5. She was a member of the secretarial staff and was a link in the chain of correspondence in order to qualify under Section 47 of the Indian Evidence Act to depose as to the authorship of the endorsement. She was a crucial witness; however, for the reasons best known to prosecution they have chosen not to examine Suchaita Vaidya though she was cited as a witness.

42. PW.4- Rajesh Chandrakant Pawar, was transferred in June, 1991from CANGROWTH to CANCIGO. He was aware of the scheme and worked under accused No.2. In his deposition PW.4 stated that the endorsement [Ex.17(i)] was in the handwriting Mr. Anil Narichania, AGM. For the reason best known to the prosecution, they have not cited Mr. Anil Narichania as one of the witnesses. Though PW.4, in his examination-in-chief specifically stated that the endorsement [Ex.17(i)] was in the handwriting of Mr. Anil Narichania, he was not declared hostile. We find a blatant contradiction and discrepancy in the evidence of PW.5 who attributes the

endorsement to accused No.1 and, therefore, it will not be desirable to rely on his evidence.

43. Apart from the statement of PW.5, there is no material to prove the involvement of accused No.1. As noted above, PW.5's evidence is beset with many unsatisfactory features which renders it clearly unreliable and in any case inadequate to establish the charges levelled against accused No.1. On a close scrutiny of the entire material on record, we have no hesitation to hold that the learned Special Court was not correct in taking the view that the prosecution has successfully established the charges against accused No.1 and wrongly held him guilty for the same.

44. The evidence on record shows that in September, 1991 CMF received, broadly, four applications for purchase CANCIGO units from Andhra Bank, ABFSL, IDBI and Sahara India to the tune of Rs.65 crores. At that time accused No.1 was the General Manager. He was also the Trustee and author of Ex.84. He also took the decision as one of the Trustees in the meeting of the Board on Ist November, 1990 to pay brokerage. The evidence also shows that the applications were routed to PW.4 through the General Manager. PW.4 in his evidence deposed that the applications of Sahara India were routed through the General Manager but there is nothing on the record to show that letter dated 9th March, 1992 (Ex.17) was received by accused No.1. The finding of the Special Judge that the letter dated 9th March, 1992 was received by accused No.1 is not based on evidence, therefore, such finding cannot be upheld. In any case mere receiving of a letter cannot be a ground to hold that the endorsement at Ex.17(i) was made by accused No.1.

45. Considering the aforesaid, we feel it expedient to record that the Special Court fell into a manifest error in coming to a conclusion with regard to accused No.1, as reflected in the judgment under appeal, which cannot be sustained. The appeal (Criminal Appeal No.1001 of 2001), therefore, succeeds and

is allowed and the appellant - B.R. Acharya is acquitted of all the charges, his bail bonds shall stand discharged.

46. It is the case of prosecution that for various acts done by accused No.3, he used accused No.1, the Trustee and General Manager of CMF to commit criminal breach of trust in respect of funds of CMF. In this context, it was submitted that under the general charge of criminal conspiracy, all those acts also constitute cheating and criminal breach of trust.

47. The evidence of PW.11 shows that accused No.3 was the broker for CMF. He was also a member of the Stock Exchange. He had an account in Andhra Bank. In the case of Andhra Bank and ABFSL, Rs.33, crores invested by them in CMF belonged to accused No.3. This is also evidenced by the two cheques (Ex.29 and Ex.30). It was the accused No.3 who induced Andhra Bank and ABFSL to apply for allotment of CANCIGO units as apparent from the applications (Ex.19 and Ex.15) which had been signed by the two officers-Dhankumar and Kalyanaraman, who were accused in some other matter. This position is not even disputed by accused No.3. The reason is not known as to why accused No.3 got Andhra Bank and ABFSL to apply. The IO has rightly pointed out in his evidence, repeatedly, that accused No.3 was not concerned with the generation of funds in this case. Applications for allotment were made by Andhra Bank and ABFSL but no entry regarding the transactions were made in the books of Andhra Bank and ABFSL. Therefore, it is clear that accused No.3, to whom Rs.33 crores belongs got Andhra Bank and ABFSL to apply for the units but kept the said matter hidden by not recording the same. In September, 1991, accused No.3 affixed the brokers stamp on the applications (Ex.19 and Ex.15). Knowing fully well that the investors were not Andhra Bank and ABFSL, he had got officers of Andhra Bank and ABFSL to sign the application forms. Both these officers are accused in other cases. By affixing the rubber stamp of the broker, accused No.3 falsely represented to CMF that he had brought subscriptions from Andhra Bank and ABFSL as a broker and, accordingly, claimed

brokerage. Even before September, 1991, he wrote a letter (Ex.18) to Andhra Bank to the effect that units worth Rs.11 crores would be given to Andhra Bank and ABFSL. They were offered as security for ready forward transaction with ABFSL as evident from the statement of PW.11. From the evidence of PW.11 it is clear that the entire record of CMF shows that pursuant to the applications (Ex.19 and Ex.15) made by Andhra Bank and ABFSL, accounts were opened in the names of Andhra Bank and ABFSL as subscribers. The names of Andhra Bank and ABFSL found place in the Investment Register [Ex.38(i) and Ex.39(i)] and also Investors Fund Ledger [Ex.A3(35)(2) and Ex.A3(37)(1)]. Thereby CMF had recognized only Andhra Bank and ABFSL as their investors and the units could be redeemed only by Andhra Bank and ABFSL. The brokers stamp was affixed on them by accused No.3 only with a view to claim brokerage. Although he was aware that the total amount of Rs.33 crores was invested by him. Even the half yearly interest which was paid on the investments of Rs.33 crores on 8th January, 1992 by CMF was only in the names of the subscribers- Andhra Bank and ABFSL. The evidence further shows that after receiving the income distribution cheques, Andhra Bank and ABFSL transferred the amount to the account of accused No.3 pursuant to his letter (Ex.12). This was on 9th January, 1992 and, yet, accused No.3 made an application vide Ex.17 claiming brokerage from CMF as a broker and not as an investor. Accused No.3 never objected to allotment of units in favour of Andhra Bank and ABFSL. In his statement under Section 313 of the Criminal Procedure Code stated that he was aware of CMF simultaneously deploying 80% of Rs.65 crores at 15% per annum in Citi Bank. Yet, accused No.3 concealed the true nature of the transactions of Rs.33 crores in the names of Andhra Bank and ABFSL though it was known to him on 9th March, 1992 that the half yearly interest came to him not from CMF but from Andhra Bank and ABFSL. In view of the aforesaid evidence if learned Judge, Special Court held that on 9th March, 1992 accused No.3 dishonestly claimed brokerage from CMF by putting brokers stamp and by

disguising his investment of Rs.33 crores on Ex.19 and Ex.15, no interference is called for against such finding.

48. In September, 1992, after the scam became public, the interest warrants were returned by Andhra Bank and ABFSL disclaiming their investments. With regard to the rest of two transactions of Sahara India and IDBI, the evidence on record shows firstly, that on applications of IDBI and Sahara India there is no brokers stamp. Despite there being no brokers stamp on these applications accused No.3 had wrongfully and dishonestly claimed brokerage on 9th March, 1992.

49. It was the case of accused No.3 that there was prior agreement between him, CMF and Citi Bank under which Citi Bank got the units purchased in the names of Sahara India and IDBI. What is relevant is allotment of units in favour of Andhra Bank, ABFSL, Sahara India or IDBI. It is to be noticed that the ownership of the units is with Andhra Bank, ABFSL, Sahara India or IDBI. It is evident from CANCIGO Certificates that at the expiry of one year, Sahara India and IDBI got CANCIGO units encashed and they have received the entire money in their accounts on the basis that they were the owners of the units. The evidence of PW.2, PW.6 and PW.7 on behalf of IDBI and Sahara India, shows that no broker was involved in the transactions involving purchase of CANCIGO units of Rs.32 crores face value. The case of the prosecution is very simple that out of four applications for allotment of units, two contained rubber stamp and rest of two applications of Sahara India and IDBI did not bear rubber stamp. The case of the prosecution is that brokerage was dishonestly claimed by accused No.3 with full knowledge that he has not acted as a broker.

50. In cross-examination, the defence examined PW.11 extensively in support of their case that brokerage was payable to accused No.3 even if there was no brokers stamp affixed on the applications in cases where the officer paying the brokerage is satisfied that the business was procured by the broker. It was contended on behalf of accused No.3 that

brokerage was payable even on self investments. However, PW.11 in his cross-examination has deposed that even in cases where the brokers stamp does not find place on the applications for allotment of units, the broker was required to forward the applications for allotment under his covering letter to CMF. In this case, the defence has not produced any such covering letter in support of their case. Similarly, they have not produced any correspondence with CMF claiming brokerage on that basis. Therefore, it is clear that accused No.3 was not the broker with regard to four investments in question.

51. PW.2, PW.6 and PW.7, employees of IDBI and Sahara India were extensively cross-examined by the defence and, yet, no case was made by the defence from any of the three witnesses regarding any correspondence between accused No.3 and IDBI and Sahara India authorizing him to collect brokerage from CMF between September, 1991 and March, 1992. Therefore, the prosecution has proved that accused No.3 is guilty of making a false representation to CMF with full knowledge and it was so made to deceive CMF to part with an amount of Rs.32.50 lakhs.

52. On 9th March, 1992 accused No.3 knew that Andhra Bank and ABFSL were not the actual investors. He also knew that brokerage was payable only if the business was procured for CMF as he was aware of the decision of Board. He was the approved broker of CMF and had bought the units in the names of Andhra Bank and ABFSL, which is admitted. He knew that that as the subscriber of units, he was not entitled to brokerage yet, he claimed brokerage as a broker vide Ex.17. Therefore, it is clear that both the transactions of Andhra Bank and ABFSL got disguised. Their true nature was suppressed. Though no brokerage was payable on such transactions, Ex.17 was written by accused No.3 with dishonest intention. Without Ex.17, accused No.3 could not have succeeded in obtaining from CMF an amount of Rs.32.50 lakhs.

53. Now the question arises as to what will be the effect of acquittal of co-accused Nos.1 and 2 on the case of accused No.3. According to the appellant if co-accused No.1 is acquitted and in view of acquittal of co-accused No.2 no charge under Sections 409, 411 and 477-A substantiate against accused No.3 and he cannot be punished with the aid of Section 120-B IPC.

54. Per contra, according to the learned counsel for the CBI, even if this Court disagrees with the Special Court and holds that the that evidence against accused No.1 is lacking, this Court can convict accused No.3 for the charges of conspiracy read with Section 409 IPC with unknown person or accused No.2 if so established from the available evidence. Alternatively, accused No.3 can be convicted under Section 420 IPC for which a substantive charge had been framed against him.

55. This Court in *Devender Pal Singh* (supra), held that acquittal of one accused does not raise doubt against conviction of another accused person. A plea that acquittal of the co-accused has rendered the prosecution version brittle has no substance. Acquittal of co-accused on the ground of non-corroboration has no application to the accused himself.

56. The question arises whether accused No.3 can be convicted for the alternative charge under Section 420 of the IPC for which a substantive charge had been framed against him. In this connection we may refer to decision of this Court in *Satyavir Singh Rathi v. State through CBI,* (2011) 6 SCC 1, wherein this Court held:

> "68. We find the situation herein to be quite different. We must notice that the charges had indeed been framed in the alternative and for cognate offences having similar ingredients as to the main allegation of murder. Section 386 Cr.P.C. refers to the power of the appellate court and the provision insofar relevant for our purpose is sub-clause (b)(ii) which empowers the appellate court to alter the

> finding while maintaining the sentence. It is significant that Section 120-B IPC is an offence and positive evidence on this score has to be produced for a successful prosecution whereas Section 34 does not constitute an offence and is only a rule of evidence and inferences on the evidence can be drawn, as held by this Court in *Lachhman Singh v. State,* AIR 1952 SC 167. We are, therefore, of the opinion that the question of deemed acquittal insuch a case where the substantive charge remains the same and a charge under Sections 302/120-B and an alternative charge under Sections 302/34 IPC had been framed, there was nothing remiss in the High Court in modifying the conviction to one under Sections 302/307/34 IPC. It is also self-evident that the accused were aware of all the circumstances against them. We must, therefore, reject Mr. Sharan's argument with regard to the deemed acquittal in the circumstances of the case."

57. In *Sunil Kumar Paul vs. State of West Bengal,* AIR 1965 SC 706, the accused was charged for the offence under Section 409 IPC. In the said case the Court held that the accused could have also been charged for the offence under Section 420 IPC and held:

> "(15). It is urged for the appellant that the provisions of s. 236 Cr.P.C. would apply only to those cases where there be no doubt about the facts which can be proved and a doubt arises as to which of the several offences had been committed on the proved facts. Sections 236 and 237 read:
>
> "236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

x x x x x x

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence."

The framing of a charge under s. 236 is, in the nature of things, earlier than the stage when it can be said what facts have been proved, a stage which is reached when the court delivers its judgment. The power of the Court to frame various charges contemplated by s. 236 Cr.P.C. therefore arises when it cannot be said with any definiteness, either by the prosecutor or by the Court, that such and such facts would be proved. The Court has at the time of framing the charges, therefore to consider what different offences could be made out on the basis of the allegations made by the prosecution in the complaint or in the charge submitted by the investigating agency or by the allegations made by the

various prosecution witnesses examined prior to the framing of the charge. All such possible offences could be charged in view of the provisions of s. 236 Cr.P.C. as it can be reasonably said that it was doubtful as to which of the offences the facts which could be ultimately proved would constitute. The facts which must have been alleged prior to the stage of the framing of the charge in the present case must have been what had been stated in the charge-sheet submitted by the Investigating Officer, 24-Parganas, which is printed at p. 3 of the appeal record. This charge-sheet narrates in the column meant for the name of offences and circumstances connected with it :

"that on the 6th October 1956 Sunil Kumar Paul, a Public servant in the employment of the office the Sub-Divisional Health Officer, Barrackpore i.e., (clerk) dishonestly drew Rs. 1,763-6-0 excluding Postal Life Insurance deduction of Rs. 5-10-0 from the State Bank of India, Barrackpore Branch by submitting a false duplicate Estt. Pay Bill under head 39 for the month of September 1956 for the office of the said S.D.H.O., Barrackpore. The money drawn was not credited to the office of the Sub-Divisional Health Officer, Barrackpore."

It is practically on these facts that the conviction of the appellant for an offence under s. 420 I.P.C. has been founded. It follows that the Special Court could therefore have framed a charge under s. 420 I.P.C. at the relevant time if it had been of the opinion that it was doubtful whether these facts constitute an offence under s. 409 I.P.C. as stated in the charge-sheet or an offence under s. 420 I.P.C.

(16). When a charge under s. 420 I.P.C. could have been framed by the trial Court by virtue of s. 236 Cr.P.C. that Court or the appellate Court can, in law, convict the appellant of this offence instead of an offence under s. 409 I.P.C. if it be of the view that the offence of cheating had

been established. This would be in accordance with the provisions of s. 237 Cr.P.C.

(17) It is then urged for the appellant that under the proviso to s. 4 of the Act, the Special Court can try any other offence only when the accused is specifically charge with that offence. The language of the proviso does not lead to such a conclusion. It provides for the trial of the accused for any other offence provided the accused could be charged with that offence at the same trial under the provisions of the Code of Criminal Procedure. The proviso does not say that the charge must be framed, though of course, if the trial Court itself tries the accused for a certain offence, it will ordinarily frame a charge. The proviso empowers a Court to try the accused for that offence and has nothing to do with the power of the trial court or of the appellate Court to record a conviction for any other offence when an accused is being tried with respect to an offence mentioned in the Schedule. The Court's power to take recourse to the provisions which empower it to record a conviction for an offence not actuality charged, depends on other provisions of the Code and the Act.

(24) The ingredients of two offences must be different from one another and it is therefore not necessary to consider whether the ingredients of the two offences are in any way related. The Court has to see, for the purpose of the proviso, whether the accused could be charged with any offence other than the one referred to in the allotment order, in view of the provisions of the Code. There is nothing in the proviso which could lead to the construction that any limitations other than those laid down by the provisions of the Code of Criminal Procedure were to affect the nature of the offence which could be tried by the Special Court.

(25.) We are therefore of opinion that the Special Court could try the appellant for the offence under s. 420 I.P.C.

and that therefore the High Court was right in altering his conviction from that under s. 409 to s. 420 I.P.C."

58. In this case the prosecution proved that the accused No.3 deceived CMF by making a false representation dated 9th March, 1992 and dishonestly induced the official of CMF to deliver Rs.32.50 lakhs in his favour and he dishonestly received the amount and thereby committed offence under Section 420 IPC. Accused No.3 was originally charged for the offence of cheating, criminal breach of trust for receiving stolen property/falsification of accounts under Section 120-B, Section 420/409 of the IPC apart from Section 411 and Section 477-A of the IPC. We, therefore, alter his conviction from that of under Section 409 to Section 420 of the IPC and convict him for the offence under Section 420 of the IPC and sentence him to undergo rigorous imprisonment for three years.

59. Further, as the prosecution successfully established the ingredients of theft for receiving stolen property from Canara Bank i.e. Rs.32.50 lakhs against accused No.3, we uphold the order of his conviction and sentenced passed by the Special Court under Section 411 of the IPC.

However, in view of the acquittal of accused Nos.1 and 2, the order of conviction of accused No.3 under Section 477-A is set aside. The judgment dated 6th September, 2001 passed by the learned Special Judge is affirmed with modification as mentioned above. The appeal (Criminal Appeal No.1226 of 2001) filed by the appellant-Hiten P. Dalal is dismissed. The bail bonds of the appellant - Hiten P. Dalal, if he is on bail, shall stand cancelled and he is directed to be taken into custody to serve out the remainder of the sentence.

R.P. Appeals disposed of.

NISHANT AGGARWAL
v.
KAILASH KUMAR SHARMA
(Criminal Appeal No. 808 of 2013)

JULY 1, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

NEGOTIABLE INSTRUMENTS ACT, 1881:

ss.138 and 141 - Dishonour of cheque - Territorial jurisdiction - In view of the law laid down in Bhaskaran's case, the Magistrate in whose jurisdiction the drawee resides and, as such, has filed the complaint, has territorial jurisdiction to try the complaint - s.178 of the Code has widened the scope of jurisdiction of a criminal court and s.179 of the Code has stretched it to still a wider horizon - Code of Criminal Procedure, 1973 - ss. 177, 178 and 179 - Jurisdiction.

The respondent/complainant, a resident of and carrying on business in District Bhiwani, Haryana, presented a cheque in his bank at Bhiwani which was further presented to the drawer's Bank at Guwahati. The cheque was returned uncashed to the respondent's bank at Bhiwani with the endorsement "payment stopped by drawer". The respondent sent a legal notice u/s 138 of the Negotiable Instruments Act, 1881 (N.I. Act) to the appellant (the drawer of the cheque) from Bhiwani, and later filed a complaint u/ss 138 and 141 of the N.I. Act before the Judicial Magistrate at Bhiwani. The Judicial Magistrate, by his order dated 5.3.2011, returned the complaint to the respondent for presentation before the proper court having jurisdiction. However, the Additional District Judge, Bhiwani, in the revision petition set aside the order of the Judicial Magistrate. The High Court dismissed the petition of the appellant.

In the instant appeal, the question for consideration before the Court was: whether the court, where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable u/s 138 of the N.I. Act or would it be only the court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?

Dismissing the appeal, the Court

HELD: 1.1 This Court in K. Bhaskaran's case*, while considering the territorial jurisdiction, has concluded that the amplitude of territorial jurisdiction pertaining to a complaint under the N.I. Act is very wide and expansive. This Court, keeping in view the relevant provisions of the Code of Criminal Procedure, 1973, particularly, ss. 177, 178 and 179, laid down that s.138 has five components, namely, i)drawing of the cheque; ii) presentation of the cheque to the bank; iii) returning the cheque unpaid by the drawee bank; iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and v) failure of the drawer to make payment within 15 days of the receipt of the notice; and concluded that the complainant could choose any one of the five places to file a complaint. The Court clarified the place in the context of territorial jurisdiction as per the fifth component, namely, "failure of the drawer to make payment within 15 days of the receipt." The place of failure to pay the amount has been clearly qualified by this Court as the place where the drawer resides or the place where the payee resides. The Court has held that s.178 of the Code has widened the scope of jurisdiction of a criminal court and s.179 of the Code has stretched it to still a wider horizon. The judgment in Ishar Alloy does not affect the ratio in K. Bhaskaran which provides jurisdiction at the place of residence of the payer and the payee. [para 8-9 and 13] [172-C-G; 173-G-H; 174-A, B; 178-D-E]

K. Bhaskaran vs. Sankaran Vaidhyan Balan and Another* **1999 (3) Suppl. SCR 271 = (1999) 7 SCC 510 - relied on.

Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd., **2001 (2) SCR 36 = (2001) 3 SCC 609;** *Mrs. Preetha S. Babu vs. Voltas Limited and Another* **2010 (3) Maharashtra Law Journal 234; and** *Harman Electronics Private Limited and Another vs. National Panasonic India Private Limited* **2008 (17) SCR 487 = (2009) 1 SCC 720 - referred to.**

1.2 In view of the law laid down by this Court in K.Bhaskaran, this Court is of the view that the Magistrate at Bhiwani has territorial jurisdiction to try the complaint filed by the respondent, as he is undisputedly a resident of Bhiwani. [para 9] [174-A-B]

Case Law Reference:

1999 (3) Suppl. SCR 271	**relied on**	**para 6**
2001 (2) SCR 36	**referred to**	**para 10**
2010 (3) Maharashtra Law Journal 234	**referred to**	**para 11**
2008 (17) SCR 487	**referred to**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 808 of 2013.

From the Judgment and Order dated 31.10.2011 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. M-32542 of 2011 (O&M).

Huzefa Ahmadi, Raka B. Phookan, Neha Tandon Phookan, Shailesh Madiyal, Rohan Sharma for the Appellant.

Mahabir Singh, Rakesh Dahiya, Gagandeep Sharma, Preeti Singh, Nikhil Jain for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. The question which has to be decided in this appeal is whether the Court, where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short "the N.I.Act") or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?

3. This appeal is directed against the final judgment and order dated 31.10.2011 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. M-32542 of 2011 whereby the High Court dismissed the petition filed by the appellant herein on the ground that it is not a fit case for invoking Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

4. **Brief facts:**

a) The appellant herein is the Director of M/s Byrni Steel Private Limited and his father Mr. B.L. Aggarwal is the Managing Director of M/s Mechfeb Engineering Industries Private Limited situated at Meghalaya and Guwahati. The respondent was associated with both the abovementioned firms as he used to bring business from various private firms and Government Departments on commission basis.

b) During the course of business, the appellant herein issued a post-dated cheque bearing No. 925504 dated 01.08.2009 drawn on Standard Chartered Bank, Guwahati, for Rs. 28,62,700/- in favour of the complainant-respondent herein in order to discharge his legal enforceable liabilities. Vide letter dated 21.01.2006, the appellant informed the Branch Manager, Standard Chartered Bank, Guwahati, as well as the officer in-charge, Dispur Police Station, Guwahati regarding missing of the said cheque. Thereafter, on 28.03.2008, the appellant wrote a letter to the Standard Chartered Bank for stop payment of the said cheque as the same was missing.

c) According to the respondent, on 13.08.2009, when he presented the same for collection through its bankers, viz., Canara Bank, Bhiwani, Haryana, it was returned unpaid on 11.09.2009 due to stop payment by the appellant. When the respondent approached the appellant about dishonour of the same, he was told to present the same again for collection after one month. On 15.10.2009, the respondent again presented the cheque for collection but the same was again returned unpaid on 14.12.2009.

d) On 11.01.2010, the respondent sent a legal notice to the appellant asking him to pay Rs. 28,62,700/- within a period of 15 days from the date of the receipt of the notice along with the interest, failing which, he shall be liable to be prosecuted under Section 138(b) of the N.I. Act.

e) On 05.02.2010, the appellant herein filed a complaint petition being C.R. No. 340 of 2010 in the Court of Addl. Chief Judicial Magistrate, Kamrup at Guwahati under Sections 379, 381,411 and 420 of the Indian Penal Code, 1860 (in short "the IPC") against the respondent. On 05.03.2010, the respondent filed a complaint being C.R. No. 9 of 2010 before the Court of J.M.I.C., Bhiwani under Section 190 of the Code for taking cognizance of the offence committed by the appellant under Sections 138 and 141 of the N.I. Act.

f) The Additional Chief Judicial Magistrate, Kamrup, by order dated 15.06.2010, in C.R. No. 340 of 2010, issued bailable warrants against the respondent. Thereafter, on 06.08.2010, the respondent filed an application for recall of the bailable warrants issued against him. Ultimately, learned Judicial Magistrate, Bhiwani, vide order dated 05.03.2011, accepted the application with the observation that the Court at Bhiwani has no jurisdiction and the complaint was returned for presentation before the proper Court having jurisdiction.

g) Dissatisfied with the order dated 05.03.2011, the respondent filed Criminal Revision Petition being No. 35 of 2011 before the Court of Additional Sessions Judge IV,

Bihwani. By order dated 12.05.2011, the Additional Sessions Judge set aside the order of the Judicial Magistrate, Bhiwani and allowed the revision.

h) Aggrieved by the said order, the appellant herein filed Crl. Misc. No. M-32542 of 2011 before the High Court. The High Court, by impugned order dated 31.10.2011, dismissed the petition.

i) Against the said order, the appellant has preferred this appeal by way of special leave before this Court.

5. Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellant-accused and Mr. Mahabir Singh, learned senior counsel for the respondent-the complainant.

6. It is the claim of the appellant that the present case is not covered by the judgment of this Court in *K. Bhaskaran vs. Sankaran Vaidhyan Balan and Another,* (1999) 7 SCC 510. On the other hand, it is the specific claim of the respondent that insofar as territorial jurisdiction of the case on hand, namely, complaint filed under Section 138 of the N.I. Act is concerned, the decision of this Court in *K. Bhasaran* (supra) squarely applies, accordingly, the Court at Bhiwani is competent to try and dispose of the complaint filed by him. It is also pointed out that the said issue was rightly considered and accepted by the Additional Sessions Judge, Bhiwani as well as by the High Court.

7. We have already narrated the case of both the parties in the pleadings portion. In order to answer the only question, it is relevant to note that the undisputed facts in the context of territorial jurisdiction of the learned Magistrate at Bhiwani are that the drawee of the cheque i.e., the respondent/complainant is a resident of Bhiwani. The native village of the respondent, namely, village Barsana is situated in District Bhiwani. The respondent owns ancestral agricultural land at village Barsana, District Bhiwani. It is also asserted that the respondent is running his bank account with Canara Bank, Bhiwani and is

also residing at the present address for the last about two decades. In view of the same, it is the claim of the respondent that he bonafidely presented the cheque in his bank at Bhiwani which was further presented to the drawer's Bank at Guwahati. The cheque was returned uncashed to the respondent's bank at Bhiwani with the endorsement "payment stopped by drawer". The respondent received the bounced cheque back from his bank at Bhiwani. Thereafter, the respondent sent a legal notice under Section 138 of the N.I. Act to the appellant from Bhiwani. In turn, the appellant sent a reply to the said notice which the respondent received at Bhiwani. In view of non-payment of the cheque amount, the respondent filed a complaint under Sections 138 and 141 of the N.I. Act before the learned Magistrate at Bhiwani.

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

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

> the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.

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

(i) drawing of the cheque;

(ii) presentation of the cheque to the bank;

(iii) returning the cheque unpaid by the drawee bank;

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

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

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

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid

by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

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

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

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas."

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

9. Para 11 of *K. Bhaskaran* (supra), as quoted above, clarified the place in the context of territorial jurisdiction as per the fifth component, namely, "failure of the drawer to make payment within 15 days of the receipt." As rightly pointed out by learned senior counsel for the respondent, the place of failure to pay the amount has been clearly qualified by this Court as the place where the drawer resides or the place where the

payee resides. In view of the same and in the light of the law laid down by this Court in *K. Bhaskaran* (supra), we are of the view that the learned Magistrate at Bhiwani has territorial jurisdiction to try the complaint filed by the respondent as the respondent is undisputedly a resident of Bhiwani. Further, in *K. Bhaskaran* (supra), while considering the territorial jurisdiction at great length, this Court has concluded that the amplitude of territorial jurisdiction pertaining to a complaint under the N.I. Act is very wide and expansive and we are in entire agreement with the same.

10. Mr. Ahmadi, learned senior counsel for the appellant in support of his claim that the Court at Bhiwani has no jurisdiction heavily relied on the decision of this Court in *Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd.,* (2001) 3 SCC 609. We were taken through the entire judgment. Though the case is also related to N.I. Act, the issue of territorial jurisdiction was not the subject-matter thereof. In Ishar Alloy Steels (supra), a three-Judge Bench of this Court defined the term "the bank" appearing in clause (a) of Section 138 of the N.I. Act as the drawer's bank. It was defined in the context of the statutory period of six months as mentioned in clause (a), hence, this Court held that the date of presentation of the cheque for calculating the statutory time period of six months will be the date of presentation of the cheque to the drawer's bank i.e. payee bank and not the drawee's bank i.e. collecting bank. This Court has correctly applied the principle of strict interpretation appreciating that Section 138 of the N.I. Act creates an offence as the drawer of the cheque cannot be expected or saddled with the liability to hold the cheque amount in his account beyond six months. The reading of the entire decision in *Isher Alloy Steel* (supra) shows that jurisdiction of the Court to take cognizance arises only where cheque is presented to the bank of drawer either by drawee's bank or the drawee/payee personally within six months. In other words, the analysis of the said decision, the ratio of *Isher Alloy Steel* (supra) deals with such a situation where the cheque has been presented within

six months to the drawer's bank by the payee in any manner. Inasmuch as the interpretation relates to filing of complaint within the statutory time period of six months, we are of the view that the reliance on the law laid down in *Isher Alloy Steel* (supra) has no relevance as far as the present case is concerned. In fact, that is the reason that in *Isher Alloy Steel* (supra), the judgment in *K. Bhaskaran* (supra) was not discussed since territorial jurisdiction was not the issue in that case. In view of the same, the definition of the term "the bank" envisaged in *Isher Alloy Steel* (supra) cannot be employed to decide the jurisdictional aspect and dilute the ratio of the judgment in *K. Bhaskaran* (supra). Hence, we are of the view that on the strength of the judgment in *Isher Alloy Steel* (supra) defining the term "the bank", it cannot be said that jurisdiction to file a complaint under Section 138 of the N.I. Act does not lie at the place of drawee's bank. To put it clearly, the judgment in *Isher Alloy Steel* (supra) does not affect the ratio of the judgment in *K. Bhaskaran* (supra) which provides for jurisdiction at the place of residence of the payer and the payee. In such circumstances, we are of the view that the judgment in *Isher Alloy Steel* (supra) as well as judgments of various High Courts relied on by the appellant cannot be read against the respondent to hold that the Magistrate at Bhiwani does not have the jurisdiction to try the complaint.

11. Though several decisions of various High Courts were cited before us, we deem it appropriate to refer only one Division Bench decision of the Bombay High Court rendered in Criminal Writ Petition No. 3158 of 2009, *Mrs. Preetha S. Babu vs. Voltas Limited and Another,* reported in 2010 (3) Maharashtra Law Journal 234. The Division Bench, after analyzing the factual position of both sides, correctly applied the ratio laid down in *K. Bhaskaran* (supra) finding that the Mumbai Court has jurisdiction to entertain the complaint, dismissed the said writ petition.

12. Mr. Ahmadi, learned senior counsel for the appellant has also relied on a decision of this Court in *Harman*

Electronics Private Limited and Another vs. National Panasonic India Private Limited, (2009) 1 SCC 720. In *Harman Electronics* (supra), the complainant and the accused entered into a business transaction. The accused was a resident of Chandigarh. He carried on the business in Chandigarh and issued a cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within 15 days from the date of the communication of the said letter, the complainant filed a complaint at Delhi. In the complaint, it was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi, the demand notice was issued from Delhi, the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within the statutory period of 15 days from the date of receipt of notice. It is further seen that the cognizance of the offence was taken by the learned Magistrate at Delhi. The accused questioned the jurisdiction of the Magistrate at Delhi before the Addl. Sessions Judge, New Delhi. The Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as, admitedly, the notice was sent by the complainant to the accused from Delhi and the complainant was having its Registered Office at Delhi and was carrying on business at Delhi. The learned Judge has also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused. Thereafter, the accused approached this Court. This Court considered Section 138 of the N.I. Act and also referred to *K. Bhaskaran's* case (supra) and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This

Court reiterated that the five different acts which are the components of offence under Section 138 of the N.I. Act were done in five different localities, any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the N.I. Act and the complainant would be at liberty to file a complaint at any of those places. Ultimately, this Court held that the Chandigarh Court had jurisdiction to entertain the complaint because the parties were carrying on business at Chandigarh, Branch Office of the complainant was also in Chandigarh, the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. This Court pointed out that the complaint did not show that the cheque was presented at Delhi, because it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. It is not in dispute that the dishonour of the cheque also took place at Chandigarh and, therefore, the only question which arose before this Court for consideration was whether the sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the N.I. Act. In such circumstances, we are of the view that *Harman Electronics* (supra) is only an authority on the question where a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down in *K. Bhaskaran* (supra). This Court has accepted that the place where the cheque was presented and dishonoured has jurisdiction to try the complaint. In this way, this Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. In other words, the court clarified only on the service in such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days, thereafter, the commission of an offence completes. We are of the view that this Court in *Harman Electronics* (supra) affirmed what it had said in *K. Bhaskaran* (supra) that court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make

payment within 15 days of the receipt of notice can have jurisdiction to try the offence under Section 138 of the N.I. Act. It is also relevant to point out that while holding that the Chandigarh Court has jurisdiction, this Court in *Harman Electronics* (supra) observed that in the case before it, the complaint was silent as to whether the said cheque was presented at Delhi. In the case on hand, it is categorically stated that the cheque was presented at Bhiwani whereas in *Harman Electronics* (supra) the dishonour had taken place at Chandigarh and this fact was taken into account while holding that Chandigarh court has jurisdiction. In the complaint in question, it is specifically stated that the dishonour took place at Bhiwani. We are also satisfied that nothing said in *Harman Electronics* (supra) had adverse impact on the complainant's case in the present case.

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

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

R.P. Appeal dismissed.

BIRENDRA DAS & ANR.
v.
STATE OF ASSAM
(Criminal Appeal No. 1130 of 2010)

JULY 1, 2013

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

PENAL CODE, 1860:

s.302 read with s.34 - Murder - Common intention - Conviction by courts below - Held: Appellants were not on lookers -- Their intention is clearly reflectible from their presence with weapons at the place of occurrence till the commission of the crime and thereafter dragging the dead body to the courtyard of one of the accused-appellant -- Thus, it cannot be said that s.34 of IPC is not attracted - In the circumstances establishing of any motive is inconsequential - Criminal law - Motive.

Out of the nine accused named in the FIR, three were declared absconders, three being juveniles, were referred to juvenile court and the remaining three were prosecuted for committing the murder of the father of PW-1. The case of the prosecution was that all the nine accused hacked the deceased with deadly weapons causing his death. Thereafter they dragged his body to the courtyard of accused-appellant no. 1 and severed his limbs. When PW-2 tried to intervene, he was also attacked which resulted into injury on the finger of his left hand. The trial court convicted the two appellants u/s 302/34 IPC and sentenced them to rigorous imprisonment for life. The High Court affirmed their conviction and sentence.

In the instant appeal it was contended for the appellants that s.34 IPC was not attracted as no overt act

was attributed to the appellants nor was there anything on record to show that they shared any common intention; and that the record did not show any motive for the alleged crime.

Dismissing the appeal, the Court

HELD: 1.1 Undisputedly, the death of the deceased was homicidal in nature as proved by the medical evidence. PW-1, the son of the deceased, has categorically stated about his father getting the blows and falling down. He has mentioned the names of the appellants to be present there. It has come out in his testimony that when he tried to go near his father, they tried to attack him and out of fear he ran away and informed his paternal uncle (PW-2). In the cross-examination, he has stood embedded in his version and the suggestion that he had not seen the occurrence has been strongly denied. His testimony is corroborated by PW 5 and the injured eye-witness PW-2. The injury of PW-2 was proved by PW-4, the doctor who had medically examined him. Similar is the evidence of other prosecution witnesses. Considering these aspects along with the factum that the dead body was seized from the courtyard of accused-appellant no. 1, it cannot be said that the eye-witnesses who have been cited as such are really not eye-witnesses and they have been planted. [para 8-13] [186-A, B, F-H; 187-A-B, C, E-F]

1.2 Though PW-1, son of the deceased, has stated that the appellants were present at the scene of occurrence, but that is not the only evidence against them. It is also seen in the evidence of others that the appellants were armed with weapons and dragged the dead body of the deceased to the courtyard of accused-appellant no. 1. Both the accused-appellants were charged for the substantive offence u/s 302 IPC in aid of s.34. The conditions precedent which are requisite to be

satisfied to attract s.34 IPC are that the act must have been done by more than one person and the said persons must have shared a common intention either by omission or commission in effectuating the crime. A separate act by each of the accused is not necessary. In the case at hand, the appellants were not onlookers. Their intention is clearly reflectible from their presence with weapons at the place of occurrence till the commission of the crime and thereafter dragging the dead body to the courtyard of accused-appellant no. 1. Thus, it cannot be said s.34 of IPC is not attracted. [para 17] [187-G-H; 188-A, B-D; 189-G; 190-A]

Mohan Singh v. State of Punja **1962 Suppl. SCR 848 = AIR 1963 SC 174;** *Lallan Rai and Others v. State of Bihar* **2002 (4) Suppl. SCR 188 = 2003 (1) SCC 268;** *Goudappa and Others v. State of Karnataka* **(2013) 3 SCC 675 - relied on.**

Barendra Kumar Ghosh v. King Emperor **AIR 1925 PC 1- relied on.**

2. On acceptation of the direct evidence on record on proper scrutiny and analysis, proof of existence of motive or strength of motive does not affect the prosecution case. That apart, it is always to be borne in mind that different motives may come into operation in the minds of different persons and it would be well nigh impossible for the prosecution to prove the motive behind every criminal act. Therefore, when the appellants armed with lethal weapons were present during the occurrence and participated in dragging the deceased to the courtyard of accused-appellant no. 1, establishing of any motive is absolutely inconsequential. [para 21] [191-C-E]

Balram Singh and Another v. State of Punjab **AIR 2003 SC 2213;** *Atley v. State of U.P.* **AIR 1955 SC 807; and** *State of Uttar Pradesh v. Kishanpal and Others* **2008 (11) SCR 1048 = 2008 (16) SCC 73 - relied on**

Case Law Reference:

1962 Suppl. SCR 848	**relied on**	**para 14**
2002 (4) Suppl. SCR 188	**relied on**	**para 15**
AIR 1925 PC 1	**relied on**	**para 15**
(2013) 3 SCC 675	**relied on**	**para 16**
AIR 2003 SC 2213	**relied on**	**para 18**
AIR 1955 SC 807	**relied on**	**para 19**
2008 (11) SCR 1048	**relied on**	**para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1130 of 2010.

From the Judgment and Order dated 30.08.2007 of the High Court of Gauhati at Assam in Criminal Appeal No. 106 of 2005.

Kiran Bhardwaj (A.C.) for the Appellants.

Vartika S. Walia (for Corporate Law Group) for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The present appeal is directed against the judgment of conviction and order of sentence dated 30.8.2007 passed in Criminal Appeal No. 106 of 2005 by the Gauhati High Court affirming the verdict of conviction of the learned Sessions Judge, Karimganj in Sessions Case No. 135 of 2004 whereby the learned trial Judge had convicted the appellants under Section 302 in aid of Section 34 of the Indian Penal Code (for short "IPC") along with another and sentenced

each of them to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each, in default to pay the fine, to suffer further imprisonment for one year.

2. The case related to the murder of a forty year old man by the name of Matilal Das in the morning of 29.9.2003 by hacking him at various parts of the body in a brutal manner with deadly weapons and the injuries sustained by him were quite serious in nature. On the date of occurrence, about 8.30 a.m., deceased Matilal Das was proceeding towards his home from his shop and at that time, the accused persons, namely, Rajan Das, Sadhan Das, Madan Das, Birendra Das, Jara Das, Bapan Das, Lakshmi Rani alias Latashi Rani and Smt. Jyotsna Das, all being armed with deadly weapons like bhojali, dao, etc. accosted him in front of the house of Birendra and immediately Rajan Das dealt a blow on the head of Matilal from behind by bhojali. After the assault, the deceased raised alarm and fell down on the road. Thereafter, all the accused persons hacked him as a result of which he sustained number of injuries and breathed his last on the spot. Hearing the scream of Matilal, Nripendra Das and Sanjan Das came to the spot and, at that juncture, Sadhan Das tried to attack Sanjan Das, but he managed to flee away from the spot. However, he inflicted a dao blow on Nripendra Das which caused an injury on the finger of his left hand. Thereafter, accused Birendra and others dragged the dead body of Matilal to Birendra's courtyard and there they continued to hack the body resulting in severing of certain limbs. Sanjan Das, son of the deceased Matilal, lodged an FIR with the Officer-in-Charge of Kaliganj Watch Post which was entered vide G.D. Entry No. 424 dated 29.9.2003 about 10.00 a.m. It was forwarded to the Officer-in-Charge, Karimganj Police Station to register a case and, accordingly, case No. 314/2003 was registered for the offences punishable under Sections 147, 148, 149, 341, 324, 307 and 302 IPC. After the criminal law was set in motion, the Investigating Officer conducted the inquest of the dead body of the deceased Matilal and sent it for post mortem, seized the bhojali which was about

15 inch in length and a dao of 2 feet in length, both stained with blood, in the presence of the witnesses vide Exts. 4 and 6. The injured Nripendra Das was sent to Karimganj Hospital for examination of injuries and treatment. After recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure (Cr.PC), a charge-sheet was placed against the accused persons and the said charge-sheet showed Sadhan Das, Jara Das and Jyotsna Rani as absconders. The learned Chief Judicial Magistrate, Karimganj committed the case to the Court of Session except that of accused Rajan Das, Madan Das and Bapan Das who were found to be juvenile on the basis of medical report and, accordingly, were sent to the juvenile court at Silcher. After committal, the learned Sessions Judge, considering the matter in entirety, framed charges against Birendra Das, Latasil Das and Jara Das under Section 302 read with 34 IPC.

3. The accused persons pleaded innocence and false implication and claimed to be tried.

4. At the trial, the Prosecution, in order to bring home the charge, examined 11 witnesses, namely, Sanjan Das, PW-1, son of the deceased Matilal, Nripendra Das, PW-2, a relation of the deceased, Dr. Rabindra Nath Das, PW-3, who conducted the autopsy on the dead body of the deceased, Dr. Pradip Dey, PW-4, who examined PW-2, Namita Rani Das, PW-5, sister of the deceased, Samiran Das, PW-6, neighbour of the deceased, Gita Das, PW-7, a co-villager, Bibhash Bardhan, PW-8, a formal witness, Rinku Rani, PW-9 and Haren Ghosh, PW-10, who had seen part of the incident, and Prabhat Saikia, PW-11, the Investigating Officer. Apart from adducing oral evidence, the prosecution placed reliance on a large number of documents. The accused persons chose not to adduce any evidence.

5. On consideration of the evidence on record, the learned Sessions Judge found that the accused-appellants therein were guilty and imposed the sentence. On appeal being preferred

by two of the convicts, the High Court gave the stamp of approval to the conviction and the sentence as has been stated hereinbefore.

6. In support of the appeal, Ms. Kiran Bhardwaj, learned counsel for the appellant, has submitted that the High Court has faulted in accepting the evidence of the principal witnesses cited by the prosecution as eye-witnesses though they arrived at the spot after some length of time. It is urged by her that the appellate court has been swayed away by the emotion because of the brutality involved in the murder and hence, the approach as requisite under the criminal law has been flawed and the result is unwarranted affirmation of conviction. It is her further submission that Section 34 IPC is in no way attracted inasmuch as no overt act has been attributed to the present appellants and there is nothing on record to show that they had shared any common intention. It is argued by her that though the prosecution has alleged commission of such a ghastly crime by the accused persons, yet remotely no motive has been indicated or even endeavoured to be traced and that shows that there has been spinning of allegations on some kind of suspicion or conjectures.

7. Ms. Vartika S. Walia, learned counsel appearing for the State, in oppugnation, has contended that description of murder as brutal cannot be construed to be a pre-determined judicial mind because the learned trial Judge as well as the High Court has analysed the evidence in a microscopic manner and found that the accused-appellants are guilty of the offence. The learned counsel would contend that carrying of weapons to the place of occurrence and the other activities which have been brought in the evidence against the appellants have clearly established the factum of common intention as envisaged under Section 34 of the Penal Code. The specious stand that no motive has been established by the prosecution is absolutely irrelevant and deserves rejection as there is ample direct evidence to show the commission of the crime by the accused-appellants.

8. Before we proceed to deal with the contentions canvassed at the Bar, it is imperative to state that there is no dispute that the death of the deceased Matilal Das was homicidal in nature. The doctor, who conducted the post mortem on the dead body of Matilal Das, had found the following injuries: -

"(1) Right foot completely severed from the leg.

(2) Right index finger is completely separated from the hand. Other fingers are partially separated.

(3) Fracture right wrist joint. Lacerated injury over the right wrist joint about 4" x 3" bone deep.

(4) Fracture of the right femur.

(5) A sharp cut injury over the forehead extending whole circumference of the head about 1" x ½" x ½" just above the ear.

(6) Sharp cut injury over the left thigh upper part about 3" x 1.5" x 1"."

9. The said witness has opined that the death was due to shock and haemorrhage resulting from the injuries sustained by the deceased and all the injuries were ante mortem in nature.

10. Keeping in view the injuries sustained by the deceased, it is to be seen how the prosecution has established the complicity of the accused-appellants in the crime. PW-1, the son of the deceased, has categorically stated about his father getting the blow and falling down. He has mentioned the names of the appellants herein to be present there. It has come out in his testimony that when he tried to go near his father, they tried to attack him and out of fear he ran away and informed his paternal uncle Nripendra, PW-2. It is in his evidence that the dead body of his father was brought to the courtyard of Birendra. In the cross-examination, he has stood embedded in

his version and the suggestion that he had not seen the occurrence has been strongly denied.

11. PW-2 has deposed that he saw Sadhan, Madan and Rajan assaulting the deceased and when he tried to intercept, he was assaulted and sustained an injury on his finger. His injury on the finger has been corroborated by Dr. Pradip Dey, PW-4. He has also deposed that the deceased was bleeding profusely and was dragged inside the courtyard of Birendra.

12. PW-5, Namita Rani Das, has testified that Sadhan, Madan, Rajan and Bapan were hacking the deceased Matilal and Birendra, Latani, Jyotsna and Jara were dragging the dead body to the side of the fence. It has come out in her evidence that the appellants were armed with deadly weapons. In the cross-examination, certain suggestions have been given as regards the existence of animosity between her husband and Matilal Das on one side and Birendra on the other over some Panchayat road. Though the said aspect has been accepted by her, yet the same cannot be treated as a ground to discredit her testimony which has remained absolutely unshaken. Similar is the evidence of other prosecution witnesses.

13. Considering these aspects along with the factum that the dead body was seized from the courtyard of Birendra, it is difficult to accept the submission urged by the learned counsel for the appellants that the eye-witnesses who have been cited as such are really not eye-witnesses and they have been planted and, accordingly, we reject the same.

14. The next limb of argument is that there has been no allegation of any overt act against the present appellants and their mere presence would not establish their complicity. Learned counsel for the appellant has invited our attention to the evidence of PW-1, son of the deceased, who has stated that the present appellants were present at the scene of occurrence. But that is not the only evidence against them. It is also seen in the evidence of others which we have already dealt

with hereinabove that the appellants were armed with weapons and dragged the dead body of the deceased to the courtyard of Birendra. From the aforesaid, the question arises whether the common intention can be derived or not. What is really proponed by Ms. Bhardwaj is that the appellants had not inflicted any blow on the deceased. The aforesaid contention, needless to say, is totally without any substratum. Both the accused persons were charged for the substantive offence under Section 302 IPC in aid of Section 34 of the Penal Code. The conditions precedent which are requisite to be satisfied to attract Section 34 of the Penal Code are that the act must have been done by more than one person and the said persons must have shared a common intention either by omission or commission in effectuating the crime. A separate act by each of the accused is not necessary. The Constitution Bench in *Mohan Singh v. State of Punjab*[1], while adverting to the concept of Section 34 IPC, has ruled thus: -

> "Like Section 149, Section 34 also deals with cases of constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons sharing the same common intention is one of the features of Section 34."

1. AIR 1963 SC 174.

15. In *Lallan Rai and Others v. State of Bihar*[2], relying upon the dictum laid down in *Barendra Kumar Ghosh v. King Emperor*[3] and *Mohan Singh* (supra), it has been ruled that the essence of Section 34 is simultaneous consensus of the mind of persons participating in the criminal action to achieve a particular result.

16. Recently, in *Goudappa and Others v. State of Karnataka*[4], the Court reiterated the principle stating that Section 34 of the Penal Code lays down a principle of joint liability in doing a criminal act and the essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a criminal act in furtherance of such intention. It has been further stated therein that the principle inherent in Section 34 of the Penal Code is only a rule of evidence, but does not create a substantive offence and, therefore, if the act is the result of a common intention, then every person would get the criminal act shared, and the common intention would make him liable for the offence committed irrespective of the role which he had in its perpetration. Posing the question how to gather the common intention, the Court opined that the conduct of the accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by the accused and the nature of the injury caused by one or some of them are relevant. Emphasis has also been laid on the totality of the circumstances from which the common intention can be gathered.

17. In the case at hand, as has been indicated earlier, the appellants were not onlookers as the submission seems to be. Their intention is clearly reflectible from their presence with weapons at the place of occurrence till the commission of the crime and thereafter dragging the dead body to the courtyard

2. (2003) 1 SCC 268.

3. AIR 1925 PC 1.

4. (20130 3 SCC 675

of Birendra. Thus, in our considered opinion, the submission that Section 34 of IPC is not attracted is extremely specious and does not deserve acceptance.

18. The last ground of attack on the sustainability of the conviction is that the prosecution has not been able to prove any motive. The learned counsel would submit that when the animosity between some of the witnesses and the deceased has been admitted, there can be a ground for false implication. We have already analysed the evidence brought on record and there is nothing to discard the same. In *Balram Singh and Another v. State of Punjab*[5], it has been clearly stated that if the incident in question as projected by the prosecution is to be accepted, then the presence or absence of a motive or strength of the said motive by itself would not make the prosecution case weak.

19. In this context, we may sit in a time machine and refer to few lines from *Atley v. State of U.P.*[6] wherein it has been expressed thus: -

> "This is true, and where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion."

20. In *State of Uttar Pradesh v. Kishanpal and Others*[7], while dealing with the presence of motive, a two-Judge Bench had to say thus: -

> "39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened

5. AIR 2003 SC 2213.

6. AIR 1955 SC 807.

7. (2008) 16 SCC 73.

even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

21. Thus, acceptation of the direct evidence on record on proper scrutiny and analysis of proof of existence of motive or strength of motive does not affect the prosecution case. That apart, it is always to be borne in mind that different motives may come into operation in the minds of different persons, for human nature has the potentiality to hide many things and that is the realistic diversity of human nature and it would be well nigh impossible for the prosecution to prove the motive behind every criminal act. Therefore, when the appellants armed with lethal weapons were present and witnessed the occurrence and participated in dragging the deceased to the courtyard of Birendra, establishment of any motive is absolutely inconsequential.

22. Consequently, the appeal, being devoid of merit, stands dismissed.

R.P. Appeal dismissed.

RAJENDRA NAGAR ADARSH GRAH NIRMAN SAHKARI SAMITI LTD.

v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 4824 of 2013)

JULY 01, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

LAND ACQUISITION ACT, 1894:

ss. 4 and 6 - Acquisition of land by State Government for setting up of Railway complex - 'Public purpose' - Held: Under ss. 4 and 6, it is the "appropriate Government" which is to be satisfied about the 'public purpose' for which the land is to be acquired and which is vested with the responsibilities contemplated u/ss. 4 and 6 - 'Public purpose' may be relatable to (i) Union/ Central Government, or (ii) State Government or (iii) a "general public purpose", which is neither exclusively relatable to Central Government nor fully relatable to State Government, but furthers a common public purpose relatable both to a Union and a State cause.

ss. 3(ee), 4, and 6 - "Appropriate Government" - Held: If the purpose of acquisition is exclusively for the Union, then Union/Central Government will have exclusive jurisdiction to acquire the land - If the purpose of acquisition is exclusively for a State, or for "a general public purpose", then the State Government concerned will have the exclusive jurisdiction to acquire the land - In the instant case, though the land was acquired for Railway complex, but additionally the purpose of acquisition would benefit the State generally, as better transportation facilities would meet the expectations of public and private entities having a nexus with the State and, as such, the purpose for acquisition can certainly be described as "a general public purpose" - Therefore, the State

Government had jurisdiction to acquire the land because it duly satisfied the requirement of the term 'appropriate Government' referred to in ss. 4 and 6 - While acquiring the land of appellants, State Government has proceeded in due course of law - As such, appellants cannot be stated to have been deprived of their lands/property, without the authority of law and there has been no violation of appellants' right under Art. 300A of the Constitution - Constitution of India, 1950 - Art. 300A.

The Railways requested the State Government of Rajasthan, to provide land "free of cost" for setting up North-Western Railway Zone Complex at Jaipur. It was emphasized by the Union Minister for Railways, that the setting up of the new Railway Zone at Jaipur, would improve train services to and within the State of Rajasthan, and thereby, meet the expectations of public and private entities, of the area. Ultimately, the Secretary, Transport Department, Government of Rajasthan issued a notification u/s. 4 of the Land Acquisition Act, 1894 indicating the State Government's desire to acquire 15.50 hectares of land situated in the revenue estate of two villages of district Jaipur. The said notification u/s. 4, was published on 6.9.1997. The State Government on 13.1.1999 notified its declaration u/s. 6 of the Acquisition Act, which was published in the State Government gazette dated 21.1.1999. On 21.3.2001, the Land Acquisition Officer passed an award, determining the compensation payable to land owners. The instant appeals arose out of the proceedings challenging the acquisition by the State Government.

The sum and substance of the contentions raised on behalf of the appellants was that since the land was acquired for setting up a new Railway Zone, the "appropriate Government", as defined in s.3(ee) of the Land Acquisition Act, 1894 was only the Central Government which could have issued the s. 4 notification

dated 19.8.1997, as also the s. 6 declaration dated 13.1.1999, but the said notification and declaration were issued by the Government of Rajasthan; that the "appropriate Government" as contemplated u/ss. 16, 17(1), 17(2), 31(3), 40 and 49 could only have been the Central Government; and that the nomination of the 'Collector' for all purposes relating to the acquisition and to carry out the functions contemplated u/ss ss. 5, 5-A, 7, 11, 12, 13, 13-A and 14 etc., could only have been ordered by the Central Government and not by the State Government and, therefore, the nomination of the Collector made by the State Government was clearly beyond the jurisdiction of the State Government; and, as such, the acquisition proceedings were vitiated.

Dismissing the appeal, the Court

HELD: 1.1 It is the "appropriate Government" alone, which is vested with the responsibilities contemplated u/ ss. 4 and 6 of the Land Acquisition Act, 1894, and which is to be satisfied about the 'public purpose' for which the land is to be acquired. Accordingly, it is only the "appropriate Government" which can issue the required notification expressing the intention to acquire land, and thereafter, the postulated declaration, after examining the objections of the persons interested. [Para 19] [217-A-C]

1.2 'Public purpose', as has been held by this Court in Ali Gulshan's* case, may be relatable to the Central Government, alternatively, it may be relatable to the State Government. Besides, there is also a third alternative, namely, a situation wherein the purpose is "a general public purpose", which is neither exclusively relatable to the Central Government nor fully relatable to the State Government. The third alternative would be a situation, wherein the cause in question furthers a common public purpose and is relatable both to a Union and a State cause. [Para 23] [227-G-H; 228-A-B]

State of Bombay v. Ali Gulshan* **1955 SCR 867 = AIR 1955 SC 810 -relied on.

Balak & Ors. v. State of Uttar Pradesh & Anr. **AIR 1962 Allahabad 208;** *Ramdas Thanu Dessai & Ors. v. State of Goa & Ors.,* **2009 (1) Mh.L.J. 241;** *M/s Tinsukia Development Corporation Ltd. v. State of Assam & Anr.* **AIR 1961 Assam 133;** *Sudhansu Sekhar Maity & Ors. vs. State of West Bengal & Ors.,* **AIR 1972 Calcutta 320- referred to.**

1.3 Statutory provisions enacted in terms of Lists I, II and III of the 7th Schedule to the Constitution of India, regulate, not only the substance of the legislation, but also modulate the procedure to administer the substance of the legislation. By the Constitution (Seventh Amendment) Act, 1956 (with effect from 1.11.1956), the legislative competence on the subject of acquisition was jointly vested in Parliament, as well as, the State Legislature through entry 42 (in list III of the Seventh Schedule). Prior to the amendment, through Entry 33 of list I, the subject of acquisition of property "... for the purposes of the Union..." was vested in the legislative domain of Parliament and as per Entry 36 in List II, "...except for the purposes of the Union...", State Legislature had the exclusive jurisdiction to enact law for acquisition of private lands. The said jurisdiction was, after the amendment concurrently, shared with Parliament. The said jurisdiction was invoked by Parliament when it enacted the Land Acquisition Act, 1894. It is not possible to read into entry 42 of list III of the Seventh Schedule, the cumulative effect of erstwhile Entries 31 and 36 (of Lists I and II, respectively, of the Seventh Schedule). Consequent upon the Constitution (Seventh Amendment) Act, 1956, the jurisdictional limitations on the subject of acquisition would emerge from a valid legislation made under entry 42 (in list III of the Seventh Schedule). The validity of the Acquisition Act has not been assailed by the appellants. [Para 32 and 37] [249-B-C; 251-G-H; 252-A-B, D-F, G-H]

1.4 Art. 73 of the Constitution vests in the Central Government executive power, the jurisdiction whereof is exactly the same as jurisdiction vested in Parliament to make laws. The executive power of the Union, therefore, extends over the subjects on which Parliament has the power to legislate. Therefore, on a subject regulated by legislation, executive power has to be exercised in consonance with the enacted legislation. The subject matter under consideration is regulated by the Acquisition Act, which demarcates the jurisdictional areas between the Union and the States. Sections 4 and 6 lay down mandatory procedural provisions, which require to be followed in letter and spirit, in matters pertaining to acquisition of private lands. [Para 33-35] [249-C-D, F-G; 250-C, F-G]

1.5 In terms of ss. 3(ee) of the Acquisition Act, the authority to acquire land has been divided between the Central executive and the State executive. In situations where an acquisition is entirely "for the purposes of the Union", s. 3(ee) clearly postulates, that the Union executive would have the exclusive jurisdiction to acquire the land. The terminology engaged in s. 3(ee), for expressing the area of jurisdiction of the State executive (in the matter of acquisition of land), is not analogous or comparable with that engaged while spelling out the jurisdiction of the Union executive. Noticeably, the words engaged to express the jurisdiction of the State executive, are extremely wide, so as to accommodate all acquisitions which are not entirely "for purposes of the Union". This intention of the legislature has been recorded by using the words "...in relation to acquisition of land for any other purposes..." (i.e., other than "... for the purpose of the Union..."). [Para 39] [254-A-E]

1.6 An acquisition may not be exclusively for purposes relatable to the Union, or entirely for purposes relatable to a State. The complex and multifarious public activities which the executive has to cater to may not fall in the exclusive domain of either the Union or the State. Causes with duality of purpose, would also fall in the realm of the third purpose ,i.e., "...a general public purpose ...". Whenever the exclusive Union or State barrier is transgressed, the purpose could be described as "...a general public purpose...". In case of the first contemplated purpose, the Union executive would have the absolute and unencumbered jurisdiction, as per the definition of the expression "appropriate Government" in s. 3(ee) of the Acquisition Act. For the remaining two purposes, the State executive would have jurisdiction. The executive domain of all acquisitions other than those for purposes of the Union, fall in the realm of the State Government concerned. Under s. 3(ee) of the Acquisition Act, for all the residuary acquisitions, i.e. situations other than exclusively "...for the purpose of the Union...", have been vested in the realm of the State Government concerned. This is exactly the same position which was contemplated by the erstwhile entries 33 and 36 (from Lists I and II respectively, of the Seventh Schedule). Thus, the cause and effect of entries 33 of List I and 36 of List II have been juxtaposed into the definition of "appropriate Government" u/s 3(ee) of the Acquisition Act. Therefore, if the purpose of acquisition is exclusively for the Union, then the Union/Central Government will have the exclusive jurisdiction to acquire the land. If the purpose of acquisition is exclusively for a State, then the State Government concerned will have the exclusive jurisdiction to acquire the land. And if the purpose of acquisition is, "a general public purpose" (i.e., a purpose which is neither exclusively relatable to the Central Government and/or fully relatable to the State Government), yet again, the concerned State Government

will have the exclusive jurisdiction to acquire the land. [Para 40-42] [254-F-G; 255-A-B; 255-G-H; 256-A-B, C-E, F-G]

1.7 In the instant case, the desire for transfer of land belonging to the State Government, and thereafter, the desire to furnish land consequent upon its acquisition "free of cost" to the Railways, leaves no room for any doubt, that the Railways desired the State of Rajasthan to contribute land, for the proposed project. In the letter dated 30.12.1996 addressed by the Union Minister of Railways the fact that the setting up of the North-Western Railways Zone Complex would improve train services in Rajasthan, which in turn, would benefit the State of Rajasthan, was particularly highlighted. From the material on record, it is evident that setting up the North-Western Railway Zonal Complex at Jaipur, would lead to better administration for the Railways, and in that sense it would serve the purpose of the Union. Additionally, it would improve train services in Rajasthan and would accordingly meet the expectations of public and private entities of the area. This would serve the purpose of the State. Therefore, the situation in hand can be described as one wherein the public purpose is "... a general public purpose..." which is neither exclusively relatable to the Central Government nor fully relatable to the State Government; and, therefore, the State executive would definitely have the jurisdiction to acquire the subject land. This court affirms that the State Government had the jurisdiction to acquire the subject land, because it duly satisfied the requirement of the term 'appropriate Government' referred to in ss. 4 and 6 of the Acquisition Act. [Para 44-46] [258-F-H; 259-D-E, F-H; 260-A; 261-C; 262-C-D]

State of Bombay v. Ali Gulshan **1955 SCR 867 = AIR 1955 SC 810 - relied on.**

1.8 No procedural lapse has been pointed out depicting any irregularity at the hands of the appropriate authority, either in terms of taking possession of the acquired land, or in terms of determination of the compensation payable. This Court further affirms that while acquiring the land of the appellants, the Government of Rajasthan, has proceeded in due course of law. As such, the appellants cannot be stated to have been deprived of their lands/property, without the authority of law. Therefore, it can not be said that the acquisition of the appellants' land has violated the appellants' right under Art. 300A of the Constitution. [Para 48] [263-A-E-G]

State of U.P. & Ors. vs. Manohar, **2004 (6) Suppl. SCR 911 = (2005) 2 SCC 126;** *Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chennai & Ors.* **2005 (3) Suppl. SCR 388 = (2005) 7 SCC 627** *Lachhman Dass vs. Jagat Ram & Ors.* **2007 (2) SCR 980 = (2007) 10 SCC 448; and** *Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd. etc. etc.* **2008 (9) SCR 165 = (2008) 13 SCC 30 - referred to.**

2.1 The acquisition in the instant case was made by the Government of Rajasthan, and therefore, there was no justification for the consultation of the Department of Land Resources of the Government of India. Thus, reliance on the provisions of the Government of India (Allocation of Business) Rules, 1961 and/or the Government of India (Transaction of Business) Rules, 1961 in order to assail the acquisition made in the facts and circumstances of the case by the Government of Rajasthan, is wholly misconceived. [Para 53] [270-B-D]

MRF Limited etc. vs. Manohar Parrikar & Ors. **2010 (5) SCR 1081 = (2010) 11 SCC 374 - held inapplicable.**

2. It is apparent that the land which was left out, and

which falls between the two blocks of land acquired, cannot be stated to have been owned by influential bureaucrats or police officers, at the time when the acquisition in question was made. In this view of the matter, it can not be said that the leaving out the land between the two blocks of acquired land, and further that, the choice of acquisition of the appellants' land to the exclusion of the land left out of acquisition, was vitiated for reasons of fraud, mala fides, arbitrariness or discrimination. [Para 55] [274-G-H; 275-A-B]

Pratap Singh vs. State of Punjab, **(1964) 4 SCR 733;** *Col. A.S. Iyer vs. V. Balasubramanyam,* **1980 (1) SCR 1036 = (1980) 1 SCC 634;** *E.P. Royappa vs. State of Tamil Nadu,* **1974 (2) SCR 348 = (1974) 4 SCC 3;** *Menaka Gandhi v. Union of India,* **1978 (2) SCR 621 = (1978) 1 SCC 248;** *Ramana Dayaram Shetty vs. International Airport Authority of India,* **1979 (3) SCR 1014 = (1979) 3 SCC 489; and** *Ajay Hasia v. Khalid Mujib Sehravardi,* **1981 (2) SCR 79 = (1981) 1 SCC 722 - referred to.**

Case Law Reference:

AIR 1962 Allahabad 208	**referred to**	**para 25**
2009 (1) Mh.L.J. 241	**referred to**	**para 25**
AIR 1961 Assam 133	**referred to**	**para 25**
AIR 1972 Calcutta 320	**referred to**	**para 25**
2004 (6) Suppl. SCR 911	**referred to**	**para 26**
2005 (3) Suppl. SCR 388	**referred to**	**para 26**
2007 (2) SCR 980	**referred to**	**para 26**
2008 (9) SCR 165	**referred to**	**para 26**
(1964) 4 SCR 733	**referred to**	**para 54**

2010 (5) SCR 1081	**held inapplicable**	**para 52**
1980 (1) SCR 1036	**referred to**	**para 54**
1974 (2) SCR 348	**referred to**	**para 54**
1978 (2) SCR 621	**referred to**	**para 54**
1979 (3) SCR 1014	**referred to**	**para 54**
1981 (2) SCR 79	**referred to**	**para 54**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4824 of 2013.

From the Judgment and order dated 05.01.2012 in SBCWP No. 384/2002, DBCSA No. 1876/2011 of the High Court of Rajasthan at Jaipur.

WITH

C.A. No. 4825 of 2013, 4829 of 2013,. 4826 of 2013, 4830 of 2013, 4827 of 2013, 4831 of 2013, 4828 of 2013.

A.S. Chandhiok, ASG, Rajeev Dhavan, Pramod Swarup, Vikas Singh, J.S. Attri, Dr. Manish Singhvi, AAG, Rajendra Prasad, Yunus Malik, Naveen Chandra, Sanjeev Agarwal, Bimlesh Kr. Singh, Pradeep Kr. Jaiswal, Suresh Sharma, Sunil Malhotra, Abhishek Puri, Rajat Malhotra, Narender Mohan, P.N. Puri, Mehmood Pracha, Sumit Babbar, Sneha Singh, Naresh Kumar, Gupreet S. Parwanda, Monika Tyagi, Syed Tanveer Ahmad, S.K. Bajwa, Priyanka Bharihoke, S.N. Terdal, B. Krishna Prasad, Amit Lubhaya, Irshad Ahmad, Pragati Neekhra, Balraj Dewan for the appearing parties.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. The instant common order will dispose of the following matters:-

(i) *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 4722 of 2012);

(ii) *Yogesh Chand Arora vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 4874 of 2012);

(iii) *Durga Devi Dharmarth Trust & Anr. vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 5041 of 2012);

(iv) *Naresh Chand Arora vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 5089 of 2012);

(v) *Madrampura Grih Nirman Sahkari Samiti Ltd. & Ors.vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 5206 of 2012);

(vi) *Yashmeen Abrar vs. Union of India & Ors.,* Civil Appeal arising out of SLP (C) No. 12072 of 2012);

(vii) *Sunita Rathi & Ors. vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 21205 of 2012);

(viii) *Arjun Nagar Vikas Samiti through its President Vimla Verma vs. State of Rajasthan & Ors.,* Civil Appeal arising out of SLP (C) No. 21226 of 2012);

2. Leave granted in all the matters.

3. Insofar as the instant judgment is concerned, *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. vs. State of Rajasthan & Ors.* (i.e., the Civil Appeal arising out of SLP (C) No. 4722 of 2012 shall be treated as the lead case. The factual narration recorded herein, shall be based on the pleadings thereof. However, in situations wherein, during the course of hearing, reference has been made to pleadings from other cases, the same will also be adverted to.

4. The appellants herein are all land losers. Their lands were acquired for establishing a zonal office complex, and residential quarters for Railway staff, for the North Western Railway Zone, at Jaipur in the State of Rajasthan.

5. The sequence of facts commencing from the initiation, and leading to the finalization of the acquisition proceedings, are of pointed significance, in the present controversy. As such, all the relevant factual details, are being narrated hereunder, first of all.

6. On 15.11.1996, the Officer on Special Duty, North Western Railway, posted at Jaipur, addressed a communication to the Commissioner, Jaipur Development Authority, Jaipur, indicating that 26 bighas of Government land was available in front of the Getor Jagatpura railway station. It was pointed out, that the aforesaid land had been allotted to the Scouts & Guides Organization. It was submitted, that the said land was ideally located, and could be effectively put to use for establishing the required infrastructure for the North Western Railway Zone complex, at Jaipur. It was accordingly requested, that the said Government land be transferred to the Railways. A relevant extract of the aforesaid letter is reproduced hereunder:-

> "As you are aware, the new North-Western Railway Zone has been set up with headquarters at Jaipur.
>
> The actual requirements of land for setting up of the Zonal office and Quarters at Jaipur is being worked out which may take some time, but in any case adequate railway land is not available at Jaipur for the purpose.
>
> It is understood that 26 Bighas of land of the State Government to allotted to Scouts & Guides Organization is available in front of Getor Jagatpura Railway Station. This is an ideal location for use by the North-Western Railway and it is requested that this land may be transferred to Railway early for immediate use. Further requirements of land will be indicated to the State Government in due course."
>
> (emphasis is ours)

The first communication on the record of the case, relating to the requirement of land for setting up the North Western Railway Zone Complex, reveals the desire (of the Railways), that vacant Government land be transferred by the State Government, to the Railways. At this juncture, one would notice, that there is no thought about acquiring land for the Railways.

7. Following the aforesaid communication dated 15.11.1996, the Officer on Special Duty, North Western Railway, addressed another letter dated 12.12.1996 to the Commissioner, Jaipur Development Authority, Jaipur, depicting the total requirements of the Railways for setting up the aforesaid zonal headquarters. The text of the said letter is being reproduced hereunder:-

> "In continuation of this office letter referred above the appropriate requirement of land for setting up of the zonal office and staff quarters at Jaipur has been assessed and about 87 acres of land is considered as necessary for this purpose.
>
> It is proposed to have the land for the above purpose at the locations at Getor Jagatpura. At least 40 acres of land will be required including the 20 bigha for which a request has already been made for transfer vide this office letter referred above. For the reasoning 47 acres land nearest to the Jaipur Railway Station in the Prithviraj Nagar on Jaipur-Ajmer Road will be suitable.
>
> It is therefore requested that 40 acres land including 20 bigha of State Government land now used by scouts and guides at Getor Jagatpura and 47 acres land in

Prithviraj Nagar scheme on Jaipur Ajmer Road nearest to Jaipur Railway Station may be acquired and transferred to Railways.

Necessary plans of both the areas may kindly be made available to Railways."

(emphasis is ours)

In its follow up action, the State Government was informed about the extent of land required. The Railways sought governmental land to satisfy its requirement. The process thus suggests, that the Railways and the State Government, were jointly pursuing the objective. The State Government was requested to acquire some more land, so as to make up the deficiency, and to transfer the same to the Railways.

8. Mr. Ram Vilas Paswan, the then Union Minister for Railways addressed a letter dated 30.12.1996 to Mr. Bhairon Singh Shekhawat, the then Chief Minister of the State of Rajasthan, indicating the Union Government's desire, to set up a zonal complex for the North Western Railways, at Jaipur. The Railways requested the State Government, to provide the required land "free of cost". It was emphasized by the Union Minister for Railways, that the setting up of the new Railway Zone at Jaipur, would improve train services to and within the State of Rajasthan, and thereby, meet the expectations of public and private entities, of the area. Relevant extract of the aforesaid letter is being reproduced hereunder:-

"In order to improve the train services in Rajasthan, meet the expectations of public and private more responsive administration, the Railways have decided to create a new Zone, North Western Railway with Zonal Hqrs. Office at Jaipur.

The setting up of the Railway Zonal Hqrs. Office, would require office accommodation, housing for staff, and other ancillary facilities, all of which need about 150 to 200 acres of land.

May I therefore request you to ask the concerned officials to identify a suitable piece of land, about 150-200 acres at Jaipur, and provide the same to the Railways free of cost for setting up the Zone. This gesture of the State Government would go a long way in enabling us to make the Zone functional early."

(emphasis is ours)

A perusal of the aforesaid letter reveals, that the Railway Ministry's request was for about 150-200 acres of land. The land would be used for establishing zonal offices for the North Western Railway Zone, and also, for raising residential quarters for Railway staff. The letter indicated, that the gesture of the State Government to provide land to the Railways "free of cost", would go a long way in making the zone functional. If the acquired land, was to exclusively serve the purpose of the Railways, then financial contribution thereto by the State Government, would be unthinkable. But strangely, the Union Minister for Railways was expecting the State Government to provide the required land, even after acquiring it, "free of cost". Logically, this would be acceptable, when the State (of Rajasthan) was to be a joint beneficiary. The incidental benefit to the State, is apparent from the opening words of the letter. The Union Minister in his above letter emphasized, that the proposed project would "...improve the train services in Rajasthan, meet the expectations of public and private...".

9. On 28.2.1997, the Commissioner, Jaipur Development Authority, pursuant to the correspondence with the Officer on Special Duty, North Western Railway, pressed the Secretary, Department of Transport, Government of Rajasthan, to initiate acquisition proceedings in respect of land identified at villages Bindayaka and Todi Ramjanipura, in tehsil Sanganer of district Jaipur. Relevant portion of the aforesaid letter is being reproduced below:-

"Please peruse the letter dated 12.12.1996 by Officer, North Western Railway Zone, Jaipur. The Railway had demanded land for Railway Zonal Office and staff quarters. You have discussed in this reference with the Commissioner in the room of Chief Secretary. The land village Bindayaka and Todi Ramjanipura, Tehsil Sanganer is required by Railway department being near to the Jagatpura Getor Railway Station.

It would be relevant to acquire the required land by Transport Department, Rajasthan, Jaipur. Therefore, the proceedings of acquisition of 4-39 hectares of land of village Bindayaka and 9-91 hectares of Todi Ramjanipura, Tehsil Sanganer, Jaipur is to be acquired. The description of the land to be acquired, trace map and six copies of land record are annexed with the prayer that the acquisition proceedings be done at your department level for the Railway Department immediately."

(emphasis is ours)

10. On 29.3.1997, the Deputy Secretary, Transport Department, Government of Rajasthan, wrote a letter to the District Collector, Jaipur, requiring him to furnish details of land, as also, land records pertaining to villages Bindayaka and Todi Ramjanipura, which was being considered for acquisition for the North Western Railway Zonal complex. The text of the aforesaid letter, is being reproduced hereunder:-

"The Secretary, Jaipur Development Authority, Jaipur by letter no. P9 (295) JDA/Acqui. Off./Land Acqui./97/362 dated 20.2.1997 informed this office that Railway Department vide letter dated 12.12.1996 placed a proposal for the land for Zonal Office in Jaipur and Staff Quarters. As per proposal land of village Bindayaka and Todi Ramjanipura, Tehsil Sanganer, Jaipur near Getor Jagatpura Railway Station is to be acquired. In this

reference information regarding details of land, trace map and land record alongwith the process of acquisition and inspection report of the acquisition officer be sent to this office."

(emphasis is ours)

11. On 9.5.1997, a communication was addressed by the Officer on Special Duty, North Western Railway, to the Chief Secretary, Government of Rajasthan, reminding him of the request made by the Union Minister for Railways. Relevant extract of the said communication dated 9.5.1997, is being set out hereunder:-

"It had been requested by Hon'ble Minister for Railways, vide this D.O. letter referred above (copy enclosed). To the Chief Minister of Rajasthan, to identify a suitable piece of land about 150-200 acres at Jaipur and to provide the same to the railways, free of cost, for setting up of new Railway Zone at Jaipur. Action taken in the matter by the State Government may please be advised, for taking further necessary action accordingly.

The State Government officials required to be contacted for pursuing the case may also please be advised so as to enable me to instruct my officers for expediting the process of acquisition of land for setting up of facilities for North Western Railway zone."

(emphasis is ours)

A perusal of the letter extracted above reveals, that officers of the Railways establishment were in touch with highest levels of governmental functionaries in the State of Rajasthan, and were seriously soliciting land "free of cost" for establishing the North Western Railway Zone complex.

12. Pursuant to the aforesaid correspondence, the

Secretary, Transport Department, Government of Rajasthan issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, the Acquisition Act), indicating the State Government's desire to acquire 15.50 hectares of land situated in the revenue estate of villages Bindayaka and Todi Ramjanipura, in tehsil Sanganer, of district Jaipur. The public purpose depicted therein was, that the aforesaid land was required to establish a zonal office of the North Western Railways and for raising residential quarters for Railway staff. The aforesaid notification was duly published in the State Government gazette. Importantly, the acquisition of land for the project under reference, was being made by the Transport Department of the Government (of Rajasthan), presumably because the setting up of the project was aimed at improving transport services to and within the State, for the benefit of public and private entities. In terms of the mandatory requirements of the Acquisition Act, the aforesaid notification under Section 4, was published on 6.9.1997 in the "Dainik Navjyoti" and on 7.9.1997 in the "Rajasthan Patrika". The pleadings of the case bear-out, that publication in the locality was also made on 10.4.1998.

13. Yet again, the Deputy Chief Engineer, North Western Railway addressed a communication dated 11.6.1998 to the Deputy Secretary, Transport Department, Government of Rajasthan intimating him, that even though permission had been received to acquire 69 bighas (17.52 hectares) of land near Getor Jagatpura railway station, yet no further details had been communicated by the State Government, in respect of the action taken by it, for acquiring the aforesaid land for the Railways, after the publication of the notification under Section 4 of the Acquisition Act. The aforesaid factual position, is evident from the letter dated 11.6.1998, which is reproduced hereunder:-

> "In the above subject it is submitted that there is no information of further proceedings after notification under Section 4 has been published on 19.8.1997. Please, inform this office immediately after proper proceedings to acquire land for Railway Zonal Office and staff quarters.
>
> It is pertinent to mention that permission has been received by this office from Railway Ministry to acquire 69 bighas (17.52 hectare) land near Getor Jagatpura Railway Station. Hence inform this office immediately regarding proceedings to acquire of the above land."

The above communication reveals that the Railways, as well as, the State Government were proceeding in the matter in complete tandem.

14. Objections were invited under Section 5A of the Acquisition Act from persons interested in the land. Having considered the objections raised by the persons interested, the Land Acquisition Collector submitted a report to the Government. Insofar as Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. (appellant in the Civil Appeals arising out of SLP (C) no. 4722 of 2012, which is hereinafter referred to as, the appellant Samiti) is concerned, the determination was as under:-

> "An application on 8.4.2009 was filed by Shrawan Singh Khinchi, Hemant Goyal, Prabhu Lal Meena, Sharda Purohit, Nirmala, Suresh Kumar Sharma, Yogesh Aroda, Naresh Chand Aroda, Ganga Sahay Meena, residents/ members of Madrampura Grih Nirman Sahakari Samiti planning Prakash Nagar and Gopalpura Grih Nirman Sahakari Samiti planning Jagatppura first (Mayur Vihar) stating that the tenants of Khasra no. 280, 282, 284 and 291 Girijadevi and Rampal Das Swami sold and handed over the possession of the land to Madrampura Grih Nirman Sahakari Samiti and Gopalpura Grih Nirman Sahakari Samiti in 1981 and received the entire sale consideration. The societies have allotted the land to the plot holders/members from 1981 to 1983 and most of the

members have constructed houses before the acquisition proceedings. The applicants have submitted that the houses have been constructed before the acquisition proceedings. Hence if the land is left out of acquisition being on one side corner only, it will not affect the railway scheme. The applicants submitted that the tenant Girija Devi and Rampal Das Swami are not interested persons, therefore, their objections should not be considered and they should be given 15 days time to file objections.

Objections of the applicants were considered and the application dated 8.4.1999 is filed which is after due date 5.4.1999. Even then the claim is being decided on merits in the interest of justice. The applicants have not produced any documents or evidence in their favour. As it is determined hereinabove that the society cannot get any right only on the basis of agreement to sale and similarly the members cannot get any legal right on the basis of allotment letter issued by society. This matter is purely a matter between the Khatedar and society and its members. The plot holders cannot be considered as interest persons to get compensation. They can get compensation from the Khatedars. Hence the objection is rejected.

(emphasis is ours)

A perusal of the aforesaid determination reveals, that the appellant Samiti had not filed its objections within the prescribed period of limitation, and as such, its objections could have been rejected simply because the same were filed belatedly. Yet the matter was examined on merits. The claims of the appellant Samiti were found to be unsustainable because the appellant Samiti did not have any right to file objections. In this behalf it was noticed, that the appellant Samiti had relied on agreements to sell in respect of the acquired land. Agreements to sell, it was felt, did not vest any legal right in the appellant Samiti (on the date of issuance of the notification

under Section 4 of the Acquisition Act).

15. On 19.8.1997, the State Government authorized the OSD-II i.e. the Collector, Jaipur, to enter into the land sought to be acquired.

16. After having dealt with the objections of interested persons including the appellant Samiti, on the subject of compensation, it was observed as under:-

It was considered as to who should be given the compensation of the acquired land. The objections filed before this court makes it clear that certain Khatedar tenants have transferred their land to the housing societies or certain other persons and construction has also been made by such persons. First of all, no such sale agreement has been filed before this court. Secondly land cannot be considered to be sold on the basis of agreement to sale. According to Section 17 of the Registration Act, any immoveable property of value more than Rs.100/- is required to be registered compulsorily. Hence any transfer of possession by unregistered document is not valid. Hon'ble Rajasthan High Court has confirmed this view in Writ Petition no. 2027/92, 1017/92, 4102/91 by judgment passed on 8.12.1992. Hence the transfer by way of agreement to the housing society cannot be recognized. And subsequent transfer of possession is illegal. It has been settled in the case of Banwari Lal Vs. State of Rajasthan & Ors., 1986 (2) WLN 648, that such transfer of land for non-agricultural purpose is useless. Transfer of agricultural land for non-agricultural purposes is against the provisions of Section 42A of the Rajasthan Tenancy Act and Section 90A of the Land Revenue Act. Thus any constructions made by persons other than Khatedars on the land under acquisition are illegal. Therefore compensation for the illegal construction is not proper."

(emphasis is ours)

17. Having rejected the objections raised by the persons interested (including all those at whose behest, the present proceedings have been initiated before this Court), the State Government notified its declaration under Section 6 of the Acquisition Act, in the State Government gazette, expressing its final determination for acquiring the land in question. The aforesaid declaration dated 13.1.1999 was published in the State Government gazette dated 21.1.1999.

18. Thereafter, public notices were issued by the Land Acquisition Officer, intimating all interested persons the intent of the State Government to take possession of the acquired land. On 21.3.2001, the Land Acquisition Officer passed an award, determining the compensation payable to land owners, whose land was being acquired.

19. The first contention advanced at the hands of the learned counsel for the appellants was, that the instant acquisition proceedings emerging out of the notification issued under Section 4 of the Acquisition Act (dated 19.8.1997), and the consequential declaration under Section 6 of the Acquisition Act (dated 13.1.1999) could not have been issued by the State Government. In fact, it was the pointed submission of the learned counsel for the appellants, that the State Government had no jurisdiction to acquire the land in question. In this behalf it was submitted, that the land was for the use and utility of the Railways, namely, for establishing zonal offices for the North-Western Zone, as also, for raising residential quarters for the staff to be posted there. Since Railways is a Union subject (under entry 22 of the Union List, in the Seventh Schedule to the Constitution of India), it was submitted, that it is the Union Government alone, which had the jurisdiction to acquire the land in question. In so far as the instant aspect of the matter is concerned, learned counsel for the appellants invited our attention to Sections 4 and 6 of the Acquisition Act. The aforesaid provisions are being extracted herein:

"4. Publication of preliminary notification and powers of officers thereupon-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification.

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches,

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the

occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

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6. Declaration that land is required for a public purpose.- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders an different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (!), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for

such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.-In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues].

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the appropriate Government may acquire the land in manner hereinafter appearing."

(emphasis is ours)

A perusal of Sections 4 and 6 extracted above reveal, that it is the "appropriate Government" which is to be satisfied about the public purpose for which the land in question is to be acquired. And it is the "appropriate Government" alone, which is vested with the responsibilities contemplated under the aforesaid Sections 4 and 6. Accordingly, it is only the "appropriate Government" which can issue the required notifications expressing the intention to acquire land, and thereafter, the postulated declaration, after examining the objections of the persons interested.

20. In order to substantiate the appellants' contention, that jurisdiction to acquire land for the Railways, could have been exercised only by the Central Government, and that the State Government had no authority to acquire land for the Railways, learned counsel placed reliance on Section 3(ee) of the Acquisition Act. Section 3(ee) aforementioned is being reproduced below :

> "3(ee) The expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government."

Relying on Section 3(ee) extracted above, it was the submission of the learned counsel for the appellants, that in relation to acquisition of land for the Union, the Central Government alone had the jurisdiction to acquire the land. Accordingly, it was contended, that it was the Central Government alone, which had the jurisdiction to issue the prescribed notification under Section 4 of the Acquisition Act, (expressing the intention of the Union Government to acquire, the land). Having thereby, brought the "appropriate Government's" intention to acquire the land to the notice of all interested persons, and having considered the objections (if any) filed at the behest of such interested persons, the Central

Government alone could have issued the consequential declaration under Section 6 of the Acquisition Act. Learned Counsel for the appellants was emphatic, that the notification to acquire land for the Railways could have only been issued by the Central Government.

21. Learned counsel for the appellants ventured to substantiate his above contention, by reading the definition of the term 'appropriate Government' along with the said words used in Sections 4, 5, 5A(2), 6, 7, the first and second proviso to Section 11(1), Sections 12 to 14, 15A, 16, 17(1) and (2), 31(3), 40, 41, 48, 49(2) and 50 of the Acquisition Act. The thrust of the instant submission is being summarized hereunder:

Firstly, referring to Section 4 of the Acquisition Act, it was the submission of the learned counsel for the appellants, that the use of the term "appropriate Government" in Section 4(1) of the Acquisition Act, with reference to the publication of the intention to acquire land (by way of a notification) has to be visualized with reference to the definition of the said term under Section 3(ee) of the Acquisition Act. On such examination, according to the learned counsel, it would clearly emerge, that it was only the Central Government which could have issued the notification dated 19.8.1997. But in the present case, the said notification has been issued by the Government of Rajasthan.

Secondly, with reference to Section 5 of the Acquisition Act, it was submitted, that the term "Collector" used therein, must be viewed with reference to Section 3(c) of the Acquisition Act. Section 3(c) is being extracted hereunder:

> "3(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of a Collector under this Act"

Based on the aforesaid definition of the term "Collector, it was the contention of the learned counsel for the appellants, that the nomination of the "Collector/Deputy Commissioner/Officer specially appointed" has to be made by the "appropriate Government". Since the "appropriate Government" in the facts and circumstances of the present case is the Central Government, according to the learned counsel, the nomination of the 'Collector' with reference to Section 5 of the Acquisition Act, could only have been ordered by the Central Government; whereas, it is apparent from the facts of this case, that the State Government by an order dated 19.8.1997, authorized the SDO-II/Land Acquisition Officer/Collector, Jaipur, as "Collector" for all purposes connected with the present acquisition. The nomination of the Collector by the State Government, when the land was being acquired for the benefit of the Railways, according to the learned counsel, was clearly beyond the jurisdiction of the State Government.

Thirdly, with reference to Section 5A(2) of the Acquisition Act, it was submitted, that the objections under Section 5 of the Acquisition Act are to be made to the Collector in writing. And, it is the Collector who is to afford an opportunity of hearing to the persons concerned, before submitting a report to the appropriate Government. Learned counsel vehemently contended, that in interpreting Section 5A(2) of the Acquisition Act, the term 'Collector' has to be interpreted in consonance with the definition thereof under Section 3(c), and with reference to the term "appropriate Government" defined in Section 3(ee) of the Acquisition Act. Thus viewed, it was the submission of the learned counsel, that not only the "Collector" to whom objections were meant to be addressed, but the Collector who had to consider and dispose of the said objections, ought to have been a person nominated by the Central Government. Herein, according to the learned counsel, admittedly the State Government had notified the "Collector" for acquisition of the land in question. The receipt of the objections, as also, the determination thereof, must, therefore, be deemed to have

been rendered by an authority having no jurisdiction (either to receive the objections or to submit a report to the appropriate Government with reference to said objections), in the matter.

Fourthly, it was contended, that the declaration under Section 6 of the Acquisition Act is to be made on the satisfaction of the "appropriate Government". Herein also, viewed with reference to the definition of the term 'appropriate Government' in Section 3(ee) of the Acquisition Act, it was submitted, that it was the Central Government alone whose satisfaction was material, whereupon, the Central Government could have issued the postulated declaration (contemplated under Section 6 of the Acquisition Act). Herein, according to the learned counsel, admittedly the declaration was made on 13.1.1999 by the State Government under Section 6 of the Acquisition Act. As such, it was asserted that the same lacked any authority of law.

Fifthly, according to the learned counsel for the appellants, under Section 7 of the Acquisition Act, after complying with the procedure contemplated under Section 6, the "appropriate Government" (or some officer authorized by the "appropriate Government") is to direct the Collector "to take order for the acquisition of the land". The aforesaid procedure contemplated under Section 7, according to learned counsel for the appellants, has also been vested with the Central Government. Insofar as the present acquisition proceedings are concerned, it was the Central Government which had to direct the Collector to take appropriate action contemplated under Section 7 of the Acquisition Act. Since in the facts of the instant case, it is the Government of Rajasthan, which had issued the aforesaid direction, according to learned counsel, the same violates the mandate of Section 7 of the Acquisition Act.

Sixthly, learned counsel for the appellants placed reliance on the first and the second provisos to the Section 11(1) of the Acquisition Act, in order to contend, that while preparing the award with reference to the acquired land, and while

determining the true area of the acquired land, and the compensation payable therefor, as also, the appropriation of such compensation amongst persons interested, the power and authority therefor, is vested in the Collector (with the previous approval of the "appropriate Government"). Yet again, it was the contention of the learned counsel for the appellants, that the provisos referred to hereinabove, were bound to be appreciated with reference to the definition of the term "Collector" in Section 3(c), and the term 'appropriate Government' under Section 3(ee) of the Acquisition Act. In so doing, according to learned counsel, the inevitable result would be, that the "appropriate Government" contemplated, is the Central Government. And, accordingly, the Collector contemplated therein, would be one nominated by the Central Government. It was pointed out, that for the acquisition proceedings under reference, the approval of the State Government, and not the Central Government was sought by the Collector. It was further pointed out, that the concerned Collector had been nominated by the State Government. For the aforesaid reasons (principally on the same basis, as noticed in the foregoing contentions), it was submitted, that the instant action of acquisition, was in clear violation of the mandate of the provisions of the Acquisition Act. According to learned counsel, all the above actions, had to be taken by a Collector nominated by the Central Government, and upon the previous approval of the Central Government. Since the position in the facts and circumstance of the present case is not so, it was submitted, that the instant process of acquisition, was in clear violation of the mandate of the above-mentioned provisions of the Acquisition Act.

Seventhly, with reference to Sections 12, 13, 13A and 14, it was submitted, that the term 'Collector' used therein, had to be viewed with reference to Section 3(c) of the Acquisition Act, inasmuch as, the Collector in the facts of the present case, had to be nominated by the Central Government, and therefore, for the procedure contemplated by the provisions referred to above,

was required to be executed by a Collector nominated by the Central Government. In the present case, the State Government, by its order dated 19.8.1997 authorized the SDO-II/Land Acquisition Collector, Jaipur, to carry out the functions contemplated under Sections 12, 13, 13A and 14 of the Acquisition Act. As such, according to learned counsel, the aforesaid procedure having been carried out by a person having no authority to do so, must be deemed to have been carried out without jurisdiction, and in violation of the above mentioned provisions of the Acquisition Act.

Eighthly, the term 'appropriate Government' referred to in Sections 16, 17(1), 17(2), 31(3), 40, 41 and 49(2), according to the learned counsel, could only have meant the Central Government, and not the State Government. It was submitted, that in giving effect to the above provisions, the Central Government had unquestionably remained out of reckoning, and it was the Government of Rajasthan, which has shouldered all the responsibilities contemplated under the said provisions. For just the same reasons, as have been noticed above, it was submitted that the scheme of the Acquisition Act very clearly defines the manner in which the provisions thereunder, were to be given effect to. Since the land was being acquired for the Railways, according to learned counsel representing the appellants, the responsibilities ought to have been shouldered by the Central Government, whereas, the entire action for the acquisition of the land in the present controversy, was dealt with by the State Government.

22. Having given our thoughtful consideration to the issue canvassed at the hands of the learned counsel for the appellants, we are of the view that it is necessary in the first instance to determine the subject of legislative competence. If the determination of legislative competence so determined falls in the realm of the Parliament, then the contemplated appropriate Government would be the Central Government. Whereas, if the legislative competence falls in the realm of the

State Legislatures, then the appropriate Government in the facts and circumstances of the present case would be the State Government. During the course of hearing, while examining the issue of legislative competence, our attention was invited to entry 33 of the Union List, entry 36 of the State List and entry 42 of the Concurrent List (of the Seventh Schedule of the Constitution of India). All the aforesaid entries are being extracted hereunder:

Entry 33 (in list I, of the Seventh Schedule)

"33. Acquisition or requisitioning of property for the purposes of the Union."

Entry 36 (in list II, of the Seventh Schedule)

"36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III."

Entry 42 (in list III, of the Seventh Schedule)

"42. Acquisition and requisitioning of property."

Before proceeding further, it would be relevant to point out that entries 33 and 36 (in lists I and II respectively, of the Seventh Schedule) were omitted by the Constitution (Seventh Amendment) Act, 1956. And in place of the above two entries, entry 42 (in list III, of the Seventh Schedule) was substituted (through the same constitutional amendment). Prior to above substitution, Entry 42 in List III read as under:

Entry 42 (in list III, of the Seventh Schedule), prior to its substitution:

"42. Principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such

compensation is to be given."

23. The scope and effect of aforesaid three entries, falling in three different lists of the Seventh Schedule were examined by a Constitution Bench of this Court in State of Bombay v. Ali Gulshan, AIR 1955 SC 810. The question posed, and the determination rendered thereon, are being extracted hereunder:

"2. On the hearing of the petition before Tendolkar, J., the State succeeded on the ground that the purpose for which the requisition was made was a "public purpose" within the meaning of the Act. But, on appeal, it was held that though the requisition was for a public purpose, the requisition order was invalid, as the public purpose must be either a purpose of the Union, or a purpose of the State and in this particular case the accommodation being required for housing a member of a foreign Consular staff was a Union purpose, which was outside the scope of the powers of the State.

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5. The ultimate source of a authority to requisition or acquire property is be found in article 31 of the Constitution. The requisition or acquisition must be for a public purpose and there must be compensation. This article applies with equal force to Union legislation and State legislation. Items 33 and 36 of List I and List II of the Seventh Schedule to the Constitution empower respectively Parliament and the State Legislatures to enact laws with respect to them.

6. The reasoning by which the learned appellate Judges of the Bombay High Court reached their conclusion is shortly this. There can be no public purpose, which is not a purpose of the Union or a purpose of the State. There are only these two categories to consider under the statute, as the words "any other purpose" in the particular context

should be read ejusdem generis with "the purpose of the State". The provision of accommodation for a member of the foreign consulate staff is a "purpose of the Union" and not a "purpose of the State".

7. We are unable to uphold this view as regards both the standpoints. Item 33 in the Union Legislative List (List I) refers to "acquisition or requisitioning of property for the purposes of the Union". Item 36 in the State List (List II) relates to "acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III". Item 42 of the Concurrent Legislative List (List III) speaks of "the purpose of the Union or of a State or for any other public purpose".

Reading the three items together, it is fairly obvious that the categories of "purpose" contemplated are three in number, namely, Union purpose, State purpose, and any other public purpose. Though every State purpose or Union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or Union purpose.

When we speak of a State purpose or a Union purpose, we think of duties and obligations cast on the State or the Union to do particular things for the benefit of the public or a section of the public. Cases where the State acquires or requisitions property to facilitate the coming into existence of utilitarian institutions, or schemes having public welfare at heart, will fall within the third category above-mentioned.

8. With great respect, we are constrained to say that the ejusdem generis rule of construction, which found favour in the court below for reaching the result that the words "any other public purpose" are restricted to a public purpose which is also a purpose of the State, has scarcely any application. Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied.

If the words "any other public purpose" in the Statute in question have been used only to mean a State purpose, they would become mere surplusage; Courts should lean against such a construction as far as possible.

9. Even if it is conceded that the law contemplates only two purposes, namely, State purpose and Union purpose, it is difficult to see how finding accommodation for the staff of a foreign consulate is a Union purpose and not a State purpose. Item 11 in the Union list specifies "diplomatic, consular and trade representation" as one of the subjects within the legislative competence of Parliament, and under article 73 of the Constitution, the executive power of the Union shall extend to all such matters.

It can hardly be said that securing a room for a member of the staff of a foreign consulate amounts to providing for consular representation, and that therefore it is a purpose of the Union for which the State cannot legislate. It was conceded by Mr. Rajinder Narain, Counsel for the Respondent, that there is no duty cast upon the Union to provide accommodation for the consulate staff, and this must be so, when we remember that the routine duties of a Consul in modern times are to protect the interests and promote the commercial affairs of the State which he represents, and that his powers, privileges and immunities

are not analogous to those of an ambassador.

The trade and commerce of the State which appoints him with the State in which he is located are his primary concern. The State of Bombay is primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State. We are inclined to regard the purpose for which the requisition was made in this case more as a State purpose than as a Union purpose.

10. In any event, as already pointed out, "other public purpose" is a distinct category for which the State of Bombay can legislate, as the acquisition or requisitioning of property except for the purposes of the Union, is within its competence under item 36 of the State List.

11. There is another way of looking at the question involved. An undertaking may have three different facets or aspects, and may serve the purpose of a State, the purpose of the Union and a general public purpose. Even if one may regard the requisition of a room for the accommodation of a member of a Consulate as one appertaining to a Union purpose, it does not necessarily cease to be a State purpose or a general public purpose. In this view also, the requisition in this case must be held to have been validly made."

(emphasis is ours)

In its determination with reference to public purpose (relatable to acquisition proceedings), this Court in the judgment referred to hereinabove, clearly held, that public purpose may be relatable to the Central Government, alternatively, it may be relatable to the State Government. Besides the aforesaid two alternatives, there is also a third alternative, namely, a situation wherein the public purpose is a general public purpose, which is neither exclusively relatable to the Central Government and/

or fully relatable to the State Government. The third alternative, would be a situation, wherein the cause in question furthers a common public purpose and is relatable both to a Union and a State cause.

24. It would be relevant to mention, that the judgment rendered by this Court in State of Bombay vs. Ali Gulshan (supra) was brought to our notice by the learned counsel for the appellants. The purpose for doing so, was to enable us to examine the matter in the correct perspective. For this, learned counsel for the appellants pointed out, that the law declared by the above judgment, came to be negated by the Constitution (Seventh Amendment) Act, 1956, which repealed entries 33 and 36 (in lists I and II respectively, of the Seventh Schedule) and substituted entry 42 (in list III, of the Seventh Schedule).

25. Before recording any final determination, we may now refer to the judgments cited at the behest of the appellants. Reference was made to the decision rendered by the *Allahabad High Court in Balak & Ors. v. State of Uttar Pradesh & Anr.,* AIR 1962 Allahabad 208. The facts in the afore-cited judgment are almost similar to the controversy in hand. From the cited judgment, our attention was drawn to the following observations:

"6. Now I proceed to discuss the merits of the writ petition. The main contention of Mr. S.C. Khare is that the acquisition proceedings are for a Union purpose. It was not open to the State Government to initiate the acquisition proceedings. The impugned notifications mention that land is being acquired for construction of staff quarters in connection with the North Eastern Railway Head-quarters Scheme. This is a Union purpose. But it has been urged for the opposite parties that, the State Government has authority to acquire land for the benefit of the Union.

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13. We have to consider whether the 1952 notification can be considered to be an order by the President of India, although the notification purports to have been issued by the Central Government. Under Article 53 of the Constitution, the Executive power of the Union shall be vested in the President and shall be exercised by him either directly Or through officers subordinate to him in accordance with the Constitution. According to Clause (1) of Article 77 of the Constitution, all executive action of the Government of India shall be expressed to be taken in the name of the President. Under this Article, even if action is taken by the. Central Government, the relevant order ought to be issued in the name of the President. I do not find in the Constitution the converse proposition. There is no provision to the effect that, orders to be issued by the President might be issued in the name of the Central Government. We have seen that under Clause (1) of Article 258 of the Constitution, it is the President who can delegate his functions to the State Government. There is nothing in the Constitution to suggest that the Central Government may act on behalf of the President for purposes of Article 258. It is true that, under Article 74 of the Constitution, the President is aided by a Council of Ministers. It was open to the Council of Ministers to advise the President for issuing an order under Article 258 of the Constitution. But ultimately the order had to be issued by the President, or in the name of the President. In the instant case the 1952 notification was issued by the Central Government, and not by the President. I agree with Mr. Khare that the notification dated 29-3-1952 is not a valid notification delegating powers under Article 258 of the Constitution. The 1952 notification did not empower the State Government to take action under the Act on behalf of the Union Government. In the absence of any such delegation of powers, action in the instant case ought to have been taken by the appropriate Government (the Central Government). It was not open to the State Government to issue notifications under Sections 4 and 6 of the Act on behalf of the Union Government. The two notifications dated 2-3-59 and 16-4-59 with reference to the area of 113.78 acres are invalid. The authorities have tried to dispossess the petitioners on the strength of these notifications. The petitioners are entitled to be restored to possession, in case the authorities have already dispossessed the petitioners. Since the petition partly succeeds, the parties may be directed to bear their own costs.

(emphasis is ours)

It was the vehement contention of the learned counsel for the appellants, that the Allahabad High Court had interpreted the provisions of the Acquisition Act, by appropriately referring to the relevant provisions of the Constitution of India. Learned counsel accordingly submitted, that the legal/constitutional inferences recorded in the cited judgment would clearly demonstrate, that only the Central Government had the jurisdiction, to issue the notification and declaration under Sections 4 and 6 respectively of the Acquisition Act, in the case in hand.

(ii) Reference was also made to the paragraphs extracted below from the decision rendered by the Bombay High Court in *Ramdas Thanu Dessai & Ors. v. State of Goa & Ors.,* 2009 (1) Mh.L.J. 241. Herein also, the controversy before the High Court was similar to the one in hand.

"5. As already seen above, once it is not in dispute that the acquisition is for the South Western Railways for the purpose of construction of railway line and cargo handling terminal at Shelvona, and the entire acquisition cost would be borne by the respondent Nos. 2 and 5, it obviously means that the acquisition is for the Union and, therefore, such acquisition has to be by the Central Government who

is the appropriate Government for initiating such action.

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7. In our considered opinion, it is difficult to accept the contention sought to be raised on behalf of the respondent Nos. 1 and 4. The section 4 of the said Act clearly requires the appropriate Government to take initiative for commencement of acquisition proceedings and section 3(ee) specifies as to who would be the appropriate Government bearing in mind the purpose for which the acquisition of land is contemplated. In the case in hand, as already seen above, the acquisition of land specified in the Schedule annexed to the notification is for the purpose of construction of railway line and cargo handling terminal for South Western Railway. The arguments on behalf of the respondent Nos. 1 and 4 relates to the benefits which may arise to the local residents out of construction of such railway line and the terminal and not to the purpose for which the land is sought to be acquired. The resultant benefits which the residents of the affected area in Goa may enjoy is not the purpose for which a particular land is sought to be acquired. If the argument on behalf of the respondent Nos. 1 and 4 is to be accepted, then even the land which is used for laying the railway line and which undisputedly belong to the Union of India would fall in the category of any other purpose. That is not the legislative intent behind defining the term "appropriate Government" under section 3(ee).

8. The appropriate Government under section 4 read with section 3(ee) is that Government which takes decision to acquire the land for its purpose. In the case in hand, once it is not in dispute that pursuant to the proposal by the State Government it was the decision of the Union and its Department of Railways to acquire a particular land for construction of the terminal to be constructed and maintained by the respondent Nos. 2 and 5, it cannot, in the same breath, be said that the acquisition is also for any other purpose. The purpose of acquisition is clearly specified in the notification. Once a particular purpose is specified in the said notification, it cannot be sought to be stated by way of an affidavit that the real purpose is something different from the one disclosed in the notification nor such additional benefits which may accrue on account of acquisition of land to the residents of the locality could be said to be the purpose for which the land is sought to be acquired.

9. It is to be borne in mind that after issuance of notification under section 4, the interested parties are entitled to object to such notification and in that regard the Collector is enjoined to hear the objections and make a report to the appropriate Government and after considering such reports, the appropriate Government is required to take appropriate decision which should culminate in the form of declaration under section 6. The sections 4, 5, 5A and 6 specifically refers to the appropriate Government and its satisfaction for need to acquire the land. Once it is not in dispute that the proposed acquisition of land is for the purpose of railway terminal, to be built by the respondent Nos. 2 and 5 at their own cost and to be maintained by them, and such terminal is to be used for the activities in relation to the railways i.e., for unloading of ore transported by the railways from Kamataka to Goa, it cannot be said that the land is sought to be acquired for any other purpose. It is to be held that the land is being sought to be acquired for the Union purpose.

10. In spite of the fact that the land is sought to be acquired for the Union, it is undisputed fact that the State Government claims to be the appropriate Government in respect of the acquisition proceedings in question. Obviously, it is without any authority to be the appropriate Government for the purpose of such acquisition. Therefore,

the notification and the declaration are to be held as bad in law.

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12. When the statutory provisions comprised under sections 4 and 6 read with section 3(ee) of the said Act clearly provide that in cases of acquisition for the purpose of Union, the appropriate Government would be the Central Government, the exercise of executive power cannot be allowed to transgress the said statutory provisions comprised under the said Act. The petitioners are justified in contending that the executive power is always subservient to the legislative power. It is always subject to legislative provision and has to yield to the legislative power. Mere inclusion of the Entry No. 42 in the concurrent list, which speaks of the principles on which compensation for the property acquired and requisitioned for the purpose of the Union and the State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given, by that itself would not empower the executive to act in contravention of the provisions made in the Central Legislation. It cannot be disputed that the said Act was enacted prior to the independence of India. However, the same was adapted in terms of the Adaptation Order of 1950 and, therefore, is a law made by the Parliament within the meaning of the said expression under the proviso to Article 162 of the Constitution of India.

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18. It is thus clear that in spite of the fact that the acquisition of the land is for the Union's purpose and at the cost of the Central Government, the process of acquisition was sought to be initiated by publication of notification under section 4 of the said Act by the State Government claiming to be the appropriate Government. As the law stands, the acquisition for the Union's purpose cannot be initiated by the State Government unless there is specific delegation of power in that regard and in the case in hand there has been no such delegation. Hence, as rightly submitted on behalf of the petitioners, the notification under section 4 and the declaration under section 6 in relation to the land in question by the State Government is bad in law and is liable to be struck down."

(emphasis is ours)

It was submitted by learned counsel for the appellants, that the issue has been correctly adjudicated even by the Bombay High Court, and that, this Court should endorse the same, while adjudicating the present controversy.

(iii) Reliance was also placed on *Messrs. Tinsukia Development Corporation Ltd. v. State of Assam & Anr.,* AIR 1961 Assam 133, wherein a Full Bench of the Assam High Court held as under :

"3. The submission made on behalf of the petitioner is that as the land was needed for construction of the food-grains godown by the Government of India the purpose was a Union purpose and the Central Government was the appropriate Government. It is not disputed that the two notifications under Sections 4 and 6 were issued on behalf of the State Government. From a perusal of the notification under Section 6 it is also clear that it was the State Government which was satisfied that the land was needed for a public purpose before issuing a declaration under Section 6.

4. The contention on behalf of the State is two-fold in reply to the argument of the counsel for the petitioner. Firstly it is urged that merely because the land is needed for construction of a food-grains godown by the Central Government, it does not necessarily follow that the purpose

is a Union purpose. The maintenance of proper supply of food-grains to the inhabitants of this State is as much the responsibility of the State Government as that of the Central Government. The benefit by the construction of the food-grains godown will be derived by the public of this State and as such it is a public purpose and not a purpose of the Union alone."

It would be relevant to mention, that the submission advanced on behalf of the acquiring Government, was akin to the "third alternative" expressed by the Constitution Bench of this Court in *State of Bombay vs. Ali Gulshan* (supra).

(iv) Reliance was also placed by the learned counsel for the appellants, on *Sudhansu Sekhar Maity & Ors. vs. State of West Bengal & Ors.,* AIR 1972 Calcutta 320, and our attention was drawn to the following:-

"9. In dealing with this point it should first be noted that after the seventh amendment to the Constitution both entries 33 & 36 respectively of the Union list and the State list have now been deleted and entry 42 of the concurrent List has been appropriately amended to cover "acquisition and requisitioning of property". On this amendment acquisition is on the concurrent list and both the Union and the State are equally authorised to legislate on the subject of acquisition irrespective of purpose of such acquisition but subject to the usual limitations otherwise imposed by the Constitution. Thus acquisition irrespective of whether it is for the purpose of the State or the Union being within the legislative competence of the State is also within its executive powers. According to Baneriee. J. in the case of *Gadadhar v. State of West Bengal,* (1963) 67 Cal WN 460 at p. 470, after such amendment it is wholly inconsequential as to whether the acquisition is made for a purpose of the Union or the State. To quote his words:

"the disclosure that acquisition of land was being made for a purpose which was not the purpose of the Union, in the notification and the declaration, was possibly made under the time worn idea that since the State could legislate in the matter of land acquisition, for its own purpose only, every land acquisition by the State must be justified on that ground. After the Constitution Seventh Amendment Act, 1956 it was not necessary to make such a statement in the notification or the declaration, even if it was at all so necessary at a time when the Constitution had not been so amended".

This statement of the principle by Banerjee, J. can be well supported so long -- as is usually the case -- the State Governments are duly authorised on delegation of powers by the Union Government to acquire lands for a purpose of the Union. Because in the absence of such delegated authority on the statutory provisions of Sections 4 and 6 of the said Act read with the definition of the term 'appropriate Government' in Section 3(ee). the power of acquisition would otherwise be limited to the State Or the Union Government respectively for purposes of the State or the Union.

10. Now in the present case it appears from the affidavit filed by the respondents Nos. 1 to 4 that by an appropriate notification dated May 14, 1955 issued under Article 258(1) of the Constitution the State Government in West Bengal was duly authorised by the Central Government to acquire land for the purposes of the Union. This factum of delegation is not disputed. If that is so, even if I assume that the purpose of the disputed acquisition is a purpose of the Union it would still be within the powers of the State Government to acquire and the acquisition cannot be struck down as beyond the competence of the State Government. Mr. Sinha, however, contends that in the present case neither the notifications under Section 4 nor the

declarations under Section 6 invoke the delegated powers nor are the notifications and declarations issued in appropriate forms. In my view even if that be so, that would not vitiate the notifications or declarations. It would be a mere irregularity not affecting the substance which would not vitiate the acquisition. If the authority has the power for any action taken, the act is competent and non recital or wrong recital of the authority for the action would not make the act incompetent or without jurisdiction. Reference may be made to the decision of the Supreme Court in the case of *Lekhraj v. Dy. Custodian, Bombay,* AIR 1966 SC 334.

11. That apart, in my view there is great substance in the contention of Mr. Bose that simply because the acquisition is for the purpose of setting up a subsidiary port, the purpose of the acquisition does not necessarily become solely a purpose of the Union. According to Mr. Bose it is a project which would not only be highly beneficial to the general public in this State but would serve public purposes in this State and as such the acquisition would be well supported on the ground that it is for a public purpose. It is clearly so when the acquisition is being made at the expense of the local authority. Mr. Bose rightly relies on the decision of the Supreme Court in the case of *State of Bombay v. Ali Gulshan,* AIR 1955 SC 810, in contending that there is no merit in the contention that merely because the purpose involves establishment of a port it serves no public purpose other than a purpose of the Union. In my view the following observations of the Supreme Court are clearly instructive, "that there is another way of looking at the question involved. An undertaking may have three different facets or aspects, and may serve the purpose of a State, the purpose of the Union and a general public purpose. Even if one may regard the requisition of a room for the accommodation of a member of a consulate as one appertaining to a Union purpose, it does not necessarily cease to be a State purpose or a

general public purpose". Similar also was the view taken by this Court in the case of (1963) 67 Cal WN 460 (supra). Therefore, following the above view I must hold that when establishment of a subsidiary port or a dock therein would undoubtedly serve at least the general public purpose even if it otherwise involves a purpose of the Union, it would not be beyond the authority of the State Government to acquire lands in exercise of its own powers and irrespective of the powers delegated by the Union Government in this respect. In either view therefore this objection of Mr. Sinha must be overruled."

(emphasis is ours)

According to the learned counsel for the appellants, in the case in hand, the purpose of acquisition was purely relatable to the Railways. And the Railways being exclusively a Union subject (falling under entry 22 in list I, of the Seventh Schedule), the process of acquisition must be deemed to fall in the exclusive executive domain of the Union Government.

26. The second contention advanced at the hands of the learned counsel for the appellants was based on the constitutional right available to the appellants, under Article 300A of the Constitution of India (hereinafter referred to as the 'Constitution'). Article 300A is being extracted hereunder:-

"300A. Persons not to be deprived of property save by authority of law - No person shall be deprived of his property save by authority of law."

Based on the aforesaid constitutional provision, it was emphatically asserted on behalf of the appellants, that an individual could not be deprived of his property except in accordance with law. It was submitted, that even if the lands of the appellants were to be acquired for a public purpose, the same could have been done only by following the procedure established by law. In the absence of following the prescribed

procedure, the acquisition itself must be deemed to have been made in violation of the constitutional rights vested in the appellants under Article 300A of the Constitution.

27. In order to support the contention advanced at the hands of the appellants (expressed in the foregoing paragraph), learned counsel for the appellants placed reliance on a number of judgments rendered by this Court. The same are being individually referred to below.

(i) First of all, reliance was placed on the decision rendered by this Court in *State of U.P. & Ors. vs. Manohar,* (2005) 2 SCC 126. The following observations recorded therein were highlighted, during the course of hearing:-

> "6. Having heard the learned counsel for the appellants, we are satisfied that the case projected before the Court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.
>
> 7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300A has been placed in the Constitution, which reads as follows:
>
> > "300A. Persons not to be deprived of property save by authority of law - No person shall be deprived of his property save by authority of law."
>
> 8. This is a case where we find utter lack of legal authority

> for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

(ii) Reliance was then placed on the decision rendered by this Court in *Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chennai & Ors.,* (2005) 7 SCC 627. In order to expound the nature of rights vested in the appellants under Article 300A of the Constitution, reliance was placed on the following observations recorded therein :

> "6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution of India, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.
>
> 7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of Clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefore and no judicial review shall lie. (See *Jilubhai Nanbhai Khachar and vs. State of Gujarat,* 1995 Supp (1) SCC 596).
>
> 8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of

being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can he exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right."

(emphasis is ours)

(iii) In addition to the aforesaid, learned counsel for the appellants placed reliance on *Lachhman Dass vs. Jagat Ram & Ors.,* (2007) 10 SCC 448, and invited our attention to the following observations made therein:-

"16. Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him

an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefore must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right, vis-a-vis, the constitutional and human right of the owner thereof."

(emphasis is ours)

(iv) Finally learned counsel for the appellants, in order to contend, that the acquisition made by the Government of Rajasthan, in the case in hand, was not in conformity with the procedure prescribed by law, placed reliance on *Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd. etc. etc.,* (2008) 13 SCC 30. From the instant judgment, learned counsel placed reliance on the following observations:-

"118. An owner of a copyright indisputably has a right akin to the right of property. It is also a human right. Now, human rights have started gaining a multifaceted approach. Property rights vis-a-vis individuals are also incorporated within the "multiversity" of human rights. As, for example, any claim of adverse possession has to be read in consonance with human rights. The activist approach of the European Court of Human Rights is quite visible from the judgment of *Beaulane Properties Ltd. vs. Palmer,* 2005 EWHC 817(Ch.), and *J.A. Pye (Oxford) Ltd. vs. Graham,* (2002) 3 ALL ER 865.

119. This Court recognized need of incorporating the same principle for invoking the rule of strict construction

in such matters in *P.T. Munichikkanna Reddy vs. Revamma,* AIR 2007 SC 1753, stating:

> Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and wilful neglect but also on account of possessor's positive intent to dispossess. Intention to possess can not be substituted for intention to dispossess. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession.

120. Further, in *Peter Smith vs. Kvaerner Cementation Foundations Ltd.,* [2006] EWCA Civ 242, the Court allowed the appellant to reopen the case despite a delay of four years as he had been denied the right to which Article 6 of the European Convention on Human Rights ("the Convention") entitled him - to a fair hearing before an independent and impartial tribunal.

121. <u>But the right of property is no longer a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation</u>."

(emphasis is ours)

Based on the judgments cited above, it was asserted by learned counsel representing the appellants, that in the facts of this case, it stood established, that even though the prescribed procedure, vested the authority of acquisition, with the Union Government, it had unauthorizedly been acquired by the State Government (of Rajasthan).

28. Viewed dispassionately, we are satisfied, that even the second submission advanced by the learned counsel for the

appellants, has trappings of the first contention. To succeed on the basis of the second contention, it is critical for the appellants to succeed on the first. Therefore, if the appellants succeed to establish, that acquisition in the present case, could only have been made by the Union Government, they would simultaneously be able to establish, that they had been deprived of their property in violation of Article 300A of the Constitution, i.e., without following the procedure established by law.

29. The third contention advanced at the hands of the appellants was based on Article 73 of the Constitution. It was submitted, that since "Railways" is a union subject (referable to entry 22 in list I, of the Seventh Schedule), only the Union Government, i.e., the Government of India had executive powers to acquire the land for establishing a zonal office complex and residential quarters for Railway staff for the North Western Railway zone, at Jaipur, in the State of Rajasthan. Article 73 of the Constitution is being extracted hereunder:-

> "73. Extent of executive power of the Union - (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-
>
> (a) To the matters with respect to which Parliament has power to make laws; and
>
> (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

Based on Article 73 of the Constitution, it was the contention of the learned counsel for the appellants, that "Railways" is a Union subject (referable to entry 22 in list I, of the Seventh Schedule). It was accordingly contended, that Parliament has the exclusive power to make laws relatable to matters pertaining to the "Railways". As such, relying on Article 73, it was submitted, that only the Union Government (the Government of India) could exercise executive power in matters pertaining to the subject "Railways". Having made a reference to the notification dated 19.8.1997 (issued under Section 4 of the Acquisition Act), and the declaration dated 13.1.1999 (issued under Section 6 of the Acquisition Act) it was pointed out, that the land under reference was acquired "… in the public interest for the purpose of Zonal office, North Western Railway by Central Government (Railways Administration)…". It was accordingly submitted, that the matter under reference was relatable to a subject with respect to which, only the Parliament had power to make laws. Therefore, the executive power relatable to the acquisition under reference, under the mandate of Article 73 of the Constitution, could only have been exercised by the Central Government. In this behalf it was sought to be emphasized, that all the executive power in the instant process of acquisition, was exercised by the Government of Rajasthan. It was accordingly submitted, that all the orders issued by the State Government, including the notification dated 19.8.1997 and the declaration dated 13.1.1999, were without jurisdiction, and as such, void being ultra vires of Article 73 of the Constitution of India.

30. It was also pointed out by the learned counsel for the appellants, that it is open to the President of India to delegate executive functions vested in the Central Government to the State Government. In this behalf, learned counsel for the appellants placed reliance on Article 258 of the Constitution. Article 258 of the Constitution, is being extracted hereunder :

"258. Power of the Union to confer powers, etc, on States in certain cases-(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties."

Based on Article 258 of the Constitution, it was the submission of the learned counsel for the appellants, that the President of India in the facts and circumstances of the instant case, cannot be stated to have ever delegated the aforesaid executive functions of the Union, to the Government of Rajasthan. The simple submission was, that no such stance had been adopted

either by the Union, or by the acquiring State Government. Insofar as the instant aspect of the matter is concerned, learned counsel for the appellants, placed reliance on Section 3(8)(b) of the General Clauses Act, 1897. Section 3(8)(b) aforementioned is extracted hereunder:

> "3. Definitions.- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-
>
> (1) to (7) ...
>
> (8) "Central Government" shall,--
>
> (a) ...
>
> (b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,--
>
> (i) in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;
>
> (ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and
>
> (iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution."

It was the submission of the learned counsel for the appellants, that the onus rested on the Railways, and alternatively on the Government of Rajasthan, to establish that the delegation of power for acquiring the land under reference had actually been ordered by the President of India. It was the submission of the learned counsel for the appellants, that since no such delegation is shown to have been made by the President of India, to the functionaries of the Government of Rajasthan, it was natural to infer, that no such delegation was ever ordered. Since as submitted by learned counsel, the instant executive function was solely vested in the Central Government, therefore, it could not have been executed on behalf of the Central Government by the Government of Rajasthan. In the instant view of the matter, it was submitted, that the concerned acquisition, by the State Government, was without any authority/sanction of law.

31. In our considered view, even the third submission advanced by the learned counsel for the appellants raises the same foundational plea, as the first two contentions. In order to succeed on the third contention it would be vital (as for the earlier two contentions) for the appellants to establish, that the process of acquisition in this case, could only have been carried out by the Union executive (i.e., the Government of India), whereas, it had unauthorizedly been undertaken by the State Government (i.e., the Government of Rajasthan). In view of the first three submissions, therefore, we shall first of all endeavour to determine, whether the instant acquisition of land, accomplished by the State Government, is sustainable in law.

32. Having given our thoughtful consideration to the matter under consideration, we are of the view, that reliance on entry 33 (of list I of the Seventh Schedule), and on entry 36 (of list II of the Seventh Schedule), and finally on entry 42 (of list III of the Seventh Schedule), is only for the purpose of avoiding and getting around, the real issue. Entries in list I, bring the listed subjects within the legislative competence of the Parliament. Entries in list II demarcate subjects falling within the legislative

competence of the State Legislatures. Entries in list III pertain to subjects on which joint legislative competence is vested with the Parliament, as also, the State Legislatures. Needless to mention, that the Constitution vests superiority in enactments made by the Parliament, on subjects enumerated in list III, of the Seventh Schedule (in case of conflict between the legislations enacted by the Parliament and the State Legislatures). Statutory provisions enacted in the manner expressed above, regulate, not only the substance of the legislation, but also modulate the procedure to administer the substance of the legislation.

33. Article 73 of the Constitution vests in the Central Government executive power, the jurisdiction whereof is exactly the same as jurisdiction vested in the Parliament to make laws. The executive power of the Union, therefore, extends over the subjects on which the Parliament has the power to legislate. Arising out of the executive power referred to hereinabove, emerges one fundamental and unambiguous understanding, namely, executive power vested in the Central Government cannot be exercised in violation of the constitutional provisions referred to above, or as may be ordained by some express legislative enactment. The latter aspect (express legislative enactment), emerges from the proviso under Article 73(1) of the Constitution of India. Therefore, on a subject regulated by legislation, executive power has to be exercised in consonance with the enacted legislation.

34. It is in the background of the conclusions recorded in the aforegoing two paragraphs, that we must understand the scope of executive authority vested in the Central Government under Article 73 of the Constitution. There is no dispute whatsoever, that the subject matter under consideration is regulated by the Acquisition Act. As such, the freedom of executive power vested in the Central Government must be deemed to have been curtailed, so as to be exercised in consonance with the provisions of the Acquisition Act. The

preceding proposition is the natural consequence of giving effect to the proviso under Article 73(1) of the Constitution of India. Since the vires of the provisions of the Acquisition Act relied upon by the learned counsel for the appellants have not been assailed, we are inclined to unhesitatingly hold that the procedure contemplated under the Acquisition Act, is liable to be followed in matters pertaining to governmental acquisitions, of private land. In absence of compliance therewith, the process of acquisition made thereunder, would be liable to be set aside. We are of the view, that Sections 4 and 6 lay down mandatory procedural provisions, which require to be followed in letter and spirit, in matters pertaining to acquisition of private lands.

35. For the reasons recorded in the foregoing paragraphs, we are of the view, that reliance on different entries in different lists of the Seventh Schedule, at the behest of the learned counsel for the appellants, may turn out to be wholly inconsequential, in so far as the present controversy is concerned. It needs emphasis, that entries in different lists, have been relied upon only to demarcate the executive domain. To impress upon us, that the jurisdiction to acquire land in the facts of the present case, fell within the exclusive domain of the Central Government, in a very subtle manner, the submission has clearly changed over to a wrong track. Herein the substance of law, as also, the procedure regulating acquisition, flows out of the Acquisition Act. The vires of the Acquisition Act is not under challenge. Therefore, the Acquisition Act, which demarcates the jurisdictional areas between the Union and the States will provide an answer to the issue of jurisdiction canvassed, and not the entries in different lists of the Seventh Schedule of the Constitution of India. More so, because the subject of acquisition is now placed in list III of the Seventh Schedule of the Constitution of India (in entry 42), and as such, the Parliament as also the State Legislatures, have concurrent jurisdiction in respect thereof. As such, it would be fully justified for Parliament (as it has done through the Acquisition Act), to

demonstrate the areas of jurisdiction. All the same, we shall endeavour to record the submissions advanced on behalf of the appellants.

36. While bringing to our notice entry 33 in list I, entry 36 in list II and entry 42 in list III of the Seventh Schedule of the Constitution, it was vehemently pointed out, by learned counsel for the appellants, that the first two of the aforesaid entries came to be omitted by the Constitution (Seventh Amendment) Act, 1956. Simultaneously, by the same amendment, entry 42 was added to List III of the Seventh Schedule. Learned counsel for the appellants therefore submitted, that the earlier entry 33 of list I and entry 36 of list II of the Seventh Schedule must be deemed to have been merged into entry 42 of list III of the Seventh Schedule. It was accordingly the vehement contention of the learned counsel for the appellants, that while determining legislative competence (and the resultant executive jurisdiction) consequent upon the merger of the aforesaid two entries into the freshly amended/substituted entry 42 of list III, it was imperative to keep in mind what the Parliament did away with, and the resultant effect emerging from a collective interpretation of the above three entries, prior to the Constitution (Seventh Amendment) Act, 1956. For the instant reason, it was also sought to be suggested, that the judgment rendered by this Court in *State of Bombay v. Ali Gulshan* (supra) would not constitute a valid basis for determination of the present controversy. Learned counsel, in this behalf also pointed out, that the judgment in the aforesaid matter was rendered in 1955, i.e. before the Constitutional Amendment in 1956.

37. We shall now endeavour to determine the effect of the submissions advanced at the hands of the learned counsel. Through entry 33 (in list I of the Seventh Schedule), the subject of acquisition of property "... for the purposes of the Union..." was vested in the legislative domain of the Parliament. And through entry 36 (in list II of the Seventh Schedule), the subject of acquisition of property "... except for the purposes of the

Union..." was vested in the State Legislatures. Having done away with the aforesaid entries from Lists I and II of the Seventh Schedule, by the Constitution (Seventh Amendment) Act, 1956 (with effect from 1.11.1956), the legislative competence on the subject of acquisition was jointly vested in the Parliament, as well as, the State Legislature through entry 42 (in list III of the Seventh Schedule). Within the scope of entry 42 (in list III of the Seventh Schedule), it was open to the Parliament, as also, the State Legislature to enact legislation on the subject of acquisition. It is, therefore apparent that the exclusive jurisdiction vested in the State Legislature to enact legislation on the subject of acquisition "...except for the purposes of the Union..." was clearly taken away from the exclusive jurisdiction of the State legislation by the aforestated amendment to the Constitution. In other words, prior to the above amendment, State Legislature had the exclusive jurisdiction to enact law for acquisition of private lands, falling within the territorial jurisdiction of the concerned State. The said jurisdiction was now concurrently shared with the Parliament. The said jurisdiction was invoked by the Parliament when it enacted the Acquisition Act. Therefore, in the ultimate analysis the submission advanced by the learned counsel, would not serve the purpose of the appellants herein, inasmuch as, it is not possible for us to read into entry 42 of list III of the Seventh Schedule, the cumulative effect of entries 31 and 36 (of lists I and II respectively of the Seventh Schedule). Hithertobefore, the jurisdiction of Parliament (and consequently of the Union executive), would extend only to acquisition of land/properties for purposes of the Union. We are satisfied to hold, that consequent upon the Constitution (Seventh Amendment) Act, 1956, the jurisdictional limitations on the subject of acquisition would emerge from a valid legislation made under entry 42 (in list III of the Seventh Schedule). Since the validity of the Acquisition Act has not been assailed by the appellants, we shall accept the same to be a valid legislation enacted under entry 42 (in list III of the Seventh Schedule). We must, therefore, now endeavour to determine the legitimacy of the submissions

advanced at the hands of the learned counsel for the appellants, on the jurisdictional question, purely on the basis of the Acquisition Act.

38. In order to determine the validity of the submission advanced at the hands of the learned counsel for the appellants, namely, that the acquisition in the facts and circumstances of the present case, could have been made only by the Central Government, and consequently, the acquisition made by the Government of Rajasthan, was totally without jurisdiction, would depend on the interpretation of Sections 4 and 6 of the Acquisition Act (read along with other provisions of the Acquisition Act, relied upon by the learned counsel for the parties). In this behalf, the submissions advanced on behalf of the appellants, have already been recorded in paragraph 21 above.

39. From the deliberations recorded above, there is no room for any dispute, that the interpretation of the term "appropriate Government" referred to in Sections 4 and 6 of the Acquisition Act would lead to the correct determination of the executive Government competent to acquire the land under reference. Indubitably, the answer to the issue would emerge from the definition of the term 'appropriate Government' in Section 3(ee) of the Acquisition Act, wherein, the expression 'appropriate Government' has been linked to the purpose of acquisition. In such a contingency, the answer to the query, as to which of the two Governments (Central Government, or the concerned State Government) would satisfy the test of "appropriate Government", one will necessarily have to carefully view the real effect of the words engaged to define the said term in Section 3(ee) of the Acquisition Act. Section 3(ee) aforementioned is being extracted hereunder:

> "3(ee) the expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;"

A perusal of Section 3(ee) of the Acquisition Act, leaves no room for any doubt, that the authority to acquire land has been divided between the Central executive and the State executive. In situations where an acquisition is entirely "…for the purposes of the Union…". Section 3(ee) aforementioned clearly postulates, that the Union executive would have the exclusive jurisdiction to acquire the land. The terminology engaged in Section 3(ee) of the Acquisition Act, for expressing the area of jurisdiction of the State executive (in the matter of acquisition of land), is not analogous or comparable with that engaged while spelling out the jurisdiction of the Union executive. Section 3(ee), it may be noted, does not express, that in matters of acquisition which are entirely for purposes of a State, the jurisdiction would vest with the concerned State executive. Noticeably, the words engaged to express the jurisdiction of the State executive, are extremely wide, so as to accommodate all acquisitions which are not entirely "for purposes of the Union". This intention of the legislature has been recorded by using the words "…in relation to acquisition of land for any other purposes…" (i.e., other than "… for the purpose of the Union…"), "…the State Government".

40. Having had the benefit of understanding the different purposes for which land may be acquired, from the Constitution Bench judgment of this Court in *State of Bombay vs. Ali Gulshan* (supra), we would unhesitatingly conclude, that the contemplated purposes would definitely be "…three in number, namely, Union purpose, State purpose, and "…a general public purpose…". Our instant determination is based on the fact, that an acquisition may not be exclusively for purposes relatable to the Union, or entirely for purposes relatable to a State. The complex and multifarious public activities which the executive has to cater to may not fall in the exclusive domain of either the Union or the State. In our view, causes with duality of purpose, would also fall in the realm of the third purpose expressed by the Constitution Bench referred to above as "…a general public purpose …". Whenever the exclusive Union or

State barrier is transgressed, the purpose could be described (as in *State of Bombay vs. Ali Gulshan* (supra)) as "…a general public purpose…". In case of the first contemplated purpose referred to above, the Union executive would have the absolute and unencumbered jurisdiction, as per the definition of the expression "appropriate Government" in Section 3(ee) of the Acquisition Act. For the remaining two purposes, the State executive would have jurisdiction. Therefore, to determine the issue of jurisdiction in the instant case, the first step essentially would be to determine the precise purpose for which the instant acquisition was made. Based on such conclusion, it would be easy to determine the vesting of executive jurisdiction, for acquisition of the land under reference.

41. The instant issue can be examined from another perspective as well. When examined closely, Section 3(ee) of the Acquisition Act, in fact and in substance, incorporates the erstwhile entries 33 and 36 (from Lists I and II respectively, of the Seventh Schedule). For, it may be recalled, that entry 33 (in List I of the Seventh Schedule), had vested the subject of acquisition of property "... for the purposes of the Union..." in the Parliament. Therefore, the executive domain thereof fell in the realm of the Union/Central Government. Exactly in the same manner, under Section 2(ee) of the Acquisition Act, for situations where acquisition is exclusively "… for the purposes of the Union…" the Union executive has been vested with absolute jurisdiction to acquire the land. Likewise, jurisdiction for acquisition of land was vested in the State legislature vide entry 36 (in List II of the Seventh Schedule). The authority of the concerned State legislature extended to acquisitions of land other than "... for the purposes of the Union...". Therefore, the executive domain of all acquisitions other than those for purposes of the Union, fell in the realm of the concerned State Government. In exactly the same manner Section 3(ee) of the Acquisition Act, for all the residuary acquisitions, i.e. situations other than exclusively "…for the purpose of the Union…", have been vested in the realm of the concerned State Government. This is exactly the same position which was contemplated by the erstwhile entries 33 and 36 (from Lists I and II respectively, of the Seventh Schedule). The scope and effect of the erstwhile entries 33 and 36 was determined by a Constitution Bench of this Court in *State of Bombay vs. Ali Gulshan* (supra), wherein this Court concluded that the acquisition may serve three purposes i.e., the purpose of the Union, the purpose of a State, and thirdly, "…a general public purpose...". Therefore, the logic, the course of thought, the conclusions and the deductions made in the Constitution Bench judgment aforementioned would completely and unqualifiedly be applicable, while interpreting Section 3(ee) of the Acquisition Act. This is for the simple reason, that the cause and effect of the aforesaid entries (33 of List I, and 36 of List II) have been juxtaposed into the definition of the term "appropriate Government" in Section 3(ee) of the Acquisition Act. Therefore, it is only for the first of the three purposes referred to hereinabove, wherein the term 'appropriate Government' would mean the Central Government. For the other two exigencies/situations, the term 'appropriate Government' would mean the concerned State Government.

42. We are of the view, that the determination on the first issue canvassed at the hands of the learned counsel, would inevitably depend on the purpose for which the land in question came to be acquired. If the purpose of acquisition is exclusively for the Union, then the Union/Central Government will have the exclusive jurisdiction to acquire the land. If the purpose of acquisition is exclusively for a State, then the concerned State Government will have the exclusive jurisdiction to acquire the land. And if the purpose of acquisition is, "a general public purpose" (i.e., a purpose which is neither exclusively relatable to the Central Government and/or fully relatable to the State Government), yet again, the concerned State Government will have the exclusive jurisdiction to acquire the land.

43. We have already referred to a series of communications exchanged between the Union Government,

as also, the State Government on the subject of the land required for establishing the zonal office complex and residential quarters for Railway staff (for the North-Western Railway Zone), at Jaipur. From the tenor thereof, we shall venture to determine whether the land in question was being acquired exclusively for the purposes of the Union, or exclusively for the purpose of the State and/or for the third purpose identified above, namely, to serve "...a general public purpose...". For this, we shall first refer to the letters exchanged between the concerned parties. The first available communication on the record of the case dated 15.11.1996, was addressed by the Officer on Special Duty, North-Western Railway, to the Commissioner, Jaipur Development Authority, Jaipur, indicating the availability of 26 bighas of Government land in front of the Getor Jagatpura Railway Station. Even though the aforesaid letter mentions, that the land in question had already been allotted to the Scouts & Guides Organization, yet it was pointed out, that the same could effectively be put to use for setting up the required infrastructure for the North-Western Railway Zone. It was accordingly requested, that the said land may be transferred to the Railways, at an early date. The aforesaid letter leaves no room for any doubt, that what was being sought through the communication dated 15.11.1996 was the transfer of State Government land, to the Railways. The aforesaid position came to be reiterated in another letter dated 15.11.1996. These two communications were then followed by a letter dated 30.12.1996, addressed by Mr. Ram Vilas Paswan, the then Union Minister for Railways, to Mr. Bhairon Singh Shekhawat, the then Chief Minister of the State of Rajasthan, indicating the Union Government's desire to set up the North-Western Railway Zone Complex, at Jaipur. Interestingly, in the aforesaid letter the Railway's request to the State Government was to provide land "free of cost". The basis of seeking the land free of cost, also emerges from the said letter dated 30.12.1996, wherein it was emphasized, that setting up of the Zonal Office would improve train services to and within the State of Rajasthan, and would meet the

expectations of public and private entities in that area. In fact, the emphasis in the aforesaid letter was, that such a gesture of the State Government (to provide land free of cost) would go a long way in enabling the Railways to make the Zonal Office functional, at an early date. The instant emphasis makes out, that the State of Rajasthan (on account of transportation facilities, which would become available to public and private entities, having a nexus to the State) would benefit therefrom. Consequent upon the receipt of the aforesaid communication, the Commissioner, Jaipur Development Authority, wrote a letter dated 28.2.1997 to the Secretary, Department of Transport, Government of Rajasthan, for initiating acquisition proceedings in respect of the land identified in villages Bindayaka and Todi Ramjanipura in tehsil Sanganer of district Jaipur. The Deputy Secretary, Department of Transport, Government of Rajasthan, responded to the same vide a letter dated 29.3.1997, addressed to the District Collector, Jaipur, for effectuating the desire expressed. Pursuant to the aforesaid correspondence between the Railways and the functionaries of the Government of Rajasthan, the State Government issued a notification dated 19.8.1997 under Section 4 of the Acquisition Act, depicting its intention to acquire land measuring 4-39 hectares in the revenue estate of village Bindyaka, and 9-91 hectares in village Todi Ramjanipura, tehsil Sanganer, district Jaipur, to establish the North-Western Railway Zone Complex.

44. The correspondence between the Railways and the Government of Rajasthan preceding the notification under Section 4 of the Acquisition Act, is the material correspondence on the basis whereof a finding will have to be recorded, on the issue in hand, one way or the other. The desire for transfer of land belonging to the State Government, and thereafter, the desire to furnish land consequent upon its acquisition "free of cost" to the Railways, leaves no room for any doubt, that the Railways desired the State of Rajasthan to contribute land, for the proposed project. Ordinarily this would be unthinkable, except when the project would directly or indirectly benefit the

State as well. Ordinarily, the setting up of a Zonal Office would mean better administration for the Railways establishment. It is difficult to understand how, for the purpose of its own administration, the Railways could repeatedly implore the Government of Rajasthan, in the first instance to transfer land under State ownership to the Railways, and thereafter, make an alternative request to the Government of Rajasthan, to acquire land and to transfer the same to the Railways free of cost. The only reason which one can infer for such an adjuration, ascertainable from the letters referred to above is, that the residents of the State of Rajasthan would also benefit from the establishment of the said Zonal Office. This issue was impressed upon by the Railways, by asserting that better transportation facilities would become available to the public and private entities having a nexus to the State. And therefore, the Railways considered it appropriate to involve the State Government's participation in the project, in the manner indicated above. The letter addressed by the Union Minister of Railways dated 30.12.1996 is a clear pointer to the above inference. In the said letter, the Union Minister for Railways particularly highlighted the fact that the setting up of the North-Western Railways Zone Complex would improve train services in Rajasthan, which in turn, would benefit the State of Rajasthan. It is, therefore, that in the first instance, transfer of Government land was sought by the Railways. When that did not materialize, the Government was asked to acquire land, and provide it free of cost to the Railways. From the above deliberations, we may record our conclusions as follows. Setting up the North-Western Railway Zonal Complex at Jaipur, would lead to better administration for the Railways, and in that sense it would serve the purpose of the Union. Additionally, it would improve train services in Rajasthan and would accordingly meet the expectations of public and private entities of the area. This would serve the purpose of the State. We would therefore unhesitatingly record, that the situation in hand can be described as one wherein the public purpose is "… a general public purpose…" which is neither exclusively relatable to the

Central Government and/or fully relatable to the State Government.

45. In *State of Bombay vs. Ali Gulshan* (supra) accommodation was required, for housing a staff member of a foreign Consulate in Bombay. In the challenge raised, the primary contention was, that the subject under reference was a Union purpose, and accordingly, the Union Government alone had the jurisdiction in the matter. This submission would naturally emerge from entry 11 (in List I, of the Seventh Schedule), which reads, "Diplomatic, Consular and trade representation". The Bombay High Court, while accepting the challenge had concluded, that there were only two categories for determining the executive Government which had the jurisdiction to acquire land i.e., for a Union purpose the Union/ Central Government, and for the purpose of the State, the concerned State Government. The High Court had interpreted the words "any other purpose" by applying the rule of ejusdem generis, as flowing out of the purpose of the State. The Constitution Bench of this Court while determining the controversy, did not accept the view of the High Court. This Court held, that categories for the purpose of acquisition were three, namely, Union purpose, State purpose, and "…a general public purpose…". This was sought to be explained by observing, that a State purpose or a Union purpose would have a nexus to the duties and obligations cast on the State or the Union, to do particular things for the benefit of the public or a section of the public. Naturally these obligations would be determined on the basis of the scheme of distribution of subjects between the Union and the States in the Seventh Schedule of the Constitution of India. The Union purpose, would constitute the first category. The second category would be, for fulfilling a State purpose. Besides the aforesaid clear demarcation, constituting the first two categories, situations where a State acquires or requisitions property to facilitate the coming into existence of allied objects having public welfare at heart, such like situations would fall within the third category.

The third category was described as one which contemplated "…a general public purpose…", i.e., where the purpose is neither exclusively relatable to the Central Government and/or fully relatable to the State Government. In *State of Bombay vs. Ali Gulshan* (supra) it came to be held, that the acquisition/ requisition under reference therein, fell in the third category. The consideration and logic leading to the aforesaid determination was, that trade and commerce is the primary cause of the State which appoints foreign Consulate staff, to the State (in the cited case, the State of Bombay) where he is appointed. The purpose for acquisition/requisition, was accepted as trade and commerce. As such, it was concluded, that the State Government had the jurisdiction to acquire/requisition the land. In the aforesaid understanding of the matter, it is evident that the situation in hand is one akin to the one referred to above where the purpose of acquisition partly falls in the first category i.e., for the benefit of the Union, and partly, falls in the third category i.e., "…a general public purpose. Just like in *State of Bombay vs. Ali Gulshan* (supra), and for exactly the same reasons, we have no hesitation in concluding, that in the present case as well, the purpose of acquisition would benefit the State generally, as better transportation facilities would meet the expectations of public and private entities having a nexus with the State of Rajasthan. The purpose of the acquisition in hand not being an exclusive Union purpose, and further because, the purpose for acquisition can certainly be described as "…a general public purpose…", the State executive would definitely have the jurisdiction to acquire the land under reference.

46. The submission advanced on behalf of the appellants, against the conclusion drawn above was, that the judgment rendered in *State of Bombay vs. Ali Gulshan* (supra) could not be applied after the Constitution (Seventh Amendment) Act, 1956. It was contended that, the basis on which the above judgment was rendered no longer exists, and as such, the same has lost all its relevance. We have already examined this aspect of the matter. We have concluded that Section 2(ee) of the

Acquisition Act, reintroduces the three categories under which jurisdiction for acquiring land has to be determined. The same three categories of public purpose, which were deduced from entries 33 and 36 (in lists I and II, respectively of the Seventh Schedule) in *State of Bombay vs. Ali Gulshan* (supra), also emerge out of an analysis of Section 2(ee) of the Acquisition Act. It is therefore not possible for us to accept, that the Constitution Bench judgment in *State of Bombay vs. Ali Gulshan* has lost its relevance. Accordingly, we find no merit in the instant objection raised on behalf of the appellants. For the above reason, it is not possible for us to accept the first contention advanced at the hands of the learned counsel for the appellants. We hereby affirm, that the State Government had the jurisdiction to acquire the land under reference, because it duly satisfied the requirement of the term 'appropriate Government' referred to in Sections 4 and 6 of the Acquisition Act.

47. The second contention advanced at the hands of the learned counsel for the appellants was based on the Constitutional right available to the appellants under Article 300A of the Constitution. The contention advanced at the hands of the learned counsel for the appellants in this behalf was, that the Government of Rajasthan had no jurisdiction to acquire the land in question. Consequently it was contended, that the procedure prescribed by law had not been adhered to. It was asserted that the Central Government alone could have acquired the land in question, since the same was acquired for a purpose which falls in the domain of the Union (the Railways).

48. It was not the contention of the learned counsel for the appellants before this Court, that there had been any other procedural lapse besides the one indicated above. It was not the case of the appellants, that the notifications and declaration contemplated under the provisions of the Acquisition Act were not duly issued. It was also not the case of the appellants, that

the land losers were not afforded an opportunity to file objections. Nor was it the case of the appellants, that the objections were not duly considered. No lapse whatsoever had been pointed out depicting any irregularity at the hands of the appropriate authority, either in terms of taking possession of the acquired land, or in terms of determination of the compensation payable. It is, therefore, apparent that in the process of acquisition, no procedural lapse has been pointed out. The only illegality pleaded and canvassed for the annulment of the acquisition proceedings was, that the term 'appropriate Government' used in Sections 4 and 6 of the Acquisition Act was wrongly assumed, as the Government of Rajasthan. It was submitted, that it ought to have been the Union/Central Government. In the determination rendered by us, in respect of the first contention canvassed on behalf of the appellants, we have already concluded, that in the facts and circumstances of this case, reference to the term 'appropriate Government' in Sections 4 and 6 of the Acquisition Act was rightfully relatable to the Government of Rajasthan. Based on the above conclusion drawn by us, there can be no further room for the appellants to contend, that the instant acquisition process, was not in accordance with law. In the aforesaid view of the matter, we have no hesitation in affirming that while acquiring the land of the appellants, the Government of Rajasthan, has proceeded in due course of law. As such, the appellants cannot be stated to have been deprived of their lands/property, without the authority of law. Accordingly, it is not possible for us to accept even the second contention advanced at the hands of the learned counsel for the appellants, namely, that the acquisition of the appellants' land has violated the appellants' Constitutional right under Article 300A of the Constitution of India.

49. We shall now advert to the third contention advanced at the hands of the learned counsel for the appellants. It was the pointed submission of the learned counsel for the appellants, that the Central Government alone had jurisdiction in the matter of acquisition of land for the Railways.

Undoubtedly, the acquisition of the land in the facts and circumstances of the present case was for establishing the North-Western Railway Zone Complex. Despite the aforesaid, we have already concluded hereinabove, that on the subject of acquisition, the only relevant entry in the Seventh Schedule of the Constitution was entry 42 in list III, i.e., the Concurrent List. Besides the aforesaid, no other entry can legitimately be referred to, wherein the acquisition of land (even though for the Railways) is the pointed subject of consideration. There was no challenge to any of the provisions of the Acquisition Act. We have already drawn our conclusions on the basis of the provisions of the Acquisition Act, framed by the Parliament under entry 42 (in list III, of the Seventh Schedule). We have interpreted the relevant provisions of the Acquisition Act, and on the basis thereof have been persuaded to conclude, that the Government of Rajasthan was the competent authority for acquiring the land under reference. In such view of the matter, reliance on Articles 73 or 258 of the Constitution of India, by the learned counsel for the appellants, was clearly misconceived. The answer to the third contention, therefore, clearly emerges from the conclusions drawn by us on the basis of the first contention advanced at the hands of the learned counsel for the appellants. For the above reasons, we find no merit even in the third contention advanced on behalf of the appellants.

50. We shall now deal with the fourth issue canvassed at the hands of the learned counsel for the appellants. The instant issue is unconnected with the previous issues. From the sequence of facts narrated hereinabove, it is apparent that the instant acquisition of land was at the behest of the Railways, i.e., the Union Government. It was pointed out, that on all administrative issues, the functioning of the Central Government is regulated by Rules of Business. In this behalf, our attention was invited to the Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961. It was the contention of the learned

counsel for the appellants, that the aforestated Rules of Business (framed under Article 77 of the Constitution of India) have a binding and mandatory effect. Breach of the Rules of Business, according to the learned counsel for the appellants, would result in vitiation of the entire action. Insofar as the instant case is concerned, it was sought to be canvassed, that the Union of India had breached the Rules of Business. And the said breach, would vitiate the impugned acquisition proceedings. In order to make good the aforesaid submission, learned counsel for the appellants, invited our attention to Rules 3 and 4 of the Government of India (Transaction of Business) Rules, 1961. Rules 3 and 4 aforementioned are being extracted hereunder :

"3. Disposal of Business by Ministries.- Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.

4. Inter-Departmental Consultations.- (1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.

Explanation-Every case in which a decision, if taken in one Department, is likely to affect the transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department.

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or

special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not;

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training.

(3) The Ministry of Law shall be consulted on-

(a) proposals for legislation;

(b) the making of rules and orders of a general character in the exercise of a statutory power conferred on the Government; and

(c) the preparation of important contracts to be entered into by the Government.

(4) Unless the case is fully covered by a decision or

advice previously given by the Department of Personnel and Training that Department shall be consulted on all matters involving-

(a) the determination of the methods of recruitment and conditions of service of general application to Government servants in civil employment; and

(b) the interpretation of the existing orders of general application relating to such recruitment or conditions of service.

(5) Unless the case is fully covered by the instructions issued or advice given by that Ministry, the Ministry of External Affairs shall be consulted on all matters affecting India's external relations."

It was pointed out on the basis of the aforesaid Rules, that if the subject under consideration pertained to business of a singular department, the determination thereof would be rendered "... under the general or special directions of the Minister in-charge...". As against the aforesaid, it was pointed out, that in situations where the subject concerned related to more than one department, no final decision could be taken, and no final order could be passed, unless all the concerned departments were agreeable to the contemplated action. It was, however, pointed out, that in case of non-concurrence of one or the other department, a final decision could still be taken, and a final order could still be passed, but only in consonance with the determination of the Cabinet.

51. Insofar as the present controversy is concerned, it was the vehement contention of the learned counsel for the appellants, that the administrative ministry relevant for the setting up of the North-Western Railway Zonal Headquarter at Jaipur was the Ministry of Railways, whereas, the Department of Land Resources was the concerned department to deal with

the matters pertaining to acquisition of land for purposes of the Union. Insofar as the instant aspect of the matter is concerned, learned counsel invited our attention to the Second Schedule under the Government of India (Allocation of Business) Rules, 1961. Therein, under the Head 'B', the Department of Land Resources has been vested with the subject of administration of the provisions of the Acquisition Act, and matters relating to acquisition of land for purposes of the Union. It was the pointed submission of the learned counsel for the appellants, that there was no material on the record of the case to indicate, that in the instant acquisition proceedings, the concurrence of the Department of Land Resources was obtained. As such, it was submitted, that the instant acquisition of land for the Railways was liable to be set aside.

52. In order to further his contention that the Rules of Business have a binding and mandatory character, learned counsel for the appellants placed reliance on a decision rendered by this Court in *MRF Limited etc. vs. Manohar Parrikar & Ors.,* (2010) 11 SCC 374. Our attention was invited to the following observations recorded therein :

"107. Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the Notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions

consequent thereto are null and void.

108. The appellants contended before this Court that another Division Bench of the High Court in its earlier judgment of 21.1.1999 had held that the Notification dated 1.8.1996 was clarificatory and that it did not create any extra financial liability on the State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said Notification cannot be treated as mere c1arificatory. It is a notification issued purportedly in terms of a Government decision. It was a decision finalized at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under Article 166(3) of the Constitution of India. The decision cannot be called a government decision as understood under Article 154 of the Constitution, though it may satisfy the requirements of authentication. Nevertheless mere authentication as required under Article 166(2) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. The validity of the notification will have to be tested with reference to the constitutional provisions and Business rules and not by their form or substance. therefore, this contention of the appellants is liable to be rejected."

No doubt, this Court in *MRF Limited's* case (supra) has made a passing reference to the effect, that violation of Rules of Business would render all actions taken as void ab initio. In other words, breach of the Rules of Business would render the entire action null and void.

53. We have duly considered the fourth submission advanced by the learned counsel for the appellant. The aforesaid determination in *MRF Limited's* case (supra), has been rendered without examining the said proposition with reference to Article 77 of the Constitution, as also, any other legislative enactment. We would, therefore, refrain from

pointedly examining the issue (in a manner as would constitute our conclusion a ratio decidendi on the said subject) since we are of the view, that the same does not arise for consideration in the facts and circumstances of this case. The acquisition in the present controversy was made by the Government of Rajasthan, and therefore, there was hardly any justification for the consultation of the Department of Land Resources of the Government of India. It is only if the acquisition had been made by the Railways, the question of consultation with the Department of Land Resources would have arisen. In our view, reliance on the provisions of the Government of India (Allocation of Business) Rules, 1961 and/or the Government of India (Transaction of Business) Rules, 1961 in order to assail the acquisition made in the facts and circumstances of the present case by the Government of Rajasthan, is wholly misconceived.

54. The next contention, serially the fifth contention advanced at the behest of the appellants was, that the choice of the appellants' land for acquisition was vitiated by fraud, and as such, was liable to be set aside. In this behalf, the contention advanced at the hands of the learned counsel for the appellants was, that the action of acquisition would have been legitimate, if the Government of Rajasthan had acquired one block of land for setting up of the North-Western Railway Zone Complex. It was submitted, that the acquisition in question for the purpose of establishing the Zonal Headquarter and staff quarters for North-Western Railways is in two blocks. In this behalf, it is pointed out, that there was motive and extraneous consideration in leaving out of acquisition, the land between the two blocks. It was submitted, that the left out land (between the two blocks acquired) was owned by highly placed bureaucrats and police officers. It was also submitted, that the action of acquiring the appellants' land by consciously leaving out land in the ownership of highly placed influential persons would also be hit by Articles 14 and 15 of the Constitution of India. According to the learned counsel, the impugned acquisition process was also liable to be described as arbitrary and

discriminatory.

(i) On the issue of mala fides and fraud, learned counsel for the appellants placed reliance on the decision rendered in *Pratap Singh vs. State of Punjab,* (1964) 4 SCR 733 wherein this Court held as under :

> "8. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that it what the appellant has to establish in this case, though this may sometimes be done (See *Edgington v. Fitzmaurice* [1855] 29 C.D. 459.. The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

(ii) On the subject of classification and equality, learned counsel for the appellants placed reliance on *Col. A.S. Iyer vs. V. Balasubramanyam,* (1980) 1 SCC 634, and invited our attention to the following conclusions drawn therein :

> "57. Sri Govindan Nair, with assertive argument, gave us anxious moments when he pleaded for minimum justice to the civilian elements. He said that the impugned rules were so designed, or did so result in the working, that all civilians, recruit or promotee, who came in with equal

> expectations like his military analogue, would be so outwitted at all higher levels that promotions, even in long official careers would be hopes that sour into dupes and promises that wither away as teasing illusions. In effect, even if not in intent, if a rule produces indefensible disparities, whatever the specious reasons for engrafting service weightage of the army recruits, we may have had to diagnose the malady of such frustrating inequality. After all, civilian entrants are not expendable commodities, especially when considerable civil developmental undertakings sustain the size of the service. And their contentment through promotional avenues is a relevant factor. The Survey of India is not a civil service 'sold' to the military, stampeded by war psychosis. Nor does the philosophy of Article 14 or Article 16 con-, template de jure classification and de facto easteification in public services based on some meretricious or plausible differentiation, 'Constitutional legalistics can never drown the fundamental theses that, as the thrust of Thomas's case State of *Kerala v. N.M.* (1976) I LLJ 376 SC and the tail-piece of *Triloki Nath Khosa's case State of J & K v. Triloki Nath khoa* (1974) I LLJ 121 SC bring out, equality clauses in our constitutional ethic have an equalising message and egalitarian meaning which cannot be subverted' by discovering classification between groups and perpetuating the inferior-superior complex by a neo-doctrine. Judges may interpret, even make viable, but not whittle down or undo the essence of the Article. This tendency, in an elitist society with a dischard casts mentality, is a disservice to our founding faith, even if judicially sanctified. Subba Rao J. hit the nail on the head when he cautioned in *Lachhman Das v. State of Punjab* [1963] 2 SCR 353 :
>
> > 'The doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Overemphasis on the doctrine of

> classification or an anxious and sustained attempt to discover some basic for classification may gradually and imperceptibly deprive the Article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality; the fundamental right to equality before the law and the equal protection of the laws may be replaced by the doctrine of classification.'

The quintessence of the constitutional code of equality is brought out also by Bose, J. in *Bidi Supply Co. case Bidi Supply Co. v. The Union of India and Ors.* [1956] 29 ITR 717 (SC) .

> The truth is that it is impossible to be precise, for we are dealing, with intangibles and though the results are clear it is impossible to pin the thought down to any precise analysis. Article 14 sets out, to my mind, an attitude of mind, -a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of. something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be (determined by the highest Judges in the land as each case arises."

(iii) In continuation of the aforesaid, learned counsel also placed reliance on *E.P. Royappa vs. State of Tamil Nadu,* (1974) 4 SCC 3; *Menaka Gandhi v. Union of India,* (1978) 1 SCC 248; *Ramana Dayaram Shetty vs. International Airport Authority of India,* (1979) 3 SCC 489; and *Ajay Hasia v. Khalid Mujib Sehravardi,* (1981) 1 SCC 722.

55. We have examined the last contention advanced at the hands of the learned counsel for the appellants. The instant contention is based on a factual assertions, namely, that the Government of Rajasthan acted arbitrarily and in a discriminatory fashion, by deliberately and intentionally leaving out of the acquisition process, land belonging to highly placed influential persons. Before venturing to examine the instant contention advanced at the behest of the appellants, it is necessary to determine, whether the factual position, at the time of acquisition was, as is being alleged by the appellants. Unfortunately, our determination on the instant aspect of the matter is contrary to the assertions advanced at the hands of the appellants. Insofar as the instant aspect of the matter is concerned, reference may be made to paragraph 11 of the counter affidavit filed on behalf of the State of Rajasthan, wherein, it was asserted as under :

> "It would be relevant to mention that the argument raised about certain lands of IAS & IPA officials being selectively left-out is without any substance. This argument would only suffice if the land belonging to the IAS/IPS officials on the date on of acquisition. This is apart from the fact that certain lands would be left out in acquisition proceedings. It is relevant to mention that no land belongs to any IAS/ IPS official on the date of acquisition and any subsequent purchase would not invalidate the acquisition proceedings. Thus, the finding on this aspect does not suffer from any legal infirmity."

The aforesaid factual position has not been denied on behalf of the appellants before this Court. Thus viewed, it is apparent that the land which was left out, and which falls between the two blocks of land acquired, cannot be stated to have been owned by influential bureaucrats or police officers, at the time when the acquisition in question was made. In the aforesaid view of

the matter, it is not possible for us to conclude, that the leaving out the land between the two blocks of acquired land, and further that, the choice of acquisition of the appellants' land to the exclusion of the land left out of acquisition, was vitiated for reasons of fraud, mala fides, arbitrariness or discrimination. For the reasons recorded hereinabove, we find no merit even in the last contention advanced at the hands of the learned counsel for the appellants.

56. It is necessary to record herein that the challenge raised at the behest of the appellants, to the acquisition of land made by the Government of Rajasthan, for the Railways, was vehemently opposed by the official respondents for a variety of reasons. More particularly on the grounds of delay and latches, as also, locus standi of the appellants to assail the acquisition proceedings. Had we dealt with the objections raised by the respondents and found merit therewith, it may not have been necessary for us to examine the merits of the claim raised by the appellants before us. We may acknowledge, that at the first blush, the objections raised by the official respondents did not seem to be bereft of merit. Yet, since the issues canvassed at the hands of the learned counsel for the appellants raised important issues of law, we considered it just and appropriate to deal with them in order to settle the legal proposition canvassed. Having recorded our conclusions on the issues canvassed before us, we are of the view, that it is no longer necessary for us to deal with the objections/ submissions canvassed on behalf of the official respondents.

57. For the reasons recorded hereinabove, we find no merit in these appeals. The same are accordingly dismissed.

R.P. Appeals dismissed.

JIJU KURUVILA & ORS.
v.
KUNJUJAMMA MOHAN & ORS.
(Civil Appeal Nos. 4945-4946 of 2013)

JULY 02, 2013

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

MOTOR VEHICLES ACT, 1988:

s. 166 - Fatal accident -- Compensation - Deceased employed in US - Date for fixing the rate of exchange - Deduction towards personal expenses - Held: If the claimant files petition claiming compensation in Indian Rupees(INR), then date of filing of claim petition is the proper date for fixing the rate of exchange at which foreign currency amount has to be converted into currency of the country (INR) -- Deceased aged 45 years, multiplier of 14 applicable - At the time of death, there being four dependents, 1/4th of total income to be deducted towards personal expenses - Amount of compensation payable to claimants will thus, be Rs.54,49,500/-, besides Rs.2,00,000/- as loss of love and affection to two children and Rs.1,00,000/- towards loss of consortium to the wife, with 12% interest.

s.166 - Fatal accident - Compensation - Propriety of Tribunal and High Court apportioning contributory negligence at 75:25 and 50:50 respectively and awarding compensation accordingly - Held: The evidence of eye-witness, the FIR and the charge-sheet against the driver of offending vehicle, established that he caused the death due to negligent driving -- Therefore, Tribunal and High Court erred in concluding that the accident occurred due to the negligence on the part of the deceased as well.

The father of appellant no. 1, while driving a car, met with an accident as a bus coming from the opposite direction hit his car resulting in his death. At that time he was aged about 45 years and was employed in US at a monthly salary of 2500 US Dollar. The wife of deceased, his two minor children and his mother joined as claimants in the petition filed before the Motor Accident Claims Tribunal in April 1990, claiming a total compensation of Rs.57,25,000/. The mother of the deceased died during pendency of the claim petition. The Tribunal assessed the compensation at Rs.18,38,500/-, apportioned the liability for the accident in the ratio of 75.25, between the driver of the bus and the deceased and deducting 25% towards contributory negligence, awarded a sum of Rs.13,80,625/-. The High Court assessed total compensation at Rs.47,09,500/- but apportioned the contributory negligence @50:50 and accordingly awarded Rs.23,45,750/-.

In the instant appeals filed by the claimants and the insurance company, the questions for consideration before the Court were: (i) "Whether the foreign currency amount has to be converted into the currency of the country on the basis of exchange rate as on the date of filing claim petition (April, 1990) or as on the date of determination (May, 1993)"; (ii) Whether there was any contributory negligence on the part of the deceased; and (iii) Whether compensation awarded was just and proper.

Disposing of the appeals, the Court

HELD: 1. In the instant case, the claimants filed the petition in April 1990 and claimed compensation in INR. Such compensation was not claimed in U.S. Dollars. Therefore, in view of the facts and the decision of this Court in *Forasol's* case, the date of filing of the claim petition (April, 1990) is the proper date for fixing the rate of exchange at which foreign currency amount has to be

converted into currency of the country (INR). The Tribunal and the High Court have rightly fixed the rate of exchange as Rs.17.30 per US Dollar (as was prevailing in April, 1990). [Para 16] [288-E-G]

Forasol v. Oil and Natural Gas Commission **1984 SCR 526=1984 (Suppl.) SCC 263;** *Renusagar Power Co. Ltd. v. General Electric Co.* **1993 (3) Suppl. SCR 22 = 1994 Suppl (1) SCC 644 - relied on.**

2.1 As regards the contributory negligence, there is no evidence on record to suggest any negligence on the part of the deceased. The owner of the bus and its driver, who were the first and the third respondents before the Tribunal and High Court, did not deny the allegation that the accident occurred due to rash and negligent driving on the part of the bus driver. The evidence of PW-3, an independent eye witness accompanying the deceased, the FIR registered u/ss. 279, 337 and 304A IPC and the charge-sheet submitted by the police against the bus driver u/ss. 279, 337 and 304A IPC specifically show that the bus driver caused the death due to rash and negligent driving. Therefore, the Tribunal and the High Court erred in concluding that the accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises. [Para 20-23 and 26] [289-D-F, G-H; 290-A-C; 291-B]

2.2 Both the Tribunal and the High Court have accepted that the deceased was working as manager in U.S.A. and was getting a monthly salary of 2500 U.S. Dollars. The High Court accepted that the deceased, as per conditions of service, could have continued in the employment upto the age of 65 years. On the basis of the annual income and exchange rate of Rs. 17.30 per US Dollar as applicable in April, 1990, the annual income of

the deceased if converted in Indian currency will be Rs. 5,19,000/- at the time of death. The deceased was 45 years of age, therefore, by applying the multiplier of 14, the amount will be Rs.5,19,000 x 14 = Rs.72,66,000/-. The family of the deceased consisted of 5 persons i.e. deceased himself, wife, two children and his mother. As per the decision of this Court in *Sarla Verma* there being four dependents at the time of death, 1/4th of the total income to be deducted towards personal and living expenses of the deceased, and, as such, the compensation payable to the claimants will be Rs.54,49,500/-. Besides, the claimants are entitled to get Rs.1,00,000/- each towards loss of love and affection to the two children i.e. Rs.2,00,000/-and a sum of Rs.1,00,000/- towards loss of consortium to wife which seems to be reasonable. Therefore, the total amount comes to Rs.57,49,500/-. The claimants are entitled to interest @ 12% from the date of filing of the petition till the date of realisation. The judgment of the High Court and the award of the Tribunal are modified accordingly. [Paras 27, 29-31] [291-C-D, F-H; 292-A-E, F]

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

Case Law Reference:

1984 SCR 526	**relied on**	**Para 14**
1993 (3) Suppl. SCR 22	**relied on**	**Para 15**
2009 (5) SCR 1098	**relied on**	**Para 29**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4945-4946 of 2013.

From the Judgment and Order dated 12.04.2007 of the High Court of Kerala at Ernakulam in M.F.A. Nos. 1298 & 1162 of 2001 (D).

WITH

C.A. Nos. 4947 & 4948 of 2013.

C.N. Sree Kumar, Prakash Ranjan Nayak, Reshmita R. Chandraw for the Appellants.

Manjeet Chawal, A. Raghunath for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Delay condoned. Leave granted.

2. These appeals are directed against the judgment of the Division Bench of the Kerala High Court dated 12th April, 2007 in M.F.A. Nos. 1162 and 1298 of 2001(D) whereby compensation awarded to the claimants by Motor Accident Claims Tribunal, Kottayam (hereinafter referred to as 'the Tribunal', for short) was enhanced and the liability for the accident was apportioned at the ratio of 50:50.

3. The facts that lead to the present case are as follows:

On 16th April, 1990, a motor accident took place on K.K. Road, near Pampadi Mavell Store, whereby the car driven by one Joy Kuruvila (deceased) had a head on collision with a bus that came from the opposite direction. Joy Kuruvila sustained serious injuries and died on the way to hospital. His four dependents, namely, Chinnamma Joy (widow of deceased), Jiju Kuruvila aged 14 years, Jaison Kuruvila aged 11 years (2 minor children of the deceased) and Grace Kuruvila (mother of the deceased) aged 85 years filed a joint application under Section 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as, 'the Act'), claiming compensation of Rs.57,25,000/- towards following heads:-

(a) Funeral Expenses Rs. 25,000/-

(b) Compensation for pain and suffering Rs. 1,00,000/-

(c) Compensation on account of death of the deceased and consequent loss of income to the petitioners	Rs. 54,00,000/-
(d) Compensation for the loss of consortium to the 1st petitioner	Rs. 1,00,000/-
(e) Loss of paternal love, affection and guidance to the 2nd and 3rd petitioners	Rs. 1,00,000/-
	Rs. 57,25,000/-

4. At the time of accident, Joy Kuruvila was about 45 years of age and was working as a Manager in the Freeman Management Corporation, New York Branch in the United State of America for more than nine years and was receiving a monthly salary of 2500 US Dollars equivalent to Rs.43,100/-. He was provided with quarter by the employer and was residing alongwith his wife. Joy Kuruvila used to give Rs.30,000/- per month to his wife for the household expenses and savings after meeting his personal expenses. He was healthy, energetic, otherwise, had longevity of life and could have continued in service upto the age of 65 years as per service conditions i.e. for another 20 years.

5. The 1st claimant is the wife, 2nd and 3rd claimants are the children and the 4th claimant was the mother of the deceased. P.C. Kurian, who was the 3rd respondent, was driving the bus at the time of the accident and 1st respondent, Kunjujamma Mohan was the bus owner. It was alleged that the accident occurred solely due to rash and negligent driving of the bus driver, P.C. Kurian and the vehicle had valid insurance with the Oriental Insurance Co.Ltd.. Based on such facts, the claimants claimed a sum of Rs. 57,25,000/- as compensation with 18% interest and cost.

6. In spite of notice, the bus owner, Kunjujamma Mohan and the driver, P.C. Kurian did not appear before the Tribunal and the High Court and had not denied the allegations.

7. The Oriental Insurance Co. Ltd. (hereinafter referred to as , "the Insurance Company") in its written statement, admitted the existence of the valid policy of bus No.KRK-3057 in the name of Kunjujamma Mohan but denied the allegation of rash and negligent driving on the part of the bus driver, P.C. Kurian in causing the accident. The age, occupation, monthly income of the deceased and the claim of compensation were also disputed. According to the Insurance Company, the accident occurred due to rash and negligent driving of the deceased.

8. The evidence consisting of testimony of PW.1 to PW.3 and Ext.-A1 to Ext.-8 and Ext.B1 to B3 were brought on record.

9. During pendency of the claim before the Tribunal, the 4th claimant, Grace Kuruvila, mother of the deceased expired; the rest of the claimants remained as legal heirs of the deceased. The 2nd and 3rd claimants, children of the deceased, who were minor at the time of filing the claim case attained majority during the pendency of the case and were declared as major.

10. The Tribunal after hearing the parties and recording evidence held that the accident was caused due to rash and negligent driving of the bus driver. Considering the contributory negligence on the part of the deceased the Tribunal apportioned the liability for the accident in the ratio of 75:25 between the driver of the bus and the deceased. It assessed compensation to be Rs. 18,38,500/- and after deducting 25% towards contributory negligence on the part of the deceased, awarded a sum of Rs. 13,80,625/- with 12% interest for payment in favour of the claimants.

11. The High Court affirmed the view of the Tribunal regarding rash and negligent driving both on the part of the bus driver and the deceased, but apportioned the contributory negligence @ 50:50 for payment of compensation. The High Court held that the Tribunal wrongly fixed Rs. 10,000/- as the monthly contribution by the deceased to the family and

observed that even if 1/3rd was deducted towards personal expenses of the deceased, more than 1600 US Dollars could be taken as dependency benefit. However, while determining the compensation, the High Court took the figure of 1500 US Dollars as the dependency benefit. The exchange rate as was prevailing on the date of filing of the claim petition i.e. April, 1990 was taken into consideration based into Ext.-A7 and worked out the contribution to the family was calculated to be Rs. 25,950/- per month. On the basis of such contribution, the High Court assessed the total compensation at Rs. 47,09,500/- and ordered to pay 50% of the amount i.e. Rs. 23,45,750/- with interest in favour of the claimants.

12. The claimants have challenged the determination made by the High Court mainly on the following terms:-

(i) The foreign exchange rate as was prevailing at the time of award i.e. May, 1993, and shown in Ext.-A8, ought to have been taken into consideration for calculation of compensation.

(ii) In absence of any evidence relating to negligence on the part of the deceased and in view of the direct evidence on record, both the Tribunal and the High Court erred in holding that there was negligence on the part of the deceased.

13. In this case, the questions which arise for consideration are:

(i) Whether the foreign currency amount has to be converted into the currency of the country on the basis of exchange rate as on the date of filing claim petition (April, 1990) or as on the date of determination (May, 1993);

(ii) Whether there was any contributory negligence on the part of the deceased, Joy Kuruvila and

(iii) Whether compensation awarded is just and proper.

14. The question as to whether the proper date for fixing

rate of exchange at which the foreign currency amount is to be converted into the currency of the country, for determination of amount payable to a claimant/plaintiff fell for consideration before this Court in *Forasol v. Oil and Natural Gas Commission*1984 (Suppl.) SCC 263 wherein this Court observed as follows:

"24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are:

(1) the date when the amount became due and payable;

(2) the date of the commencement of the action;

(3) the date of the decree;

(4) the date when the Court orders execution to issue; and

(5) the date when the decretal amount is paid or realised.

25. In a case where a decree has been passed by the Court in terms of an award made in a foreign currency a sixth date also enters, the competition, namely, the date of the award. The case before us is one in which a decree in terms of such an award has been passed by the Court."

Taking into consideration the claim as was made in the said case this Court held as follows:

"70. It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have been sufficiently indicated in the English decisions referred to by us above. Such instances can, however,

never, be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case with which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency, and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment

in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court-fees, if any, if at the date of the judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court-fees and jurisdiction. At the hearing of such a suit, before passing the decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange

proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff."

15. In *Renusagar Power Co. Ltd. v. General Electric Co.* 1994 Suppl (1) SCC 644, similar question came for consideration. In the said case, a foreign award was under consideration and the Arbitral Tribunal awarded the same in U.S. Dollars with interest. In the said case relying on decision of this Court in *Forasol* (supra), it was held as follows:

"143. In accordance with the decision in Forasol case the said amount has to be converted into Indian rupees on the basis of the rupee-dollar exchange rate prevailing at the time of this judgment. As per information supplied by the Reserve Bank of India, the Rupee-Dollar Exchange (Selling) Rate as on October 6, 1993 was Rs 31.53 per dollar.

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146. In the result, C.A. Nos. 71 and 71-A of 1990 and C.A. No. 379 of 1992 are dismissed and the decree passed by the High Court is affirmed with the direction that in terms of the award an amount of US $ 12,333,355.14 is payable by Renusagar to General Electric out of which a sum of US $ 6,289,800.00 has already been paid by Renusagar in discharge of the decretal amount and the balance amount payable by Renusagar under the decree is US $ 6,043,555.14 which amount on conversion in Indian rupees at the rupee-dollar exchange rate of Rs 31.53 per dollar prevalent at the time of this judgment comes to Rs 19,05,53,293.56. Renusagar will be liable to pay future interest @ 18 per cent on this amount of Rs 19,05,53,293.56 from the date of this judgment till payment. The parties are left to bear their own costs."

16. In the present case, admittedly the claimants filed a petition in April, 1990 (affidavit sworn on 24th March, 1990) and claimed compensation in INR i.e. Rs.57,25,000/-. Such compensation was not claimed in U.S. Dollars. For the said reason and in view of the decision of this Court in *Forasol* (supra) as followed in *Renusagar Power Co. Ltd.* (supra), we hold that the date of filing of the claim petition (April, 1990) is the proper date for fixing the rate of exchange at which foreign currency amount has to be converted into currency of the country (INR). The Tribunal and the High Court have rightly relied on Ext.-A7, to fix the rate of exchange as Rs.17.30 (as was prevailing in April, 1990).

17. The second question is relating to contributory negligence of the deceased. According to the claimants, accident occurred due to rash and negligent driving on the part of the bus driver, P.C. Kurian and there was no negligence on the part of the deceased, Joy Kuruvila.

Per contra, according to the Insurance Company, the accident took place due to negligent driving on the part of the deceased, who was in the intoxicated condition. They relied on Ext.-A5, the post-mortem report.

18. Three witnesses, PW.1 to PW.3 deposed before the Tribunal. Parties placed documentary evidence, Ext.A-1 to Ext.A-8, Ext. B1 and B2. On behalf of the claimants, they relied on the oral evidence and documentary evidence to show rash and negligent driving on the part of the bus driver. On behalf of the Insurance Company, the counsel relied on Ext.-B2 'Scene Mahazar' and Ext.-A5, post mortem report to suggest negligence on the part of the deceased.

19. The High Court based on Ext.-B2 'Scene Mahazar' and Ext.-A5, post mortem report held that there was also negligence on the part of the deceased as well.

20. On hearing the parties and perusal of record, the following facts emerge:-

The owner of the vehicle Kunjujamma Mohan and the driver of the bus, P.C. Kurian who were the first and third respondents before the Tribunal and High Court, had not denied the allegation that the accident occurred due to rash and negligent driving on the part of the bus driver.

21. PW-3, an independent eye witness was accompanying the deceased during the journey on the fateful day. He stated that the bus coming from the opposite direction hit the car driven by the deceased and the accident occurred due to rash and negligent driving of the bus driver.

22. Ext.-A1, FIR registered by Pampady Police against the bus driver, P.C. Kurian, under Sections 279, 337 and 304A IPC shows that the accident occurred due to rash and negligent driving on the part of the bus driver. After investigation, the police submitted a charge-sheet (Ext.-A4) against the bus driver under Section 279, 337 and 304A IPC with specific allegation

that the bus driver caused the death of Joy Kuruvila due to rash and negligent driving of the bus on 16th April, 1990 at 4.50P.M. In view of the direct evidence, the Tribunal and the High Court held that the accident was occurred due to rash and negligent driving on the part of the bus driver.

23. There is no evidence on record to suggest any negligence on the part of the deceased. Ext.-B2, 'Scene Mahazar' also does not suggest any rash and negligent driving on the part of the deceased.

24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

25. Post Mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit.

26. The aforesaid evidence, Ext.-A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext.-B2, 'Scene Mahazar' and the Ext.-A5, post mortem report cannot take the place of evidence, particularly, when the direct evidence like PW.3, independent

eye-witness, , Ext.-A1(FIR), Ext.-A4(charge-sheet) and Ext.-B1(F.I. statement) are on record.

In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.

27. The last question relates to just and proper compensation. Both the Tribunal and the High Court have accepted that the deceased was 45 years of age at the time of accident; he was working as manager, Freeman Management Corporation, New York Branch, U.S.A. and was getting a monthly salary of 2500 U.S. Dollars. The High Court accepted that the deceased, as per conditions of service, could have continued the employment upto the age of 65 years.

28. Ext.-A6, is a certificate issued by the employer of deceased, i.e.,Freeman Management Corporation, U.S.A. dated 23rd April, 1990 which shows that his annual salary was 30,000 U.S.Dollars. He was in their employment for 9 years and had an excellent standing and his employment was of a permanent nature. The deceased would have continued in service upto the age of 65 years. Ext.-A6 was attested by Notary Public and counter signed by the Consulate General of India, New York, as per Section 3 of the Diplomatic and Consular Officers(Oaths and Fees) Act, 1948.

29. On the basis of the aforesaid annual income and exchange rate of Rs. 17.30 per US Dollar as applicable in April, 1990 (Ext.-A7), the annual income of the deceased if converted in Indian currency will be 30,000 x 17.30 = 5,19,000/- at the time of death. The deceased was 45 years of age, therefore, as per decision in *Sarla Verma & Ors. V. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, multiplier of 14 shall be applicable. But the High Court and the Tribunal wrongly held that the multiplier of 15 will be applicable. Thus, by applying the multiplier of 14, the amount of compensation

will be Rs.5,19,000 x 14 = Rs.72,66,000/-. The family of the deceased consisted of 5 persons i.e. deceased himself, wife, two children and his mother. As per the decision of this Court in *Sarla Verma* (supra) there being four dependents at the time of death, 1/4th of the total income to be deducted towards personal and living expenses of the deceased. The High Court has also noticed that out of 2,500 US Dollars, the deceased used to spend 500 US Dollars i.e. 1/5th of his income. Therefore, if 1/4th of the total income i.e. Rs. 18,16,500/- is deducted towards personal and living expenses of the deceased, the contribution to the family will be (Rs. 72,66,000 - Rs. 18,16,500/- =) Rs.54,49,500/-. Besides the aforesaid compensation, the claimants are entitled to get Rs.1,00,000/- each towards love and affection of the two children i.e. Rs.2,00,000/-and a sum of Rs.1,00,000/- towards loss of consortium to wife which seems to be reasonable. Therefore, the total amount comes to Rs.57,49,500/-.

30. The claimants are entitled to get the said amount of compensation alongwith interest @ 12% from the date of filing of the petition till the date of realisation, leaving rest of the conditions as mentioned in the award intact.

31. We, accordingly, allow the appeals filed by the claimants and partly allow the appeals preferred by the Insurance Company, so far as it relates to the application of the multiplier is concerned. The impugned judgment dated 12th April, 2007 passed by the Division Bench of the Kerala High Court in M.F.A. Nos.1162 and 1298 of 2001 and the award passed by the Tribunal are modified to the extent above. The amount which has already been paid to the claimants shall be adjusted and rest of the amount with interest as ordered above be paid within three months. There shall be no separate order as to costs.

R.P. Appeals disposed of.